Neutral Citation Number: [2026] EWHC 2107 (KB)

Case No: QB-2022-002405 and others

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/08/2026

Before:

THE HONOURABLE MR JUSTICE CONSTABLE

- -

Between:

VARIOUS CLAIMANTS

Claimants

- and -

MERCEDES-BENZ GROUP AG AND OTHERS

FORD MOTOR COMPANY AND OTHERS

NISSAN MOTOR CO., LTD AND OTHERS

STELLANTIS AUTO SAS AND OTHERS

AND OTHERS

Defendants

- -

Oliver Campbell KC, **Matthew Parker KC**, **Philip Hinks KC**, **Gareth Shires**, **Anna Medvinskaia** and **Alicia Lawson** (instructed by **Leigh Day** and **PGMBM Law Ltd**) for the **Claimants**
Tom Adam KC, **Malcolm Sheehan KC**, **Richard Blakeley KC**, **Zahra Al-Rikabi**, **William Moody** and **Camilla Cockerill** (instructed by **Herbert Smith Freehills Kramer LLP**) for the **Mercedes-Benz Group Defendants**

Catherine Gibaud KC, **Sonia Nolten KC**, **Theodor Van Sante**, **Meghann McTague**, **Benjamin Phelps** and **Georgia Terry** (instructed by **McGuire Woods London LLP**) for the **Ford Defendants**
Alexander Antelme KC, **Richard Sage**, **Frederick Simpson** and **Frederick Wilmot-Smith** (instructed by **Signature Litigation LLP**) for the **Renault Defendants**
Stephen Auld KC, **Anneli Howard KC**, **Michael Ryan KC** and **Michael d'Arcy** (instructed by **Hogan Lovells International LLP**) for the **Nissan Defendants**
John Taylor KC, **James Cutress KC** and **Christopher Monaghan** (instructed by **Cleary Gottlieb Steen & Hamilton LLP**) for the **PCD Defendants**

Hearing dates: 23 and 24 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 7 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Constable:

A. Introduction

1. On 10 July 2026, Cockerill LJ handed down the judgment on defined liability issues in the Pan-NOx Emissions Group Litigation (see [2026] EWHC 1753 (KB) (the "PDD Judgment")). It concerned a range of different types of alleged Prohibited Defeat Devices ("PDDs") across a number of core sample vehicles ("CSVs") manufactured by the Mercedes, Ford, Renault, Nissan and PCD Defendants (the "Lead Defendants"). Having reflected on the PDD Judgment, the Claimants applied to vacate the Quantum Trial listed to commence on 26 October 2026 and stay proceedings pending the Claimants' application for permission to appeal ("the Application to Stay"). The Application to Stay was supported by every Lead Defendant, except Mercedes and Renault. A full day's argument in respect of the Application to Stay took place on the first day of the Pre-Trial Review (the "PTR"). Following consideration of the parties' positions overnight, I indicated on the morning of the second day of the PTR that the Application to Stay would be refused in respect of the Mercedes GLO, but otherwise granted to reflect the preferred position in each of the other GLOs. I indicated that a reasoned judgment would follow. This is that judgment.

B. The PDD Judgment

2. The PDD Judgment, divided into 3 Parts, ran to 369 pages including Appendices. Part 1 was the main part, setting out core background, the legal analysis and summary conclusions on the individual cases. Part 2 of the PDD Judgment contained the detailed reasoning on the individual defeat devices ("DD") alleged against each manufacturer. Part 3 contained the Appendices.

3. Cockerill LJ interpreted Article 3(10) of Regulations 715/2007 (the "Emissions Regulation" or "ER") narrowly so that it only applies to cycle recognition defeat devices and so-called "boundary devices", subject to them having "an intentional and/or

impermissible purpose of causing the ECS to operate differently when it senses it is being tested". As a result, many of the devices alleged by the Claimants to be PDDs that operated in normal driving conditions have been found not to be PDDs, nor devices that optimise for the New European Driving Cycle ("NEDC") test.

4. Cockerill LJ also found that "conditions which may reasonably be expected to be encountered in normal vehicle operation and use" (which phrase within Article 3(10) has been colloquially referred to by the parties as "NDC") is limited to (i) a temperature window of 3°C to 30°C; (ii) an altitude of up to 945hpa/ 600m; and (iii) a torque/engine speed which did not exceed 95% of the range of the vehicle.

5. In respect of Article 5(2) ER, Cockerill LJ concluded that there was no requirement to use a range of alternative technologies identified by the Claimants at Euro 5. Taken together, Cockerill LJ's Article 3(10) and Article 5(2) findings mean that the majority of the Claimants' PDD allegations have not been successful. Mercedes' Coolant Temperature Setpoint device ("CTS") and PCD's Split Injection Device ("Split") have been found to be PDDs. CTS affects one of the Mercedes CSVs (MBC1) and two of the PCD CSVs (PCDC6 and PCDC4).

6. Cockerill LJ determined that a breach of the ER gave rise to an actionable cause of action. However, the Claimants were not successful in relation to their case on axiomatic breach of contract (i.e. breach of contract flowed automatically from a breach of statutory duty). Breach of contract will need to be argued, insofar as necessary, at a further hearing on the basis of evidence from the Claimants.

7. On the basis of the primary findings therefore, Cockerill LJ found the Mercedes and PCD Defendants liable in respect of those vehicles containing a CTS or Split respectively. None of the other Lead Defendants were found liable, at least in respect of those allegations which had been the subject of the PDD Judgment.

8. The PDD Judgment also contained "contingent findings" as to what Cockerill LJ's conclusions would have been as to the existence of a PDD had she not construed Art 3(10) ER as she did. Those findings indicate that, had the Claimants' case been accepted, then they would have established (based on the table at pg. 303 of the PDD Judgment):

(1) 1 out of 10 alleged DDs in Mercedes' CSVs would be a PDD;

(2) 3 out of 6 alleged DDs in PCD's CSVs would be PDDs;

(3) 4 out of 8 alleged DDs in Renault's CSVs would be PDDs; and

(4) 4 out of 8 alleged DDs in Nissan's CSVs would be PDDs.

The Claimants indicated their understanding that had the "contingent findings" been made then the Claimants would have established PDDs in 12 out of 20 CSVs, affecting 27 of the 39 Quantum Sample Claimants ("QSCs").

9. Cockerill LJ's description of how the two PDDs identified in the PDD Judgment operated is as follows:

(1) The CTS device found in MBC1 is described at [900]-[903] of the PDD Judgment as a coolant-based device. When the engine is too hot, the cooling system actively cools it by channelling the hot coolant through a radiator. A wax thermostat prevents coolant flowing to the radiator until the coolant has warmed up. The wax melts naturally when the engine reaches 95ºC, allowing coolant into the radiator to be cooled from that point onwards. The CTS is operative in NEDC conditions by reference to ambient air temperatures, intake air temperatures, oil temperatures and atmospheric pressure. Further, the CTS works on a timer, the length of which depends on the engine start temperature. Within the permitted temperature range of the NEDC, the timer allows the CTS to operate for a duration slightly longer than the NEDC test. Given the manner of its operation, the lack of credible explanation from Mercedes' Mechanical Engineering expert, the limited documentary evidence and the findings of the KBA, Cockerill LJ concluded at [918] that the CTS was a Cycle Recognition Defeat Device ("CRDD") (boundary device). She also noted that Mercedes decided to remove the CTS via a software update (at [920]).

(2) The Split device is considered at [1171]-[1224]. The split mode is a combustion mode in some of PCD's Euro 5 vehicles, in which the main injection of fuel into the combustion chamber is split into two, either with a delay or with a "dwell" in between injections. The device is activated if seven main parameters are met (identified at [1173]). It operates by reference to a timer (a deactivation mode) and mode prioritisation. The main parameters all coincide with the highest load phase of the Extra-Urban Drive Cycle ("EUDC") (i.e. the "motorway" section of the NEDC cycle). Cockerill LJ found that its primary purpose was to reduce combustion noise and reduce soot and not merely to reduce NOx in the NEDC test, but she also concluded that split mode operated very rarely during real world driving due to the timer, with the test results across all vehicles showing an operation in a road test for only one second ([1199]). She therefore concluded that *"the way in which it works is such that it provides optimum benefits in the NEDC"* (at [1201]) and found that it was a CRDD. On her alternative case, she also concluded that the test data established that there was a reduction in effectiveness ("RIE") ([1219]).

C. The Procedural Background

10. The Pan-NOx proceedings comprise approximately 1.6 million claims brought against sixteen OEMs. The Court's case management of the Pan-NOx litigation has sought to achieve dispositive and expeditious resolution, at proportionate cost. The Court has to date sought a structure which has promoted, so far as possible, resolution of Pan-NOx issues which are widely dispositive and which bind as many parties as possible. Case management of the Pan-NOx litigation has also sought to assist the resolution of the non-Lead Claims against the Non-ALGLOs. It was for this reason that a broad spread of CSVs was selected for the PDD Trial, using a range of technology and with a range of calibrations, with the aim that resolution of the allegations against the CSVs would best assist in clarifying the merits of the claims against the Non-ALGLOs. A similar approach was taken to Quantum: QSCs were selected to represent a range of characteristics.

11. How the Quantum Trial was to be shaped was considered in detail at the October 2024 CMC, presided over by Cockerill J, as she then was. It was the Claimants' position at

that CMC that the Quantum Trial should proceed by reference to the Mercedes CSVs only, with some assumed facts and would not involve test claimants. No other Defendant Manufacturer would have permission to adduce evidence or cross-examine, but could make submissions. It was anticipated that the trial would last for four weeks. It was the position of Mercedes (together with Ford and Nissan) that the Quantum Trial should not be limited to Mercedes CSVs, and that (a) there should be test claimants and (b) the trial should take place on the basis of assumptions without regard to PDDs or their impact on a particular vehicle.

12. At paragraph 29(c) of the Claimants' Skeleton Argument for the October 2024 CMC, it was submitted:

> "The core issues for quantum relate to valuation of the vehicles, and the issues of law and principle around valuation and what post-acquisition matters are taken into account. (Put simply, Cs will contend for a difference in value at the date of acquisition and say the vehicles were worth far less than they would have been in a warranty true/no breach of statutory duty world. Ds will say there is no loss because the PDDs were fixed by updates, and anyway, Cs had use of the vehicles for their life, but in any case, the vehicles were no less valuable.) The issues that arise on particular test claimants (e.g. mental distress, failure to mitigate, specific increased costs of a claimant) are relatively minor and unlikely to drive settlement, which in any event will be done on a global or general basis. As recognised in Gallagher 2, §50 the key driver of value and settlement is the vehicle value and the correct approach to the legal questions on those issues. If those issues are unlocked, there is a significant prospect of a wider settlement of the Cs' claims."

13. Indeed, Mr Gallagher's evidence referred to went as far as to suggest that, in light of the fact that the key driver was the correct approach to the legal questions, "*realistically the parties are unlikely to ever get to a trial of the Claimant-specific issues*". Having pointed out the importance of the PDD Trial in focussing on the full possible range of PDDs and justifications, the Skeleton Argument continued: "*the same approach need not be taken to the Quantum Trial. Rather the Quantum Trial should focus on providing clarity and facilitating settlement by deciding the correct approach to quantum through worked examples…*". Some parties, including Mercedes, contended that the approach then proposed by the Claimants was unlikely to provide sufficient guidance.

14. The approach taken by the Court was to (a) take a Pan-NOx approach broadly echoing the model of the PDD Trial – i.e. Lead Defendants taking part evidentially, and Non-ALGLOs being entitled to participate by way of submissions; (b) require the involvement of Sample Claimants, so that the Quantum Trial would decide not just principles, but test the cases of actual Sample Claimants; (c) order preparation for the Quantum Trial to be progressed, in parallel with the PDD Trial, on assumptions but providing for the replacement of those assumptions with findings in circumstances where the PDD Judgment was handed down in sufficient time.

15. This was therefore reflected in the October 2024 CMC Order made by the Court:

> "20. There shall be a trial of certain causation and loss issues identified at Annex 2 (the "Quantum Trial Issues") to be tried by reference to sample Claimants from the Lead GLOs in respect of their claims in breach of contract and breach of statutory duty (the "Quantum Trial"). The time

estimate for the Quantum Trial is eight weeks (the final two weeks to be held in reserve). The Quantum Trial shall be listed to commence on a date between 26 October 2026 and 6 November 2026.

Assumptions

21. The Quantum Trial shall proceed on the following assumptions:

a. the assumption that at the point of manufacture the vehicles of each of the sample Claimants which are the subject of these proceedings ("the Relevant Vehicles") contained one or more of any PDDs alleged to be contained in the corresponding Sample Vehicles at the PDD Trial (the "PDD Assumption").

b. the alternative assumptions that, following software updates, the Relevant Vehicles:

i. still contained one or more of any PDDs (assumed pursuant to sub- paragraph (a) above) alleged to be contained in the Sample Vehicles at the PDD Trial (the "No Cure Assumption"); or

ii. no longer contained any PDD (the "Cure Assumption").

22. These assumptions shall apply unless and until there is any finding (in the PDD Trial or otherwise) or admission that a Relevant Vehicle did not contain, contained, contains, or no longer contains one or more PDDs. If any such finding or admission is made in respect of a Relevant Vehicle the Quantum Trial will proceed on the basis of such finding or admission."

16. The inclusion of more than one or two Lead Defendants was driven (both in relation to the PDD Trial and the Quantum Trial), to a material extent, by the danger to progress of the broader Pan-NOx proceedings if any single GLO, or even two GLOs, selected as Lead GLO(s) settled prior to judgment. The inclusion of real Sample Claimants rather than assumed facts ensured that the Quantum Trial would be dispositive of actual cases. However, no view was expressed by the Court at that time inconsistent with the then analysis of the Claimants, namely that a determination by reference to real PDDs would determine the correct approach to relevant legal questions underlying the quantum dispute, and that if those issues were unlocked, there was a significant prospect of a wider settlement of the Claimants' claims. The Court also recognised that the Claimants might fail to establish an unspecified number of the alleged PDDs, and ordered that the concrete findings about PDDs, whatever they turned out to be, would be the basis upon which the Quantum Trial would proceed.

17. It is also important to note that, in recognition of the fact that the Quantum Trial would be seeking to determine questions of law and related methodological principles applicable across the Pan-NOx proceedings, the October 2024 CMC Order provided for the involvement of the "Non-ALGLOs" (i.e. those Defendant Manufacturers other than the Lead and Additional Lead Defendant Manufacturers). Specifically, it provided at [57] and [58] that:

"57. Any Defendant Group in a non-ALGLO intending to participate in the Quantum Trial shall notify all other Parties of their intention to do so by

4pm on 10 January 2025 (the "Quantum Participating non-ALGLOs").

58. The Quantum Participating non-ALGLOs do have permission, if so advised, to make written and oral submissions on issues of law arising on the Quantum Trial Issues. Any closing submissions filed and served by the non-ALGLO Defendants shall insofar as reasonably practicable be non-duplicative of submissions already served and so far as reasonably practicable shall not be duplicative of one another."

18. The fact of this provision is reflective of the fact that the parties did not consider that the issues to be determined would be so fact sensitive that it made no sense for the Non-ALGLOs to be participants, nor that as a result there would be no legal findings of principle that would read across dispositively to all Defendant Manufacturers taking part (irrespective of the precise PDD or Claimant characteristic).

19. In light of the perceived utility, at least as things stood in 2024, of the Quantum Trial in resolving matters and providing a platform for wider settlement, the most significant aspect of the overall structure of the litigation was that the preparation for the Quantum Trial was to proceed in parallel with the preparation and hearing of the PDD Trial, and that it would follow very shortly after. It was envisaged that the PDD Judgment would be handed down shortly before the start of the Quantum Trial, and that the assumption-based evidence would be fine-tuned to deal with actual findings. It was obviously readily foreseeable that, insofar as the Claimants failed entirely against any particular Defendant Manufacturer, there would be no findings in respect of which the Quantum Trial could proceed in that GLO. Similarly, it was inherent in the structure that, in respect of any particular Defendant Manufacturer, the scope of the case tested at the Quantum Trial would be limited to those PDDs in respect of which findings of liability were made at the PDD Trial, with the consequence that some of the QSCs whose vehicles contained devices not found to be PDDs would fall away. It was also reasonably foreseeable that the PDD Judgment might be the subject of appeal, and that, as such, the Quantum Trial might, if it proceeded as ordered, determine matters of a narrower or broader scope than that which may reflect the landscape if any part of the appeal was successful. The parties have therefore expended significant time and resources in furtherance of the intention to resolve quantum disputes shortly after the liability hearing, notwithstanding the prospect of an appeal against the PDD Judgment in parallel. A significant justification for that approach, together with the inclusion of Non-ALGLO participation, was undoubtedly the view that a quantum trial would determine the correct approach to the relevant legal questions and may unlock the dispute.

D. The Law

20. Unsurprisingly, the principles were not in material dispute. The Court's jurisdiction to stay the whole or part of any proceedings arises under both (i) its inherent jurisdiction, as expressly preserved by s.49(3) of the Supreme Court Act 1981 and (ii) its general case management powers under CPR 3.1(2)(g).

21. The White Book notes observe (at 3.1.8), "*the circumstances in which a stay may be appropriate are many and various*." Given the breadth of the circumstances in which a stay might be needed or considered desirable, there are no fixed rules or principles which are applicable to all such applications; "*the court has an unfettered discretion and no authority can lay down rules for its exercise*": Leicester Circuits Ltd v Coates

Brothers plc [2002] EWCA Civ 474 at [12] *per* Potter LJ. In Hammond Suddard Solicitors v Agrichem International Holdings Ltd [2002] C.P. Rep. 21, Clarke LJ explained (at [22]) that whether the Court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, with the essential question being "*whether there is a risk of injustice to one or both parties if it grants or refuses a stay*".

22. Mercedes directed the Court to the various authorities dealing with applications under CPR 3.1(2)(b) to vacate a trial at such a late stage as facing the Court on this Application. Whilst it is right, as pointed out by Mr Campbell KC for the Claimants, that an application to adjourn is not directly analogous to an application to stay in the present circumstances, it is plain that the Court will in both cases make a fact-sensitive judgment taking into account all the circumstances. Those circumstances may include consideration of the broader use and fair allocation of the Court's resources (Fitzroy Robinson Ltd v. Mentmore Towers Ltd [2009] EWHC 3070 (TCC) at [8] per Coulson J (as he then was), applying Boyd and Hutchinson (A Firm) v. Foenander [2003] EWCA Civ 1516), as well as doing justice between the parties themselves.

23. In the context of a stay pending an appeal, Patten LJ held in HTC Corp v Nokia Corp [2013] EWCA Civ 1759 that the focus should be minimising risk (at [7]):

> "The effect of a stay is therefore to impose upon the successful party a temporary postponement of the relief he obtains from the trial judge until the correctness of the order is confirmed by the Court of Appeal. Consistently with the court's disinclination to debate the merits, the grant or not of the stay has to take into account the effect on the respective parties of such a postponement, weighed against the possibility that either may eventually turn out to be the winning party. Perfect justice is rarely obtainable and the uncertainty of the eventual outcome inevitably dictates that [sic] court may be able to do no more than to opt for the lesser of two evils. It is essentially about minimising risk. Where the potentially adverse consequences are relatively evenly balanced, the court can probably do no better than to maintain the status quo pending the outcome of the appeal."

24. Indeed, at least in the circumstances of this case, Patten LJ's reference to the lesser of two evils is particularly apposite. It became readily apparent, not least from the forcefully argued cases for and against staying the Quantum Trial, that the balancing process would always conclude, whichever way it was decided, with a less than perfect outcome.

E. Summary of the Parties' positions

25. The Claimants' submission that the Quantum Trial should be stayed rested on the following:

(1) the remaining cohort of QSCs no longer represented the totality of the Claimant characteristics which were ordered by the Court to ensure that the QSCs are properly representative of the class of Claimants as a whole;

(2) the Quantum Trial would not cover all the devices in issue between the Claimants and the remaining Lead Defendants, Mercedes and PCD;

(3) as such, it would not be dispositive of all quantum issues arising on the claims so that a further quantum trial would be required in any event, including if the

anticipated appeal was unsuccessful;

(4) few of the findings made at a Quantum Trial if it took place now could be relevantly applied in a second quantum trial, so that a trial as presently planned would be largely if not entirely redundant;

(5) it would therefore amount to a waste of costs and Court resources;

(6) even as a trial scaled down from that which would have taken place if all the Lead Defendants had had findings against them, it would remain a substantial fixture. Being required to take part in a wasteful exercise would be prejudicial to the Claimants;

(7) by contrast, the prejudice to the Mercedes Defendants would be, at most, delay in the ultimate resolution of the claim against them;

(8) the grant of a stay would assist in the promotion of settlement.

26. The fundamental point – that the planned Quantum Trial would not be dispositive in any meaningful way, such that a second Quantum Trial would be inevitable if the appeal was successful (and even if it was not) – was echoed by Ford, Nissan and PCD. Ms Gibaud KC for Ford sought, additionally, to emphasise that to allow a Quantum Trial to go ahead pending the appeal would be fundamentally out of step with the Pan-NOx management approach to date, which has sought to seek resolution of issues which are widely dispositive and which bind as many parties as possible. It was common ground that to the extent that a party was not involved in the Quantum Trial, it would not be bound by its findings. To the extent that it was involved, for example by making legal submissions, it would be bound by the findings of law. In circumstances, therefore, where Renault, Ford and Nissan did not take part, no findings would be binding against them and, Ms Gibaud argued, the entire ethos of the Pan-NOx management would be undermined.

27. Mr Taylor KC pointed out, for PCD, that they supported a stay and that the fact that, in the PCD GLO, both the Claimants and the Defendants did not wish to proceed to a Quantum Trial at this stage, should be a powerful factor, at least in the context of that GLO. He also suggested, with some obvious justification, that the scale of the Claimants' lack of success in establishing liability was what obviously underlay their change in position, but the changed landscape is something the Court should take properly into account. Would the Court have made the orders it did in October 2024 regarding the architecture of the case, Mr Taylor posed rhetorically, had it known what the outcome of the PDD Trial would have been? On behalf of Nissan, Mr d'Arcy emphasised that those whose continued involvement in the litigation would depend upon a successful appeal by the Claimants retained an interest in the orderly and logical management of the Pan-NOx litigation as a whole, and how a non-dispositive or non-binding Quantum Trial was more likely to disrupt than promote such orderly management. Mr Antelme KC for Renault, uncharacteristically but understandably given the PDD Judgment, made no substantive submissions because Renault did not support the Claimants' position or oppose Mercedes' position.

28. Against this, Mr Adam KC, on behalf of Mercedes, made the following points:

(1) the appeal may never happen;

(2) vacating the Quantum Trial would unravel the Court's careful case management to

date;

(3) critically, the Quantum Trial retains real utility now whatever the outcome of an appeal;

(4) vacating the Quantum Trial would waste costs and cause disruption, expense and delay; and

(5) Mercedes is entitled to have the claims against it resolved.

F. Discussion

29. I deal first with Mr Adam's first and second points.

The Appeal

30. As to the contention that the appeal may never happen, it is plainly right that it would be the worst of all worlds if the Court were persuaded to stay the presently scheduled Quantum Trial, which on any view will lead to wasting considerable cost (at least in absolute terms), for either no application for permission to appeal to be made or, it not to be granted.

31. Notwithstanding Mercedes' potentially justified concerns about the lack of clarity provided by the Claimants in respect of whether funding is in place for any appeal, it is difficult sensibly to go behind the clear statement of intent by the Claimants: they intend, and have instructions, to appeal. Whether an application for permission to appeal would be successful is a different point. Notwithstanding submissions on both sides, it would not be appropriate to express any view that trespasses on the application yet to be made. If the prospect of a successful application for permission to appeal was so vanishingly small so as to be dismissed out of hand, the answer to the question before me would be straightforward. However, I consider the only safe basis upon which to consider the competing arguments is simply to assume (rather than find) that there is a realistic prospect that an application for permission to appeal will be granted, either by Cockerill LJ or the Court of Appeal, and that, following any appeal, the landscape of the litigation may look different to how it looks today.

Case Management to Date

32. Mr Adam's second point, that vacating the Quantum Trial would unravel the Court's careful case management to date, is correct insofar as a course had been set by the Court by the case management decisions in March and October 2024, and the application to stay necessarily disrupts the existing October 2024 CMC Order which is predicated on a Quantum Trial taking place with the assumptions upon which the parties have been proceeding being replaced with the actual findings. It is equally true, however, that proceeding on the basis of a Quantum Trial against Mercedes, or Mercedes and PCD, will be sufficiently different in character to that which would have been the case had the Claimants succeeded in respect of a greater number of PDDs against a greater number of Defendants, this of itself can only be a subordinate consideration. Active

case management may mean changing tack if it is the right thing to do.

Utility: Introduction

33. Therefore, the question fundamental to the analysis is the utility of continuing with the Quantum Trial. If, given the much more limited scope of such a trial were it to proceed on the present primary findings of Cockerill LJ, either against Mercedes alone or against Mercedes and PCD, it would be all but redundant whether or not the appeal succeeded, which is the Claimants' position at its highest, this would obviously be a powerful factor in favour of a stay. If, however, Mr Adam is, or may be, right in his analysis of the potential remaining significant utility of what will be a narrower Quantum Trial, the position is different.

34. Whatever view on utility is reached, that must then be weighed against the expenditure, actual or potential wastage, or saving of costs and Court resources involved in the various potential scenarios. The evaluation must take account of the fact that utility as perceived in advance may prove not to be the case: the Court must be acutely aware, as it is in the context of preliminary issues, not to take a 'treacherous shortcut'. This is particularly so in circumstances where the Claimants are adamant that a Quantum Trial would now be almost entirely pointless; and the Mercedes Defendants say the opposite.

35. It is neither possible nor indeed desirable in the circumstances of this case to express a view as to utility in definitive terms. Much may depend upon the outcome of any Quantum Trial were it to go ahead. In expressing views, as I do, as to the strength of Mr Adam's submission it is to be stressed that such views are not pre-determinative of arguments in due course that may be deployed in support of, or resisting, the application of statements of legal principle to claims or defences not specifically before the Court on any such Quantum Trial.

36. I therefore consider in general terms the question of utility, and I then turn to weigh these conclusions against the cost and resource impact of various outcomes to reach an evaluation of the best (or least worst) way forward.

Utility: Reduced Coverage

37. The principal basis upon which Mr Campbell argued that there was no or little remaining utility in the Quantum Trial related to the significantly reduced coverage, both in terms of PDDs and QSC characteristics.

38. It is not in dispute that as a result of the findings made in the PDD Judgment and the reduction in the number of QSCs who continue to have claims the cohort of QSCs no longer represents "*the totality of characteristics set out in Annex 1*" to the October 2024 CMC Order, as envisaged by paragraph 29 of that Order, which provided:

> "the parties to the respective Lead GLOs shall consider the Initial Sample Pool in respect of their GLO and identify from it a group of Claimants ("the Sample Claimants") whose claims include at least one of each of the characteristics identified in Annex 1. The total number of Sample Claimants shall not be less than 20 and shall not exceed 40 and the Sample Claimants must, as a group, represent the totality of the characteristics set out in Annex 1."

39. There are three remaining Mercedes QSCs. Mercedes submit that these span almost all

the relevant permutations and are more than sufficient to produce decisions of general application:

(1) Contract type: a personal contract purchase ("PCP") where the option was exercised (Q1M, Fernandes), a hire purchase ("Hire Purchase") contract equivalent to an outright purchase (Q5M, Kalaitsidis), and a lease (Q6M, Bhardwaj);

(2) Disposal: a claimant who sold (Fernandes), one who still owns (Kalaitsidis), and one who returned the vehicle under a lease (Bhardwaj); and

(3) Software update: a vehicle that received an update (Fernandes), one that could have but did not (Kalaitsidis), and one returned before any update was released (Bhardwaj).

40. Mercedes rely upon the table in the evidence from Ms Johnson, a Partner at Herbert Smith Freehills Kramer LLP, representing Mercedes, as follows:

	Vehicle type		Consumer type		Acquisition type				Trade in status of acquisition			Updates		
Reference	Car	Van	Consumer	Business	Outright purchase	Hire-purchase agreement	PCP agreement	Leasing agreement	Trade-in	Non-trade in	Disposed of interest in vehicle?	Voluntary update applied	Mandatory or mandatory + voluntary update applied	No update applied where updates were made available
Q1M	x		x				x		x		x	x		
Q5M	x		x			x				x				x
Q6M	x			x				x		x	x			

41. The accuracy of the table was not in dispute. It shows that the only three characteristics not to be represented at all are (1) vans; (2) outright purchase; and (3) mandatory or mandatory + voluntary updates. Nevertheless, the Claimants are right that the October 2024 CMC Order envisaged a larger number of permutations: e.g. paragraph 4 of Annex 1 required at least two QSCs for each type of acquisition, one trade-in and one non-trade in. The question, however, is an evaluative one not a box-ticking one. Will the spread that *does* exist permit a meaningfully broad analysis of the issues so as to have real utility?

42. As to the three characteristics for which there is no coverage at all, Mr Adam argues that it is of little practical importance. In circumstances where there was no Mercedes QSC who owned a van, he submitted that this absence was immaterial to the Mercedes GLO. That may be so, but it is not of itself an answer. A 'van' was a specified characteristic because of the perceived potential for a different approach, which was (in the QSCs that had been selected) to be tested by reference to Renault or Ford vans. The Claimants describe this as a substantial omission. It is said that, on the basis of evidence provided by Ford's factual witnesses, they give rise to particular considerations as potentially indispensable 'working vehicles' may have different levels of depreciation, and are less likely than passenger vehicles to be available in petrol. These factors may influence questions before the Court in relation to mitigation and the level of risk a Claimant might associate with purchasing a vehicle which could be declared unlawful.

43. In relation to the absence of an outright purchaser amongst the Mercedes QSCs, Mr Adam contends that on the face of the Mercedes pleadings, there is no distinction

between outright purchasers and Hire Purchase Claimants. Mr Campbell's answer to this is that, whilst it is correct as far as Mercedes is concerned, the other Defendant Manufacturers do not adopt the same approach: Ford treat Hire Purchase Claimants as purchasers only after they have paid all sums required under the Hire Purchase Agreement.

44. In relation to mandatory updates, Mr Adam simply contends that there are no issues on the pleadings which distinguish between a mandatory or a voluntary update in terms of how damages ought to be assessed (as opposed to update and no update where available, which is a distinction capable of exploration on the reduced Mercedes QSCs in any Quantum Trial).

45. Ms Varga, a Partner at Pogust Goodhead providing evidence on behalf of the Claimants, identified other features of the cohort as a whole (i.e. not the cohort of QSCs selected for the Quantum Trial) which are not represented by the remaining QSCs. As such, of course, difficulties caused by their absence in any reduced Quantum Trial would be difficulties encountered in any event following a broader Quantum Trial which might have taken place had the Claimants' been largely successful in the PDD Trial (or had no PDD Judgment been handed down at all, such that the Quantum Trial proceeded on assumptions). Pointing these out is, it seems, at best double edged for the Claimants. Their existence demonstrates either that the parties had envisaged that obtaining specific findings taking into account the particular features were insufficiently important to include within either Annex 1 as a characteristic or within Annex 2 as an Issue. Whilst, for example, therefore it is now said that the absence of any Fleet Claimant is a significant omission, this must be seen in context of the fact that no party considered in October 2024 that this was a sufficiently important feature to require specific representation.

46. Judging the importance of the reduction in characteristics cannot, of course, be considered in a vacuum. It is obvious that, absent a particular characteristic being represented, the Quantum Trial will not provide a granular answer having taken that characteristic into account. A greater number of permutations represented would be better; the non-representation of a characteristic previously required is not ideal. But whether the reduced coverage impacts the overall utility of continuing with a Quantum Trial involves an evaluation which focusses not just on what it may no longer achieve in this regard, but what it may nevertheless achieve.

Utility: Issues

47. No doubt for this reason, Mr Adam's submissions as to utility focussed principally on the List of Issues for determination at the Quantum Trial, as set out in Annex 2 to the October 2024 CMC Order.

48. The first is: "*Are Business Claimants entitled to claim damages for alleged mental distress?*". That is stated to be a *"Preliminary Issue of Law"*. There is obviously no reason why that cannot be determined; but it is equally clear that if it were the only issue of law which might be dispositively determined, it alone would not justify proceeding with the Quantum Trial.

49. Relatedly, Issue 9 is:

> "Did any of the Sample Claimants who are Consumer Claimants or (subject to Issue 1) Business Claimants suffer distress, disappointment, inconvenience and

loss of enjoyment of their Relevant Vehicle for which they expected to have the quality and prestige attached to expensive branded goods, or the other non-financial value ascribable to the alleged respects in which the Relevant Vehicles were not as they allegedly should have been ("distress, etc.") (as per Mercedes GPOC §291.4)? If so:

a. Are damages for distress etc. recoverable in this case and if so under which causes of action for (i) Sample Claimants who are Consumer Claimants and (ii) (if different) Sample Claimants who are Business Claimants?

b. What amount of monetary compensation should that Claimant recover for said distress, etc. for (i) Sample Claimants who are Consumer Claimants and (ii) (if different) Sample Claimants who are Business Claimants?"

50. This is plainly a mixed issue of fact and law, and the specific outcome in respect of any particular QSC will turn on the evidence of that QSC.

51. However, that does not mean that principles will not be determined en route. The Claimants' generically pleaded case (in the (Re-Amended) Statement of Case as to the Quantification of Loss (SOCQL) which sits over the Individual Particulars of Quantum for each QSC) states (at [23] - [25]):

> "The Claimants will say that a major or important object of the contracts into which they entered was to provide them with the peace of mind, pleasure, satisfaction or other non-pecuniary benefit of an Emissions Regulation-compliant and road-legal vehicle such that it is appropriate to compensate them by way of damages for breach of contract for the non-pecuniary loss which they have suffered.
>
> In any event, the Claimants are entitled to claim such non-pecuniary damages for breach of statutory duty on the basis that such damages are of the kind that the relevant statutes were designed to prevent.
>
> …The Claimants will contend that the appropriate figure should be not less than £500 per Claimant."

52. These averments are denied by the Mercedes Defendants at a level of principle, denying in terms (amongst other things) that:

(1) it was a major or important object of any of the contracts alleged and relied upon by the QSCs to provide pleasure, relaxation or peace of mind;

(2) non-pecuniary loss has been suffered or that an award of damages would be 'appropriate';

(3) it would be particularly inappropriate to award such damages to any QSC who disposed of their interest in the relevant Vehicle without ever even having become aware that it might not be ER-compliant and road-legal;

(4) the purpose of the ER (or other statutory regimes) was to protect the Claimants against distress, anxiety, disappointment and similar;

(5) an appropriate figure would be more than £500 per Claimant.

53. Albeit phrased in different terms, the other Defendant Manufacturers effectively advance the same points of defence in principle.

54. Mr Adam contends that recovery of damages for distress in principle is an absolutely classic piece of legal dispute: is the function of a chattel to provide a party with the comfort and benefits which might be expected so as to enable recovery of damages for distress and/or was the purpose of the relevant statutory regime to protect against distress. Mr Campbell did not respond specifically to this aspect of Mercedes' submissions. For the reasons I have explained, it is not necessary to express a definitive view. However, I am satisfied that Mr Adam's submission may well be correct: the Court is likely to be able to give considerable guidance with respect to recoverability of damages for distress as a matter of principle which is unlikely to be affected to any material degree by the loss of the particular characteristics or fewer permutations. For example, a determination of whether the purpose of the ER (or other statutory regimes) was to protect the Claimants against distress, anxiety, disappointment and similar is likely to be one of general application. If the Mercedes Defendants are correct, it will (subject to appeal) be dispositive of all such claims arising out of breach of statutory duty across the Mercedes cohort, together with all other Defendant Manufacturers (a Lead Defendant other than Mercedes or a Non-ALGLO) who take part by way of legal submissions. It also would likely be highly persuasive if not strictly binding in other GLOs. If the Mercedes Claimants are correct, it will not be dispositive in quite the same way, in that such claims remain to be valued on a case-by-case basis, unless settled. The smaller the number of QSCs, the smaller the number of examples of actual quantification, and the smaller the benefit; but even then the amounts determined are likely to give significant guidance on orders of magnitude that a successful Claimant might be awarded.

55. Given that the PDD Judgment has not dismissed the Claimants' contractual claims, the question of whether it was a major or important object of any of the contracts can also be determined. Whilst it is conceivable that any such findings based only on two consumer and one business QSCs may be distinguishable in principle from other types of consumer or business user contracts, there is at least a real prospect that a conclusion would be of broad, even if not universal, application and would provide meaningful guidance across the Pan-NOx litigation.

56. So much for distress. As Mr Adam rightly identified, echoing the Claimants' sentiments expressed at paragraph 29(c) of their Skeleton for the October 2024 CMC quoted at paragraph 12 above, the real driver of the amount of loss claimed by the Claimants is the pecuniary, not non-pecuniary loss.

57. Issues 2 and 3 of Annex 2 are as follows:

> "2. What is the date of assessment for the Sample Claimants' loss? Is it the date of acquisition, or some later date (and if so, which date)?
>
> 3. For each of the Sample Claimants:
>
> (a) what value would the Sample Claimants' Vehicles have had at the relevant date if the warranties had not been breached (i.e. if the vehicle had corresponded to its description and been of satisfactory quality etc)?
>
> (b) what was the actual value of the Sample Claimants' Vehicles at the relevant date?"

58. Issue 2 is the question of the date of assessment. The SOCQL which sets out the primary position of the Claimants, generically against all Defendants, avers that the

quantum of the claim is the warranted value of what the Claimants term the relevant vehicle less its actual value at the date of acquisition.

59. Paragraph 4A of the Re-Amended SOCQL neatly summarises the variations on a theme as advanced by the various Defendants:

(1) the Mercedes Defendants claim that in respect of *"a Claimant who has disposed of their interest in the relevant vehicle before the close of evidence in any trial to determine their claim"*, the date for assessing loss is *"the date of disposition"* and in respect of *"a Claimant who still retains their interest in the Relevant Vehicle at the date of the close of evidence in any trial to determine their claim, that date"*;

(2) the PCD Defendants claim that the relevant date for the assessment of loss where the Claimant has disposed of their vehicle is the date of disposal; and where the Claimant still retains their vehicle, the date of trial (alternatively, if earlier, a reasonable time after the PDD Judgment is handed down; alternatively, if earlier, such date as the court determines the particular QSC ought to have sold their vehicle in mitigation of their alleged loss); and

(3) the Ford, Nissan and Renault Defendants claim, by way of letters dated 13 February 2026, 21 January 2026 and 13 February 2026 respectively, that the date for the assessment of loss is the date of the Quantum Trial.

60. The Claimants' case, in response, is that even if the loss is assessed at the date of sale or other disposition or trial, the proper measure of loss remains the warranted value of the relevant vehicle less its actual value at the date of acquisition (as pleaded at paragraphs 4 and 4B of the Re-Amended SOCQL), alternatively the date of trial (paragraph 4C(1)), or the date of disposal (paragraph 4C(2)) as well as the harm suffered as a result of the vehicle not being as warranted for the duration of the ownership, possession or hire (paragraph 4C(3)).

61. A central divide is therefore whether the proper date of assessment is the date of acquisition on the one hand, or date of disposal or date of trial on the other. Moreover, the Defendants contend that even if the proper date of assessment of any Claimant's loss is the date of acquisition, then the information available to the Court at the time of trial (including relevant post-acquisition events) is still to be taken into account in the assessment of each Claimant's financial loss in order to do justice between the parties.

62. Mr Adam contends that that is an issue of principle, not dependent upon the nature of the PDD. The generic nature of the claim, as advanced against all Defendant Manufacturers, was illustrated with some force, by reference to the way in which the Annex to the Re-Amended SOCQL reduces the calculation of damages to a formula, by way of example in relation to the primary case:

Damages = $(WV_a - AV_a) + + (WNPV_a - ANPV_a) +$

Where: WV_a is the Warranted Value of the Affected Vehicle at the date of acquisition, as set out in paragraphs 7 to 13

AV_a is the Actual Value of the Affected Vehicle at the date of acquisition, as set out in paragraphs 14 and 15 to 17

$WNPV_a$ is the Non-Pecuniary Value of the Affected Vehicle as warranted at the date of acquisition, as set out in paragraph 22

$ANPV_a$ is the actual Non-Pecuniary Value of the Affected Vehicle at the date of acquisition, as set out in paragraph 22

63. In terms of Issue 2, Mr Campbell argues that the correct date of assessment may depend upon the method of acquisition; or that the date of assessment may differ between someone who has a vehicle which is known to be subject to a simple cure when compared to somebody who has a vehicle that has not been cured. Neither of these propositions were explained with any granularity, and of course neither propositions reflect the Claimants' primary case which is, as set out above, formulaic across all vehicles irrespective of PDD or Claimant characteristics. Whilst it is impossible to rule out that particular factual situations may impact the application of the principled question of the point at which to assess loss, there is a real prospect that the question of date of assessment in respect of a vehicle containing a PDD is capable of being answered in a single, principled way.

64. Issue 3 then requires the ascertainment of two different values at (a) (the 'Warranted Value') and (b) (the 'Actual Value' (referred to by some Defendants as the 'True Value')).

65. The first point made by Mr Adam is that there is a ripe issue of principle as to whether these values (calculated at whichever date) are relevant to the correct measure of loss at all. It is Mercedes' contention (as pleaded in their generic defence to the SOCQL) that measuring loss by reference to the difference between Warranted Value and True Value is an aspect of mitigation of loss and is a convenient technique where there is a ready market in substitute goods fulfilling that warranty. In such a situation the buyer could have mitigated their loss by immediately purchasing replacement goods (and selling the defective goods) in the market, and this measure therefore fulfils the basic principle of estimating loss directly and naturally resulting, in the ordinary course of events, from any breach of warranty. However, it is argued that the technique is not appropriate, where, there would be no available market to acquire a vehicle as warranted. It is therefore said that it is inappropriate to seek a measure of loss by reference to the difference in capital value, as a matter of principle, at all.

66. The absence of a readily ascertainable market price (which the Defendant Manufacturers contend is necessary when adopting the measure of loss advanced by the Claimants) is demonstrated, Mr Adam submits (as, indeed, the Mercedes Defence avers at paragraph 29.4), by the fact that the Claimants' Warranted Value ('WV' in the formula above) includes a sum it says represents the additional amount the manufacturer would have charged to allow for the additional cost it would have incurred to produce a lawful vehicle that conformed with the description of the vehicle: the additional warranted value component. This is characterised by the Mercedes Defendants as (a) a speculative enquiry into what a hypothetical market price might have been had vehicles been manufactured and priced which were in fact never manufactured or priced and (b) a further speculative enquiry into what a hypothetical purchaser might have paid for the vehicles on being given hypothetical risk warnings. The same fundamental objection to the concept of an 'additional warranted value' component is taken by all Defendant Manufacturers.

67. There is, in addition, a sub-issue as to whether the constituent element of the Warranted Value (net of the 'additional' warranted value, described above) is calculated by reference to the Recommended Retail Price ("RRP") for the vehicle, or the price paid.

68. Mr Campbell submitted that the question of the existence of an 'additional-warranted

value' component essentially did not arise in respect of the three Mercedes QSCs when the CTS device was fixed at no or limited cost to Mercedes. In doing so he drew a distinction between a device which is capable of being corrected by a software update and one which would require a change to hardware, or a change to the emission control systems at significantly greater cost. It is right that an additional-warranted value component, if appropriate at all, is likely to be different depending on what is required to eliminate a PDD, as would the extent to which (depending on the amount) one manufacturer might seek to pass on those costs by way of increased sale price. It might also be the case that, on investigation, a Court would conclude that, as submitted by Mr Campbell, whether or not the measure of loss should, in principle, include an additional warranted value component at all cannot be determined as a matter of generality. However, there is a real prospect (as a minimum) that Mr Adam is correct that each of these three important issues arising under Issue 3(a) – the correct measure of loss, whether the starting point is RRP or purchase price, and the conceptual validity of including an additional warranted value – is capable of dispositive determination as a matter of principle, be it in the Defendants' favour or the Claimants' by reference to the remaining QSCs.

69. It is the figure to be ascertained pursuant to Issue 3(b), however, which is the real driver of the extent of losses claimed by the Claimants.

70. Using the Claimants' terminology, Actual Value is calculated by an assumption that the market would value each relevant vehicle taking account of the possibility of three outcomes. Whilst more complex than this, the outcomes stated simply are (1) that the PDD would be fixed at some point in the future but may, when fixed, have reduced fuel efficiency, performance or otherwise negatively affected characteristics including increased maintenance; (2) no fix would be available but the vehicle would remain permitted on the roads albeit with higher emissions and a risk of higher taxes or other charges; and (3) no relevant lawful fix would be made available, the vehicle would be unlawful and would have to be taken off the road. The value decrease in option 3 is pleaded as 75%.

71. The pleaded claim is currently estimated on the basis of treating each outcome as equally likely and then quantifying the estimated values of the Affected Vehicles if each outcome eventuated and weighting these values to reach an overall value.

72. Taking one of the Mercedes QSCs, Mr Fernandes, as an example: WV is calculated as £22,096 (including an additional warranted value of £935). This, it is noted, exceeds the actual price paid/liability incurred of £20,746. The Actual Value is calculated as £13,956, producing a claimed sum on the Claimants' primary case of £8,140. The Actual Value of £13,956 is calculated as follows:

Value under Outcome 1: £18,378

Value under Outcome 2: £18,198

Value under Outcome 3: £5,290

Actual Value: (£18,378+£18,198+£5,290)/3 = £13,955.33

73. Thus, the inclusion of Outcome 3 within the overall calculation, with its equal weighting, is the factor which substantially reduces the Actual Value. On the figures above, over half the value of the claim is attributable to the inclusion of Outcome 3 within the calculation. In the context of the Pan-NOx Litigation, that amounts to many billions of pounds.

74. The Mercedes (and other) Defendants reject that approach to calculating Actual Value as a matter of principle, contending instead that the extent of loss (if any) can be ascertained by consideration of actual market data. See the Mercedes Defendants' Response to the SOCQL:

> "This is a flawed approach to the measurement of "true value", given that it depends upon speculation about what discount hypothetical consumers might have required if hypothetical risks had been explained to them many years ago. The best evidence in this area is hard market data evidencing what discount actual consumers in fact required when buying the Defendants' (or other comparable) diesel vehicles in the light of what the market knew about the risks associated with those vehicles…".

75. If the Mercedes Defendants are right that the Claimants' approach to 'Actual Value' is fundamentally flawed, including in particular the inclusion of Outcome 3 weighted within the overall calculation as it is, this would have an extremely significant effect on the quantification of the Claimants' claims, even if the Mercedes Defendants were wrong on every other issue for determination at the Quantum Trial.

76. It is entirely realistic, even if not certain, that, as Mr Adam submits to be the case, the determination of whether the Claimants' case is legally sustainable at the Quantum Trial, even in the context of a limited number of CSVs and a single Defendant Manufacturer, will (subject to any appeal) be dispositive in practice of the issue of how quantum is to be assessed across the Pan-NOx Litigation. That is so even if that legal determination would be formally binding only within the Mercedes GLO, and within such other GLOs as opt to take part, by way of submissions only, in the Quantum Trial.

77. Turning more briefly to the other issues:

(1) Issue 4 relates to valuation on a 'Cure' and 'No Cure' assumption. Only the 'Cure' assumption arises in the Mercedes GLO given the PDD Judgment. Any 'No Cure' analysis would not be undertaken in a Mercedes-only Quantum Trial, and therefore this would be seen as an issue in respect of which no binding or persuasive guidance would be provided;

(2) Issue 5 relates to mitigation: if a software update was available to cure the PDD but it has not been installed, to what extent does that impact the claim? As Mr Adam submitted, this is a point of principle and one which arises in relation to one of the Mercedes QSCs;

(3) Issue 6 is effectively the arithmetic application of the answer to prior issues;

(4) Issue 7 is whether a Claimant has to give credit for the value of their use of their vehicle and the benefits derived from it, if so, for which causes of action, and in what amount. Whilst the amount would be Claimant specific, the question of credit is one of principle and would be of general application;

(5) Issue 8 concerns other alleged post-acquisition losses. To the extent a particular category of loss is to be taken account of at all would be a question of general principle. It may be that the reduced Mercedes cohort would mean that not all such losses as may have been claimed across the Pan-NOx Litigation would fall to be considered, although increased fuel and maintenance are claimed by one of the remaining Mercedes QSCs;

(6) Issue 10 is whether any adjustment is required to avoid double recovery, which

will give rise to a principled answer, but the circumstances considered in the context of the Mercedes QSCs may be narrower than those arising across the Pan-NOx Litigation;

(7) Issue 11 is whether QSCs who are Consumer Claimants are entitled to exercise the final right to reject pursuant to section 48C(2) SOGA 1979 (for vehicles bought before 1 October 2015) and/or section 24(5) CRA 2015 and if so what is the appropriate amount of any refund. It is agreed that this issue does not arise on the remaining Mercedes QSCs, although Mr Adam submits that the Court could deal with it in any event as a matter of principle. On any view, this is likely to be an issue of relatively limited application, and whether or not it is determined should not dictate the broader picture.

Evaluation

78. The evidence of Ms Varga was predicated upon a reduction in trial period from 10 to six weeks for a PCD/Mercedes Quantum Trial, and estimated costs yet to be incurred on Trial Preparation and Trial phases would still amount to £13,500,000.

79. A Mercedes-only Quantum Trial, albeit with time for submissions from other Defendant Manufacturers, would be shorter still: around 18 days on the timetable prepared by the parties (albeit after my decision in principle). This was based upon nine days of evidence and nine days of oral submissions (perhaps itself indicative of the fact-to-legal principles ratio involved).

80. The Claimants' costs as budgeted for the full Quantum Trial Preparation were £8m, and the Trial itself £3.7m. The Mercedes Defendants' figures were £4m and £2.4m. Mercedes' evidence is that the majority of the brief fees have already been incurred, and that brief fees constituted the majority of Trial Preparation Costs. Already incurred costs were not accounted for by Ms Varga. Doing the best I can, given the substantial difference in length of trial between the Mercedes only and the full Quantum Trial, it might be estimated by reference to the cost budgets that a further £4m may be incurred by the Claimants and £2m by the Defendants for a Mercedes-only Quantum Trial. To that might be added (say) £2m incurred in aggregate by any and all other non-Mercedes Defendants who would wish to make non-duplicative submissions. That is a total of £8m.

81. The cost budgets for the full Pan-NOx Quantum Trial for Trial Preparation and Trial aggregate approximately £45m. This is likely to be higher in 2028.

82. In broad terms, the principal scenarios are therefore:

<u>A. No Stay</u>

(1) Mercedes only Trial in 2026:

- £8m future spend;
- No costs wasted by abortive trial; or

(2) Mercedes/PCD Trial in 2026:

- (say) £12m (taking account of incurred costs)
- No costs wasted by abortive trial.

B. Stay: Appeal unsuccessful

Same options as above, but

- Trial delayed until 2028;
- Costs preparing for 2026 Trial wasted;
- Costs higher than above as starting again plus inflation.

C. Stay: Appeal successful

- Full Quantum Trial in 2028, costing £45m (+ inflation).

83. If it were possible to know with certainty that the appeal would fail, the case for continuing with the Quantum Trial against both PCD and Mercedes now would be overwhelming. It would avoid the costs already incurred in preparing for the 2026 Quantum Trial being wasted, prevent further delay, and avert the additional expense inevitably associated with restarting the process in late 2027 or 2028. Mr Campbell identified a number of imperfections in the current scope of the Quantum Trial, including in relation to those PDDs affected by KBA decisions. However, those matters fall far short of providing a sufficient basis for disrupting the existing timetable or departing from the directions already given.

84. Ford, Nissan and Renault will only become involved in a future Quantum Trial if the appeal is wholly successful. At one extreme, the Claimants and the non-Mercedes Lead Defendants contend that a Quantum Trial in 2026 will serve no useful purpose, regardless of the outcome of the appeal, making a second Quantum Trial inevitable. At the other, Mercedes contends that determination of the issues of principle governing quantum is likely to unlock settlement and may be dispositive of the Pan-NOx litigation as a whole. If that proves correct, assuming the appeal is successful, a £45 million Pan-NOx Quantum Trial will be avoided.

85. Put bluntly, on the assumption that the appeal is successful, even a modest prospect of avoiding a future quantum trial costing in the region of £45 million, particularly given the extent of the costs already incurred in advancing the quantum issues, provides a compelling justification for proceeding at an additional cost of approximately £8 million.

86. For the reasons advanced by Mr Adam, and consistent with the position adopted by the Claimants in October 2024, I consider there to be a real prospect that determination of the quantum issues will materially advance, and may assist in unlocking, the litigation from a commercial perspective. Moreover, the utility of proceeding lies not only in the possibility of avoiding a future quantum trial altogether. Even if that does not occur, there is a real prospect that the determination of issues of principle will narrow the issues in dispute, reduce the scale of any future trial, and materially assist the parties in evaluating and resolving their claims. In circumstances where substantial resources have already been invested in preparing for a trial later this year, I consider that it makes clear sense to proceed.

87. The question is not whether, as Mr Taylor put it, armed with hindsight and knowledge of the outcome of the PDD Trial, the Court would have made precisely the same order in 2024. The question is whether, in the circumstances as they now exist, effective and economical case management favours continuing with a process into which substantial

time, effort and resources have already been invested, when the alternative is delaying the determination of quantum issues for a likely minimum of 18 months.

88. Whilst Ms Gibaud is right to point out that proceeding with the Quantum Trial marks a degree of departure from the original Pan-NOx approach, the determination of issues of principle relevant to quantum, again in the circumstances as they now exist, in a manner that offers a real prospect of materially advancing or even resolving the litigation, is wholly consistent with the case management philosophy that has guided these proceedings throughout.

89. The Court is in a different position to when, in October 2024, the Defendant Manufacturers were fully 'in' the litigation. The PDD Trial means that the opposite is the position now, subject to the appeal. I do not consider it appropriate to make an order forcing a party who has succeeded at a liability trial to take part in a necessarily contingent quantum trial pending an appeal. Nevertheless, any decision by the non-Mercedes Lead Defendants not to participate in the Quantum Trial pending determination of the appeal will be a matter of litigation strategy of their own choosing: they will, should they elect to do so, have the same opportunity to make written submissions as those Non-ALGLOs (who are still 'in' the litigation) who have elected to do so.

90. The final question is whether the Quantum Trial should also include PCD. I consider not for two reasons. First, looking at the PCD GLO in isolation, neither the PCD Claimants nor the PCD Defendants wish to take part in a Quantum Trial. That is not determinative, but plainly the Court should hesitate to order their participation against their will. Second, if Mr Adam's analysis is right, it is likely to be right whether or not PCD is involved. Whilst the spread of QSCs will, to some degree, be improved (in that, for example, there is an outright owner), there would be a significant additional cost which is unlikely to be justified by the benefit. This is supported by the fact that in Mr Campbell's submissions, he generally distinguished between the types of PDD that may come back into play were the appeal to be successful on the one hand and, together, the CTS and Split devices on the other. Therefore, even accepting some marginal additional utility from PCD's participation, that utility is outweighed by the incremental cost given that the Mercedes Quantum Trial alone can adequately determine the principal legal questions.

G. Conclusion

91. I am satisfied that the reduced scope of the Quantum Trial does not deprive it of real utility. There remains a real prospect that determination of the quantum issues will materially advance the litigation and narrow, if not resolve, future disputes. In circumstances where substantial time, effort and resources have already been invested in preparing for trial, I consider that the balance falls clearly in favour of permitting the Quantum Trial to proceed against Mercedes. The non-Mercedes Lead Defendants will be entitled, in line with the Non-ALGLOs, to make submissions and should they elect to do so, they (and the respective non-Mercedes Lead Claimants) will in that event be bound by the anticipated findings of law.