



Neutral Citation Number: [2023] EWHC 2710 (KB)

Case No: KB-2022-004426 and ors

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/11/2023

**Before :**

**SENIOR MASTER COOK**

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**Between :**

**MARK ALLSOPP**  
**(and the other Claimants as listed in the Claim Forms**  
**identified above)**

**Claimant**

**- and -**

- (1) BAYERISCHE MOTOREN WERKE**  
**AKTEINGESELLSCHAFT**  
**(2) BMW M GMBH GESELLSCHAFT FÜR**  
**INDIVIDUELLE AUTOMOBILE**  
**(3) BMW (UK) LIMITED**  
**(4) BMW FINANCIAL SERVICES (GB)**  
**LIMITED**  
**(5) ALPHABET (GB) LIMITED**  
**(6) PARK LANE LIMITED**  
**(7) AUTHORISED DEALERSHIPS**

**Defendants**

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**Oliver Campbell KC, Gareth Shires and Kate Boakes** (instructed by **Leigh Day** and  
**PGMBM Law Ltd** trading as **Pogust Goodhead**) for the **Claimants**  
**Charles Dougherty KC and Thomas Fairclough** (instructed by **Hogan Lovells International**  
**LLP**) for the **1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants**  
**David Thomas** (instructed by **Addleshaw Goddard LLP**) for the **7<sup>th</sup> Defendants**

Hearing date: 23 October 2023  
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**Approved Judgment**

This judgment was handed down remotely at 2pm on 2 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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SENIOR MASTER COOK

**SENIOR MASTER COOK:**

1. This was the hearing of an application dated 3 October 2022 for a Group Litigation Order (“GLO”).
2. The Applicants are the 41,225 Claimants who appear on 13 Claim Forms that had been issued as at the date of the Application. Each of the Claimants instructs either Leigh Day or Pogust Goodhead, the proposed “Lead Solicitors” or “PLS” under the GLO, and alongside Milberg London LLP (“Milberg”), form the proposed “Steering Group”. As at October 2023, there are six other firms that have issued or intend to issue claims, who it is proposed will form the “Claimants’ Solicitors Group”. As at the date of the hearing, claims had been issued on behalf of approximately 125,000 Claimants in total. For convenience, the Applicants and the Claimants bringing the claims are referred to throughout this judgment as the “Claimants”.
3. The following witness statements were filed on behalf of the Claimants in support of the application:
  - i) First statement of Matthew Hunt dated 3 October 2022;
  - ii) Second statement of Matthew Hunt dated 10 October 2023;
4. In response, the first statement of Valerie Kenyon dated 26 September 2023 was filed on behalf of the First and Third to Sixth Defendants.
5. These claims form part of a second wave of litigation arising out of the scandal that is often referred to as “Dieselgate”. The first wave of claims – known as the VW NOx Emissions Group Litigation – concerned Volkswagen vehicles with EA189 engines. Claims were brought by approximately 86,000 claimants, which were subject to a GLO made on 11 May 2018 and were managed by Waksman J. These claims settled on 25 May 2022, following a trial of preliminary issues and a further hearing in December 2021 which resolved several disputed applications.
6. Of the second wave of claims, those concerning Mercedes vehicles are the most advanced. A GLO was made in the case of *Cavallari and ors v Mercedes Benz Group* on 17 May 2023 following approval by the President of the King’s Bench Division. There is a case management conference (CMC) due to take place in the Mercedes GLO on 5 and 6 March 2024 before the Managing Judge. By paragraph 10 of the order of Mr Justice Fraser dated 19 July 2023, any party with an interest in the diesel emissions litigation including but not limited to other German manufacturers have permission to make CPR compliant applications to address the Court.
7. In addition to the current claims, there are a large number of claims against other manufacturers of diesel vehicles including:
  - i) Opel/Vauxhall;
  - ii) Nissan/Renault;
  - iii) Volkswagen (No2);
  - iv) Peugeot/Citroen;

- v) Jaguar/Land Rover;
  - vi) Ford;
  - vii) Volvo;
  - viii) Hyundai/Kia;
  - ix) Toyota, and;
  - x) Mazda.
8. All the BMW Claimants bring claims against:
- i) the First Defendant for breach of statutory duty in relation to breaches of relevant EU and domestic legislation concerning emissions, type approval, and the placing of vehicles on the market in the UK;
  - ii) the First and Third Defendants for deceit; and
  - iii) the First and Third to Sixth Defendants for breach of Article 101(1) TFEU (and associated breach of s. 2(1) of the European Community Act 1972) and/or breach of Chapter 1 of the Competition Act 1972 (the “Competition Claim”).
9. The Competition Claim arises out of BMW’s involvement in an unlawful cartel. The other members of the cartel were the Mercedes Group and the VW Group. The Claimant’s position is that the principal object of the cartel found by the European Commission and the Korean Fair Trade Commission (KFTC) was to restrict competition in relation to the development of SCR technology. The BMW Defendants do not accept this characterisation.
10. Whether and if so which other causes of action as set out in the draft generic particulars of claim (GPOC), depends principally upon (1) the capacity and means by which they acquired their vehicle, including whether they acquired it as a consumer or in a business capacity, and whether they acquired it with finance from the Fourth Defendant or the Fifth Defendant, and (2) the limitation position.
11. The “Consumer Claimants” bring further claims against:
- i) The Fourth to Sixth Defendants and the Authorised Dealerships for breach of contract by supplying goods and/or software of unsatisfactory quality in breach of terms implied by either the Supply of Goods (Implied Terms) Act 1973 or the Sale of Goods Act 1979;
  - ii) The Fourth to Sixth Defendants and the Authorised Dealerships under the Consumer Protection from Unfair Trading Regulations 2008 (“CPUT”);
  - iii) The Fourth and Fifth Defendants under the Consumer Credit Act 1974.
12. The “Business Claimants” bring claims against:

- i) The Sixth Defendant and the Authorised Dealerships for breach of contract by supplying goods and/or software of unsatisfactory quality in breach of the terms implied by s. 14 of the Sale of Goods Act 1979 and;
  - ii) The Fourth and Fifth Defendants under the Consumer Credit Act 1974.
13. At the core of these claims is a central allegation:
  - i) The relevant vehicles each contained a “defeat device”, defined by Article 3(10) of the Emissions Regulation 715/2007 (the “Emissions Regulation”) as: *“any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use”*; and
  - ii) Such defeat devices were prohibited within the meaning of Article 5(2) of the Emissions Regulation, which provides that *“the use of defeat devices that reduce the effectiveness of emissions control systems shall be prohibited”* save where: *“the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle; the device does not function beyond the requirements of engine starting; or the conditions are substantially included in the test procedures for verifying evaporative emissions and average tailpipe emissions.”*.
14. Any liability is firmly denied by the BMW and Authorised Dealership Defendants. The Defendants also criticise the prolixity of the GPOC which has been provided. Their position is that the allegations are almost entirely non-specific and inadequately particularised, including in relation to what prohibited defeat devices (PDDs) are alleged to have been present and in which vehicles. They submit at this stage it is near-impossible for the BMW Defendants to understand the actual case they are expected to meet in relation to key factual and legal issues.
15. Notwithstanding the above, there will eventually be around 168,000 Claimants represented by 9 firms of solicitors. The parties were agreed the claims raise many common issues of fact and law, and a proposed list of GLO issues has been agreed between them. The agreed list of issues is annexed to this judgment as part of the proposed GLO order.
16. All that remained in dispute was a number of issues concerning;
  - i) the wording of the standard minimum requirements (SMR) in relation to the place of acquisition of a vehicle;
  - ii) the inclusion of an unless order in relation to the failure to serve a schedule of information (SOI);
  - iii) an issue relating to the Lead Solicitors common costs, and
  - iv) whether or not the milage of any vehicle should be included in the SOIs.

17. I heard argument on these issues and then adjourned the hearing. I gave no indication to the parties as to whether I thought it appropriate to make a GLO.
18. CPR PD19B 3.5 provides that an application for a GLO in the King's Bench Division of High Court in London must be made to the Senior Master. However, CPR 19.22 (2) (d) provides that a GLO may not be made without the consent of the President of the King's Bench Division. This provision reflects the importance of the senior judiciary supervising the use of the GLO procedure and their concern to ensure that the court's resources are utilised appropriately.
19. After detailed consideration of the issues and the general background to these claims, I decided that the requirements of CPR 19.22 were met. There were clearly a large number of cases giving rise to common issues of related fact and law. In the circumstances, I considered that it would be appropriate to request the consent of the President of the King's Bench Division to make the order sought.
20. Having carefully considered my recommendation, the President of the King's Bench Division has given her consent the proposed GLO being made.
21. I now give my judgment on the issues remaining in dispute.

The wording of the SMR in relation to the place of acquisition of a vehicle.

22. The SMR set the boundaries for entry to the Group Register. Without meeting the SMR, a claim would not be determined within the GLO process.
23. The disputed wording is as follows, with the BMW Defendants' wording underlined and the Claimants' wording in square brackets:

“the Claimant must claim to be, or to have been, the owner (including a joint owner) of a Subject Vehicle, or to have, or to have had, an interest in a Subject Vehicle whether by purchase, hire purchase, lease, personal contract plan or other finance terms. The relevant Subject Vehicle must have been acquired in England and Wales and it must be alleged that the claim is subject to English law or it must not be contended that any law other than English law applies. [The relevant Subject Vehicle must have been acquired in the United Kingdom or Channel Islands]”

24. On behalf of the Claimants, Mr Campbell KC made the point that all of the Defendants with the exception of the First Defendant are domiciled in England Wales. The GPOC sets out the provisions of law upon which the Claimants rely which do not include reliance on foreign law. He points out that any relevant EU law is in fact incorporated into English law. In the circumstances, he submits that the condition that the claim must be subject to English law is unnecessary.
25. Further, Mr Campbell KC submitted that the Defendants' proposal was objectionable on practical grounds as it would require each Claimant to make a positive assertion that their claim was subject to English law. That would in turn require a check to be made of the contract pursuant to which each vehicle was acquired to see whether it had an applicable law clause, or instructions to be sought in relation to the place of

purchase and delivery of the vehicle. That would be an onerous and unnecessary task, particularly in circumstances where the onus is on the Defendants to assert that some foreign law applies.

26. Mr Campbell KC then referred to the evidence of Mr Hunt at paragraph 98 of his second witness statement to the effect that there are approximately 1,700 Claimants that acquired their vehicles outside England or Wales. He stated that on the basis of the present estimate that there will be around 168,000 Claimants, that would represent 1% of the cohort. Each of these Claimants relies only on English and EU law, and each of these Claimants brings a claim giving rise to several of the GLO Issues. He argued that if the Defendants proposed condition was accepted, it would exclude claims which plainly are best and most conveniently litigated as part of the group. He gave the example of a person living in the north of England who purchased a vehicle second-hand from a person in the Scottish Borders. On the Defendants' proposal, that person's claim would be excluded, even though the person lives and uses his vehicle in England, his claim is brought under English law, he would be suing five Defendants domiciled in England, and he would not be suing any Defendant domiciled in Scotland.
27. Mr Campbell KC then referred to the Mercedes litigation where a very similar point had arisen. The Defendants sought an order that a SMR was that the Claimant's "ownership or interest must have arisen from a contract subject to the laws of England and Wales". By the time of the hearing, the parties' positions had narrowed such that the Mercedes Defendants were willing to accept the words "the Relevant Vehicle must have been acquired in England and Wales" and the Mercedes Claimants were willing to accept the words "the Relevant Vehicle must have been acquired in the UK or the Channel Islands.". In Senior Master Fontaine's judgment, *Cavallari and ors v Mercedes Benz Group AG and ors* [2023] EWHC 512 (KB) at [17] she explained her decision;

"17. I consider that it would be appropriate to include the wording suggested by Mr Campbell KC for the Claimants namely;

"The relevant vehicle must have been acquired in the UK or the Channel Islands."

The alternative is that the c. 1,000 claims which may be based on a contract subject to Northern Ireland or Scottish law will have to proceed as unitary claims or as a smaller separate group of multi party claims, when the majority of the factual issues will be common to or related to the other claims in these proceedings. It is entirely likely that the parties may be able to agree that such claims be determined on an English law basis. Alternatively, the Managing Judge can, if they think it appropriate, decide at the first CMC whether it would be practical to include claims made subject to a non-English law clause, and if so, give directions to identify such categories of claim, and if not, give directions for those claims to be dealt with separately."

28. Mr Campbell KC invited me to reject the Defendants' proposed wording for the same reasons.

29. On behalf of the Defendants, Mr Dougherty KC submitted that the Defendant's proposed wording would very significantly reduce the chance that any law other than English law applies to the resolution of the claims. In particular he made the point that where the vehicle has been acquired in England and Wales, English law is highly likely to apply to any claim in contract and tort; conversely where a vehicle is acquired outside of England and Wales, it is likely that the law of the place of acquisition will apply to both contractual and non-contractual claims. He gave an example of consumer claimants living outside of England and Wales who acquired their vehicles in England and Wales. In such circumstances, absent a choice of law clause, their claims may be governed by the law of their habitual residence at the time of the conclusion of the contract, see Article 6(1) of Rome I.
30. He submitted that if there was an increased risk that foreign law will govern claims, the Defendants will need to investigate and plead out such laws. The fact that the Claimants do not want to rely on a foreign law of course does not mean that the Defendants may not plead that such foreign law applies, and if the Court determines that it does apply, the Court will have to apply that law regardless of the Claimants' position, see *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45; [2022] AC 995, [117] (per Lord Leggatt).
31. Mr Dougherty KC pointed to three features which he said made it hard to understand the stance taken by the Claimants;
- i) The Claimants' own case has always been that the Claimants are "individuals and companies who purchased, leased and/or otherwise acquired...BMW branded vehicles in England and Wales..." and are "persons who acquired...one or more Subject Vehicles in England or Wales".
  - ii) Publicly, Leigh Day encourages, for example, Scottish claimants to claim in Scotland and states, in its FAQs in response to the question "Does it matter where I bought my vehicle", "No, it does not matter where you bought your BMW vehicle as long as it was bought in England or Wales". Pogust Goodhead has also publicly stated that "In 2022, Pogust Goodhead opened a Scottish office, where we are pursuing diesel emissions claims for our clients who purchased or leased their vehicles in Scotland". It is apparent from paragraph 111 (d) of Valerie Kenyon's witness statement that claims are live against BMW in Scotland.
  - iii) Both Leigh Day and Pogust Goodhead have confirmed in correspondence that they do not seek to rely on any foreign law.
32. In response to The Claimants' offer to accept the wording used in the Mercedes GLO, Mr Dougherty KC pointed out that multiple applicable laws other than English law are likely to apply. There will inevitably be differences in relation to, for example, causes of action and limitation periods. Most starkly, EU law only applied in the Channel Islands in a very narrow way and did not include the Emissions Regulation. Claims in respect of vehicles acquired outside of England and Wales should not be part of the GLO.
33. Mr Thomas adopted the submissions made by Mr Dougherty KC.



34. I fully accept that the points made by Mr Dougherty KC have some force. Were I deciding this issue in a vacuum I would probably agree with him. However, I am not deciding this issue in a vacuum. It seems to me inevitable that there will be some form of joint management of the BMW and Mercedes GLOs and in the circumstances, there seems much to be said for the standard minimum requirements of each GLO to be the same.
35. In reality, I suspect there will be very few outlier claims where the applicability of foreign law will be an issue. If there are such claims I agree with Senior Master Fontaine's view, set out above, that the Managing Judge can decide at the first CMC whether it would be practical to include claims based on a contract which is not subject to English law and depending on the answer to give appropriate directions. This will enable a consistent approach to be taken across each GLO.

The inclusion of an unless order in relation to the failure to serve a SOI

36. The Defendants propose that the Court should make an unless order in the following terms:

"In the event a Claimant who is named on the Group Register does not serve a Schedule of Information purporting to comply with paragraph 33 or 34 above, then, absent an application for relief within 56 days of the Cut-Off Date, as defined below, the Claimant's Claim will be automatically struck out."

37. Mr Dougherty KC amplified Valerie Kenyon's reasons at paragraph 120 of her witness statement for requiring such an order, namely that it would ensure things are done properly in the first place. He stressed it was necessary to bring discipline to the preparation of the SOIs. He said the wording had been chosen so it would not operate in an unduly harsh fashion and that it would assist in managing the claims as a whole. It struck a fair balance between the interests of the parties and would only bite if no SOI or a blank piece of paper was served.
38. Mr Campbell KC submitted that it was wrong in principle to include an unless order at this stage of proceedings. He referred to the observations of Moore-Bick LJ in *Marcan Shipping (London v Keflalas and anor* [2007] EWCA Civ 436:

"The third consequence is that before making conditional orders, particularly orders for the striking out of statements of case or the dismissal of claims or counterclaims, the judge should consider carefully whether the sanction being imposed is appropriate in all the circumstances of the case. Of course, it is impossible to foresee the nature and effect of every possible breach and the party in default can always apply for relief, but a conditional order striking out a statement of case or dismissing the claim or counterclaim is one of the most powerful weapons in the court's case management armoury and should not be deployed unless its consequences can be justified. I find it difficult to imagine circumstances in which such an order could properly be made for what were described in *Keen Phillips v Field* as "good housekeeping purposes".

## Decision

39. I agree with the submission of Mr Campbell KC. There is nothing in the evidence before me to suggest that there will not be compliance with the requirements of the GLO in relation to the provision of SOIs. As Moore-Bick LJ made clear in *Marcan Shipping*, unless there is such evidence or other justification for making an unless order, it would be wrong to impose one for purely housekeeping purposes. I decline to make such an order.

## The issue relating to the Lead Solicitors common costs

40. Mr Dougherty KC pointed to the level of costs for completing the SOIs that Mr Hunt had put forward in his second witness statement. In the circumstances, the BMW Defendants wish to make the allocation of Common Costs incurred by the Lead Solicitors as certain as possible. This was because there are two proposed Lead Solicitors as opposed to the standard one (despite three firms' agreement to form a Steering Committee).
41. The proposal was therefore that the Lead Solicitors, in relation to Common Costs, “are to be treated as a single firm for assessment purposes (as regards, among other things, the recoverability of any duplicated costs)”. He submitted that this wording would meet the concern that there should be no duplicative costs just because there are two Lead Solicitors.
42. Mr Dougherty KC suggested that such a wording merely reflects the existing law. He referred to the remarks of Trower J in in *Edward Moon and Ors v Link Fund Solutions* [2022] EWHC 3344 (Ch), [49]-[50] where joint lead solicitors were sought:
- “it would be important to make clear from the outset that for the purposes of any common costs, that is to say the costs incurred on issues which are not specific to any individual PLS Claimant, Leigh Day and Marcus Parker are to be treated as a single firm for assessment purposes. It follows that when the court is assessing costs at a later stage, the costs of any duplicated work would not be recoverable as a cost reasonably incurred.”
43. Mr Campbell KC said it was important to understand Trower J’s remarks in context. The judge was determining a GLO application in the context of a claim by investors who lost money in the collapse of a fund managed by Neil Woodford. One of the issues between the parties was whether it was appropriate for there to be two firms acting as joint lead solicitors. The judge indicated that it would be appropriate, however he declined to make a GLO. In the circumstances, his remarks were obiter. As there was no GLO there was no order for lead solicitors and no order in respect of common costs.
44. Mr Campbell KC informed me that he was not aware of any other GLO case involving more than one firm of lead solicitors in which such an order has been made. Such an order was certainly not made in the VW proceedings or the Mercedes proceedings, though there were two lead solicitors in both of those cases.

## Decision

45. I agree with Mr Campbell KC that such a direction would serve no useful purpose. To the extent that the Defendants might have any complaint about the Lead Solicitors' costs bill at the conclusion of the litigation, they can be aired and resolved by a costs Judge on detailed assessment. Pursuant to CPR 44.3 (2) the judge would only be allowing costs which are proportionate to the matters in issue. Any costs which were found to be disproportionate in amount would be disallowed or reduced even if reasonably and necessarily incurred. I cannot envisage any situation where duplication of work would be found to be proportionate.
46. In any event it is difficult to imagine how a costs judge would be assisted by an order in the terms proposed, which purports to tie their hands but in terms that are wholly unclear. Should the order be made, the likely outcome would be protracted argument at detailed assessment about the meaning of "duplicated costs". In any event, a costs judge would be expected to eliminate any unreasonable duplication on detailed assessment. The same would also apply to any costs budgeting.

Should the mileage of any vehicle should be included in the SOIs?

47. At paragraph 116 of her witness statement Ms Kenyon suggests the Claimants should be required to state their vehicles' mileage as at the date of the SOI, or at the date on which the vehicle was disposed of if it is no longer in their possession. Where the mileage of a vehicle which has been disposed of is not known, it is proposed an estimate should be given. She states that this information goes towards quantum, for example how much use the Claimant has had from the vehicle and whether they continue to use it, will impact on allegations regarding loss of value.
48. Mr Dougherty KC additionally made the point that for, second-hand vehicles, the mileage is a very important component of any valuation.
49. Mr Dougherty KC drew my attention to the approach approved by Senior Master Fontaine in ***Cavallari and ors v Mercedes Benz Group AG and ors*** where at [41] she approved the Defendants' approach to the provision of information:

"41. The Defendants' approach is that the Claimants should be expected to provide the same information as they would if advancing a unitary claim allocated to the small claims track in the County Court. They refer to the consideration given to the requirements of a SOCI by O'Farrell J in ***Alame & Others v Royal Dutch Shell & Others*** [2022] EWHC 989 (TCC), when determining a dispute about the extent of information to be included in SOCIs. The judge held:

i) The pleading of the case in general terms in the generic particulars of claim "*does not exempt each claimant from the requirement to set out in a schedule to the group statement of case, or in a questionnaire or other pleading in the group register, the facts necessary for the purposes of formulating a complete cause of action.*" (at [59]).

ii) In reliance on ***Varney v Ford*** [2013] EWHC 1226 (Ch) at [39]-[40] the judge rejected the argument that it would be disproportionate to require the claimants to provide the

requested details about the date, location, time and interest in land of each individual claimant in relation to damage alleged to arise from oil pollution. She held that "*if the necessary facts are not pleaded in respect of each individual claimant, there will be no rational basis on which the Defendants will be able to identify their chosen claimants for the pool from which the lead claimants will be selected*" (at [69])

iii) The judge recognised "*that this task will be expensive and time consuming but it is necessary to ensure that the material issues in dispute can be identified and determined in the trial of the lead claimants. The preparation of the questionnaires will make the exercise focused and manageable.....*" (at [76]).

50. Mr Dougherty KC stressed that it was important that this information be provided now rather than later and would enable the Defendants' to form a view about the level of the claims for damages being made against them.
51. Mr Campbell KC did not agree that this information was reasonably required by the Defendants and relying upon Mr Hunt's evidence at paragraph 85 of his second witness statement, made the point that the provision of such information was likely to be costly and labour intensive, particularly for claimants who no longer had their vehicles.
52. Mr Campbell KC pointed out that the primary measure of loss is the difference in value as at the date of acquisition of the vehicle, as set out at section IV of the GPOC. It is therefore far from clear that "how much use the Claimant has had from their vehicle" or "whether they continue to use it" has any relevance to quantum. Even if those issues might have some potential relevance to quantum, he suggested, the information sought will be of very limited, if any, value. For those Claimants who still own their vehicle as at the date of the SOI, the mileage will be out of date immediately after the SOI is produced; the mileage as at the date of production of the SOI is of no real relevance. For those Claimants who have sold their vehicle, the sale price will be included in the SOI, which will provide a far more useful indication of its value than the mileage.
53. Lastly, Mr Campbell KC made the point that the question is not one which was included on the SOI in the Mercedes claims.

#### Decision

54. I agree with the observations of Senior Master Fontaine and O'Farrell J set out above concerning the general approach to the provision of information, however like Senior Master Fontaine, I recognise that it is necessary to strike a proportionate balance between identifying the information which is strictly necessary to formulate, value and identify the issues which will enable the lead claims to be chosen and keeping the exercise as straightforward as possible, so that excessive and costly queries are kept to a minimum.
55. I am not persuaded that the information the Defendants seek is necessary at this stage. In the vast majority of cases they will have access to mileage data, if relevant, from other sources. However more importantly, given the measure of loss as pleaded is the

difference in value as at the date of acquisition between the price paid and the actual value of the vehicle, the information sought is of limited value.

56. This question does not form part of the SOIs in the Mercedes litigation and as I have already observed, it seems sensible to have a broad level of alignment between the approach to both of the groups of litigation.
57. In the circumstances, I decline to order the provision of this information at this stage. If relevant, this issue can be revisited before the Managing Judge. The SOIs are in electronic format and data points should be capable of swift inclusion in the event such inclusion is found to be relevant and necessary.

## Schedule

### The approved order

**UPON** hearing Leading Counsel for the Applicants, Leading Counsel for the First and Third to Sixth Respondents and Counsel for the Authorised Dealership Defendants listed at Schedule 4.

**AND UPON** the President of the King’s Bench Division having consented to an Order being made in the following terms.

**IT IS ORDERED** that:

#### **A. Scope of the Group Litigation Order**

1. This Group Litigation Order (“**GLO**”) applies to all Claims:
  - (a) brought against one or more of the Defendants;
  - (b) in respect of Subject Vehicles (as defined in paragraph 3, below) manufactured by the First Defendant;
  - (c) where the Claimant (as defined in paragraph 4 below) claims to be, or to have been, the owner (including a joint owner) of a Subject Vehicle, or to have, or to have had, an interest in a Subject Vehicle whether by purchase, hire purchase, lease, personal contract plan, or other finance terms; and
  - (d) which raise one or more of the GLO Issues identified, for the purposes of CPR 19.22(2)(b), in Schedule 1 to this Order.
2. The Claims which are the subject of this Order shall constitute and shall be known as “**The BMW NOx Diesel Emissions Group Litigation**” and are to be conducted in accordance with the terms of this GLO and any subsequent orders. The parties to these Claims are bound by the orders of the Court made in relation to The BMW NOx Diesel Emissions Group Litigation.

## **B. Definitions**

3. **“Subject Vehicles”** are diesel vehicles manufactured by the First Defendant with Type Approval granted to Euro 5 or Euro 6 standards.
4. **“The Claimants”** are those claimants whose details are included on the Group Register in the manner and under the terms set out in paragraphs 22-31 and following below. Pending the establishment of the Group Register, the Claimants are those Claimants listed on the Claim Forms listed at Schedule 5.
5. **“The Lead Solicitors”** for the Claimants are PGMBM Law Ltd (trading as **“Pogust Goodhead”**) and Leigh Day who will together act as joint lead solicitors.
6. The **“Steering Committee”** is made up of Pogust Goodhead, Leigh Day and Milberg London LLP. Other firms may be added to the Steering Committee with the permission of the Court or if there is unanimous agreement between the existing members of the Steering Committee and the solicitors for the Defendants that they should be so added. The Court will be informed within 7 days of any changes to the membership of the Steering Committee. The Steering Committee is responsible for receipt of documents for the Claimants under this Order save where such documents relate solely to individual claims issued by firms other than the Lead members of the Steering Committee, the management and co-ordination of the Claimants’ claims, and shall have sole conduct, for the Claimants, of all investigations, applications and proceedings in respect of the GLO Issues and preparation for trial of any Lead Cases relating to any of the GLO Issues subsequently ordered by the Court, and such further purposes as the Management Court may direct. Unless otherwise agreed between the parties, other firms may deal directly with the Defendants and the Court, but only in relation to individual matters concerning the Claimants they represent.
7. The **“Claimants’ Solicitors Group”** is made up of the Steering Committee and Bond Turner Limited, JLG Legal Limited, Law Room Solicitors Limited, Robert Bingham Limited, Venus Legal Limited, and Your Lawyers Limited. Other firms may be added to the Claimants’ Solicitors Group if they have been instructed by 20 or more Claimants. The Court and the Defendants will be informed in writing within 7 days of any changes to the membership of the Claimants’ Solicitors Group. The purpose of the Claimants' Solicitors Group is to provide a mechanism for the Steering Committee

to liaise with other firms representing Claimants as to the progress of this litigation, and how the claims are best progressed.

8. **“The Defendants”** are listed in the heading to this Order.
9. **“Finance Defendants”** refer to the Fourth and Fifth Defendants.
10. **“Authorised Dealerships”** refer to defendant dealerships which are or were officially authorised between 2009 and the present by the Third Defendant (or another entity in the BMW group of companies) to sell or lease Subject Vehicles in England and Wales and who did sell or lease Subject Vehicles in England and Wales as listed in Schedule 4 hereto, and the **“Dealership Defendants”** refer to the Sixth Defendant and the Authorised Dealerships.
11. **“The GLO Issues”** are the common or related issues of fact or law which are identified in Schedule 1 hereto, as may be amended from time to time.
12. **“Lead Case”** means a case which, following its selection as a Lead Case, alone or together with other such cases is intended to dispose, so far as possible, of issues (primarily but not limited to the GLO Issues, but subject to CPR 19.23(1)) between the parties to this litigation.
13. **“The Management Court”** is the King’s Bench Division of the High Court, Royal Courts of Justice, Strand, London WC2A 2LL.
14. **“The Managing Judge”** is such Judge or Judges nominated from time to time to hear, if possible, all pre-trial applications in this litigation and to conduct the trial.
15. **“The Managing Master”** is the Senior Master, or such other Master of the King’s Bench Division nominated by the Managing Judge or Senior Master from time to time to hear any pre-trial applications in this litigation that are not suitable to be dealt with by the Managing Judge and are released thereto by the Managing Judge.
16. **“Claim”** and **“Claim Form”** mean claims and claim forms that are subject to this Order and subsequent orders in this litigation and shall be read throughout as excluding counterclaims.



**C. Documentation**

17. All documents (including Claim Forms, statements of case, applications and witness statements) filed with the Managing Court in respect of a Claim which is the subject of this Order shall be marked with the short title of the Claim and shall be marked in the top left-hand corner "*The BMW NOx Diesel Emissions Group Litigation*".

**D. Future Claims**

18. All future Claims to which this Order applies by virtue of paragraph 1 must be issued out of the Management Court, and provided that the Standard Minimum Requirements (set out at paragraph 33 below) are met be entered on the Group Register.

**E. Transfer of Existing Proceedings and Notices of Change**

19. Any existing Claim to which this Order applies by virtue of paragraph 1 above, and which is proceeding other than in the Management Court, is to be transferred forthwith to the Management Court. Solicitors for the parties are to co-operate in identifying such Claims, including in accordance with paragraph 22 below. On identification of such Claims, the Lead Solicitors are to send a copy of this Order to each transferring Court. Notices of Transfer in accordance with paragraph 4.1 of CPR PD30 are hereby dispensed with; and provided that each such Claim meets the Standard Minimum Requirements set out in paragraph 33 below, it shall be entered forthwith onto the Group Register in accordance with the terms of this Order and CPR 19.22(3)(a)(i) and (iii).
20. If any Defendant is or has been served with a Claim Form falling within paragraph 1 of this Order, other than by one of the firms which is a member of the Claimants' Solicitors Group, then the Defendant shall ensure that the Lead Solicitors are informed of the name of the Claimant, the Claimant's solicitors (if any) and all available contact details of the Claimant and/or the Claimant's solicitors (if any), within 28 days of such service, or, in the case of any Claim Form already served on any Defendant as of the date of this Order, within 28 days of this Order.
21. The requirement to file individual Notices of Change pursuant to CPR 42.2 where a Claimant changes legal representation is hereby dispensed with and replaced by the

obligation to file a list in the form attached at schedule 6 to this Order at the same time as the Group Register and its updates are served in accordance with paragraphs 25-26. This paragraph does not apply to any Lead Claims, as to which CPR 42.2 will continue to apply.

## **F. The Group Register**

22. A Group Register, on which details of the Claims that are subject to this and subsequent orders in this litigation and that comply with the Standard Minimum Requirements as set out in paragraph 33 below are to be entered, shall be set up and managed by Pogust Goodhead in accordance with this GLO. Pogust Goodhead will be responsible for establishing and maintaining the Group Register in respect of all Claimants.

23. The Group Register shall be established by Pogust Goodhead on or before the date falling 42 days from the date this Order is made. It is a condition of being entered on the Group Register that each Claimant has complied with the Standard Minimum Requirements set out at paragraph 33 below.

24. The following details shall be recorded in respect of each Claimant who is added to the Group Register:

- (a) full name and address of the Claimant together with a unique identifier for that Claimant and that Claimant's vehicle or vehicles;
- (b) the number of the Claim Form under which the Claimant claims;
- (c) the date on which the Claim Form under which the Claimant claims was issued;
- (d) the date on which the Claimant was added to the Claim Form by way of amendment to the Claim Form, where relevant;
- (e) the Vehicle Identification Number ("VIN") of the vehicle or vehicles in respect of which the Claim is made;
- (f) the firm of solicitors instructed by the Claimant;

(g) the date upon which the Claimant's Claim was entered on the Group Register;

(h) the date of removal of the Claimant's Claim from the Group Register, if it is so removed.

25. Pogust Goodhead shall serve an electronic copy of the Group Register in Excel on the Defendants by 4pm on 8 January 2024.

26. Pogust Goodhead shall review and update the Group Register every 3 months, the first such review to take place on the first working day 3 months after the Group Register is established in accordance with paragraph 23 above. Pogust Goodhead shall serve an electronic copy of the updated Group Register on the Defendants within 14 days of each such update. In the updated Group Register, the Claimants shall identify each change made since the last version of the Group Register. Each version of the Group Register shall include all claims that fulfil the Standard Minimum Requirements set out at paragraph 33 below at the date of that version of the Group Register. At the same time as updating the Group Register, Pogust Goodhead shall (if necessary) update Schedule 4 of this Order so as to accurately reflect the Dealership Defendants currently being pursued, with all changes to be clearly marked.

27. Any of the Defendants may give written Notice of Objection to the Lead Solicitors in respect of any Claimant whose Claim has been entered on the Group Register, or as to the accuracy of any other information entered thereon, within 56 days of the service of the version of the Group Register in which the Claimant or information is included for the first time, stating the nature of the objection and the ground(s) for it. In the absence of written confirmation within 56 days of the Notice of Objection that the objection has been accepted by the Lead Solicitors, any of the Defendants may apply to the Management Court for determination of the issue. Such a Notice of Objection shall not affect the individual Claimant's entitlement to remain on the Group Register unless and until the Court directs otherwise.

28. The parties shall otherwise be permitted to apply to the Management Court to remove a Claimant's Claim from the Group Register where there are appropriate grounds for doing so.

29. A Claimant's Claim shall remain on the Group Register until such time as they serve notice of discontinuance or, if required, obtain permission to discontinue, or if the Claim is otherwise disposed of prior to trial, or if the Court orders its removal. In any such event, the Claimant's Claim shall be removed from the Group Register on the expiration of the last day of the period of account during which notice of discontinuance or permission to discontinue is given or the effective date of disposal occurred. For these purposes, the period of account shall be each period of 3 months commencing with the date of the first review in accordance with paragraph 26 above.
30. For the purposes of CPR 38.2(2)(c), consent to discontinuance by any Claimant on behalf of the other Claimants may be given by the Lead Solicitors.
31. The Lead Solicitors shall, as a schedule to the Group Register, maintain a list called the "Discontinued Claims Register" detailing:
- (a) the name of any party discontinuing; and
  - (b) the date of the filing of the notice of discontinuance or other form of disposal.
32. There shall be no discontinuation of any claim selected as a Lead Case unless permission is given by the Court following application on notice to all parties.

## **G. Standard Minimum Requirements**

33. The Standard Minimum Requirements for entry of a Claim onto the Group Register in accordance with paragraph 22 above are as follows:
- (a) a Claim Form (in respect of which the issue fee has been paid) has been issued, on which the Claimant is named;
  - (b) the Claim Form on which the Claimant is named must have been served. The requirement to serve separate Particulars of Claim is hereby dispensed with, subject to further order;
  - (c) the Claimant must claim to be, or to have been, the owner (including a joint owner) of a Subject Vehicle, or to have, or to have had, an interest in a Subject Vehicle whether by purchase, hire purchase, lease, personal contract plan or

other finance terms. The relevant Subject Vehicle must have been acquired in the United Kingdom or Channel Islands.

(d) the Claim must raise one or more of the GLO Issues and meet the other requirements at paragraph 1 of this Order; and

(e) the Claimant is not claiming against any defendant other than the Defendants.

## **H. Schedules of Information**

34. All of the Claimants who, as of the date of this Order, have issued proceedings to which this GLO applies by virtue of paragraph 1 above and who, within 21 days of the date of this Order, (a) meet the Standard Minimum Requirements for entry on the Group Register and (b) have been entered on the Group Register, shall serve on the Defendants a Schedule of Information in the form set out in Schedule 2 hereto, including a Statement of Truth, as soon as reasonably possible, and in any event in accordance with the following timetable:

(a) By no later than 4 months after the Group Register is established, the Claimants shall serve a first tranche of 30,000 such Schedules of Information;

(b) Every 3 months thereafter until five tranches have been served, the Claimants shall serve a further tranche of 30,000 such Schedules of Information;

(c) 3 months after service of the fifth tranche the Claimants shall serve a sixth and final tranche comprising Schedules of Information for all remaining Claimants on the Group Register.

35. Where more than one Claimant claims in respect of the same Subject Vehicle and in respect of the same period of ownership, those Claimants may serve a single Schedule of Information containing the information in respect of each Claimant. The information to be provided in the Schedule of Information is to be provided to the best of each Claimant's knowledge and belief.

36. For the avoidance of doubt, subject to further order, no Claimants are required to amend a Schedule of Information in the event of change of information.

37. For the avoidance of doubt, and save as otherwise provided for any the Court, only those Claimants who have specified that they are suing on a particular cause of action in their Schedule of Information can succeed in that cause of action.

## **I. Statements of Case**

38. The Claimants shall file and serve Generic Particulars of Claim on or before 20 February 2024.
39. The First and Third to Sixth Defendants shall file and serve a Generic Defence on or before 20 May 2024. The Dealership Defendants shall file and serve a Generic Defence, adopting the relevant parts of the Generic Defence of the First and Third to Sixth Defendants, mutatis mutandis, or setting out any points of difference as against the Generic Defence of the First and Third to Sixth Defendants on or before 17 June 2024.
40. The Claimants shall, if so advised, file and serve Generic Replies to the Generic Defences on or before 19 July 2024.

## **J. Provisions for Costs Sharing and for Costs on Settlement or Discontinuance**

41. Save as otherwise ordered, the liabilities for costs for the Claims are to be determined in the following manner:
- (a) “**Costs**” has the meaning given in CPR 44.1.
  - (b) “**Individual Costs**” mean those costs incurred for and/or in respect of any individual Claimant in relation to matters which are particular and personal to that Claimant, irrespective of the number of vehicles in respect of which that Claimant Claims, excepting any costs incurred because that claim is under consideration for selection as a lead claim or any costs incurred after that claim is nominated as a lead claim (such costs to be treated as Common Costs).
  - (c) “**Common Costs**” are all costs and disbursements other than Individual Costs (and include, for the avoidance of doubt, all the costs within the definition of common costs in CPR 46.6(2)), and shall (unless ordered otherwise) include

costs incurred for and in respect of any Lead Cases incurred because that claim is under consideration for selection as a Lead Case or any costs incurred from the date of their respective nomination(s) as a Lead Case. The reasonable cost of attendance at, and preparation for, meetings of the Claimants' Solicitors Group will be a Common Cost.

(d) The liability of each party for costs, and each party's entitlement to recover costs, shall be several and not joint. Unless ordered otherwise (and subject, in the case of the Claimants' liabilities to their own legal representatives, to any costs sharing agreement that they may enter *inter se*) each Claimant's share of the Common Costs shall be calculated by reference to the number of vehicles in respect of which the Claimant claims.

(e) Each Claimant is solely responsible for the Individual Costs relating to that Claimant.

(f) Each Defendant is solely responsible for the Individual Costs relating to that Defendant.

42. Each Claimant is severally liable for a share of the Commons Costs as provided for at paragraph 41(d) above, or as the court may order otherwise, to be determined as follows:

(a) There shall be accounting periods for the purposes of calculating Common Costs.

(b) The first accounting period shall be deemed to run from and including 1 September 2020 to and including 31 December 2023. Thereafter, quarterly accounting periods shall run for 3 months from and including the following dates in each year: 1 January, 1 April, 1 July, and 1 October.

(c) Each of the Claimants on the Group Register, or whose Claim is subsequently entered on the Group Register, shall, for the purposes of calculating the amount of Common Costs to be shared between Claimants, be treated as if they had been a Claimant from the beginning of the first accounting period.

- (d) The Common Costs incurred in any quarterly accounting period by the Claimants are to be divided by the number of vehicles in respect of which Claimants are deemed by sub-paragraph (c) above to have been pursuing their Claims on the first day of the quarterly accounting period.
- (e) The Common Costs incurred in any quarterly accounting period by the Defendants are to be divided by the number of vehicles in respect of which Claimants are deemed by sub-paragraph (c) above to have been pursuing their Claims against the Defendants (whether alone or with other Claimants) on the first day of the quarterly accounting period.
- (f) If in any quarterly accounting period a Claimant compromises their Claim with a Defendant on terms which provide for the Defendant to pay that Claimant their costs, then that Claimant shall be entitled to recover their Individual Costs, but the Defendants' liability for any Common Costs shall be determined following the trial of any Lead Cases and/or the trial of the GLO Issues (with permission to apply if such a trial does not take place). For the avoidance of doubt, the foregoing default position does not prevent parties, if so advised, from agreeing to compromise a Claimant's claim on terms providing for the payment of Individual Costs together with the share of that Claimant's Common Costs to the last day of the relevant quarterly accounting period.
- (g) If in any quarter a Claimant discontinues their Claim against a Defendant, or compromises their Claim with a Defendant on terms which provide for the Claimant to pay the Defendant its costs, or it is dismissed by an order of the Court whereby the Claimant is ordered to pay the Defendant's costs, then they will be liable for the Defendant's Individual Costs in respect of that Claim up to the last day of that quarterly accounting period; with liability of the Claimant for the Defendant's Common Costs to be determined following the trial of any Lead Cases and/or the trial of the GLO Issues (with permission to apply if such a trial does not take place).
- (h) The Common Costs ordered or agreed to be paid if not agreed shall be subject of detailed assessment which shall not take place prior to the conclusion of the



trial of the GLO Issues and/or any Lead Cases, with permission to apply if such a trial does not take place.

(i) Any Common Costs or share of the Common Costs ordered to be paid by a Defendant to any Claimant shall be paid to the Lead Solicitors and such payment shall be deemed good receipt discharging the Defendant's liability for the said Common Costs.

(j) Unless the Court orders otherwise a Claimant will not be liable to pay the costs of a Defendant against whom he did not make a Claim. A Defendant will not be liable to pay the costs of a Claimant who did not pursue a Claim against that Defendant.

43. No further work in relation to the GLO Issues shall be undertaken by any legal representative other than the Steering Committee, their servants or agents unless authorised by the Steering Committee; and no liability for Common Costs in relation to such work in the absence of such authorisation shall arise between the Claimants or between the parties.

44. Where any Claim is nominated or selected as a Lead Case (or if applicable a reserve Lead Case) then, for the period of that Claim's nomination or selection the relevant Claimant may not discontinue that claim without the permission of the Court.

## **K. Publicity**

45. The making of this GLO, and an invitation to prospective Claimants to consider joining this Group Litigation, shall be advertised by the Lead Solicitors in the form set out at Schedule 3 to this Order. The Lead Solicitors shall place appropriate notices of the making of the GLO on their own websites, in the Law Society Gazette, on social media to include but not limited to Twitter, LinkedIn and Facebook, and national and regional newspapers as agreed between the parties or otherwise determined by the Court, the costs of which shall be Common Costs and follow the event. Nothing in this Order is intended to restrict the Claimants' Solicitors Group or any other claimant firm otherwise publicising their involvement in the BMW NOx Diesel Emissions Group Litigation, the costs of which shall not be recoverable from the Defendants.

**L. Cut-off Date**

46. In order to be entitled to enter on to the Group Register, a Claimant whose claim falls within the scope of this GLO must have issued and served a Claim Form on the date falling 7 months from the date of this Order. The final date on which such Claims must be entered on to the Group Register will be on the date falling 10 months from the date of this Order (the “**Cut-Off Date**”). Both cut-off dates shall be subject to review at the Case Management Conference (“**CMC**”) provided for at paragraph 49 below.

**M. Extensions of Time**

47. The parties may, by prior agreement in writing, extend the time for directions, in any Order relating to The BMW NOx Diesel Emissions Group Litigation, by up to 28 days and without the need to apply to the Court. Beyond that 28-day period, any agreed extension of time must be submitted to the Court by email including a brief explanation of the reasons, confirmation that it will not prejudice any hearing date and with a draft Consent Order in word format. The Court will then consider whether a formal application and/or hearing is necessary.

**N. Further Case Management**

48. A copy of this Order shall be lodged with:

(a) the Senior Master of the King’s Bench Division at the Royal Courts of Justice, Strand, London, WC2A 2LL; and

(b) the Law Society at 113 Chancery Lane, London, WC2A 1PL.

49. There shall be an initial CMC before the Managing Judge or Master on the first open date after 1 June 2024 with a time estimate of 2 days, for which purpose the parties are to apply jointly to King’s Bench listing.

50. The purpose of the CMC provided for in paragraph 49 shall be for the Managing Judge or Senior Master to provide further directions for the progress of this litigation.

51. In preparation for the CMC provided for in paragraph 49:

(a) The parties are to exchange draft orders setting out the directions they will

seek at the CMC by no later than 28 days before the hearing;

- (b) Any applications to be made or witness statements to be relied on at the CMC are to be filed and served no later than 21 days before the hearing;
- (c) The Claimants shall provide updated bundles for the CMC no later than 14 days before the hearing; and
- (d) The parties, and any party wishing to address the court at the CMC, shall file and exchange skeleton arguments and draft proposed orders no later than 7 days before the CMC.

**O. Disclosure**

52. The documents disclosed and/or provided by the Defendants pursuant to paragraphs 1.1, 1.2, 1.4 and 1.6 of the Order dated 30 October 2023 relating to (i) the European Commission Decision in Case AT. 40178 – Car Emissions and (ii) the Korea Fair Trade Commission decision on the Collusion on Emissions Reduction Technologies by German Passenger Car Manufacturers shall be deemed to have been disclosed and/or provided to all Claimants who are subject to this Group Litigation Order.

**P. Costs**

53. Costs of the application for a GLO be in the case.

**Q. Permission to Restore**

54. The parties have permission to restore.

Dated 2 November 2023

## SCHEDULE 1

### LIST OF GLO ISSUES

The matters set out below for the purposes of CPR 19.22(2)(b) are intended to identify the high level GLO issues to assist in the management of the GLO and are not intended as a substitute for particularised pleadings. These GLO issues (the “**GLO Issues**”) will be likely to require revision and review as the matter progresses, including when pleadings are finalised. Accordingly, no party makes or is deemed to make any admission by reason of the matters set out below.

- (1) **Presence of defeat devices:** Whether each or any of the Subject Vehicles contained any of the alleged defeat devices within the meaning of article 3(10) of EC Regulation 2007/715 (the “**Emissions Regulation**”) at (a) the time of their manufacture, and/or (b) at the time of each Claimant’s purchase, hire purchase, lease, personal contract plan or other finance agreement relating to the Subject Vehicles, and/or (c) during the relevant Claimant’s period of ownership or lease of the Subject Vehicle(s), including following any software updates or technical measures being applied to the vehicles’ emission control systems.

The remaining issues in this section only arise to the extent that any of the Subject Vehicles are found to have contained any pleaded defeat device.

- (2) **Justification:** If the Subject Vehicles, or any of them, did contain such defeat devices, whether those defeat devices were or are not prohibited by reason of Article 5(2) of the Emissions Regulation.
- (3) **Certificates of Conformity:** Whether the certificates of conformity issued by the First Defendant in respect of each or any of the Subject Vehicles were accurate and/or correct and, if not, whether any legal consequences result in respect of any of the Claimants’ claims.
- (4) **Type Approval:** Whether each or any of the Subject Vehicles were manufactured in accordance with a valid type approval at the time the vehicle was manufactured and/or at the time of each Claimant’s purchase, hire purchase, lease, personal contract plan or other relevant financial agreement,

and, if not, whether any legal consequences result in respect of any of the Claimants' claims.

- (5) **Contract:** Whether the Finance Defendants and/or the Dealership Defendants acted in breach of any implied term of satisfactory quality and/or terms relating to the description of goods imposed under the Supply of Goods (Implied Terms) Act 1973, the Sale of Goods Act 1979, and the Supply of Goods and Services Act 1982, and/or the Consumer Rights Act 2015 (as appropriate), in contracts with the Claimants relating to the Subject Vehicles, by supplying vehicles fitted with prohibited defeat devices.
- (6) **CPUT:** Whether any of the consumer Claimants (as defined by Section 2 of the Consumer Protection from Unfair Trading Regulations 2008) have any right to redress in relation to the Subject Vehicles under Part 4A of the Consumer Protection from Unfair Trading Regulations 2008 and, if so, what redress the Court should give.
- (7) **Deceit:** Whether the First and/or Third Defendants (i) knowingly, recklessly and/or dishonestly made false representations in relation to any of the Subject Vehicles (ii) with the intention that each or any of the Claimants should be influenced or induced by those representations; (iii) which did influence or induce each or any of the Claimants; and (iv) whereby each or any of the Claimants suffered loss and/or damage.
- (8) **Statutory duty:**
  - a. Whether as a matter of law any pleaded breaches of obligations under relevant EU emissions legislation, including the framework provisions in Regulation 2018/858 and its predecessor Directive 2007/46; the Emissions Regulation; EC Regulation 2008/692; and its successor Regulation (EU) 2017/1151 and Regulation 2020/683 give rise to an actionable claim in damages as a breach of statutory duty.
  - b. Whether as a matter of law any pleaded breaches of dependent or related domestic legislation governing emissions, type approval or lawfully putting vehicles on the market in the UK, including the

Road Vehicles (Construction and Use) Regulations 1986; the Road Vehicles (Approval) Regulations 2020 and its predecessor the Road Vehicles (Approval) Regulations 2009; and the Road Traffic Act 1988 give rise to an actionable claim in damages as a breach of statutory duty.

- (9) **CCA:** Whether there was an unfair relationship between Claimants who entered into finance agreements with the Finance Defendants in respect of the Subject Vehicles such that a remedy ought to be ordered under section 140B of the Consumer Credit Act 1974 and, if so, what remedy the Court should order.
- (10) **Competition:** Whether in addition to the First Defendant's breach of Article 101(1) TFEU, as found by the Commission in its Decision C(2021) 4955, in case AT.40178, dated 8 July 2021, all or any of the Defendants participated (directly or indirectly) in any pleaded breach of Article 101(1) TFEU and/or Chapter I of the Competition Act 1998; and whether any of BMW (UK) Limited, BMW Financial Services (GB) Limited, Alphabet (GB) Limited, and/or Park Lane Limited participated in any pleaded breach of those provisions at all, and whether any such participation resulted in the installation of a prohibited defeat device in any Subject Vehicle.
- (11) **Loss:** If any of the Defendants are found to be liable to any of the Claimants in respect of any of the causes of action above, what recoverable loss, if any, have any of the Claimants suffered, and what damages, relief or compensation, if any, are any of them are entitled to. In particular:
- a. What is the difference, if any, between the value of the Claimants' interests in their Subject Vehicles with and without any identified prohibited defeat devices; and what is the relevant time of assessment?
  - b. Are any of the consumer Claimants entitled to rescind their Subject Vehicle agreement or reject their Subject Vehicle?
  - c. Are any of the consumer Claimants entitled to a reduction in purchase price or discount on payments and/or compensation and, if so, in what amount?

- d. Have any of the Claimants incurred additional costs by reason of any of the pleaded breaches and, if so, are the additional costs recoverable as damages, and, if so, in what amount?
  - e. Are any of the Claimants entitled to damages and/or compensation for distress and disappointment, exemplary and/or aggravated damages, and, if so, in what amount?
  - f. How far, if at all, should any Claimant's remedies, including the award of damages, be adjusted to prevent over-compensation?
- (12) **Limitation:** Whether any of the claims are time-barred or otherwise statute-barred and, if so, to what extent.

## SCHEDULE 2

### SCHEDULE OF INFORMATION

The Schedule of Information referred to at paragraph 34 is as follows: —

<b>Section A: All claimants</b>	1.	Name of Claimant Firm	
	2.	Claimant Firm Reference	
	3.	GLO ID Number	
	4.	GLO ID Extension Number	
	5.	Claimant Name	
		If individual: a) First name (and any middle names)	
		b) Surname	
		If business: c) Business name	
	6.	Claimant address	
		a) First line	
		b) Second line	
		c) Postcode	
		d) Country	
	7.	Vehicle Model	
	8.	VIN number	
9.	Vehicle registration number		
10.	Is the vehicle registration number a private/cherished plate?	<ul style="list-style-type: none"><li>• Yes</li><li>• No</li></ul>	



	11.	If yes to Q10, please provide original registration number	
	12.	Capacity in which the claimant claims.	<ul style="list-style-type: none"> <li>• Owner</li> <li>• Former owner</li> <li>• Lessee</li> <li>• Former lessee</li> </ul>
	13.	If the answer to Q12 arises from an agreement where the counterparty is not one of the Defendants, please confirm the type of agreement entered into by the Claimant.	<ul style="list-style-type: none"> <li>• Immediate purchase</li> <li>• Hire purchase, lease</li> <li>• Personal contract plan</li> <li>• Other / not known</li> </ul>
	14.	Is the vehicle still in the Claimant's possession?	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>
<b>Section B:</b> <b>Only if</b> <b>'<u>owner/former owner</u>' is</b> <b>ticked in Q12</b> <b>above.</b>	15.	Date of purchase (date of order)	DD/MM/YYYY
	16.	Is date provided in response to Q15 exact or approximate?	<ul style="list-style-type: none"> <li>• Exact</li> <li>• Approximate</li> </ul>
	17.	Name of trading company or person the vehicle was purchased from (if known)	

	18.	Price paid	£.....
	19.	Was the vehicle purchased:	<ul style="list-style-type: none"> <li>• New</li> <li>• Secondhand</li> </ul>
	20.	Was the vehicle purchased:	<ul style="list-style-type: none"> <li>• In a personal capacity</li> <li>• In a business capacity</li> </ul>
	21.	How was the vehicle acquired?	<ul style="list-style-type: none"> <li>• Private seller</li> <li>• Dealer</li> <li>• Auction</li> <li>• Gift / inheritance</li> <li>• Employer scheme</li> <li>• Motability scheme</li> <li>• Other</li> </ul>
<b>Section C:</b> <b>Only if</b> <b>'lessee/former lessee' is</b> <b>ticked in Q12</b> <b>above.</b>	22.	Date of hire purchase/lease/personal contract plan/other finance agreement (if known, exact date, otherwise approximate date)	DD/MM/YYYY
	23.	Is the date provided in response to Q22 exact or approximate?	<ul style="list-style-type: none"> <li>• Exact</li> <li>• Approximate</li> </ul>
	24.	Creditor / counterparty	<ul style="list-style-type: none"> <li>• BMW Financial Services (UK)</li> </ul>

		If “other” is stated, please also state the name of the other party or parties to the finance agreement (if known).	<p>Limited</p> <ul style="list-style-type: none"> <li>Alphabet (GB) Limited</li> <li>Other</li> </ul>
	25.	If “other” is stated in response to Q24, the total amount payable under the finance agreement when the finance agreement was entered into and/or the monthly payment amount under the relevant finance agreement if known.	
	26.	Was the vehicle leased:	<ul style="list-style-type: none"> <li>In a personal capacity</li> <li>In a business capacity</li> </ul>
<b>Section D:</b> <b>Only if claimant has indicated that the vehicle is no longer in their possession in Q13 above.</b>	27.	Why is the vehicle no longer in the Claimant’s possession?	<ul style="list-style-type: none"> <li>Sold</li> <li>Part exchanged</li> <li>Returned to finance provider</li> <li>Written off</li> <li>Stolen</li> <li>Scrapped</li> <li>Gifted</li> <li>Other</li> </ul>
	28.	Date of sale or disposition (if known, exact date, otherwise approximate date)	DD/MM/YYYY
	29.	Is the date provided in response to Q28 exact or approximate?	<ul style="list-style-type: none"> <li>Exact</li> <li>Approximate</li> </ul>
		If sold or part exchanged: provide sale / part exchange price	£..... .....

		If written off or stolen: provide value of any insurance payment received	£..... .....
<b>Section E: All claimants</b>	30.	Defendant(s) against whom the Claimant claims.	•
	31.	<p>Cause(s) of action that the Claimant pursues (as set out in Sections [I to L] of the Generic Particulars of Claim)</p> <p>Breach of statutory duty</p> <p>Deceit</p> <p>Competition claims</p> <p>Contractual claims arising from Vehicle Agreements and DCC Contracts Under CPUT 2008</p> <p>Contractual claims arising from Vehicle Agreements Under CCA 1974</p>	<ul style="list-style-type: none"> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> </ul>
	32.	<p>Claims for alleged loss that the Claimant pursues:</p> <p>Reduction in value of vehicle</p> <p>Additional fuel and/or AdBlue consumption and/or running and maintenance costs</p> <p>Distress, disappointment, inconvenience and / or loss of enjoyment of the vehicle</p>	<ul style="list-style-type: none"> <li>• Yes / No</li> <li>• Yes / No</li> <li>• Yes / No</li> </ul>
<b>Section F: All claimants</b>	33.	[[I] [We] believe] [the Claimant[s] believe[s]] that the facts stated in this Schedule of Information are true. [[I] [We]] [the Claimant[s]] understand[s] that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.	<ul style="list-style-type: none"> <li>• Yes (signed by Claimant(s))</li> <li>• Yes (signed by legal representative on behalf of Claimant(s))</li> </ul>

## **SCHEDULE 3**

### **ADVERTISEMENT**

#### **The BMW NOx Diesel Emissions Group Litigation**

The High Court made a Group Litigation Order on 2 November 2023 in relation to a Group Action to be pursued against BMW AG, BMW (UK) Limited, BMW Financial Services (GB) Limited, Alphabet (GB) Limited, Park Lane Limited and authorised dealerships. The Group Action is brought by individuals or businesses who owned, leased, or otherwise acquired vehicles manufactured by BMW AG. Individuals and businesses can check whether their vehicle is eligible to join the claim by contacting one of the law firms listed below.

The Court has appointed Leigh Day and Pogust Goodhead as Lead Solicitors to the Group Action. In addition to the Lead Solicitors, Milberg London LLP has been appointed as a member of the Steering Committee to be responsible for the conduct, management and coordination of the Claimants' claims.

The contact details for the claimant firms are as follows:

**(1) Leigh Day**

Panagram, 27 Goswell Road, London, EC1M 7AJ

[bmw@leighday.co.uk](mailto:bmw@leighday.co.uk)

<https://www.leighday.co.uk/latest-updates/cases-and-testimonials/cases/bmw-emissions-claims/>

Tel: 0330 097 6925

**(2) PGMBM Law Ltd t/a Pogust Goodhead**

70 Mark Lane, London, England, EC3R 7NQ

[bmw@pgmbm.com](mailto:bmw@pgmbm.com)

[www.bmwclaimlawyers.com](http://www.bmwclaimlawyers.com)

Tel: 03330 155 900

Individuals and businesses who wish to be added to the Group Register of claims should come forward as soon as possible before 2 May 2024.

Potential claimants should be aware that the Court has ordered that 2 June 2024 is the cut-off date for claims to be issued and served in order to be entitled to enter on to the Group Register. If you wish to make a claim, it is in your interest to contact a solicitor at least one calendar month before that date.

The making of a Group Litigation Order is a procedural matter only to enable the Court to manage litigation affecting multiple parties and does not imply any view as to the merits of the claims put forward. This advertisement does not contain legal advice. If a potential claimant instructs a solicitor, the solicitor will be able to provide advice as to the benefits and risks of bringing a claim, and in relation to the funding and insurance of the claim (including payment of the Defendants' costs in the event the claim is unsuccessful).

**This advertisement is published by Order of the High Court of Justice.**

**SCHEDULE 4**  
**LIST OF AUTHORISED DEALERSHIP DEFENDANTS**

<b>No.</b>	<b>Company name</b>	<b>Registered office address</b>	<b>Company number</b>
1.	Alloy Racing Equipment Limited	Loxley House 2 Oakwood Court, Little Oak Drive, Annesley Nottingham, Nottinghamshire, NG15 0DR	901017
2.	Arden Maidstone Limited	12 Wood Close, Quarry Wood, Aylesford, Maidstone, ME20 7UB	6894533
3.	Arden Tunbridge Wells Limited	12 Wood Close Quarry Wood, Aylesford, Maidstone, Kent, United Kingdom, ME20 7UB	12524097
4.	Astle Limited	Airport House, The Airport, Cambridge, CB5 8RY	1114983
5.	Barons Automotive Limited	First Point St. Leonards Road, Allington, Maidstone, Kent, England, ME16 0LS	1695666
6.	Barretts of Canterbury Limited	Broad Oak Road, Canterbury, Kent, United Kingdom, CT2 7PQ	349070
7.	Benham Wolverhampton Ltd.	6 Athena Drive, Tachbrook Park, Warwick, England, CV34 6RT	2389641
8.	Bowker Blackburn Limited	Bowker Bmw, Trident Way, Trident Park, Blackburn, Lancashire, BB1 3NU	1364761
9.	Bowker Preston Limited	Channel Way, Ashton On Ribble, Preston, Lancashire, PR2 2YA	805059
10.	Clare James Automotive Limited	The Pinnacle, 170 Midsummer Boulevard, Milton Keynes, MK9 1FE	5082322
11.	Cotswold Motor Group Limited	Cotswold Motor Group Corinthian Way, The Reddings, Cheltenham, England, GL51 6UP	3028787
12.	Dick Lovett (Bath) Limited	The Copse Frankland Road, Blagrove, Swindon, Wiltshire, England, SN5 8YW	3826675
13.	Dick Lovett (Bristol) Limited	The Copse Frankland Road, Blagrove, Swindon, Wiltshire, England, SN5 8YW	1683232
14.	Dick Lovett (Hungerford) Limited	The Copse Frankland Road, Blagrove, Swindon, Wiltshire, England, SN5 8YW	1037913
15.	Dick Lovett (Specialist Cars) Limited	The Copse Frankland Road, Blagrove, Swindon, Wiltshire, England, SN5 8YW	2567241
16.	Fairfield Garage (Leigh-On-Sea) Limited	First Point St. Leonards Road, Allington, Maidstone, Kent, England, ME16 0LS	916058
17.	Grevan Cars Limited	St Modwen House, Longbridge Road, Marsh Mills, Plymouth, Devon, PL6 8LD	1852806
18.	Halliwell Jones (Chester) Limited	Sealand Road, Chester, CH1 4LS	2665815
19.	Halliwell Jones (North Wales) Limited	Ffordd Maelgwyn, Tre Marl Industrial Llandudno Junction, LL31 9PL	1266292
20.	Halliwell Jones	Bmw Showrooms, Winwick Road, Warrington,	3323081

	(Warrington) Limited	WA2 8HY	
21.	Halliwell Jones (Wilmslow) Limited	Manchester Road, Wilmslow, Cheshire, SK9 2LE	398803
22.	Halliwell Jones Limited	59/61 Southport Road, Scarisbrick, Southport, Merseyside, PR8 5JF	2043705
23.	Helston Garages Limited	Vertu House Fifth Avenue Business Park, Team Valley Trading Estate, Gateshead, Tyne And Wear, United Kingdom, NE11 0XA	703021
24.	Inchcape Retail Limited	First Floor, Unit 3140, Park Square Solihull Parkway, Birmingham Business Park, Birmingham, United Kingdom, B37 7YN	194561
25.	Ivor Holmes Limited	2 Penman Way, Grove Park, Leicester, Leicestershire, LE19 1ST	645538
26.	Jardine Automotive Limited	C/O Porsche Centre Colchester Auto Way, Ipswich Road, Colchester, Essex, United Kingdom, CO4 9HA	153658
27.	JCT 600 (Yorkshire) Limited	Tordoff House, Apperley Bridge, Bradford, West Yorkshire, BD10 0PQ	647724
28.	Knights North West Limited	Lookers House 3 Etchells Road, West Timperley, Altrincham, United Kingdom, WA14 5XS	4604497
29.	Leslie H. Trainer and Son Limited	2 Penman Way, Grove Park, Enderby, Leicester, England, LE19 1ST	1140490
30.	Listers Group Limited	Othello House Stratford Business & Technology Park, Banbury Road, Stratford-Upon-Avon, Warwickshire, CV37 7GY	1400698
31.	Lloyd Motors Limited	Montgomery Way, Rosehill, Carlisle, Cumbria, CA1 2RP	1271767
32.	Lookers Motor Group Limited	Lookers House 3 Etchells Road, West Timperley, Altrincham, United Kingdom, WA14 5XS	143470
33.	Marsh Wall Limited	6 Shield Drive, Brentford, Middlesex, TW8 9EX	6319869
34.	North Oxford Garage Limited	Wollaston Motors, Bedford Road, Northampton, Northamptonshire, NN1 5SZ	399428
35.	Partridge of Hampshire Limited	Arcadia House Maritime Walk, Ocean Village, Southampton, SO14 3TL	8313261
36.	Radford (Bavarian Limited)	Lookers House 3 Etchells Road, West Timperley, Altrincham, United Kingdom, WA14 5XS	3050018
37.	Ridgeway Bavarian Limited	Airport House, The Airport, Cambridge, England, CB5 8RY	7930214
38.	Rybrook Limited	6 Athena Court, Athena Drive Tachbrook Park, Warwick, Warwickshire, CV34 6RT	5818937
39.	Sandal Motors (Bayern) Limited	Dewsbury Road, Wakefield, West Yorkshire, WF2 9BE	1381018
40.	Sandal Motors (Huddersfield) Limited	Dewsbury Road, Wakefield, West Yorkshire, WF2 9BE	6652168
41.	Snows Motor Group Limited	Snows House Second Avenue, Millbrook, Southampton, Hampshire, SO15 0BT	1318267
42.	Soper of Lincoln Limited	166 College Road, Harrow, Middlesex, England, HA1 1RA	9244414



43.	Specialist Cars Limited	2 Penman Way, Grove Park, Leicester, Leicestershire, England, LE19 1ST	2416408
44.	Specialist Cars Tring Limited	2 Penman Way, Grove Park, Leicester, Leicestershire, England, LE19 1ST	6572230
45.	Spire Automotive Limited	First Point St. Leonards Road, Allington, Maidstone, Kent, England, ME16 0LS	5813758
46.	Stephen James (Automotive) Limited	Unit 1 Martinbridge Estate, Lincoln Road, Enfield, United Kingdom, EN1 1SP	9738102
47.	Stephen James Group Trading LLP	Unit 1 Martinbridge Estate, Lincoln Road, Enfield, United Kingdom, EN1 1SP	OC325235
48.	Stratstone Limited	Loxley House 2 Oakwood Court, Little Oak Drive Annesley, Nottingham, Nottinghamshire, NG15 0DR	3835900
49.	Sycamore (Peterborough) Limited	C/O First Hamblin (Eastern) Limited Papyrus Business Parc, Werrington, Peterborough, England, PE4 5BH	216564
50.	Sytner Limited	2 Penman Way, Grove Park, Leicester, Leicestershire, LE19 1ST	813696
51.	Sytner Retail Limited	2 Penman Way, Grove Park, Leicester, Leicestershire, LE19 1ST	833930
52.	The Cooper Group Limited	First Floor, Unit 3140, Park Square Solihull Parkway, Birmingham Business Park, Birmingham, United Kingdom, B37 7YN	821770
53.	Vertu Motors (Continental) Limited	Vertu House Fifth Avenue Business Park, Team Valley, Gateshead, Tyne & Wear, United Kingdom, NE11 0XA	2156457
54.	Vines Limited	Vines House, Slyfield Green, Guildford, GU1 1RD	1849408
55.	Williams Motor Co. (Holdings) Limited	2 Vincent Way, Raikes Lane, Bolton, BL3 2NB	597708
56.	Wollaston Motors Limited	Bedford Road, Northampton, Northamptonshire, NN1 5SZ	708410

## **SCHEDULE 5**

### **LIST OF ISSUED CLAIM FORMS**

1. KB-2022-004426 (formerly CP-2021-000016)
2. KB-2022-004432 (formerly CP-2021-000017)
3. KB-2022-004422 (formerly CP-2021-000022)
4. KB-2022-004434 (formerly CP-2022-000005)
5. KB-2022-004428 (formerly CP-2022-000007)
6. KB-2022-004433 (formerly CP-2022-000009)
7. KB-2022-004491 (formerly CP-2022-000013)
8. KB-2022-004486 (formerly CP-2022-000023)
9. KB-2022-004435 (formerly CP-2022-000027)
10. KB-2022-004430 (formerly CP-2022-000033)
11. KB-2022-004414 (formerly CP-2022-000045)
12. KB-2022-004484 (formerly CP-2022-000050)
13. KB-2022-004488 (formerly CP-2022-000054)
14. KB-2022-004489 (formerly CP-2022-000056)
15. KB-2022-005064
16. KB-2022-005162
17. KB-2023-000709
18. KB-2023-001072
19. KB-2023-001083
20. KB-2023-002642
21. KB-2023-002844
22. KB-2023-003281
23. KB-2023-003373
24. KB-2023-003417

## SCHEDULE 6

## NOTICE OF CHANGE OF LEGAL REPRESENTATIVE

In the King's Bench Division

Claim No: [KB-2022-004426 and others]

[illegible]

This notice of change has been served on every party to the claim and on the former legal representative: [to insert]

**Addresses of firm(s) that is being replaced:**

**[Leigh Day**

Panagram  
27 Goswell Road  
London  
EC1M 7AJ]

Email:  
Tel:  
Reference:

**Addresses of firm(s) instructed to which documents about this claim should be sent:**

**[PGMBM Law Ltd t/a Pogust  
Goodhead**

70 Mark Lane,  
London, England,  
EC3R 7NQ ]

Email:  
Tel:  
Reference:

Position or office held:

Signed:

.....

Date: