Neutral Citation Number: **[2020] EWHC 1280 (Comm)**

Case No: CL-2017-000323

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)
AND IN THE MATTER OF GERALD MARTIN SMITH
AND IN THE MATTER OF THE CRIMINAL JUSTICE ACT 1988

Date: 20 May 2020

Before :

MR JUSTICE FOXTON

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Between :

(1) THE SERIOUS FRAUD OFFICE
(2) MR JOHN MILSOM AND MR DAVID STANDISH
(as joint Enforcement Receivers in respect of the realisable property of Gerald Martin Smith) **Applicants**

- and –

(1) LITIGATION CAPITAL LIMITED
(a company incorporated in the Marshall Islands) and the (2) to (25) Defendants **Defendants**

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Nathan Pillow QC, Tim Akkouh and **Richard Hoyle** (instructed by **Harcus Parker LLP**) for the Seventh Defendant
Kennedy Talbot QC and **James Mather** (instructed by the **SFO**) for the First Claimant
Stephenson Harwood LLP for the Second Claimant
Blair Leahy QC (instructed by **HFW LLP**) for the Joint Liquidators of Twenty-First to the Twenty-Third Defendants and for the Twenty-Fourth to Twenty-Fifth Defendants
Felicity Toube QC (instructed by **Addleshaw Goddard LLP**) for the Fifth and Tenth Defendants
Sean Upson for the Sixth Defendant
James Pickering QC and **Samuel Hodge** (instructed by **Spring Law**) for the Twelfth to Fourteen Defendants
Sebastian Kokelaar (instructed by **Richard Slade &** Co) for the Eighth and Ninth Defendants
The Twentieth Defendant in person
Written submissions from: **the First, Fourth** and **Fifteenth Defendants**, and from **Dr Imogen Smith** and **Ms Iona Smith**

Hearing date: 18th May 2020
Draft Judgment Circulated: 19th May 2020

Judgment Approved

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 20 May 2020 at 10.00am.

The Honourable Mr Justice Foxton:

1. This is the hearing of the latest case management conference in a case involving competing claims to interests in a variety of assets. By way of very brief background:

   i) Dr Smith was convicted of fraud, sentenced to eight years' imprisonment and made subject to a confiscation order on the application of the Serious Fraud Office ("the SFO"). The High Court appointed receivers on the application of the SFO ("the Joint Enforcement Receivers") in respect of Dr Smith's realisable property under the Criminal Justice Act 1988 ("the CJA 1988"), for the purposes of realising property to discharge the confiscation order and accumulating interest.

   ii) A Jersey company called Orb arl ("Orb") was used as a vehicle to hold the Smith family's financial interests. It became involved in litigation with a Mr Andrew Ruhan, concerning (amongst other things) the group of companies through which Mr Ruhan owned or controlled various assets, including companies known as the Arena Companies. The background to those proceedings is set out in Mr Justice Popplewell's judgment in Orb arl v Ruhan [2016] EWHC 850 (Comm), [7]-[19]. That litigation was settled on terms which provided of various transfers of assets, the validity and effect of which is hotly disputed.

   iii) Following the settlement of the Ruhan litigation, numerous further claims have arisen in relation to both the settlement, and as to the assets held or once held by companies on the Orb and Ruhan sides. Popplewell J explained in Sodzawiczny v Ruhan [2018] Bus LR 2419, [6]:

   > "Following the settlement of the main litigation there have emerged numerous further claims, both in relation to the settlement and in relation to assets of those in the Dr Smith camp including the Arena and non-Arena assets. Amongst the claimants are the SFO; the Viscount of Jersey who has succeeded to the title of Dr Cochrane who is in 'en désastre' (a form of bankruptcy in Jersey); liquidators of various BVI companies which sat at the head of structures within the Arena Settlement…; beneficiaries of the settlement of the main action; various litigation funders; Stewarts Law, Orb's former solicitors in the main litigation; and a number of others. I have been managing those various actions together, which were described before me as 'the Popplewell proceedings', and have ordered a trial of a number of issues in relation to proprietary claims to certain of the assets, which is not due to be heard until 2020."

2. As will be apparent, Popplewell J was initially responsible for managing this complex litigation He did so by making the following orders:

   i) Following a hearing on 22 June 2017, he directed the SFO to file an Application Notice asserting its claims in relation to Dr Smith's realisable property. This was done on 26 June 2017.

   ii) Thereafter the SFO filed its statement of case, to which 12 further parties filed responsive statements of case.

iii) In April 2018, Popplewell J held a case management conference in which he gave directions for the litigation to proceed in phases, with the first phase (known as "the Directed Trial") to determine claims by parties to a series of corporate assets and certain properties in Jersey. Those properties are referred to as "the Jersey Properties" and the assets in issue in the Directed Trial are referred to as "the Relevant Assets".

iv) Popplewell J made an order granting permission to those claiming interests in the Relevant Assets to participate in the Directed Trial, providing for the advertisement of the Directed Trial and the order giving permission to participate in it, and providing that any party who claimed an interest in the Relevant Assets but who did not come forward to advance their claim by a set date would need the permission of the court to advance such a claim thereafter.

3. The Directed Trial was originally fixed for January 2020. However, in September 2019, a number of the rival claimants to the Relevant Assets notified the court that they had reached agreement on a settlement in principle of their claims "inter se", subject to those participating parties who were acting by court appointed officers obtaining the sanction of their supervising courts. Those parties ("the Settlement Parties") sought to adjourn the Directed Trial. That application was heard and granted by Mrs Justice Moulder in an approved ruling reported at [2019] EWHC 2598 (Comm).

4. At that hearing, it appears to have been assumed that it would be possible for the applications for court approval to be determined in time for the Settlement Parties to serve an amended consolidated pleading reflecting the terms of the settlement by January 2020, and on this basis, a further Case Management Conference was fixed for February 2020. However, it did not prove possible to hold all of the approval hearings within that period, with the result that the approvals had not been obtained, and no consolidated pleading had been served, when the hearing came before me on 24 February 2020 ("the February CMC"). My approved ruling from that hearing is reported at [2020] EWHC 788 (Comm). For present purposes, it is sufficient to note that in the run-up to and at that hearing, the Settlement Parties made it clear that they were considering applying to expand the scope of the Directed Trial so that the Court would at the same time resolve the issue of the beneficial ownership of certain further assets over and above the Relevant Assets.

5. I directed all parties to file any applications they wish to make to expand the scope of the relief sought by the SFO at the Directed Trial by 9 April 2020. However, I made it clear that the issue of whether and to what extent the issues raised in those applications would be heard as part of the Directed Trial would not be determined until a further CMC which I fixed for July 2020, by which time, it was hoped that it would be clear whether or not the settlement had received the relevant court approvals.

6. In the event the only parties who filed such an application were the Settlement Parties, who seek to include various issues concerning what they refer to as the Identified Underlying Assets within the scope of the Directed Trial. This was the hearing of that application ("the Settlement Parties' Application").

The Settlement Parties' Application

7. The Settlement Parties seek to include a series of further assets (described as "the Identified Underlying Assets") within the scope of the current proceedings. The Identified Underlying Assets comprise:

   i) 15 flats and the head lease of a property at 75-81 Southampton Row, which are in the legal ownership of predominantly Marshall Island companies under the control of the Enforcement Receivers, who are among the Settlement Parties, save for one flat in the legal ownership of Dr Smith's daughter Dr Imogen Smith.

   ii) A collection of assets over which the SFO has applied for freezing order relief: a property in Spain, three properties in England and the sum of £500,000 paid over to an English solicitor. The Spanish property is called Casa Stickler, and is owed by a Spanish company called Casa Futura Mallorca srl. The Nineteenth Defendant ("Ms Stickler") is the legal owner of the shares in that company. The Settlement Parties' Application as against Casa Futura Mallorca srl was adjourned due to difficulties effecting service abroad during the Covid-19 pandemic. The English properties are two properties at Montagu Square and a 50% share of the freehold of a property in Rickmansworth ("Moor Lane"). The £500,000 is held by a company called By Corporate LLP. On the morning of the hearing, the Settlement Parties' Application was adjourned so far as the £500,000 is concerned, on terms agreed between the Settlement Parties and two individuals. The Application against By Corporate LLP was also adjourned.

   iii) Certain loan rights secured on a property jointly owned by the former solicitor of Dr Smith and his wife known as Walham Court, and the proceeds of sale of a property known as Goodwood Court.

   iv) Jewellery owned by the Fourth Defendant ("Dr Cochrane", who was formerly married to Dr Smith) and her daughters, Dr Imogen Smith and Ms Iona Smith: a Graff diamond bracelet and earrings.

8. I am told that the Identified Underlying Assets have been selected because they are within the jurisdiction (with the exception of Casa Stickler) and it is believed that the principal, or at least significant, claimants to those assets are likely to be individuals closely connected with Dr Smith. I am also told it is believed that there may well be a degree of overlap in the factual enquiry raised by claims to those assets and the enquiry which already forms part of the Directed Trial so far as the Jersey Properties are concerned.

9. In summary, the orders which I am asked to make on the Settlement Parties' Application are as follows:

   i) First, an order expanding the issues in these proceedings to include a determination of the ownership of the Identified Underlying Assets, or whether the Identified Underlying Assets constitute realisable assets under the CJA 1988 for the purposes of the SFO's confiscation claim against Dr Smith.

   ii) Second, joinder of certain new parties to the proceedings ("the Additional Parties") who are believed to be the legal owners of the Identified Underlying Assets.

iii) Third, a direction requiring those existing or Additional Parties who assert proprietary claims to the Identified Underlying Assets to serve statements of case setting out their claims.

iv) Fourth, an order requiring advertisement of the fact that the Court will be determining claims in relation to the ownership of the Identified Underlying Assets, allowing an opportunity for non-parties who assert such a claim to bring it in these proceedings, and debarring any non-party who does not bring such a claim forward from asserting it hereafter without the permission of the court.

v) Finally, the Settlement Parties seek certain orders intended to regularise the position so far as service of applications and documents to date is concerned, and to simplify and streamline such service going forward.

10. Reflecting the bifurcated approach I put in place at the February CMC, the Settlement Parties do not seek an order now that the Court determine the issues of ownership of the Identified Underlying Assets as part of the Directed Trial. That is an issue which I have ordered should be considered, if it arises, at the CMC fixed for July 2020, by which point it is hoped that the Court will be better informed both of the progress of the attempts to obtain court-approval for settlement, and the nature and extent of any issues relating to the Identified Underlying Assets.

The Settlement Parties claims to the Identified Underlying Assets

11. I should say a little more about the claims of the various Settlement Parties so far as they concern the Identified Underlying Assets, because this is relevant both to the issue of whether there is an overlap between those claims and the matters which already form part of the proceedings, and to the application of CPR 19.8A (with which I deal below).

12. I consider the position of the SFO first. As I have stated, the SFO obtained a confiscation order against Dr Smith following his conviction. S.80(2) of the Criminal Justice Act 1988 gives the court the power to appoint a receiver in respect of realisable property when a confiscation order has been made. "Realisable property" is defined as any property held by a defendant, and this includes any property in which the defendant holds an interest. S.80(6) provides:

> "The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property".

13. The SFO obtained an order under s.80(2) appointing the Joint Enforcement Receivers in respect of Dr Smith's realisable property. The SFO contends that the Identified Underlying Assets constitute "realisable property". As I understand the position, one of the claims which the SFO advances is that the legal owners of the Identified Underlying Assets are close associates of Dr Smith who hold the assets for him as beneficial owner. It also claims that the transfers were effected at an undervalue (in effect as gifts) and are realisable property in that sense as well. To the extent that the Identified Underlying

Assets were owned by companies prior to their transfer to the current legal owners, there is clearly scope for an argument that the person entitled to assert a beneficial interest in them may be the company rather than Dr Smith personally (unless the company was already holding the asset on trust for Dr Smith). However, that is an argument which, if it arises at all, is one for a future occasion.

14. Harbour claims to be the beneficiary under an express trust arising from an investment agreement it entered into with claimants in the Orb arl v Ruhan litigation ("the Orb Claimants"). It contends that assets transferred pursuant to the Isle of Man and Geneva Settlements (by which those proceedings were settled) are subject to that trust, as are the traceable proceeds of those assets. Harbour, therefore, claims a beneficial interest directly over the Individual Underlying Assets pursuant to or by reason of an interest arising under an express trust.

15. Stewarts assert an equitable claim, or alternatively a claim to be subrogated to the Orb Claimants' lien as trustees, in respect of the same assets as those over which Harbour asserts a beneficial interest, on the basis of the services Stewarts say they provided which contributed to the recovery of those assets. Stewarts, therefore, assert both an equitable interest in the Identified Underlying Assets and claim they are entitled to assert a trustee's right to a lien against those beneficially interested in the assets. As Popplewell J noted in his ruling of 24 April 2018, Stewarts' claim is parasitic on the form of the proprietary interest of those against whom the charge or lien is being alleged.

16. The Viscount administers the estate in bankruptcy of Dr Cochrane. She says assets which are held in Dr Cochrane's name are part of that estate, that some of the assets held in the names of others are beneficially owned by Dr Cochrane, and that some of those assets are beneficially owned by companies which are beneficially owned by Dr Cochrane. The Viscount, therefore, asserts an equitable interest in some of the Identified Underlying Assets.

17. Finally, there are the claims of joint liquidators appointed over various of the companies which are in dispute ("the Joint Liquidators"). The Joint Liquidators say that the monies used to purchase the Identified Underlying Assets came from the assets of the companies over which they have been appointed, and that the companies are entitled to trace into those assets. The Joint Liquidators, therefore, claim a beneficial interest in the Identified Underlying Assets.

18. It will be apparent from that summary that this is not a straightforward case in which it can be said that the Directed Trial is concerned with the issue of which parties own the companies, leaving a separate issue for a subsequent trial of what is owned by the companies. The Settlement Parties, who are all parties to the Directed Trial, all to greater or lesser degree claim proprietary interests or rights over the Identified Underlying Assets.

Service of the Settlement Parties' Application

19. The first issue with which I am concerned is whether the Settlement Parties' Application has been properly, or at least sufficiently, served so as to allow this hearing to proceed as an effective hearing.

20. So far as the existing parties to the litigation are concerned, they were served by email on 9 April 2020. None of the relevant emails generated a "bounce back". They were all aware of, and in many cases were represented at, the February CMC at which I made orders providing for the service of this Application, and received copies of the sealed order made following that hearing on 6 March 2020. The only existing parties who appear to be taking a service point are LCL and Ms Stickler. However, LCL received a copy of the order made at the February CMC. The Settlement Parties' Application clearly came to LCL's attention. LCL has written a number of lengthy letters about the Application, including a 12-page letter on 24 April 2020, an 11-page letter of 11 May 2020 and a two-page letter to the Court of 12 May 2020 all addressing the merits of the Settlement Parties' Application in detail. Those letters did not explain the basis of any challenge which LCL may have had to service of the application upon them. It is clear from this correspondence that the Settlement Parties' Application was served by email on LCL, and in sufficient time to allow LCL to participate effectively at this hearing.

21. I am also satisfied that Ms Stickler was served on 6 March 2020 with the order made at the February CMC setting out the timetable for the Settlement Parties' Application, and that she was served with the Settlement Parties' Application by email at the email address which she had supplied on 9 April 2020. As I explain below. I am satisfied that Ms Stickler has long been aware that the SFO contends that Casa Stickler is beneficially owned by Dr Smith, not least by reason of an application for a restraint order issued by the SFO in respect of that property on 10 February 2020, and that she is fully up-to-speed with the issues which that claim raises.

22. In these circumstances, I am satisfied that the Settlement Parties' Application and supporting documents have been served on the existing parties to the litigation in a manner sufficient to bring them to the timely attention of those parties. Nonetheless, the Settlement Parties ask me to make an order confirming that the service of the Settlement Parties' Application by email constituted valid service under CPR Part 6.15(2) and 6.27(1), and to provide for the alternative service of future documents on existing parties by email under CPR Part 6.15(1) and 6.27(2) going forward. I have jurisdiction to make such orders where there is "good reason" to do so.

23. I am satisfied in the circumstances of the case that there is good reason to make both of these orders. First, the order is being made in respect of the service of applications and documents in existing proceedings on those who are already parties to those proceedings, rather than in respect of originating process. Second, there has been a history of the service of documents by email in these proceedings by all parties without any consistent prior objection to the practice. By way of example Popplewell J gave directions for service by email of the SFO's application in respect of the Relevant Assets in his order of 28 June 2017 and of his order for the Directed Trial of 25 April 2018. No doubt it is for that reason that no application for alternative or deemed service had been made before. Third, particularly in the current circumstances of the Covid-19 pandemic, service by email is likely to be quicker, more reliable, and provide a greater degree of reassurance that the documents will come promptly to the attention of the relevant person than, for example, service by first class post or courier.

24. A separate issue arises as to service on the Additional Parties. The Settlement Parties' application in respect of certain of those Additional Parties has been adjourned, leaving

some 21 Additional Parties who the Settlement Parties seek to join to the proceedings at this hearing. 15 of those 21 Additional Parties are companies under the receivership of the Joint Enforcement Receivers who have consented to their joinder. That leaves six Additional Parties.

25. In a letter sent on 24 April 2020, signed by Mr Antony Smith, LCL has asserted that the Application has not been properly served on the Additional Parties, and stating that much of the information about the location of the Additional Parties given by the Settlement Parties is wrong. However, the letter does not explain what the alleged issue on service is, still less which parties it relates to. The solicitors for Harbour wrote to LCL on 1 May 2020, stating that it was unclear on whose behalf LCL was purporting to take a service point, and asking LCL to specify which information it believes was mistaken, and in what respects, and to provide corrected information. In response on 11 May 2020, LCL stated

> "It is for you and your client to achieve proper service of your 'application'. It is not our role to help you achieve that".

26. That, to my mind, was an unhelpful and misjudged response. A high level of co-operation is expected of those who litigate in this court to ensure the efficient and effective conduct of proceedings. This is even more important in the circumstances of the current Covid-19 pandemic.

27. I now consider the position of the six Additional Parties in turn.

28. The first of those Additional Parties is Dr Imogen Smith, the daughter of Dr Smith and Dr Cochrane. On the evidence before me, the Settlement Parties' Application was served on Dr Imogen Smith by post at her address on 29 April 2020. This is clear from Dr Imogen Smith's letter, sent from the same address, on 7 May 2020 which confirms that the Settlement Parties' Application arrived on 29 April 2020. It is also clear from that letter that the Application came to Dr Smith's attention on 29 April 2020. Accordingly I am satisfied that Dr Imogen Smith has been validly served and that the Application came to her attention in time for her to participate effectively in the hearing had she wished.

29. The second is Ms Iona Smith, also the daughter of Dr Smith and Dr Cochrane. Ms Iona Smith was served by post, with delivery being effected on 29 April 2020 at a London address. Ms Smith wrote to Harbour's solicitors on 7 May 2020 from the same address stating that she had not yet been served because she was currently outside of the United Kingdom. However, service was effected at Ms Smith's address, as evidenced by the fact that her own letter of 7 May 2020 came from that address. The fact that Ms Smith is currently outside of the United Kingdom does not affect the validity of service at her address under Part 6 of the CPR. Ms Smith was also served via her email address on 9 April 2020. It is clear from Ms Smith's letter of 7 May 2020 that the Settlement Parties' Application came to her attention. In these circumstances, I am satisfied that Ms Smith has been validly served and that the Application came to her attention in time for her to participate effectively in the hearing had she wished.

30. Third, Ms Alison Hollis. Ms Hollis acquired a property called Goodwood Court in 2014, in circumstances in which Dr Smith was copied into the email correspondence relating to the acquisition of the property. The Settlement Parties contend that the property was

acquired using funds into which they can trace. Service was effected on Ms Hollis via an email address which she had used when buying Goodwood Court (which was in 2014). In addition, service of the Settlement Parties' Application Notice was effected by post on Goodwood Court, with Royal Mail recording receipt by Ms Hollis (albeit with a very rough signature which was not clearly hers). Ms Hollis has not, on the information available to me, had any prior notice that the SFO or others claim an interest in Goodwood Court or its proceeds. In circumstances in which Ms Hollis is said to have sold Goodwood Court in 2017, I am not satisfied that Goodwood Court is still Ms Hollis' address, nor that it was Ms Hollis (as opposed to the current owner of that property) who received the documents. Further, given the time which elapsed since Ms Hollis is known to have last used the email address by which service was effected, I am also not satisfied that the Settlement Parties' Application came to her attention by that route. In those circumstances, so far as Ms Hollis is concerned, I will treat the Settlement Parties' application as one made without notice, which Ms Hollis is entitled as of right to apply to set aside pursuant to CPR 23.10, and the Court's order should so record (in accordance with CPR 23.9(3)). Dr Smith helpfully confirmed that he would provide the Settlement Parties with Ms Hollis' current email and postal address, and this should be reflected in the order.

31. The fourth and fifth of those Additional Parties are Mr Nicholas and Mrs Patricia Greenstone. Mr Greenstone was Dr Smith's solicitor. They were served on 29 April 2020 at the address of the property which was acquired with the benefit of a loan provided by Dr Cochrane and which on the evidence is still their address. That loan was subject to a charge in favour of Dr Cochrane, which was and remains registered on the Land Registry albeit there is a dispute as to whether the benefit of the loan and charge is held by the Viscount, or whether the charge was cancelled by LCL as assignee from Dr Cochrane. On the evidence before me, the address for service remains Mr and Mrs Greenstone's address. The application was also sent to an email address for Mr Greenstone which appears to be a current email address. I am, therefore, satisfied that Mr and Mrs Greenstone have been validly served under the CPR.

32. The final Additional Party with whom I am concerned is Ms Sinead Irving. Ms Irving was served at two addresses of property in which she claims an interest, at least one of which I am satisfied is her current address. She has had a long involvement in the background to this matter, having worked as the executive assistant to Ms Dawna Stickler, (who administered the business and property dealings of Dr Cochrane and who was described by Mr Justice Mostyn as Dr Smith's "femme d'affaires": Richardson-Ruhan v Ruhan [2017] EWHC 2739 (Fam), [84]). Ms Irving swore five affidavits in one application in the Orb litigation [2015] EWHC 361 (Comm). She was interviewed by the SFO on 18 October and 7 and 8 November 2016 in relation to two of the Identified Underlying Assets, on the last two occasions in the presence of her solicitor. Ms Irving was served with an application for a restraint order by the SFO issued on 10 February 2020, in which the SFO asserted that there was a "good arguable case" that the two properties constituted realisable property of Dr Smith, to which solicitors responded on her behalf. I am satisfied that Ms Irving was properly served with the Application and had ample time to participate in the hearing had she so wished.

Should the application be adjourned?

33. There were applications to adjourn the Settlement Parties' Application by:

i) Dr Smith;

ii) LCL;

iii) Dr Cochrane;

iv) Ms Stickler;

v) Dr Imogen Smith; and

vi) Ms Iona Smith.

34. In support of his application for an adjournment, Dr Smith said that his "primary and only concern" was that joining Additional Parties would inevitably complicate and delay the Directed Trial, suggesting that he was aware that at least some of the Additional Parties would challenge service and any order made against them. Dr Smith did not suggest that he was in any personal difficulty in dealing with the Settlement Parties' Application. The issue of whether any claims in respect of the Identified Underlying Assets should form part of the Directed Trial does not arise for decision at this hearing, but is a matter which is to be decided at the July CMC. Accordingly the issue raised by Dr Smith does not provide any sufficient basis to adjourn the Settlement Parties' Application.

35. In its letter to the Court of 12 May 2020, LCL stated that:

> "We have considerable concerns about our ability to attend any scheduled hearing effectively. This company's staff are small in number and in disparate locations throughout Europe which are locked down. Our records are also not immediately available to us where we all are, and thus we cannot give solicitors and counsel full and effective instructions for the hearing".

36. LCL received a copy of the order made at the February CMC, and was aware from that order that the Settlement Parties intended to issue an application setting out claims to certain Underlying Assets. I have held that LCL was properly served with the Settlement Parties' Application. As the Application was heard remotely, I can think of no reason why LCL's solicitors could not have represented them at this hearing (a hearing for which all or most legal representatives will have received their instructions from their clients remotely). The issues raised at the hearing are essentially issues of case management and do not require any access to underlying records. Accordingly I am satisfied that there is no substance to LCL's application for an adjournment. I should state that there are a number of noteworthy similarities between LCL's letters in response to the Application, and that written by Dr Smith. However, it not possible to determine at a hearing of this kind whether Dr Smith was involved in preparing LCL's responses. For that reason, I have considered LCL's reasons for seeking an adjournment on their merits, but found them to be insufficient.

37. Dr Cochrane also sought an adjournment, suggesting that the Settlement Parties were seeking to take advantage of the Covid-19 pandemic. However, it has previously been determined in this litigation that all of Dr Cochrane's interests in any assets are vested in

the Viscount as the administrator of Dr Cochrane's estate in bankruptcy, such that it is only the Viscount who is able to pursue any claims in Dr Cochrane's name. Accordingly, Dr Cochrane has no role to play in the Settlement Parties' Application, and would not have been in a position to make submissions to the Court. In those circumstances, Dr Cochrane's statement that she is unable to attend to the issues raised in the Application goes nowhere. In any event, Dr Cochrane was served with a copy of the order made at the February 2020 CMC on 6 March 2020, and has had ample time to prepare for the hearing. She has had a prolonged involvement in this dispute.

38. Ms Stickler wrote to the Court on 12 May 2020 seeking an adjournment because she was currently under lockdown in Spain due to Covid-19 and had been unable to instruct an English lawyer. She has claimed that she is unable to defend herself properly. Ms Stickler had had a long and close involvement in the events which give rise to the current litigation. She gave evidence in support of applications in the Orb proceedings, and was criticised in a judgment given by Popplewell J in those proceedings in April 2016. In the context of the Ruhan proceedings, she has already sworn an affidavit in answer to assertions that she had acquired Casa Stickler with money emanating from the Arena Settlement. In 2016, Ms Stickler was interviewed by the SFO on 25 August, 22 September, and 3 and 10 October 2016, on the last two occasions in the presence of her solicitor, Mr Webster of Simmons and Simmons. Popplewell J made a restraint order on the application of the SFO over property held in Ms Stickler's name in December 2017, finding that there was good reason to suppose that she was managing property on behalf of Dr Smith. She was made the subject of freezing order relief in proceedings commenced by Mr Sodzawiczny in July 2018. Ms Stickler has been a party to these proceedings since she was joined by the order of Popplewell J on 25 April 2018. She was the subject of a restraint order application issued by the SFO on 10 February 2020 in relation to Casa Stickler, which the SFO asserted there were good reasons to believe constituted realisable property of Dr Smith. She was on notice of the February CMC, albeit she did not attend that hearing or instruct lawyers to attend on her behalf (before any Covid-19 travel restrictions were imposed).

39. In these circumstances, I am satisfied that Ms Stickler has long been aware that the SFO and others were making claims to Casa Stickler, is fully alive to the issues raised by those claims and what might be said in response to them, and that she has had ample time to obtain legal representation in relation to those claims. Had she wished, I am satisfied that she could have instructed a lawyer remotely to represent her at this hearing, or indeed participated in the remote hearing herself. All parties participated remotely in the hearing and therefore Ms Stickler's inability to fly from Spain has occasioned her no prejudice. It is also open to Ms Stickler to instruct lawyers without travelling to the UK.

40. Dr Imogen Smith and Ms Iona Smith have also suggested that they need time to take legal advice, while at the same time saying that they do not wish to be part of their parents' ongoing litigation. It is not clear to me whether Dr Imogen Smith and Ms Smith assert a proprietary claim to any of the Identified Underlying Assets, and, if they do so, whether they claim to be anything other than the recipients of gifts from one or both of their parents. If, however, they do assert such a claim, then the fact is that they are involved in this litigation and, if they wish to assert such claims, they have to participate in the proceedings. I do not accept that they have had insufficient time to obtain legal advice since being served with the Application (even assuming in their favour that they were not

already aware of legal disputes relating to any of the Identified Underlying Assets in which they assert an interest, which seems unlikely). Further, I am satisfied that they will have sufficient time to take legal advice, should they wish to do so, before they are required to take steps to assert and formulate any proprietary claim they may have.

41. For these reasons, I am satisfied it would not be appropriate to adjourn the Application.

The Popplewell J hearing of April 2018

42. Dr Smith, LCL and Dr Cochrane all submitted that the Settlement Parties' Application should be dismissed because it was an attempt to renew an application made before Popplewell J and rejected by him in April 2018.

43. It is the case that in the course of the April 2018 CMC, Harbour made what appears to have been an impromptu application to include unidentified Underlying Assets within the scope of the Directed Trial, albeit without any explanation of which assets it proposed be included, or how they had been selected. Popplewell J refused that application. In his ex tempore ruling, he held

> "I am not attracted by Harbour's suggestion that we include an additional category of claim to the underlying assets. It undermines the logic of the structure which has been put in place, and if one is to go down that road, there is no reason to include those clams to underlying assets. It would involve starting again with re-pleading those sorts of claims".

44. Popplewell J's order provided that the Directed Trial would "not determine any proprietary claims to any of the assets of the Arena Companies or the Non-Arena Companies ('the Underlying Assets Claims')". However, Popplewell J was clearly not precluding any attempt to include Underlying Asset Claims in *the proceedings*. Paragraph 12(c) of his order of 25 April 2018 provided that the order was:

> "without prejudice to any party's rights to make further claims or seek further determinations with regard to the Excluded Issues or the Underlying Assets Claims or any other issues not determined in the Directed Trial, whether in these proceedings or in any other proceedings".

45. I am satisfied that Popplewell J's order in April 2018 does not constitute a reason why the Settlement Parties' Application should be dismissed:

i) Popplewell J refused an application that some Underlying Assets should form part of the Directed Application. However, as I have stated, there is currently no application before me to include issues relating to the Identified Underlying Assets within the scope of the Directed Trial. That is an issue for the July 2020 CMC.

ii) Popplewell J clearly did not decide that claims to the Underlying Assets could not form part of the proceedings, because he gave liberty to the parties to apply to bring such claims as part of the proceedings.

iii) In any event, there was no developed proposal for the inclusion of specific Underlying Assets within the Directed Trial at the April 2018 CMC. Instead, a

rather general proposal was put forward in the course of argument. By contrast, the Settlement Parties' Application identifies specific Underlying Assets and the rationale for selecting them.

iv) It is clear the Popplewell J's reasons for refusing that application were essentially pragmatic (as can be seen from the fact that the Jersey Properties were included within the Directed Trial, even though they are Underlying Assets). It will be for the judge at the July CMC to determine whether those pragmatic considerations still hold good, or whether circumstances have changed sufficiently to make another order appropriate.

46. For the same reason, it is not necessary to address at this hearing the submissions made in opposition to the Settlement Parties' Application by LCL, Dr Smith, Dr Cochrane and Mr Pelz that it would not be appropriate to include claims to the Identified Underlying Assets within the Directed Trial because these would complicate and delay that trial. That is not an issue which arises for decision at this stage, but only at the July CMC.

The merits of the Settlement Parties' claims to the Identified Underlying Assets

47. The correspondence from LCL, Dr Smith and Dr Cochrane made various assertions about the merits of, in particular, Harbour's claim to the Identified Underlying Assets. For example LCL suggested that it was responsible for achieving the only successful litigation recovery, and not Harbour, and on a number of occasions LCL expressed its "supreme confidence" in a successful outcome. Dr Smith advanced similar submissions. However, that is not a matter which the Court can determine at a case management hearing such as this. The time for determining the merits of the claims, and when it will be seen whether or not that confidence is justified, will be at a trial when the evidence has been filed and arguments on the applicable legal principles have been addressed.

48. I therefore turn to the Settlement Parties' Application.

Should the Settlement Parties be permitted to issue their application concerning the Identified Underlying Assets in these proceedings?

49. The first issue is whether I should allow the issues raised by the Application to be determined in these proceedings. Dr Smith, LCL, and Ms Stickler argue that the Settlement Parties should be required to commence fresh proceedings, under which the respective parties would serve statements of case in the normal way, presumably with directions being given to culminate in a separate trial or trials of those cases.

50. This is not the structure which Popplewell J ordered in relation to the Relevant Assets, and for good reason. Claims for confiscation and forfeiture in criminal proceedings are governed by RSC Order 115 (which applies to claims under s.80 of the CJA 1988 as well as those under s.29 of the Drug Trafficking Act 1994). Rule 7(1) provides:

> "An application by the prosecutor under section 29 shall, where there have been proceedings against the defendant in the High Court, be made by an application in accordance with Part 23 and shall otherwise be made by the issue of a claim form".

51. The SFO had commenced proceedings against Dr Smith in the High Court (in the Administrative Court, but later transferred to the Commercial Court) and it was accordingly appropriate for the SFO's claim for realisation of Dr Smith's property to be made by way of an application notice under Part 23. The claims of the other parties (including the other Settlement Parties) to those same assets must also be determined within the Part 23 application issued by the SFO because RSC Order 115 Rule 7(2)(b) required the SFO's application to be served on "any person holding any interest in the realisable property to which the application relates", thereby making those entities parties to the application. Further, the Court is empowered by RSC Order 115 Rule 7(4) to give directions in respect of the property interests to which the application relates, and to make declarations in respect of those interests. The proceedings are not, therefore, limited to determining the SFO's claims, but the Court can also make declarations as to the interests in the relevant assets of other persons holding interests in the property on whom the SFO's application has been served.

52. For these reasons, it is also necessary for the SFO's claim that the Identified Underlying Assets constitute realisable property to be brought by way of an application notice under Part 23 in the High Court proceedings which the SFO has already commenced, rather than by way of a claim form. It is also necessary for the other Settlement Parties to be parties to that application, and to assert their own proprietary claims in it. In those circumstances, the suggestion that there should also be some parallel proceedings commenced by a claim form, which would also address the Settlement Parties' claims to have proprietary interests in the Identified Underlying Assets, can be seen to be wholly without merit, involving the same claims being litigated as between many of the same parties in different sets of proceedings running in parallel.

53. There are a number of other reasons why it is appropriate to follow, in the case of the Identified Underlying Assets, the same course which Popplewell J adopted in relation to the Relevant Assets, and to proceed by way of an application notice in these proceedings.

54. First, there is a clear and obvious overlap between the issues raised in relation to the ownership of the Identified Underlying Assets and those already in issue in the litigation. Both matters are concerned with the extent to which assets constitute the realisable property of Dr Smith for the purposes of the CJA 1988. Both sets of claims arise in the context of the various allegations made against Dr Smith and arising from the Orb litigation. A number of persons or parties already involved in the proceedings, such as Dr Smith, Dr Cochrane and LCL, are concerned with the claims to the Identified Underlying Assets.

55. Second, relief has already been claimed in these proceedings by Harbour and Stewarts which would extend to at least some of the Identified Underlying Assets. Harbour's statement of case asserts an entitlement to trace all of the settlement consideration into any substitute assets, and specifically identified Hamilton House, Montagu Square, Moor Lane and Casa Stickler as assets into which it was able to trace. Stewarts pleaded Hamilton House and Casa Stickler as properties over which it claimed a lien or in respect of which it was subrogated to the Orb Claimants' or Dr Cochrane's lien as trustees. These proceedings are also already concerned with some Underlying Assets, namely the Jersey Properties. The evidence which is relevant to the determination of those claims (in

particular in tracing monies through Dr Cochrane's bank accounts) is also relevant to the claims to some of the Identified Underlying Assets.

56. Third, there is also a close practical connection between the existing claims and the matters which the Application seeks to raise, in that the various claimants to the shares in companies which form part of the Relevant Assets may find any victory either pyrrhic, or at least significantly less satisfying, without resolving the issue of the owners of the Identified Underlying Assets. For that reason, also, any attempt to resolve all or parts of the dispute out of court are likely to involve consideration of the Identified Underlying Assets.

57. Fourth, resolving these issues within the context of the present proceedings, on a basis which allows for the managed interface between the different issues, is likely to be conducive to a quicker and more efficient resolution of the disputes overall than requiring the commencement of fresh proceedings, with the risk of legal teams being involved in related matters running on different tracks, and with different judges being concerned in the management of the litigation. That includes allowing for the possibility of binding the Additional Parties into the determinations made at the Directed Trial, even if the claims to the Identified Underlying Assets do not form part of that trial, or providing for a trial in relation to some of the Underlying Assets at a separate hearing as soon as possible after judgment in the Directed Trial before the same judge. These are issues which can be considered at the July CMC.

The Settlement Parties' Application to Join the Additional Parties

58. I therefore turn to the application to join the Additional Parties.

59. The Court's power to join additional parties is set out in CPR 19.2(2). The Court can join a new party (a) where it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; and (b) where there is an issue involving the new party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

60. In this case, I am satisfied that I have power to effect joinder under CPR 19.2(2)(b), and for that reason there is no need to debate whether I also have power to effect joinder under CPR 19.2(2)(a). It necessarily follows from the reasons which I gave when determining that it is appropriate to raise these issues by way of an application in these proceedings that the subject matter of the application is connected to the matters already in dispute, which it is desirable to determine as part of these proceedings. It follows that it is appropriate to join as additional parties those who it is believed might assert a claim to the Identified Underlying Assets, because they are essential parties to the resolution of that claim. In particular, I am satisfied that it is appropriate to join the Additional Parties because they are said to be the legal owners of the Identified Underlying Assets. It is, therefore, important that they can be bound by any judicial determination of the beneficial ownership of those assets. That will also benefit them in ensuring that they are able to advance their own positions, and bind any other claimants to the outcome if they win.

61. Further, s.80(8) of the CJA 1988 provides that "the court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a

reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court". Joining the Additional Parties will afford them that reasonable opportunity.

The direction for service of pleadings

62. That brings me to the second aspect of the Settlement Parties' Application, the service of statements of case. In making his order in relation to the Relevant Assets, Popplewell J dispensed with the requirement for those asserting claims to file an acknowledgement of service, and provided that they should proceed to filing a statement of case setting out their claim. I propose to follow the same course, which will be more efficient in the context of complex multi-party litigation of this kind.

63. The Settlement Parties invite me to order that any party asserting a proprietary claim to the Identified Underlying Assets shall have until 4pm on 3 July 2020 to issue an application supported by a properly particularised statement of case.

64. This application is opposed by Mr Pelz, in submissions filed close to midnight on the night before the hearing, in which he states that he is uncertain whether the proposed deadline would apply to him because he has already presented his claims. It is the case that Mr Pelz has already filed extensive submissions in this action, explaining the basis on which he asserts claims to the Relevant Assets. That statement of case does not specifically refer to any of the Identified Underlying Assets. If Mr Pelz wishes to assert a proprietary claim – that is, that he has an ownership interest in any of the Identified Underlying Assets – then he will be required to do so in response to the Settlement Parties' Application. If, of course, any claim Mr Pelz wishes to advance relies on the matters he has already pleaded, then he can simply refer back to his previous statement of case, and explain why the matters he is already relying upon to establish a proprietary interest in the Relevant Assets also give him an interest in the Identified Underlying Assets.

65. I am unable to accept Mr Pelz's submission that he would need significantly more time to plead any claim he might have. At the moment, it is not clear to me that Mr Pelz's case would involve any matters going beyond those he has already pleaded, in which he makes clear that he is unable to say whether he is able to trace into the Relevant Assets, but states that he advances a claim on the basis that he has a share in any proprietary claim which the Ruhan parties may have in the Relevant Assets (para. 3(g) of the introduction and paras. 2.18 and 8.12.21). This appears to be a reference to the Eighth and Ninth Defendants, who are not opposing the Settlement Parties' Application and will presumably set out any proprietary claim they assert in the Identified Underlying Assets, and of which Mr Pelz claims a share. Further, it is clear from Popplewell J's order at the April 2018 CMC that it was open to parties to seek to raise claims relating to the Underlying Assets as part of those proceedings, and therefore Mr Pelz could not reasonably assume that there would be no need to consider such claims until after the Directed Trial.

66. I have concluded that the date of 3 July 2020 proposed by the Settlement Parties provides a fair balance between giving those parties who may wish to advance claims sufficient time – nearly 7 weeks – to formulate their claims, yet ensuring that the formulation takes

place sufficiently in advance of the July 2020 CMC for the Court to be able to consider those claims and their implications for case management. I am satisfied that this will provide enough time for Mr Pelz, and any other claimant, to formulate their claims.

67. For the same reason, I am willing to make the direction sought that any party seeking to assert that a claim in respect of the Identified Underlying Asset be included within the Directed Trial set out their position in writing by 4pm on 13 July 2020.

The barring order

68. I now turn to the proposed barring order. The Settlement Parties ask the Court to make an order (a) requiring the advertisement of the fact that the Court will be determining who has proprietary claims to the Identified Underlying Assets within these proceedings; (b) setting a reasonable period of time for anyone wishing to assert such claims to notify them; and (c) preventing any party who did not advance such a claim from bringing it thereafter without the permission of the Court. The order sought is similar in structure to paragraphs 3 to 8 of the order made by Popplewell J in respect of the Directed Trial of the Relevant Assets.

69. The first issue which arises is whether I have power to make such an order.

70. The Settlement Parties principally rely on CPR 19.8A which gives the court power to make judgements binding on non-parties in respect of any claim relating to "property subject to a trust". The statutory predecessor of CPR 19.8A, RSC Order 44 r 2, was expressed in narrower language, referring to any question arising in "the execution of a trust", which language still appears in CPR 64.2. Even as to that narrower language, there is support for the view that the provision extends to constructive as well as expressly constituted trusts, and applies where the existence of the trust is disputed:

    i) In the Court of Appeal decision in Finers v Miro [1991] 1 WLR 35 at 45C-D, Balcombe LJ held that "what gives the court jurisdiction is the fact that the plaintiffs undoubtedly hold assets on trust for the defendant and are also potentially liable as constructive trustees at the suit of the insurance company".

    ii) *Lewin on Trusts* (20th) para. 39-012 suggests that the jurisdiction under CPR 64 "extends to bare trustees, and may also extend to persons who are alleged to be trustees or who may incur liability as constructive trustees". In this context it cites Baden v Societe General pour Favoriser le Developpement du Commerce et de l'Industrie en France SA [1993] 1 WLR 509, 585, in which Peter Gibson J suggested that a bank which held moneys which might be trust moneys could bring an administration claim under RSC Order 85 for "the execution under the direction of the Court of a trust".

    iii) Mr Pillow QC referred me to CPR PD 64A, which gives examples of claims falling within CPR 64.2(a) as claims "for the court to determine any question arising in … the execution of a trust". These include "any claim for the determination of … any question as to who is included in any class of person having …. a beneficial interest in any property subject to a trust" and "any question as to the rights of any person claiming to be beneficially entitled under a

trust". This language recognises that those asserting claims as beneficiaries under a trust can bring proceedings under CPR 64.2(a), and this must equally be true of the wider language used in CPR 19.8A.

iv) Finally, the court's powers under ss.57 and 58 of the Trustee Act 1925 apply to constructive as well as expressly constituted trusts as a result of the definition in s.68(17). In these circumstances, the references to trusts in CPR 19.8A is similarly likely to extend to constructive trusts.

71. In circumstances in which the Settlement Parties have joined the legal owners of the Identified Underlying Assets to the Application, and in which they themselves claim a beneficial interest in those assets, I am satisfied that CPR 19.8A applies and that the Court can make orders with a view to giving notice to any other parties who may claim beneficial interests in those assets. I note that Popplewell J was similarly so satisfied so far as the claims to the Relevant Assets are concerned.

72. I am also satisfied that it would be appropriate to make such an order. It is clearly desirable, so far as possible, that there is a once and for all determination of the beneficial ownership of the Identified Underlying Assets which involves, and is binding upon, all those who may assert such an interest. Not only is this necessary for reasons of good case management, and to avoid the unnecessary use of court resources determining the same issues on two separate occasions, but it will also avoid a risk of inconsistent findings, and ensure that any orders the Court makes on such a determination are effective. Moreover, such an order is required to give effect to s.80(8) of the CJA 1988, requiring that those who claim an interest in property which is said to be a realisable property are given a reasonable opportunity to make representations to the Court; to give effect to s.82(4) of the CJA 1988 (which requires that the powers of the court are exercised "with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him"); RSC Order 115 Rule 7(2)(b) (requiring any application by the SFO to be served on "any person holding any interest in the realisable property to which the application relates") and to render effective the power of the Court under RSC Order 115 Rule 7(4)(c) to make declarations in respect of the property interests to which the application relates. These provisions require steps to be taken, so far as possible, to identify those with claims so that they may advance them, and to render any determinations which the Court does make as to the interests in the property as effective as possible.

73. CPR 19.8A(2) provides that if the court orders the service of claim, judgment or order in the requisite form on someone who is or may be affected by it, and that person does not acknowledge service within the time provided, they will be bound by any judgment given in the claim as if they were a party (CPR 19.8A(6) and CPR 19.8A(8)(a)). For the existing parties and the Additional Parties, I will make an order for service under CPR 19.8A(2).

74. What of potential claimants whose identity is not yet known? It is clear that proceedings cannot be commenced against an unnamed and unknown defendant where it would be conceptually impossible to bring the proceedings to the attention of the defendant: Cameron v Liverpool Victoria Insurance [2019] 1 WLR 1471. In that case, Lord Sumption JSC at [13] distinguished anonymous defendants who are identifiable, but whose names are unknown, and those who are not only anonymous but cannot even be

identified. He held that those in the second category cannot be made parties to proceedings because it is not conceptually possible to serve the claim form upon them. However, the order sought from me is not one which involves making anyone other than the Additional Parties parties to the litigation. It involves giving notice of proceedings under CPR 19.8A(2) to non-parties. It is clear from the provisions of CPR 19.8A(2) that the giving of such notice does not of itself make the recipients parties. They have an option to become parties by serving and asserting a claim, and if they do not choose to do so, they will be bound by the judgment "as if they were a party". However that deeming provision makes it clear that an order under CPR 19.8A(2) is not akin to an order making someone a party to proceedings.

75. For those reasons, in my view steps can be taken to give notice to persons under CR 19.8A(2) even if those persons are not at the relevant date identifiable in the sense described in Cameron v Liverpool Victoria Insurance. I note that this was the course adopted in Cawdron v Merchant Taylors' School [2009] EWHC 1722 (Ch), [26] where Blackburne J noted:

> "The chief master also directed that the claimants should place advertisements in the *London Gazette* and the *Times*, in a form which he approved, giving details of the claim and inviting participation in the proceedings. This was on the basis that such advertisements should constitute notice in accordance with CPR 19.8A with the result that any person claiming an interest in Durrants who failed to file an acknowledgement of service should be bound by the judgment made as if that person had been made a party to the claim. Since the advertisements were placed but no acknowledgements of service were filed the effect has been that the subscribers to the fund, and the Crown, are bound by the court's decision on whether they have any interest".

76. This was also the course which Popplewell J ordered here, save that the advertisement was placed in the *London Gazette* only. I have concluded that advertisements should be placed in *The London Gazette* and the *Times*. In addition, the Settlement Parties and the other parties should consider whether there is scope for the notice to be included on websites, including the court service website and the SFO website. They are also asked to consider whether it would be possible to include key words in any such notice which would increase the possibility of the notice responding to search terms entered by those who might have an interest in the Identified Underlying Assets.

77. If I had not been satisfied that I had jurisdiction to make the advertisement and barring orders under CPR 19.8A, a question would arise as to whether I have jurisdiction to make an order in the form sought under the inherent jurisdiction and/or CPR Part 3.1(2)(m). Lord Morris of Borth-y-gest in Connelly v Director of Public Prosecutions [1964] AC 1254, 1301 noted that:

> "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers inherent within such jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its processes".

78. That raises a preliminary issue as to the implications of the express but limited power under CPR 19.8A for the argument that the Court is able to make a similar order in cases falling outside of CPR 19.8A under its inherent jurisdiction. I was referred to the decision of the Court of Appeal in Raja v Hoogstraten (No 9) [2009] 1 WLR 1143 on that issue. The Court of Appeal held that the inherent jurisdiction can supplement rules of court, but it cannot be used to lay down a procedure which is contrary to or inconsistent with them. Where, therefore, a particular subject-matter is governed by the CPR, it is to be dealt with in accordance with the rules and not by exercising the court's inherent jurisdiction.

79. However, I do not believe that the use of the inherent jurisdiction to seek to manage complex litigation in the manner sought here would be inconsistent with the express provisions of CPR 19.8A. In particular, as I have set out above, I have concluded that the notification and barring orders sought are necessary to give effect to ss.80 and 82 of the CJA 1988 and RSC Order 115. If CPR 19.8A did not, in terms, provide a basis for making such orders, then I am satisfied that the orders can be made under the inherent jurisdiction to render the steps taken under the CJA 1988 and RSC Order 115 more effective.

80. Further, the Court's inherent jurisdiction extends to taking steps to ensure that proceedings are conducted efficiently and court resources appropriately used. In the Lloyd's litigation, Mr Justice Cresswell made an order requiring Lloyd's Names who wished to reserve the right to bring a claim in fraud to provide written notice by a set date, failing which they would "thereafter be precluded from advancing such allegations without leave of the Commercial Court." In Society of Lloyd's v Jaffray [2002] EWCA Civ 1101, [500]-[502], the Court of Appeal observed of this order:

> "[500] At a case management conference on 29 October 1999 Cresswell J, who was of course in charge of the Lloyd's litigation, decided that any names who wished to reserve the right to advance a case that they had been induced to become or remain members of Lloyd's by reason of Lloyd's failure to disclose the nature and extent of the market's liability for asbestos-related claims must give notice that they intended to become parties to the litigation. He made an order to that effect. Such an order was plainly appropriate since it would be unthinkable for either names or indeed Lloyd's to be able to use valuable court resources twice (or many times) in order to have the same issues determined.
>
> [501] That is, in our judgment, so even though some of the litigants in person, especially Mr Harrison, have expressed some unhappiness that they could not pursue their own actions on their own. Mr Harrison also submits that the judge should have advised him to take independent legal advice. However, it was not for the court to give Mr Harrison or anyone else advice. It must have been obvious to every name that it was desirable to take legal advice.
>
> [503] It was no doubt because there was no realistic alternative to a single determination of the threshold fraud issue which would be binding on everyone that both Lloyd's and the represented names consented to such a course and no-one has since challenged the order to that effect. In our view, such an order and the subsequent control of the litigation was not only sensible but entirely consistent with the principles relating to group litigation

> which have been developed in recent years and with the provisions of CPR 19 Part III, which subsequently came into force on 2 May 2000. The order directed that a statement recording the terms of the order and the background to it be publicised on the Court Service website and Lloyd's sent a copy of the statement to every name who had not accepted the R&R settlement offer".

81. The order sought in this case, like the order made in the Lloyd's litigation, requires someone wishing to assert a proprietary claim to the Identified Underlying Assets who has failed to notify such a claim within the required period to obtain the Court's permission. That discretion provides a mechanism for addressing any potential injustice which might otherwise arise from a barring order, while at the same time requiring a party who seeks to use court resources again to determine matters which have already been resolved once to show a sufficient basis for doing so. It would not be appropriate at this stage to seek to anticipate what might constitute such a sufficient reason. That is an issue best considered, if it ever arises, by reference to the facts of actual cases.

82. For these reasons, I will make the notification and barring orders sought by the Settlement Parties. It follows that I reject Mr Pelz's submission that certain companies which he identifies should be excluded from such order, for the same reasons as I concluded that Mr Pelz should be required to assert any proprietary claim he has in relation to the Identified Underlying Assets in accordance with the timetable I have set down.

83. The parties are asked to agree the terms of an order giving effect to my findings. To the extent that further time is needed to consider the possibilities of placing a notice on a website, this can be dealt with by way of a liberty to apply and should not hold up the finalisation of the order.