Neutral Citation Number: [2024] EWCA Civ 376

Appeal No: CA-2023-001843
Case No: BL-2023-000165

IN THE COURT OF APPEAL OF ENGLAND AND WALES (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
HH Judge Jarman KC (sitting as a Judge of the High Court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/04/2024

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE LEWISON
and
LADY JUSTICE FALK

- -

Between:

RYAN MORRIS
and 131 others

Claimants/Respondents

- and –

WILLIAMS & CO SOLICITORS (A FIRM)

Defendant/Appellant

Roger Stewart KC and **Scott Allen** (instructed by **Caytons Law LLP**) for the **Appellant/Defendant**

Simon Johnson and **Jennifer Meech** (instructed by **Penningtons Manches Cooper LLP**) for the **Respondents/Claimants**

Hearing dates: 19-20 March 2024

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APPROVED JUDGMENT

This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00am on 18 April 2024.

SIR GEOFFREY VOS, MASTER OF THE ROLLS

Introduction

1. In this case, the 134 claimants (the Claimants) issued a single claim form against Williams & Co Solicitors (the Solicitors). Each of the Claimants sought damages for breaches of the Solicitors' duty to advise properly in relation to their investments in one or more of 9 separate development projects promoted by the same group of companies. HH Judge Jarman KC (the judge) dismissed the Solicitors' application to strike out the claim form under CPR Part 3.4(2)(b) and/or (c) on the grounds that it was an abuse of process or an obstruction to the just disposal of the proceedings, or the claim form did not comply with CPR Part 7.3 (7.3).

2. Against that background, this appeal concerns the circumstances in which it is permissible under the CPR for multiple claimants to bring claims in one claim form and one set of proceedings. There are, in effect, three regimes for such claims under CPR Part 19, which is headed "Parties and Group Litigation". The first is governed by CPR Part 19.1 (19.1) (which needs to be read alongside 7.3, which appears in the Part concerning claim forms). It is that regime that is the subject of this appeal. The second regime is representative proceedings brought under CPR Part 19.8, and the third regime is group litigation established by CPR Part 19.21-19.24.

3. The argument in this court has revolved around the proper meaning of 19.1 and 7.3 and the correctness of the tests applied by the Divisional Court (Dingemans LJ and Andrew Baker J) in *Abbott v. Ministry of Defence* [2023] EWHC 1475 (KB), [2023] 1 WLR 4002 (*Abbott*). *Abbott* is important because HH Judge Jarman KC (the judge) expressly followed it in deciding this case, and there is no appeal from *Abbott* to this court.

4. 19.1 provides that "[a]ny number of claimants or defendants may be joined as parties to a claim", and 7.3 provides that "[a] claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings".

5. There has been controversy over what precisely *Abbott* decided. For present purposes, it is sufficient to refer to [73] of Andrew Baker J's judgment in *Abbott*, where he said that "[i]f there are likely to be common issues of sufficient significance that their determination would constitute real progress towards the final determination of each claim in a set of claims, that could be enough for a conclusion that common disposal rather than separate disposal of that set of claims would be convenient". This can be referred to as the "real progress" test of whether "all claims [in a single claims form] can be conveniently disposed of in the same proceedings" pursuant to 7.3.

6. In a nutshell, the Solicitors argue that *Abbott* was wrongly decided. They say that the words of 19.1 and 7.3 severely restrict the situations in which numerous claimants can bring separate claims in one claim form. In particular, the words "[a] claimant" in 7.3 is singular and does not, in context, include the plural. The word "claim" in 19.1 means "a cause of action", and not, as the Divisional Court in *Abbott* held, "proceedings". The Solicitors argue that it is inconvenient and unfair for these 134 Claimants to group together their disparate claims. The process has already led to

inadequate disclosure, and will lead to the Solicitors being unable properly to defend themselves.

7. In response, the Claimants submit that *Abbott* was correctly decided, and that, even if it was not, claims of this kind have historically always been allowed to proceed under 19.1 and its predecessors. Whatever test is applied, all the Claimants' claims can be conveniently disposed of in the same proceedings within the proper meaning of 7.3. The judge was right, and the Solicitors' construction of 19.1 and 7.3 would set the clock back decades. The Claimants rely on the procedural history of group claims going back to the seminal decisions of the Court of Appeal and the House of Lords in *Hannay & Co v. Smurthwaite* [1893] 2 QB 412 (*Hannay CA*), and [1894] AC 494 (*Hannay HL*). The Claimants argue that, if the Solicitors succeed, the Claimants will be forced to give up their claims, because of the court fees of £5,000 per claimant, which will need to be paid if they each have to issue their own claim form.

8. I have decided that both the Solicitors' construction of 19.1 and 7.3 and the tests adumbrated in *Abbott* are incorrect in law. The regime allowing multiple claimants to bring their claims in one claim form under 19.1 has to be construed against the background of the previous regime established under the Rules of the Supreme Court (RSC) in general and Order 15 rule 4 of the RSC 1999 in particular (O15 r4). Even though the judge applied the *Abbott* test, he was right to allow the Claimants' claims to proceed in one set of proceedings. O15 r4 allowed multiple claimants where, amongst other things, "some common question of law or fact" arose. This formal requirement was not carried over into the CPR. It seems to me that the Civil Procedure Rules Committee (the CPRC) could usefully look again at whether it would have been better if it had been.

9. This judgment will proceed to deal with: (i) the essential background, (ii) the relevant provisions of the CPR, (iii) the *Abbott* litigation, (iv) other relevant authorities and RSC provisions, (v) when multiple claimants can issue a single claim form under 19.1, (vi) the article 6 point raised by the Respondents' Notice, (vii) disposal of the appeal, and (viii) my conclusions.

<u>The essential background</u>

10. This section is taken loosely from [1]-[9] of the judge's judgment. Northern Powerhouse Development Limited (Northern Powerhouse), operating through associated companies, promoted 9 development projects in different parts of England and Wales between 2017 and 2020. The investors were to be granted leases of units in the developments. Northern Powerhouse nominated the Solicitors to act for and advise the potential investors in each of the 9 projects.

11. When each of the Claimants instructed the Solicitors, they were provided with a standard pack of documents, including a client care letter, and standard terms and conditions of the retainer. There was some variation in the wording of these documents, but the Claimants maintain that the essential terms of the Solicitors' retainers were the same in each of their cases.

12. Two of those essential terms were set out expressly in writing. They were that the Solicitors would: (i) explain the effect of any important document, and (ii) advise of any risk of which the Solicitors were aware, or which was reasonably foreseeable.

13. The Solicitors' terms and conditions made it clear that they would not give commercial or investment or tax advice. Thereafter, the Solicitors provided the Claimants with a report on title, a draft lease and sublease, drafts of two option agreements to sell or buy back the units and, in certain cases, draft guarantees. The reports on title: (a) advised that the Claimants would get good leasehold title, (b) warned that the investment deposits could be used by Northern Powerhouse prior to completion, (c) said that, if completion did not taken place by a certain date, the Claimants' investment would be refunded, and (d) warned of the risk of insolvency of Northern Powerhouse and its associated companies.

14. The Claimants' core case is that the Solicitors' advice failed to warn of the risks of completion not taking place, and of the dissipation of the investment deposits in the meantime. These were the risks which eventuated. The guarantees were mostly provided by associated companies without sufficient assets to honour them.

15. No defence had been served when the judge heard the strike out application, but a draft defence was made available shortly before the hearing. The Solicitors' argument to the judge was presented on the basis that they reserved the right to argue in the Court of Appeal that *Abbott* was wrong.

16. The judge dismissed the application on 25 July 2023. He said at [13] that *Abbott* had held that "subject to the test of convenience, any number of claimants can bring a claim pursuant to a single claim form". The judge set out at [14]-[20] the principles that he said emerged from *Abbott* at [63]-[73]. I shall return to those principles when I deal below with what *Abbott* decided. The Solicitors emphasised to the judge that the scope of a solicitor's duty to advise may vary according to the understanding and experience of the client. The judge then dealt at [24]-[36] with three of the 6 examples provided by the Solicitors to show that each of the Claimants would have to plead their particular understanding and experience, so that the outcome of one case would not be binding on another.

17. At [37]-[38], the judge held that there were significant common issues in these cases: (i) the scope of the Solicitors' duties arising from the retainer letters, terms of business, and any obligations implied by law, (ii) questions of breach involving consideration of the meaning and effect of the reports on title, (iii) what losses are recoverable in principle, (iv) whether the investments were unlawful as collective investment schemes, whether the Solicitors had duties to identify that possibility, whether they breached that duty and what types of losses were recoverable in principle, and (v) certain issues as to the guarantees. The judge then noted the existence of individual issues such as reliance and advice from other professionals. He referred to two other cases where claims by multiple claimants had been allowed to proceed in one or two claim forms, and where individual issues had been dealt with through effective case management (see *McLean & others v. Thornhill* [2019] EWHC 3514 (Ch), and *Various Claimants v. Giambrone & Law* [2017] EWCA Civ 1993, [2018] PNLR 2).

18. The judge concluded at [46] as follows:

> I am satisfied … that in these cases there is a sufficient commonality in the claims for them properly to proceed in one claim form. The commonality is as [counsel for the Claimants] identifies. I accept … that there are also individual

issues, but that does not detract from the identification of the sufficient commonality for the claims to proceed conveniently under one claim form and for the usefulness and helpfulness that that is likely to engender in respect of all claims, if not of a binding nature, then on the basis of a persuasive nature.

The relevant provisions of the CPR

19. CPR Part 1.1(1) provides that: "[t]hese Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost".

20. CPR Part 2.3 provides that: "'claimant' means a person who makes a claim".

21. CPR Part 7.3 provides that: "[a] claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings".

22. CPR Part 19.1 provides under the heading "Parties - general" that "[a]ny number of claimants or defendants may be joined as parties to a claim.

23. CPR Parts 19.2-19.7 appear under the heading "I ADDITION AND SUBSTITUTION OF PARTIES".

24. CPR Parts 19.8-19.20 appear under the heading "II REPRESENTATIVE PROCEEDINGS".

25. CPR Parts 19.21-19.26 appear under the heading "III GROUP LITIGATION".

26. I set out the relevant parts of CPR Parts 19.21 and 19.22 as follows so that the essential nature of a GLO can be understood:

> *Definition*
> **19.21** A Group Litigation Order ('GLO') means an order made under rule 19.22 to provide for the case management of claims which give rise to common or related issues of fact or law (the 'GLO issues').
>
> *Group Litigation Order*
> **19.22**
> (1) The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues. The multiple parties may be claimants or defendants.
> (Practice Direction 19B provides the procedure for applying for a GLO where the multiple parties are claimants)
> (2) A GLO must –
> (a) contain directions about the establishment of a register (the 'group register') on which the claims managed under the GLO will be entered;
> (b) specify the GLO issues which will identify the claims to be managed as a group under the GLO;
> (c) specify the court (the 'management court') which will manage the claims on the group register; and
> (d) be made in the King's Bench Division with the consent of the President of the King's Bench Division; in the Chancery Division with the consent of the

> Chancellor of the High Court; or in the County Court with the consent of the Head of Civil Justice. Such consent will be sought by the court to which the application for the GLO is made. …

27. CPR Practice Direction 19B explains how solicitors for various claimants should go about obtaining a GLO as follows:

> *Preliminary steps*
> **2.1** Before applying for a Group Litigation Order ('GLO') the solicitor acting for the proposed applicant should consult the Law Society's Multi Party Action Information Service in order to obtain information about other cases giving rise to the proposed GLO issues.
> **2.2** It will often be convenient for the claimants' solicitors to form a Solicitors' Group and to choose one of that Group to take the lead in applying for the GLO and in litigating the GLO issues. The lead solicitor's role and relationship with the other members of the Solicitors' Group should be carefully defined in writing and will be subject to any directions given by the court under CPR 19.24(c).
> **2.3** In considering whether to apply for a GLO, the applicant should consider whether any other order would be more appropriate, and in particular whether, in the circumstances of the case, it would be more appropriate for –
> (1) the claims to be consolidated; or
> (2) the rules in Section II of Part 19 (representative parties) to be used.

28. It can be seen immediately that a GLO for multiple claimants covers a number of additional situations which would not be covered by 19.1. For example, a GLO can occur where there are multiple solicitors for different claimants in different sets of proceedings, the GLO can be made before or after proceedings are actually issued, and the permission of a Head of Division is required. Moreover, a GLO will lead to the establishment of a group register, and will specify the "common or related issues of fact or law" that are raised by the claims that are being managed together.

The *Abbott* litigation

29. In the briefest outline, the claim form in *Abbott* was issued naming Mr David Abbott and 3,559 other individuals in schedules against the Ministry of Defence (MoD). The claim details said that they were employees or members of the armed forces and brought claims for damages for injuries (noise induced hearing loss) arising out of their exposure to excessive noise during their service. Master Davidson decided in [2022] EWHC 1807 (QB) and recited in his order that "as a matter of law, it was impermissible under CPR7 and CPR19 … for the claimants to issue their claims by a single claim form". *Abbott* was the appeal against that ruling to the Divisional Court, which allowed the appeal, holding that a single claim form was appropriate under 7.3 and 19.1 for the claimants' 3560 claims, notwithstanding that each claim had separate individual circumstances. At [78], Andrew Baker J identified 7 generic issues arising from all these cases including, for example: (i) the content of the duty of care, (ii) the adequacy of standard protective equipment and training provided to military personnel, and (iii) whether age-related hearing loss is accelerated by military noise exposure.

30. At [42]-[43], the Divisional Court construed 19.1 ("[a]ny number of claimants … may be joined as parties to a claim") as meaning that any number of claimants could be

joined as parties to "a set of proceedings commenced by a claim form". I should say at once that I agree with that analysis, bearing in mind that the word "claim" is used in many places in CPR Part 19 as meaning "proceedings" (see, for example, CPR Parts 19.7 to 19.10 inclusive). At [47]-[77], Andrew Baker J analysed the proper meaning of 7.3 and the correctness of Master Davison's decision. At [53], he noted that "convenience" was "an ordinary word conveying usefulness or helpfulness in respect of a possible course of action". It did not need further elaboration or lengthy definition. Thus, he held that 7.3 required that "common disposal, rather than separate disposal, would be convenient". He said that 7.3 asked whether it "would be possible and useful or helpful to have all of [the individual cases] finally determined in the same proceedings rather than in two or more separate proceedings".

31. Having considered at some length the meaning of "the same proceedings" as used in 7.3, Andrew Baker J concluded at [63]-[66] that 7.3 did not require "a single final trial hearing to be possible or practicable". Again, I agree. Then, having considered the case management issues applicable to *Abbott* itself, at [73], Andrew Baker J promulgated what I have described above at [5] as the real progress test. In reaching that conclusion, he apparently accepted in the first part of [71] that the question was whether a cohort of claims (even if not all of them) had sufficient commonality of significant issues of fact that it would be useful or helpful, in the interests of justice, that their determination would bind the MoD and other claimants in that cohort. I will return at [51]-[52] below to the question of whether it is right to require that an issue determined binds some or all of the other parties to a 19.1 claim.

32. At [71(iv)], Andrew Baker J said that the governing principle was "the convenience of disposing of the issues arising between the parties in a single set of proceedings", so that "[t]he degree of commonality between the causes of action … will generally be the most important factor in determining whether it would, or would not, be convenient to dispose of them all in a single set of proceedings".

33. At [76], Andrew Baker J said that the MoD was not "self-evidently wrong" to suggest that it was in some way important or likely that the findings made upon the trial of lead claims would be treated by the parties as persuasive. At [77]-[78], he said that, if the "commonality across the claims cohort were very limited", there would not be the necessary convenience. In *Abbott*, Garnham J had approved 8 lead cases in which the MoD had accepted that there was enough commonality for the decisions made "to be of real significance for all the rest", which was a concession that acknowledged the convenience of common disposal. It is for consideration whether this passage put forward what might be described as a "real significance test" either in addition to or instead of the real progress test already mentioned. In the light of this and the promulgation of the real progress test, I am not sure that Andrew Baker J actually meant either in [71] (as to which, see [31] above) or in the concluding words of [77] to say that common issues had to bind other parties rather than just having a persuasive impact. He actually said in [77]: "whereby it will be beyond argument that the significance in question has the character of findings that bind and not merely findings that may have a persuasive impact". I will deal, in any event, at [51]-[52] with the correctness of that proposition. I should note, however, at this point that the first point in the Claimants' Respondents' Notice argues that *Abbott* ought to have decided (if it did not) that the trial of common issues in proceedings brought by multiple claimants would "produce a binding determination" on all parties.

34. Dingemans LJ agreed with Andrew Baker J, but added a short judgment of his own. It is sufficient to recite what he said at [91] as follows:

> It will be for Mr Justice Garnham and Master Davison to reflect on the submission made on behalf of the [MoD] that findings made in lead claims may not bind other claimants, [see [76] and [77] of Andrew Baker J], and to take such steps as they see fit to deal with that point.

35. These remarks seem to have prompted an application by the claimants in *Abbott* for a GLO that came before Garnham J and Master Davison at [2023] EWHC 2839 (KB). Those judges rejected the application for a GLO. The detail of that decision is not directly relevant to what we have to decide. It may be worth, however, noting two matters. First, despite the finding of common issues by Andrew Baker J at [78] in *Abbott* (as to which, see [29] above), Garnham J and Master Davison seem to have rejected a GLO at [56]-[59] on the basis that the findings in the lead cases would be "dispositive of few, if any, of the other claims". Secondly, at [57], they explained what they thought *Abbott* had decided as follows: "that "real progress" towards the resolution of the other claims [73] and/or "real significance" for all the rest of the claims [77] was enough to justify an omnibus claim form". The Claimants in this case submitted that that analysis was "flat wrong", and that *Abbott* had decided at [70]-[73] that the test was whether "the determination of common issues would bind all parties" (see also [33] above).

Other relevant authorities and RSC provisions

36. In 1893, the RSC provided by Order 16 rule 1 that:

> All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative; and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

37. In addition, Order 18 rule 1 provided that:

> The plaintiff may unite in the same action several causes of action; but, if it appear to the Court or a judge that any of such causes of action cannot be conveniently tried or disposed of together, the Court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

38. In *Hannay CA*, the Court of Appeal decided (Lord Esher MR and Kay LJ, Bowen LJ dissenting) that these rules meant that claims by more than one plaintiff that arose from one transaction could be included in a single writ if such a course would not give rise to absurdity, unfairness or inconvenience (see pages 420-1). *Hannay HL* unanimously overruled this decision, upholding Bowen LJ's dissenting judgment. Lord Herschell rejected at page 501 the proposition that "any number of plaintiffs might join together to sue any number of defendants in respect of causes of action not common to either plaintiffs or defendants".

39. As a result of *Hannay HL*, Order 16 rule 1 was amended in 1896 to allow several persons to be joined in one action where their right to relief was "in respect of or

arising out of the same transaction or series of transactions" and where "if such persons brought separate actions any common question of law or fact would arise" (see *Drincqbier v. Wood* [1899] 1 Ch 393 at 395-7).

40. The 1896 version of Order 16 rule 1 eventually became O15 r4, which continued in essentially the same form until the introduction of the CPR in 1999. O15 r4 provided as follows at that time:

> (1) Subject to rule 5(1) two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where-
>
> (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
>
> (b) all rights to relief claimed in the action (whether they are joint several or alternative) are in respect of or arise out of the same transaction or series of transactions.

41. It is also worth noting that Order 15 rule 5 provided as follows:

> (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action …, or if two or more plaintiffs … are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

This rule (which appeared as early as 1910 if not before) may be the provenance for the use of the word "conveniently" in 7.3.

42. In the 1980s and 1990s, there was an upsurge in group litigation in which multiple plaintiffs utilised O15 r4 to enable them to bring their many claims in a single writ. I have in mind, in particular, the well-known Lloyd's litigation of that period (see, for example *Ashmore v. Corporation of Lloyd's* [1992] 1 WLR 446 (30 claimants) and *Deeny v. Gooda Walker Limited (in liquidation)* [1994] CLC 1224 (some 3,000 claimants)).

43. On 23 May 1991, the Supreme Court Procedure Committee produced a definitive guide for use in group actions (the Guide) (see 15/12/6 of the RSC 1999). It referred specifically to claims by investors in a collapsed investment fund. It said at page 5 that it was concerned with "litigation where there is a multiplicity of plaintiffs between whom there is sufficient common ground to justify them all being joined in one action. That common ground is defined in [O15 r4] and decisions of the courts applying that rule". At page 6, it discussed the types of claims where the issues were mostly identical (e.g. disaster claims) and types of claims where the liability issues are more complex (e.g. pharmaceutical claims). Chapter 3 of the Guide discusses the 4 possible procedures: representative proceedings, joint plaintiffs in one action under O15 r4, separate actions by individual plaintiffs and the test case or lead action. Interestingly, the Guide specifically directs attention to the financial advantage of starting one action at pages 17 and 18:

> If one solicitor has authority to act for a large number of plaintiffs … there would be some inconveniences if an action were started by that solicitor in the name of them all, but it would very often be less inconvenient (and less costly) than starting an action on behalf of each plaintiff separately. To issue one writ on behalf of 1,001 plaintiffs instead of one writ on behalf of each of those plaintiffs produces a saving of £70,000 in court fees for the writ alone …

44. Chapter 17 of Lord Woolf's final report on Access to Justice in 1996 was headed "Multi-Party Actions". He proposed reforms to group litigation, which eventually became the GLO provisions in section III of CPR Part 19, but he made no mention of abolishing the established process of multiple plaintiffs issuing a single writ.

45. Following Lord Woolf's report, the CPR were introduced in 1999. Various changes have been made, but the rules for group actions relevant to this case are now as described above at [19]-[28].

When can multiple claimants issue a single claim form under 19.1?

46. With that introduction, I come to the main issues in this case, namely whether *Abbott* laid out the correct tests to be applied under 7.3, and the circumstances in which multiple claimants can issue a single claim form under 19.1. I should say at once that it does not appear that the court in *Abbott* was referred to the history of group claims that I have recorded above. It seems to me that that history puts a rather different complexion on the rather stark construction exercise upon which the judges in *Abbott* thought they were engaged.

47. I have already touched upon the correct construction of both 19.1 and 7.3. The questionable nature of the Solicitors' preferred construction is demonstrated, I think, by the fact that they at first conceded in oral argument that the words "[a] claimant" in 7.3 could be read under section 6(c) of the Interpretation Act 1978 as including the plural, before retracting that concession upon realising that it went some way towards defeating their primary argument. Their initial concession was obviously appropriate. The meaning of the word "claim" in 19.1 is equally clear. It means, in the context of CPR Part 19, "proceedings" or as, Andrew Baker J said, more precisely, "a set of proceedings commenced by a claim form". It is true that the word "claim" is used elsewhere in the CPR to mean a cause of action, but it would make a nonsense of 19.1 if it meant that in that rule. After the changes to the RSC that I have mentioned in 1896, it was never doubted that any number of claimants could be joined as parties to a single set of proceedings. Lord Woolf's report did not suggest that the introduction of the CPR was intended to make any such radical change.

48. Against that background, the next issue is as to the proper meaning of 7.3, which provides that claimants "may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings". I do not think that the courts need to define the meaning of a simple English word such as "conveniently". "Convenience" is a most ordinary word, as Andrew Baker J pointed out at [53] in *Abbott*. It was first used in our procedural rules more than 100 years ago. The question is rather: in what circumstances can multiple claims be conveniently disposed of in the same proceedings? It seems to have been common ground at the end of the hearing that the answer to that question **included** the circumstances described in O15 r4. I entirely agree with that proposition for several reasons. First, it

is obviously the case that claims can be conveniently disposed of in the same proceedings if common questions of law or fact arise in all the claims brought and if the claims are in respect of or arise out of the same transaction or series of transactions. Secondly, nobody ever suggested when the CPR was introduced that a radical departure was intended from the previous position as to group actions, save for the introduction of GLOs. Thirdly, the concept of "convenience" appeared many years ago in Order 15 rule 5 where it was provided that if two or more plaintiffs were parties and the court thought that their joinder might embarrass or delay the trial or was otherwise inconvenient, separate trials could be ordered. It is this rule that seems to have been used as a foundation for the simplified words in 7.3. The intention of the CPR was to make the procedural rules intelligible to non-lawyers as well as lawyers. Finally, for the reasons given in the Guide, amongst others, interpreting 7.3 as excluding the cases brought by multiple claimants within O15 r4 would not serve the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

49. I turn next to the question of whether any of the three tests promulgated in *Abbott* are correct. I have described the three tests as the real progress test, the real significance test and the test that requires that the determination of common issues in a claim by multiple claimants under 19.1 would bind all parties. I do not think any of these tests is appropriate to exclude cases from the ambit of 19.1. It seems to me that 19.1 and 7.3 must be construed as meaning what they say: any number of claimants or defendants may be joined as parties to proceedings, and claimants may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings. There is no exclusionary rule of real progress, real significance or otherwise. The court will determine what is convenient according to the facts of every case.

50. We were referred to the decision on HH Judge Worster in the Birmingham County Court on 8 September 2023 in *Angel v. Black Horse Rock Limited*, unreported, where he decided that it was not convenient on the facts of that case for multiple claimants to be joined in a single set of proceedings. All the individual claims demanded a separate evaluation of whether the separate relationship between the claimant and the defendant was unfair within the meaning of section 140A of the Consumer Credit Act 1974. No joint remedy was sought, and each claim was legally distinct and turned on the particular facts of the case, and a finding in one case would not bind the situation in another (see [19]-[22], [36] and [42] of Judge Worster's decision). The facts are quite different here, where there are common issues as the judge found. It seems likely at least that findings on the common issues the judge identified will apply to, and depending on the precise nature of the issue and any further orders made, bind all the claimants.

51. I accept that multiple claims will probably be capable of being conveniently disposed of in the same proceedings where common issues will bind all or most of the claimants (see [31], [33] and [35] above), but I do not think that is currently a requirement of the CPR. Nor, therefore, is it the correct test. There is no test beyond the words of rule 7.3, even if it is clear that cases within the old O15 r4 and cases where common issues will bind all the claimants will obviously be capable of being conveniently disposed of in the same proceedings. The case management tools of ordering lead claims and more than one trial, whether of preliminary issues or

otherwise, are very much part of proceedings brought by multiple claimants under 19.1. Lead claims are often chosen specifically to resolve specific issues that arise in claims made by some claimants and not others. The current CPR does not restrict the flexibility of 19.1 and 7.3 by imposing a requirement that one or more issues has to be common to or bind all or even most of the other parties. As I said at [8] above, however, I would think it very useful if the CPRC were to consider whether it would have been better and clearer if a requirement for common issues of the kind found in O15 r4 had been carried over into the CPR.

52. Accordingly, I would also reject the Claimants' submission in its Respondents' Notice that *Abbott* ought to have decided (if it did not) that the trial of common issues in proceedings brought by multiple claimants would "produce a binding determination" on all parties. That is not something that can be spelled out of 19.1 and 7.3. Nor is it the current test of whether it would or would not be convenient to dispose of claims by multiple claimants in the same set of proceedings.

53. I should mention for the sake of completeness that I do not accept in this case that it is inconvenient or unfair for the Claimants' claims to be grouped together in one claim form. The judge found that there were the common issues that I have identified at [17] above.

54. I do, however, accept that defendants to group actions initiated by a single claim form may face potential unfairness in the absence of active case management. For example, the circumstances that justify a single claim form may not be clearly identified, and the page and document limits in [5.3(3)] of CPR PD57AD (which apply to initial disclosure in the Business and Property Courts cases) may operate to allow the claimants to withhold key documents at the early stages of the case. Every possible step should be taken in such a situation to ensure that each claimant's case is properly explained so that the defendant knows the case it has to meet, and so as to facilitate early dispute resolution.

55. The questions of what disclosure is ordered and how the claims are managed generally can be dealt with by applications to the court at appropriate stages in the conduct of the litigation. A case such as this will inevitably require active case management and proper engagement with the court by the parties and their lawyers.

56. I should also make clear that I am **not** saying that the matters considered in *Abbott* were **irrelevant** to the question of whether it was convenient in that case to dispose of those claims in the same set of proceedings. Many matters will be relevant to that question. But the matters that are most relevant to the ultimate question of convenience will vary across the wide spectrum of cases that have been and will in the future be brought under 19.1. This court would not wish to confine the discretion of judges in deciding that question under rules that are written in plain English.

57. I will make two concluding remarks in this section. First, nothing in this judgment should be taken as casting doubt on the actual determination in *Abbott*. We are dealing only with the applicable law. Secondly, nothing I have said should be taken as discouraging the use of GLOs. GLOs are a very useful and desirable procedure in many cases. This case has not raised any questions about that process, but it is valuable for the parties and the court to consider in every case started by multiple claimants by a single claim form whether it would be appropriate for a GLO to be

applied for. A GLO brings the advantages mentioned in [28] above, including in particular the specification of the "common or related issues of fact or law" that are raised by the various claims.

The article 6 point

58. The second point raised by the Claimants' Respondents' Notice argued that this court should approve *Abbott* on the basis that it gave effect to the Claimants' rights under article 6(1) of the European Convention on Human Rights. Since I am deciding that 19.1 and 7.3 allow a broad range of multiple claimants' claims to be brought in a single claim form, it does not seem to me that article 6 adds anything to the analysis.

Disposal of the appeal

59. The question then arises as to how the appeal should be disposed of. I have held that *Abbott* did not adumbrate the correct approach to the circumstances in which multiple claimants can bring their claims in a set of proceedings initiated by a single claim form.

60. It cannot be doubted that, on the judge's findings of fact as to common issues (which have not been appealed), the Claimants' claims would have satisfied the requirements of O15 r4. That was not seriously contested in argument. The judge found that common questions of law or fact arose in all the Claimants' claims, and the Claimants' claims all arise out of the same series of transactions. In these circumstances, it seems to me that there is no point in sending the case back to the judge to apply the correct test. We can make that decision now. The claims brought by the Claimants in their single claim form can be conveniently disposed of in these proceedings.

61. For those reasons, I would dismiss the appeal.

Conclusions

62. I have concluded, as already explained, that *Abbott* was wrong to suggest that 7.3 required the court to apply the real progress test, the real significance test or a requirement that the determination of common issues in a claim by multiple claimants under 19.1 would bind all parties.

63. 19.1 and 7.3 mean what they say. Any number of claimants or defendants may be joined as parties to proceedings, and claimants may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings. The court will determine what is convenient according to the facts of every case. There is no test beyond the words of rule 7.3, even if it is clear that cases within the old O15 r4 and cases where common issues will bind all the claimants will obviously be capable of being conveniently disposed of in the same proceedings.

64. I reiterate, however, what I said at [8] and [51] above, namely that O15 r4 allowed multiple claimants to bring their claims in a single writ (now claim form) where "some common question of law or fact" arose and where their claims arose out of the same transaction or series of transactions. Those were not exclusionary tests, because there remained the fall back of the permission of the court. Nonetheless, it seems to

me that it would be valuable for the CPRC to have another look at the current provisions, with a view to considering whether the existing rules are working well or whether a requirement for common questions of law or fact to be identified could usefully have been brought across from the RSC.

65. The appeal should be dismissed.

LORD JUSTICE LEWISON:

66. I agree.

LADY JUSTICE FALK:

67. I also agree.