

ENGLAND AND WALES / JUDGMENT

Adam Hughes & Ors v World Rugby Limited & Ors

COURT
IN THE HIGH COURT OF JUSTICE

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IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

Case Nos: QB-2022-002343

KB-2023-001233

KB-2023-002288

KB-2023-004596

KB-2024-001839

KB-2025-001951

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 22/12/2025

Before : Mr Justice Dexter Dias

Between : (1) ADAM HUGHES & 162 OTHERS (KB-2022-002343)
(2) AAKESH RAI & 65 OTHERS (KB-2023-001233)
(3) WILLIAM EVANS & 30 OTHERS (KB-2023-002288)
(4) ANDREW BISHOP & 59 OTHERS (KB-2023-004596)
(5) AIDEN COLVIN & 64 OTHERS (KB-2024-001839)
(6) SMEDLEY & 387 OTHERS (KB-2025-001951)
- and -
Applicants/
Claimants
(1) WORLD RUGBY LIMITED
(2) THE WELSH RUGBY UNION LIMITED
(3) RUGBY FOOTBALL UNION
Respondents /

High Court Approved
Judgment:

Defendants

Mr Justice Dexter Dias
Rugby head injury litigation

Susan Rodway KC, Shaman Kapoor and John Platts-Mills (instructed by Rylands
Garth
Limited) for the Applicants/Claimants

Nina Goolamali KC, William Clerk and Michael Standing (instructed by DWF Law
LLP)

for the First Respondent/Defendant

Michael Kent KC and Edward Broome (instructed by Weightmans LLP) for the
Second

Respondent/Defendant

Neil Block KC and Jack Holborn (instructed by Weightmans LLP) for the Third
Respondent/Defendant

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

Case Nos: KB-2023-002280

KB-2023-004778

KB-2024-002064

Between :

(1) MICHAEL EDWARDS & 120 OTHERS
(KB-2023-002280)

(2) ADAM PALFREY & 20 OTHERS (KB-
2023-004778)

(3) ALAN HODGKINSON & 33 OTHERS
(KB-2024-002064)

- and -

Applicants /
Claimants

(1) THE RUGBY FOOTBALL LEAGUE
LIMITED

(2) BRITISH AMATEUR RUGBY LEAGUE
ASSOCIATION LIMITED

Respondents /
Defendants

Susan Rodway KC, Shaman Kapoor and John Platts-Mills (instructed by Rylands
Garth

Limited) for the Applicants/Claimants

William Audland KC and Niall Maclean (instructed by Pinsent Masons LLP) for the
First

and Second Respondents/Defendants

Hearing dates: 7 and 26 November 2025

(Judgment circulated in draft: 15 December 2025)

High Court Approved
Judgment:

Mr Justice Dexter Dias
Rugby head injury litigation

JUDGMENT

Remote hand-down: this judgment was handed down remotely at 10.30 am on Monday 22 December 2025 by circulation to the parties or their representatives by e-mail and release to the National Archives.

- ----- High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation THE HON. MR JUSTICE DEXTER DIAS Table of Contents I.

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Mr Justice Dexter Dias : 1. 2. This is the judgment of the court. To assist the parties and the public to follow the main lines of the court’s reasoning, the text is divided into 19 sections, as set out in the table of contents above. The table is hyperlinked to aid swift navigation. I. Introduction High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 3. 4. This is an appeal against case management orders (“CMOs”) in what has come to be known as the rugby head injury litigation. The appealed orders were made in proceedings involving a series of personal injury claims being case managed together by Senior Master Cook (“the Judge”). The claimants 5. The claimants are former rugby players from both codes, rugby union (“RU”) and rugby league (“RL”). In this judgment, I adopt the terminology used by the parties at the appeal. Although the many rugby players are strictly applicants in the appeal, they remain claimants in the underlying claims. There are around 1000 claimants spanning the two rugby football codes. This includes both women and men, many of whom were dedicated athletes at the very pinnacle of their sport. The claimants’

case is that they sustained serious head injuries due to the collision forces from sporting impacts during rugby matchplay or training which have led to both concussions and sub-concussive permanent brain damage. The cumulative nature of such blows is said to have caused the injuries. The neurological injuries include Persistent Post Concussion Syndrome, Chronic Traumatic Encephalopathy, Early Onset Dementia, Parkinson's Disease, Epilepsy and Motor Neurone Disease. For those who develop these conditions, the consequences can be severe. The claimants in both codes are represented by Ms Rodway KC, Mr Kapoor and Mr Platts-Mills of counsel. The defendants 6. The defendants are governing bodies of the two codes. They are the respondents in the appeal. It is alleged by the claimants that the governing bodies owed them a duty of care, and although the appropriate standard of care may "vary over time", as the list of common issues states, a core duty was to protect the claimants from such head injury. The governing bodies are said to have had the knowledge and resources to appreciate the likelihood of brain damage and long-term neurological injuries arising from cumulative blows or impacts to the head. However, they failed to take steps to prevent or reduce the risk and associated injury; they failed to inform the players of this damaging potential consequence. This includes an alleged failure to properly deal with or treat players after collisions, including by not taking them off the playing field and not reducing collisions in training. Since the claimants were ignorant of these risks and outcomes, they say they did not consent to exposing themselves to the risk of the injuries by playing rugby or training for it. 7. In the RU litigation, the defendants are World Rugby Limited, the Welsh Rugby Union Limited and the Rugby Football Union. The RU defendants are represented by Ms Goolamali KC, Mr Clerk and Mr Standing (World Rugby Limited), Mr Kent KC and Mr Broome (The Welsh Rugby Union Limited) and Mr Block KC and Mr Holborn (Rugby Football Union) of counsel. In the RL litigation, the defendants are the Rugby Football League Limited and the British Amateur Rugby League Association Limited. The RL defendants are represented by Mr Audland KC, Mr Maclean and Ms Scott of counsel. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 8. 9. The court is grateful to all counsel for their submissions and assistance. May I pay particular tribute to Ms Rodway KC, who on the first hearing date, and following an unfortunate accident, tenaciously addressed the court at length despite considerable personal discomfort. It is obvious that the stakes in the litigation are high and the temperature in the courtroom at times reflected that. However, to my mind, the questions for determination at this appeal are relatively straightforward. Judgment structure 10. Following this introduction, I structure the judgment by first making some necessary preliminary remarks (Section II). I then set out the appeal test, the yardstick by which the merits of the appeal must be determined and what the higher courts have said about the proper appellate approach to appeals of CMOs made by judges in the lower court (Section III). Appeals require timely application or an extension of time and the grant of permission, matters that must also be considered here. A large part of the appeal centres around the Judge's making of unless orders. There is a fundamental dispute between the parties about the legal preconditions necessary before an unless order can be made. I resolve that dispute at the outset, being a hard-edged question of law and not a matter of judicial discretion (Section

IV). I then provide in bullet-point format a compressed overview of the relevant elements of the complicated procedural history (Section V). The most important orders are then set out and divided along rugby code lines (Section VI). I detail the grounds of appeal in Section VII, before turning to the appeals themselves in two parts. In Part A I deal with the RU litigation appeal (Sections VIII to XI). Part B examines the appeal in the RL litigation (Sections XII to XVIII). Finally, the disposal of the appeals is shortly stated (Section XIX). 11. The claimants make associated applications for extension of time to appeal in some cases (claiming they are not out of time in certain other instances), and permission to appeal more generally. The appeals are made principally against orders made by the Judge following a two-day case management conference (“CMC”) on 22 and 23 July 2025 at which he made unless orders. Unless orders are a type of conditional order. Their essential structure is “you must meet condition X or consequence Y will follow”. The Judge granted unless orders in both codes following applications for an unless order (by the RU defendants) and for strike out or alternatively an unless order (by the RL defendants) due to alleged failures by the claimants in their disclosure obligations arising from previous court orders. While the Judge refused to strike out any claims, he made unless orders and directed steps to be taken by a certain date (the conditions), with strike out in default (the consequence). 12. However, the appellate challenges range wider than this. For example, there is an application to appeal an order the Judge made in February 2024 for the disclosure of medical records in the RL litigation. There are submissions that later-joining claimants are not bound by earlier orders. There is a lot to consider. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation The court’s approach 13. Having heard two days’ legal argument, I have decided to approach my task by fully considering the merits of each ground advanced – and there are many – in recognition of the immense importance these claims have to individual claimants. Anyone reading what the parties have called the “thumbnails” – potted summaries of the often-stellar careers of individual claimants - cannot but be filled with admiration at the personal sacrifices they have made and the dedication necessary to attain their sporting success. I have also carefully read, without reaching any conclusions, the accounts of the many difficulties that have beset their lives more recently. My task as someone entirely independent is to adjudicate on the various applications for extension of time, permission to appeal and the substantive merits of the grounds as objectively and dispassionately as possible. No one can doubt but that taken together, this body of female and male athletes has made a very significant contribution to our sporting and cultural life. II. Preliminary remarks 14. 15. To begin, some necessary preliminary remarks. First, the appeals do not stand or fall together. This observation applies across codes and within them. Second, I deal with issues of extension of time, where necessary, and permission to appeal under each ground. Third, I now identify the basis of the procedural regime used within the Civil Procedure Rules 1998 (“CPR”) as it has a broad relevance across the codes for the applications and objections to them. CPR Part 19 lays out two ways to conduct large-scale multi-party litigation. Under CPR Part 19 II “Representative Parties” for parties with “the same interest” and under CPR Part 19 III “Group Litigation”. CPR 19.21 defines Group Litigation Orders (“GLOs”) as those where claims “give rise to common or related issues of

fact or law”. Although there was consideration of GLOs in these claims and the terminology of GLO litigation has often been used (such as identification of “common issues”), the position altered in early

2025. The Judge said in his judgment dated 5 February 2025: “1. This is the first joint CMC in what has come to be known as the Rugby head injury litigation, where the claims bought on behalf of current and former Rugby Union players are being considered together with those bought on behalf of current and former Rugby League players.
2. The Claimants' solicitors, Rylands Garth were originally proposing to proceed to make applications for group litigation orders in respect of both groups of players. However, having considered the matter, in light of my comments in the case of Hammond [sic] v University College and having considered the position following the case management conference in related proceedings involving professional football players, High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation the parties, and particularly the Claimants now seem to be in agreement that the claims should progress, subject to the court's creative use of its case management powers, and more specifically by way of test cases.” (see *Hammon v University College London* [2024] EWHC 1744 (KB) (“Hammon”)). 16. Therefore, it appears that instead of CPR Part 19, the Judge has used his wide case management powers under CPR Part 3 to manage proceedings and identify test cases through the selection of “lead claimants”. The purpose of identifying a cohort of lead claimants was explained by this court in *Lancaster and others v Peacock QC* [2020] EWHC 1231 (Ch) (“Lancaster”) at paras 2-
3. Fancourt J sitting with Master Kerr said: “2. The purpose of taking sample claimants is twofold. First, to ensure that issues that are common to all the claimants’ claims can be decided in such a way as to bind them all; and, second, to decide other factual and legal issues where the decision will not necessarily bind other claimants but is likely to give a very clear indication of the way that their cases too will be decided if tried, with the expected consequence that the parties will then be able to settle the remaining claims.
3. It is not, of course, necessary to have very many sample claimants in order to decide common issues. The purpose of a broader selection of sample claimants, beyond what is needed to try the common issues, is to generate sufficiently broad guidance for the likely disposal of all the other claims, whose particular facts will vary, while at the same time not overcomplicating or encumbering or significantly adding to the cost of the trial.” 17. The RU defendants sought examination of the claimants. The Judge refused the application. This is an important context for understanding the centrality of medical record disclosure and the sensitivities around it. The Judge explained in his CMC judgment dated 5 February 2025: “18. Secondly, in relation to numbers, in my judgment, having regard to the issues, the conditions and the allegations in the Particulars of Claim, each side should nominate 28 claims as possible lead claims. That will then produce a pool of 56 claims. The next issue is whether the Defendants should medically examine each of those 56 claimants in the pool. I have concluded, despite the persuasive arguments put forward by Mr Kent and Mr

[Audland], that there should be no medical examination at this point.” 18. It is largely because adequate disclosure is necessary for the defendants to fairly engage in the selection of truly representative lead claimants that disclosure has become what can only be described as an acrimoniously contested battleground in these claims. The Judge continued at para 19: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation “19. I do so [refuse defendant examination of claimants], on the basis that the full disclosure of the relevant medical records and brain imaging will have been given, which together with the appropriate thumbnails and disclosure should be sufficient to enable the parties to choose the lead claims. To do otherwise, in my view, would not be consistent with the overriding objective. It would increase costs and cause more delay.” 19. It is important to understand this context to comprehend the vehemence of the argumentation I shortly set out and the causes for it. III. Appeal test 20. All the parties refer to the “generous ambit” appellate test enunciated by the Court of Appeal in *Broughton v Kop Football (Cayman) Ltd* [2012] EWCA Civ 1743. It has found approval at the very highest level. In *Global Torch Ltd v Apex Global Management Ltd (No 2) (SC(E))* [2014] 1 WLR 4495 (“Global Torch”), the Supreme Court considered the appropriate test for an appellate court to interfere with a judge’s case management decision. Lord Neuberger said at para 13: “The essential question is whether it was a direction which Vos J could properly have given. Given that it was a case management decision, it would be inappropriate for an appellate court to reverse or otherwise interfere with it, unless it was “plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree” as Lewison LJ expressed it in *Broughton v Kop Football (Cayman) Ltd* [2012] EWCA Civ 1743 at [51].” 21. This echoes the much-cited statement of the precept by Chadwick LJ in *Royal & Sun Alliance Insurance plc v T&N Ltd (in administration)* [2002] EWCA Civ 1964 at para 38: “I accept, without reservation, that this court should not interfere with case management decisions made by a judge who has applied the correct principles, and who has taken into account the matters which should be taken into account and left out of account matters which are irrelevant, unless satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.” 22. In *Mannion v Ginty* [2012] EWCA Civ 1667, Lewison LJ said at para 18 that it is “vital for the Court of Appeal to uphold robust, fair case management decisions made by first instance judges.” A similar approach must apply to High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation first appeals to this court. The unmistakable ethos is one of appellate restraint when case management decisions by first instance judges are challenged by way of appeal. These are reviews and not re-hearings. 23. Much dispute centres around the interpretation of the Judge’s orders. The approach to such interpretation is clear. In *Pan Petroleum AJE Ltd v Yinka Folawiyo Petroleum* [2017] EWCA Civ 1525, the Court of Appeal held that the sole question is what the order means. Orders should be given their natural and ordinary meaning understood in context and having regard to the purpose of the order. IV. Unless orders: legal preconditions 24. A significant part of the appeals in both codes revolves around the unless orders made by the Judge at the CMC in July 2025. The power to make unless orders can be found in CPR 3.1(3): “I CASE MANAGEMENT The court’s general

powers of management 3.1 ...

- (3) When the court makes an order, it may –
- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequence of failure to comply with the order or a condition.” 25. Put shortly, there are two key constituent parts: a condition and a consequence. Sometimes different but synonymous terminology is used such as triggering event and sanction. The labels are unimportant; what matters is the substance and effect. As noted, the structure of the order is broadly “You must do X or Y follows.” The parties remain in dispute about the legal requirements for making such orders. More precisely: the claimants have at points submitted that before the making of an unless order, the court must make a finding of default (breach or non-compliance). Since this is a matter of pure law that crosses the code appeals, I deal with it here. I examine the further proportionality objection to the unless orders under the pleaded grounds, where appropriate. For now, the focus is on an exploration of any legal preconditions for making an unless order. In *Marcan Shipping (London) Limited v Kefalas and anor* [2007] 1 WLR 1864 (“*Marcan*”), the Court of Appeal explained (per Moore-Bick LJ, Pill and Keene LJ agreeing): “36. The third consequence is that before making conditional orders, particularly orders for the striking out of statements of case or the dismissal of claims or counterclaims, the judge High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation should consider carefully whether the sanction being imposed is appropriate in all the circumstances of the case. Of course, it is impossible to foresee the nature and effect of every possible breach and the party in default can always apply for relief, but a conditional order striking out a statement of case or dismissing the claim or counterclaim is one of the most powerful weapons in the court's case management armoury and should not be deployed unless its consequences can be justified. I find it difficult to imagine circumstances in which such an order could properly be made for what were described in *Keen Phillips v Field* as ‘good housekeeping purposes’.” 26. 27. One question I posed to all counsel was whether there was authority for the proposition that before an unless order was granted there had to be a finding of default, breach or non-compliance. The defendants in unison submitted no such authority exists: proof of breach was not a legal prerequisite. By the end of the first hearing date, the claimants agreed: a finding of breach was not legally necessary for the making of unless order. It should be noted that this is different from whether the unless order consequence is triggered. All the defendants agreed that there had to be either proof of default or its admission before the consequence in an unless order could take effect (always subject to an application for relief from sanctions). For the second hearing date on 26 November 2025, the claimants placed further authorities before the court. Their position appeared to have changed. I do not say this by way of criticism. The content of the governing law is a hard-edged legal question. The court simply wants the best assistance to identify it with accuracy. The authorities relied on by the claimants included extracts from the White Book 2025 and Kemp & Kemp: Personal Injury Law, Practice and Procedure (2025, Chapter 18) (“*Kemp &*

Kemp”). At 18-019, Kemp & Kemp says: “It would be unusual for “unless” orders to be made without some previous default by the party subjected to the orders. However, the default need not be failing to comply with a previous court order. If the party has failed to comply with a relevant pre-action protocol, or failed to comply with the provisions of a rule or practice direction, or even failed to co- operate with another party, that could be sufficient for a procedural judge to impose an “unless” order. ... The onus is thus on the defaulting party to seek relief. In *Marcan Shipping v Kefalas*, the Court of Appeal said that it should now be clearly recognised that a sanction embodied in an “unless” order in traditional form takes effect without the need for any further order if the party to whom it is addressed fails to comply with it in any material respect.” High Court Approved Judgment: Mr Justice Dexter *Dias Rugby head injury litigation* 28. 29. While I note that Kemp & Kemp mentions it being “unusual” to make an unless order without there having been “some previous default”, it does not suggest that in the absence of such default it is impossible or necessarily legally wrong to make an unless order. Further, it leaves open the question about whether it is necessary to make a specific finding of fact about the previous default or whether should clear evidence of general default be before the court, the court can make the order without descending into making specific findings of breach or non-compliance in the cases of every individual claimant against whom an unless order is granted. That is the essential question in the instant case. The claimants further rely on the second paragraph in the extracted passage to support their submission about the risk of automatic strike out. However, the passage accords with my understanding of the law which is that “if” there has been material non-compliance, then the sanction (consequence) occurs without the need for further order. But the question remains how the default or breach is established as the triggering event. It can only be by admission or a court finding. Mere assertion by the benefitting party (here the defendants) is clearly insufficient. While Moore-Bick LJ said in *Marcan* that it is unnecessary for the benefitting party to make an application for the sanction to be “activated”, that is not the same as saying the proof of default stage can be bypassed as a condition precedent for the automatic effect. Kemp & Kemp then provides the following advice: “Practitioners who contend that they have complied with the “unless” order should strongly consider making an application in the alternative for relief from sanctions should the primary argument not succeed.” 30. This is entirely consistent with the construction that establishing non- compliance is necessary: either through admission or proof by the benefitting party and corresponding court finding. The claimants highlighted the following passage in the White Book at 3.1.14.7: “An order in unless form must be proportionate. In *Al-Subaihi v Al-Sanea* [2020] EWHC 3206 (Comm) the second claimant (“C2”) failed to comply fully with an order for disclosure and the defendants sought a further order in the unless form. Cockerill J ruled that C2’s breach had been unrepentant and uncontrite and, had the circumstances remained unchanged, she would have had little or no hesitation in imposing an unless order. However, the circumstances had altered in two respects. C2 now accepted that he had been at fault and had expressed his willingness to provide the remaining disclosure. Also, C2 had recently been taken into detention in Saudi Arabia which plainly gave rise to the possibility of difficulties even though C2 believed that he could provide the

disclosure sufficiently speedily. An order in the unless form was therefore disproportionate and inappropriate. However, if the non-compliance continued, an unless order would be made on a High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation renewed application unless C2 could then establish an extraordinarily good excuse.” 31. I cannot see how this highly fact-specific first instance decision materially advances the claimants’ submission. Also cited by the claimants was the passage in Kemp & Kemp at 18-020: “Some “unless” orders are clear-cut: if a sum of money has to be paid by 4pm on a given day, then it is easy to prove whether that order has been complied with. In other cases, compliance is more a matter of fact and degree—for example, where the order requires full disclosure of documents in various categories or, alternatively, a full explanation of what has happened to documents that are not disclosed. In the first instance, care has to be taken when drafting the order that it is clear what steps have to be taken to comply with it. In Keith v CPM Field Marketing, the Court of Appeal warned that if parties are going to seek to enforce court orders in a draconian way, it obliges them to ensure that the relevant court orders are drawn up in clear and specific terms, so that the other side can see on the face of the order what they are required to do. Subsequent disputes about whether a party is in breach of an “unless” order are unlikely to be a profitable use of court time. However, if there is a dispute as to whether the purported compliance is sufficient, then technical breaches will not suffice for the case to be struck out. There will have to have been a gross breach of the order. For example, in Carlco v Chief Constable of Dyfed Powys Police, the Court of Appeal said that the disclosure given was far from satisfactory but as the breaches could not be characterised as “gross”, the claim should not have been struck out. In such cases, the court will usually then go on to give one final chance for the party to comply exactly with the “unless” order, and no further mercy is likely. However, in Marcan Shipping v Kefalas the Court of Appeal said that Carlco failed to consider the point that the sanction had already taken effect by virtue of CPR r.3.8. In future, it would seem, a party who might be found to have been in technical breach of the “unless” order should also apply for relief from sanctions to protect his position.” 32. I again find this is of little assistance to the claimants. The Court of Appeal’s observations in Marcan about the sanction having already taken effect do nothing to remove the need for the establishing of default before the sanction operates where there is dispute. The sanction (consequence) cannot simply be triggered on the unproven assertion of a benefitting party. I consider this question in more detail later. Discussion High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 33. 34. The question arising in this case is whether there must be a finding of default (breach/non-compliance) before an unless order can be made. The court invited all parties to provide any authority that provided support for that proposition. None has been advanced. I cannot think that this is the law. As Kemp & Kemp states, an unless order may be granted where the party has failed to observe not just a CPR rule but a practice direction or has even failed to cooperate with another party. This indicates the breadth of circumstances justifying the imposition of an unless order as a flexible if draconian case management tool. In fact, mass multi-party litigation such as this illustrates the point. Consider where there is strong evidence presented to the court about a fundamentally

erroneous general approach to a court order (here disclosure). There must be sufficient flexibility in the court's discretion to make an unless order requiring future compliance with the court's previous orders combined with a specified sanction in the event of future non-compliance without having to make findings of default in every one of the many hundreds of individual claims which become subject to the unless order. As this court said in Lancaster (para 3), one of the objectives of identifying lead claimants is to conduct complex multi-party proceedings without "significantly adding to the cost of the trial". If a court were obliged to make a specific default finding in every one of the possibly hundreds of individual claims proposed to be subject to the unless order as a precondition of that order, that would be the very opposite of the parsimonious and proportionate approach to case management envisaged by the lead claimant approach. 35. Naturally, whether the breach/default is later proved as the activation trigger in any individual case for the sanction to take effect is a separate question. The claimants have conflated the two issues. They are conceptually distinct. This seems to me to be clear from CPR 3.8 itself: "Sanctions have effect unless defaulting party obtains relief 3.8

- (1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction." (emphasis provided) 36. It is quite clear that "has failed" means where it is established that there is failure to comply, either by admission or proof and court finding. In *Huscroft v P&O Ferries Limited* [2011] 1 WLR 939 ("Huscroft"), Moore-Bick LJ said at para 19: "I do not think that the power to attach a condition to an order can be exercised only if there is a history of repeated failures to comply with orders of the court or the party in question is not conducting the litigation in good faith. I do think, however, that before exercising the power given by rule 3.1(3) the court should identify the purpose of imposing a condition and satisfy High Court Approved Judgment: Mr Justice Dexter *Dias Rugby head injury litigation* itself that the condition it has in mind represents a proportionate and effective means of achieving that purpose having regard to the order to which it is to be attached." 37. Thus, the Court of Appeal requires that a first instance judge is mindful of purpose and proportionality. I note that in *Huscroft*, Moore-Bick LJ said at para 18 that "The court has ample powers under rules 3.1(2)(m) and 3.3 to make whatever orders are needed for the proper management of the proceedings." In reaching the conclusion that a prior finding of default is not a precondition to making an unless order, I draw heavily on the approach of Moore-Bick LJ in *Huscroft* at para 17: "... rule 3.1(3) is deliberately drafted in quite general terms and I think that this court should be reluctant to lay down any hard and fast rules about the circumstances or manner in which the power can be exercised. Experience shows that cases are infinitely variable and the rule does not place any limit on the nature of the conditions that may be imposed or the circumstances in which the power may be invoked, other than providing that a condition may be imposed as an adjunct to an order." (emphasis provided) 38. As a result, I judge that the claimants' various submissions that proof of breach is required as a legal precondition to the making of an unless order in, as they put it, "each and every"

individual claim to legally qualify for an unless order is wrong in law. Not only does it find no support in authority, but it cuts across the necessary spirit of flexible and effective case management embodied in the CPR Part 3 and the proper approach to CPR 3.1(3) as set out by the Court of Appeal. The claimants' position impermissibly attempts to read into the rule a condition precedent that does not exist as, to my mind, Huscroft makes plain. 39. As noted, I deal with the fact-sensitive proportionality of making such an order later. This section has focused solely on the legal test. The claimants' submission on a default precondition is wrong in law and is rejected. V. Procedural history 40. It is convenient to summarise in bullet-point format the procedural evolution of the claims:

- Letter before action RU: 17 December 2020
- First letter before action RL: 11 October 2021
- Draft Generic Particulars of Claim RU: 24 November 2022 • Individual Particulars of Claim RU: 24 November 2022
- First CMC in RU: 23 June 2023 (Master Fontaine)
- Draft Generic Particulars of Claim RL: 22 September 2023
- First CMC in RL: 29 September 2023 (Master Sullivan) High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation
- Condition and Prognosis report RU: first tranche on 27 October 2023
- Second CMC in RU: 1 December 2023 (first CMC conducted by Senior Master Cook)
- Service of Generic Particulars of Claim RL: 19 July 2024 • Individual Particulars of Claim RL: 19 January 2024
- Second CMC in RL: 23 February 2024 (the resulting order being “the February 2024 order”)
- First Joint CMC of RU/RL: 20 May 2024 (“Joint CMC 1”)
- Underlying RU order: made 20 May 2024; dated 17 June 2024; sealed 31 July 2024 (“the 17 June 2024 order”)
- Service of Generic Particulars of Claim RU: 19 July 2024
- Condition and Prognosis reports RL (with disclosure of medical records relied upon): first tranche on 31 October
- Second Joint CMC of RU/RL: 4 to 5 February 2025 (“Joint CMC 2”)
- Third Joint CMC of RU/RL: 22 to 23 July 2025 (“Joint CMC 3”, with the resulting order being “the July 2025 order”)

- Amended Generic Particulars of Claim RU & RL: 18 August VI. Orders 41. I divide the relevant orders into the two codes, with the RU orders first, followed by the relevant orders in the RL litigation. RU Litigation RU underlying order, 17 June 2024 42. The key underlying order was made on 20 May 2024, dated 17 June 2024 and sealed on 31 July 2024. It has been referred to by the Judge as the 17 June 2024 order and so that is the label used (occasionally the parties have referred to it by the date it was made or the date of sealing). The relevant terms are in paras 5 and 6: “5. The Claimants shall disclose to the Defendants as soon as reasonably practicable and in any event by 4 pm on 31 October 2024, for all existing claims, all documents referred to as part of the “testing process” set out in paragraphs 13 to 21 of the witness statement of Richard Boardman dated 15 May 2024 including but not limited to:
 - a. Neurology interviews;
 - b. Neuropsychological assessments;
 - c. Brain scans i.e. MRI with imaging and reports thereon; and
 - d. letters of diagnosis. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation
- 6. Disclosure of documents
 - (1) By 31st October 2024 or, if later, within 8 weeks of service of a claim form, for all existing claims in this litigation (being the claims brought by claimants represented by Rylands Garth Limited against the Defendants, hereinafter referred to as “the Rugby Union Litigation”), the Claimants shall disclose those documents referred to in paragraphs 4 and 5 (above).
 - (2) The representatives of the Claimants in the three proceedings shall send forms of authority for the release of medical records (including GP records, hospital records and club records) and club/team records at all levels to the Claimants and/or their litigation friends as soon as reasonably practicable and in any event within 8 weeks of service of a claim form. Upon their return, the Claimants’ representatives shall supply them to the Defendants representatives as soon as reasonably practicable.” RU unless order, 23 July 2025 43. In the RU litigation, the unless order made as a result of the July 2025 CMC was: “2. Unless by 4pm on 26th September 2025:
 - (1) The Claimants in Claim Forms 1- 5 do properly and fully comply with paragraphs 5 and 6 of the Court Order dated 17 June 2024; and
 - (2) The Claimants’ Solicitor do file and serve an affidavit giving full particulars in respect of each Claimant named on Claim Forms 1 – 5 of:
 - a. All medical reports/letters, brain scanning and reports thereon (for the avoidance of doubt to include all MRI, DWI and DTI reports), and medical assessments, obtained, prepared or undertaken, as part of testing the Claimants as referred to in paragraphs 5 and 6 of the order of 17 June 2024. the claims of any Claimants in Claim Forms 1-5 in respect of whom there

remains default of paragraphs 5 or 6 of the Court order dated 17 June 2024 be struck out pursuant CPR3.4(2)(c) and the costs of their claims be paid by the Claimants to the Defendants to be assessed if not agreed. The issue of the timing of the assessment and enforcement is reserved.” RL litigation RL underlying order, 23 February 2024 “2. The time by which each Claimant is to file and serve condition and prognosis reports pursuant to paragraph 2b of the Order dated 2 October 2023 is extended to 4 p.m. on 31 October 2024 such reports to include the relevant expert’s opinion within their specialism as to whether the injuries (and where applicable death) complained of are consistent with and High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation caused by the Claimant’s (or Deceased’s) involvement in playing rugby, identifying those particular aspects of the professional game which the expert considers are likely on the balance of probability to have had a causative effect on the conditions identified with their reasons.

3. The Claimants’ solicitors are by 4 p.m. on 31 October 2024 to disclose to the Defendants copies of all medical records (including GP records, hospital records, club records, and if applicable all post mortem and inquest records) for each Claimant; and to give interim disclosure of all such records as are in their possession by 1 May 2024 and 1 July 2024 respectively.” RL CMC order, 14 June 2024 (as later referred to in the unless order of July 2025) “General case management
8. The Claimants shall disclose to the Defendants by 31 October 2024, for all existing claims, all documents referred to as part of the “testing process” set out in paragraphs 13 to 21 of the witness statement of Richard Boardman dated 15 May 2024 including (but not limited to) all documentation relation to:
 - a. Neurology interviews;
 - b. Neuropsychological assessments;
 - c. Brain scans i.e. MRI with imaging and reports thereon; and
 - d. Neurologist letters of diagnosis.” RL unless order, July 2025 44. In the RL litigation, the orders made following defendants’ application dated 24 June 2025 are as follows: “2. By 4pm on 17 October 2025, the Claimants (save for those in the Fourth Claim Form) shall comply fully with the following:
 - a. paragraphs 2 and 3 of the Order dated 23 February 2024 (sealed on 19 March 2024); and
 - b. paragraph 8 of the Order dated 14 June 2024.
3. By 4pm on 17 October 2025, the Claimants’ solicitor shall serve an affidavit setting out in detail and verifying with reasons compliance with paragraph 2 of this order. For the avoidance of doubt, this document shall address all breaches identified by the Defendants in their application dated 24 June 2025 and their skeleton argument (and appendices) for the CMC on 22 and 23 July 2025. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation

4. Any claims for which there is default with paragraphs 2 or 3 this Order shall be struck out pursuant CPR3.4(2)(c) without further order of the Court.
5. For any claims so struck out:
 - a. The Claimants whose claims have been struck out do pay the Defendants' costs of their claims, to be assessed if not agreed. The issues of the timing of the assessment and enforcement are reserved.
 - b. Any application by the Defendants for a costs order against the litigation funder(s) of said Claimants shall be notified to the litigation funder(s) and to the Court by 4pm on 12 December 2025. The Court will notify the Defendants and the litigation funder(s) of the time of a hearing to consider directions for any such application.
6. The Claimants (save for those in the Fourth Claim Form) shall pay the Defendants' costs of and occasioned by the Defendants' application dated 24 June 2025, to be assessed if not agreed. The issues of the timing of the assessment and enforcement are reserved." VII. Grounds of appeal 45. The grounds of appeal are now set out. Mostly, the grounds are reproduced exactly as the claimants framed them, except where purely for ease of comprehension to anyone not intimately familiar with the proceedings there has been slight rephrasing. The substance remains unchanged. The RU grounds are provided first. RU grounds 46. The RU claimants challenge aspects of the July 2025 order. The claimants rely on one prime ground with six sub-grounds. The head ground is: "The Learned Judge erred in law and misdirected himself by making final or peremptory Orders with the ultimate sanction of striking out each individual Claimant's action without further order when such Orders are disproportionate and oppressive, irrational and perverse for the following reasons." 47. The six sub-grounds are: "1(a): the Learned Judge took account of irrelevant matters in finding that there had been 'misapprehension' of the meaning of the orders in rugby union, when this was a finding made solely in respect of paragraph 3 of the Order of 23 February 2024 (medical records) in the Rugby League Litigation. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 1(b): made the Orders notwithstanding no finding of non-compliance on the part of any RU Cs and 1(e): failed to have regard to Schedule of 59 Alleged Non-Compliant RU Cs. 1(c): failed to give reasons for any non-compliance. 1(d) failure to make findings relating to non-compliance with paragraph 6 of the Order of 17 June 2024. 1(f): making a final order in relation to "DTI reports and DTI imaging or sequences" when a separate order at paragraph 7 already dealt with the matter." RL grounds 48. The claimants rely on six grounds. As indicated, five relate to the July 2025 order and the other to the underlying February 2024 order, what I have called Ground 6. I have reordered my treatment of them as follows: "Ground 6 In respect of medical record disclosure, if "all means all", para 3 of the February 2024 order is "disproportionate and oppressive, irrational and perverse". Ground 3 Regarding paras 2 to 6 of the RL Order dated 23 July 2025, (relating to paragraph 3 of the RL Order dated 23 February 2024 (medical records)), whether the Judge misconstrued the February 2024 order as it did not require the claimants to disclose all medical records "ever in existence". Ground

1 The orders at paras 2 and 4 of the July 2025 order were made against the wrong claimants. Ground 2 The Judge misdirected himself in failing to make findings of non-compliance and/or providing reasons for non-compliance, rendering paras 2 to 6 of the July 2025 order disproportionate and oppressive, irrational and perverse. Ground 4 The unless order in respect of the testing process disclosure is disproportionate and unlawful. Ground 5 The Judge erred at para 3 of the July 2025 order by requiring the claimants' solicitor to file an affidavit "verifying with reasons compliance" with para 2 of the same order." High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation PART A: RU APPEAL VIII. Introduction: RU appeal 49. Some initial observations. First, there is no appeal against the underlying order of 17 June 2024, which therefore stands unaffected. Second, and to reiterate, I provide my conclusions on the extension of time and permission applications after the examination of the substance of the application. This is because I have fully considered its intrinsic merits in any event. Nevertheless, I emphasise that the RU defendants quite properly argued the issues in the conventional order: extension of time, followed by permission, then substantive merits. Third, I have found it essential to understand in depth the procedural context of the making of the appealed order. It is to this I turn first. RU procedural history 50. Mr Boardman prepared a statement dated 15 May 2024 for the imminent CMC listed for 20 May 2024. On reading this statement, it became clear to the defendants for the first time that there was a testing process to assess potential claimants. Mr Boardman set out the screening in detail at paras 13- 16: "Testing Process

13. For the Court's assistance, I will now set out our testing process for each of the Claimants.
14. When a player contacts us to say they are symptomatic and would like to join the action, we aim to give each individual,
 - i) a neurology interview; ii) a neuropsychological assessment, and iii) a brain scan, i.e., an MRI with imaging. There are some exceptions to this namely where, a) an individual has already been diagnosed with dementia/Parkinson's disease/Motor Neurone Disease by the NHS or privately and may not require additional testing; b) an individual has already been in part tested by a credible organisation; or c) where we represent the estate of a deceased player, which we now do on behalf of six rugby players. The focus for the estates of the deceased is to review the clinical and post-mortem records, and have a neuropathologist produce a report.
15. However, for a large majority of new joiners, it costs between £10,000 to £15,000 to be fully tested by us. That figure varies depending on the time taken to perform the neurology interview and neuropsychological assessment, and the type of brain scan. I provide some of the (redacted) invoices at Exhibits RB6 to RB8. Often, the neurologist and/or neuropsychologist may request that they speak to the High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation individual on several occasions. In other cases, the Claimant (or often their concerned partner and/or Litigation Friend) may wish to speak to the neurologist several more times to process the diagnosis they have been provided.

16. We also ask that the neurologist draft a letter of diagnosis to assist the individual with getting urgent clinical support as often the players are suffering from chronic depression, anxiety and/or suicidal tendencies. We have already notified the Court of the suicide of two Claimants we represented, and since the last CMC on 1 December, a further three rugby players have died. We anticipate several more deaths during these proceedings.” 51. 52. Unsurprisingly, the defendants wanted to see the documentation generated by this screening process. That desire was animated by the intended selection of a long list of 56 potential lead claimants without the defendants medically examining any of the proposed claimants. This differs markedly from the frequently encountered approach in personal injury claims where a claim form is filed along with a report and then the claimant is examined on behalf of the defendant. Given this different procedural methodology, effective and fair disclosure is indispensable. The CMC in the RU litigation did take place on 20 May 2024, resulting ultimately in what has been called the 17 June 2024 order, the underlying order to the unless order made at the July 2025 CMC. A further CMC was held on 3 February 2025. The day before the hearing, Mr Boardman filed a further witness statement (also dated 3rd February 2025). It included the following undertaking: “4. I make this statement as one of the legal representatives of the Claimants, and in respect of my disclosure obligations in this matter as per paragraphs 4(4), 5 and 6 of the Court Order of 31 July 2024 ('the Documents').
5. I hereby provide an undertaking to the Court that we, Rylands, have disclosed all the Documents in our possession. I am comfortable providing this undertaking because:
- We have contacted all our medico-legal experts and their administrative teams to ensure that they have provided all relevant documents in their possession.
 - We conducted our own extensive review of our case files, including our email archives” 53. The defendants complained of inadequate disclosure of the testing process documents and suggested a new deadline (said to be “final”) for compliance which would be 19 March 2025. The Judge made the following order at this CMC on 3 February 2025: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation “1. The Claimants’ solicitor, Richard Boardman, shall within 7 days of the date of this Order being sealed, file and serve a witness statement to verify that the disclosure obligations required by paragraphs 4(4) [relating to two specific claimants, Messrs Bishop and Evans] and 5 of the Order sealed on 31 July 2024 have been complied with.” 54. The significance of disclosure compliance was obvious to all. The Judge gave directions for the selection of lead claimants from paras 4 to 5: “Selecting Lead Claimants
4. The Claimants and Defendants shall each select 28 claims in the proceedings which together shall form a pool of 56 individual claims (the ‘Pooled Claimants’) as soon as practicable and in any event by 4pm six weeks prior to the November / December CMC. For the avoidance of doubt, the claims selected by the Defendants shall be 28 in total across all three Defendants.

5. The number of Lead Claimants to be drawn from the Pooled Claimants shall provisionally be 21 (the 'Lead Claimants')." 55. On 23 April 2025, Rylands Garth, the claimants' solicitors, wrote to the defendants: "Alleged Failure To Comply With Court Order The Order of Senior Master Fontaine dated 23 June 2023 (sealed 11 May 2023) para 4b, ordered that the Claimant do file/serve condition and prognosis medical reports. This was completed. Later, by the Order of Senior Master Cook dated 17 June 2024 (sealed 31 July 2024) para 4 (4)(b), the Claimants were required in accordance with PD16.4 and to disclose all documents referred to as part of the ""testing process"" by 31 October 2024 (later extended). to serve medical reports All documents in possession of Rylands Garth have been disclosed. Furthermore, as the Claimants' solicitors, we have used our best endeavours to achieve compliance with the Order, in circumstances where we are involved in a large group action, with clients suffering permanent and debilitating brain injuries, who are themselves dependent on third parties and medical experts to assist them in complying with their disclosure obligations." 56. On 9 May 2025, Mr Tracey of Weightmans on behalf of the Rugby Football Union responded to Rylands Garth: "Disclosure obligations High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation The requirement to disclose documents is not limited to those which may be physically in your offices or your possession. We refer you to CPR 31.8(2) which provides as follows:
- 2) For this purpose a party has or has had a document in his control if -
 - a) it is or was in his physical possession;
 - b) he has or has had a right to possession of it; or
 - c) he has or has had a right to inspect or take copies of it." (emphasis provided) 57. In anticipation of the July 2025 CMC, Mr Boardman filed further statements dated 10 and 15 July 2025. The defendants contested significant parts of their contents and filed statements in response. They were from Mr Burton dated 16 July 2025 and Mr Tracey dated 17 July 2025. These defendants' statements do two things. First, they identify specific cases where it could be demonstrated that there were further testing documents to be disclosed, for example because of references in medical records. Second, both statements assert that such failure was likely to be illustrative of a much wider problem of non-compliance with the 17 June 2024 order. This would prove to be significant: the complaint was raised the question of specific failure raising concerns about wider general disclosure failure. July 2025 hearing 58. The RU defendants submitted during the hearing: "Our complaint with regard to disclosure is first of all that Mr Boardman seeks to limit his compliance with your order to documents that are at any time within Rylands Garth possession. Secondly that if there is a document that comes within the scope of the 2024 order, but for some reason Mr Boardman feels it appropriate to say the claimant is not relying on that document, then he thinks he has no obligation to comply with the order." 59. During the hearing, the Judge commented: "I am bound to say Mr Block, because it is abundantly clear to me that Mr Boardman has been proceeding under – or labouring under a very grave misapprehension as to what this order actually meant. I do not intend to go into that, but I have made it clear what the order meant.

I hope the order was clear on its face, but he was wrong. And if necessary, I will so find and the proposal put forward by Mr Block seems in the circumstances, a most sensible one because the solicitor who is conducting the disclosure exercise in this case was required to do something which he did not do and which he now should do. And I stressed at the last hearing the importance of filing that with the statement because it that certain applications may or may not be means High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation forthcoming. And the fact that they were in this case, is largely seemed to me, down to his interpretation of the order. And there will be other reasons, but that as a – certainly as far as the Union claims are concerned, seems to me to be an eminently sensible way to move through that unfortunate incident.” 60. The appealed order made at the July 2025 CMC has been previously set out, with the unless order in it. After the hearing, the claimants wrote to the Judge in an email: “If the Unless Order is to apply to documents and claimants beyond Appendix A, then in the absence of any specific findings the claimants do not know what more the claimants are required to do. Can the Court now please confirm the specific non-compliance that is required to be cured for each individual claimant.” 61. Following rival submissions from the parties about the meaning of the order, the Judge provided his ruling by way of email on 18 August 2025: “The Defendants’ wording accurately reflects the decision of the court. The court decided that there had been widespread non compliance with the order of 17 June 2024 which was primarily due to Mr Boardman’s misunderstanding of the previous order. In the circumstances it did not make detailed findings of breach in respect of each claimant as to do so was not necessary or proportionate, what was required was compliance with the existing order by all C’s. The unless order was made to ensure that the existing order was complied with. As the Court made clear, it is not merely the documents which Cs “rely upon” that must be disclosed, or the documents in the possession of Cs’ solicitors, that must be disclosed, but all documents generated as part of any testing process. This information is within the knowledge of Mr Boardman.” 62. The claimants’ challenge on appeal to para 2 of the July 2025 order is as follows: “a. its removal altogether or, in the alternative,

- b. its replacement by an order merely requiring “the Claimants’ solicitors ... to use their best endeavors (sic) to obtain any neuropsychological tests results relating to the players as set out in the Defendants’ re-Amended Schedule titled ‘Claimants for whom unless orders are sought & the missing document type’ attached at Annex A to this Order.” High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation IX. Discussion: RU appeal 63. I structure my analysis by first giving a general overview of the RU appeal and the breadth of the unless order, before examining the individual sub- grounds and then providing the court’s conclusion. Overview 64. I have considered and rejected the claimants’ legal submission that findings of breach or default are a precondition for the making of an unless order. To the extent that the argument is extended to the necessity of making a finding in individual cases as a matter of proportionality or due process, I reject that argument. Naturally, in personal injury procedural practice, unless orders are at times made following specific breach findings. However, conditional orders are a flexible and adaptable

tool for managing a case by providing a consequence for non-compliance. Whether the making of the order falls within the wide case management discretion of a judge, including in a case where no specific finding of breach has been made, depends on all the facts. It is the Judge who is best placed to assess this. The Court of Appeal has warned against hamstringing the tool's flexibility by the building of unnecessary legal architecture around what is a clear, simple, draconian but adaptable power granted by CPR Part 3. 65. In this case, there had already been several extensions in the date for disclosure. But the unless order is not necessarily the end of the road. In an individual case if default is established by admission or court finding at the specified date, the offending claimant has the opportunity to seek relief from sanctions. Narrow or general? 66. A further prime challenge to the unless order is to its general application across the RU claimant cohort. This is because the filed application for the order only identified a limited number of claimants who were said to be non-compliant. 67. First, fairness. The first criticism of the order is that there was no notice of the broadening of the scope of the unless order sought. This submission fails to recognise that during the July 2025 two-day hearing, the Judge expressed his concerns about the extent of Mr Boardman's misapprehension about his disclosure duties in the proceedings generally. With that unfolding situation, the RU defendants broadened the scope of their application. It cannot be said that the claimants did not have an opportunity to address the broadened parameters of the application. It was argued about during the course of the July 2025 hearing. The wider disclosure concerns were heralded in evidence filed by the defendants before the CMC. Therefore, there is no valid fairness point. 68. Next, scope. The question is whether the general unless order granted by the Judge was within the ambit of his discretion. Given what the Judge deemed serious and fundamental misapprehensions or errors of approach by Mr Boardman, the defendants were concerned that there was a material risk that High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 69. 70. 71. the flawed approach extended more widely than any individual identified defaulting claimant. As noted, in their statements filed shortly prior to the July 2025 CMC, and in direct response to the statements of Mr Boardman, Mr Tracey and Mr Burton made this point about the failures extending beyond the illustrative examples. The Judge for his part had serious concerns about the pervasiveness of the disclosure failures. He was right to be so concerned. The court's concern was informed by Mr Boardman's various attempted interpretations of his disclosure duties that did not withstand scrutiny. They were obviously flawed. First, that he only had to disclose documents in his possession at the time of his witness statement in May 2024 when he first mentioned the testing process. Second, that he only had to disclose documents in his possession or coming into his possession. Third, that he only had to disclose documents that the claimants relied on. The Judge was plainly concerned about these basic and serious errors of understanding. There was also concern expressed about how Mr Boardman approached the question of raw data imaging and raw test data. The claimants in their skeleton argument at para 87 are correct to state that the Judge criticised Mr Boardman's approach "severely". It was the extent of the concern and the sheer depth (fundamentality) of Mr Boardman's misconceived approach that justified the Judge's making of general orders. The Judge had to get the case "back on

track”, as the defendants put it. The unless order was the case management tool he chose instead of striking out immediately. In my judgment, an unless order was unarguably open to him and clearly well within his reasonable discretion. There was a serious erosion of the confidence the court could safely place in the way the disclosure process had been conducted given what the Judge called Mr Boardman’s “complete misunderstanding of his responsibilities.” Those words are not chosen by an experienced judge lightly. He had by that point managed these proceedings with multiple applications and hearings for over 18 months. He knew. The Judge said in his February 2025 judgment that he intended to use his wide case management powers “creatively”; he had said as far back as the February 2024 CMC, albeit in respect of the RL claimants, that if there was non-cooperation in the provision of forms of authority from claimants “then there may be consequences” (5G). Both leading counsel for the RL claimants and Mr Boardman were in attendance at the February 2024 hearing when the Judge said this. He further said, “I am not in the stage yet of putting in any unless orders” (23D), so this type of order had been mentioned 17 months previously. There can have been no doubt on the part of Mr Boardman and counsel that the proceedings had to be actively progressed. Indeed, in the February 2025 judgment, the Judge said: “4. The court now wishes to ensure that there is active progress in this litigation, so that it can arrive at a point in November/December, probably December of this year where High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation directions to trial can be made in respect of the test cases, and I will say more about that process later.

5. To that end, I proposed, and the parties have accepted, that case management conferences should be listed, one in late July and another that both case in December. I propose management conferences be listed with two-day estimates.” 72. 73. The July 2025 CMC was the first of those CMCs envisaged by the Judge for later in 2025. In that context, the Judge could have proceeded to investigate the case of each allegedly non-compliant claimant and make a finding about compliance. That would have consumed a very significant amount of further court time, there can be no doubt about that. Gauged by the extended hearings before the Judge - and indeed before me - it is entirely predictable that such a granular individualised enquiry would occupy a very great amount of court time. It could not possibly have been completed within the two-day July 2025 CMC. Given the Judge’s wish to actively progress the proceedings, the Judge expressly rejected making findings about individual non-compliance as unreasonable and disproportionate. Applying the appellate test, this decision was to my mind unquestionably comfortably within the broad ambit of his discretion and cannot be faulted. Equally, making a general unless order lay well within the generous margin of his discretion. I cannot accept that the Judge’s decision was unreasonable or perverse, or suffered from any of the further condemnatory adjectives the claimants have deployed at various points. The key thing for the Judge, as he had said back in February 2024 in the RL CMC, was to progress this multi-party litigation in a “proportionate and sensible manner”. In judging the reasonableness of his order, it must be firmly borne in mind that no claim would be struck out automatically. It appeared that by the end of the hearing before me, the claimants accepted that: in other words, the mere

assertion of default by the defendants was insufficient to strike out. I find support for this approach in Marcan itself, where Moore- Bick LJ said at paras 37-38: “37 The effect of the order made on 21 July 2006 was that in default of compliance the claim stood dismissed and Marcan became liable to pay the defendants’ costs in an amount to be assessed. As a result the defendants became entitled to obtain judgment in their favour, but since the party in default in this case was the claimant, it was necessary for them to make an application to the court in order to do so (see rule 3.5(5)); and since there was a dispute about whether Marcan had failed to comply with the order, it was necessary for that application to be supported by evidence setting out in sufficient detail the nature and extent of the alleged default. In its opposition to the defendants’ application Marcan relied on a witness statement made by Mr Yamvrias on 11 August 2006 in which he sought to demonstrate that all relevant documents had been disclosed and on correspondence High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation between the parties’ solicitors culminating in a letter from Marcan’s solicitors to the defendants’ solicitors dated 1 September enclosing further documents relating to the Greek proceedings. 38 The only matters the judge had to decide when the matter came before him on 5 September, therefore, were whether the evidence was sufficient to establish a breach of the order of 21 July, and if so, whether the order being sought by the defendants properly reflected the effect of the sanction which that order had contained.” (emphasis provided) 74. Before strike out, further safeguarding and balance are provided by the availability of an application for relief from sanctions. Another part of the Judge’s evaluation in granting the unless order must be the central importance of the disclosure sought to the fairness and accuracy of the lead claimant selection process. The refusal of the RU defendants’ application to medically examine the claimants was justified by the provision of thumbnails, condition and prognosis reports and the medical records – by disclosure, about which the Judge found fundamental flaws in Mr Boardman’s general approach. X. Sub-grounds: RU appeal 75. I provide a brief summary of the court’s assessment of each of the sub- grounds, concisely stated since it is unnecessary to set out laboriously what is of general application to all the constituent elements of the prime ground already provided in the immediately preceding overview. Ground 1(a): the Learned Judge took account of irrelevant matters in finding that there had been ‘misapprehension’ of the meaning of the orders in rugby union, when this was a finding made solely in respect of paragraph 3 of the Order of 23 February 2024 (medical records) in the Rugby League Litigation 76. A threshold complaint by the claimants is that the Judge impermissibly transposed his concerns about compliance with RL medical record disclosure to a failure to comply with the testing process order in RU. This does not hold water. The complaints about disclosure failures by the RU defendants did not appear out of nowhere. They had been strongly voiced at the February 2025 CMC in the RU litigation. The concerns resulted in the Judge making an order for an additional witness statement from Mr Boardman “within 7 days” verifying compliance with para 5 of the July 2024 RU order, which is of general application to the RU claimants (along with the specific para 4(4) order in respect of Messrs Bishop and Evans). For the July 2025 CMC, the defendants had filed detailed witness statements from Messrs Burton and Tracey identifying alleged disclosure breaches. While it

is true that Mr Block of counsel noted that he had been listening while the picture of disclosure misunderstanding in the RL litigation emerged, the question of disclosure High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation failure in the RU litigation was a separate and serious matter laid clearly before the court. Mr Block submitted to the Judge: “Mr Block KC: It occurred to me when listening to these exchanges between yourself and other counsel this morning, that we and the Court really need to be satisfied when Mr Boardman is told by his counsel and members of his staff are here, that his interpretation of the order is incorrect. That he goes away, doesn't necessary work, thinks about it, and confirms to the Court that he has complied with the order according to the correct interpretation and is very clear in the White Book what disclosure means.” 77. Mr Block submitted elsewhere to the Judge: “MR BLOCK KC: So, against the background that it is absolutely clear from the exchanges, if one takes Mr Tracey’s witness statements and Mr Boardman’s, and then one sprinkles in some of Mr Burton, that there are ships that pass in the night and there shouldn’t be. And that’s the way to deal with that. It’s also absolutely clear that the date that the assurances were given to you orally at the last hearing [February 2025 regarding RU] and subsequently in the witness statement [from Mr Boardman] that those are based on a misapprehension as to what the order said. And if you are with me that far, then it would seem sensible because the one thing that we do not want it to be doing in the future is arguing about what the order means. It would be sensible for paragraph two to make an order in the terms set out there. And I would suggest that to make it absolutely clear, it would say the claimant solicitor files and serves a further witness statement.” 78. The reference to the two solicitors acting for RU defendants makes clear what is being discussed: RU disclosure non-compliance. The reference to the previous CMC is plainly a reference to the previous CMC in the RU litigation. Thus, while there was reference to the earlier exchanges about RL disclosure, Mr Block was raising a wider point about whether Mr Boardman had complied with his disclosure duties more generally and in the RU litigation specifically. Mr Block does not represent any RL-only claimants. He has no professional interest in their cases except to the extent that the flaws in the RL disclosure exercise may inform the disclosure failures in the RU litigation clearly earmarked by the RU defendants in their targeted and detailed filed evidence in advance of the July 2025 hearing. The transposition complaint made by the claimants is misplaced. The RU defendants’ application for unless orders was filed on 24 June 2025. Originally, they sought unless orders against 40 claimants, identified in schedule A of their notice. This was increased to 61 claimants on 27 June 2025, and then two were removed leaving the figure of 59 claimants in schedule A before the Judge at the July High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 2025 CMC. Therefore, the question of unless orders in the RU litigation was directly and unmistakably before the court at the July 2025 CMC on a concretely particularised basis and the RU defendants had expressed grave concerns about the flaws in the claimants’ compliance with disclosure obligations. What was significant was the Judge’s conclusion about the nature of the errant approach to his disclosure duties by Mr Boardman. The RU defendants were able to provide examples of what they submitted were defective disclosure. The defects identified in the witness statements filed for the July 2025

CMC by Mr Burton and Mr Tracey on behalf of the defendants were only illustrative of the disclosure failures. Thus, it is unarguable that the disclosure failures that exercised the Judge were restricted to the RL litigation. Ground 1(b): made the Orders notwithstanding no finding of non-compliance on the part of any RU Cs and 1(e): failed to have regard to Schedule of 59 Alleged Non-Compliant RU Cs 79. 80. As explained, a finding of non-compliance is not a necessary precondition for the making of an unless order in law or on the facts of the case. I simply add that in the post-hearing email correspondence, it was submitted on behalf of the claimants that “The Claimants accept that the final order [unless order] applies to Appendix A.” If this is a concession that the unless order was properly made against the Appendix A claimants, this does not sit easily with the other submission that the Judge was obliged to make a finding of breach or non-compliance in “each and every alleged breach” (as the claimants put it in column 5 of the table of submissions) in which an unless order was imposed. During the hearing, the position changed about the significance of the schedule of non-compliant claimants. As explained in my overview, the extent of Mr Boardman’s errors resulted in the Judge reasonably harbouring legitimate concerns about wider disclosure failure. As such, it was unnecessary to restrict his consideration to the schedule and the allegedly non-compliant claimants on it. Ground 1(c): failure to give reasons for any non-compliance 81. The reasons provided by the Judge were sufficient to understand why he determined that an unless order was necessary. He provided an ex tempore judgment. This was an appropriate and proportionate course in keeping with his desire at a case management hearing to keep the litigation moving forward. There is no valid procedural fairness challenge to the order: it was perfectly clear why the unless order was made in respect of the RU claimants. The Judge could always have been asked for fuller reasons. He was not. It was perfectly clear what the Judge ordered and why. Ground 1(d): failure to make findings relating to non-compliance with paragraph 6 of the Order of 17 June 2024 High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 82. In the 17 June 2024 order, para 6 refers to paras 4 and 5 and of the same order. It is para 5 that was of prime importance given the disclosure issues with the testing process. That was Mr Boardman’s misunderstanding: about his disclosure duties in respect of the testing process. The defendants were “unconcerned” with the thumbnail disclosure (para 4); their criticisms of the disclosure failures centred around para 5 and the testing process. It was unnecessary to make findings generally about non-compliance with para 6 for the reasons given generally about making findings of fact at the July 2025 CMC. Ground 1(f): making a final order in relation to “DTI reports and DTI imaging or sequences” when a separate order at paragraph 7 already dealt with the matter” 83. 84. 85. Mr Boardman says in his witness statement dated 10 July 2025 that there had simply been “an inadvertent oversight by [Dr MacSweeney] when she meant ‘DWI’” instead of DTI (diffusion tensor imaging).” No statement from Dr MacSweeney confirming such error was provided to the court. It would have been a very simple matter to do this. This clearly was a source of further concern to the defendants and the Judge. Para 7 of the July 2025 order requires the claimants to “serve a letter” from Dr MacSweeney confirming whether there has been a typographical error and explaining the error. This was ordered to be done by 31 October 2025. This cannot of itself be

deemed unreasonable; it plainly was. Para 2 of the July 2025 order requires an affidavit from Mr Boardman. Para 2 provides: “(2) The Claimants’ Solicitor do file and serve an affidavit giving full particulars in respect of each Claimant named on Claim Forms 1 – 5 of:

- a. All medical reports/letters, brain scanning and reports thereon (for the avoidance of doubt to include all MRI, DWI and DTI reports), and medical assessments, obtained, prepared or undertaken, as part of testing the Claimants as referred to in paragraphs 5 and 6 of the order of 17 June 2024.” It was well within the Judge’s case management discretion to make such an order given the flawed approach to disclosure on the part of the claimants. An individual claim would be struck out not simply should Mr Boardman fail to file an affidavit as ordered by the court, and there is no credible reason why he could not. But the individual claimant would have to be proved to be (or conceded as being) still in default of the paras 5 and/or 6 disclosure obligations. Even if that were the case, an application for relief from sanctions would remain open to such a defaulting claimant. In their oral reply, the claimants submitted that the central issue in the appeal was “proportionality”. I accept that proportionality is critical. The remaining basis of the appeal, the legal precondition basis being rejected, rests on the allegedly disproportionate nature of the imposition of the unless order. In an High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation appellate review, and without second-guessing the Judge, I must assess whether the making of an unless order of general application against all RU claimants is within the ambit of the Judge’s discretion. Given the background I have set out in detail, including the central importance of proper disclosure for the selection of lead claimants, the repeated extensions, the strong indications by the Judge from early in proceedings of the need for active progression of the litigation, the gross misunderstandings of Mr Boardman about his disclosure duties and the associated puzzling nature of these fundamental misconceptions with his unconvincing explanations, it was entirely reasonable in my judgment for the Judge to lack confidence in the adequacy or legal accuracy of the approach to disclosure beyond the instances originally identified by the defendants. It was a reasonable concern that there was more pervasive disclosure. It was unnecessary and disproportionate to proceed to make individual findings of non-compliance or breach in every single allegedly non-compliant claimant’s case. The claimants submit that a “huge plank” in their appeal and a “problem for the defendants” is that the Judge failed to “look at even a sample of breaches”. If “to look at” means to make findings in, I reject that submission. The Judge was satisfied about a larger and more fundamental “problem”, as the claimants term it, which was Mr Boardman’s fundamentally misconceived approach to disclosure. The Judge was justified in this concern. failure. In large-scale multi-party litigation, it seems to me that from a finding of such macro wide-scale error, it is unnecessary for the Judge to descend into making findings of breach in individual cases before making an unless order, let alone “every one of them”, as the claimants submitted. Such a course would be the opposite of the effective, efficient and proportionate use of court time and resources. The decision is always acutely fact-specific. The Judge at first instance, who here has carefully managed these proceedings since December 2023 was well placed, and indeed best placed, to make such a judgment.

This court must exercise the necessary appellate restraint. It will be slow to interfere with the robust exercise of the Judge's discretion. At times the claimants appeared to erroneously characterise the Judge's order as resulting in automatic strike out without a finding of default or breach in any individual case. The defendants have never maintained that. It is not a valid or viable interpretation of the Judge's order and not consistent with legal principle. I fully recognise the Court of Appeal's deprecation in *Marcan* (para 36) of the use of unless orders for "good housekeeping" purposes. These orders were not granted by the Judge to keep house. The Judge had legitimate and profound concerns about serious breaches of the approach to disclosure by the claimants that risked significantly impeding the progression of the proceedings and resulting in further extensive delay. He had strong, identifiable and rational reasons to make an unless order in the RU proceedings. 86. 87. Extension of time 88. There are two questions. First, whether the appeal is out of time. Second, if it is, whether an extension of time should be granted in the court's discretion. High Court Approved Judgment: Mr Justice Dexter Dias When time runs from Rugby head injury litigation 89. The question of when time begins to run is addressed in CPR Part 52. CPR 52.12 provides as relevant: "Appellant's notice 52.12

- (1) Where the appellant seeks permission from the appeal court, it must be requested in the appellant's notice.
- (2) The appellant must file the appellant's notice at the appeal court within—
 - (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
 - (b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal." 90. The lower court did not direct any specific or different time for filing. Therefore, time runs from the day the order is made, not the day the order is sealed. That day was 23 July 2025. The claimants' application notice is dated 2 September 2025. This is 41 days after the order sought to be appealed. The time limit is 21 days. Therefore, the appellants' notice was filed out of time. Reasons for delay 91. Cognisant of the 21-day time limit, a party can apply to the court for an extension of time. The claimants pointed out in oral submissions that the Judge was asked in these terms: "Paragraph 3, the Court will note that an application to vary this Order has now been issued. Can the Court please confirm that time for permission to appeal this part of the Sealed Order is extended until after determination of the application to vary" 92. 93. The Judge did not extend time. Therefore, the claimants should have filed a protective notice of appeal. They did not. Mr Boardman provides reasons for the filing delay in a statement dated 9 September 2025 and the appellants' notice itself at section 11 (of the N161). Once more, the history of unfolding events is instructive. On 25 July 2025 – two days after the hearing ended – the RU defendants sent the claimants a draft order to reflect the Judge's decisions at the July 2025 CMC. The contents of the draft were disputed by the claimants. Thus the High Court

Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 94. 95. Judge was required to intervene and clarify what his orders were. It is significant that the claimants did not respond to the defendants' draft until 8 August 2025. The claimants' counter-draft was significantly different. It became necessary to set out rival submissions. The Judge ruled on 18 August 2025 on what order truly reflected his CMC decision-making. The court- approved order was precisely as the defendants had set out in their circulated draft. To the suggestion that the unless order confirmed by the Judge was a "surprise" to the claimants, one only has to read the transcript of the July 2025 CMC. It is clear that the Judge ordered unless orders. It is for this reason that the defendants were able to circulate a minute in those terms two days after the hearing ended, and that draft was approved by the Judge as accurately reflecting his thinking. This was not hard to do by anyone reading the transcript, let alone attending the two-day hearing. The appellants' notice states that the Judge was "not clear" about the wording of the orders he made. It is true that the Judge, as was his previous practice in the conduct of the rugby litigation, left it to counsel to agree a draft of his orders. There is nothing remarkable or unusual about this. The claimants may not have liked the granting of the unless order and it was open to them to appeal it by making a timely application, but it cannot be credibly argued that they did not know that an unless order had been made. When the claimants finally submitted their draft on 8 August, there is force in the defendants' submission that the claimants sought to "relitigate" what the Judge intended, or as the defendants also put it, "resurrect arguments" that the Judge had firmly rejected at the hearing. The claimants' draft proposed that the unless order would be triggered if a claimant's case was "not dealt with in the affidavit". I concur with the defendants' assessment: the claimants' draft "effectively emasculated" the Judge's order. It is unsurprising that the Judge rejected such an interpretation of his order. The drafting of an order to reflect the court's decision should not be litigious or transactional. It should be a faithful and fair mirroring. The Judge was right to respond to the claimants' draft robustly. He was clear about what he ordered as were the defendants, justifiably. The exercise should not be the preparation of a minute of the order one wishes the court had made, but an accurate representation of what the court did order, unfavourable or not. The date of the order is 23 July 2025. The claimants submit in their appellants' notice that the RU order was sealed on 21 August 2025. That is not a sufficient reason: the date of the order was on day 2 of the CMC on 23 July 2025. In circumstances where there is a "significant dispute" about the order granted by the Judge, and where the defendants have provided a minute of the order significantly at variance to the claimants' conception of the order granted, there is no sound or defensible reason not to file a protective N161 as the time limit loomed. The application to vary is not a substitute for filing an appellants' notice in accordance with the procedural rules. Further, there was no need to wait for a transcript before filing a notice of appeal. The grounds could comfortably have been filed within time with a rider that the grounds may need perfecting following receipt of the transcript. This is an entirely conventional way to conduct an application for permission to appeal. Mr Boardman further states in his statement of 9 September 2025 at para 11 that: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 96. 97. "the necessity of making appeals became

increasingly apparent as the Claimants' legal team have set about determining what is required to meet the terms of the Orders." This cannot be a good reason not to file an appellants' notice in time. The underlying orders regarding the testing process reach back to May 2024. Further, if solicitors take on substantial litigation such as this, they are duty-bound professionally, both to their lay clients and to the court in their capacity of officers of it, to ensure they have made appropriate and effective logistical and administrative arrangements to comply with the lawful orders of the court. Equally, the suggestion that time within the 21-day period for appealing was spent amending the particulars of claim (to the extent such argument is maintained), provides no sound basis not to apply for permission to appeal within the stipulated time when there was no permission to amend. Procedural rules must be enforced with rigour. This was the ethos of the changes to the CPR in 2013, as notably stated by the Court of Appeal in *Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537 ("Mitchell") at paras 46-48, albeit revisited in *Denton v TH White Limited*

[2014] EWCA Civ 3926 ("Denton"). There must be a different approach to compliance with procedural rules and the orders of the court. I recognise that this passage in *Mitchell* is principally aimed at relief from sanctions under CPR 3.9. However, this is materially equivalent to applications to extend time (*R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633 at para 36). In *Mitchell*, the court said: "46 The new more robust approach that we have outlined above will mean that from now on relief from sanctions should be granted more sparingly than previously. There will be some lawyers who have conducted litigation in the belief that what Sir Rupert Jackson described as "the culture of delay and non-compliance" will continue despite the introduction of the Jackson reforms. But the Implementation Lectures given well before 1 April 2013 were widely publicised. No lawyer should have been in any doubt as to what was coming. We accept that changes in litigation culture will not occur overnight. But we believe that the wide publicity that is likely to be given to this judgment should ensure that the necessary changes will take place before long. 47 We recognise that there are those who will find this new approach unattractive. There may be signs that it is not being applied by some judges. In *Wyche v Careforce Group plc*

[2013] EWHC 3282 (Comm), the defendant had failed to comply in all respects with an "unless" order. Walker J acceded to an application for relief under CPR r 3.9 for two failures which he described, at para 61, as "material in the sense that they were more than trivial . . ." But he said that they were "unintentional and minor failings in the course of High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation diligently seeking to comply with [the] order". At para 61 of his judgment, Walker J continued: ". . . The culture which the court seeks to foster is a culture in which both sides take a common sense and practical approach, minimising interlocutory disputes and working in an orderly and mutually efficient manner towards the date fixed for trial. It would be the antithesis of that culture if substantial amounts of time and money are wasted on preparation for and conduct of satellite litigation about the consequences of truly minor

failings when diligently seeking to comply with an “unless” order.” 48 We have earlier said that the court should usually grant relief for trivial breaches. We are not sure in what sense the judge was using the word “unintentional”. In line with the guidance we have already given, we consider that well- intentioned incompetence, for which there is no good reason, should not usually attract relief from a sanction unless the default is trivial. We share the judge’s desire to discourage satellite litigation, but that is not a good reason for adopting a more relaxed approach to the enforcement of compliance with rules, practice directions and orders. In our view, once it is well understood that the courts will adopt a firm line on enforcement, litigation will be conducted in a more disciplined way and there should be fewer applications under CPR r 3.9. In other words, once the new culture becomes accepted, there should be less satellite litigation, not more.” 98. In *Denton*, the Court of Appeal said at para 24: “Guidance 24 We consider that the guidance given at paras 40 and 41 of the *Mitchell* case remains substantially sound. However, in view of the way in which it has been interpreted, we propose to restate the approach that should be applied in a little more detail. A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the “failure to comply with any rule, practice direction or court order” which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate “all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]”. We shall consider each of these stages in turn identifying how they should be applied in practice. We recognise that hard-pressed High Court Approved Judgment: *Mr Justice Dexter Dias Rugby head injury litigation* first instance judges need a clear exposition of how the provisions of rule 3.9(1) should be given effect. We hope that what follows will avoid the need in future to resort to the earlier authorities.” 99. This is the approach I take to the applications for extension of time, treating them as a form of relief. Here the delay was not trivial but significant in duration compared to the 21-day time limit and substantial in *Denton* terms as reducing the time for appeal preparation and producing unnecessary further delay in a case with an already protracted procedural history. No good reasons were provided by the claimants. Taking into account all the prevailing circumstances as I have in my detailed exposition of the nature and history of these proceedings, I refuse to extend time. Conclusion: RU appeal 100. The Judge correctly observed in *Hammon* at para 42: “It will be noted that the court’s conventional powers of case management under CPR 3.1 are very wide indeed and conclude with the power to “take any other step or make any other order for the purpose of managing the case and furthering the overriding objective”.” 101. 102. The set of reasonable solutions to the case management problem confronting the Judge at the CMC in July 2025 was not narrow to the point of being binary. Different judges may reasonably decide on different solutions. That is unobjectionable. The solution the Judge chose was undoubtedly informed by the already protracted nature of these proceedings, with the letter before action in the RU claims approaching five years previously (December 2020) and the particulars of claim almost

three years before (November 2022) with repeated extensions of disclosure deadlines. In these circumstances, the Judge chose a case management solution well within the class of reasonable options conferred on him by the wide ambit of discretion built into the procedural code. As the defendants reminded the Judge in the post-hearing email correspondence, at the hearing the Judge “expressly considered ... an alternative draconian option of striking out the claims, but instead made the unless order to ensure that the existing orders are complied with.” To my mind, he took appropriate and proportionate steps to proactively manage the disclosure failures and progress the litigation. He did so in furtherance of the overriding objective so that the RU claims could progress with expedition despite the challenging circumstances, and thus justly and at proportionate cost. Enforcing compliance with the court’s previous orders is unquestionably an essential element of the overriding objective (CPR 1.1(2)(g)). The Judge gave it necessary and appropriate priority here. The time had come for unless orders. I have at the forefront of my mind the words of Lewison LJ in *Mannion v Ginty* (para 18) that “It has also been said, not least by Jackson LJ, that the culture of toleration of delay and non-compliance with court orders must stop.” Here there has been very extensive delay. At High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation the conclusion of his July 2025 judgment, the Judge found default. He said at para 24: “In short, I find that there has been noncompliance with my previous order ... that there has been a serious breach of those orders, that there has been no proper explanation for it ...” 103. He explained that something had to change to get the proceedings on track: “I have more than once said in the course of this litigation that a new way of operating is required and that a high degree of cooperation between the legal teams is absolutely essential if this to be conducted efficiently and proportionately.” litigation is 104. The unless orders were not simply “good housekeeping”. Having seriously considered striking out the claims, the Judge “doing justice” and in recognition of the “importance of [the claims] to the claimants” (para 24), refused to strike out the claims. An unless order was one of the “other powers” (ibid.) at his disposal and reasonably open to him. The very highest authority emphasises that the appellate court should be slow to interfere with a first instance judge’s robust case management decisions. The Judge had been managing these claims together since the end of 2023 and was very well placed to know what was required and had an in-depth understanding of the litigation needs, far superior to an appellate court on review. He had conducted numerous extended hearings. The appeal is not a re-hearing. I find support for a restrained appellate approach in the Court of Appeal’s decision in *Thomson v O’Connor* [2005] EWCA Civ 1533. Brooke LJ said at para 18: “In my judgment this court should do everything in its power to support the authority of the judges at the coal face who are using their professional skills and the authority that they possess to ensure that litigation solicitors do not go back to the bad old days that existed before the Woolf reforms were introduced...For my part I would be very slow to interfere with the discretion of a judge exercising her discretion in these circumstances unless I was satisfied that there were any material matters which she had failed to take into account.” 105. This is my approach generally to the challenges to the Judge’s case

management decisions. I will not repeat the full exposition. I will refer to it as the “appellate restraint approach”. XI. Conclusion: RU appeal 106. Extension of time is refused. The RU appeal is not arguable and I refuse permission. Even if I had extended time and granted permission, I would have refused the appeal on its merits. The Judge did not err in law in making an High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation legally perverse. unless order, nor on the facts; he did not misdirect himself; the order was not disproportionate, oppressive, It was irrational or proportionate and within the ambit of his wide discretion. I am perfectly satisfied in Huscroft terms that the Judge properly identified the purpose of the order (disclosure) and was mindful of considerations of proportionality. He declined to strike out claims, but chose a less draconian option, while exercising his wide case management discretion through the making of an unless order to insist on disclosure compliance after so much time had passed since the litigation began. The unless order was proportionate to that legitimate disclosure aim and rationally connected to it, that is, likely to materially assist in its accomplishment. 107. Therefore, the RU appeal is dismissed. PART B: RL APPEAL Introduction to RL appeal 108. There are five numbered grounds challenging the July 2025 orders plus an additional ground challenging the February 2024 order. I shall call the final challenge “Ground 6”. Due to its being made first in time, I will deal with Ground 6 first, followed by the associated challenge to the medical records order, Ground 3. Thereafter I will examine Grounds 1, 2, 4 and 5 in turn, before providing my overview conclusion about the RL litigation appeal. XII. RL Ground 6 RL Ground 6: whether in respect of medical record disclosure, if “all means all”, para 3 of the February 2024 order is “disproportionate and oppressive, irrational and perverse”. Claimants’ submissions 109. The claimants submit that if the meaning now attributed to para 3 of the February 2024 order is that “all means all”, the order is “unreasonable, unfair, disproportionate and wrong in law and this Court can and should interfere.” The resulting disclosure task is an “exercise of infinite proportions” and thus disproportionate and unreasonable, placing an unfair burden on the claimants. Such an “impossible” and “onerous” burden can be interfered with on appeal, despite any or any perceived delay in the appeal. Defendants’ submissions 110. The claimants agreed the wording of para 3. The meaning was always clear. There would be disclosure of medical records currently held and all medical records when later obtained by the claimants. The claimants undertook to obtain the medical records. The order reflects that position. Compliance with an all means all order is “perfectly possible”. It took the RL defendants’ legal team “3½ months to identify the missing documents”. Missing or unavailable High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation documents can be explained in an affidavit. The defendants can only properly select lead claimants when they have the “full documentary evidence” for any individual claimant. This is because head injury may have “any number of causes”. It is not a matter of the claimants’ decision which medical records are relevant and they then choose to disclose to the defendants. Discussion 111. The defendants identify the correct logical sequence of decision-making: extension, permission, merits. For the RL litigation, given the nature of the extension application, it is necessary to deal

with it first. 112. 113. 114. Extension of time There has been a delay of 18 months in applying for permission to appeal. It exceeds the 21-day limit by a factor of approximately 25. This is by any measure a serious and significant delay. The reason for the delay is said to be that the true meaning of the disclosure order for medical records only became clear when the Judge clarified what he meant by his order much later in July

2025. I deal with these arguments in Ground 3. As will be seen, they are meritless. I need not belabour the analysis now as it is set out in full shortly. The February 2024 order is clear on its face. Therefore, there is no good reason for the delay. I agree with the defendant that such gross and unjustified delay is the “antithesis of efficient litigation”. Extension of time is refused. Substance of ground Nevertheless, I have decided to fully examine the substance of the challenge to the February 2024 order. The natural and ordinary meaning of the word “all” on the face of the February 2024 order is simply that: all medical records. It is not qualified in the body of the order, whether by recital or any contextual reading from the other terms. The claimants rely on the genesis of the order. This is because as the claimants submit, the final wording “emanated” from discussion between the parties. I therefore trace the evolution of the order. Genesis As the claimants accept, they “did not take issue with the wording” in the order. But they maintain that it was always meant to convey that the claimants would disclose the medical records they held and “all relevant medical records that they obtained for the purpose of instructing their medical experts” for use “in their preparation of condition and prognosis reports”. This is said to be the only “sensible” interpretation. There are many arguments advanced by the defendants against this submission. I introduce the forensic debate by giving but one example, interestingly coming as it does in the evidence of Mr Ralston, solicitor for the RU defendants. The history of these proceedings needs to be viewed in its full context. Mr Ralston points out that at the CMC on 1 December 2023 relating to the RU claims, there was concern expressed by the defendant about the medical evidence served before that CMC (statement, para 22). The RU defendants stated that they had requested medical records three years previously. There was an exchange between the Judge and claimants’ leading counsel in these terms: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation “MS RODWAY: Each of those reports does set out the route by which Dr Alder has concluded that it is the playing career of Mr Thompson, for example, that has led to the cumulative suffering of concussion and sub concussion (inaudible) which itself has been - on the balance of probabilities
- the cause of his current condition. And he does look at whether there is anything other than that that he can, as it were, identify --- MASTER COOK: The gaping hole in this is - I mean, just look at prognosis. “As outlined above, the diagnosis I have made in this case based on the evidence made available for review” - which is what? Mr Thompson's own self-reported symptoms, on the face of it. MS RODWAY: Yes, and the history that is provided of concussions and, as you rightly said, one of the background issues we were trying to obtain - we have gone through trying to obtain disclosure of club records and so on and so forth and that is an unwieldy process and we have put together --- MASTER COOK: But I mean, at the

very least, one needs his medical records. I mean, you as well as I know that there can be all sorts of reasons why someone might suffer a particular unfortunate event. ... MS RODWAY: Yes, but please specify because to try and produce

- how is that going to help, producing 300 medical records. Some of them rightly have no medical records and that --- MASTER COOK: But how do we know which ones are which? MS RODWAY: But I mean this is something that could have been delineated, Judge, on 23 June and it was not --- MASTER COOK: Well, I think it was probably thought that - when one says produce a condition of prognosis report, I mean, does one really need to spell it out that one needs to have the diagnosing doctor --- ... MASTER COOK: But what I am thinking is that based upon the thumbnails that we have - the defendants should be permitted to request the forms of authority to look at the medical records to enable them to take a view as to whether the prognosis, that is in much the same form throughout these documents, is one that they can accept unchallenged on the basis of the claimant's account. MS RODWAY: Well, I am not supposing, Judge, that in the end of the day they are going to accept unchallenged --- MASTER COOK: Well, no but --- MS RODWAY: As we go down the line there has --- MASTER COOK: But that will enable them to pick out their cohort of cases that they say will be relevant to enable them to make such arguments --- MS RODWAY: Well, I still do not understand what inhibits them at the present from being able to do that. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 115. 116. 117. MASTER COOKE: Well, I do, I am afraid and, as I have said, it is basic. You simply cannot have a medical report in this fashion, it seems to me, as a condition and prognosis report because it does not accurately deal with causation.” It is clear from this exchange that the Judge was alive to the RU defendants’ concerns about the need to have sight of the wider medical records of the claimants. Indeed, the Judge raised it himself with leading counsel. This exchange occurred about ten weeks before the impugned order of February 2024 in respect of the RL claimants, but has obvious relevance and casts light on the Judge’s thinking and approach to the rugby head injury litigation more generally. There is no distinction in the importance of medical records for claimants (players) from either code. Indeed, some claimants are cross-code, having played both League and Union. If there are forms of authority “to look at the medical records”, as the Judge put it, that is granting access to the entirety of the medical records of the claimant in question, not simply such records as the expert considered or that happen to be in the possession of the claimant or her or his solicitor at any time. By this point, and to the clear surprise of the Judge, the diagnostic report had been prepared on the basis of the claimant Mr Thompson’s self-reporting of symptoms. Thus, there were no medical records examined by the expert to disclose as the expert had examined none. This is further support that what the Judge had in mind was disclosure of the full medical records. The real question would become who would have carriage of that task. The next step is significant. Following the December 2023 CMC, the claimants disclosed eight condition and prognosis reports for cross-code players. On 21 December 2023, the RL defendants wrote to the claimants stating that the reports were deficient as they were made without consideration of the claimants’ full medical records. In

response, on 11 January 2024, the claimants responded that following the RU CMC in December, the claimants had been sent forms of authority. Once returned, the relevant ones would be passed on to the RL defendants so they (the defendants) could obtain the medical records. The letter from the claimants stated: “These medical and club records, in our opinion, now stand in the place of the Condition and Prognosis reports. Once you are in possession of all medical records, you will be in a position to agree or disagree with our proposed list of lead / test Claimants.” (emphasis provided) 118. There is no indication that “all medical records” is qualified. It is useful here to set out one of the forms of authority – this signed by a claimant in July

2023. The name of the claimant has been removed. “I, XXX XXX, consent to disclosure of copies of all of my medical records, including but not limited to all GP records, records, medical notes, hospital treatment records, High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation rugby medical records, correspondence, assessments, physiotherapy records, and imaging to (i) Rylands Garth, 25 Wilton Road, London, SW1V 1LW (the Claimants, and their advisers); (ii) Weightmans LLP, 100 Old Hall Street, Liverpool, L3 9QJ; and (iii) Kennedys Law LLP, 20 Fenchurch Street, London, EC3M 3BY (the Defendants, and their advisers).” 119. One sees the breadth of the authority. Over six months after such forms of authority, leading counsel for the defendants sent to the claimants’ counsel a draft order on 23 February 2024 including provision of all medical records currently held and all medical records later obtained. This formulation was adopted by the claimants. They prepared a skeleton argument for the February 2024 hearing. It said: “The Senior Master has arrived at a proportionate way-forward in the Rugby Union Claims that should be followed in the Rugby League Claims 19. ...
- c. That the provision of access to medical records through forms of authority being provided would enable the Defendants to participate in the process of determining the appropriate way forward with respect to case management and the identification of lead claimants and common and related issues under any GLO.
20. This way forward was reflected in the Order made following the 1 December 2023 hearing [101]. Such an approach has the major added benefits in furtherance of the overriding objective in the Rugby League Claims of:
- a. Providing the Defendants with sight of the majority of the medical records of the Claimants in a timely manner so as to enable them to make more informed decisions regarding all aspects of the case.” 120. Therefore, coming into the hearing, the claimants were proposing that the defendants would be granted what amounts to unqualified access to the medical records of the claimants through forms of authority. This would inevitably grant the defendants access to all the medical records of any individual claimant. It would grant the defendants access “in a timely manner” to the “majority” of the medical records. Should the defendants seek all the records, there was nothing to prevent them doing so. The purpose was to enable the defendants to “make more informed decisions” regarding “all aspects of the case”. 121. On 29 October 2025, Ms Croydon, solicitor for the RL defendants, filed a

statement for the appeal hearing about what happened during the February 2024 hearing. It is unchallenged in this respect. She notes (paras 17-18) that the Judge: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation “17 ... commented on the fact that the experts required sight of the Claimants’ medical records in order to prepare meaningful condition and prognosis reports. He gave the hypothetical example of a Claimant who had been hit by a car and suffered a head injury; such a history would obviously be a relevant consideration for any medical expert opining on condition and prognosis in the Current Litigation. The short form condition and prognosis reports provided to date were inadequate precisely because there was no consideration given to the Claimants’ medical history.

18. The Senior Master stated that disclosure of the Claimants’ medical records would enable the RFL Defendants to begin the process of identifying whether the proposed Lead Claimants were suitable or whether the RFL Defendants may wish to propose their own Lead Claimants.” 122. The full transcript of the RL CMC reveals a number of relevant passages in the exchanges between both counsel and the Judge during the course of the hearing. Less relevant comments are omitted. It gives important insight into what was being discussed between the Judge and counsel at the February 2024 CMC and justifies extended citation: “MS RODWAY: It is now patently clear, we say, that that is an exercise that is empty in the absence of medical records. ... MASTER COOK: The two issues as regards to medical records; I mean, the claimants have got access to their own medical records, and I would hope if anyone was producing a condition and prognosis report that they would have access to the individual claimant’s medical records ... And in those circumstances, where what was important was that the defendants were put in position where they could participate in the overall scheme of identifying potential claimants ... I know you have access to them anyway, but to make sure the defence, in advance of getting a proper condition and prognosis report, could at least have access to the raw material which would give a fairly good insight into the medical background of each of the claimants. I think that was the, that was my thinking anyway. ... MASTER COOK: Well, that is medical records. What progress has been made on conditional and prognosis reports? High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation MS RODWAY: We cannot deal with those until the medical records. What has happened is that the Rugby League players have been examined, and I think we have got through pretty much the whole report, so that is an objective imaging examination, followed by a face-to-face examination. But we are not in a position to do anything more at present then produce condition of prognosis that is similar to the ones that were thought to be, claimed of being inadequate – MASTER COOK: Totally inadequate, because you cannot have conditional prognosis report unless – MS RODWAY: Well exactly. MASTER COOK: - the author of the report has properly taken into account the circumstances of the claimant. ... MASTER COOK: ... The litigation has to progress in a timely fashion, and sometimes deadlines have to be set with consequences; otherwise, you know, it just gets completely out of control. ... MS RODWAY: Well, as I understand it, and I need to have direction from the Court here, both the defendants and the Courts are finding it

unacceptable that any condition of prognosis report is finalised or sent/completed without having access to all the medical records. MASTER COOK: Well, it need not have access to all of the medical records, but it has to take into account that the claimant's medical history and/or be based on a proper clinical interview with the claimant. I mean there maybe all kind of likely events that you have to go through, things that you have to explain in the usual way of reaching a diagnosis, and without that the process is simply suspect. MS RODWAY: That was the process that was undertaken. MASTER COOK: Yes. MS RODWAY: A doctor had already set out his discussions and interviews with the claimants, and that was considered, and you accepted, that that was not sufficient in the absence of the actual physical medical records; and so, we would say, in order to keep things running smoothly, the records have to be produced first. ... MS RODWAY: Providing the defendants with the medical records enables them to begin the process of identifying whether those candidates are suitable lead candidates or whether they wish to put up candidates of their own. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation ... MR AUDLAND: ... But what would not be right is only to serve anything other than the reports for the test claimants, and then to give us the onerous duty of obtaining all the records, and then to let us guess what the diagnosis or symptoms of all these missing, unidentified claimants whose diagnoses are yet to be set; and we have to work that out. ... MR AUDLAND: Because it is not true that there has been no disclosure. There was a contract relating to an agreed parameters of pre-action disclosure, and that has been given. MASTER COOK: Right. MS RODWAY: We had no disclosure prior to 2000, of course, there was a problem with – MASTER COOK: Well, I am not going to get into disclosure now. MS RODWAY: Yes. MASTER COOK: There is a process of discussing this has begun, and, as you will be well aware, the parties are encouraged to discuss and agree these issues in advance of any full-scale assault on the Court. So, I will leave disclosure with you firmly for the moment. But I can see that there has been some progress in this case. MS RODWAY: In the Rugby Union decision/order, Judge, you ordered that the defendants had carriage of assimilating and bundling of the medical records, and hence why the forms of authority were being sent to them. So, I do not quite understand what Mr Audland is saying, perhaps he does not – MASTER COOK: Well, that was mainly in the Rugby Union case because they had nothing, and they wanted to get on with the job, and they had resources to do that. MS RODWAY: Well, in the present case what we had assumed was the same pattern would be followed, because the, we have been sending the forms of authority across to the defence. I do not know what they wish now, because if they are wishing us to simply produce bundles, then so be it; but I think that seeks some clarity. MR AUDLAND: Well, I think the answer to that is that we will be happy, if claimant is not doing it, then we will certainly will. MASTER COOK: Yes. MR AUDLAND: And we will obviously share that disclosure; with the claimants, but what I am saying is that is no replacement for – MASTER COOK: For a condition of prognosis report. MR AUDLAND: For a condition of prognosis report. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation MS RODWAY: We discussed previously the 23, and I sought the time period that I have required or requested for those. If we are looking at a further 150 condition of prognosis reports, then clearly you will understand we need a considerable length of time,

longer than July. MASTER COOK: Yes. MS RODWAY: So, we are quite happy for this to be, as it were, in a two-stage process, but focusing first of all on the 22 or 23 that we have identified that pretty much cover all bases, and certainly all potential diagnoses. But we do need some guidance, Judge, as to what happens the remaining 150 or more, because we do not know [inaudible], but there is going to be medical documents, GP documents, hospital records such as they are, club records, and both parties are going to have those available to them. In those circumstances, for the purposes of the condition of prognosis report we would look to seek an order that they are very similar to the ones that were produced [inaudible], they are a relatively short form, setting out what is seen, what happened on examination, and what the diagnosis of the condition and prognosis is. I do not know if you remember seeing some of those. MASTER COOK: Well, I did not. I thought the short form reports that I saw were pretty inadequate, which is why I made the order that I did. MS RODWAY: All right. We need an identification, because clearly if there are to be very comprehensive – MASTER COOK: Well, is not a question of it “comprehensive”; it is question of complying with the Rules of Court. I think I pointed out on the last occasion, these are personal injury claims. MS RODWAY: Yes. MASTER COOK: And there are certain basic rule requirements of claiming a personal injury claim. And those requirements must be met. MS RODWAY: My understanding was that the inadequacy related to not referring to medical records. MASTER COOK: That was because there was simply no indication that any consideration at all – MS RODWAY: Yes. MASTER COOK: - had been given to the claimant’s past medical history. And I think I remember posing, posing an example, let us assume that the claim of X had been hit by a car whilst crossing the road and had been knocked to the ground and suffered a head injury, would that not be a relevant matter – MS RODWAY: Obviously. MASTER COOK: - to put in a condition and prognosis report in a case like this? Answer, obviously. And if there is no indication that something like that has been given any thought, you question the value of that short form of High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation report. [emphasis provided] And least rule that sort of thing out; if you can that is fine. But if it has happened, then that incident, or any other similar incident, must be referred to. MS RODWAY: Referred to. MASTER COOK: And fed into the conclusion as what is the operative cause or the predominant cause, or how do you care to define it. MS RODWAY: I would not have thought that is a most, that comes under the [inaudible], under the reviewing of medical records; and I will not comment on the content of otherwise for things that are not. MASTER COOK: Yes. MS RODWAY: It is really a question of what is reasonably going to assist the Court and the defendants in respect of all of these players, because it is a question really of diagnosis, Judge, is it not? It is a question of, is there are – MASTER COOK: It can be simply wider, Ms Rodway, it can be simply wider than diagnosis. Because as I looked at the conditions here, I mean dementia, there could be genetic factors there as well it runs in families. MS RODWAY: No no – MASTER COOK: I mean these things have to be feed in. MS RODWAY: Yes. MASTER COOK: And understood, you know, just because it is there does not mean there is cause– MS RODWAY: Doctor [inaudible] had already been setting out his view as to the origins and the causation of the diagnosis, and that has – MASTER COOK: Absolutely, and again that was something that was lacking from

the previous – As long as that is understood, then those reports will be of utility. The last thing I want to happen is that you get Doctor [inaudible] to produce 170 short form reports which then have to be duplicated because there are omissions in the methodology. And then you have to do it again at great cost; and in case like this it should be done right the first time around, and that is really what I am diving at here. The exercise must be done properly, and it is done, there is no need to go over it again, and then the defendants know that the job has been done properly, and that can then feed into their decision-making process; we can then narrow down the issues and then get on and consider how best these claims should be managed. ... MASTER COOK: ... as the parties will realise, they are under a duty to co-operate with each other and the Court to further the overriding objective. And that duty is even stronger in multi-party litigation such as this, because, as you all know, it takes up an enormous amount of Court resource, the parties High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation incur an enormous amount of cost, and it is controlling that and bringing it forward in a proportionate and sensible manner which should be at the fore front of everybody's minds, and I mean everybody's minds. And I will almost certainly want to hear that those words have been taken into account when we next meet, and that we have some constructive proposals on the table, and that we have narrowed down and got a plan, or at least competing plans, about how we go forward. So, I will shut up now. I have said enough, and I have said it many times before; but I do not think it can be said too often. MS RODWAY: Given what you have said, Judge, it does occur to me that, at the moment, we can probably agree to word as such by further order in relation to this, because we have to be pressing on.” 123. At the hearing, the Judge delivered an ex tempore judgment about the various applications before him. He said: “1. The application before the Court this afternoon, is for a variation of the existing directions.

2. The core of the claimants' difficulty is that the process of obtaining condition and prognosis reports, which had been ordered for all claimants, is a process that is going to take them a lot longer than, I think, had been envisaged at the previous hearings. In these circumstances, the claimants seek a variation of the existing directions to provide for an extension of time and provision of, firstly, the medical records in respect of each of the claimants and secondly, a restriction on the requirement to provide condition and prognosis reports, the claimants' case being that it is only necessary to restrict such reports to the potential lead claimants as put forward by them.” (emphasis provided) 124. 125. One sees how the Judge puts it in the judgment and the context of the CMC discussions reveals clearly what was being discussed, including as Ms Croydon accurately noted the car accident hypothetical. That example clearly illustrates the importance the Judge placed on full disclosure of previous medical history. The Judge granted an extension of time for the provision of medical records, for each claimant. The term “medical records” was not qualified. After the hearing, there was an email and draft order from counsel for the claimants on 4 March 2024 that makes plain the claimants' agreement with the approach suggested by the defendants. Then on 8 March 2024, there was a change of position by the claimants. In a letter to the defendants dated 8 March 2024, the claimants said: “Medical

records High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation

We are willing to concede that the Senior Master only ordered the forms of authority and disclosure in relation to “medical records” and that there is no duty on you to recover the club playing/non-medical records. We had hoped that you might see the sense of dealing with this in order to advance the litigation in the manner suggested, however, we are content to gather the club medical and non-medical records ourselves. We do hope you can agree to the principal of us, now, being the first Party to send out the forms of authority in order to access the records from medical providers and the clubs. Experience tells us that being first to do so will provide us with the records in hand as quickly as is possible for the purposes of expeditiously producing the C and P reports. If you could agree to hold off doing so, we would be grateful (the same not of course being amenable to inclusion in an order).” 126. Therefore, the claimants offered to take carriage of the task of obtaining medical records. This was agreed between the parties. There is no indication that the records to be disclosed would be restricted to those considered for the condition and prognosis reports. Leading counsel for the RL defendants wrote to counsel for the claimants on 15 March 2024: “Medical records: We can agree to your having conduct and disclosing all records [emphasis provided] by the same date as reports but we would like to receive two interim tranches of disclosure so we can get going with the records reviews in phases rather than being landed with more than a hundred reports and records in late October. I have also corrected the date of the CMC to 20th May in the draft order. Please let me know whether the above and the attached draft proposed order can be agreed.” 127. Therefore, the defendants agreed to the claimants having “conduct” of obtaining the medical records and “disclosing all records”. This was unqualified. This was how the February 2024 order was agreed between the parties. As a reminder, and for convenience, at para 3 the order states: “3. The Claimants’ solicitors are by 4 p.m. on 31 October 2024 to disclose to the Defendants copies of all medical records (including GP records, hospital records, club records, and if applicable all post mortem and inquest records) for each Claimant; and to give interim disclosure of all such records as are in their possession by 1 May 2024 and 1 July 2024 respectively.” 128. At no point was it ever suggested by anyone that the only medical records that would be obtained and disclosed would be restricted to those considered by the experts. The order states in terms the wide range of records that falls High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation to be included within “all medical records”. This is what was agreed between the parties and this is what the Judge ordered and what the Judge later said that he meant. In the draft order sent by leading counsel for the defendants to the claimants on 23 February 2024, it was made clear that there should be two stages. First, disclosure of documents currently held by the claimants. Second, disclosure of all medical records at a later date. There was no dissension from this proposal and it found its way into the order made by the court and later sealed. 129. Following the February 2024 order, the claimants gave interim disclosure of the medical records that they had obtained by 1 May 2024. Leading counsel for the RL defendants commented in his skeleton argument for the 20 May 2024 CMC at para 12: “On 1.5.2024 C disclosed the first interim batch of medical records which consist of the incomplete records for 73 players” 130. Therefore, it was made plain by

the defendants that although there was interim disclosure of medical records, these records were “incomplete”. 131. Purpose The purpose of obtaining the medical records is key. All parties agree that it is to identify lead claimants. This is an important consideration. As the lower court did not make a GLO, the claims are being managed together through the identification of “lead” claimants. As such, the identification of the correct lead claimants is of vital importance not only to those individual claimants, but to the cohort of claimants more widely as so much may be influenced by how the claims of the lead claimants develop or may be determined. Therefore, for each individual lead candidate, the extent to which her or his condition is attributable to rugby-related injury and speaks to the common issues is vital. To understand this question, it is essential to know whether there are other possible or material causative factors of head or brain injury or cognitive impairment. Cardinal questions in this litigation are causation and state of knowledge of risk. While the Judge recognised the centrality of knowledge in the February 2024 judgment, the medical records go to the first prime question. This issue is not a footnote or curiosity, but vital. As such, the defendants’ concerns about proper medical record disclosure are reasonable and unsurprising. 132. The claimants’ argument is based on an important confusion. The claimants accept explicitly that the medical records were obtained to instruct “their” (the claimants’) medical experts and that the defendants would not be permitted to medically examine the claimants with their own experts. In such circumstances, the medical records the claimants’ experts have considered are obviously important. But must the selection of lead claimants by the defendants be limited to the records the claimants’ experts have considered? It seems to me that this cannot be correct. The selection of lead claimants is a vital step in multi-party litigation of this kind, with or without a GLO. There is clear force in the defendants’ submission that head injuries can be very High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation complicated. It is not only factually important but fair that any proposed lead claimant’s medical history can be examined to see whether there are any other possible causes of head trauma or injury or cognitive impairment such as road accident, genetics or substance abuse. That is significant because it might suggest that the individual claimant is not representative and her or his case may not be generalisable in determining the “common issues” applicable to the cohort. The importance of the selection of the correct lead claimants in multi-party litigation is hard to overstate. It is insufficient to submit, as the claimants do, that the procedural stage is pre-defence. This is true. But it does not meet the point: the central enduring importance of lead claimant selection. That the defendants should be restricted to a consideration of the condition and prognosis reports prepared on behalf of the claimants (“their” experts) and only the medical records the claimants’ experts have considered, carries with it clear risks of imbalance, unfairness and factual inaccuracy in terms of the common issues. 133. Impossibility/disproportionality The claimants submit that the task of obtaining all the medical records is “akin to the folklore “Wicked Stepmothers” who compel “the Princess to mow vast meadows using only nail scissors”. Thus it is a task “bound to fail” resulting in strike out. This both misunderstands and exaggerates the task. Where medical evidence is unavailable or no longer in existence, the affidavit can simply explain that. If an extension of

time is required in respect of the medical records of an individual claimant due to difficulties beyond the claimants' control, that can be justified and applied for. Mr Boardman filed a statement for the first joint CMC in May 2024. He explained the work thus far undertaken to comply with the order in respect of medical records: "31. We have been working towards this task since the CMC hearing on 23 February 2024. The process is as follows: We have the Claimant sign the Form of Authority for medical and club records. We send the completed form to the GP, hospital and clubs. Given the many injuries suffered by players, they have often attended several hospitals. Due to their poor memories, multiple Claimants struggle to recall where they have attended. The GP / hospital / club records are then delivered to us either in hard copy or electronically. If the former, those records need scanning. Using the timings it took the rugby union Defendants to collate the medical records, it appears to take up to three to four months for a GP / hospital to provide records, even though, according to data protection legislation, they have one calendar month in which to provide them. I provide at Exhibit RB9, a table setting out how long it took the rugby union Defendants to provide these documents (and are still to High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation provide in many cases) and highlight in yellow where the process took them three months or more. We cannot commence the condition and prognosis reports in the rugby league litigation until we have collated these records." 134. As ordered by the Judge in February 2024, the claimants had contacted hospitals and GPs. Records were being received. While medical providers have one month to provide the records, they had been taking longer. However, there is no suggestion from Mr Boardman that the task is "impossible" or of "infinite proportions" as now claimed. The issue mentioned is the delay in receipt not the impossibility of contacting the holders of the medical records and obtaining them in due course. Evidence filed by the defendants, the correctness of which has not been challenged, states that "There are numerous records relating to, for example, childhood illnesses and vasectomies. It is evident that the Claimants have simply disclosed those records that they have initially and easily managed to obtain." (B4/565) 135. 136. 137. Permission To begin, the sheer breadth of access to the range of medical records in the forms of authority is a signpost about the extent of medical records that fall to be disclosed. In terms of scope of records, there is no material distinction between the medical records being obtained by the claimants in the RL litigation or by the defendants in RU litigation. The forms of authority provide an extremely wide authorisation. If the carriage was by a defendant, the authority grants access to all the medical records. I have been provided with no rational basis on which the claimants in taking carriage of the disclosure task would selectively obtain certain records from hospitals and GPs and not others. The defendants submit that para 3 of the February 2024 order is in effect "an order by consent" from which there is no appeal. The claimants dispute that this is what they intended the order to mean. It is quite clear to me what was intended and agreed. However, I am not persuaded it is akin to a consent order and effectively unappealable, as the defendants contend. Nevertheless, it is clear what the claimants agreed to and what the Judge ordered: disclosure of all the medical records. Beyond this, the claimants submit that such an order is objectively disproportionate and oppressive. If this were so, it is surprising

that they agreed to it. But I test the argument by putting to one side their agreement. Even if the Judge had directed the disclosure of all the medical records over fierce claimant objection, I judge that it would have been a proportionate order. I concur with the defendants' submission that they are not simply seeking all medical records for the sake of it or to act in a "Machiavellian" way (as put in the claimants' skeleton argument, para 78). The claim against them is for head injuries. An erroneous inclusion of a claimant or claimants in the lead cohort may affect many other claims wrongly, unhelpfully or unfairly. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 138. Therefore, I judge that this ground has no real prospect of success. I refuse permission. Merits 139. Extension of time and permission having been refused, the merits stage has not been reached. However, I would have dismissed any appeal on this ground as lacking in merit, having fully considered the substance of the ground as set out above. Conclusion: Ground 6

140. My approach is one of appellate restraint. In summary on Ground 6, extension of time is refused; permission is refused; this ground is in any event misconceived. Ground 6 fails.
- XIII. RL Ground 3 RL Ground 3: regarding paras 2 to 6 of the RL Order dated 23 July 2025, (relating to paragraph 3 of the RL Order dated 23 February 2024 (medical records)), whether the Judge misconstrued the February 2024 order as it did not require the claimants to disclose all medical records "ever in existence". Claimants' submissions 141. The February 2024 order did not require the disclosure of "all" medical records and was thus misconstrued by the Judge at the July 2025 CMC (Grounds 3(a) and (b)). The RL claimants had made their position clear at the February 2025 CMC that they had disclosed all the medical records in their possession (Ground 3(c)). The Judge failed to take into account factors relevant to the overriding objective (Ground 3(d)(i)-(vi)), and thus the unless order was "disproportionate and oppressive, irrational and perverse" (Ground 3(d), and Ground 3 generally). Defendants' submissions 142. The February 2024 order is clear on its face. The claimants agreed to all meaning all and thus this is a species of appeal against a consent order. The Judge did not misconstrue his February 2024 order on medical record disclosure. The unless order was proportionate. Discussion 143. I divide my analysis by considering first the dispute about the order's interpretation, then questions about proportionality. In due course, I return to questions of extension of time and permission, but emphasise that I have fully examined the intrinsic merits of the ground as advanced. Interpretation 144. It is a bold submission that a judge has misunderstood her or his own order. This is a very experienced judge, being the Senior Master. The bread and High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation butter of his important function is making case management decisions, particularly in more complicated cases such as this. Nevertheless, I entertain the possibility that the Judge here could have made a fundamental error in interpreting the meaning of his order. Everything depends on the facts. 145. The claimants submit correctly that the order must be viewed "in context". For me, the context must include the genesis of the order in February 2024. That is the point of embarkation. It is for this reason that I have taken "Ground 6" out of turn. I accept the defendants' submission that the order is clear on its face. Of relevance is the way the Judge dealt with the meaning of his order. "I am bound

to say Mr Block, because it is abundantly clear to me that Mr Boardman has been proceeding under – or labouring under a very grave misapprehension as to what this order [the CMC3 Order] actually meant. I do not intend to go into that, but I have made it clear what the [CMC3] order meant. I hope the order was clear on its face, but he was wrong.” 146. 147. The only order having been discussed at that point was the RL order from February 2024. The Judge made it clear that Mr Boardman’s understanding of it was fundamentally wrong; Mr Boardman’s misapprehension was “grave”. However, as I have explained in the analysis of the RU appeal, it is clear that Mr Block was voicing concerns about the RU disclosure failure having been growingly concerned about the extent of Mr Boardman’s misapprehensions about his disclosure duties. Next, one looks at what those representing the claimants have said about the meaning of the order. Mr Boardman filed a statement dated 11 August 2025. The purpose was to support an application to vary the February 2024 order, the variation restricting disclosure only to those medical records in the claimants’ possession. He says under oath at paras 3-5: “3. I wrongly interpreted this Order to mean that I had to disclose all medical records in my possession. I took it as my duty to obtain the records on behalf of the Claimants and then to disclose what I had obtained.

4. Following the case management hearing of 22 and 23 July 2025 it has become clear that the Order required me to find every single medical and other record created on behalf of every Claimant in Claim Form One, and then to copy the same to the Defendants.
5. I can assure the Court that it was never my intention to mislead the Court, and I can now see I was wrong in my interpretation of the wording of the Order. I am very sorry.” 148. It is submitted on behalf of the claimants that all Mr Boardman is saying is that because the Judge has stated what he meant by the order, Mr Boardman High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 149. 150. has apologised for not having reached the same interpretation of the order. I am not persuaded by this. It was open to Mr Boardman to say that the court has provided its interpretation of the February 2024 order and the claimants maintain their respectful disagreement with the court’s interpretation. There is nothing disrespectful for a legal professional to differ in an interpretation with the court. It frequently happens. Further, it is puzzling, given that the claimants now seek to appeal the February 2024 order as disproportionate and unlawful, that the initial application on 11 August 2025 was to vary with a concession that Mr Boardman “wrongly interpreted” the order. As at this appeal, it appears that the claimants now withdraw the essence of these paragraphs of Mr Boardman’s statement to the extent any concession has been made. Their position is that Mr Boardman never interpreted the order incorrectly. Instead, it was the statement that Mr Boardman “wrongly interpreted” the order that is incorrect: he has not made a mistake except in admitting that he made a mistake. There are obvious difficulties with the shifting sands of the claimants’ position that support the Judge’s concerns about the confidence he could place in Mr Boardman’s approach to his disclosure duties. Proportionality There has been no challenge to the evidence filed by the defendants that it took the defendants’ team “about 3½ months to identify missing medical records for all the claimants.” No one has suggested that any claim would automatically be struck out if

medical records no longer existed or were unavailable for good reason. That is the purpose of the affidavit: the claimants can explain any difficulty. That is the point of relief from sanctions: relief may be sought from the court if there is breach, but one cannot be in default in disclosing what does not exist. The unless order was a proportionate way forward in this large-scale litigation and strikes a fair balance. If more time is needed in the cases of specific claimants, that can be discussed between the parties sensibly or applied to the court for. As explained, causation is a central issue in these claims. Thus, alternative explanations for claimed head injury or cognitive functioning have clear importance. The medical records are relevant to that issue. The extent they assist in any individual case is highly fact-specific. However, the historical medical records should be obtained, which is what the Judge plainly ordered. The contrary position can be readily tested. If the disclosure duty the claimants assumed was only to disclose those documents in their possession, I fail to see how anyone could reach a safe conclusion that there was nothing in medical history of the claimant in question that provided a different explanation for any medical or cognitive difficulties she or he was experiencing. If the argument by the claimants is that the defendants could obtain the balance of the records using the forms of authority, that defeats the purpose of the claimants undertaking to obtain the medical records in accordance with the Judge's February 2024 order. In the RL litigation, the parties agreed that the most effective and expeditious way to do obtain the medical records was for the claimants to have carriage of the task. It cannot be fair or appropriate for the claimants only to obtain or disclose such records as suit their case. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 151. 152. 153. As to the claim that it has created an "impossible" and "onerous" task, in conducting this substantial litigation, the claimants' solicitors have a high professional duty to ensure they make effective administrative and logistical arrangements to comply with case management orders made by the court to progress the litigation. Such orders are not optional. If the solicitors are encountering difficulties, they should revert to the court, provide a fair and accurate explanation and seek further directions. What appears to have happened is that when the defendants voiced concerns about the defects in the medical record disclosure, the claimants on a basis that is misconceived have sought to retrospectively reinterpret the Judge's clear case management order in an artificial way, entirely contrary to the Judge's understanding of his order, and when there is no underlying support for their singular interpretation in the filed evidence. There is nothing to suggest that the order is beyond the ambit of reasonable discretion. While that ambit is not limitless, it is wide. Relevant factors were the depth of Mr Boardman's fundamental misapprehensions about the scope of documentation falling to be disclosed, the repeated extensions, and the fact that as at the July 2025 CMC, it was almost four years after the first RL letter before action and almost two years after the draft generic particulars of claim. The Judge had to find a solution to progress the litigation proportionately and effectively. He did not strike out any of the RL claims. He made a conditional order that was plainly within the generous margin afforded to the case management decisions of first instance judges. It was a robust order, but it was reasonable for the Judge to conclude that the stage had come for such procedural robustness. Extension

of time There can have been no doubt that on 23 July 2025, the Judge made unless orders. The claimants appear to accept that the application to appeal is out of time, but even if they do not, such argument is misconceived. The delay is of approximately three weeks or almost the same again as the 21-day period for filing a timely appellants' notice. The RL defendants sent a draft of the order to the claimants on 24 July 2025, that is, the day after the order was made (it will be remembered that the RU claimants sent their draft the next day, 25 July). The claimants did not respond to the RL defendants' draft until 11 August. Should time have been spent by the claimants in an application to vary the February 2024 underlying order, that did not preclude the filing of a timely protective appellants' notice. The claimants failed to do that with no good reason. The suggestion by Mr Boardman at para 12 of his witness statement in support that he was awaiting transcripts before he filed an appeal is plainly meritless. As noted, it is invariably possible to file an appeal notice marking it as possibly needing perfecting upon receipt of transcripts. These are no more than elementary procedural precautions. No permission was sought from the Judge. It is unclear why not. To the suggestion that time was used up amending the particulars of claim, there was no justification in prioritising that task above compliance with the appeal deadlines when no permission to amend had been granted and no impending deadline loomed. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 154. 155. 156. I apply the test set out by a very strong Court of Appeal in Denton. I find the breach serious and significant, the reasons for delay poor, and in all the circumstances of the case, including the repeated previous extensions, not asking the Judge for permission, nor asking him for an extension of time, I judge that the relief (extension) sought should be refused. The approach of the RL claimants has been procedurally flawed and significantly contrary to the approach required by the CPR, grounded in weak and unconvincing

reasons.

I will not repeat the extension of time reasoning for the other RL grounds challenging the July 2025 order, but simply refer back to this analysis ("Ground 3 refusal reasons"). Permission It will be clear from my analysis in the above discussion that I have not been persuaded by the claimants' submissions. The arguments presented for the challenge to the Judge's clear order lack merit. They do not reach the arguability threshold. Nevertheless, as may be seen above, in fairness to the claimants, I have fully engaged with the substance of their submissions. I refuse permission. Conclusion: Ground 3 157. I adopt the appellate restraint approach. Extension of time is refused; permission to appeal is refused; in any event, the ground lacks substantive merit. Ground 3 fails. XIV. RL Ground 1 RL Ground 1: whether the orders at paras 2 and 4 of the July 2025 order were made against the wrong claimants. Claimants' submissions

158. When the February 2024 order was granted, only the first claim form had been issued. The RL order in June 2024 was made only in respect of claim forms 1 and 2 and not claim form 3. Thus these claimants have "never been subject to any Order in such terms prior to 23 July 2025 and hence have not failed to comply". As the claimants put it in oral submissions, there are "no retrospective orders" and "future joiners cannot be subject to the order or they

would automatically be in breach”. Therefore, the Judge took an irrelevant fact into account, and the decision was perverse and disproportionate. Defendants’ submissions 159. This point was not taken before the Judge in the July 2025 hearing. It was first raised by email on 12 August 2025 after the hearing. As such it falls outside the scope of appellate review. As to the merits of the ground, in any event the ground does not reflect how the claims have been managed. Discussion High Court Approved Judgment: Mr Justice Dexter Dias Scope Rugby head injury litigation 160. The claimants did not make this objection before the lower court at the July 2025 hearing. It was open to the claimants to do so. The defendants are correct that the ground falls outside appellate scope in that way. However, it conceivably raises a question of law about the lawfulness of the order and in my discretion and in fairness to the claimants I am prepared to entertain it. These claims do not proceed under a GLO.

Therefore, the code at CPR Part 19 III does not apply in the same way. These claims are managed together through the selection of lead claimants and CPR Part 3, as was made clear by the Judge in early 2025. Merits 161. The Judge stated in his post-hearing email in response to the claimants’ post- hearing submissions that he is managing all the claims together and all claims are subject to the case management directions that he may make. It is instructive to note that if these claims were being managed alternatively as representative actions under CPR 19 II (Representative Parties”), then by virtue of CPR 19.4: 162. 163. “(4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule –

- (a) is binding on all persons represented in the claim” However, these are individual claimants whose cases are being managed together under CPR Part 3 and from whom representative lead claimants will be selected. It is plainly furthering the overriding objective of dealing with the claims expeditiously and at proportionate cost to manage them together using the wide CPR Part 3 case management powers. No one has suggested otherwise. However, there is no express order made by the Judge that I have been directed to where he has said in terms that future claims are bound by previous orders. That is not the end of it. One must carefully examine the way the claims have been dealt with by the Judge, and equally how the parties have conducted the litigation. Until the claimants’ email after the last CMC in July 2025, at no point has any party suggested that future entrants are not bound by previous orders. Indeed, at the two-day hearing in July 2025 itself, when the issue of unless orders was discussed, the claimants did not submit to the Judge that only those claimants in claim form 1 are subject to the February 2024 order. Such a submission would have given a very different colour to the unless orders application. Reading the transcript of the hearing and the skeleton arguments prepared for it, supported as they were by filed evidence, the “claim-form-1- only” submission was not made by the claimants precisely because everyone understood perfectly well that the claimants on claim forms 2 and 3 were bound by the February 2024 order. If it were the case that the later claimants were not bound, it is a point that inevitably would have been raised. It would have been the duty of those representing the claimants to raise this threshold issue so any counterargument could be made by the defendants and the Judge High Court Approved Judgment: Mr Justice Dexter Dias Rugby

head injury litigation could have considered the objection during the two days of argument. That did not happen. It must be remembered that the defendants made an application on 24 June 2025 to strike out the claims. The claimants on claimants 2 and 3 would have had a powerful, conceivably perfect, defence to the strike out application if they were not bound by the February 2024 disclosure order that underpinned such application. Given this argument was never made, a strong inference may be drawn that the argument did not exist.

164. Moreover, if the claimants' submission is correct, there has been no extant order for the RL claimants in claim forms 2 and 3 about the disclosure of medical records. This would be a bizarre situation. If it were true, this substantial group of claimants would, as the defendants vividly submit, "float free". Claim form 2 covers 21 claimants; claim form 3 a further 34. Thus, the implication of the claimants' stance is that these 55 claims had been floating forensically untethered to the proceedings by any effective case management order about medical records because of their later entry. The three joint CMCs were all held after the February 2024 CMC at which the medical records disclosure order for the RL claimants was made. At these joint CMCs, in May 2024 and February and July 2025, the later RL claimants were represented by the same counsel and solicitors and although complaints have been made about the lack of adequate disclosure, nothing was ever said about these dozens of claimants not being bound by the February 2024 disclosure order. A further consequence would be that there would need to be fresh case management directions for all new claims. In complicatedly shifting multiparty litigation such as this, it cannot be proportionate for this to be the procedural environment in which proceedings are conducted. 165. The solution to this and the true position seems clear. The Judge was exercising his wide case management powers under CPR Part 3. CPR 3.1(2)(p) provides materially: "(2) Except where these Rules provide otherwise, the court may – ...

(p) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective" 166. As explained, managing the claims together furthers the overriding objective. Thus, the Judge has taken the "step" of managing these claims together and identifying lead claimants. It would have perhaps been preferable if he had previously made an explicit order specifying that later claimants are bound by previous case management orders, but this appears to be simply an oversight. That oversight appears to have extended to all the many legal professionals engaged in these already protracted and procedurally intensive claims with their regular listing before the same judge for case management disputation and direction. Once the point was raised by the claimants, the Judge made his position clear in his response the claimants' post-hearing email. He said by email on 18 August 2025: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 167. 168. "Paragraph 2. Reflects the order made by the court which applies to all C's not just those on Claim form 1. All claims are being managed together and are subject to the case management directions made from time to time." The Judge's comment unquestionably reflects the reality of the way the litigation has been conducted by the court, counsel and solicitors and understood by all. Summary: Ground 1 merits I judge this ground to be an artificially technical one targeting what is at most an oversight by

everyone involved in the proceedings and not just the Judge. The substance of the case management steps taken by the Judge in managing the claims together is clear: later entrants are bound by case management orders previously made, as relevant to their claims, and always subject to any application to vary deadlines because of their individual circumstances. That is the reality of the way the proceedings have been conducted and understood and that forensic reality must not only carry weight but prevail. I have received no explanation whatsoever why, if the later claim form claimants were not bound by the medical records disclosure order, that root and branch objection to an unless order against them was not taken at the hearing. It is fanciful to imagine that the claim forms 2 and 3 claimants have not had any disclosure obligation in respect of their medical records whatsoever for many months. One only has to ask what their solicitors imagined their medical records disclosure obligations to be in respect of these later entrants. It is absurd to think there was none. If the claimants' legal representatives knew that their lay clients under claim forms 2 and 3 were not subject to any disclosure obligations, I cannot think but that it was their professional duty to alert the defendants and the court to that fact to avoid further delay and needless disputation. Such a duty clearly arises under CPR 1.3, because "the parties are required to help the court to further the overriding objective". Saying nothing and then deploying an oversight as a highly technical ground of appeal cannot be in the spirit or letter of the overriding objective and the duties of parties under it. Extension of time 169. Extension of time is refused for Ground 3 refusal reasons. Permission 170. However, I judge that this ground is arguable given the oversight and I would have granted permission if I had extended time. On the merits, and for the reasons given, I would have dismissed the appeal. Conclusion: RL Ground 1 171. Therefore, extension of time is refused; however, I would have granted permission to appeal if time had been extended; nevertheless, the ground in any event fails on its merits. Ground 1 fails. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation XV. RL Ground 2 RL Ground 2: whether the Judge misdirected himself in failing to make findings of non-compliance and/or providing reasons for non-compliance, rendering paras 2 to 6 of the July 2025 order disproportionate and oppressive, irrational and perverse. Claimants' submissions 172. The Judge not only failed to make the necessary findings of fact on non-compliance, but failed to provide reasons and failed to offer any explanation for how the claimants could cure their non-compliance. Defendants' submissions 173. The defendants' spreadsheet for the July 2025 hearing included a column for condition and prognosis reports. The specific breaches were identified in the table. Column D detailed the cases of 19 claimants in which the defendant maintain that the medical evidence was non-compliant. The order was proportionate. Discussion 174. The Judge delivered an ex tempore judgment. It was appropriate to do so given the need to progress the management of the proceedings and assist the parties. As the RL defendants point out, the Judge offered to flesh out his reasoning following his ex tempore judgment: "1. I will deal with the strikeout application conclusions, which will be short and brief. I will [be] provided more detailed written reasons if required by the parties, however it is important that my conclusions are expressed and parties can make progress with his litigation. ... In short, I find that there has been noncompliance with

my previous order, that the applications were properly made, that there has been a serious breach of those orders, that there has been no proper explanation for it, but not withstanding that standing back and doing justice as I must, and having regard to my other powers and the stage at which this litigation has reached, the importance of it to the claimants, it is not appropriate to exercise the draconian remedy of strike out. However, as I have said, there will be unless orders to ensure that the existing orders to which the claimants have subscribed are complied with. Therefore, I will flesh that all out in detail if the parties required me to, but essentially that is my reasoning for coming to that conclusion.” (emphasis provided) 175. It was always open to the claimants to take up the Judge’s offer to provide fuller reasons. It is puzzling that the basis of the appeal is that the Judge failed to provide reasons for non-compliance when it was open to the claimants to seek it. It is instructive to examine another passage of the judgment: High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation “21. It does seem to me at the very least, that Mr Boardman must make, under pain of strike out, an affidavit verifying that he has now complied with the claimants’ disclosure obligations and or properly explain any difficulties or shortfall in that disclosure. I have asked him to do that once, he has failed to do it, he has failed to give any explanation, and he has failed to be before the Court with an affidavit now confirming compliance. That affidavit is but one thing, the next thing to do is to ensure that the documents the defendants are entitled to and already covered by the existing orders for disclosure are provided.

22. We will discuss in due course the precise wording necessary to achieve that, but it seems to me it must proceed on the basis that there is a recognition that there still remains a large quantity of documentation that has been identified and which has not yet been provided. The fact of the matter is I have stopped somewhat short of the draconian remedy strike out, but I have concluded that both applications were in the circumstances properly brought. Therefore, those circumstances, it seems to me that the defendants are both entitled to the costs of their respective applications.” in 176. Putting all this together, it is clear that the Judge was greatly concerned about non-compliance and found non-compliance in the form of serious breaches with the court’s previous order with no adequate explanation for the defaults. The order he then made covered all the breaches alleged in the defendants’ document. It was unnecessary and would have been disproportionate at a case management hearing for the Judge to go through each individual case and make a specific finding about non-compliance in that claim. There simply is insufficient time in a large-scale multi-party litigation to do this prior to making an unless order more widely. It would result in a disproportionate use of valuable court time. As a reminder, para 4 of the July 2025 order states: “4. Any claims for which there is default with paragraphs 2 or 3 of this Order shall be struck out pursuant CPR3.4(2)(c) without further order of the Court.” 177. The Judge said in his email of 18 August 2025, in response to the claimants’ email: “Paragraph 4. Reflects the order made by the Court. The order was made in this form to ensure compliance with the order of 23 February 2024. It is for the C’s to ensure that their reports are compliant with the order and deal with the causation issues. It is not for the court to declare compliance. (I note

that the C's have now sought to vary this order, I say nothing about the merits of such an application at this stage). The order applies to all Cs and as submitted by Ds it is not for the court High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation to specify the specific non-compliance which is required to be cured but for the Cs to ensure they have complied with the existing orders. If there are any gaps or difficulties these should be addressed by Mr Boardman in his witness statement.” 178. It is not for the Judge to provide defaulting parties with instructions “to cure” their non-compliance, as the claimants maintain. 179. 180. Precondition of default findings A substantial part of the claimants’ submissions on this topic was directed at the proposition that a court must have made a finding of default or non-compliance before granting an unless order (“You have to prove the breach in any individual case before you can make an unless order”). The submission that findings of breach or non-compliance are a precondition for making an unless order is wrong in law. Such finding was not necessary on the facts of the individual claims. Automatic effect It was submitted at various points by the claimants that part of the disproportionality and unlawfulness of the order is that the claims would be “automatically” struck out “without more”. At points the presentation of the argument suggested that following an assertion by a defendant that there was non-compliance, the claim would be struck out automatically. A moment’s thought reveals that this cannot be true. By the end of the first day of the hearing before me, the position the parties had reached seemed to be that if the defendants, or any of them, asserted that a claimant was non-compliant and that was disputed by the claimant, the dispute had to be determined by the court. That must be the case. A claim cannot be struck out because a defendant says it is. It appears that there was conflation on the part of the claimants between the establishing of the default by the claimants and the automaticity of the consequence. The structure of the order granted by the Judge is that should the non-compliance be either accepted by a claimant or proved by a defendant, then the claim would struck out “without further order”. In other words, there need be no further application to strike out. It is the acceptance of default or its proof by the defendant that automatically results in the strike out, not the mere assertion by the defendant. Extension of time 181. Extension of time is refused for Ground 3 refusal reasons. Permission 182. I have again fully examined the merits of the ground. It is not arguable and I would have refused permission if I had extended time. I find that the ground is flawed in substance. Conclusion: RL Ground 2 183. The appellate restraint approach applies. Extension of time is refused; permission is refused; the ground has no intrinsic merit and would have failed in any event. Ground 2 fails. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation XVI. RL Ground 4 RL Ground 4: whether the unless order in respect of the testing process disclosure is disproportionate and unlawful. Claimants’ submissions 184. Para 8 of the June 2024 order required disclosure of all documents relating to the testing process. The claimants submitted to the Judge during the hearing that “you cannot go from the hearing judge unless we go through every single one, thinking that every allegation in Charlotte English’s table is made out.” It is submitted that the judge erred in the making of unless orders. If he wished to impose any unless order, he had to make a claimant-specific finding of default. He failed to do this. Making an unless

order in respect of every one of 176 RL claimants on claim forms 1 to 3 therefore was disproportionate and without rational basis. Defendants' submissions 185. Any claimants who comply with paragraph 8 of the order of 14 June 2024 are plainly not going to have their claims struck out for non-compliance with that paragraph. This is group litigation. The order made in July 2025 is to ensure that any non-compliance across the entire cohort of claims is dealt with. Full compliance should have been achieved seven months prior to the CMC in July 2025. The Judge's order to ensure compliance cannot possibly be said to fall outside his generous ambit of discretion. Discussion 186. For similar reasons to those stated in Ground 2, it was unnecessary as a matter of law for the Judge to identify every specific instance of non-compliance. Further, a finding of breach is not a precondition to the making of an unless order. Given the number of claimants in these multi-party proceedings being managed together, it would be a disproportionate use of court time to descend into claimant-by-claimant breach analysis. Here the unless order was justified given that this is multi-party litigation involving a large cohort of claimants with common issues. By the time of the July 2025 CMC, compliance with the disclosure duties under the orders previously made should have taken place months before. The initial date for compliance was 31 October 2024 with extension to December 2024. 187. There is a dispute between the parties whether the "MRI raw data" is or is not part of the testing process. Mr Boardman asserts that it is not. The claimants point out that the testing process, first mentioned by Mr Boardman, was an internal filtering and verification process that the claimants adopted. Initially, the defendants did not know about it. Once this material became known through Mr Boardman's statement, disclosure was ordered. For the purposes of these appeals, it is not going to assist for the appellate court to adjudicate on precisely which classes of material fall to be disclosed, as distinct from High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 188. examining the rival big-picture arguments about what the Judge intended his order to mean (RL Grounds 6 and 1, for example). In Ms English's filed statement, she identifies in a schedule (column F) 19 RL claimants said to be non-compliant (see para 30). The claimants' submission is that a "less draconian and more proportionate Order could have been made if it had been limited to these 19." The defendants respond that "the order was made against the 19 said to be in breach and it does not affect the others who were not in breach". I am not sure that the defendants' response answers the point. The Judge could have restricted the order to those claimants who were in breach as at the July 2025 CMC. He chose not to. This was because the claimant-by-claimant determination of which claimants are objectively in breach would expend a very substantial amount of court time and inevitably involve significant dispute. For example, Mr Boardman noted in his statement dated 10 July 2025 at para 35: "whilst we had a methodology for testing claimants, not every claimant would have the same testing, and it is obvious from that that not every claimant will have the same disclosure" 189. The claimants' skeleton argument states at para 64: 190. "It is clear that 5 of the 19 immediately fall away on the basis that they relate to MRI raw data which was in any event provided on 4 July 2025 (para 112). The Learned Judge failed to engage with the explanations provided by Mr Boardman in respect of the outstanding 14." The Judge clearly wished to avoid diverting the hearing, convened to manage the cases not

only of the RL claimants but the hundreds of RU claimants as well, into a particulate analysis of individual claimant non-compliance. This was a reasonable and rational ambition and his decision was within the generous margin. On appeal, this court is not concerned with whether it would have made a different order if exercising the first instance discretion. Given the wide range of case management options available to a managing judge, the discretion could be legitimately exercised by different judges in different ways. It is important for the Judge to manage the case effectively and find a way progress the proceedings in an orderly and structured way. There had been extended opportunities to comply with the disclosure orders. It was not unreasonable nor “oppressive” for the Judge make an unless order having general application, given the claims were being managed together in multi- party litigation and the misapprehensions of Mr Boardman had every risk of extending beyond disclosure in any individual case to a flawed approach to his general disclosure duties. The procedural safeguarding balance is that in any case where there is no default, that can be attested to by Mr Boardman in his affidavit. His verification is capable of simple expression. He must have satisfied himself of compliance in the past as he had informed the court on numerous occasions across the two codes of exactly that. In any case where there is default, whether admitted or proved, an application for relief from sanctions can be made. High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 191. To the extent that the claimants advance similar submissions about the legal basis for making unless orders, I reject them as before. Extension of time 192. Extension of time is refused for Ground 3 reasons. Permission 193. The order made by the Judge falls well within the ambit of his wide case management discretion. It is not arguable that he exceeded the generous discretion conferred on him and permission is refused. Conclusion: RL Ground 4 194. I have full regard to and apply the appellate restraint approach. Extension of time is refused; permission is refused; in any event, the ground has no substantive merit. 195. Ground 4 fails. XVII. RL Ground 5 RL Ground 5: whether the Judge erred at para 3 of the July 2025 order by requiring the claimants’ solicitor to file an affidavit “verifying with reasons compliance” with para 2 of the same order. Claimants’ submissions

196. Mr Boardman could not “properly comply” with the order because the Judge had already made findings of non-compliance “at a high level” and at the same time failed to identify particulars. Given the Judge’s findings, it would be “entirely contrary” for Mr Boardman to assert compliance which would be “an affront” to the court. Thus, the order is “impossible to comply with and unsustainable”. Defendants’ submissions 197. The point of para 3 is for Mr Boardman to verify whether there has now been compliance. If not, he must explain why not. The order is within the Judge’s discretion. Discussion 198. It is unnecessary to overcomplicate this. The claimants have misunderstood the purpose of the order. 199. By para 2, the claimants were granted until 17 October 2025 to comply fully with paras 2 and 3 of the February 2024 order and para 8 of the June 2024 order. By the 17 October date, either the claimants will have complied or not. If they have, then Mr Boardman must verify that. It can be shortly attested to. Para 3 of the July 2025 order is not “impossible” for an experienced legal professional such as Mr Boardman to comply with. The answer as at 17

High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation 200. October for each claimant he represents is simple: compliant or non-compliant. If there is non-compliance, he must explain why. I fail to see what is “impossible” about that sensible and practical case management order which provides the court with valuable information about the state of the litigation and how to progress it. As to the affrontery argument, the point of the second sentence of para 3 of the order is for Mr Boardman to “address” the breaches mentioned. He can address them by stating that by 17 October there is compliance or not. If the position as at 17 October is that for any individual claimant there is not “breach” (non-compliance), that is something Mr Boardman should verify. Nothing in a court order can possibly compel a legal professional or anyone else to verify on oath a proposition of fact she or he does not believe to be true. If Mr Boardman’s position is that for any particular claimant there is not breach, notwithstanding the contents of the defendants’ skeleton argument and appendices (24 June 2025), he has a duty to say so and justify his position. That is his professional obligation. A court may take a different view. That does not force him to give evidence on oath he does not believe to be true. Such evidence may be subject to challenge, by the defendants, by the court. This is simply real-world litigation.

201. Overall, the affidavit order is undoubtedly a reasonable, sensible and practical case management step taken by the Judge. It is unarguably well within the ambit of his discretion and proportionate. Extension of time 202. Extension of time is refused for Ground 3 refusal reasons. Permission 203. This ground is not arguable. Permission is refused. Conclusion: RL Ground 5 204. I apply the appellate restraint approach. Extension of time is refused; permission is refused; the ground lacks intrinsic merit and would have failed in any event. Ground 5 fails. XVIII. Conclusion: RL appeal 205. I have dealt with extension of time and permission under the relevant grounds. All six grounds of appeal in the RL litigation are rejected. As in the RU appeal, the Judge was mindful of the purpose of the making an unless order in Huscroft terms – to achieve effective disclosure – and again refused to strike out any claims, choosing a less draconian and proportionate case management option by insisting through the unless order on proper compliance by the claimants with their disclosure obligations under the court’s previous orders. This was clearly a proportionate exercise of his case management discretion. This court must be slow to interfere with it, applying the appellate restraint principle. The Judge’s exercises of his discretion fall High Court Approved Judgment: Mr Justice Dexter Dias Rugby head injury litigation well within the generous margin of his case management discretion. This is appellate review not re-hearing; his decisions cannot be faulted. 206. The RL appeal is dismissed. XIX. Disposal 207. The RU litigation appeal is dismissed. The RL litigation appeal is dismissed. 208. I will receive submissions on consequential orders and direct the parties to agree an order to reflect the terms of this judgment. 69

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