

<p>1 Friday, 1 June 2012 2 (10.00 am) 3 CASE MANAGEMENT CONFERENCE 4 MR TOMLINSON: My Lord, the this is the fourth CMC in the 5 second tranche. Time is limited so I am going to deal 6 with things, I hope, very quickly. My Lord, there are 7 essentially before the court today three issues. 8 As proposed, this is the order which I am suggesting 9 they be dealt with. First of all, a proposed amendment 10 to the 27 February order. I think your Lordship had 11 an email from counsel for News Group this morning. 12 Subject to one point, I do not think that is 13 contentious. Secondly, there is an application in 14 relation to disclosure by the claimants which as, 15 I understand it, is substantially agreed. Thirdly, 16 there are the issues about the costs budget which are 17 not substantially agreed, but will be, I hope, dealt 18 with very shortly. 19 My Lord, can I immediately turn to the proposed 20 amendments to the 27 February order? Your Lordship will 21 recollect that a cut-off date was inserted of 1 June. 22 This is in paragraph 3. 23 MR JUSTICE VOS: Hang on a second. Where do I find this 24 order? 25 MR TOMLINSON: Well my Lord, the -- Page 1</p>	<p>1 point is not everybody has still been notified and, 2 secondly, I am pleased to say to the court that 3 everybody thinks that this regime is working rather 4 well. 5 MR JUSTICE VOS: Shouldn't it be made clear publicly that 6 this deadline is being extended to a particular date, so 7 that those people ... I mean there seem to be a lot of 8 people affected. There has been a rush of undertakings 9 received by my clerk over the last 24 hours. 10 MR TOMLINSON: My Lord, I think that is because of the 11 1 June date. 12 MR JUSTICE VOS: Exactly, but if we are extending it to 13 28 June, is it, for the second tranche? 14 MR TOMLINSON: My Lord, we are not extending, no. The idea 15 is to make it open-ended so that there not be any 16 deadline. 17 MR JUSTICE VOS: But not if you want to get into tranche two 18 of the litigation? 19 MR TOMLINSON: If you want to get into tranche two. What is 20 being proposed, and my Lord, this is we think a slightly 21 odd proposal, paragraph 4(a). 22 MR JUSTICE VOS: Yes. 23 MR TOMLINSON: So paragraph 3, the idea is the remove the 24 deadline completely. 25 MR JUSTICE VOS: Yes, basically. Page 3</p>
<p>1 MR JUSTICE VOS: I have my own copy, but where is it in the 2 CMC bundles? 3 MR TOMLINSON: Well, the amended version is not in the CMC 4 bundle, I think it needs to be handed up to 5 your Lordship now. This was sent out this morning. 6 (Handed). 7 MR JUSTICE VOS: Hang on. I may have it on this email. 8 I only read the email. 9 MR TOMLINSON: Ah yes. My Lord, it is attached to the 10 email. 11 MR JUSTICE VOS: I have it, yes. 12 MR TOMLINSON: My Lord, paragraph 3. There was a cut-off 13 date of 1 June which was inserted and the purpose of 14 that was to encourage people to get on with it because 15 at that stage, we were operating on the assumption that 16 people would have been notified by February. 17 MR JUSTICE VOS: Before you just go there, at the top it 18 says, "27 February, as varied by the order of 18 May". 19 If this is a draft of what is going to be, it should 20 say, "As varied by the order of 18 May and" ... 21 MR TOMLINSON: My Lord it will, "and 1 June." 22 MR JUSTICE VOS: Yes, good. 23 MR TOMLINSON: So my Lord, the words in the second line of 24 paragraph 3, it is proposed that those be deleted, my 25 Lord, I think for reasons which were obvious. The first Page 2</p>	<p>1 MR TOMLINSON: My Lord, this obviously should be clear 2 publicly: anybody who is contacted by Operation Weeting 3 has the facility, if they wish, to use this swift 4 procedure to obtain documents without issuing 5 proceedings. 6 MR JUSTICE VOS: Which is working well. 7 MR TOMLINSON: Which is working well, and they can then 8 either decide to issue proceedings or move to settlement 9 or move to the compensation scheme if they so desire. 10 So my Lord, that is to be open ended. What is proposed 11 at paragraph 4(a) is that a named individual who does 12 not provide the documents referred to by 29 June will 13 not be added to the group register without an order of 14 the managing judge. 15 My Lord, in one sense that is unnecessary because we 16 know that you are not going to be added to tranche two 17 if you do not serve your claimant-specific Particulars 18 of Claim by 24 August. That is in your Lordship's order 19 from last time. So this, as it were, other deadline is, 20 in one sense, irrelevant. I think as I understand the 21 purpose of putting it in is just to encourage people to 22 get on with it, which may or may not be a sensible 23 purpose. 24 MR JUSTICE VOS: So what is the effect if you don't do it by 25 29 June? Page 4</p>

<p>1 MR TOMLINSON: The effect is you can't be added to the group 2 register, but you can nevertheless, without an order of 3 the managing judge, issue a claim form and as long you 4 serve your claimant-specific Particulars of Claim by the 5 24th, you have to be added to the group register under 6 the terms of the other order. 7 MR JUSTICE VOS: Well, then that is a nonsense. 8 MR TOMLINSON: Well, my Lord, that is what we think. 9 MR JUSTICE VOS: Shouldn't it just say: you will be added to 10 the group register in part 2? 11 MR TOMLINSON: Well, your Lordship's order of 20 April, as 12 amended on the last occasion, which is in bundle D at 13 tab 2, paragraph 16, page 43. 14 MR JUSTICE VOS: Yes. 15 MR TOMLINSON: "Unless the management court gives 16 permission, no claim shall be added to the group 17 register after 24 August 2012. Any claimant who issues 18 a claim form on or before 24 August 2012 must have 19 served claimant-specific particulars by this date." 20 So that is the cut-off date for the logical reason 21 that, if you haven't served your Particulars of Claim by 22 that date, you are not going to be ready for the trial. 23 MR JUSTICE VOS: Yes. 24 MR TOMLINSON: But whether and to what extent -- 25 MR JUSTICE VOS: Because of the next sentence because you</p> <p style="text-align: center;">Page 5</p>	<p>1 MR JUSTICE VOS: Yes. 2 MR TOMLINSON: But my Lord, what we've -- 3 MR JUSTICE VOS: What are you suggesting? 4 MR TOMLINSON: Well, my Lord, we just say that 4(a) really 5 is unnecessary and confusing. 6 MR JUSTICE VOS: Right. Mr Silverleaf? 7 MR SILVERLEAF: Yes, my Lord, Mr Vassall-Adams is dealing 8 with this. 9 MR JUSTICE VOS: This is your party, Mr Vassall-Adams. 10 MR VASSALL-ADAMS: We are not fixated with the precise 11 wording of 4(a). The purpose behind it is 12 straightforward: that if you want to join tranche two, 13 you have to get on with it. 14 MR JUSTICE VOS: Yes. 15 MR VASSALL-ADAMS: And that was the purpose of the deadline 16 of 1 June. We're now proposing it's moved back by four 17 weeks. That focuses the mind. It also ensures that 18 there's obviously 28 days from the request to getting 19 MPS disclosure. There then has to be time to consider 20 and formulate your case. Claimant-specific particulars 21 have to be served by 24 August, so it's actually 22 a sensible timetable going forward. It doesn't matter 23 exactly how it's worded. The purpose is to ensure that 24 if you want to join tranche two, you need to be making 25 your requests for MPS disclosure ASAP.</p> <p style="text-align: center;">Page 7</p>
<p>1 get stayed. 2 MR TOMLINSON: Yes, quite. 3 MR JUSTICE VOS: That is the point. 4 MR TOMLINSON: Quite. 5 MR JUSTICE VOS: So that because you're getting stayed on 6 24 August, even if you're on the group register, this 7 doesn't matter. 8 MR TOMLINSON: Yes. 9 MR JUSTICE VOS: But it would be more sensible, wouldn't 10 it -- because we want a complete group register -- to 11 have them added to the group register, with that still 12 surviving? 13 MR TOMLINSON: Yes. 14 MR JUSTICE VOS: Because that says you can't get added to 15 the group register after 24 August, which is a different 16 point, and we should stick with that probably for the 17 time being. That says that you must serve your 18 particulars if you want to be in the -- if you don't 19 want to be stayed, and that we should stick with. 20 MR TOMLINSON: Yes. 21 MR JUSTICE VOS: But actually who's on the group register is 22 different from who's in tranche two. 23 MR TOMLINSON: Well it is for another reason, which is that 24 if you don't agree to engage in the costs-sharing 25 regime, you're stayed as well.</p> <p style="text-align: center;">Page 6</p>	<p>1 MR JUSTICE VOS: But I am not going to be faced with 2 individual application to, say, join the group register 3 after 28 June made on paper, "Oh look, I missed it by 4 a day and I had a headache", and all that, am I? 5 MR VASSALL-ADAMS: It seems unlikely, my Lord. 6 MR JUSTICE VOS: Well, could we just urge claimants then 7 that if they want to later join the group register that 8 they apply at the following CMC? 9 MR VASSALL-ADAMS: We can make a provision in the order. 10 MR JUSTICE VOS: Yes, you could just add a sentence, and 11 then Mr Tomlinson doesn't really object to this, he just 12 says it doesn't have great effect, but let us leave it, 13 shall we, Mr Tomlinson? 14 MR TOMLINSON: My Lord, the fallacy of it is that it's not a 15 necessary condition to engage in this procedure to issue 16 proceedings. You can issue proceedings whether or not 17 you've engaged in the named individual, so you can get 18 people who could issue proceedings in August, not having 19 engaged in this procedure, and then there would be two 20 contradictory orders, one would say they're beyond the 21 group register and one would say they're not. 22 MR JUSTICE VOS: What is the consequence of being on the 23 group register? 24 MR TOMLINSON: Well, the consequence of being on the group 25 register is that you have the benefit of being managed</p> <p style="text-align: center;">Page 8</p>

<p>1 by Mr Thomson and being available for selection for 2 a lead case and so on. If you're not on the group 3 register, you're not part of the VLO. 4 MR JUSTICE VOS: I mean why don't I order something 5 different, which is that all persons that -- I mean what 6 other sanction pour encouragez les autres could I think 7 of? 8 MR TOMLINSON: Well, my Lord, the position is perfectly 9 straightforward. If you don't serve your 10 claimant-specific Particulars of Claim by 24 August, 11 you're not on the group register. And that's really all 12 that's necessary. Otherwise, we have a contradiction: 13 we are going to have cases which are both on and off the 14 group register as a result of two orders. 15 MR JUSTICE VOS: Yes, Mr Vassall-Adams, it doesn't look 16 a very sensible order to me. It seems to me that I 17 should just declare, as it were, for public consumption, 18 that if you want to be involved in this, if you don't 19 get your application in for MPS disclosure by 20 29 June 2012, you're extremely unlikely, on the 21 timescales laid down, to be able to serve your 22 particulars by 4 August and therefore you will be 23 excluded from stage 2. And if that is said publicly, 24 which I've just said, that is enough, isn't it? 25 MR VASSALL-ADAMS: Well, my Lord, we will take that</p> <p style="text-align: center;">Page 9</p>	<p>1 MR JUSTICE VOS: Well, they are the ones who are doing the 2 work, aren't they, Mr Dixey? 3 MR DIXEY: My Lord, yes. We believe that this is a workable 4 system, it is working and providing efficient mechanisms 5 through which the MPS can provide disclosure. The only 6 caveat that I would make at this stage is that, as 7 your Lordship has noted, in the last week there has been 8 a significant amount of requests made. At this stage, 9 the MPS does not believe that it will not meet the 28 10 day deadline and therefore does not seek an extension, 11 but I, at this stage, indicate that there have been 12 a considerable number received in the last week and, in 13 the circumstances, we will, of course, inform the court 14 or the parties if, at the next CMC, any extension was 15 needed. 16 MR JUSTICE VOS: I mean that was to be expected and I expect 17 they'll tail off now. 18 MR DIXEY: Well, I am grateful for that indication my Lord. 19 MR JUSTICE VOS: Thank you Mr Dixey. Is there anything 20 else, Mr Tomlinson, you needed to draw my attention to? 21 MR TOMLINSON: My Lord, not in relation to this order. 22 MR JUSTICE VOS: Subject to those two changes, then, the 23 addition in the title and the deletion of clause 4(a), 24 shall I initial this draft? 25 MR TOMLINSON: My Lord, yes. We would be most grateful.</p> <p style="text-align: center;">Page 11</p>
<p>1 indication from you. Our concern was just to ensure 2 that there were properly formulated particulars and we 3 were not faced with the position where, in mid-August, 4 suddenly claim forms were being issued, 5 claimant-specific Particulars of Claim not fully 6 particularised because they hadn't got MPS disclosure in 7 terms and then we were faced with claims that were then 8 not properly formulated and couldn't -- 9 MR JUSTICE VOS: Well, I tell you now that if you draw to my 10 attention any claims that have not been properly 11 formulated, where the procedure has not been properly 12 followed, the likelihood is that I will, at the very 13 next CMC, stay them -- 14 MR VASSALL-ADAMS: I am very grateful, my Lord. 15 MR JUSTICE VOS: -- put them in the next category, so we're 16 not going to have our carefully laid plans brought to 17 naught by people who try to frustrate them. People have 18 to follow the procedure I've laid down. 19 MR VASSALL-ADAMS: My Lord, with those indications, we do 20 not pursue 4(a). 21 MR JUSTICE VOS: All right, I will take out 4(a). 22 MR TOMLINSON: My Lord, I should say, and Mr Dixey is here 23 for the Metropolitan Police, and that they are content 24 with this amendment. The original provision was put in 25 at their request, but they are now content to have it --</p> <p style="text-align: center;">Page 10</p>	<p>1 MR VASSALL-ADAMS: My Lord, there was one matter that 2 followed from that. 3 MR JUSTICE VOS: Yes. 4 MR VASSALL-ADAMS: In relation to the 20 April, which is at 5 present, we have a group register for issued claims that 6 are added to the register. We don't have any record of 7 claims which are stayed because they are issued after 8 24 August. 9 MR JUSTICE VOS: We should have. 10 MR VASSALL-ADAMS: And we should have. 11 MR JUSTICE VOS: And where is that going to come in? Can 12 that be part of an order I make today? 13 MR VASSALL-ADAMS: Yes, my Lord, we will add suitable 14 provision in an order from today and that will have the 15 necessary effect. 16 MR JUSTICE VOS: Yes, so there should be a group register 17 for claims that are live and it should state, if 18 possible, on the register whether they are stage 2 19 claims or whether they are stayed. 20 MR VASSALL-ADAMS: I am grateful. We are proposing that 21 that register would contain the same details as the 22 group register, as set out in paragraph 6 of the 23 20 April order. 24 MR JUSTICE VOS: Yes. I mean I haven't seen the group 25 register lately, but it is in here somewhere.</p> <p style="text-align: center;">Page 12</p>

<p>1 MR TOMLINSON: My Lord, I can hand your Lordship a copy. 2 The group register has 49 lead claims on it, so since 3 the last occasion there's one claim been issued. 4 MR JUSTICE VOS: The group register just has 49 claims? 5 MR TOMLINSON: Yes. 6 MR JUSTICE VOS: But how many undertakings have been given, 7 do we know? 8 MR TOMLINSON: My Lord I don't. 9 MR JUSTICE VOS: About 200? 10 MR TOMLINSON: About 200, my Lord, yes. 11 MR JUSTICE VOS: So the scale of it at the moment is about 12 250 claims? 13 MR TOMLINSON: Yes, and as anticipated, not every 14 undertaking has resulted in an issued claim. So since 15 the beginning of May, there have been four claims 16 issued. 17 MR JUSTICE VOS: Right, but I suspect that is because of the 18 timing. 19 MR TOMLINSON: My Lord, I think there's a slight blockage to 20 do with arguments about NGN electronic disclosure which 21 is, I think, slowing things down. 22 MR JUSTICE VOS: Right. Okay. Well we'll come to that no 23 doubt. Any, I've initialled this order and I'll hand it 24 down and it will take effect immediately, even if not 25 entered.</p> <p style="text-align: center;">Page 13</p>	<p>1 MR JUSTICE VOS: Right, this is disclosure, it is agreed, 2 Mr Sherborne? That's very good. 3 MR SHERBORNE: Well it is agreed, subject to two minor 4 points which I'll come to. Your Lordship has seen from 5 the skeleton arguments that there are a number of 6 disclosure issues which have arisen, principally 7 relating to evidence which has come to light -- 8 and I choose my words very carefully, given we are in 9 open court and there are ongoing criminal proceedings -- 10 suggesting that senior executives of News International 11 had company iPhones which they were heavily using during 12 the relevant period, and this was contrary to the 13 evidence which had been filed by the first defendant 14 previously. Our primary concern, as you will have seen, 15 particularly given the history of what has happened as 16 regards documents, is the preservation of these iPhones 17 and the email accounts which relate to them, and 18 everything else, as you'll see, can flow from that. As 19 your Lordship says, the parties have, in effect, reached 20 agreement that the phones should be preserved, and the 21 email accounts, insofar as they're within the first 22 defendant's control. 23 MR JUSTICE VOS: Is there a form of order? 24 25 MR SHERBORNE: There is a draft that we've prepared.</p> <p style="text-align: center;">Page 15</p>
<p>1 MR TOMLINSON: Yes. 2 The next matter on the agenda, I suggest, is dealing 3 with the application for disclosure, simply because it 4 is quite short. 5 MR JUSTICE VOS: Yes. I just want to give notice so that 6 people can think about it in the next half an hour. 7 15 June is not a day on which I think a CMC is going 8 to be seriously possible. A short CMC would be 9 possible, but I have a feeling, looking at what is on 10 the agenda today and the amount of time there is to deal 11 with it, that there may be some issues bubbled over, and 12 so we are going do have to find a new day. The 13 following Friday would be all right, the 22nd, but 14 I don't think the Monday or Tuesday of the following 15 week would be possible for me, but if the parties can 16 just have a think about it whilst the rest of this is 17 going on, and also think how long that's going to take, 18 realistically, because this was supposed to be an hour 19 before court. I began to see yesterday it wasn't going 20 to be an hour before court and the problem is I've got 21 a trial going on with many people from abroad. 22 MR TOMLINSON: Well, my Lord, we saw your Lordship's listing 23 difficulties. 24 MR JUSTICE VOS: Yes. Okay, let's keep going. 25 MR TOMLINSON: Mr Sherborne is dealing with this.</p> <p style="text-align: center;">Page 14</p>	<p>1 I handed a copy of it -- or two copies of it -- to the 2 other side shortly before court, and it reflects, to be 3 fair, what we say should be -- 4 MR JUSTICE VOS: Could I have it? 5 MR SHERBORNE: I can certainly hand one up. But it reflects 6 the position your Lordship will have seen from the 7 skeleton arguments, namely preservation in the recital, 8 an agreement by the first defendant that they will take 9 all reasonable steps to preserve the iPhones and the 10 linked email accounts, to the extent they're in their 11 control. And then, on that basis, there is an order 12 that the remainder of the disclosure directions we've 13 sought should be adjourned over to the next case 14 management conference which your Lordship has just 15 explained may not take place on 15 June, which may have 16 a consequential effect, of course, on paragraph 2, and 17 this is the extent to which there is, as I say, dispute 18 between the parties. It's not disputed that the first 19 defendant should file and serve a witness statement 20 explaining the investigations into the iPhones. What is 21 disputed is who should provide the statement and the 22 date by which it should be provided. 23 Taking them in reverse order, you will have seen 24 that we say -- and that's in the draft -- that this is 25 a statement which can be easily provided by Monday,</p> <p style="text-align: center;">Page 16</p>

<p>1 11 June. The first defendants have asked, I think, for 2 Wednesday the 13th but, of course, if your Lordship is 3 going to fix a case management conference to take place 4 some time after 15 June, then it may be a point that 5 falls away, given that our concern for having it on the 6 Monday the 11th was that we had sufficient time to deal 7 with what may be said in the statement prior to this 8 being considered at the next case management conference. 9 MR JUSTICE VOS: Well, it does sound as if it is not going 10 to be a real issue if we're going to have a CMC just 11 a little bit later. 12 MR SHERBORNE: My Lord, yes. On that basis, I am looking to 13 Mr Thomson for my instructions. Wednesday, 13 June 14 would be acceptable to us. That was the date that the 15 first defendant proposed. 16 MR JUSTICE VOS: Right. 17 MR SHERBORNE: That brings me to the question of a proper 18 officer, and the position is, and I can put it very 19 shortly, there are two points we say as to why a proper 20 officer is the appropriate person to make the statement. 21 MR JUSTICE VOS: Well, who do they want to make it by? Not 22 an improper officer. 23 MR SHERBORNE: Well one suspects that they want to do what 24 they proposed to do back in November of last year, which 25 is to have a solicitor give that evidence. The two</p> <p style="text-align: center;">Page 17</p>	<p>1 because ...Reading to the words... the relevant time." 2 Your Lordship said this: 3 "I know, but cross-examining your solicitor on the 4 basis that something improper has gone on is not going 5 to help." 6 That was no doubt the basis on which your Lordship 7 made the order we sought, namely that a proper officer, 8 in that case it was Mr Lewis(?), gave the witness 9 statement. 10 MR JUSTICE VOS: And that was a different instructing 11 solicitor in those days. 12 MR SHERBORNE: My Lord, yes, I was going to make that point, 13 but perhaps -- 14 MR JUSTICE VOS: Well, it is a fair point for to you make. 15 Mr Silverleaf, surely it should be the same person 16 who makes all the other affidavits. 17 MR SILVERLEAF: Just step back a moment. 18 MR JUSTICE VOS: I'm stepping. 19 MR SILVERLEAF: The whole point about this is it hasn't been 20 established yet what these materials are, hasn't been 21 established whether they exist, whether they're 22 relevant. This is the investigation stage. What I 23 suggest, and it seems to me to be far more appropriate 24 that we serve evidence from someone involved in carrying 25 out the investigation to inform the claimants and the</p> <p style="text-align: center;">Page 19</p>
<p>1 answers to that are, of course, solicitors may come and 2 go, and if there is ever a case in which that maxim 3 applied, it would be this case. But the second point, 4 and perhaps more forcefully, is that, of course, 5 solicitors are not going to be cross-examined and 6 there's an issue in this case, as you know, as to the 7 deletion of documents and the concealment of wrongdoing, 8 and we say that it is only a proper officer that can be 9 cross-examined. 10 MR JUSTICE VOS: Let me hear Mr Silverleaf on that. 11 MR SHERBORNE: Before you do, can I simply say this, my 12 Lord? And that is to remind you that exactly this point 13 was taken in November and your Lordship said -- and 14 unfortunately I don't have copies of it -- but this is 15 in the transcript of 18 November and, no doubt, 16 your Lordship will recall, where you said that: 17 "I don't think [this is what you said to Mr Reed] 18 and they're going to give a full explanation, I think 19 they should give a full explanation by a proper officer, 20 not by a solicitor, by somebody who's involved in the 21 company who's cross-examined if I decide that was 22 appropriate." 23 And then Mr Silverleaf, who says: 24 "My instructing solicitor probably has at least as 25 good a grasp of the material as any of the officers,</p> <p style="text-align: center;">Page 18</p>	<p>1 court of what has happened. And once your Lordship and 2 the claimants have that information, you will be in 3 a much better position to decide whether it is then 4 appropriate for there to be a statement from the proper 5 officer for the purposes my learned friend has just 6 outlined. 7 MR JUSTICE VOS: But who is carrying out the investigation? 8 MR SILVERLEAF: It will be done by, probably by Mr Cheeseman 9 because he is in charge. 10 MR JUSTICE VOS: And who is Mr Cheeseman? 11 MR SILVERLEAF: He is the chief IT officer. 12 MR JUSTICE VOS: So he would be a proper officer for this 13 purpose? 14 MR SHERBORNE: My Lord yes, we are perfectly happy, he is 15 the person who gave the witness statement, as you will 16 have seen in, which paragraphs 39 and 40, he says there 17 were no iPhones, of course, so it is entirely 18 appropriate that he is the person, particularly since he 19 is carrying out the investigation, who can explain why 20 or why not -- 21 MR SILVERLEAF: I don't know whether he is going to be the 22 person who does the investigation, he is almost 23 certainly going to be the person in charge. 24 MR JUSTICE VOS: In charge, yes. 25 MR SILVERLEAF: But can I put it like this? It seems to me</p> <p style="text-align: center;">Page 20</p>

<p>1 that it is premature to direct a witness statement from 2 a proper officer until the matter has been investigated. 3 You actually have no evidence at all. 4 MR JUSTICE VOS: No. Well, I mean, yes, I see that. So 5 what I would just direct is that you file evidence about 6 this, and if Mr Sherborne is unhappy -- because we are 7 not getting to cross-examination until next February. 8 MR SILVERLEAF: No, exactly. 9 MR JUSTICE VOS: And therefore, it will be perfectly 10 possible for Mr Sherborne, having seen your evidence, to 11 say -- 12 MR SILVERLEAF: That's not good enough. 13 MR JUSTICE VOS: "That's perfectly satisfactory" or "That's 14 terrible" or "We don't know enough yet to judge" and 15 "The person who is talking is not speaking from their 16 personal experience," et cetera, et cetera. All I think 17 I would say is that evidence in this kind of sensitive 18 matter is better from people who know about it and 19 therefore -- 20 MR SILVERLEAF: That's what I was going to say my Lord. 21 MR JUSTICE VOS: Yes. 22 MR SILVERLEAF: And therefore, it would make sense for the 23 investigation to be carried out to establish who 24 actually knows and for those people to give the 25 evidence.</p> <p style="text-align: center;">Page 21</p>	<p>1 will come back is a witness statement from 2 Mr Silverleaf's instructing solicitors. 3 MR JUSTICE VOS: Yes, but it's the information which is in 4 it, which -- I mean if it is not verified, we're going 5 to meet again in three weeks' time and you've got your 6 preservation order -- 7 MR SHERBORNE: My Lord, yes. 8 MR JUSTICE VOS: -- which is obviously important, and then I 9 will be able to ... you're not going to get 10 cross-examination in three weeks' time, whatever 11 happens. 12 MR SHERBORNE: My Lord no, of course not, and I appreciate 13 the indication as to what will happen if the witness 14 statement simply deals with instructions. 15 Can I simply say this -- and this is the last thing 16 I will say on this, given the time: your Lordship has 17 seen the evidence which suggests the existence of these 18 iPhones; it's quite wrong for Mr Silverleaf to say there 19 is no evidence before the court. 20 MR JUSTICE VOS: No. Well, there is evidence, but exactly 21 what they were and who used them and what they did with 22 them is obviously still open for discussion and we'll 23 have to see what they say and look at the record. 24 MR TOMLINSON: Yes. 25 MR JUSTICE VOS: So I am going to just change this order,</p> <p style="text-align: center;">Page 23</p>
<p>1 MR JUSTICE VOS: Well that's right. Well this is the first 2 stage. Okay, let me get back to Mr Sherborne. 3 Mr Sherborne, I think that this is the first stage. 4 Ultimately you're entirely right, and what I said before 5 was entirely right, but what I said was in the context 6 of a trial the next month, in which I had I think 7 already directed -- or rather bullied -- Mr Silverleaf 8 into agreeing to call at that trial Mr Cheeseman and the 9 other people who had given evidence. 10 MR SHERBORNE: I think it was the other way round, my Lord. 11 MR JUSTICE VOS: Well, whichever way it was, that was 12 developing in my mind. I think Mr Silverleaf is fully 13 aware that it is still in my mind and, if there is 14 another trial in February, it will be the same position. 15 And so he is not going to get away with filing evidence 16 from somebody who knows nothing about it on 17 instructions. But for this purpose, it seems to me that 18 he should provide such evidence as he thinks appropriate 19 to give explanations and tell you what you need to know 20 and then if it's from the wrong people or it's on 21 instructions and you want to cross-examine it, I will 22 direct that it come from a proper officer at a later 23 stage. 24 MR SHERBORNE: Well, I am grateful for that indication. 25 Your Lordship will appreciate that our concern is what</p> <p style="text-align: center;">Page 22</p>	<p>1 I'm going to make it, "adjourned until the next case 2 management conference" and you can insert the date when 3 we know what that is. I'm going to say the witness 4 statement should be served -- rather the evidence -- by 5 4.30 on Wednesday, 13 June, setting out the result of 6 its investigation into the iPhones and that will be 7 costs reserved and that is based upon an undertaking by 8 NGN to take all reasonable steps to preserve the iPhones 9 provided by O2 to the two named officers and all data 10 thereon. 11 MR SHERBORNE: I am grateful, my Lord. 12 MR JUSTICE VOS: All right, I will initial that and give 13 liberty to somebody fill in the date of the next case 14 management conference. 15 MR TOMLINSON: My Lord, on this side of the court, we are 16 happy with the 22nd. We've made inquiries and -- in 17 other words, the Friday after the one originally. 18 MR JUSTICE VOS: What about you, Mr Silverleaf? 19 MR SILVERLEAF: I think the 22nd is all right, my Lord. 20 I do know I have a trial earlier that week, a planning 21 appeal at some point, and I was supposed to be doing a 22 conference, but I think the Friday's become clear. Can 23 I say provisionally yes and I'll confirm as soon as 24 I get back to chambers? 25 MR JUSTICE VOS: Yes. I'm just checking my own diary,</p> <p style="text-align: center;">Page 24</p>

<p>1 actually. Sometimes I make these promises ... Right, so 2 I'll say the 22nd for the time being. Hopefully it 3 won't be necessary to move it again. 4 MR TOMLINSON: My Lord, the next item on the agenda is the 5 review and consideration of the parties' costs budget in 6 accordance with paragraph 29 of the order made on 7 20 April, and Mr Morgan is going to deal with that. 8 MR JUSTICE VOS: Yes, Mr Morgan. 9 MR MORGAN: My Lord, the issues on budget which we raise are 10 whether the defendant should recover the rates claimed, 11 or the more reasonable proportion of rates that we 12 propose. Secondly, whether the defendants should 13 recover the enormous amount proposed by them for common 14 cost, and especially group coordination. 15 MR JUSTICE VOS: Yes. 16 MR MORGAN: And thirdly, some minor adjustments to the 17 budgets proposed at the end of Mr Thomson's witness 18 statement. The issues raised on the defendant's case 19 are rather more substantial and lengthy and I will not 20 list them now. 21 Can I just start by explaining one matter of common 22 ground? There is one issue, which although we've 23 already conceded it in correspondence earlier in the 24 week, the defendant continues to raise, so just to allay 25 their concerns, I make this point: they raise an issue</p> <p style="text-align: center;">Page 25</p>	<p>1 your Lordship will recall the context of the undertaking 2 that has been given not to claim costs until an offer 3 has been rejected -- or, sorry, the time for accepting 4 it has expired. These walk-away offers which are 5 referred to have been made in relation to people who 6 have not yet written a letter of claim or issued 7 proceedings. They're therefore an offer of nothing, 8 since there is nothing to drop, the defendants have no 9 entitlement to claim costs which are dropping. The only 10 purpose of these letters is to impose a costs risk on 11 claimants who have not yet even formulated a claim. 12 MR JUSTICE VOS: Well, they can't do that, can they, because 13 there is no cost risk until you issue a claim? 14 MR MORGAN: My Lord, that is simply our point. It raises 15 two issues: firstly, it casts serious doubt on the 16 statement that NGN took the view the claimants are 17 entitled to have their claims properly investigated; 18 and, secondly, it raises an issue which is probably not 19 for today as to whether those offers have any effect at 20 all. 21 MR JUSTICE VOS: Well, I don't think it is for today, but my 22 first reaction would be it doesn't have any effect at 23 all. I imagine it's to encourage those who they think 24 don't have any real claims not to trouble them any more. 25 MR MORGAN: Yes. My Lord, then moving to the budgets</p> <p style="text-align: center;">Page 27</p>
<p>1 about inter-claimant communications by individual 2 solicitors in a case where a single firm has several 3 clients. So, for example, a firm which is not Atkins 4 Thomson corresponding with Mr Thomson over some general 5 matter and what they say is if the individual firm has 6 ten clients, the cost of that process should be divided 7 ten ways because it's carried out on behalf of ten 8 clients rather than just one. We entirely agree, we 9 have conceded the point in correspondence. 10 MR JUSTICE VOS: Good. 11 MR MORGAN: My Lord, then a brief comment on the skeletons. 12 I'm not going to address you on the general points made 13 in the skeletons on either side. I would like to deal, 14 though, with one general issue arising from the 15 defendant's skeleton, and Ms Band's latest witness 16 statement. The skeleton -- and I needn't take you to it 17 for this -- at paragraph 6, says that: 18 "NGN endorses the court's view that prospective 19 claimants are entitled to have their concerns about what 20 happened to them properly investigated." 21 That is paragraph 6, if your Lordship wants it. 22 MR JUSTICE VOS: Yes. 23 MR MORGAN: The defendant's skeleton and Ms Band's witness 24 statement also refer to a number of offers which were 25 made yesterday to walk away or drop hands, and</p> <p style="text-align: center;">Page 26</p>	<p>1 themselves, my learned friend has helpfully provided you 2 with Mr Justice Ramsey's lecture from the other night, I 3 don't know if you -- 4 MR JUSTICE VOS: Well, I glanced at it. I haven't had as 5 much time as usual I'm afraid to read all this material. 6 MR MORGAN: You have had a lot of material. 7 MR JUSTICE VOS: And I've had quite a lot of it, so you'd 8 better assume I haven't grasped anything. 9 MR MORGAN: My Lord, the only point I want to take you to, 10 if you have a copy in front of you -- 11 MR JUSTICE VOS: Yes. 12 MR MORGAN: -- is paragraph 21. This, just to explain it, 13 is Mr Justice Jack's implementation lecture on the 14 approach to cost management. 15 MR JUSTICE VOS: Paragraph 20? 16 MR MORGAN: Paragraph 21. My Lord, perhaps I could just 17 invite to you read it. 18 MR JUSTICE VOS: Yes. 19 MR MORGAN: It is in particular the last two sentences that 20 we say should govern the approach to the exercise. 21 MR JUSTICE VOS: Well, I completely agree with that. 22 I think it is what I said last time. 23 MR MORGAN: Yes. My Lord, the approach that we say we adopt 24 for this exercise falls within that and we say some of 25 the points which are made by the defendant are, in</p> <p style="text-align: center;">Page 28</p>

<p>1 effect, nitpicking and amounting to a detailed 2 assessment in advance. 3 MR JUSTICE VOS: I mean the big issues that I have to decide 4 are the rates for the defendant's solicitors, as to 5 whether they can have more expensive solicitors than you 6 can. 7 MR MORGAN: Yes. 8 MR JUSTICE VOS: And whether they can spend more than you 9 can. 10 MR MORGAN: Yes, my Lord, precisely. Just by way of 11 overview, I think entirely in accordance with 12 Mr Justice Ramsey's views on the matter, can I just take 13 you to some spreadsheets which we prepared, and I'm not 14 going to take you through the nitpicking detail. This 15 is bundle F. 16 MR JUSTICE VOS: And are these the big ones? 17 MR MORGAN: These are the big ones and they're comparisons 18 of all the other spreadsheets. 19 MR JUSTICE VOS: Yes. 20 MR MORGAN: In particular, it is the last tab which is 21 page 23. 22 MR JUSTICE VOS: Yes. 23 MR MORGAN: My Lord, just to explain the spreadsheets: the 24 yellow columns are the claimants' budgets and you'll see 25 there are three enhancements there as the case moves up</p> <p style="text-align: center;">Page 29</p>	<p>1 for the settled before defence line -- you'll see that 2 across the page -- certainly all the claimants' figures 3 are, we would say, reasonable and proportionate for 4 claims of this sort and you'll also see the defendant's 5 figures very much higher. A similar exercise -- 6 MR JUSTICE VOS: They are less different in terms of 7 non-contingent costs. In fact, one is lower. 8 MR MORGAN: Yes. 9 MR JUSTICE VOS: It is really the basic costs that you are 10 complaining about in the first line, in other words the 11 17 plays 36, 24 plays 45, and 31 plays 49. 12 MR MORGAN: My Lord yes, I'm not particularly concerned 13 about those differences. We say that this comparison 14 enables you to take the broad brush view that 15 Mr Justice Ramsey envisages and say there's not a huge 16 amount wrong with these estimates. 17 MR JUSTICE VOS: All of them? 18 MR MORGAN: Well, I have some minor points on the claimants' 19 figures in the light of what the defendant has said 20 about the work they're intending to do. So we would 21 propose that some of the claimants' figures are slightly 22 increased. But this gives you a broad brush picture and 23 shows you the ballpark. 24 MR JUSTICE VOS: Yes, and so really we are concerned with 25 rates.</p> <p style="text-align: center;">Page 31</p>
<p>1 in seriousness. On the defendant's side, in green, you 2 have four enhancements. What's been done in this 3 particular budget -- 4 MR JUSTICE VOS: Why do you have four enhancements for them? 5 MR MORGAN: They have an extra enhancement for email 6 interception which the claimants don't have because they 7 say it is really a separate category of claim 8 altogether. 9 MR JUSTICE VOS: Right, thank you. 10 MR MORGAN: The top right hand side will show you that the 11 rates which have been deployed are exactly the same and 12 that's the point of this spreadsheet, it removes 13 anomalies over rates and just enables you to look at the 14 work. My Lord, if you turn to the second page, please. 15 About a quarter of the way down the page, you'll see 16 total lines running across the page. The first is total 17 settled before the defence and the second is total 18 non-contingent costs, so ignoring what follows, and the 19 little asterisk there simply makes the point that 20 because it's impossible to know at what point a case 21 might settle, other than if it's before defence, we 22 haven't been able to factor in any relevant cost 23 budgeting CMC or similar claimant communication costs. 24 So these are the bare costs, ignoring those. But if you 25 look across the page, and look at those totals, firstly,</p> <p style="text-align: center;">Page 30</p>	<p>1 MR MORGAN: We are concerned with rates, and we are 2 concerned largely, on the other spreadsheet I haven't 3 shown you, with common costs, where there is a very big 4 difference. Perhaps, before we leave this file I should 5 show you it to introduce it. That is the previous tab. 6 MR JUSTICE VOS: Where is the equivalent? 7 MR MORGAN: This is the equivalent. 8 MR JUSTICE VOS: Yes, but where is the total? 9 MR MORGAN: The total is over the page. 10 MR JUSTICE VOS: Total non-contingent, is it? 11 MR MORGAN: Yes, and you will see a massive differential, 12 most of which comes from the first category, group 13 coordination. 14 MR JUSTICE VOS: Sorry, group coordination? Which category? 15 Oh, I see. 16 MR MORGAN: The very first one at the top of the first page. 17 MR JUSTICE VOS: Yes, I see. The rest of it all is non 18 controversial then. 19 MR MORGAN: So looking at the total, non-contingent costs 20 on -- 21 MR JUSTICE VOS: What is this group? I'm afraid I haven't 22 really grasped that. 23 MR MORGAN: We will come to that. It is one of the issues 24 I have to address you on, my Lord. 25 MR JUSTICE VOS: Can't you just give me a hint as to what</p> <p style="text-align: center;">Page 32</p>

<p>1 it's about?</p> <p>2 MR MORGAN: I can give you a hint, my Lord: it's everything,</p> <p>3 and it is everything to do with not just this</p> <p>4 litigation, but all the claims which are going through</p> <p>5 Mr Justice Grey's procedure. They're all the claims</p> <p>6 which have not yet been notified. It's everything.</p> <p>7 It's all the work.</p> <p>8 MR JUSTICE VOS: The History of the World, part 1?</p> <p>9 MR MORGAN: Exactly.</p> <p>10 MR JUSTICE VOS: Right, okay.</p> <p>11 MR MORGAN: Just to pick up --</p> <p>12 MR JUSTICE VOS: But these are costs that have not yet been</p> <p>13 incurred?</p> <p>14 MR MORGAN: Some have been incurred. My Lord, if you look</p> <p>15 at this table here, you'll see the first column is</p> <p>16 "Incurred", the second is "Estimated" and the third is</p> <p>17 "Total", and that's true for both sides.</p> <p>18 MR JUSTICE VOS: Right, but "Incurred" is very little.</p> <p>19 MR MORGAN: Well, "Incurred" on the defendant's side is</p> <p>20 700 --</p> <p>21 MR JUSTICE VOS: Oh, 734.</p> <p>22 MR MORGAN: At the same rate, and it's much higher at their</p> <p>23 actual rates.</p> <p>24 MR JUSTICE VOS: Sorry?</p> <p>25 MR MORGAN: This particular spreadsheet assumes the same</p> <p style="text-align: center;">Page 33</p>	<p>1 My Lord, we dealt with this in the section of the</p> <p>2 skeleton at paragraph 24. Can I say first of all,</p> <p>3 Mr Bacon intends no discourtesy by not attending here.</p> <p>4 As you know, he is in the Scilly Isles and it was</p> <p>5 thought that I would probably be capable of dealing with</p> <p>6 this.</p> <p>7 MR JUSTICE VOS: Yes.</p> <p>8 MR SILVERLEAF: The real point is very simple: it is that</p> <p>9 the nature of the litigation for the two parties --</p> <p>10 MR JUSTICE VOS: Is different.</p> <p>11 MR SILVERLEAF: -- is different.</p> <p>12 MR JUSTICE VOS: Correct.</p> <p>13 MR SILVERLEAF: We are in --</p> <p>14 MR JUSTICE VOS: But that is about implications of the</p> <p>15 litigation.</p> <p>16 MR SILVERLEAF: It is about the implications of the</p> <p>17 litigation, but it is also about the way in which we are</p> <p>18 dealing with the allegations which are made. And</p> <p>19 putting it very simply, my Lord, one of the things that</p> <p>20 we have done is we have made extensive admissions and</p> <p>21 concessions, and it is a very difficult task deciding</p> <p>22 the extent of which those admissions and concessions</p> <p>23 should be made because there are extensive --</p> <p>24 MR JUSTICE VOS: I will tell you what bugs me,</p> <p>25 Mr Silverleaf. It is either right that costs budgeting</p> <p style="text-align: center;">Page 35</p>
<p>1 rate, it just shows you the work.</p> <p>2 MR JUSTICE VOS: Okay.</p> <p>3 MR MORGAN: But overall, the total for non-contingent costs</p> <p>4 are --</p> <p>5 MR JUSTICE VOS: Shall we come to the rates, Mr Morgan?</p> <p>6 MR MORGAN: Very well, my Lord.</p> <p>7 MR JUSTICE VOS: You say -- and I see the great force in</p> <p>8 what you say -- that Mr Silverleaf and Mr Bacon got up</p> <p>9 in front of me last time and said this is not a city</p> <p>10 case and we shouldn't be paying city rates and these</p> <p>11 chaps shouldn't have city lawyers. But then they say:</p> <p>12 but for me, it is a city case.</p> <p>13 MR MORGAN: Yes.</p> <p>14 MR JUSTICE VOS: Well, I had better hear Mr Silverleaf or</p> <p>15 Mr Bacon or whoever is going to talk about that,</p> <p>16 hadn't I?</p> <p>17 MR MORGAN: My Lord, I am happy with that.</p> <p>18 MR JUSTICE VOS: Mr Silverleaf, how can you get away with</p> <p>19 that? I mean you can instruct whatever lawyers you</p> <p>20 choose, your client can have as many or as few and as</p> <p>21 illustrious or as not illustrious as you choose, but why</p> <p>22 should they pay when you're telling them that they've</p> <p>23 got to have poor old Mr Tomlinson?</p> <p>24 MR TOMLINSON: At very modest rates.</p> <p>25 MR SILVERLEAF: Mr Tomlinson's always modest.</p> <p style="text-align: center;">Page 34</p>	<p>1 should be calculated on the basis of the nature of the</p> <p>2 litigation, in other words the type of litigation. Is</p> <p>3 this a small claim about a washing machine in the</p> <p>4 Neasden County Court, or is it a claim about some very</p> <p>5 complicated CSD or financial instrument which nobody</p> <p>6 understands except three people in the city, or</p> <p>7 somewhere in between? If you're doing that kind of</p> <p>8 assessment, this is a case which falls, as has been</p> <p>9 agreed, somewhere in between, on the scales that the</p> <p>10 claimant side are using.</p> <p>11 I don't think that that assessment can be</p> <p>12 case-specific -- in other words, can be</p> <p>13 party-specific -- because if it were, there would be</p> <p>14 a tremendous injustice because if I were to sue my</p> <p>15 electricity supplier for £100, which was a great sum to</p> <p>16 me but nothing to the electricity supplier, but raised</p> <p>17 a question which affected all the other customers of the</p> <p>18 electricity supplier, then the electricity supplier</p> <p>19 could say: I could have Slaughter & May defend me in the</p> <p>20 County Court because the consequences are very bad for</p> <p>21 me and therefore the poor old claimant who is wanting</p> <p>22 his £100 would be faced with a costs budget that would</p> <p>23 be massive.</p> <p>24 MR SILVERLEAF: My Lord, I can see that, and in the instance</p> <p>25 which your Lordship puts to me, it is obviously right</p> <p style="text-align: center;">Page 36</p>

<p>1 that there couldn't be a differential. It might be that 2 the correct answer, even though the dispute is only 3 about £100, would be that the recoverable rates would be 4 very high because the importance of the issue is 5 considerable. 6 MR JUSTICE VOS: But it's not important. I mean this is the 7 whole point about costs. It's not important to the 8 consumer claimant. It's never disproportionately 9 important. The consumer claimant has no justifiable 10 interest in establishing a legal precedent or making 11 some big fuss. 12 MR SILVERLEAF: I understand all that. 13 MR JUSTICE VOS: All he wants is his £100. 14 MR SILVERLEAF: I agree. 15 MR JUSTICE VOS: And it is the same for these claimants. 16 MR SILVERLEAF: My Lord, with respect it isn't and the 17 reason for that is this: this is not about a single 18 claim. I'm not saying there's one single claimant and 19 he is much more important to me. This is about scale, 20 this about the fact that we are dealing with 500 claims 21 already -- or potential claims. Remember, what we are 22 talking about here is the common costs. The individual 23 claimants are not faced with a risk of incurring all 24 those costs. They're only faced with a risk of 25 incurring a tiny proportion of those costs because there</p> <p style="text-align: center;">Page 37</p>	<p>1 do, but that the management issues are inherently more 2 difficult for the defendant than the claimants. 3 MR JUSTICE VOS: Yes. 4 MR SILVERLEAF: They involve more difficulty, more nuanced 5 tasks, and relating what one does in this litigation to 6 all the other possible ramifications. That's why, from 7 the point of view of the defendant, actually the 8 management of this litigation is a singularly more 9 demanding task in its nature as well as its extent than 10 the claimants. The claimants' only objective is to 11 pursue each individual claim to a successful conclusion 12 and they are therefore concerned with taking, claim by 13 claim, their attack on us to settlement or judgment. We 14 have to deal with the consequences of those attacks in 15 the round, the allegations that are made and the impacts 16 they have on the business. 17 MR JUSTICE VOS: But that's the point: that they are not 18 concerned with the impact on your business. 19 MR SILVERLEAF: Yes. 20 MR JUSTICE VOS: And they are not concerned that you have 21 a wonderful -- and I am not deprecating your having 22 a city lawyer running this case. I am sure it is very 23 sensible from your point of view because of the 24 ramifications on your business, but that is your lookout 25 for which you have to pay. The poor old claimant is</p> <p style="text-align: center;">Page 39</p>
<p>1 are many of them and, if the risk is therefore spread 2 across them in a very large way. And we are managing 3 and dealing with a complex web of litigation which 4 affects our client as a whole. They are pursuing 5 a large number of individual claims -- I am straying 6 into the extent of the work -- but the management 7 process on our side is much more complex and much more 8 difficult to handle and we deal with that in the 9 following section of our skeleton. 10 MR JUSTICE VOS: Well, I am not unimpressed with the point 11 that you have a lot of common costs that they don't have 12 because you are doing all the disclosure and you are 13 dealing with all these knotty issues, the likes of which 14 we have been talking about. That's a different point. 15 MR SILVERLEAF: I know it is, my Lord, but what I am saying 16 is that that point actually illustrates why this case is 17 of considerably more difficulty and importance to the 18 defendant, in the very unusual circumstances in which we 19 find ourselves. 20 MR JUSTICE VOS: Yes, but you see I think you're confusing 21 the two. I think your argument may be valid on point 2, 22 but can never be valid on point 1 for the reasons 23 I started by giving you. 24 MR SILVERLEAF: My Lord, I will have one more go, if I may. 25 The point is not just that there is more management to</p> <p style="text-align: center;">Page 38</p>	<p>1 simply suing News Group Newspapers for Mr Mulcaire's 2 picking up the phone and dialling into his voicemail, 3 and that is a London B rate rather than a city rate. 4 I mean I'll give a judgment about this if you would like 5 me to because it may be important, but it does seem to 6 me to be a point of principle. 7 MR SILVERLEAF: Would your Lordship give me a moment? 8 (Pause). My instructions are that the indications 9 your Lordship has given are sufficient. Can I just 10 direct to you paragraph 25 of the skeleton because there 11 may be some adjustment required on the rates -- 12 MR JUSTICE VOS: It is already very highly highlighted. 13 MR SILVERLEAF: I am not surprised, my Lord. I am 14 gratified, actually. There may be some adjustments on 15 the rates on both sides that are required because there 16 are two issues: one the grade or band of solicitor who 17 is doing some of the work, and the other is that, 18 actually, their rates are rather higher than the rates 19 we have conceded, which is London 2. 20 MR JUSTICE VOS: Can we just look at the figures? I find it 21 in Ms Band's affidavit, her fourth statement at page 5, 22 don't I? 23 MR SILVERLEAF: This is G, tab 1, my Lord. 24 MR JUSTICE VOS: I have a separate copy, but it's 10.8.4? 25 MR SILVERLEAF: Yes.</p> <p style="text-align: center;">Page 40</p>

<p>1 MR JUSTICE VOS: So what you're suggesting is those rates 2 for yourself; is that right? 3 MR SILVERLEAF: We are suggesting those rates for us and 4 slightly lower for the claimant. 5 MR JUSTICE VOS: And the claimants' rates are set out in 6 those schedules that I was just looking at. 7 MR TOMLINSON: Your Lordship finds it, sorry, at 10.2, just 8 going back in the same witness statement. 9 MR SILVERLEAF: I am grateful to Mr Tomlinson, yes. 10.1 is 10 the rates we say are appropriate for the claimants. 11 MR JUSTICE VOS: Right. 12 MR SILVERLEAF: 10.2 is the rates they claim. 13 MR JUSTICE VOS: Right. 14 MR SILVERLEAF: And 10.8.4 is the rates we claim. 15 MR JUSTICE VOS: But you may want to reconsider, now that 16 you have accepted, tacitly, my ruling on what is going 17 to be applicable to you, and you may want to take 18 a 30-second double take and say, "Oh, those rates that 19 the claimants are suggesting are very sensible", may you 20 not, because they're going to apply to both sides, you 21 see? 22 MR SILVERLEAF: I understand that. 23 MR JUSTICE VOS: Yes, you have that point. 24 MR SILVERLEAF: My Lord, on that basis, we would say that 25 the rates in 10.1 should be applied to both sides.</p> <p style="text-align: center;">Page 41</p>	<p>1 that common ground or not? 2 MR SILVERLEAF: The rates on counsel are in 10.3. 3 MR JUSTICE VOS: Well, that's particular counsel on the 4 claimants' side. 5 MR SILVERLEAF: Yes. 6 MR JUSTICE VOS: But what about for you? 7 MR MORGAN: 10.5. 8 MR SILVERLEAF: 10.5 is what is agreed. And those are the 9 rates that we say should apply to both sides if you're 10 going to apply a common rate. 11 MR JUSTICE VOS: So that's 450 and 270? 12 MR SILVERLEAF: Yes. 13 MR JUSTICE VOS: There should be a lower rate for junior 14 junior counsel, whom a lot of this work could be done 15 by. 16 MR SILVERLEAF: What has been done is a blended rate. If 17 you look in the second line of 10.5, what both sides 18 have done is arrive at that they call a blended rate, 19 which is a mixed rate for junior counsel reflecting the 20 fact that some will be done by a more senior junior and 21 some will be done by a more junior junior. That's what 22 has been done on both sides. 23 MR MORGAN: It's not been done on ours. 24 MR JUSTICE VOS: You see, the great benefit of counsel is 25 that they're cheap -- I mean not at the higher echelons,</p> <p style="text-align: center;">Page 43</p>
<p>1 MR JUSTICE VOS: 10.1? 2 MR SILVERLEAF: Yes. 3 MR JUSTICE VOS: Not 10.2? 4 MR SILVERLEAF: Not 10.2. 5 MR JUSTICE VOS: And the basis for that is that there should 6 be no -- what are the variations that they've made? 7 MR SILVERLEAF: That is apparent from 10.2. If you look, 8 10.1 is the London central rates. 9 MR JUSTICE VOS: Right. 10 MR SILVERLEAF: Or London 2 -- sorry, uplifted by 11 10 per cent for grades A to C. 12 MR JUSTICE VOS: Sorry, London central plus 10 per cent for? 13 MR SILVERLEAF: Grades A to C. That's what we are conceding 14 in 10.1. 15 MR JUSTICE VOS: And why is A to C upgraded? 16 MR SILVERLEAF: I think the debate on the last occasion was 17 that this was slightly more than London 2. 18 MR JUSTICE VOS: I see. So that is what you are conceding? 19 MR SILVERLEAF: What they are asking, as your Lordship will 20 see, is substantially more than that and we've given the 21 equivalents, so you see that they are asking for a band 22 A solicitor to be 42 per cent over, in fact over the 23 city rate, which is higher than the rate you have 24 already said I shouldn't have. 25 MR JUSTICE VOS: And what are they suggesting on counsel, is</p> <p style="text-align: center;">Page 42</p>	<p>1 and I don't criticise that at all -- but the donkey-work 2 echelons of counsel can be very cheap -- 3 MR SILVERLEAF: Yes. 4 MR JUSTICE VOS: -- and can get a lot of good work done. 5 MR SILVERLEAF: Mr Ellis is just telling me I'm wrong 6 actually. We do have a lower rate for junior junior 7 counsel. 8 MR JUSTICE VOS: Yes, I would prefer it. 9 MR SILVERLEAF: On individual case budgets, we have a lower 10 rate for junior junior counsel. We've had to apply 11 a blended rate on their side because that's all the 12 information we have. 13 MR JUSTICE VOS: So there's a dispute between both of you, 14 really? I mean there's a dispute at both levels. 15 Solicitors, you say, is too high, and counsel is too 16 high? 17 MR SILVERLEAF: Yes. 18 MR JUSTICE VOS: And you're objecting, for example, to the 19 rates that are set out there for leading counsel? 20 MR SILVERLEAF: Yes. 21 MR JUSTICE VOS: You're saying that should be down to 450 22 and that is the tops, however eminent. 23 MR SILVERLEAF: Yes, because that is the appropriate 24 recoverable rate on London 2. 25 MR JUSTICE VOS: That's the London 2 rate?</p> <p style="text-align: center;">Page 44</p>

<p>1 MR SILVERLEAF: Yes.</p> <p>2 MR JUSTICE VOS: Okay. Well, let me hear them on that and</p> <p>3 then we will come back to costs.</p> <p>4 MR SILVERLEAF: Oh, I apologise, I am wrong about that.</p> <p>5 I am sorry, my Lord, Mr Ellis's expertise has been</p> <p>6 applied to counsel and that is the rate that he would</p> <p>7 expect to recover for a London 2 case --</p> <p>8 MR JUSTICE VOS: Right.</p> <p>9 MR SILVERLEAF: -- for counsel.</p> <p>10 MR JUSTICE VOS: Okay, good. Mr Morgan, what do you say</p> <p>11 about these rates? This argument has come back by way</p> <p>12 of a boomerang.</p> <p>13 MR MORGAN: Yes, my Lord, and clearly one anticipated that,</p> <p>14 although it's interesting the speed with which the point</p> <p>15 is conceded perhaps indicates that the result</p> <p>16 financially matters much more on this side than on the</p> <p>17 defence.</p> <p>18 MR JUSTICE VOS: Well, of course it does. We're not stupid</p> <p>19 here.</p> <p>20 MR MORGAN: Yes. My Lord, the starting point of the</p> <p>21 defendant's concessions are the guideline rates of</p> <p>22 summary assessment. Those are simply guideline rates</p> <p>23 for summary assessment. They've added on 10 per cent</p> <p>24 for the higher figures, but starting with the guideline</p> <p>25 rates is not a good starting point. The appropriate</p> <p style="text-align: center;">Page 45</p>	<p>1 senior partner, 250 for grade B, 225 for grade C and 150</p> <p>2 for --</p> <p>3 MR JUSTICE VOS: So where do you get 450 from?</p> <p>4 MR MORGAN: The 450 is a little higher, I don't deny that.</p> <p>5 Just two more figures I was going to give you. In</p> <p>6 recent budgets and the defamation pilot, I'm told that</p> <p>7 for the senior fee earner, the grade A fee earner, rates</p> <p>8 between 350 and 400 have been allowed, and where</p> <p>9 advocacy is additionally involved 450 -- that's Mr David</p> <p>10 Price who's a defamation lawyer who does his own</p> <p>11 advocacy.</p> <p>12 What we say simply is that this isn't a defamation</p> <p>13 case. It is more complicated, it has overtones of fraud</p> <p>14 because one is, on the claimants' side, seeking to do</p> <p>15 the detective work in uncovering fraud. That's not what</p> <p>16 you normally have in defamation and, to that extent, one</p> <p>17 does enhance the rates.</p> <p>18 MR JUSTICE VOS: Are you happy for me to take a view?</p> <p>19 MR MORGAN: My Lord, you are going to have to ultimately.</p> <p>20 Could I just make one more point before you do so, my</p> <p>21 Lord, and that is this: if you're against me for the</p> <p>22 general allowance for individual cases and individual</p> <p>23 solicitors -- and, of course, there's a range of them --</p> <p>24 can I invite to you allow higher rates for common costs</p> <p>25 work? Mr Thomson has the responsibility of being the</p> <p style="text-align: center;">Page 47</p>
<p>1 starting point is what is a reasonable allowance for</p> <p>2 cases of this sort, which would be allowed in the Costs</p> <p>3 Office, were the matter to go there? I've been given</p> <p>4 some indication from Masters, the costs lawyers who</p> <p>5 instruct us, about results in fairly recent decisions on</p> <p>6 detailed assessment in the Costs Office. One of the</p> <p>7 problems with detailed assessment these days is it</p> <p>8 scarcely ever happens because people agree things at</p> <p>9 an early stage. But over the last two or three years,</p> <p>10 I've been told this: Master Hurst, the Senior Costs</p> <p>11 Judge, allowed £350, in fact, for the Musa King case,</p> <p>12 which you were taken to last time, for work done in 2009</p> <p>13 and 2010. That's for the partner there.</p> <p>14 MR JUSTICE VOS: It's not gone up?</p> <p>15 MR MORGAN: Well, they have tended to go up a little bit,</p> <p>16 yes.</p> <p>17 MR JUSTICE VOS: Well, they may have done, but I'm not sure</p> <p>18 there's any basis for that. Nobody else's wages have</p> <p>19 done, Mr Morgan. On you go.</p> <p>20 MR MORGAN: I'm sure you heard Mr Tomlinson's point.</p> <p>21 MR JUSTICE VOS: I did hear it, yes.</p> <p>22 MR MORGAN: In the case of Naomi Campbell's case, which was</p> <p>23 decided a little early -- 2005, I think -- £275 was</p> <p>24 recovered for the partner there, and more recently for</p> <p>25 other cases from the same firm, Schillings, 350 for the</p> <p style="text-align: center;">Page 46</p>	<p>1 lead solicitor in this major, demanding and valuable</p> <p>2 litigation.</p> <p>3 I appreciate that the common costs work on the other</p> <p>4 side, the same thing will apply. One of the factors to</p> <p>5 be taken under account under the CPR is -- and I am</p> <p>6 reading the rule -- "skill, effort, specialised</p> <p>7 knowledge and responsibility involved," and that has</p> <p>8 been reflected over the years in significantly greater</p> <p>9 allowance for cases which place exceptional demands upon</p> <p>10 particular solicitors.</p> <p>11 If I can give an example: until about ten years ago,</p> <p>12 the calculation of costs was much more nuanced. One had</p> <p>13 an expense rate which was, if you like, the expense of</p> <p>14 putting the solicitor behind his desk, the cost to the</p> <p>15 firm of having solicitors behind their desk doing their</p> <p>16 work with no profit at all, and to that was added</p> <p>17 a percentage which was called the care and conduct</p> <p>18 uplift. The going rate was 50 per cent for</p> <p>19 a bog-standard case. In group litigation -- and I am</p> <p>20 thinking particularly of child abuse litigation where</p> <p>21 the senior costs judge carried out the assessment, as</p> <p>22 against the normal 50 per cent -- rates of 140 to 160</p> <p>23 per cent were allowed for the leading solicitor. One</p> <p>24 might say the child abuse litigation has some</p> <p>25 similarities to the present in the sense that the levels</p> <p style="text-align: center;">Page 48</p>

<p>1 of damages are probably comparable. 2 MR JUSTICE VOS: It doesn't make it very complicated if 3 I allow different rates for common costs. 4 MR MORGAN: No. 5 MR JUSTICE VOS: No, okay. I take that point. Anything 6 else? 7 MR MORGAN: My Lord, the only other point is this: to the 8 extent that -- my learned friend has not raised a 9 concern about out-of-town solicitors and I think 10 your Lordship was not very impressed with it before, but 11 to the extent that the rates which you fix now are 12 higher than might be paid as between solicitor and 13 client in some cases, that will work out on the -- 14 MR JUSTICE VOS: The indemnity principle applies. 15 MR MORGAN: Exactly. My Lord, I haven't addressed you on 16 counsel and it's my submission that the rates which are 17 put forward by NGN are far too low, both in respect of 18 leading counsel and junior counsel. 19 MR JUSTICE VOS: Well, why shouldn't a lot of the nuts and 20 bolts work -- I mean Mr Reed has established 21 a marvellous precedent for Particulars of Claim and why 22 shouldn't somebody even more junior to Miss Mansoon(?) 23 be able to knock them out? It's like running down. 24 MR MORGAN: Yes. My Lord, one of the difficulties with that 25 is the team on this side has been deliberately kept</p> <p style="text-align: center;">Page 49</p>	<p>1 you didn't expect to recover counsel's fees if you 2 wanted good counsel. 3 MR MORGAN: Well, the point, my Lord, is at what level you 4 are charging. Rates of £750 an hour, which are the 5 contractual rates for my learned friend and Mr Bacon, 6 one wouldn't expect to recover. 7 MR JUSTICE VOS: Right, you say this is absolutely top whack 8 for what you might get, but in a case like this? 9 MR MORGAN: In a case like this, bearing in mind the 10 involvement of leading counsel who tend to be involved 11 in the heavier aspects of the case, yes, and the same 12 for the juniors. 13 MR JUSTICE VOS: Sorry? Same with the juniors? Okay. All 14 right. 15 MR MORGAN: And the rates which are charged for the junior 16 are at the junior end and there's a range to reflect 17 their experience. 18 MR JUSTICE VOS: Well, there's not a very big range, is 19 there? I mean I'm quite attracted by this blended rate. 20 What's wrong with that? 21 MR MORGAN: The blended rate then means that happen the 22 juniors are overpaid and the senior barristers are 23 underpaid. 24 MR JUSTICE VOS: What, you mean the junior counsel or the 25 junior leading counsel?</p> <p style="text-align: center;">Page 51</p>
<p>1 quite small so that lots of other people don't have to 2 read in. 3 MR JUSTICE VOS: Right, and it is a specialist team with 4 lots of expertise. 5 MR MORGAN: Yes. 6 MR JUSTICE VOS: I accept that completely. 7 MR MORGAN: That being so, the rates which are, in fact, 8 being charged in the market place on this side are very 9 close on the other side. 10 MR JUSTICE VOS: Do I have to set a rate for individual 11 counsel; is that appropriate? Is that not rather 12 invidious, if I am saying I think Mr X is better than 13 Miss Y? 14 MR MORGAN: Well, my Lord, no. You have their rates. 15 MR JUSTICE VOS: These are their actual rates? 16 MR MORGAN: These are their actual rates. 17 MR JUSTICE VOS: Do they get those on taxation? Do we have 18 cases in which we can they have those rates? 19 MR MORGAN: I would say, yes. Certainly, in relation to my 20 own fees, I would say that £600 -- and Mr Tomlinson -- 21 £600 an hour is recoverable on taxation. 22 MR JUSTICE VOS: I remember my fees at the Bar, they never 23 recovered them. That was the old days, but it was 24 perfectly normal not to expect to recover counsel fees. 25 That wasn't meant to be a trivial remark. It's true:</p> <p style="text-align: center;">Page 50</p>	<p>1 MR MORGAN: Yes. The blended rate is fine for a firm, 2 my Lord, because the firm takes the profit, pays its 3 salaries and the firm will get £400 an hour for a senior 4 and £300 for a rather more junior one, and if you 5 blended that and said "350", it's no skin off the firm's 6 nose. For counsel, and particularly counsel on CFAs, as 7 we all are, we get what is recovered in respect of our 8 fees and therefore a blended rate is wholly 9 inappropriate for counsel acting under such 10 an arrangement. 11 MR JUSTICE VOS: Can we not say a maximum of X for leading 12 counsel and a maximum of Y for junior counsel and leave 13 it at that? 14 MR MORGAN: One could do that, but then one has to pitch it 15 not as a blended rate, but at the other end. 16 MR JUSTICE VOS: Well no, but then you have to justify 17 within your budget that you are using the right counsel 18 for the right job. 19 MR MORGAN: My Lord, that would always be the case, yes. 20 MR JUSTICE VOS: So I would prefer to say leading counsel 21 cannot charge -- or rather there cannot be in the budget 22 for leading counsel to charge more than X and there 23 cannot be in the budget for junior counsel to charge 24 more than Y, and that's that. 25 MR MORGAN: Well, my Lord, yes, but hopefully that will not</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 be a blended rate; that will have to reflect the 2 experience of the most senior junior counsel. 3 MR JUSTICE VOS: Yes, the maximum will reflect within 4 reason. Because we are doing budgets here. We are not 5 giving everybody every last bean, but it would then be 6 up to you to make sure that the budget does not have 7 inappropriate people doing inappropriate work. 8 MR MORGAN: My Lord, that will always be the case in any 9 event. 10 MR JUSTICE VOS: Okay, so that is what I would rather do 11 then having the invidious task of saying that Mr X 12 should get an extra £30 than Mr Y. 13 MR MORGAN: My Lord, in a sense part of the solution is 14 perhaps the way in which the budgets have been 15 approached. On the claimants' side, certainly in the 16 individual budgets, we've tended to put in a figure for 17 counsel, £1,500, £250, that sort of thing, and it's up 18 to the claimants to do the work within that budget. 19 MR JUSTICE VOS: Yes. Well, that seems very sensible. 20 MR MORGAN: And that may well be the happy way of dealing 21 with these matters. 22 MR JUSTICE VOS: I'd much prefer that. So why do I need 23 rates for counsel? 24 MR MORGAN: Well, in relation to common costs work, it has 25 been put in at rates, and that's the reason why there's</p> <p style="text-align: center;">Page 53</p>	<p>1 an hourly rate times a time or it's a number. What we 2 have to have is a budget for that particular aspect. 3 MR JUSTICE VOS: Should common costs be charged slightly 4 higher for the reasons given? 5 MR SILVERLEAF: What is sauce for the goose is sauce for the 6 gander. If he is right that the common costs attract 7 a higher rate, they attract a higher rate for us as 8 well. 9 MR JUSTICE VOS: Of course, that is what I'm thinking of. 10 What I'm thinking of, Mr Silverleaf, just to cut to the 11 chase, is I'm thinking of the normal costs that you 12 suggest in 10.1 for individual costs, which is 350 going 13 down to 126. 14 MR SILVERLEAF: Yes. 15 MR JUSTICE VOS: And upgrading those to a compromise rate of 16 my own devising for common costs -- which would be 400, 17 280, 230, and 140 -- on the basis that I think there is 18 merit in what Mr Morgan has submitted about common 19 costs. 20 MR SILVERLEAF: I am not going to resist that, my Lord. 21 MR JUSTICE VOS: And then, for counsel, a rate for the job 22 or individual costs, and for common costs, I would say 23 a maximum of 600 for leading counsel and a maximum of 24 300 for junior counsel. But they have to be justified 25 as being necessary to have the top people doing it. It</p> <p style="text-align: center;">Page 55</p>
<p>1 a difference between the two. 2 MR JUSTICE VOS: Okay. So I am not going to do it for 3 individual costs work, but I'll do it for common costs. 4 Mr Silverleaf? 5 MR SILVERLEAF: My Lord, there are one or two things that 6 I ought to say in response to this. First of all, 7 I agree with your Lordship that it is wrong to give 8 rates for individual counsel and things like that. 9 MR JUSTICE VOS: Yes. 10 MR SILVERLEAF: What we're trying to do here is establish 11 a fee for the job, and the more senior counsel would be 12 expected to do the job faster, so there's a rate/time 13 balance. 14 MR JUSTICE VOS: Yes. 15 MR SILVERLEAF: You charge more, but you do more in the 16 time. 17 MR JUSTICE VOS: Yes. 18 MR SILVERLEAF: And that is true. 19 MR JUSTICE VOS: You do it differently, sometimes. 20 MR SILVERLEAF: Sometimes you do it so much better that you 21 get value overall, but that's a different point 22 altogether. 23 I think where Mr Morgan has ended up, with a rate 24 for the job, is a more sensible approach. We need to 25 get to a figure. It doesn't matter whether it's</p> <p style="text-align: center;">Page 54</p>	<p>1 is only poor old Mr Sherborne. I'm sure he'll take some 2 ... 3 MR SILVERLEAF: My Lord, I think that deals with all the 4 points that have been debated so far. 5 MR JUSTICE VOS: You are not fighting against what I've just 6 said? 7 MR SILVERLEAF: No. 8 MR JUSTICE VOS: Well let me see if Mr Morgan is fighting 9 against what I have just said, because it is only 10 an idea. 11 MR MORGAN: Well it does create a difficulty but -- just 12 excuse me for a moment. 13 MR JUSTICE VOS: I might be persuaded for 350 for junior 14 counsel. I hadn't noticed Mr Sherborne's fee. I think, 15 probably, 350 as the maximum for junior counsel. 16 I hadn't noticed that there was that. (Pause). 17 MR MORGAN: My Lord, there is just the difficulty of 18 Mr Sherborne's particular position. He has been heavily 19 involved in the litigation, had -- 20 MR JUSTICE VOS: I know, but then you are asking me to fix 21 special rates for special counsel and Mr Silverleaf 22 might want to get up and say, "I am special counsel and 23 I should have the extra that I charge". 24 MR MORGAN: Well, my Lord, we are looking here at common 25 costs only because as, your Lordship said --</p> <p style="text-align: center;">Page 56</p>

<p>1 MR JUSTICE VOS: It's only common costs. 2 MR MORGAN: Yes. 3 MR JUSTICE VOS: Mr Sherborne's main involvement is in 4 individual cases, actually, although he has just had 5 some from this morning. 6 MR MORGAN: Yes. I simply make the point that if one fixes 7 rates which mean that he is going to have to go 8 somewhere else, that would be unfortunate. 9 MR JUSTICE VOS: I am not suggesting that. But this is what 10 is recoverable. 11 MR MORGAN: Yes. 12 MR JUSTICE VOS: I mean. 13 MR MORGAN: It is the same thing on this side of the room, 14 my Lord. 15 MR JUSTICE VOS: It is the same thing? 16 MR MORGAN: Yes. All counsel for common costs work, in fact 17 all work, but certainly common costs, work, are all on 18 conditional fee agreements. 19 MR JUSTICE VOS: It is a terribly invidious thing that 20 judges have to do. What do you say about it, 21 Mr Silverleaf? It's a bit unfair to knock one 22 particular counsel who's doing a good job isn't it? 23 MR SILVERLEAF: My Lord, you just said that it's 24 inappropriate to fix particular rates for special 25 counsel.</p> <p style="text-align: center;">Page 57</p>	<p>1 budget. 2 MR JUSTICE VOS: I think Mr Silverleaf is just taking some 3 instructions. 4 MR MORGAN: I am sorry. 5 MR SILVERLEAF: My Lord, I think the point is being made to 6 me by Mr Ellis is that 400 is actually too high and that 7 if you are going to make a special rule -- 8 MR JUSTICE VOS: I should make a special ruling. 9 MR SILVERLEAF: -- you should make a special ruling. The 10 recoverable rate should be no more than 300, unless it's 11 Mr Sherbourne, but his presence has to be justified. 12 MR JUSTICE VOS: Well, then I am going to say 330 is the 13 maximum rate, unless it's Mr Sherbourne, in which case, 14 provided his attendance to the matter is justified, it 15 will be 400. 16 MR MORGAN: My Lord thank you, yes. That is acceptable. 17 MR JUSTICE VOS: Right. Come on, let's move on then. 18 Right. 19 MR MORGAN: My Lord, the next item was the NGN common costs 20 budget, in particular that large item at the beginning 21 for group coordination. 22 MR JUSTICE VOS: Yes. 23 MR MORGAN: When we saw it, we were really -- 24 MR JUSTICE VOS: Shouldn't I really hear Mr Silverleaf on 25 this, rather than you?</p> <p style="text-align: center;">Page 59</p>
<p>1 MR JUSTICE VOS: I know. 2 MR SILVERLEAF: I am sorry, Mr Sherbourne is in a particular 3 position and he'll have to decide how to deal with that, 4 but there shouldn't be a special rate for him. 5 MR JUSTICE VOS: The problem I face is, as I think Mr Morgan 6 said, is that the rules do say that if you're 7 particularly specialised and particularly good -- I mean 8 the next step for Mr Sherbourne I expect is to take silk 9 and then ... 10 MR SILVERLEAF: And it solves the problem. 11 MR JUSTICE VOS: Well, it solves the problem, but it 12 actually makes it more expensive for his clients, so his 13 clients should be grateful that he hasn't done that. 14 Right, I'm too soft, really, but I'm going to say a 15 maximum of 600 and a maximum of 400 for junior counsel, 16 but I shall be astute, if it ever comes back to me, to 17 make sure that expensive junior counsel is not doing 18 work that cheap junior counsel could do. 19 MR SILVERLEAF: As long as it is clear, my Lord. 20 MR JUSTICE VOS: It shouldn't cost any more for the clients. 21 It should cost less because, effectively, Mr Sherbourne 22 will be doing the work of a leading counsel and taking 23 some food out of Mr Tomlinson's mouth. He doesn't care, 24 I know. 25 MR MORGAN: My Lord, the next item is the NGN common costs</p> <p style="text-align: center;">Page 58</p>	<p>1 MR MORGAN: My Lord, I simply wanted to explain how it 2 appears to have derived from Ms Band's -- 3 MR JUSTICE VOS: I know, but you are going to explain that, 4 but actually Mr Silverleaf is the one who derived it. 5 MR MORGAN: Very well. 6 MR JUSTICE VOS: So he would be better to explain it to me. 7 Mr Silverleaf, this is your very large estimate for 8 common costs. 9 MR SILVERLEAF: Yes. 10 MR JUSTICE VOS: What is it all about? 11 MR SILVERLEAF: This is the point that is made in 12 paragraphs 19 to 22 of Ms Band's witness statement and 13 is dealt with, in particular, at paragraph 21, which is 14 absolutely crucial. 15 MR JUSTICE VOS: 21 of what? 16 MR SILVERLEAF: Of Ms Band's witness statement, so that is 17 bundle G, tab 1, page 10. The section of my skeleton 18 which is relevant is paragraphs 33 to 42 on pages 10 to 19 13. The simple point is that they are not comparing 20 like with like because they have two totally separate 21 categories of costs, one in the common costs and one in 22 the individual cost budgets which are the equivalent -- 23 closest equivalent -- to our group coordination costs. 24 MR JUSTICE VOS: Where are the figures actually, 25 Mr Silverleaf? I want to look at that thing, the</p> <p style="text-align: center;">Page 60</p>

<p>1 schedule for common costs that Mr Morgan showed me. 2 MR SILVERLEAF: The one in bundle F? 3 MR JUSTICE VOS: Tab 4, is it? 4 MR SILVERLEAF: Bundle F, tab 4. 5 MR JUSTICE VOS: Yes. 6 MR SILVERLEAF: Right, the group coordination costs are -- 7 right, the trouble is these are all done in pounds 8 rather than hours. You need to look at the hours, and 9 what you're looking at is the first box on the first 10 page. 11 MR JUSTICE VOS: Yes. 12 MR SILVERLEAF: They have much smaller figures. As 13 your Lordship sees, I don't think they've done the 14 totals actually. Oh yes, they have. 15 MR JUSTICE VOS: They have. 16 MR SILVERLEAF: Yes, they have. Sorry. 186 hours as 17 against 2,200 for us. For incurred, 210 for them 18 estimated as against 3,800 for us. 19 MR JUSTICE VOS: Right. Why is the discrepancy? 20 MR SILVERLEAF: The discrepancy is very simple. Included in 21 ours is what they're doing in common costs, but also 22 what they're doing in inter-claimant communications in 23 each individual budget. They have allowed, in each 24 individual budget, cash -- 25 MR JUSTICE VOS: And your figures on individual budgets are</p> <p style="text-align: center;">Page 61</p>	<p>1 this case. So to go back to my electricity board 2 example, the electricity board could legitimately charge 3 £500 for defending the case, but it has to incur another 4 £2,000 because it needs detailed legal advice from 5 leading counsel about what the ramifications are and 6 what it should do and how it should manage its position. 7 MR SILVERLEAF: With respect my Lord, that's not a fair 8 comparison. 9 MR JUSTICE VOS: There's none of that? 10 MR SILVERLEAF: No, what this is is, in fact, the internal 11 coordination of the claims that have been made, checking 12 them against each other, which is exactly what they're 13 doing with their inter-claimant communication. 14 MR JUSTICE VOS: What do you mean "checking them against 15 each other"? 16 MR SILVERLEAF: Well, comparing one claim with another to 17 see if the evidence overlaps, organising the claims so 18 that we know what's being claimed in relation to the 19 various activities of Mr Mulcaire. For example, you 20 will know that if you look on one page of Mr Mulcaire's 21 notes, there will be entries relating to several 22 different activities, which are all in relation to 23 related people. All those people may be claimants and 24 one needs to correlate the claims that are being made in 25 relation to each of the items that appears on</p> <p style="text-align: center;">Page 63</p>
<p>1 less are they? 2 MR SILVERLEAF: My figures on individual budgets include 3 nothing for inter-defendant communication because there 4 isn't any. I've got another table here, my Lord. I'm 5 just trying to see if it's actually going to help for 6 the purposes of doing -- could your Lordship just give 7 me one moment? (Pause). No, it's okay, my Lord, we can 8 use the document you have. 9 MR JUSTICE VOS: Yours is significantly less. 10 MR SILVERLEAF: I'm sorry? 11 MR JUSTICE VOS: Your individual budget for a basic case is 12 3,000 playing 6,000. 13 MR SILVERLEAF: That's right, my Lord. 14 MR JUSTICE VOS: That is your point. 15 MR SILVERLEAF: The point is their individual budgets 16 include a very large chunk of work which actually we've 17 put into group coordination and common costs because it 18 is, in fact, related to the overall management of the 19 litigation so far as we are concerned. If you compare 20 like with like you'll find that all that time is in 21 their individual budgets. 22 MR JUSTICE VOS: I understand that, but what bothers me 23 about it is that you're charging them potentially for 24 internal business advice concerned with this litigation, 25 which ultimately is really separate from the costs of</p> <p style="text-align: center;">Page 62</p>	<p>1 Mr Mulcaire's notes, and it's not -- one of the problems 2 is that those individuals are not necessarily all 3 represented by the same solicitors. So you then have 4 to -- what we're doing internally is individual 5 solicitors are dealing with claims from a particular 6 firm, but then, of course, you get two claims from two 7 different firms that relate to the same section of 8 Mr Mulcaire's notes, and they need to coordinate their 9 response. It is simply internal management. 10 It may just be that the way that the costs have been 11 allocated, they could equally have been put into the 12 individual budgets as part of the management of the 13 individual's case, but the point I'm making, my Lord, 14 the point Ms Band makes in paragraph 21 and the point 15 I make in my skeleton -- 16 MR JUSTICE VOS: Where in your skeleton? 17 MR SILVERLEAF: At paragraphs 39 to 42 -- is that actually 18 if you compare like with like, if you look at the 19 litigation management costs overall, ours are in fact 20 substantially smaller than the figures being claimed by 21 the claimants. I mean they're actually claiming twice 22 as much if you assume that there will be no more claims. 23 That's an unrealistic assumption; they're in fact going 24 to claim more. So I'm saying it's simply because of the 25 way the figures are presented that it looks as if ours</p> <p style="text-align: center;">Page 64</p>

<p>1 are higher. In fact, ours is a lot lower and we think 2 theirs is too high. We think their inter-solicitor 3 communication figures should be significantly reduced. 4 MR JUSTICE VOS: Where do I find that line? 5 MR SILVERLEAF: Which one, inter-solicitor communications? 6 MR JUSTICE VOS: Yes. 7 MR SILVERLEAF: That is in "Individual case budget", so that 8 will be in the next tab -- sorry, it must be the 9 previous tab, tab 3. 10 MR JUSTICE VOS: I thought it was in 23. Can't I look at it 11 in 23? 12 MR SILVERLEAF: Sorry? 13 MR JUSTICE VOS: Can't I look at it in -- 14 MR SILVERLEAF: Page 23 I'm told. 15 MR JUSTICE VOS: Yes, you have 23. Where is it? 16 MR MORGAN: At the bottom of the page. 17 MR SILVERLEAF: Yes, I'm sorry. That's right. It's tab 5, 18 page 23, down at the bottom, item 9. 19 MR JUSTICE VOS: That's per case? 20 MR SILVERLEAF: Yes. That's the whole point, my Lord. 21 Every single claim incurs this figure, and you'll see 22 that ours is zero, for obvious reasons. That's the 23 point. You multiply that by 500 and suddenly there's 24 a very big number. So you've got to be a little bit 25 cautious about how you approach these figures. They</p> <p style="text-align: center;">Page 65</p>	<p>1 step one, take all the work that Linklaters have done 2 since they took over from Olswang's in connection with 3 potential hacking claims; step two, deduct 4 an allowance -- this is 16.4.3 -- for work being down on 5 tranche 1 costs, a small amount; step three, deduct the 6 irrecoverable work of some of the more junior fee 7 earners -- that's 16.4.4 -- to reach a total which is to 8 be charged against the claimants in this litigation; 9 step four, deduct from that an estimate for individual 10 costs work, that's 50 times the budget of work for 11 an individual case, 16.5. The rest is the common costs 12 budget. 13 So they have taken all the work that they've done 14 since they came on board, projected to October, and 15 that's the exercise they've adopted. When we saw this, 16 we wrote them letter and saying we assume a lot of this 17 is reading and duplication and getting familiar with the 18 case, duplicating the work that had been done by Farris 19 & Olswang(?). They promised a response, but the 20 response we got didn't even deal with that point. It 21 evidently includes a great deal of reading and 22 duplication because they're bound to do it. 23 MR JUSTICE VOS: So that's the point? 24 MR MORGAN: Well, no, that is only the first point. This is 25 all the work that's been done; it's nothing to do with</p> <p style="text-align: center;">Page 67</p>
<p>1 come stamping in and saying, "Oh, Linklaters' figures 2 are vast compared with ours". In fact, they're not; 3 we're all doing the same work; it's just we put it in 4 different places. 5 MR JUSTICE VOS: Let me go back to Mr Morgan and see what he 6 says. 7 Mr Morgan, I don't like the look of the £7,000 for 8 each case. 9 MR MORGAN: My Lord, can I begin at the beginning in 10 relation to this. It's rather the reason I wanted to go 11 first. With the greatest respect to my learned friend, 12 the explanation for the large item in the first section 13 of the comparative spreadsheet is not what my learned 14 friend says. We have an explanation of this budget in 15 Ms Band's statement, beginning at paragraph 16. 16 MR JUSTICE VOS: Yes. 17 MR MORGAN: My Lord, can I just invite you to read to 18 yourself the whole of paragraph 16 down to 16.5? 19 (Pause). 20 MR JUSTICE VOS: Yes. 21 MR MORGAN: And perhaps also paragraph 19. 22 MR JUSTICE VOS: Yes. 23 MR MORGAN: My Lord, in simple terms, what this part of the 24 evidence shows that the calculation of the total common 25 costs budget has been achieved in the following way:</p> <p style="text-align: center;">Page 66</p>	<p>1 group coordination. It is the kitchen sink where work 2 has not been allocated to a separate category. But 3 further than that, it's not just the kitchen sink for 4 the claimants which are involved in this litigation, 5 it's the kitchen sink for 520 claims which they 6 apprehended may be made, including those who have not 7 written a letter of claim, those who have not issued 8 proceedings, and those who have positively elected to go 9 down the compensation scheme route. To call this 10 "common costs" for which the 49 claimants who have 11 issued proceedings and those who join in later should be 12 liable is fatally flawed by embarking on this 13 litigation, the claimants who have issued proceedings 14 accept that if the time comes when they have to pay 15 costs to NGN, they'll have to pay NGN's costs of those 16 issued claims, but costs in relation to claims which, 17 outside that, have nothing to do with the litigation and 18 are outside the scope of the costs order. 19 MR JUSTICE VOS: Either you have costs for group 20 coordination and inter-claimant communication -- 21 MR MORGAN: My Lord we have common costs group coordination, 22 which is Mr Thomson working with his solicitors, and 23 individual costs are incurred by the individual 24 solicitors in dealing with Mr Thomson. A point of 25 relative detail in the context of this enormous</p> <p style="text-align: center;">Page 68</p>

<p>1 overegging of the pudding is that it's said that we have 2 £7,000-worth of costs multiplied by up to 500 potential 3 claimants. That's completely erroneous. We have 4 conceded that inter-claimant communications by a firm 5 that has ten clients will be divided by ten. 6 MR JUSTICE VOS: So the 7,500 will be divided by ten? 7 MR MORGAN: It'll be divided by however many clients that 8 particular firm has. 9 MR JUSTICE VOS: I see. It's only per firm. 10 MR MORGAN: That aspect is per firm. That's the concession 11 I make. 12 MR JUSTICE VOS: How many firms are there? 13 UNKNOWN SPEAKER: There are already 69. 14 MR MORGAN: These are people who have written possibly -- 15 MR JUSTICE VOS: How many with issued claims? 16 MR MORGAN: With issued claims I think there are 11 or 12, 17 but it cannot be right to include all the costs of 18 dealing with people who have never issued claims in this 19 calculation. 20 MR JUSTICE VOS: Right. 21 Mr Silverleaf, your figure is duplicated, reading 22 in, too many claimants, ridiculous estimates of 500, far 23 too much. 24 MR SILVERLEAF: So he says. Where is the evidence that it's 25 reading in? What we've done --</p> <p style="text-align: center;">Page 69</p>	<p>1 work for solicitors between now and October. 2 MR SILVERLEAF: Yes. 3 MR JUSTICE VOS: That's huge. 4 MR SILVERLEAF: But that's compared with the equivalent 5 figures for tens of firms doing 20 hours each, which 6 will come up to thousands of hours over the same period. 7 MR JUSTICE VOS: Well a thousand, perhaps. If there's 50 8 firms, it'll already be a thousand. 9 MR SILVERLEAF: There's already 69 firms. 10 MR TOMLINSON: I am sorry, the position is that there are 11 11 firms. All these other cases are not within this 12 budget. 13 MR SILVERLEAF: There is a fallacy in what my learned friend 14 has said. He's treating the pre-action activities as 15 unrelated to this litigation. We all know that 16 pre-action activities form part of the budget of the 17 litigation. The fact that some people may ultimately 18 not become claimants because they settle before they 19 issue or they go into the compensation scheme rather 20 than issue doesn't make dealing with their claim any 21 less part of the budget of this litigation, and -- 22 MR JUSTICE VOS: How is that? 23 MR SILVERLEAF: Because you cannot rationally separate out 24 the management of pre-action claims into ones that are 25 going to become actions and ones that aren't because you</p> <p style="text-align: center;">Page 71</p>
<p>1 MR JUSTICE VOS: Has there been any discount for reading in? 2 MR SILVERLEAF: We didn't start the count until after 3 Linklaters took over. They did the reading in before we 4 started the count. They didn't start until mid March, 5 and they took over in February. 6 MR JUSTICE VOS: So is that on instructions, that there's 7 nothing in here for the period of reading-in? 8 MR SILVERLEAF: I am just checking, my Lord. 9 MR JUSTICE VOS: Well, I think I need to have that checked. 10 MR SILVERLEAF: I understand. 11 MR JUSTICE VOS: I mean what bothers me is, slightly, that 12 it does look like a kitchen-sink figure. 13 MR SILVERLEAF: Yes, I understand the problem. If you go 14 back to tab 4 and look at the group coordination figure 15 at the top. 16 MR JUSTICE VOS: Yes, that's what I'm doing. 17 MR SILVERLEAF: What we've done, as your Lordship knows from 18 Ms Band's witness statement, is we've prorated, so the 19 incurred charge covers the current period up to the 20 evidence and the estimated charge covers the period up 21 to the end of -- I think it is October. The management 22 of these claims is a complicated task because it 23 involved receiving and dealing with the individual 24 claims and interrelating them. 25 MR JUSTICE VOS: I know, but you're looking at 3,788 hours'</p> <p style="text-align: center;">Page 70</p>	<p>1 don't know. You can't treat them differently, you can't 2 budget for them separately. 3 MR JUSTICE VOS: I mean that is a problem there, isn't it, 4 because if, at the end of the day, the claimants go down 5 in flames and lose these claims -- which does look 6 slightly unlikely on the present form -- 7 MR SILVERLEAF: Highly unlikely, my Lord. 8 MR JUSTICE VOS: -- and they pay your common costs, I would 9 have thought that claimant number 46 would say: why 10 should I pay the costs of your dealing with all these 11 people who settled? 12 MR SILVERLEAF: My Lord, I would accept that, but for the 13 fact that what they leave out of account is that, of 14 course, a claimant who is ordered to pay costs, common 15 costs, is only ordered to pay common costs for the 16 period during which they are on the group register and 17 part of the group, so if they settle and drop out -- 18 MR JUSTICE VOS: So what about the poor old 49 people who 19 are now on the group register? You wouldn't want to be 20 one of those, would you? 21 MR SILVERLEAF: And if they come in late, they'll only be 22 liable for the later costs. This point is this only 23 applies pro rata across the claimants and over time, so 24 they're only actually individually liable for a very 25 small part of it.</p> <p style="text-align: center;">Page 72</p>

<p>1 MR JUSTICE VOS: What I am thinking of doing, Mr Silverleaf, 2 is this: I'm thinking of approving all the budget on the 3 basis that we have discussed, except the group 4 coordination budget. That does not mean I'm not going 5 to approve it, but I want to see how it is broken down. 6 In other words, I want a little more detail from Ms Band 7 as to what this exercise she did was and it doesn't seem 8 to me so urgent that this budget is approved. I mean 9 this is a novel exercise anyway -- you're going to 10 recover what you recover -- and I don't feel I've got 11 the time this morning --</p> <p>12 MR SILVERLEAF: No, I understand, my Lord.</p> <p>13 MR JUSTICE VOS: -- to go into it, if it becomes 14 contentious.</p> <p>15 As regards the £7,500, provided it is a firm's 16 charge and is split between the number of clients, and 17 provided my very clear guidance which is that claimants 18 should not go to firms, unless there's some very 19 compelling reason, which are not experts in this 20 litigation because it is simply multiplying the costs -- 21 and there can be justifications of course, but there 22 will not be many cases, I'm sure -- so provided this 23 argument between the 69 and the 12 firms is resolved in 24 favour of 12 -- or, you know, 15 -- then I don't think 25 that the 7,500 looks objectionable.</p> <p style="text-align: center;">Page 73</p>	<p>1 allowance for it in the budget.</p> <p>2 MR JUSTICE VOS: So what is --</p> <p>3 MR SILVERLEAF: That is --</p> <p>4 MR MORGAN: Item 16.</p> <p>5 MR SILVERLEAF: Item 16, is it?</p> <p>6 MR JUSTICE VOS: That's a contingent. What's wrong with 7 that?</p> <p>8 MR SILVERLEAF: The reason I'm lost --</p> <p>9 MR JUSTICE VOS: 16, page 24. But it's a contingent fee of 10 £1,800 if a solicitor --</p> <p>11 MR SILVERLEAF: No, sorry, this is item 7 I'm talking about.</p> <p>12 MR JUSTICE VOS: Right, the contingent fee seems perfectly 13 sensible, if there is an issue concerning claimant X, 14 claimant X's solicitor may want to come and he can get 15 paid that.</p> <p>16 MR SILVERLEAF: Yes, that is the only one that should be 17 allowed. Item 7 is attendance at the ordinary CMCs and 18 that shouldn't be allowed.</p> <p>19 MR MORGAN: My Lord, item 7 is the dealings between 20 individual solicitors and Mr Tomlinson around the CMCs 21 which take place. It doesn't involve them attending.</p> <p>22 MR JUSTICE VOS: But why is it 5 hours for A --</p> <p>23 MR SILVERLEAF: It's a ridiculous amount of time.</p> <p>24 MR JUSTICE VOS: It's three CMCs?</p> <p>25 MR MORGAN: Yes, it is all the CMCs in this period.</p> <p style="text-align: center;">Page 75</p>
<p>1 MR SILVERLEAF: I can see that once it starts to be divided 2 up into a very small amount on individual cases, it 3 becomes much less of a problem.</p> <p>4 MR JUSTICE VOS: Yes, so we'll approve that, subject to 5 keeping an eye.</p> <p>6 MR SILVERLEAF: I think, my Lord, that is a point that is 7 basically agreed between the parties. We have debated 8 it in correspondence.</p> <p>9 MR JUSTICE VOS: Yes, we will keep an eye on it to make sure 10 it is working. And I'll approve everything else at the 11 rates I have laid down and that can be incorporated in 12 an order and I will stand over the question of group 13 coordination costs for both sides because I know that 14 you say theirs is too great as well.</p> <p>15 MR SILVERLEAF: My Lord, just before do you that, there are 16 two things I want to raise. The there are two remaining 17 sections of the budget where we suggest that their 18 figures are far too high, which are sections 7 and 10. 19 We deal with this in --</p> <p>20 MR JUSTICE VOS: This is generic witness statements?</p> <p>21 MR SILVERLEAF: No, this is in the individual budgets. 22 Attendance at CMCs by individual solicitors, we say that 23 simply shouldn't be a figure. There should only be 24 attendance by non-lead solicitors at CMCs where they 25 need a CMC on an individual case and there should be no</p> <p style="text-align: center;">Page 74</p>	<p>1 MR JUSTICE VOS: Right, so it is an hour and a half for each 2 solicitor?</p> <p>3 MR SILVERLEAF: It should be no more than an hour each. It 4 should be three hours.</p> <p>5 MR MORGAN: My Lord, what it involves is the discussion -- 6 before a CMC, any witness statements and any skeleton 7 arguments are circulated among the solicitors. 8 Following the CMC, a brief report is made and then 9 they're given the transcript. They have to consider the 10 implications of the orders which are made at the CMC and 11 they have to put in their views to the process before 12 the --</p> <p>13 MR SILVERLEAF: My Lord, I may be able to cut through this. 14 If this is on the same basis as the inter-claimant 15 communications, ie per firm and not [OVERSPEAKING], it's 16 not a problem.</p> <p>17 MR JUSTICE VOS: No, it is per firm.</p> <p>18 MR SILVERLEAF: I appreciate this is a small point, but 19 item 10 on page 24, cost budgeting, they allow six hours 20 for determining which of the add-ons are present in the 21 case. My Lord, I can tell you it takes about 22 15 minutes.</p> <p>23 MR MORGAN: My Lord, again, can I correct 24 a misunderstanding? The explanations at the end of the 25 original budget show quite clearly that it's not simply</p> <p style="text-align: center;">Page 76</p>

<p>1 for categorising one's case. If individual budgets are 2 fixed, they have to be monitored because otherwise 3 there's no point in having budgets if they're not 4 monitored. If they're not monitored, the courts are 5 never going to know. 6 MR JUSTICE VOS: Didn't Mr Justice Ramsey say that should be 7 cheap? 8 MR MORGAN: Yes, it should be cheap, but we're monitoring 9 over a period of 5 months here. 10 MR JUSTICE VOS: This is per firm? 11 MR MORGAN: No, it will be more per client. It has to be 12 done, otherwise the budgeting process simply breaks down 13 because your Lordship will not know when budgets are 14 being exceeded. It is a fairly modest amount for a 15 period like that. It has to be done regularly as well. 16 It's not something one can do at the beginning and end 17 of the period; one has to monitor it monthly. That's 18 the recommendation in the practice direction which is 19 presently in force. 20 MR SILVERLEAF: Mr Ellis tells me, my Lord that 21 Mr Justice Ramsey said that it should be no more than 22 3 per cent of the budget and it's at least twice that. 23 MR MORGAN: Well, that's in a different context; these are 24 individual cases. 25 MR SILVERLEAF: These are individual, it's an individual Page 77</p>	<p>1 outstanding issue, would your Lordship please direct 2 that Linklaters provide a witness statement setting out 3 an explanation of how this large item is allocated as 4 between those cases which have been issued and those 5 cases which have not been issued? 6 MR JUSTICE VOS: Yes, I want them to deal with that. I want 7 them to deal with reading in, I want them to deal with 8 duplication, although that is the same thing really, and 9 I want a little more detailed explanation of what falls 10 into this general catch-all, with a view to you 11 answering it and our having a properly informed debate 12 about it next time, but not a lengthy one. I would 13 anticipate that with the benefit of this discussion it 14 should take half an hour at the next CMC. 15 MR MORGAN: Yes. 16 MR JUSTICE VOS: And Mr Silverleaf, if you could do that 17 within, say -- well if you said by 13 June, which is ... 18 we have a vacation coming up. 19 MR SILVERLEAF: Everyone is away next week, my Lord, because 20 of the two bank holidays. Could we have a little bit 21 longer because we are not meeting until 22 June? Could 22 we have until the end of that week? 23 MR JUSTICE VOS: You can have until noon on the Friday, and 24 if the claimants will respond if they think it 25 appropriate. I'm not going to direct them to. Page 79</p>
<p>1 costs budget. That is the whole point. 2 MR MORGAN: I haven't done that calculation. I don't know 3 if my learned friend has. 4 MR SILVERLEAF: Yes, it's twice. 5 MR JUSTICE VOS: I don't think the lead solicitor needs to 6 be involved in this, so I think, subject to anything 7 else anybody wants to say, I'm going to knock 8 solicitor A down to one hour in that section, each of 9 them, and solicitor B down to three hours, and see if 10 you can manage. 11 Do you have anything else you want to say? 12 MR SILVERLEAF: My Lord, there is only one other thing. You 13 said you are were going to allow different rates for 14 common and individual budgets. 15 MR JUSTICE VOS: Yes. 16 MR SILVERLEAF: I just want to check: will the rates for the 17 individual budgets therefore be the rates that we 18 suggested? 19 MR JUSTICE VOS: Yes. And the others will be the ones 20 I read out. 21 MR SILVERLEAF: The ones you read out? 22 MR JUSTICE VOS: Which are on the transcript and I have lost 23 ... oh no, I haven't: 400, 280, 230 and 140. 24 MR SILVERLEAF: That's fine, my Lord. 25 MR MORGAN: My Lord in relation to carrying forward the Page 78</p>	<p>1 I just want to make it clear nor those that are 2 attending this hearing that the debate that we've been 3 having this morning is for the purpose of approving 4 budgets in order to limit the costs of this litigation, 5 which, obviously, are very expensive because of the 6 number of individual claimants that are bringing claims. 7 They have to be represented and have the claims 8 explained and be advised on the claims and NGN have to 9 deal with individual claims. So this is really a wholly 10 exceptional piece of litigation, but what we've been 11 doing this morning -- and I have today done and am doing 12 by this tiny judgment -- is approving budgets which the 13 parties have pretty well agreed, subject to my 14 determining issues on the rates that solicitors and 15 barristers can charge, with a view to making sure that 16 the costs are properly controlled and don't get out of 17 hand. 18 This is a very important and novel exercise and it's 19 something that the court does because of its concern to 20 make sure the parties can, if at all possible, afford to 21 litigate, and that the costs incurred are not 22 disproportionate to the amount at stake. And that is 23 the concern that I had so that is why I have set 24 relatively low rates, comparatively. I am afraid they 25 are not low in comparison to what most people earn, but Page 80</p>

<p>1 they are low in comparison to what lawyers sometimes 2 charge and the purpose of that is to make sure that the 3 litigation stays within bounds, which is what I have 4 been attempting to achieve ever since it started. Some 5 of these debates do depart from what normal people would 6 think of as reality and that is why I thought it 7 appropriate to say a little about what I have been doing 8 this morning.</p> <p>9 MR MORGAN: My Lord, can I just make three short points? 10 MR JUSTICE VOS: Yes, Mr Morgan.</p> <p>11 MR MORGAN: The first is about the 22nd. I personally have 12 a difficulty about the 22nd in that it's a last day of 13 a holiday I'm going to have.</p> <p>14 MR JUSTICE VOS: In the Scilly Isles, Mr Morgan? 15 MR MORGAN: A little further afield, my Lord. But, knowing 16 Mr Bacon, also sailing.</p> <p>17 MR JUSTICE VOS: I am afraid that's tough, I'm sorry, 18 although I've found your attendance a great help today.</p> <p>19 MR MORGAN: I am grateful, my Lord. Two other points. In 20 our skeleton at paragraph 9, we asked you to give 21 an indication as to flexibility in relation to what 22 might happen if a case settles before budgets have been 23 revised.</p> <p>24 MR JUSTICE VOS: Yes.</p> <p>25 MR MORGAN: And we've highlighted a problem that arose in</p> <p style="text-align: center;">Page 81</p>	<p>1 for that exchange of views.</p> <p>2 MR JUSTICE VOS: Is that all three points? 3 MR MORGAN: That's all three points.</p> <p>4 MR JUSTICE VOS: Mr Silverleaf? 5 MR SILVERLEAF: My Lord, on the categorisation, I don't have 6 a strong view. It would seem sensible that they 7 categorise when they present the claim on the basis that 8 they must have some idea. They can always review it.</p> <p>9 MR JUSTICE VOS: And you can come back. 10 MR SILVERLEAF: And they can always review it. It may well 11 be that when they serve the particulars, the 12 categorisation will change.</p> <p>13 MR JUSTICE VOS: And if the worst comes to the worst, I have 14 to decide.</p> <p>15 MR SILVERLEAF: Yes. 16 MR JUSTICE VOS: Yes.</p> <p>17 MR SILVERLEAF: So I don't think that's a big point. I'm 18 more concerned about the flexibility.</p> <p>19 My Lord -- and this is in their paragraph -- either 20 these budgets are budgets or they aren't. If they are, 21 then they should apply nine times out of ten. If not, 22 then we need to revisit them generally. If something's 23 not working, there's no point in having budgets and then 24 leaving the parties at liberty to depart from them 25 whenever they want. You might as well put the whole lot</p> <p style="text-align: center;">Page 83</p>
<p>1 the case of Henry v NGN. I wonder if your Lordship 2 would simply indicate on the record that you approve 3 that approach.</p> <p>4 MR SILVERLEAF: My Lord, if you're going to say anything, 5 I will have something to say on this.</p> <p>6 MR MORGAN: That is the first point. I am saying nothing 7 more than what is in the skeleton.</p> <p>8 The second point concerns the categorisation of 9 cases. You may recall that in paragraph 22 of his 10 witness statement, Mr Thomson raised the point that it's 11 quite hard to categorise the case, given the elements 12 which have to be considered, until client-specific 13 Particulars of Claim are prepared. Because until you've 14 reviewed the evidence, you don't know which points 15 you're going to run, and so we would invite approval of 16 Mr Thomson's approach.</p> <p>17 MR JUSTICE VOS: What, that is categorisation delay? 18 MR MORGAN: That, in effect, what happens is the claimant, 19 when they issue their claimant-specific Particulars of 20 Claim, say: we think this falls within category 2 or 21 whatever.</p> <p>22 MR JUSTICE VOS: But they have power to amend it? 23 MR MORGAN: They have power to amend it, of course, and then 24 the claimant can come back and say: no, we don't agree 25 at all. That would be an appropriate place procedurally</p> <p style="text-align: center;">Page 82</p>	<p>1 in the bin and that's basically what they are asking you 2 to do. The point about these budgets is that they are 3 or they are intended to be a realistic assessment by the 4 parties of the amounts of work involved in a typical 5 case. The claimants say that they have applied their 6 expertise to the litigation in determining this.</p> <p>7 Mr Thomson repeatedly says that. If so, one would 8 expect them to hit the target reasonably accurately.</p> <p>9 There's therefore no need for this flexibility from case 10 to case. Overall recovery should be about right and 11 a great deal of time and money will be saved if we stick 12 to the budget, both now and on assessment. It avoid a 13 large part of the costs.</p> <p>14 MR JUSTICE VOS: Why can't I simply reserve the question of 15 what to say about flexibility when it arises? 16 MR SILVERLEAF: My Lord, what I was going to say was that if 17 there are going to be revisions to the budgets, they 18 should be approached as such before this court on 19 an application to revise the budget overall --</p> <p>20 MR JUSTICE VOS: Because we have CMCs by the gallon. 21 MR SILVERLEAF: Exactly. If they want revisions, then this 22 is the place to do it.</p> <p>23 MR JUSTICE VOS: Okay. Mr Morgan, I am very reluctant to 24 give you some sort of blanket opt out because if you get 25 a blanket opt out, then there is really very little</p> <p style="text-align: center;">Page 84</p>

<p>1 point in the exercise we've undertaken. 2 MR MORGAN: My Lord, with respect, I'm not seeking a blanket 3 opt out. What happened in the Henry case was this: 4 a CMC was fixed, a cost management conference, in order 5 to consider revised budgets. Four days before that 6 hearing took place, the case settled. The consequence 7 of that was that the budgets which had been approved at 8 the outset of that particular litigation stayed as the 9 last approved budget. 10 MR JUSTICE VOS: Yes, but it was up to you whether you 11 settled. If there was a real costs problem, you would 12 not have settled. 13 MR MORGAN: My Lord what I am simply suggesting here is 14 that in effect, rather than having to come back to this 15 court in such a situation and insisting that we cannot 16 settle until we have been back in front of 17 Mr Justice Vos for approval, that your power, if you 18 like, to -- and your intended assertion of flexibility 19 in approving these budgets -- be carried over on to the 20 costs judge, so that he has the power to make that 21 decision, rather than it having to come back to you and 22 it thus holding up such settlements which might 23 otherwise take place. 24 This isn't a blanket get out. We have to indicate 25 on this proposal that if there is going to be</p> <p style="text-align: center;">Page 85</p>	<p>1 briefly? (Pause) My Lord, there is nothing further, 2 thank you. 3 MR JUSTICE VOS: Good, well thank you all very much. I'm 4 grateful to all counsel for keeping this within very 5 close control, bearing in mind the time limits. We'll 6 meet again on 22 June. Hopefully that is when we will 7 meet again. Thank you. 8 (12.00 pm) 9 (The hearing adjourned until Friday, 22nd June 2012) 10 11 CASE MANAGEMENT CONFERENCE1 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 87</p>
<p>1 an application for an increased budget, we have to give 2 reasons for it so the other side knows clearly where we 3 are. If that doesn't happen, then this provision would 4 not kick in. 5 MR JUSTICE VOS: But you are asking me to say the costs 6 judge has good reason to depart from the last approved 7 budget where a settlement takes place and the party has 8 indicated with reasons before settlement that the costs 9 are likely to exceed the budget. All you have to say 10 is, "They're likely to exceed the budget", and you get 11 an opt out. 12 MR MORGAN: Well, it's not a complete opt out, my Lord, 13 because it's then up to the costs judge to consider how 14 much flexibility to allow. The alternative is to come 15 back to you, but it does, as I say, potentially hold up 16 settlements because it may mean that there may be many 17 cases where no settlement can take place. 18 MR JUSTICE VOS: I'm not going to do that at the moment, 19 Mr Morgan, but I will listen at subsequent CMCs if you 20 want to say it again, or somebody wants to say it again, 21 because it's proving to be a real problem. But at the 22 moment, I'd like to see if we can make this actually 23 work and have an impact on controlling the costs of the 24 litigation. 25 MR MORGAN: My Lord, can I just take instructions very</p> <p style="text-align: center;">Page 86</p>	

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