Neutral Citation Number: [2020] EWHC 2322 (Ch)

Case No: PT-2020-000587

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Rolls Building,
Fetter Lane,
London EC4A 1NL
Date: Wednesday 26 August 2020

Before :

MR JUSTICE SNOWDEN

- -

Between :

PDVSA SERVICIOS S.A. **Claimant**

and

(1) CLYDE & CO LLP **Defendants**

(2) PETROSAUDI OIL SERVICES (VENEZUELA) LIMITED

and

THE NATIONAL CRIME AGENCY
Proposed Third Defendant

- -

Mr. Anthony Jones (instructed by **Gresham Legal**) for the **Claimant**
Mr. Charles Dougherty QC for the **First Defendant**
Mr. David Allen QC, Mr. James Lewis QC, Mr. Michael Ryan and Mr. Robert Morris (instructed by **Kerman & Co.**) for the **Second Defendant**
Mr. Martin Evans QC for the **National Crime Agency**

Hearing dates (in private): 18 and 19 August 2020

- -

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 a.m. on Wednesday 26 August 2020.

.....

MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

Introduction

1. Following a remote hearing on Tuesday 18 August 2020 and the receipt of further information overnight, on Wednesday 19 August 2020 I decided that I would not accede to an application by the Second Defendant ("POS") to join the National Crime Agency (the "NCA") to these proceedings. I indicated that I would give my reasons in writing, which I now do.

2. The hearing of the application for joinder was advertised in the cause list in the usual way, but having first heard submissions from the parties and two representatives of the media who (among a number of others) attended the start of the remote hearing on 18 August 2020, I ordered that the hearing of the application would take place in private. I took the view that the application fell within the definition of an "arbitration claim" under CPR 62.2(1)(d)(i), as it was an application affecting arbitration proceedings, which CPR 62.10(3) indicates should be heard in private unless the court directs otherwise. On the basis of my knowledge of the matter at that stage I did not see any good reason to order otherwise, and in particular I was not persuaded that I should hold the hearing in public merely because an earlier judgment of Zacaroli J in the proceedings had been published.

3. Had I not considered that this was an arbitration claim under CPR 62, I indicated that I would, as an alternative, have applied the more general provisions of CPR 39.2(3)(c) and ordered the hearing to be held in private on the basis that this was an application which involved confidential information relating to a private arbitration, and publicity would damage that confidentiality.

4. I did, however, indicate that I would consider the extent to which I could make public the arguments and my decision when I delivered my written judgment, either by doing so in open court or giving a judgment in redacted form. Having taken into account the observations of the parties, I can indicate that this is my full and unredacted judgment which is deemed to be delivered in open court.

Background

5. These proceedings were commenced by the Claimant ("PDVSA") against the First Defendant ("Clyde & Co"). POS was subsequently joined to the proceedings as a defendant upon its own application. PDVSA and POS are parties to a confidential UNCITRAL arbitration with its seat in Paris. The arbitration concerned the rights and obligations of PDVSA and POS under a drilling contract to which they were both parties. During the course of the arbitral proceedings, an Escrow Account was established (the "Escrow Account") into which were paid the proceeds of demands by POS under a standby letter of credit issued by a third-party bank in favour of POS. The Escrow Account was operated by Clyde & Co, and under the escrow agreement between the parties Clyde & Co agreed to instruct the bank at which the account was held to pay the sums in the Escrow Account at the direction of the arbitral tribunal.

6. On 16 July 2020 the Malaysian public prosecutor obtained an order from the High Court of Malaysia in Kuala Lumpur under section 53 of the Malaysian Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

prohibiting any dealings with the monies in the Escrow Account (the "Malaysian Order"). The basis for the Malaysian Order appears to be an allegation that the funds in the Escrow Account are linked in some way to an alleged fraud by a third party in Malaysia in 2010. That allegation is hotly disputed by POS which contends that the monies in the Escrow Account are the product of its legitimate business activity.

7. The arbitral tribunal delivered its final award on 17 July 2020 and directed Clyde & Co, subject to payment of some deductions for costs and Clyde & Co's "regulatory, statutory and legal obligations and other constraints", to make payment of the monies in the Escrow Account to POS. POS contends that this means that it is unquestionably the beneficial owner of, and contractually entitled to payment of, the monies in the Escrow Account.

8. Following the delivery of the arbitral award, PDVSA brought proceedings in the Cour d'Appel de Paris to annul the award (the "French Annulment Proceedings"). PDVSA has stated that the essential basis of its annulment proceedings will be an allegation that the underlying contracts and performance giving rise to the payments to POS involved money-laundering, bribery and corruption connected to the alleged fraud in Malaysia.

9. In addition to launching the French Annulment Proceedings, on 4 August 2020, PDVSA sought, without notice, and obtained, an injunction from Zacaroli J preventing any payment being made by Clyde & Co from the Escrow Account to POS in accordance with the arbitral tribunal's directions (the "UK Injunction"). The UK Injunction did, however, permit payment of specified monthly amounts for POS's continuing operating expenses. POS and Clyde & Co have both indicated that they will be seeking to have the UK Injunction set aside or discharged. A date for the hearing of that application has been fixed for late September 2020.

10. Pending that hearing in September, a further order was made *inter partes* by Trower J on 11 August 2020 varying the UK Injunction so as to permit Clyde & Co to pay additional monthly sums on account of legal costs and expenses to enable POS (among other things) to defend the French Annulment Proceedings and to contest the Malaysian Order.

11. Although Clyde & Co had thus been given permission to make monthly payments of both operating costs and legal costs and expenses from the Escrow Account, a problem arose because Clyde & Co claimed that if it made any payment to POS from the Escrow Account it would be at risk of committing an offence under the UK Proceeds of Crime Act 2002 ("POCA"). The basis for that concern appears to have been that Clyde & Co had at some point made an authorised disclosure to the NCA under Part 7 of POCA. With the consent of the NCA, Clyde & Co told the parties on 7 August 2020, and the responsible partner of Clyde & Co, Mr. David Langley, affirmed in a witness statement dated 10 August 2020, that the NCA,

> "had refused consent for Clyde & Co to make a payment of the escrow monies to POS in accordance with the Final Award and that a moratorium period is running in respect of this".

12. POS took the view that there was no legitimate basis upon which the NCA could deny consent for payments which had been permitted to be made from the Escrow Account

by Zacaroli J and Trower J, and that Clyde & Co would not be at risk of committing a criminal offence under POCA were it to make such payments. POS contends that such payments would be from an Escrow Account established for the purpose of legitimate arbitral proceedings and in amounts permitted by the court, so that under the principles outlined in Bowman v Fels [2005] 1 WLR 3083 there could be no possible criminal liability for Clyde & Co under POCA.

13. As a consequence, POS sought a mandatory order requiring Clyde & Co to make the payments permitted by Zacaroli J and Trower J to POS (the "Mandatory Order"). On 14 August 2020 the application for the Mandatory Order was directed by Trower J to be heard as a matter of urgency on Friday 21 August 2020.

14. In parallel to these proceedings, on 7 August 2020 the NCA gave notice to Clyde & Co and POS that it intended to apply to the Queen's Bench Division on 10 August 2020 for a prohibition order under Article 141D of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (the "2005 Order") giving effect in England to the Malaysian Order. Although no such application was in fact made on 10 August 2020, the NCA has continued to indicate its intention to make such application, and communications have continued between it and POS as to the terms of any such prohibition order.

The Application for Joinder of the NCA

15. Against that background, POS issued the application for the NCA to be joined to the proceedings for the purposes of its application for a Mandatory Order. POS's position was put in the following way in its evidence in support of the joinder application,

> "The NCA is responsible for reporting under POCA 2002 and is aware of this litigation and has in fact threatened to bring its own related action in the Queen's Bench Division but has not done so. Furthermore, it has failed to give consent (without any basis) and failed to explain its dilatory conduct. The result is paralysis, with Clyde & Co failing to act without the NCA acting first, and the NCA refusing to do anything. The position of the NCA is thus directly relevant to POS's application for mandatory orders against Clyde & Co. The NCA needs to explain its position and how Clyde & Co could be at risk of committing any offence under POCA 2002 in making payments to POS which have already been permitted by the High Court."

16. The NCA took the view and wrote to POS indicating that the application to join it to proceedings was misconceived and inappropriate. On 17 August 2020 POS's solicitors responded to the NCA in the following terms,

> "We do not accept that the application is either inappropriate or misconceived or that the conditions of CPR19.2(2) are not met. As you are aware, the High Court has made it perfectly clear, notwithstanding your continuous threats to issue an Application for a Prohibition Order, that our client should have access to the funds set out in the Order of the Hon Mr Justice Trower…

> It is your inaction that prevents Clyde & Co making the payments to which our client is entitled. We fail to understand why you have not already made it clear to Clyde & Co, copied to our client, that there will be no sanction by the NCA for paying monies in accordance with the Hon Mr Justice Trower's Order. We therefore need the NCA to appear in Court to explain to the High Court Judge why it has not acted to facilitate these payments by agreeing the consent order, or giving permission to any [defence against money laundering] that may have been applied for, so as to give effect to the order of the Hon Mr Justice Trower made last Tuesday of which you had immediate notice."

17. In response, on the evening of 17 August 2020 prior to the hearing before me, the NCA wrote a short letter to POS stating,

> "We remain of the view that your application is inappropriate and misconceived.
>
> In relation to the third paragraph of your letter, the NCA has not prevented Clyde & Co from making payments to your client (as suggested by your letter and your application).
>
> We invite you to withdraw your application … to join the NCA as a party to these proceedings and to vacate the hearing tomorrow."

18. That letter from the NCA was copied by POS to Clyde & Co, who in turn responded to POS on the morning of the hearing before me on 18 August 2020 as follows,

> "We have seen the NCA's letter to you of 17 August 2020, forwarded to us at 19.35 last night. This letter came as a surprise as we have repeatedly been seeking permission from the NCA (through correspondence, telephone calls and leading counsel) to update you and the court as to the position in relation to the POCA issues, with the latest position being that no permission has been given. Moreover, the NCA letter may, we consider, potentially be regarded as incomplete and therefore apt to mislead. We will be writing to the NCA in that regard, insofar as they may wish to correct the position.
>
> Nevertheless, we are content to proceed on the basis that the NCA has now openly confirmed that there are no longer any live POCA issues with regard to the payments sought pursuant to the Trower J order.
>
> …
>
> This leaves the question of the Malaysian order, which makes no provision for the payments permitted by the order of Trower J. We understand that the NCA have been seeking to liaise with

> the Malaysian authorities with a view to ensuring that the Malaysian order (and any English prohibition order) is consistent with what was permitted by the order of Trower J. We also understand that your client is seeking this Wednesday to vary the Malaysian order in order to bring it into line with the order of Trower J. This is clearly desirable. The time difference with Malaysia means that the position ought to be clear one way or the other by Wednesday morning, London time. If the Malaysian order is varied so as to reflect the order of Trower J, we will be in a position to make payment."

19. As anticipated in that email, an application was determined overnight on 18/19 August 2020 in Kuala Lumpur, with the result that the Malaysian Order was varied to permit the payment of amounts from the Escrow Account in accordance with the UK Injunction as varied by the order of Trower J.

The Arguments

20. CPR 19.2(2) provides,

> "(2) The court may order a person to be added as a new party if -
>
> > (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
> >
> > (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue."

21. The cases of re Pablo Star Limited [2018] 1 WLR 738 and Molavi v Hibbert [2020] 4 WLR 46 establish that the court has no inherent jurisdiction to order joinder of a person to proceedings, but can do so in its discretion if either or both of the conditions in CPR 19.2(2)(a) or (b) are satisfied.

22. Referring to CPR 19.2(2), Mr. Allen QC, for POS, contended, first, that it was desirable for the NCA to be joined so that it could address the court on the application for a Mandatory Order so as to help resolve the issue between POS and Clyde & Co as to whether the Mandatory Order sought by POS would in fact require Clyde & Co to risk committing a criminal offence under POCA.

23. Secondly, POS submitted that there was an issue between itself and the NCA concerning the form of the prohibition order to be sought by the NCA under the 2005 Order, and in particular whether it should include exceptions for payment of expenses and legal costs as permitted by the UK Injunction (as varied by Trower J). POS submitted that this issue was connected to the issues that would be before the court hearing the application for a Mandatory Order, so that it would be desirable for the NCA to be before the court to resolve the relevant issues.

24. In Pablo Star at [60], Etherton MR observed that,

> "In considering whether or not it is desirable to add a new party pursuant to CPR r 19.2(2) two lodestars are the policy objective of enabling parties to be heard if their rights may be affected by a decision in the case and the overriding objective in CPR Pt 1."

25. Relying on that dictum, Mr. Evans QC, for the NCA, submitted that the NCA had no rights that could be affected by the decision on the application for a Mandatory Order, that the NCA had no wish to be heard in that regard, and that it could not assist in any way in the resolution of the issues between the parties to that application, so that joinder of the NCA was not desirable within the meaning of CPR 19.2(2).

26. Mr. Evans also submitted more generally that the fact that a party such as POS might want to know whether or why the regime under Part 7 POCA was engaged in relation to a payment to it was no justification for joining the NCA to proceedings, and that the court should be very reluctant to do anything that might amount to an intervention in the statutory procedure under POCA.

27. Finally, Mr. Evans contended that the issues on the potential application for a prohibition order under the 2005 Order were not "connected" with the issues between PDVSA, POS and Clyde & Co in these proceedings so as to fall within CPR 19.2(2).

Analysis

CPR 19.2(2)(b)

28. I can deal shortly with the second basis upon which Mr. Allen put the argument for joinder.

29. The issue identified by Mr. Allen as existing between the NCA and POS in relation to the intended application by the NCA for a prohibition order under the 2005 Order was whether that prohibition order should contain exemptions for the payments permitted under the UK Injunction as varied by Trower J. I think there is force in Mr. Evans' point that this issue is not connected with the question of whether Clyde & Co should be mandated to make such payments as required by CPR 19.2(2)(b). However, the point fails in any event, because CPR 19.2(2)(b) makes clear that the purpose of ordering joinder of the new party is to permit "the court" – which is the court seized of the existing proceedings to which joinder is sought – to resolve the issue between the existing party and the new party. But the 2005 Order makes clear that an application for a prohibition order must be made to the Queen's Bench Division, and hence that is the forum in which the issue as to the grant and extent of the prohibition order must be determined. There is no basis upon which the court hearing the application for a Mandatory Order against Clyde & Co could resolve the issue as to whether to grant a prohibition order, and if so, in what form.

30. In the course of the hearing before me, Mr. Evans also pointed out that the NCA did not act as the agent of the Malaysian authorities, and that it had a discretion as to the form in which it should seek a prohibition order in response to the Malaysian request for assistance. He also made clear that whatever form the Malaysian Order took, the NCA did not intend to seek an order which was more restrictive in terms of payment than the UK Injunction as varied by Trower J.

31. Finally, and in any event, any possible issue between the NCA and POS in that regard fell away overnight with the amendment to the Malaysian Order so as to permit the payments envisaged by the UK Injunction as varied by Trower J.

CPR 19.2(2)(a)

32. The more complex question concerned the potential application of CPR 19.2(2)(a).

33. The dictum of Etherton MR in Pablo Star upon which Mr. Evans relied describes the "lodestars" for the court when considering whether it is desirable to add a new party to proceedings. As the term "lodestar" suggests, this was intended to be guidance rather than a reformulation of the terms of the test in CPR 19.2(2). In focussing on the question of whether a non-party which itself seeks to be joined has rights that may be affected by the decision, Etherton MR's guidance reflects the facts of Pablo Star, and is likely to be the situation most frequently encountered in practice.

34. However, the broad terms of CPR 19.2(2) are plainly wide enough to cover an alternative (and less common) situation in which a non-party is sought to be joined which does not have rights which might be affected as such, but where, for some other reason, its presence before the court is desirable in the broader interests of justice and the overriding objective so that the court can resolve all the matters in dispute in the proceedings between the existing parties.

35. In that regard, although Mr. Evans is correct that the NCA does not have private law rights of the type which will be affected by the decision of the court as to whether to make a Mandatory Order against Clyde & Co, by virtue of its statutory role, the NCA does have a clear interest in the operation of the regime under Part 7 POCA. That interest will most obviously be engaged if the operation of the statutory regime under POCA might be by-passed or frustrated by a mandatory order of the court directing payment to be made by one person to another.

36. That latter proposition, and the fact that it would justify the NCA itself intervening to be heard on such an application appears clearly from the decision of the Court of Appeal in N v RBS [2017] 1 WLR 3938. In that case, the Court of Appeal was asked by the NCA to consider whether a first instance judge (a) had jurisdiction and (b) should have exercised it, to order a bank to make a payment to a customer and to declare that the bank would not be committing an offence under POCA were it to do so.

37. The Court of Appeal held that the court's jurisdiction to grant a mandatory order is not ousted by the provisions of POCA, but that the operation of the POCA regime would be highly relevant to the exercise of the court's discretion. Hamblen LJ observed, at [60],

> "60. Whilst I do not consider that the jurisdiction of the court is ousted, I accept the NCA's alternative submission that the statutory procedure is highly relevant to the exercise of the court's discretion. It cannot be displaced merely on a consideration of the balance of convenience as between the interests of the private parties involved. The public interest in the prevention of money laundering as reflected in the statutory

> procedure has to be weighed in the balance and in most cases is likely to be decisive. Cases justifying such intervention are likely to be exceptional, although the test is not one of exceptionality …."

38. It seems to me that in the same way as the NCA has a sufficient interest and role in the operation of POCA to justify it asking to be heard on an application between private parties for a mandatory payment order, the same interest could conceptually justify the NCA being joined to such proceedings at the instigation of one of the parties so as to assist the court in understanding the ramifications of the order that it was being asked to make, and to perform the balancing exercise envisaged by Hamblen LJ.

39. That said, I certainly accept that the court should be very wary of seeking to involve the NCA against its will in commercial litigation between private parties. Ordinarily, the NCA should be able to decide for itself whether to apply to be heard if it considers that a court decision might have an impact upon the operation of the statutory regime under POCA, and Mr. Evans stressed that the NCA would generally seek to assist a court faced with making such a decision in so far as it could.

40. But there may be circumstances in which the court might not simply regard it as appropriate to leave matters entirely to the NCA in that way. One such situation was envisaged by Hamblen LJ in N v RBS, where he gave a number of examples of circumstances in which the court might be persuaded to intervene in the statutory procedure under POCA. The examples included the following, at [65],

> "65. Another possibility in a case of real urgency and delay by the NCA in determining whether to provide consent would be to seek judicial review of its failure to do so promptly. This is likely to be difficult during the notice and moratorium periods, but the NCA's stated position is that it does respond to urgent requests, and does so promptly. As stated in its skeleton argument and confirmed in open court, "in practice the NCA can and does in appropriate cases move considerably faster than within seven days; potentially within hours"…"

41. Although Hamblen LJ contemplated that a litigating party might seek judicial review in order to ensure that the NCA's operation of (or failure to operate) the statutory process under POCA was not inappropriately preventing payment, it seems to me that joining the NCA to proceedings under CPR 19.2 might, in a suitable case (and especially if there was real urgency), provide a procedurally efficient alternative by which the court could obtain the necessary information to enable it to understand the NCA's position and the reasons for it.

42. However, I very much doubt that it is generally open to a party to litigation simply to demand that the NCA should "explain itself" to the court or the parties. So far as I am aware, there is no express requirement for the NCA to do that, whether under POCA or the CPR. At least provisionally, it seems to me that any litigant would have to approach any challenge to the position adopted by the NCA as if an application for judicial review of the type envisaged by Hamblen LJ were being made.

43. Nevertheless, for the reasons that follow, I ultimately did not need to determine that question to decide whether or not to join the NCA to these proceedings.

44. By the time that the matter came before me on 18 August 2020, the NCA had (i) authorised Clyde & Co to tell the parties on 7 August 2020 that it had refused consent to payment of the monies in the Escrow Account to POS, and that a moratorium period was running under POCA, and (ii) had sent the letter of 17 August 2020 to which I have referred in paragraph 17 above, which stated that "the NCA has not prevented Clyde & Co from making payments to [POS]" (emphasis in the original).

45. On their face, those two statements were not easy to reconcile. Although the NCA had asserted that it had not "prevented" Clyde & Co making payments to POS, at least on one interpretation it appeared to me that Clyde & Co may have taken the view that this was precisely the practical effect of the NCA's earlier refusal of consent under section 335 POCA which was communicated to the parties on 7 August 2020.

46. In that regard it should be recalled that the effect of a refusal by the NCA to provide its consent in response to an authorised disclosure under section 338 is that unless and until the moratorium period prescribed by section 335(6) expires, the person who has made the authorised disclosure will not have a defence to a subsequent charge under sections 327-329 POCA that he had the "appropriate consent" for the proposed transaction. Hence, except in the most unlikely event that a person who has made an authorised disclosure is willing to take the risk of committing a criminal offence by proceeding in the teeth of a refusal of consent by the NCA, the practical effect of that refusal will be to prevent the transaction taking place until the expiry of the moratorium period.

47. Indeed, the statutory scheme of this part of POCA itself appears to proceed upon the basis that if the NCA has been given a "heads up" of an intended transaction by an authorised disclosure, it can, by refusing consent in the initial notice period of seven working days, trigger a moratorium period of 31 days in which to investigate matters, during which period (as the name of the period suggests) the transaction will not happen. Moreover, if necessary, the NCA can apply to the court to extend the moratorium period on the basis that more time is needed to complete the investigation: see section 336A POCA. It is difficult to see what purpose that extension would serve if it was thought that the person making the disclosure would go ahead in the meantime.

48. I was, however, told at the hearing on 18 August 2020 that Clyde & Co was still limited in what it could say, so that drawing any conclusions in these respects would not be safe. However, what seemed obvious from Clyde & Co's email of 18 August 2020 was that Clyde & Co had interpreted the NCA's letter as an indication from the NCA that the moratorium period under section 335 had expired following its earlier disclosure, viz

> "… we are content to proceed on the basis that the NCA has now openly confirmed that there are no longer any live POCA issues with regard to the payments sought pursuant to the Trower J order."
>
> (my emphasis)

49. When I put the uncertainties over the NCA's letter of 17 August 2020 to Mr. Evans at the hearing, his somewhat delphic response was to say that the NCA had seen Clyde & Co's subsequent email, and that if his client disagreed with that interpretation of its letter of 17 August 2020, it had had the opportunity to say so, but had not done so.

50. Rather than venture my own view of what the NCA's position might be in light of this exchange, I invited the NCA, if it thought appropriate to do so, to set out its position in writing. This it did by a letter which I received in the evening of 18 August 2020 which stated, in material part,

> "The NCA position is that the Part 7 regime under POCA is not engaged in relation to any of the payments under the Trower Order (dated 11th August 2020); and that there is no Part 7 obstacle to the payments permitted by Trower J in that Order.
>
> … the statement of David Langley [set out in paragraph 11 above] was correct at the time; Clyde & Co previously submitted a [Suspicious Activity Report] and the NCA refused consent for that activity. Whilst this is a matter for Clyde & Co, to assist the Court, the NCA can confirm that with effect from midnight on 16 August 2020 that refusal is no longer extant. That SAR was in relation to the transactions identified in it. It does not relate to the transactions that are the subject of these proceedings (for which there is no obstacle under the Part 7 regime)."

51. I confess that I was not (and still am not) clear how this statement corresponded with the NCA's earlier letter of 17 August 2020 or Clyde & Co's interpretation of it. But whether or not Clyde & Co and the NCA had arrived at their conclusions by the same or different routes, by 19 August 2020 it was clear that they were ultimately of the same view, namely that there was no reason under Part 7 POCA why Clyde & Co should not make payment from the Escrow Account of the amounts permitted by the UK Injunction as varied by Trower J. Indeed, when the hearing resumed on 19 August 2020, I was told that Clyde & Co had in fact already instructed the appropriate payments to be made from the Escrow Account to POS in accordance with the UK Injunction as varied by Trower J.

52. On that basis, it was obvious that there was no longer any issue to be resolved between POS and Clyde & Co which could conceivably make it desirable to join the NCA to the proceedings prior to the hearing of POS's application for a Mandatory Order. I therefore indicated that I did not intend to join the NCA to the proceedings.

Subsequent events

53. On the basis that the appropriate payments had been made, I was subsequently asked by the parties to vacate the hearing of POS's application for a Mandatory Order.

54. I will receive written submissions from the parties in due course as to the costs of the joinder application.