



Neutral Citation Number: [2022] EWHC 235 (QB)

Case No: QB-2021-003567

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 February 2022

Before:

LORD JUSTICE DINGEMANS
VICE-PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR JUSTICE PICKEN

Between:

ADAM RAWET and Others

Claimants

- and -

(1) DAIMLER AG
(2) MERCEDES BENZ FINANCIAL
SERVICES UK LIMITED
(3) MERCEDES-BENZ AG

Defendants

Patrick Green QC and **Ognjen Miletic** (instructed by **Leigh Day**) for the Claimants.
Helen Davies QC (instructed by **Herbert Smith Freehills LLP**) for the Defendants (for part
of the hearing only).

Hearing date: 12 January 2022.

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

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Mr Justice Picken:**Introduction**

1. This case raises two short but important points concerning the ability to be added as a claimant to proceedings prior to service.
2. These arise in the context of applications for certain declaratory relief which, although widely couched at the outset, had reduced in scope by the end of the hearing before us so as to entail the Court being asked to make a declaration that two individuals, Mr Romans Kocegarovs and Mr Mohamed Mussajlbal were properly added as Claimants to these proceedings, pursuant to CPR 17.1(1), by an amendment to a claim form effected on 22 September 2021 (i) without the written consent of the other parties and without permission of the Court, and (ii) without also Mr Kocegarovs and Mr Mussajlbal being required by CPR 19.4(4) to give written consent to their being added as claimants to the proceedings.
3. As will appear and for reasons which I will give in what follows, I am satisfied that it is appropriate to make the declaration in substantially the terms sought.

CPR 17 and 19.4

4. It is convenient at the outset to set out the relevant provisions of the CPR, starting with CPR 17.1 itself. Under the heading “*Amendments to statements of case*”, this provides at CPR 17.1(1) as follows:

“A party may amend his statement of case at any time before it has been served on any other party.”

It is clear that the definition of “*statement of case*” includes a claim form: see CPR 2.3(1).

5. CPR 17.1(1) is followed by CPR 17.1(2) and (3):

“(2) If his statement of case has been served, a party may amend it only –

(a) with the written consent of all the other parties; or

(b) with the permission of the court.

(3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 19.4.”

There is, then, this wording at the end of CPR 17.1:

“(Part 22 requires amendments to a statement of case to be verified by a statement of truth unless the court orders otherwise).”

6. CPR 17.2 deals with the Court’s power to disallow amendments made without permission in these terms:

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- “(1) If a party has amended his statement of case where permission of the court was not required, the court may disallow the amendment.*
- (2) A party may apply to the court for an order under paragraph (1) within 14 days of service of a copy of the amended statement of case on him.”*
7. CPR 17.3 (“Amendments to statements of case with the permission of the court”) is then in the following terms:
- “(1) Where the court gives permission for a party to amend his statement of case, it may give directions as to –*
- (a) amendments to be made to any other statement of case; and*
- (b) service of any amended statement of case.*
- (2) The power of the court to give permission under this rule is subject to –*
- (a) rule 19.1 (change of parties – general);*
- (b) rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period); and*
- (c) rule 17.4 (amendments of statement of case after the end of a relevant limitation period).”*
8. I refer also to CPR 19.4 (“Procedure for adding and substituting parties”) which states as follows:
- “(1) The court’s permission is required to remove, add or substitute a party, unless the claim form has not been served.*
- (2) An application for permission under paragraph (1) may be made by –*
- (a) an existing party; or*
- (b) a person who wishes to become a party.*
- (3) An application for an order under rule 19.2(4) (substitution of a new party where existing party’s interest or liability has passed) –*
- (a) may be made without notice; and*
- (b) must be supported by evidence.*
- (4) Nobody may be added or substituted as a claimant unless –*
- (a) he has given his consent in writing; and*
- (b) that consent has been filed with the court.*

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- (5) *An order for the removal, addition or substitution of a party must be served on –*
- (a) *all parties to the proceedings; and*
 - (b) *any other person affected by the order.*
- (6) *When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about –*
- (a) *filing and serving the claim form on any new defendant;*
 - (b) *serving relevant documents on the new party; and*
 - (c) *the management of the proceedings.*”

9. These are provisions of the CPR which, amongst others, were considered last year in ***Various Claimants v G4S Plc*** [2021] EWHC 524 (Ch), [2021] 4 WLR 46. In that case, as I explain in more detail later, Mann J decided, first, that CPR 17.1 does not permit amendment of a claim form to add other claimants to the proceedings between the issue and service of the claim form since CPR 17.1(1) is available only to an existing claimant and, secondly, that, in any event, CPR 19.4(4) is not satisfied merely by completion of a statement of truth on an amended claim form signed by the solicitor acting for a claimant added by the amendment.
10. The Claimants, represented by Mr Patrick Green QC and Mr Ognjen Miletic, invite us to conclude that ***G4S*** was wrongly decided on both points. In doing so, they explain that, although Mann J granted the claimants in ***G4S*** permission to appeal, the appeal did not proceed for other reasons. Hence, they submit, the legal position is in a state of uncertainty. This, they further submit, is causing difficulty in relation to the efficient and proportionate progress not only in relation to the present proceedings but of group actions more generally.

Nature of the present proceedings

11. As explained in the first witness statement of Ms Bozena Michalowska, this claim is one of a number of related anticipated claims concerning emissions from Mercedes diesel vehicles and alleged breaches of statutory obligations (as well as certain common law claims). Leigh Day, the firm in which she is a partner, is working in collaboration with several other law firms all acting for a proposed steering committee which has been set up with a view to ensuring coordination and cooperation prior to the seeking of a group litigation order for management of the claims.
12. The (existing) Claimants named in the proceedings are individuals and businesses who each purchased, leased or otherwise acquired a Mercedes vehicle which, they allege, contained one or more unlawful defeat devices prohibited by EC Regulation 715/2007.
13. The Defendants are companies within the Daimler Group, which manufacture and sell Mercedes vehicles in the UK and elsewhere. Specifically, the First and Third Defendants, Daimler AG and Mercedes-Benz AG, are manufacturers whilst the Second Defendant, Mercedes-Benz Financial Services UK Ltd is a company incorporated in England and Wales which carries on business as the finance and leasing company for the First Defendant in the United Kingdom.

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14. The Mercedes vehicles with which the claims are concerned are mostly models that have been the subject of mandatory recall by Germany's Federal Motor Transport Authority or voluntary service measures initiated by the Daimler Group.
15. Ms Michalowska goes on to explain that Leigh Day began receiving instructions from clients in relation to the claims in around June 2020. She also points out that the Defendants have agreed that, as an exception to the extension of time agreed generally (between them and the clients of the various law firms acting for the steering committee) for service of claim forms in the proposed group litigation, a claim form could be served only for the purpose of facilitating the making and determination of the declaration sought at the hearing before us, and thereafter stayed for all purposes until 15 October 2021 (in line with the agreement in relation to other claim forms) other than the resolution of the application.
16. Accordingly, the claim form which is the subject of the application before us was served on 12 October 2021. I am told, however, that there are many other claim forms also in existence which have far larger numbers of claimants, not that this matters for present purposes since we are concerned with certain discrete issues arising out of CPR 17 and CPR 19.

The Defendants' stance in relation to the application

17. The present application has been the subject of not inconsiderable correspondence between Herbert Smith Freehills LLP and PGMBM, another of the firms of solicitors acting on behalf of the proposed steering group. It is not necessary, in the circumstances, to set out detail of that correspondence. Suffice to say, however, that the Defendants do not oppose the application whilst nonetheless not agreeing to it either.
18. This was helpfully confirmed by Ms Davies QC when she appeared, at short notice and prompted by a concern on the part of the Court that there should be clarity as to the position being adopted by the Defendants, to explain that, as far as the Defendants are concerned, **G4S** represents the law both as regards Mann J's conclusions concerning CPR 17.1 and as regards CPR 19.4(4).

The decision in G4S

19. In **G4S** anomalies in G4S's billing practices were discovered and in 2013 and 2014 the Government made various announcements about this. In July 2019, a claim form was issued by the original claimants. A further 64 additional claimants were then, subsequently, added to the claim form by a series of amendments made pursuant to CPR 17.1 prior to service.
20. G4S applied to strike out various of the claims on various grounds, including those of the additional claimants, who had been added pre-service. For present purposes, the key issues before Mann J were: whether CPR 17.1 permitted the addition of claimants with separate claims before service of the claim form; and whether the additional claimants had been validly added pursuant to CPR 19.4(4).
21. In **G4S** Mann J decided, in relation to the first of these issues, that CPR 17.1 did not permit amendment of a claim form to add other claimants to the proceedings between the issue and service of the claim form. This, in his view, was because an amendment

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to plead another claimant's entirely separate case was not an amendment by the existing party of "his statement of case", so that such an amendment was not one which was allowed under CPR 17.1.

22. As to the second issue, Mann J held that the additional claimants had not been validly added pursuant to CPR 19.4(4) because no written consent to their being added had been filed as required by this provision. He considered, specifically, that a statement of truth on the amended claim form, signed by the claimants' solicitor, would not suffice as such a consent.

The Claimants' position

23. Mr Green QC submits that Mann J was wrong to decide as he did in **G4S** in relation to both these issues. He invites the Court, accordingly, to hold both that CPR 17.1 allows additional claimants to be added to a claim form prior to service without leave and that it is sufficient for CPR 19.4(4) purposes that a solicitor signs a statement of truth accompanying the amended claim form.

CPR 17.1

24. As to the first of these matters, Mr Green QC submits that in **G4S** Mann J adopted too restrictive an approach to CPR 17.1(1). He observes, specifically, that it would not fit the scheme of CPR 17.1 and CPR 19.4 were the position pre-service (under CPR 17.1) to be more restrictive than it is post-service (under CPR 19.4).

25. These submissions mirror the position which was adopted by the claimants in **G4S**, as recorded by Mann J at [34], as follows:

"Mr Onslow's case is that the new claimants can be joined without permission under and by virtue of CPR 17.1. The wording permitted that. He sought to demonstrate that if that were not the case then there would seem to be no provision in the CPR which applied so as govern and permit the joinder of a claimant before service of the claim form. The way it worked was to allow joinder under that rule and, if the defendant did not like it, the defendant could apply to the court to disallow the amendment under CPR 17.2, provided that the application was made within the two weeks referred to in that provision."

26. Mann J went on to reject these submissions at [36] to [38], before also rejecting (wrongly, Mr Green QC submits) a further submission made by Mr Onslow QC which he summarised at [39] in this way:

"Mr Onslow ... suggested that if that construction were correct it would mean that there could be no addition of a claimant before service of a claim form because there was no other provision of the CPR which provided for that. The remainder of CPR 17 and CPR 19 dealt with the addition of parties (and therefore a claimant) after service, but not before. The way the rules worked was that CPR 17 was the gateway to all amendments. If there was a change of parties before service, CPR 17.1 applied and CPR 17.2 provided for disallowance if the change was impermissible. The time limit in CPR 17.2 was necessary to make sure there was one; otherwise a very late challenge could be made to an amendment made under CPR 17.1. 17.1(2) dealt with amendments where there was no change of parties, and 19.4 operated in the realm of a change of

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parties (qualified by CPR 19.5 where there were limitation issues). CPR 19.4(1) itself seemed to contemplate a change of claimant (whether by addition or not) before service - see the words 'unless the claim form has not been served'. In the circumstances CPR 17.1 was capable of providing for all amendments, including the addition of claimants with separate claims."

27. Mr Green QC furthermore highlights the effects of Mann J's decision on group litigation, specifically the fact that, each time that a claim form is issued, there are incremental attendant costs, in particular in issue fees. Such cumulative costs consequences alone could, he observes, be a substantial barrier to access to justice or, at least from a defendant's perspective, serve as a convenient tax on the limited funded resources of claimant groups – accentuated in cases where individual losses are more modest. He refers in this regard to the evidence contained in Ms Michalowska's first witness statement, in which she sets out the costs implications of conducting group litigation and describes how the Steering Committee firms have issued more than 41 claim forms, equating to a cost of over £430,000 in issue fees.
28. In doing so, Mr Green QC makes reference to *Sayers v SmithKline Beecham Plc* [2002] 1 WLR 2274, in which Longmore LJ had this to say at [1] to [2]:

"Multi-party actions are a comparatively novel feature of English litigation and the courts have attempted over recent years to fashion new types of order to enable viable actions to be brought in situations where a single individual would find it prohibitively expensive to bring proceedings on his or her own ...

These actions are difficult, as well as expensive, to run and impose great burdens on the practitioners who conduct them and judges who try them. They can, however, be a service to many who suffer severe injuries and it is the policy of the courts to facilitate such actions in appropriate cases and adapt traditional procedures accordingly."

Mr Green QC refers also to *Boake Allen Limited and others v Her Majesty's Revenue and Customs* [2007] UKHL 25, [2007] 1 WLR 1386, where Lord Woolf said this at [30]:

"In view of the outcome of this appeal in accordance with the opinion of Lord Hoffmann, the decision of the Court of Appeal as to the amendment is of no practical significance to the parties. However, my concern is as to its possible effect on future practice in relation to GLOs. GLOs can involve hundreds or thousands of different parties. In such a situation any step which each of the many parties has to take can cumulatively so effect the total costs, as to make them disproportionate both to the means of the parties to the action and the issues at stake. For this reason it is important that such steps generate the least possible costs."

Mr Green QC submits that it is difficult to reconcile Mann J's approach with the approach which is described in these passages.

CPR 19.4(4)

29. Turning to the second of the issues, it is Mr Green QC's submission that Mann J was also wrong to have decided that, for the purposes of CPR 19.4(4), it is not sufficient that there merely be a statement of truth signed by an additional claimant's solicitor.

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30. As Mr Onslow QC did before Mann J, Mr Green QC submits, first, that CPR 19.4(4) applies only at the post-service stage. Mann J, however, disagreed: see [95]. Mr Green QC alternatively submits (as Mr Onslow QC did in **G4S**) that, in any event, even if CPR 19.4(4) is applicable pre-service and so there is a requirement that there be signed consent on the part of the additional party (here, Mr Kocegarovs and Mr Mussajlbal as additional claimants), that requirement is satisfied by the signature of that additional party's legal representative on the amended claim form.
31. As to the latter, Mann J recorded the submission which G4S had made at [98]:

*"I can therefore turn to the more substantial question of whether the signed amended claim forms can also stand as filed consents within CPR 19.4(4). The defendant's point on this is that there is no written consent of the new claimants to their joinder, and certainly none filed. It relies heavily on relatively modern Court of Appeal authority (**Kay v Dowzall** [1993] WL 13726011, applying the rather older case of **Fricke v van Grutten** [1896] 2 Ch 649). Those cases are said to make it clear that the written consent, which must be filed, must be in a document which can be said to be the new claimant's (and not his solicitors). A claim form signed by the solicitor does not qualify even if (which is said to be unclear) a claim form signed by the claimant himself would qualify."*

32. He went on to consider the authorities to which he referred, in particular **Kay v Dowzall** [1993] WL 446, noting that the relevant rule was in these terms (see [102]):

"No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised."

Mann J explained at [105] that in that case Sir Thomas Bingham MR found that the deed relied on did not contain the relevant consent, on its true interpretation, adding at [106] that *"That would seem to cover the present situation"* but noting that Mr Onslow QC sought to distinguish the decision. He went on at [107] and [108] to say that *"technically"* the part of the decision relied on by G4S was not part of the binding ratio decidendi. He then said this at [109]:

"However, that does not mean to say I should treat myself as completely free to decide the question on the basis of the modern rule, from which the word 'own' has been dropped. Left to my own devices, I am not wholly convinced that a signature by a solicitor should be insufficient. To say that it is not would be tantamount to saying that a document signed and verified by a duly authorised agent would not be sufficient. If that is right then one has to ask how a corporate body is supposed to mark its consent. It can only do so by a duly authorised person, who for those purposes must be an agent. If a corporate body can use an agent, why cannot an individual? And in the present case most of the would-be claimants are corporate bodies, so refusing to allow them to sign by one agent (a solicitor) but allowing them by another (an officer or director) might be thought to be inconsistent."

He concluded at [110], as follows:

"Having said all that, I do not consider myself as being free to decide the point in favour of allowing a solicitor to consent. The decision of the Court of Appeal is strong and firm, and it approves a historic practice. That practice is said to be rooted in principle"

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- *the need to be quite sure that a party wishes to be joined. I do not consider it to be appropriate for me to depart from what was said by the Master of the Rolls (and thus Lindley LJ).*”

33. Mann J then briefly addressed *TRW Pensions Trust Ltd v Indesit Company Polska* [2020] EWHC 1414 (TCC), in which Fraser J decided that a witness statement made by a solicitor acting on behalf of a claimant is capable of amounting to written consent for the purposes of CPR 19.4(4). Mann J had this to say at [112] concerning that decision:

“With all due respect to Fraser J, I do not consider that that is a sentence which I should follow. The content of the two paragraphs in which he deals with the point suggest that it may have been a bit of a sideshow in that case, and there is no indication that Kay v Dowzall was drawn to his attention. If it had been I do not consider it likely that he would have mentioned the point so shortly.”

34. Mann J, accordingly, decided at [113] that the consent said to be impliedly expressed by the solicitor who signed the claim form in the case before him could not count as a consent under CPR 19.4(4), before going on to say this at [114]:

“... there is a further reason why, on any footing, the claim form should not stand as a consent even if a solicitor could sign one for the client. In my view the wording of CPR 19.4(4) requires a separate document from the sort of pleading that a new claimant would inevitably have to sign anyway when he/she is added (someone would have to sign an amended claim form for them). In my view, what the rule, and the reasoning behind it as expressed in the Court of Appeal cases, requires is a separate document which is filed for the purpose of expressing the consent. The filing has to take place before the addition as a party. That can logically only be done in a separate document before the addition which takes effect via an amendment. The amending document itself (here, the claim form) cannot achieve that function. It may be that a prior document which achieves the purpose of expressing consent, but is filed for a different primary purpose (such as the witness statement referred to in TRW) could accidentally (or incidentally) have the same effect, but I do not need to decide that. What seems to me to be clear enough is that a separate consent document has to (a) exist and (b) be filed, and the claim form introducing the new claimants does not qualify.”

35. Mr Green QC submits that Mann J was wrong to decide as he did. As a matter of principle and practicality, he submits, it must be the case that, if CPR 19.4(4) does require each individual additional claimant to consent to their inclusion on an amended claim form pre-service, such requirement is satisfied by their legal representative signing the amended claim form.

Discussion

CPR 17.1(1)

36. I start by addressing CPR 17.1(1). I do so, first, with it very much in mind that this is a rule which, at least as I see it, is to be read alongside CPR 19.4(1). That it is appropriate to approach matters in this way is, in my view, borne out by CPR 19.4(1)’s express carve-out of the situation where *“the claim form has not been served”*, in respect of the

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requirement to apply for permission from the Court “*to remove, add or substitute a party*”.

37. The distinction, therefore, between the pre-service stage and the post-service stage is clear: CPR 17.1(1) applies to the former whilst CPR 19.4(1) applies to the latter. The two rules dovetail: together, they provide a complete regime for adding parties which applies both pre- and post-service, albeit with modifications to reflect the fact that pre-service a defendant has yet to be served and so to be called upon to do anything in relation to the proceedings.
38. This is significant, as I see it, because, in such circumstances, it is unlikely that there should be a more restrictive ability to amend at the pre-service stage than at the post-service stage. Indeed, if anything, given that at the pre-service stage, the other party (here, the Defendants) will not yet have been troubled to respond to a claim form which has been served, it might be expected that the ability to amend should be greater than at the post-service stage. Certainly, in my view, the scope to amend prior to service should not be more circumscribed than it is at the post-service stage.
39. Taking this as my starting point, I then note, secondly, that, when dealing with post-service, CPR 19.4(1) is explicit in stating that an application for permission to amend may be to “*remove, add or substitute a party*”. I am clear that this points strongly to the ability to amend under CPR 17.1(1) likewise including the ability to “*remove, add or substitute a party*”. There is nothing in CPR 17.1 to suggest that the position is otherwise.
40. Nor, thirdly, is there any indication that the ability to “*remove, add or substitute a party*” does not apply to the removal, addition or substitution of a claimant. On the contrary, CPR 19.4(4) expressly addresses the situation where the proposed amendment involves a claimant being added or substituted. It follows, as I see it, that there ought not to be an objection, in principle, to an amendment being made under CPR 17.1(1) which entails the addition of a claimant.
41. I respectfully, therefore, disagree with Mann J in **G4S** that there is the restriction in this respect which he suggested. Indeed, as I see it, the fact that CPR 17.1(3) itself specifically refers to amending a statement of case by “*removing, adding or substituting a party*” in accordance with CPR 19.4 (at the post-service stage) reinforces the view that CPR 17.1(1) ought not to be read in so restrictive a fashion.
42. I consider, fourthly, that CPR 19.4(1) is significant, at least potentially, for a further reason, however. This is because CPR 19.4(2) makes it clear that an application for permission under (1) may be made by either “*an existing party*” or “*a person who wishes to become a party*”. This seems to me to serve as a useful indication that the reference in CPR 17.1(1) to a party making an amendment is to be regarded as a reference to *either* an existing party or a person who wishes to become a party. I would have been inclined to the view that the reference to a “*party*” in CPR 17.1(1) should be treated as including an existing party or a person who wishes to become a party in line with the express wording of CPR 19.4(2). On reflection, however, the difficulty with an approach which sees the reference to a “*party*” in CPR 17.1(1) treated as including *either* an existing party or a person who wishes to become a party (in line with the wording used in CPR 19.4(2)) is the fact that CPR 17.1(1) goes on to refer to the party amending “*his statement of case*”. As Mann J pointed out in **G4S**, it is only an existing

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party who has a “*statement of case*”. It is difficult, in these circumstances, to see how the reference to a “*party*” in CPR 17.1(1) can embrace a wider category than that of an existing claimant. This is, no doubt, why Mr Onslow QC made the concession which he did in *G4S* (as recorded by Mann J at [35] and as adopted by Mr Green QC before us) that a “*party*” for the purposes of CPR 17.1(1) is an existing party only.

43. Ultimately, however, I need express no concluded view on this point since, on analysis, I am satisfied that the reference to a “*party*” amending “*his statement of case*”, in any event, presents no obstacle in the present case. This is because, fifthly, I am quite satisfied that CPR 17.1(1) permits an existing party to amend “*his statement of case*” in order to introduce an additional claimant. In a case like this, where solicitors are acting on behalf of a steering group in group litigation and so, in effect, on behalf of both existing *and* proposed claimants, it is open to the Court to proceed on the basis that, in truth, the amendments are being effected, at least in part, by existing claimants. On that basis, the fact that CPR 17.1(1) makes reference to a party amending “*his statement of case*” presents no difficulty.
44. In this respect, sixthly, I agree with Mr Green QC that Mann J in *G4S* took too restrictive an approach to the reference to “*his statement of case*” in CPR 17.1(1). Specifically, Mann J said this at [36]:

“The provision then allows that party to amend ‘his statement of case’. In my view the natural meaning of those words is such that it refers to the statement of case embodying the claim that that claimant is making or seeks to make. It distorts the words to take it any wider than that. An amendment to plead another claimant’s entirely separate case is not so much an amendment of the existing claimant’s claim form by that claimant (though it would, I accept, change the document itself); it is bringing in a new person who is bringing in a separate and distinct claim. It does not seem to me to be a natural construction to treat that as an amendment by the existing party of ‘his statement of case’ when one considers what a statement of case is.”

45. In my view, the reference in CPR 17.1(1) is a reference to a document (in the present case, a claim form), and not a reference to the claim or claims contained in that document. This distinction is one to which, in my view, Mann J had insufficient regard, so leading him to adopt the overly restrictive approach to CPR 17.1(1) which he did, as reflected not only at [36] but also at [37] and [38], as follows:

“37. What a statement of case is is set out in other parts of the CPR. The claim form of an existing claimant (which is the relevant statement of case in this instance) has to contain the matters referred to in CPR 16.2 - a concise statement of the nature of the claim (which must mean the claimant's claim), the remedy which ‘the claimant’ seeks, and certain material where ‘the claimant’ is seeking certain remedies. All this points clearly to the fact that the claim form is, as one would expect, a document which is geared to the claim that the claimant is making.

- 38. That makes it harder to read CPR 17.1 as allowing a claimant to introduce another claimant with a different claim. In doing so the existing claimant is not doing anything to its existing claim. It is not even adding another of its own claims (which I accept would be possible under this rule). It is doing something rather different.”*

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Mann J's reference at [38] to "*the existing claimant ... not doing anything to its existing claim*" serves to reinforce the impression that he conflated the statement of claim with the concept of a claim made within that document.

46. I might add, seventhly, that I am also not persuaded by Mann J's reasoning at [40], which entailed him asking whether the construction urged upon him by the defendant in that case "*produced an incoherent whole*". Specifically, Mann J said this:

"I agree with Mr Onslow that one could produce a coherent whole out of the elements of the CPR by adopting his analysis of the provisions. If the defendant's interpretation produced an incoherent whole then that would be a possible reason for construing 17.1 his way. However, the construction which I favour still produces a coherent regime. While 19.4 (change of parties) applies 'unless the claim form has not been served', and therefore assumes that there can be a change of parties prior to service of the claim form, that qualification can still have work to do even if adding a claimant with its own separate claim is not permitted under 17.1. It can, for example, cover the removal, addition or substitution of defendants. It could cover the position of a claimant which seeks to remove itself from a claim form - I do not see why that would not be within 17.1, because the removing claimant would be removing its own claim by amending its own statement of case. So it is not necessary to adopt Mr Onslow's interpretation to make sense of 17.1 or to give it some useful effect."

47. Mann J then went on at [41] to say this:

"The rest of the provisions make sense on Mr Rabinowitz's construction as well. A would-be claimant is not deprived of an opportunity of suing. It can still commence its own proceedings and, in due course and if appropriate, apply for consolidation or for the cases to be heard together. The other provisions of CPR 17 and CPR 19.4 all work as they appear to operate on their face. The distinction between adding a party with a new claim on the one hand and other amendments which are properly viewed as amendments to a claim made by an existing claimant, whether by adding a cause of action or amending an existing one, or joining a new defendant, is one that can be justified rationally. They are all amendments which the existing claimant wishes to make to the claim that he/she originally brought, or (in the case of a new cause of action) to his position as a claimant set out in 'his' statement of case. A separate claim made by a separate claimant can be said to be (and is) qualitatively different."

48. In my view, eighthly, such an approach is too formalistic. It also runs counter to the overall scheme of CPR 17 and CPR 19. It is, no less importantly, inconsistent with the Overriding Objective and authorities such as *Sayers* and *Boake Allen*. The impracticalities highlighted by Ms Michalowska in the present case amply demonstrate that CPR 17.1(1) ought not to be viewed in so restrictive a fashion. To require claimants in group litigation to have to issue separate proceedings every time that additional claimants are sought to be added entails a disproportionate approach to costs and, worse still, potentially represents a denial of access to justice.

CPR 19.4(4)

49. I turn to the second of the issues which arises, namely whether, in the case of an amendment without leave under CPR 17.1, CPR 19.4(4) means that it is not sufficient that there be a statement of truth signed by an additional claimant's solicitor.

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50. I can deal with this issue relatively shortly since I am clear that CPR 19.4(4) has no application to amendments which are made (without leave) pursuant to CPR 17.1.

51. Mann J took the contrary view in **G4S** at [95], as follows:

“I will first dispose of the argument that 19.4(4) does not apply to pre-service joinder. In my view it plainly does. Its wording is general and on its natural construction applies to joinder whenever it takes place. Its position in the CPR does not affect that meaning. The heading to the rule shows it is general in its application, and the reference to a non-service situation in 19.4(1) does not mean that the rest of the rule does not apply to that situation; it tends to indicate that that situation is within the scope of the rule even if most of the subsequent provisions deal with a permission that is not required pre-service. Furthermore, there is no good reason in practice for excluding pre-service additions from the consent requirement. If a clear expression of consent is required to support an application post-service, it is impossible to think of a reason why that should not apply pre-service. The contextual argument advanced by Mr Onslow cannot overcome this, and there is nothing in Practice Direction 19A, also relied on as context by Mr Onslow, which assists him either. Accordingly, a filed consent in writing is required and it is necessary to consider whether the amended claim forms were meaningfully signed at all (so as to signify consent) and if so whether the solicitor’s signature on that type of document is sufficient.”

However, I respectfully disagree for a number of reasons.

52. First and fundamentally, CPR 19.4(4) is expressly concerned with the post-service stage and the need to make an application to the Court in order to effect an amendment. That this is the position is made clear by the reference in CPR 19.4(1) to the Court’s permission being “*required to remove, add or substitute a party, unless the claim form has not been served*”. The carve-out in respect of the pre-service stage could not be clearer. CPR 19.4(2) and (3) then go on to deal with the application which is required post-service. Those provisions say nothing about any earlier stage. There is, in such circumstances, no justification for supposing that CPR 19.4(4) applies other than to a post-service application to amend. Similarly, CPR 19.4(5) and (6) quite plainly address orders or directions made post-service rather than pre-service.

53. Secondly, although in a sense the point is merely the corollary of the first, to apply CPR 19.4(4) to the pre-service stage would involve importing into the pre-service regime governed by CPR 17.1 a requirement which is nowhere to be found within CPR 17.1 when the assumption ought surely to be that, in the absence of an express requirement akin to CPR 19.4(4), the intention of those who drafted CPR 17.1 must have been that there is no such requirement.

54. Thirdly, I do not agree with Mann J that CPR 19 is general in its application. Nor do I agree with him that “*there is no good reason in practice for excluding pre-service additions from the consent requirement*”, in particular that “*If a clear expression of consent is required to support an application post-service, it is impossible to think of a reason why that should not apply pre-service*”. I am clear that it would be wrong to read into CPR 17 a requirement which is not contained within it.

55. Fourthly, it is not clear to me why at the pre-service stage, when an amendment can be made without leave, there should need to be the same level of formality as at the post-

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service stage. That absence of formality would include the absence of a requirement akin to CPR 19.4(4). It should be borne in mind in this connection that it is open to a party to apply under CPR 17.2(1) to ask the Court to disallow the amendment. There is, therefore, protection afforded to the other party if, for example, that party considers that any claimant added through the amendment had been joined without his or her consent.

56. Fifthly, if there were any doubt about matters, the fact that Practice Direction 19A accompanies CPR 19 but there is no equivalent practice direction in respect of CPR 17 serves to underline the absence of a requirement that written consent be given in accordance with CPR 19.4(4) not only at the post-service stage but also prior to service. Practice Direction 19A, unsurprisingly, begins by making it clear that it supplements CPR 19; there is no reference, equally unsurprisingly, to CPR 17. It then provides at paragraphs 2.1 and 2.2 as follows:

“2.1 Where an application is made to the court to add or to substitute a new party to the proceedings as claimant, the party applying must file:

(1) the application notice,

(2) the proposed amended claim form and particulars of claim, and

(3) the signed, written consent of the new claimant to be so added or substituted.

2.2 Where the court makes an order adding or substituting a party as claimant but the signed, written consent of the new claimant has not been filed:

(1) the order, and

(2) the addition or substitution of the new party as claimant,

will not take effect until the signed, written consent of the new claimant is filed.”

These are provisions which echo the requirement for written consent contained in CPR 19.4(4) and which have no application in the CPR 17.1 context.

57. The conclusion which I have reached in relation to this threshold issue makes it unnecessary to go on to consider Mr Green QC’s alternative submission that, even if CPR 19.4(4) is applicable pre-service and so there is a requirement that there be signed consent on the part of the additional party, that requirement is satisfied by the signature of that additional party’s legal representative on the amended claim form. On this issue, however, I agree with what Mann J had to say in *G4S* at [114], namely that CPR 19.4(4) and Practice Direction 19A require that a separate document be filed for the purpose of expressing consent. That document must, furthermore, be filed before the addition which takes effect through the amendment which is sought be effected. The amending document itself (here, the claim form) cannot achieve that function. It follows that I agree with Mann J that a solicitor signing a claim form cannot count as a consent under CPR 19.4(4). Nonetheless, given our conclusion in relation to the non-applicability of CPR 19.4(4) to the pre-service stage, in this case the absence of separate written consent is immaterial.

Conclusion

58. For the reasons which I have given and if my Lord agrees, I consider it appropriate that a declaration be made that Mr Kocegarovs and Mr Mussajlbal were properly added as Claimants to these proceedings, pursuant to CPR 17.1(1), by the amendment to the Claim Form effected on 22 September 2021. It is unnecessary to make a declaration in the wider terms sought given that the reasons why the declaration is considered appropriate are apparent from our respective judgments.

Lord Justice Dingemans

59. I agree with Picken J that a declaration should be made to the effect that Mr Kocegarovs and Mr Mussajlbal have been properly added as Claimants to the claim form in these proceedings, for the reasons that he gives. I give this short judgment because we are differing from the interpretation of CPR 17 and CPR 19 adopted by Mann J in *Various Claimants v G4S plc* [2021] EWHC 524 (Ch); [2021] 4 WLR 46.
60. As Mann J was sitting at first instance in the High Court, and Picken J and I are also sitting at first instance in the High Court (albeit as a Divisional Court) this Court should follow the approach taken by Mann J as a matter of judicial comity unless “*convinced that that judgment is wrong*”, see *R v HM Coroner for Greater Manchester ex parte Tal* [1985] QB 67 at page 80. If we followed the approach of Mann J, this would leave it to the Court of Appeal to determine conclusively the issue of the proper interpretation of CPR 17 and CPR 19 in any appeal in which it arose.
61. In my judgment this is a case where it is appropriate for this Court to declare what it considers to be the correct construction of CPR 17 and CPR 19. First this is because both Picken J and I have come to a clear and different conclusion from Mann J about the proper interpretation of CPR 17 and CPR 19. Secondly it is apparent that the proper interpretation of CPR 17 and CPR 19 was only a part of the matters in issue in *G4S*. In particular the issue of limitation “*loomed large*”, see *G4S* at [15], and there were issues about misdescriptions of the added claimants. It is apparent that there were many good reasons why an appeal against Mann J’s judgment should not have been pursued to the Court of Appeal, despite the grant of permission to appeal. Thirdly it is apparent that the defendants have deliberately taken a “*neutral stance*” on this question, and this was expressly confirmed by Helen Davies QC on behalf of the Defendants when this Court asked for the position to be confirmed (this was because some of the correspondence about what was the Defendants’ approach was not as clear as other parts of the correspondence). The fact that none of the parties before the Court has sought to argue in support of the interpretation of CPR 17 and CPR 19 adopted by Mann J in *G4S* clearly does not mean that Mann J’s interpretation was wrong, but it does suggest that this Court should look at the matter for itself.
62. Having decided to determine the issue of the proper interpretation of CPR 17 and CPR 19, then I agree with Picken J that a claim form may be amended to add in another party before it has been served. In my judgment CPR 19.4(1) clearly indicates that such a conclusion is likely (“*the court’s permission is required to remove, add or substitute a party, unless the claim form has not been served*” (emphasis added)). I also agree with Picken J that, for the reasons that he gives, it is difficult to make sense of the structure of both CPR 17 and CPR 19 unless CPR Part 17 is interpreted to include the power to amend the claim form to add in a party before service of the claim form.

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63. I also agree that CPR 19.4(4) applies only to amendments made after service of the claim form. However I wanted to add that, as Picken J has pointed out, a claim form is verified by a statement of truth. There is, as a matter of practice, an important obligation, on the part of the person who signs the statement of truth, to ensure that the claimant added to the claim form has given informed consent to be added to the claim form, and that the name of the added claimant is accurately set out. This should avoid some of the practical difficulties which occurred in *G4S*.