



Neutral Citation Number: [2022] EWHC 989 (TCC)

Case No: HT-2015-000430

Case No: HT-2017-000022

Case No: HT-2015-000241

Case No: HT-2016-000147

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**TECHNOLOGY AND CONSTRUCTION COURT (QBD)**

Royal Courts of Justice  
Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 29/04/2022

**Before :**

**MRS JUSTICE O'FARRELL DBE**

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**Between :**

**ALAME & Others**

Claimants: HT-2015-000430 "Bille Individuals"

**CHIEF IBITAMINO D MINAPAKAMA & Others**

Claimants: HT-2017-000022 "Bille Community"

**OKPABI & Others**

Claimants: HT-2015-000241 "Ogale Community"

**EJIRE AWALA & Others**

Claimants: HT-2016-000147 "Ogale Individuals"

**Claimants**

**- and -**

**(1) ROYAL DUTCH SHELL PLC**

**(2) THE SHELL PETROLEUM DEVELOPMENT  
COMPANY OF NIGERIA LIMITED**

**Defendants**

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**Richard Hermer QC & Edward Craven (instructed by Leigh Day) for the Claimants**  
**Lord Peter Goldsmith QC, Dr Conway Blake and Tom Cornell (instructed by Debevoise & Plimpton LLP) for the Defendants**

Hearing date: 10th December 2021

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## Approved Judgment

I 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.

**“This judgment was handed down by the judge remotely by circulation to the parties’ representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Friday 29<sup>th</sup> April 2022 at 10:30am”**

MRS JUSTICE O’FARRELL DBE

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**Mrs Justice O'Farrell:**

1. These proceedings concern environmental pollution, including water and ground contamination, that has blighted the Niger Delta region in Nigeria.
2. The claims arise out of oil spills that have occurred from oil pipelines and associated infrastructure operated in the vicinity of communities in Rivers State in the Niger Delta, causing environmental damage. The Claimants' case is that the Defendants failed to prevent, mitigate or remediate the oil contamination and they are liable to compensate the Claimants in respect of harm suffered by affected individuals and communities. The Defendants' case is that the major sources of oil pollution are crude oil theft (bunkering) and related oil spills, artisanal refining and oil spills from assets controlled and operated by third parties, matters for which they are not responsible and, in any event, do not give rise to any liability under Nigerian Law.
3. There are four sets of related proceedings before the court:
  - i) Alame & Others: HT-2015-000430 ("the Bille Individuals Claim");
  - ii) Chief Ibitamino D Minapakama & Others: HT-2017-000022 ("the Bille Community Claim");
  - iii) Okpabi & Others: HT-2015-000241 ("the Ogale Community Claim"); and
  - iv) Ejire Awala & Others: HT-2016-000147 ("the Ogale Individuals Claim").
4. The Claimants in the Bille Individuals Claim are 2,335 existing or former inhabitants of the Bille Kingdom, a riverine community comprising island villages and fishing settlements in the Degema Local Government Area, Rivers State, Nigeria. The Claimants in the Bille Community Claim are 21 council chiefs / community leaders, suing for themselves and on behalf of the people of the Bille Community.
5. The Claimants in the Ogale Individuals Claim are (currently) 26 existing or former inhabitants and/or owners of land and/or fishponds in the Ogale farming and fishing community in the Eleme Local Government Area, Rivers State, Nigeria. The Claimants in the Ogale Community Claim are 15 council chiefs / community leaders, suing for themselves and on behalf of the people of the Ogale Community.
6. In each set of proceedings, the Claimants allege that the Defendants are liable for damage caused by the oil contamination. The claims against the First Defendant, Royal Dutch Shell plc ("RDS"), a UK domiciled company and parent company of the Shell group, are based on common law negligence. The claims against the Second Defendant pipeline operator, The Shell Petroleum Development Company of Nigeria Limited ("SPDC"), a Nigerian registered company and subsidiary of RDS, are based on statutory breaches, common law negligence, nuisance, the rule in *Rylands v Fletcher* and trespass.
7. It is said that as a result of the oil spills, the natural water sources in the Claimants' communities cannot safely be used for drinking, fishing, agricultural, washing or recreational purposes; the indigenous fish and shellfish populations have been destroyed; large swathes of the mangrove forests have been destroyed and plants and

trees that could prevent soil erosion have been destroyed; farmlands have been polluted so that they are no longer suitable for farming; fishponds and swamps have been contaminated by oil; and properties have been damaged by airborne hydrocarbons and ingress of oily water, rendering some of the islands within the communities uninhabitable.

8. The Claimants seek injunctive relief, compelling the Defendants to carry out remediation of the land and waterways or lump sum damages for such purpose; further, the Claimants seek damages and/or statutory compensation in respect of loss of income, damage to property, personal injury and loss of amenity caused by interference with their enjoyment of the land.
9. The following issues have arisen for consideration by the court as part of the case management of the claims:
  - i) whether or not a Group Litigation Order (“GLO”) should be made in these proceedings; if a GLO is considered appropriate, the making of a GLO (subject to the approval of the President of the Queen’s Bench Division);
  - ii) any necessary directions consequential on any GLO, including provision for Schedules of Information, Group Registers and Cut-off dates;
  - iii) the Claimants’ application for transfer of these proceedings from the Technology and Construction Court (“TCC”) to the Queen’s Bench Division (“QBD”); and
  - iv) any further directions necessary to progress the proceedings.

#### *Procedural Background*

10. On 14 October 2015, proceedings were issued in the Ogale Community Claim and on 22 December 2015 the Bille Individuals Claim was issued.
11. Jurisdictional challenges were raised by the Defendants, pending the outcome of which further proceedings, namely, the Ogale Individuals Claim (issued on 13 June 2016) and the Bille Community Claim (issued on 27 January 2017) were stayed.
12. On 26 January 2017 – see: [2017] EWHC 89 (TCC), Fraser J held that there was no arguable common law duty of care owed by RDS and therefore no anchor defendant, as a result of which the jurisdictional challenges by SPDC succeeded. On 14 February 2018 – see: [2018] EWCA Civ 191 (CA), the Court of Appeal upheld that finding. On 12 February 2021 - see *Okpabi v RDS and SPDC* [2021] UKSC 3, the Supreme Court held that the Claimants had an arguable case that RDS owed them a common law duty of care so as properly to found jurisdiction against SDPC, its foreign subsidiary company, as a necessary and proper party to the proceedings. The claims were remitted to the High Court for determination of the outstanding jurisdictional challenges. The challenges were finally resolved by agreement in April 2021 and it is now accepted that the court has jurisdiction to determine the claims.

#### *Pleadings*

13. Amended particulars of claim have been served in each set of proceedings:

- i) the Bille Individuals Claim (30 July 2021);
  - ii) the Bille Community Claim (30 July 2021);
  - iii) the Ogale Individuals Claim (27 August 2021); and
  - iv) the Ogale Community Claim (27 August 2021).
14. For the purpose of the case management issues currently before the court, the pleadings in the Bille Individuals Claim and the Ogale Individuals Claim are material.
15. The basis of the pleaded case in the Bille Individuals Claim is that between 2011 and 2013 a series of spills from the Bille pipelines and infrastructure resulted in the discharge of significant volumes of crude oil into the creek (paragraph 23). Reliance is placed on ten reported oil spills during that period although it is said that such reports underestimate the number of incidents and volumes of oil released as a result of the spills (paragraphs 25-30). The repeated oil spillages have resulted in ongoing contamination to the natural environment in Bille, which caused and continues to cause a number of direct harmful effects, including: (a) devastation of aquatic life; (b) widespread death of mangroves; (c) damage to individually owned properties; (d) contamination of wells; (e) erosion of community land; (f) desecration of shrines; and (g) abandonment of settlements (paragraph 24).
16. It is pleaded that the Defendants are liable for the oil spills and consequential pollution (paragraphs 64-98). The Claimants have suffered loss and damage as a consequence of the 2011-2013 oil spills, described as: (a) loss of income and damage to property suffered by the fishermen; (b) loss of income suffered by shellfish harvesters, fish traders and supporting industries; (c) increased costs or loss of income suffered by firewood collectors; and (d) loss in value of land or costs of repairing property suffered by owners or occupiers of properties and fishponds (paragraphs 99-109). The Claimants are entitled to damages, compensation and/or injunctive relief (paragraphs 110-121).
17. The basis of the pleaded case in the Ogale Individuals Claim is that since at least 1993, Ogale has been subjected to repeated oil spillages from the Ogale pipelines and infrastructure. Reliance is placed on 121 reported or recorded incidents during that period although it is said that due to the regularity of the oil spillages and discharges over a prolonged period of time, and due to the lack of effective monitoring and reporting by the Defendants, the Claimants are unable to enumerate precisely the total number of oil spills and discharges (paragraphs 21-24). Discharges of crude oil from pipelines and infrastructure operated by the Second Defendant have caused and continue to cause long-term contamination of the land, swamps, groundwater and waterways in Ogale, including: (a) pollution of boreholes and wells; (b) high levels of hydrocarbons in soil, groundwater, sediment and drinking water; (c) contamination of soil on individual landowners' land; (d) detrimental effect on the health of palm trees and raffia palms; (e) reduction of the healthy fish population in the waterways and fishponds; and (f) contamination of the land, preventing the Claimants from creating productive fishponds in those areas (paragraph 25). The principal areas of contamination are identified and marked on a map annexed to the pleading (paragraphs 26-57).

18. It is pleaded that the Defendants are liable for the oil spills and consequential pollution (paragraphs 90-123). The Claimants have suffered loss and damage as a consequence of the oil spills and discharges, described as: (a) loss of a safe source of clean drinking water from the Ogale Stream and other waterways; (b) loss of income as a result of polluted farmland, fishponds and waterways, and contaminated palm trees and raffia palms; and (c) loss of amenity caused by the interference with enjoyment and use of land (paragraphs 125-129). The Claimants are entitled to damages, compensation and/or injunctive relief (paragraphs 130-142).
19. On 19 November 2021 the Defendants served their Defences to each of the claims, together with Requests for Further Information. In the Bille Individuals Claim and the Ogale Individuals Claim, the matters raised by way of defence include: (a) the Niger Delta suffers from widespread oil pollution, predominantly caused by crude oil theft, illegal oil refining and the sabotage of pipelines; (b) other operators with pipelines and assets located in and around Bille and Ogale are also a source of pollution; (c) it is denied that the oil pollution was only or predominantly caused by oil spills from SPDC-operated assets; (d) many of the spills were caused by illegal third-party interference, including pipeline sabotage, illegal bunkering and other forms of oil theft; and (e) damage caused by any spills for which SPDC was responsible was cleaned up and remediated.
20. The Defendants deny liability for the pollution caused. In particular, it is pleaded that Nigerian public policy and law prescribes that oil operators are not liable to pay compensation in respect of any oil spill caused by illegal third party interference and that there is an exclusive and comprehensive statutory compensation scheme in respect of oil spills from oil pipelines and ancillary infrastructure. Further, the alleged breaches of statutory duty, negligence, nuisance and other tortious liability are denied. The alleged loss and damage is denied. The losses are too remote and/or constitute pure economic loss. It is denied that the Claimants are entitled to the relief sought. In respect of the Ogale Individuals Claim, it is asserted that a number of the claims are statute-barred.
21. On 1 and 22 April 2022 the Claimants filed their Replies and Responses to the RFIs in each set of proceedings, in which they do not admit that the oil pollution was predominantly caused by third party interference and assert that the Defendants bear the burden of proving that case. In any event, it is alleged that the Defendants failed to take reasonable steps to protect the pipelines and infrastructure against third party interference, failed to take reasonable steps to prevent spills of oil from the pipelines and infrastructure, and, in the event of such spills occurring, to clean up and remediate effectively all of the spilled oil, caused by acts of third party interference.
22. In the Replies and RFI Responses in the Bille Individuals Claim and the Ogale Individuals Claim, the Claimants seek damages, compensation and other relief in respect of all of the oil spills and incidents identified in the Amended Particulars of Claim. However, they are not (and do not purport to be) an exhaustive list of all oil spills and leakages for which the Defendants are liable and for which the Claimants seek damages, compensation and other relief in these proceedings. Pending disclosure by the Defendants and the provision of expert evidence, the Claimants plead that they are unable to provide particulars of the dates or causes of further unpublished spills, the durations and volumes of oil spilled or the location and volume of un-remediated oil pollution originating from each such spill.

23. The Claimants deny that SPDC has complied with its obligations to remediate oil spilled from the Ogale Pipelines and Infrastructure and it is denied that any of the claims are statute-barred.

*The Group Litigation Order ("GLO")*

24. On 3 December 2021 the Claimants issued an application for a GLO to be made in respect of the claims and for transfer of the proceedings to the QBD. The application is supported by the witness statement of Martyn Day, a partner in Leigh Day, solicitors acting for the Claimants, dated 3 December 2021. The Defendants have responded by the witness statement of Christopher Boyne, a solicitor in Debevoise & Plimpton LLP, solicitors acting for the Defendants, dated 8 December 2021.
25. The witness statements and recent correspondence indicate that the parties are agreed in principle that it is appropriate for the Bille Individuals Claim and Ogale Individuals Claim to be managed under a GLO, so that common issues can be determined in a reasonable and proportionate manner. Further, it is agreed that the Bille Community Claim and the Ogale Community Claim are not suitable for a GLO but could be case managed together with the other claims. However, the Defendants' position is that it is premature for any order to be made at this stage, particularly as the common issues for any GLO have not yet been agreed or ordered.
26. A GLO is defined by CPR 19.10 as follows:
- “A Group Litigation Order ('GLO') means an order made under rule 19.11 to provide for the case management of claims which give rise to common or related issues of fact or law (the “GLO issues”).”
27. CPR 19.11 sets out the circumstances in which, and the terms on which, the court may make a GLO:
- “(1) The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues.
- (2) A GLO must –
- (a) contain directions about the establishment of a register (the “group register”) on which the claims managed under the GLO will be entered;
  - (b) specify the GLO issues which will identify the claims to be managed as a group under the GLO; and
  - (c) specify the court (the “management court”) which will manage the claims on the group register.
- (3) A GLO may –
- (a) in relation to claims which raise one or more of the GLO issues –

- (i) direct their transfer to the management court;
- (ii) order their stay until further order; and
- (iii) direct their entry on the group register;
- (b) direct that from a specified date claims which raise one or more of the GLO issues should be started in the management court and entered on the group register; and
- (c) give directions for publicising the GLO.”

28. The effect of a GLO is set out in CPR 19.12:

“(1) where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues –

- (a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and
- (b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.”

29. Practice Direction 19B provides at paragraph 3.3 that a GLO may not be made in the Queen’s Bench Division without the consent of the President of the Queen’s Bench Division.

30. Although they have not yet been agreed and would require careful consideration and formulation, a number of common or related issues of fact and law appear to arise on the pleadings in respect of the Bille Individuals Claim and the Ogale Individuals Claim, including:

- i) the circumstances in which, as a matter of Nigerian Law, the Defendants might be liable to pay compensation and/or damages for harm caused by oil contamination, pursuant to statute or common law remedies and whether any of those remedies are exclusive in application;
- ii) the cause and effect of the oil spills relied on in each Claim;
- iii) whether the Defendants owed any statutory or common law obligations, including any duty of care, to the Claimants in respect of the oil spills and any resulting harm caused;
- iv) whether the Defendants were in breach of any such obligations;
- v) whether any asserted claims are statute-barred in accordance with Nigerian limitation law; and



- vi) injunctive relief available and/or recoverable heads of loss for any such breaches, together with the approach to quantification of such loss under Nigerian Law.
31. The court confirmed at the hearing in December 2021 that, having consulted with the President of the Queen's Bench Division, it was satisfied that, in principle, this would be an appropriate case in which to make a GLO pursuant to CPR 19.11 in respect of the Bille Individuals Claim and the Ogale Individuals Claim. However, the court does not consider that the proceedings have yet reached the stage where a GLO can be made. The purpose of a GLO is to provide a framework for the case management of claims which give rise to common or related issues of fact or law. Therefore, it is essential that such common or related issues of fact and law are defined at the time of any GLO. Indeed, CPR 19.11(2)(b) provides that a GLO must specify the GLO issues which will identify the claims to be managed as a group under the GLO. In this case, the common or related issues have not yet been agreed or identified with sufficient specificity for the purposes of the GLO and there are outstanding disputes as to the particulars required to be supplied as part of the pleaded case. On that basis, the GLO application was adjourned for consideration at the next hearing.
32. The court also indicated that when a GLO is made, this court will transfer the proceedings from the TCC to the QBD pursuant to CPR 30.5(2). The court has a broad discretion to exercise its power to transfer proceedings from one division of the High Court to another, having regard to the overriding objective. It is noted that the claims were commenced in the TCC and the Defendants oppose the application to transfer them to the QBD at this stage. However, although the claims were started some years ago, they remain at a relatively early stage, the general pleadings having just been completed. Therefore, they will benefit from the clear structure and careful case management that can be offered by an allocated managing judge. A transfer order to the general QBD will allow the President of the Queen's Bench Division greater flexibility, in terms of deploying judicial resources efficiently and appointing a Managing Judge under the GLO, for the purpose of managing and hearing the issues in this group litigation.

*Directions consequential on GLO*

33. The parties agreed that it would be appropriate for the court to determine certain issues of principle consequential upon the making of a GLO in the Bille Individual Claims and Ogale Individual Claims. In particular, the parties agreed that it would be appropriate and conducive to effective case management for the court to determine issues relating to:
- i) group registers;
  - ii) cut-off dates;
  - iii) minimum requirements for entry onto the Ogale Group Register; and
  - iv) the content of the schedules of information.

*Group Registers*

34. It is common ground that there should be separate group registers for each of the Bille Individuals Claim and the Ogale Individuals Claim as set out in paragraphs 20 to 28 of the Claimants' draft order.

*Cut-off date*

35. The Claimants do not envisage any new or additional claims will be brought on behalf of individuals from Bille and therefore the Bille Group Register is closed.
36. The Claimants anticipate that there will be new individuals from Ogale who wish to advance claims in this litigation. The parties have agreed, and the court approves, a cut-off date of 15 July 2022 for any additions to the group register for the Ogale Individuals Claim, based on the standard minimum requirements for joining the Claim as set out in the Claimants' draft order.

*Standard minimum requirements*

37. The Claimants propose that the standard minimum requirements for entry of a claim onto the Ogale Group Register should be as follows:
- i) a Claim Form (in respect of which the issue fee has been paid) has been issued, on which the individual Claimant is named;
  - ii) the Claim Form on which the Claimant is named must have been served (although the requirement to serve Particulars of Claim in any separate document is dispensed with, subject to further order); and
  - iii) the Claimant:
    - a) must have resided or resides within the area known as Ogale Community as a member of that community; and
    - b) must claim damages against the Defendants as a result of pollution alleged to have been caused by oil from the Ogale pipelines and infrastructure.
38. The Defendants' position is that an additional standard minimum requirement should be that any new prospective claimant must link the damage they claim to have suffered to a particular oil spill listed in Annex 2 to the Amended Particulars of Claim or, as a minimum, provide particulars of the alleged spill in respect of which it is alleged they have suffered damage and how it is said that the relevant spill emanated from an SPDC JV-operated asset.
39. This issue is addressed with the information required to be pleaded as part of the schedules of information below.

*Schedules of Information*

40. CPR 19.11 provides that a GLO must contain directions about the establishment of a group register on which the claims managed under the GLO will be entered. The parties agree that a schedule of information should be served in respect of each Claimant as part of their entry on the group register but there is a dispute as to the extent of

information that should be supplied in respect of each Claimant entered onto the group register.

41. The Claimants propose that the schedule of information for each claimant in the Billie Individuals Claim should contain the following details:

- i) Client code
- ii) Name
- iii) Address
- iv) Date of birth
- v) Type of ID
- vi) ID number
- vii) Gender
- viii) Main source of income prior to 2012
- ix) Type of fishing
- x) Main sites used
- xi) Before 2012 were you a full time student?
- xii) Did you have a secondary source of income?
- xiii) If yes, what was your secondary source of income?
- xiv) Non-fishing occupation
- xv) Do you own property in Bille?
- xvi) How many people live in your property in Bille?
- xvii) How has the oil pollution impacted life in your property?
- xviii) What is your main source of income now?
- xix) Do you do this full time or part time?
- xx) Secondary source of income
- xxi) Do you earn less money now than before 2012?

42. The Defendants agree that the above information should be provided but submit that it is insufficient and should be expanded to include the following details:

- i) details of the particular oil spill in relation to which each individual Claimant seeks compensation and/or damages;

- ii) where each individual Claimant says that he or she suffered damage, assuming that this location cannot be ascertained based on the individual's address;
- iii) when each individual Claimant says that they were first impacted by oil from the particular oil spill;
- iv) to the extent relevant to an individual Claimant's claim, the basis on which each individual asserts ownership and/or exclusive possession of the land in question; and
- v) whether the individual Claimant specifically authorised Leigh Day to pursue a claim on his or her behalf.

*Parties' submissions*

- 43. The Claimants submit that it is unnecessary and contrary to the overriding objective to require these additional categories of information to be obtained and provided in respect of each of the 2,335 Bille Individual Claimants at this stage.
- 44. First, it is said that the information encapsulated by the 21 categories has already been collected from the Claimants. In order to provide the additional information it would be necessary for the Claimants' solicitors to travel to Nigeria and re-interview them, a very time-consuming and expensive task.
- 45. Second, it is said that the additional information regarding details of the oil spills is not necessary for the Defendants to understand the case they have to meet. The alleged oil spills occurred between 2011 and 2013, details of the spills are publicly recorded on SPDC's website and no limitation defence has been pleaded by the Defendants in respect of the Bille Individuals Claim. Under the Claimants' proposals, each party will select claimants from which a group of lead claimants will be drawn. The Claimants will provide more detailed information in respect of the pool of selected claimants, which will ensure that the lead claimants are representative of the broader cohort of individual claimants. Determination of the dates of relevant oil spills and their impacts will be on the basis of disclosure, expert evidence and the evidence of the lead claimants. Expert analysis of satellite images is likely to be a more proportionate, reliable and efficient way of establishing the date of relevant oil spills and impacts than the recollection of the Claimants, many of whom are illiterate and innumerate, after the passage of time.
- 46. Third, it is said that the Claimants' proposal is in accordance with the standard practice followed by the courts in group actions of this type.
- 47. Fourth, the Claimants' proposed Schedule of Information in the Bille Individual Claims includes details of each Claimant's ownership and occupation of property in Bille, and how the oil pollution has impacted life in the property. It is unnecessary and disproportionate for the Claimants to provide additional information regarding the basis of any land ownership.
- 48. Fifth, by letter dated 22 November 2021, Leigh Day have provided confirmation that they have authority to represent all of the Bille Individual Claimants and there is no basis for further information to be required.

49. Although the Claimants have not yet proposed the content of the Schedules of Information for the Ogale Individuals Claim, similar considerations apply. Mr Day proposes in his witness statement that, in addition to the other details set out in the Ogale schedules of information, individual claimants will also identify:
- i) the area of Ogale that has been impacted and caused them loss and damage;
  - ii) the area's proximity to Shell infrastructure and the area's proximity to any infrastructure owned by any other oil operator (in the case of Ogale that would be NNPC); and
  - iii) the nature of that harm - whether they have suffered damage to their farmland, the fish ponds, their property, their drinking water or other loss of livelihood as a result of the oil pollution.
50. The Claimants submit that the further information sought by the Defendants is not necessary or proportionate. In Ogale there have been a very large number of oil spills from SPDC's pipelines and infrastructure over a number of years. Given the sheer number of oil spills, the extent of the pollution and the fact that pollution from spills is conducted and transported from the spill source to other locations within Ogale, it is in many instances not possible for individual Claimants to link the damage they have suffered with any particular oil spill. This issue can be addressed by expert evidence, including hydrology, the likely migration of the oil, the age and composition of the contaminants, and the likely source of the oil and contaminants.
51. Leigh Day have provided confirmation that they have authority to represent all of the Ogale Individual Claimants and there is no basis for further information to be required.
52. The Defendants submit that in order to substantiate the claims, the individual Claimants must provide information regarding the particular spill or spills in respect of which they allege damage, where they say they suffered damage and when they say that damage first occurred.
53. First, it is said that, given that both the Bille and Ogale areas suffer from extensive oil pollution from a range of different sources, it is essential for the individual Claimants in both sets of proceedings to identify the relevant spill or spills relied on because the issues of liability in this case must be assessed on a spill-by-spill basis for the purpose of the claim for statutory compensation, to identify any claims that are time-barred and any claims related to spills caused by third-party interference. The Defendants will be unable to engage in any process for the selection of selected or test claimants in the Bille Individuals Claim or the Ogale Individuals Claim if they do not know which spills form the basis of the individual claims. The Defendants will not be in a position to select representative Claimants that will test the components of their Defences without the further information sought.
54. Second, it is said that it is neither proportionate nor reasonable for the Claimants to wait until expert evidence and disclosure to have provided a better picture of where oil pollution occurred. This information is offered in respect of the Ogale Individuals Claim but should also be supplied in respect of the Bille Individuals Claim. The Bille area is extensive, spanning many kilometres, and it is unlikely that all the individual claimants suffered the same level of pollution damage from all of the spills. The

Claimants' solicitors have over-stated the task required to provide the additional information. They could send questionnaires to the individuals, work with local agents, lawyers and community leaders to collect the information, and employ information technology to facilitate and expedite the process of information gathering.

55. Third, the additional information sought by the Defendants is not contrary to standard practice in GLO claims; it is in accordance with CPR 19 and the principles established by authorities.
56. Fourth, it is said that the nature of the property rights asserted by individuals is material to the Claimants' entitlement to assert claims under the statutes relied on or at common law; further, there are unclear or contested issues as to ownership of portions of the land that affect the Claimants' entitlement to compensation and/or damages.
57. Fifth, the Defendants submit that it is necessary for each individual claimant to indicate whether Leigh Day is authorised to pursue a claim on their behalf, so that the court can satisfy itself that it is appropriate to designate them as lead solicitors for the GLO, and to ensure that there is no outstanding dispute as to whether Leigh Day is properly instructed to act on behalf of the Claimants. This is particularly acute in the Ogale claims given the letter dated 8 September 2021 from the Ogale Council of Chiefs and Elders, raising questions regarding Leigh Day's authority to act for the community.
58. Finally, the pleaded case in that claim refers to 121 incidents over a period of more than 30 years. It is submitted that at least some of the individuals must be able to identify which of those incidents were the source of pollution relied on. Where individuals suffered harm on a particular date in the vicinity of a particular spill, it should be possible for those individuals to state their best case in respect of the specific oil spill, based on the information they have. Limitation is pleaded as a defence in the Ogale Individuals Claim. Without knowing when it is said that each individual first suffered damage, the Defendants will be unable to identify a pool of individuals from which the representative lead claimants can be selected and the court will be unable to assess when different causes of action accrued and, therefore, whether any are statute-barred.

*Discussion and ruling on necessary information*

59. The starting point for the court is consideration of the matters necessary for the Claimants to plead their case where a GLO is contemplated or ordered. CPR 16.4(1)(a) provides that Particulars of Claim must include a concise statement of the facts on which the claimant relies. This should include all the facts necessary for the purpose of formulating a complete cause of action.
60. As Lord Woolf MR observed in *McPhilemy v. Times Newspapers Ltd* [1999] 3 All ER 775 at page 793A, statements of case are required to "mark out the parameters of the case that is being advanced by each party". In *Tchenguiz v. Grant Thornton UK LLP* [2015] EWHC 405 (Comm) Leggatt J (as he then was) stated:

"[1] Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Still less should they contain arguments, reasons or rhetoric. These basic rules were developed long ago

and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial.”

61. Practice Direction 19B provides as follows:

“14.1 The management court may direct that the GLO claimants serve “Group Particulars of Claim” which set out the various claims of all the claimants on the Group Register at the time the particulars are filed. Such particulars of claim will usually contain –

(1) general allegations relating to all claims; and

(2) a schedule containing entries relating to each individual claim specifying which of the general allegations are relied on and any specific facts relevant to the claimant.

14.2 The directions given under paragraph 14.1 should include directions as to whether the Group Particulars should be verified by a statement or statements of truth and, if so, by whom.

14.3 The specific facts relating to each claimant on the Group Register may be obtained by the use of a questionnaire. Where this is proposed, the management court should be asked to approve the questionnaire. The management court may direct that the questionnaires completed by individual claimants take the place of the schedule referred to in paragraph 14.1(2).

14.4 The management court may also give directions about the form that particulars of claim relating to claims which are to be entered on the Group Register should take.”

62. Group litigation cases may differ from other Part 7 or Part 8 claims in that the claim form and the group statement of case on common issues may plead the claim in short or general terms. However, that does not exempt each claimant from the requirement to set out in a schedule to the group statement of case, or in a questionnaire or other pleading in the group register, the facts necessary for the purpose of formulating a complete cause of action.

63. As observed by Lewison LJ in *Prudential Assurance Co Ltd v Revenue and Customs Commissioners* [2016] EWCA Civ 376 (CA), in respect of paragraph 14.1 of the practice direction:

“This paragraph plainly envisages that particulars of claim will be served. Particulars of claim must comply with CPR Pt 16 ... relevant facts must in our view be pleaded. If they are facts generally applicable to all claimants, they may be pleaded in group particulars of claim; if they are specific to a particular claimant they may be set out in a schedule ...”

64. In *Europcar UK Ltd v Revenue and Customs Commissioners* [2008] EWHC 1363 (Ch), following consideration of the Court of Appeal judgment in *NEC Semi-Conductors Ltd* [2006] STC 606, Henderson J stated:

“In my judgment *NEC Semi-Conductors* is authority for the proposition that, even where multiple proceedings are managed through a GLO, the individual claim forms must still satisfy the basic pleading requirement of setting out the material facts relied upon and the causes of action to which they relate. The necessary information may be pleaded in a concise and summary form ... but in the absence of this basic minimum the claim form will not fulfil its primary purpose of defining the issues and enabling the defendant to know what case it has to meet.”

65. The current pleaded case in the Bille Individuals Claim and the Ogale Individuals Claim is a global claim, in that the Claimants have identified a number of oil spillages, and described the damage suffered as a result of consequential contamination of the land and waterways, but they have not pleaded any causal nexus between each oil spill and the damage suffered by individual claimants.
66. As a matter of principle, it is permissible to advance a case as a global claim: *Walter Lilly & Company v Mackay* [2012] EWHC 1773 (TCC) per Akenhead J at [486]. However, there is an inherent degree of risk in a global claim because it depends on establishing the matters of which complaint is made in their entirety, as explained by Lord Macfadyen in *John Doyle Construction Ltd v Laing Management (Scotland) Ltd* [2002] BLR 393:

“[36] The logic of a global claim demands, however, that all the events which contribute to causing the global loss be events for which the defender is liable. If the causal events include events for which the defender bears no liability, the effect of upholding the global claim is to impose on the defender a liability which, in part, is not legally his. That is unjustified. A global claim, as such, must therefore fail if any material contribution to the causation of the global loss is made by a factor or factors for which the defender bears no legal liability. That point has been noted in *Keating* at paragraph 17-18, in *Hudson* at paragraph 8-210, more clearly in *Emden* at paragraph [231], in the American cases, and most clearly by Byrne J in *Holland v Kvaerner* at 85H and 86D ... The point has on occasions been expressed in terms of a requirement that the pursuer should not himself have been responsible for any factor contributing materially to the global loss, but it is in my view clearly more accurate to say that there must be no material causative factor for which the defender is not liable.

[37] Advancing a claim for loss and expense in global form is therefore a risky enterprise. Failure to prove that a particular event for which the defender was liable played a part in causing the global loss will not have any adverse effect on the claim, provided the remaining events for which the defender was liable



are proved to have caused the global loss. On the other hand, proof that an event played a material part in causing the global loss, combined with failure to prove that that event was one for which the defender was responsible, will undermine the logic of the global claim. Moreover, the defender may set out to prove that, in addition to the factors for which he is liable founded on by the pursuer, a material contribution to the causation of the global loss has been made by another factor or other factors for which he has no liability. If he succeeds in proving that, again the global claim will be undermined.”

67. It is a matter for the Claimants to decide how to advance the case against the Defendants. However, the Claimants do not appear to rely on the global claim currently pleaded. They have intimated in their Replies and their Responses to the RFIs that they will provide further details following disclosure and experts reports – see for example Response 7 in the Ogale Community Claim (which is also relied on by the Claimants as their response to the RFI in the Ogale Individuals Claim):

“For the reasons pleaded at paragraph 12(b) of the Reply, the Claimants cannot reasonably be expected to provide particulars of the dates, times or locations of the particular oil spills and leaks contributing to the contamination of the aquifer prior to provision of disclosure by the Defendants and obtaining expert evidence. Without prejudice to that position, it is likely that many of the oil spills and leaks in and around Ogale from the Ogale Pipelines and Infrastructure have collectively contributed to the contamination of the aquifer system and drinking water in Ogale.”

68. In my judgment, the Claimants must clarify now in their pleadings, whether through the group statements of case or in the questionnaires and/or pleadings that will be attached to the group registers, the nature of the case to be advanced at trial.
69. The Claimants suggest that it would be disproportionate for this information to be provided in respect of several thousand individual claimants prior to the identification of any lead claimants. But, as submitted by the Defendants, if the necessary facts are not pleaded in respect of each individual claimant, there will be no rational basis on which the Defendants will be able to identify their chosen claimants for the pool from which the lead claimants will be selected.
70. This difficulty was identified in *Varney v Ford* [2013] EWHC 1226 (Ch), a case in which a GLO was made in respect of 1,400 claims. Ordering that all the claimants in that case should provide details of their claims so that the test cases could be drawn from a proper sample, Asplin J (as she then was) stated at [40]:

“the collation of all the details gives a sound foundation ... to the litigation as a whole and to the choice of ten test cases. It avoids the possibility of further applications and the wasted costs which that would cause and court time, and further additional delay dealing with further inquiries which might be required at a later date.”

71. A similar approach was adopted in *Tew v BoS (Shared Appreciation Mortgages)* [2010] EWHC 203 (Ch). Rejecting the claimants' proposal that the claims could be determined without reference to the individual circumstances of the claims, Mann J explained:

“[21] ... The adjudication of the Claimants' various claims raises the issues that it raises, not the issues that the Claimants would like to say that it raises, or only the issues that they would like to have adjudicated. I must form a view of the extent to which any given issue will arise. It does not cease to arise merely because the Claimants would like to run the case without it. True it is that the manner in which the Claimants' Particulars of Claim are formulated relies on the sort of common issues ... that I have referred to above, and that they do not go into the circumstances of individual transactions. However, that does not mean that the individual circumstances will not be an issue in these claims. It can be safely predicted, on the basis of the evidence and submissions before me, that if the claims were pleaded out the banks' Defences would take the point that the actual circumstances rendered the relevant terms, or the relationship, fair because, for example, the claimant in question had sufficient understanding, and the transaction made personal sense for that individual. That those circumstances are capable of being relevant is, in my view, quite plain from the wording of the legislation, whose pertinent words I have emphasised above. At the end of the day that proposition was not disputed by counsel for the claimants.

[22] In those circumstances it seems to me to be quite wrong to allow the GLO issues to be phrased in such a way as involve a shutting out of individual circumstances from the scope of the litigation. It is not an accurate way of describing the litigation and amounts to a form of pre-judgment of some issues.”

72. The court notes that in *Tew* the issue was a stark one as the claimants were seeking to avoid any interrogation of the individual claims. That is not the case in these proceedings. The court also notes that it would be possible for the Claimants to plead the claims at this stage on the basis of sampling and extrapolation although, as in the case of global claims, such claims can be particularly difficult to establish. It is legitimate for a claimant to plead its sample claims in detail, identify the links between the sample and the pool of all the allegations, and explain how and why any findings on the sample would give rise to liability for the whole or another part of the pool: *Building Design Partnership Ltd v Standard Life Assurance Ltd* [2021] EWCA Civ 1793 per Coulson LJ at [42]-[47]. However, the Claimants have not adopted such a form of extrapolation pleading in these claims and have not proposed that such a course should be taken.
73. The framing of their claims with a view to the court making a GLO does not release the Claimants from their obligation to provide details of the facts relied on by the individual claimants to establish a cause of action. The potential pool of test cases, from which the parties can select the lead claimants, can only be identified as representative of the wider group when judged against the factual circumstances of all claimants.

74. For those reasons, the court orders the Claimants to provide the following additional details in the Schedules of Information:
- i) In both the Bille Individuals Claim and the Ogale Individuals Claim, the Claimants must provide details of the particular oil spill, or spills, in relation to which each individual claimant seeks compensation and/or damages. This does not have to depend solely on the recollection of individuals. Contemporaneous records, including photographs and reports, may assist in identifying the relevant events. If the Claimants are unable to provide such details, they must confirm the nature of the case they will rely on at trial, i.e. a global claim.
  - ii) In both the Bille Individuals Claim and the Ogale Individuals Claim, the Claimants must provide details as to where each individual Claimant says that he or she suffered damage, if not confined to the individuals' address set out in the questionnaire. This should be relatively straightforward to ascertain as it must be the basis on which an individual has agreed to participate in these proceedings.
  - iii) In both the Bille Individuals Claim and the Ogale Individuals Claim, the Claimants must provide details as to when each individual Claimant claims that they were first impacted by oil from the particular oil spill. Contrary to the Claimants' submission, this is not simply relevant to the pleaded defence of limitation made in the Ogale Individuals Claim. The date on which it is claimed that the adverse impact of oil contamination was first suffered is also relevant to the causal link between a particular oil spill and actionable damage. The Claimants' case is that the Defendants are responsible for all such oil spills, by failing to prevent, mitigate or remediate the same, but the Defendants' case is that they have remedied any spills for which they were responsible and they have no liability for those caused by others. If the Claimants are unable to provide such details, they must confirm the nature of the case they will rely on at trial, i.e. a global claim.
  - iv) In both the Bille Individuals Claim and the Ogale Individuals Claim, the Claimants must provide, to the extent relevant to an individual's claim, the basis on which each individual asserts ownership and/or exclusive possession of the land in question. This will enable the parties to categorise the claimants by land interests so that a representative pool can be identified from which the lead claimants can be selected. The court understands that the concepts of property rights under Nigerian Law may differ from those in this jurisdiction. Therefore, where an individual simply relies on occupation or use of the land, or other interest, that can be stated.
  - v) In the Ogale Individuals Claim, the Claimants must confirm that the individual Claimant specifically authorised Leigh Day to pursue a claim on his or her behalf. It should be relatively straightforward for this to be added as a further item on the questionnaires. It is not necessary for the Bille Individuals Claim because Leigh Day has already collated information in the schedules for the purpose of pursuing those individual claims and it must be presumed that authority was given from provision of the information.

75. The Claimants must obtain signatures (or some other indication of confirmation) in respect of the questionnaires providing the detailed information as to the claim advanced by each Claimant.
76. It is recognised that this task will be expensive and time-consuming but it is necessary to ensure that the material issues in dispute can be identified and determined in the trial of the lead claimants. The preparation of the questionnaires will make the exercise focused and manageable, and local resources can be utilised to improve efficiency.

*Statement of Truth*

77. It is not necessary for statements of truth to be obtained from each individual claimant in respect of the Replies and Part 18 responses. Those existing pleadings set out the Claimants' position as to the generic grounds of claim but do not address the facts relied on by individual claimants.

*Other matters*

78. All other case management matters, including the formulation of the common issues for the GLO, will be considered by the court at the next case management hearing.