Neutral Citation Number: [2024] EWHC 2759 (Ch)

Case No: BL-2021-001047

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Date: 30th October 2024

Before :

Andrew Twigger K.C. sitting as a Deputy Judge of the High Court

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Between :

(1) JORDAN KAGBARA
(2) BARIBOR NAAFOR
(3) BEMA BARIVULE
(4) GANABER DAVID LENAATA
(5) GODJUGE BARIBEELA BAKEL
(6) BARISI BARA-OL
(7) GBENEE ANITA BARIMOEIBOO
(8) JOHN NYIEDAH
(on behalf of the Bodo Community) **Claimants**

- and -

LEIGH DAY SOLICITORS (a firm) **Defendant**

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THE CLAIMANTS appeared **In Person**
MICHAEL POOLES KC and **IVOR COLLETT** (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing dates: 15 – 18 July 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Andrew Twigger KC:

1. Since around 2011 the Defendant, Leigh Day Solicitors (**Leigh Day**), has acted as the legal representative of various claimants in several claims brought in this jurisdiction against the Shell Petroleum and Development Company of Nigeria Ltd (**SPDC**). That litigation arose out of two oil spills which occurred in 2008-2009 in the vicinity of the Bodo Creek in the Gokana Local Government Area of Rivers State, Nigeria. The oil spills were the result of ruptures of a pipeline operated by SPDC.

2. Some of the claims against SPDC were brought by individuals on their own behalf and in a representative capacity for others (**the Individual Claims against SPDC**). Another claim against SPDC (**the Community Claim against SPDC**) was an action brought on behalf of the members of the Bodo Community (**the Community**), a fishing and farming community residing in Bodo City and the surrounding villages and settlements. (The documents in evidence suggest that there may have been two claims brought on behalf of the Community, but only the later of them seems to have been pursued, and no one suggested to me that anything turns on the existence of the earlier claim.) I explain more about the identity of the claimants in the Community Claim against SPDC below, but they included the Paramount Ruler of the Community at that time, King Felix Sunday Bebor Berebon (**King Felix**), and other individuals, including members of the Council of Chiefs and Elders (**CCE**).

3. On 11 December 2014 the parties to the Individual Claims against SPDC and the Community Claim against SPDC entered into a Master Settlement Agreement, pursuant to which SPDC agreed to pay a total sum of £55 million. Of this sum, £35 million represented compensation in respect of the Individual Claims against SPDC and £20 million represented compensation in respect of the Community Claim against SPDC. As I understand it, that £20 million was paid to Leigh Day as the claimants' solicitors, in the normal way, before being distributed by them.

4. The proceedings before me have been brought against Leigh Day by eight individuals, to whom I shall refer collectively as the "**Eight Claimants**" (to distinguish them from the claimants in the various claims against SPDC). It is not in dispute that all Eight Claimants are members (or "*indigenes*") of the Bodo Community. The Amended Particulars of Claim dated 22 September 2022 in these proceedings (**the APOC**) alleges, in outline, that Leigh Day wrongfully disbursed £6,080,000 out of the sum of £20 million paid by SPDC in respect of the Community Claim against SPDC. This is said (in paragraph 20 of the APOC) to give rise to claims for "*breach of duty, breach of trust, misrepresentation and in tort (negligence)*". The relief sought includes an account and damages.

5. Leigh Day denies these allegations on the grounds that it acted at all times lawfully on the authority of the King, the CCE and the Council of Traditional Rulers (**the CTR**), to whom a full account of payments was provided. I will consider the nature of the claims asserted in the APOC in more detail below, but the final determination of those claims is not before me and nothing said in

this judgment should be understood as a finding of any kind about Leigh Day's stewardship of the money paid by SPDC.

6. On 24 April 2023 Master McQuail ordered that "*there be a trial of a preliminary issue of the Claimants' authority to advance the claims made in the action.*" This is my judgment following the trial of that issue.

7. The trial took an unconventional course. It was listed for three days, commencing on Monday, 15 July 2024 (after a reading day on 12 July 2024). On the morning of the first day of the trial, however, Mr Tiki Emezie, a solicitor-advocate from the firm of Raegal Solicitors (**Raegal**), then acting for the Eight Claimants, made a last-minute application for an adjournment until at least October 2024 on various grounds, including the alleged unavailability of counsel. I refused that adjournment, but permitted a short delay until Tuesday, 16 July 2024, so that the Eight Claimants could attempt to find alternative counsel or consider how they wished to proceed. I indicated that I would put in writing my reasons for refusing the lengthy adjournment sought, and I have included them in an appendix to this judgment.

8. On the Tuesday morning, Mr Emezie applied for a further day's adjournment, on the basis that he had found counsel who was prepared to represent the Eight Claimants, subject to a fee being agreed and further time being given to read in to the case. A further day's adjournment could not, however, have been accommodated by Leigh Day's expert witness or junior counsel and I refused the Eight Claimants any further indulgence. At that late stage, during a debate about what order I should make, Mr Emezie indicated for the first time that, if there was to be no adjournment, the Eight Claimants wished the trial to proceed and would represent themselves. Despite the anticipated difficulties of proceeding in that way, some of which I explain below, I considered that the overriding objective of dealing with cases justly, and in particular ensuring that the parties were on an equal footing and that the case was dealt with expeditiously and fairly, would best be achieved by permitting the Eight Claimants to represent themselves and for the trial to proceed.

9. Accordingly, the trial began at 2.00 pm on Tuesday, 16 July 2024. Since the availability of Leigh Day's expert and junior counsel meant that the trial had to finish by the end of the court day on Thursday, 18 July 2024 (which was a day later than it had been listed to finish), some robust case management was necessary in order to finish on time.

10. I directed the Eight Claimants to nominate a single representative to conduct the hearing on their behalf. They initially chose Mr Kagbara, the first Claimant, although Mr Nyiedah, the eighth Claimant, took over that role after the oral opening statements. One consequence of proceeding in this way is that I have not had the benefit of any written submissions (opening or closing) on behalf of the Eight Claimants. Nevertheless, they had the benefit of legal advice when their pleadings, witness statements and expert report were prepared, and it is clear what their case is on the issues before me.

11. Mr Kagbara and Mr Nyiedah were situated throughout the trial in their expert witness's office in Port Harcourt, Nigeria, and conducted the trial by video-link.

This was possible because it had always been intended that most of the witnesses, and both experts, called by the parties would give evidence from Nigeria via video-link, so the technology had already been set up. Mr Michael Pooles K.C., together with Mr Collett and representatives of Reynolds Porter Chamberlain LLP (**RPC**) representing Leigh Day, were present in court; whilst Mr Kagbara, Mr Nyiedah and most of the witnesses (for both parties) appeared from Nigeria on a screen in the courtroom. It was apparent that other individuals were present in the rooms from which both parties' witnesses gave evidence, but the risk of any material interference with their testimony was minimal and unavoidable, in my judgment.

12. The video-link failed a number of times, causing short delays. Although all witnesses spoke English, it was sometimes a little difficult to hear what was being said, both because of regional accents and technological problems. There was insufficient time to ask for every answer to be repeated, but there was an excellent transcript, which I have read and re-read carefully. Whilst the conditions in which the trial was conducted were not ideal, I am satisfied that the difficulties did not prevent the parties having a fair hearing, taking all the circumstances into account. In particular, Mr Nyiedah conducted a well-prepared and focussed cross-examination of Leigh Day's factual witnesses in what must have been difficult and unfamiliar circumstances for him. I am grateful to him, and to Mr Kagbara, for their courtesy and efficiency.

13. The structure of this judgment is as follows:

    i) I have explained my assessment of the witnesses in section A.

    ii) I analyse the claims being asserted in the APOC in section B.

    iii) I outline the six issues for decision in section C.

    iv) I deal with the first three issues in turn in sections D to F.

    v) I have included an introduction of two of the remaining issues in section G.

    vi) I deal with those two issues and the final remaining issue in turn in sections H to J.

    vii) My conclusions are summarised in section K.

    viii) I have included my reasons for refusing the adjournment in the Appendix.

A. The Witnesses

The Eight Claimants' factual witnesses

Chief James Baridoma Ntete

14. Chief Ntete made two witness statements in these proceedings, in which he claims to be the current Chairman of the CCE. As will become apparent, there is no doubt that he was once appointed Chairman of the CCE, but there is a dispute about whether he remains Chairman, or is even a member, of the current CCE.

15. At the outset of his oral evidence Chief Ntete declined to give his full address, beyond Bodo City. He said that any mail sent to him addressed "*Mene James Ntete, Bodo City*" would reach him. I am prepared to accept that may be so, but other witnesses from Bodo City gave more specific addresses. Mr Nyiedah, for example, gave an address identifying a house number, a road name and a particular village within Bodo City. Whilst Chief Ntete's actual address has no relevance to these proceedings, his answers about it are symptomatic of a tendency towards evasiveness which pervaded his testimony. In reaching that judgment, I have made allowances for the possibility that, in some instances, the questions may not have been properly heard, or properly understood.

16. Chief Ntete was insistent that he remains the Chairman of the CCE. For reasons which I explain below, I do not accept that evidence. Nevertheless, listening to Chief Ntete, I formed the impression that he has convinced himself that he is still the Chairman of the legitimate CCE and genuinely believes that to be the case. His evidence on the point was unrealistic and unreliable, but in my judgment he was not deliberately seeking to mislead the court.

17. I have done my best to take account of the significant difficulties caused by intermittent problems with the video-link and by the use of legal language which may have been unfamiliar to Chief Ntete. Nevertheless, Chief Ntete's tendency to evasiveness and lack of realism gave me no confidence that I can rely on what he said without corroboration from some other source.

Mr John Nyiedah

18. Mr Nyiedah is the eighth Claimant in these proceedings and he made a witness statement dated 22 January 2024. He gave his evidence politely but firmly and I had the impression that he genuinely felt a sense of grievance against Leigh Day (although I make no finding as to whether that was justified). Ultimately, however, I was frequently unable to tell where Mr Nyiedah's factual recollection ended, and the presentation of his case began.

19. Mr Nyiedah said, for example, that key decisions in the Bodo Community were taken in the Town Square by the Community as a whole, rather than by the CCE, yet he appeared unable to give any estimate of how many Town Square meetings there had been during the year so far. He said that, if the claim against Leigh Day were to be settled, there would be a Town Hall meeting of the Community to determine to whom the money should be paid (I understood "Town Square" meetings and "Town Hall" meetings were the same thing). On the other hand, Mr Nyiedah said that the Eight Claimants had authority to accept any offer which was made, and that they had authority to enter into a damages-based agreement which had apparently been entered into with Raegal (although the agreement itself was not in evidence). He did not suggest that the terms of that agreement had been discussed at a Town Square meeting and was unable

to say what percentage of any damages were to be paid to Raegal pursuant to the agreement, saying "*anything that is the standard is what they will retain*".

20. When asked to explain why he, in particular, was chosen as one of the Eight Claimants, he speculated that it was because he was a citizen of Bodo City, was considered mature, married and responsible, knew about the pollution caused by the oil spills and was directly affected. When it was put to him that many individuals might fall into that category, he said "*in the organisation there are divisions of labour, so in the Shell matter they want people to handle their matters for them.*" I formed that view that Mr Nyiedah was trying his best to assist the Court with information about the source and scope of his authority, but that he did not have a clear understanding of how and why he came to be a Claimant or the terms on which Raegal had been instructed. I do not consider that I can place much reliance on his evidence.

Mr Frimabo Gabriel Warmate

21. Mr Warmate is the principal solicitor of Latter House Attorneys in Port Harcourt. He acted for Chief Ntete in some proceedings in the High Court of Rivers State of Nigeria with suit number PHC/3763/2017, to which I refer below as the "**2017 Vilola Case**". Mr Warmate was asked repeatedly, including by me, what was the last occasion on which any step had been taken by the parties or the court in the proceedings in the 2017 Vilola Case. He never gave an answer, saying that it was not material and that the matter was ongoing.

22. Mr Warmate's witness statement contained a number of expressions of opinion, rather than fact. An example was his comment that "*no lover of Bodo and its people would object, or prevent a call for representatives of Bodo to account for their stewardship to the Bodo People.*" Mr Warmate said that he understood the difference between fact and opinion, yet when that comment was put to him he insisted that it was factual.

23. I reached the clear view, based on these matters and his evidence as a whole, that he was acting as a lawyer and arguing the Claimants' case, rather than providing the court with reliable factual evidence. I prefer to base any decision regarding the various Nigerian court proceedings on the court documents, rather than on Mr Warmate's evidence. I have disregarded his opinions.

Mr Jordan Kagbara

24. Mr Kagbara is the first Claimant in these proceedings. He prepared a witness statement, but he did not, in the event, give any oral evidence. This occurred because of difficulties arising from the adjournment application, which I have mentioned above. It became clear that the trial of this preliminary issue would have to be heard in two and a half days, rather than the three for which it had originally been listed, and that the Eight Claimants would be acting in person by video-link from Nigeria. Time was lost for various reasons, including intermittent difficulties with the video-link and problems sending documents to Nigeria to ensure that copies of the bundles were available to the Eight Claimants' witnesses.

25. In order to make up time, Mr Pooles said that he had very similar questions for Mr Kagbara and Mr Nyiedah and proposed that the Eight Claimants might choose which of them gave evidence, with a view to treating the oral evidence of one as if it were the evidence of both. I considered that this accorded with the overriding objective, particularly given that Mr Kagbara's and Mr Nyiedah's witness statements covered much the same ground, and that Leigh Day bore no responsibility for the delays. Nevertheless, I gave the Eight Claimants a chance to consider overnight whether they would agree to Mr Pooles's proposal or not. They subsequently agreed. Consequently, whilst I have read Mr Kagbara's witness statement, I have assumed that he would have been asked the same questions as Mr Nyiedah, and would have answered them in the same way.

Leigh Day's factual witnesses

Chief Kornom Gbaraba Polycarp

26. Chief Polycarp made two witness statements in these proceedings in which he says he has been the Chairman of the CCE since January 2023. During much of his oral evidence, Chief Polycarp was willing to answer the questions which were put to him by Mr Nyiedah, although on occasion he responded by saying he was unaware of matters which he might have been expected to know. For example, he said that he was appointed to the CCE during the regency in 2023, whilst the King was suspended, and that prior to that he had been a civil servant. When he was later asked whether there were Town Hall meetings during the suspension of the King, however, he said that he did not know because he had been a civil servant at the time and was "*highly engaged.*" Since I understood Chief Polycarp to say he had been appointed to the CCE, and was its Chairman, during the suspension of the King, it seems implausible that he did not know whether there were Town Hall meetings or not.

27. I consider that Chief Polycarp's evidence is helpful where it adds colour and detail to uncontentious facts, but I am cautious about accepting those parts of his evidence which are uncorroborated by other material.

Chief Pius Menegah

28. Chief Menegah is the current Chairman of the CTR and made a short witness statement in these proceedings dated 28 March 2024. He was asked relatively few questions. He answered confidently and directly. In my judgment his evidence was helpful as far as it goes, but it did not significantly advance Leigh Day's case.

Mr Ilan Daniel Leader

29. Mr Leader is a barrister and partner at Leigh Day who, together with the senior partner, Mr Martyn Day, has had conduct of the Community Claim against SPDC from 2011 onwards. He also had conduct of the Individual Claims against SPDC. He made a detailed witness statement in these proceedings setting out much of the relevant history.

30. Mr Leader was questioned briefly by Mr Nyiedah, principally on the basis that, as a non-resident of Bodo City who was not present at the appointment of Chief Polycarp as Chairman of the CCE, he was not qualified to speak about issues of authority. It was also put to him that he had connived with Chief Polycarp to arrange matters so that he would not have to explain what had happened to the £6 million which is the subject of the Claimants' claim. Despite this serious allegation being made, Mr Leader gave his evidence calmly and firmly. I do not doubt that he tried to assist the court to understand what has happened. Nevertheless, it is fair to say that Mr Leader's evidence about who was on a particular council at a particular time, and who gave authority to whom, can only ever be, to some extent, second-hand knowledge. Mr Leader was, obviously, not present at meetings of the CCE or at other times when decisions were taken.

Mr Dimabo Karibo

31. Mr Karibo is a barrister practising in Port Harcourt, Nigeria. He acted for Chief Vilola in the 2017 Vilola Case and made a short witness statement explaining the background to those proceedings. Mr Karibo's testimony was too brief for me to form a view about the reliability of his evidence. In my judgment, the facts relating to the 2017 and 2020 Proceedings are to a considerable extent common ground and can readily be ascertained from reading the court documents available to me, without the need to rely on witness evidence.

Conclusion regarding the factual witnesses

32. The issues which I have to decide turn to a large extent on a selection of documents, written in English. In the circumstances, therefore, I have so far as possible followed the well-known guidance from *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) that, "*the best approach for a judge to adopt in the trial of a commercial case is … to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.*"

The experts

Introduction

33. Expert evidence of Nigerian law was provided by Mr Clifford Burabari Sigalo on behalf of the Eight Claimants and Mr Naabululobari Nwin Naazihga-Lue on behalf of Leigh Day. Leigh Day's expert was referred to at trial as Mr Lue, and I hope he will not mind my adopting that abbreviated form of his name in this judgment. Mr Sigalo and Mr Lue each produced a report in May 2024. They eventually also produced a document entitled "*Areas of Consensus and Dissention between the Claimants' and the Defendant's Expert Witnesess*", to which I shall refer below as their "**Joint Statement**". This was provided to me before court on 18 July 2024, the final day of the trial. Although this was, therefore, very late, it arrived before the experts were cross-examined and was helpful, so in the unusual circumstances of this case I considered it consistent

with the overriding objective to admit it. In my judgment there is no utility in exploring the reasons for the delay, or attributing blame for it.

34. Since the Eight Claimants were acting in person, and given limitations of time, it seemed unsatisfactory to proceed by way of sequential cross-examination of experts. In particular, I considered it unfair to expect one of the Eight Claimants to question a trained lawyer about legal matters at short notice, and it also seemed unlikely to be the best way for the court to obtain assistance from Leigh Day's expert. I accordingly directed that the expert evidence should be given concurrently under paragraph 11 of Practice Direction 35, but exercised my discretion under paragraph 11.4 to modify the procedure, so that Mr Pooles asked questions of Mr Sigalo in relation to a topic, following which I invited Mr Lue to comment and asked him my own questions. Although I would not have proceeded in this way in an ideal world, I considered it a fair compromise in the unusual circumstances of the case.

Mr Sigalo

35. Mr Sigalo is a barrister and solicitor at Sig & Silk Attorneys in Port Harcourt, Nigeria, who has been qualified for a little over 20 years. His evidence did, from time to time, stray from independent expert evidence into submission and he referred on numerous occasions to "*my brief.*" This was, perhaps, understandable in the unusual circumstances which led to the Eight Claimants being unrepresented at this trial.

36. Mr Sigalo did, however, have a tendency to sidestep difficult questions in order to support the Eight Claimant's case. When asked, for example, whether it would be proper for any award of damages paid to the CCE following judgment in this claim being used to build a school, such that the Eight Claimants would receive no personal benefit, he responded several times that the question was "*speculative*" rather than give a direct answer.

37. It was also put to him that Chief Ntete's position in the 2020 Proceedings was that his period in office was extended until 21 August 2021, but not beyond that. Mr Sigalo said the opinions of the parties were immaterial because it was only the court's decision which mattered. Again, this seemed to be an attempt to avoid giving the obvious answer to the question.

Mr Lue

38. Mr Lue is a barrister and senior partner of Naazigha-Lue & Partners, which is affiliated with Lawrence S. Oko Jaja San & Co. in Port Harcourt, Nigeria. He has been qualified since 2007. Mr Lue was, on occasion, also prone to avoiding difficult questions in order to support Leigh Day's case, rather than providing an independent opinion. When I asked him, for example, about the effect on the validity of decisions of the number of members of the CCE falling below 18, instead of answering that question he speculated that, "*it could not have been that several persons have died and the Council of Chiefs continue to function without the input of the Council of Traditional Rulers.*"

39. On occasion, the views Mr Lue expressed in his oral evidence seemed obviously wrong. When I asked him about the effect of the order of 15 December 2020 in the 2020 proceedings, he said that there would be no CCE in existence following that order, and that a new one would have to be appointed. That does not appear to be the correct interpretation of the court's judgment on its face, nor is it consistent with Leigh Day's case. Mr Pooles said that "*the order on its face sets aside the impeached conduct of the King and so restores what was then the status-quo ante*" and he accepted that was different from what Mr Lue had said.

Conclusion regarding the experts

40. In all the circumstances, the safest approach to deciding any issues of Nigerian law has been to rely where possible on matters about which the experts agreed, either in the Joint Statement or as part of their oral evidence. Where it has been necessary to decide a disputed issue, the fact that the Nigerian authorities on which the experts relied are all in English and apply broadly familiar principles, has meant that I have been able to assess the weight to be given to their opinions by a careful review of the cases they have cited.

41. I have reminded myself that foreign law is a question of fact which must be proved by expert evidence and that, where there is insufficient evidence of the content of foreign law, it will generally be assumed to be the same as the law of England and Wales (see Dicey, Morris & Collins on the Conflict of Laws, 16th Ed., rule 2 at paragraph 3R-001). For convenience, I shall refer to the law of England and Wales as English law.

B. Analysis of the claims asserted in the APOC

42. Although this is not a trial of the substantive claims asserted by the Eight Claimants, it is important to understand the nature of the claims alleged in the APOC. For reasons which will become apparent below, the identification of the individuals in whom the relevant causes of action are vested has significance when assessing the arguments made to me based on Nigerian law. The APOC is signed by Jacqueline A. Perry K.C. with a statement of truth signed by a representative of Raegal. Plainly the claims were pleaded with the benefit of legal advice.

43. Paragraph 1 of the APOC alleges that the Eight Claimants are "*the representatives of the communities known collectively as the Bodo Community…*" It is said that they "*act with the authority of the Bodo Peoples' General assembly which is empowered and endorsed by the Bodo Council of Chiefs and Elders to bring this litigation.*" I understand that the Bodo Peoples' General Assembly (to which I shall refer as the "**GA**") is the official title of what was elsewhere referred to as a "Town Hall" or "Town Square" meeting.

44. Paragraph 2 of the APOC identifies Leigh Day and paragraph 3 alleges that "*From about 2011, the Defendant was the legal representative of what was generically described as the Bodo Community as well as being the legal representative of several thousand community individuals…*" in connection

with the claims brought against SPDC. The reference to the representation of several thousand individuals is plainly a reference to the Individual Claims against SPDC, so the implication is that the Community Claim against SPDC was brought by the Bodo Community.

45. This is not (or not entirely) accurate. The Claim Form in the Community Claim against SPDC was issued on 22 November 2012. Along with the Particulars of Claim of the same date, it listed 19 claimants: the first was King Felix, the next 17 claimants were individuals described in the Particulars of Claim in those proceedings as the members of the CCE, and the final claimant was "*The Bodo Community*". According to paragraph 22 of the judgment of Coulson J dated 4 July 2017, however, that final claimant was deleted following Akenhead J's judgment of 20 June 2014 deciding various preliminary issues, because it was not a separate legal entity and had no legal status. It must follow that the claim in the Community Claim against SPDC was never validly brought in the name of the nineteenth claimant, which did not exist. In their witness statements in these proceedings, both Chief Ntete and Mr Nyiedah agreed that the Bodo Community cannot bring a claim in its own right.

46. Paragraph 13 of the Particulars of Claim in the Community Claim against SPDC stated that "*the King and/or the King and Council* [meaning the CCE] *hold and will hold as trustees for the benefit of the Community: (a) The Community Interest in the Community Land* [defined as "*the proprietary rights of the Community to use and occupy the Community Land*"]*; (b) The causes of action stated hereunder for damage to Community Land and loss suffered by the community in respect of their ownership of the Community Interest in the Community Land; (c) The causes of action stated hereunder for compensation for damage to or loss suffered by the Community in respect of the Other Common Interests of the Community* [defined as the interests recognised by the Nigerian Oil Pipelines Act 1990]*; (d) All damages or other compensation recovered in these proceedings…*"

47. Paragraph 14 of the Particulars of Claim in the Community Claim against SPDC pleaded in the alternative that "*the King and/or the King and Council are entitled in Nigerian substantive law to bring this action as representatives on behalf of the Community…*" I note that, in paragraph 24 of his judgment of 4 July 2017, Coulson J said that SPDC had, in its defence, denied that claimants were entitled to bring the proceedings on the basis alleged in paragraph 13 (i.e. that they were trustees) but admitted that, as a matter of Nigerian customary law, King Felix was entitled to bring a representative claim on behalf of the members of the Community, and also that the first to eighteenth claimants were all entitled to bring a representative claim in respect of common rights to use the communal lands.

48. Paragraph 15 of the Particulars of Claim in the Community Claim against SPDC pleaded in the further alternative that the Community had capacity as the nineteenth Claimant to bring the claims, but, as I have mentioned, that claimant was subsequently deleted. Thus, with the exception of the purported claim by the nineteenth Claimant which did not exist, the claims in the Community Claim against SPDC were originally brought by the King and 17 individuals identified

as the members of the CCE at the relevant time, who were admitted by SPDC to be entitled to bring those claims.

49. Whilst, therefore, the description in paragraph 3 of the APOC in these proceedings of Leigh Day as "*legal representative of what was generically described as the Bodo Community*" may be a convenient shorthand, Leigh Day actually represented certain named individuals, who themselves represented the Bodo Community, either as trustees or (more likely) in their capacity as representatives of the Community pursuant to Nigerian law. In connection with the latter capacity, I note that, in paragraph 18 of his judgment of 20 June 2014, Akenhead J said there was no dispute that the applicable law on all liability aspects of the claims against SPDC was the law of Nigeria. In that context, it was obviously relevant to have regard to Nigerian law when considering the entitlement of the 18 individual claimants to bring the claims on behalf of the Community.

50. The individuals representing the Community for whom Leigh Day acted in connection with the Community Claim against SPDC have changed over time (as I explain below). Despite those changes, it was the limited group of individuals who instructed Leigh Day from time to time, rather than all the members of the Community, who brought the Community Claim against SPDC. For present purposes, the important point is that throughout the APOC the distinction between the Individual Claims and the Community Claim against SPDC is blurred, and the APOC does not clearly identify the individuals who were Leigh Day's clients in the latter claim.

51. Continuing with the APOC in these proceedings, under the heading "*Brief History of the Underlying Litigation*", paragraphs 4 to 9 refer to a deed governed by Nigerian law, headed "*Irrevocable Power of Attorney*" dated 27 October 2011. This deed appointed Leigh Day to have conduct of the Community Claim against SPDC. It contemplated that Leigh Day would collaborate with certain Nigerian attorneys, who were to be entitled to a contingency fee of 20% of any damages recovered in respect of the Community Claim against SPDC. As I understand it, £4 million out of the £6,080,000 alleged to have been wrongly disbursed by Leigh Day was the contingency fee paid to the Nigerian attorneys pursuant to this deed. The Nigerian attorneys were parties to the deed, along with Leigh Day, four donors of the power of attorney, including King Felix, and two "*supplementary*" donors. The donors were defined on the title page as "*The Paramount Ruler, Council of Chiefs and Elders of the Bodo Community and other duly authorized elders and representatives of Bodo City*."

52. As I understand the allegations in the APOC, it is said that the individuals who executed the deed on behalf of the Community did not have authority to do so in the absence of a written approval by the GA, and there seems to be a hint in paragraph 9 of the APOC that perhaps the deed is a forgery.

53. Paragraph 10 of the APOC refers to Conditional Fee Agreements (**CFAs**) between Leigh Day and individual claimants. It is then alleged that Leigh Day "*had a duty to act with the professionalism and integrity expected from a firm of solicitors and to carry out its fiduciary and contractual duty to its clients for whom it had taken on the duty of care and to whom it had agreed, expressly or*

impliedly, that it would so act towards them both as individuals and as members of the community." The implication seems to be that all individual members of the Community who entered into CFAs were Leigh Day's clients, but that was plainly not so in relation to the Community Claim against SPDC. As explained above, that claim was initially brought by 18 named individuals, not by all the members of the Community who had entered into CFAs.

54. Moreover, Leigh Day had entered into a separate CFA dated 25 February 2011 in respect of the Community Claim against SPDC. That agreement is expressly stated to be governed by English law. The client's name was given at the top as "*Bodo Council of Chiefs and Elders.*" It was signed by King Felix and three other individuals whose names I cannot discern, acting as "*the authorised representatives of the Bodo Council of Chiefs and Elders.*" On the page above their signatures was the heading "*Confirmations.*" This stated in bold that "*We, the Bodo Council of Chiefs and Elders, have authority to enter into this agreement on behalf of the Bodo Community.*" A little lower down were the words, "*We confirm that the Bodo Council of Chiefs and Elders agrees to be bound by the terms of this Agreement.*"

55. On 23 March 2013 a document headed "*Appendix A to the CFA*" was signed by 17 individuals described in the document as the "*new members of the Council of Chiefs and Elders.*" These 17 individuals were the same as the second to eighteenth Claimants named in the Particulars of Claim in the Community Claim against SPDC. They confirmed agreement to the terms of the CFA dated 25 February 2011 and agreed that they should be "*treated as if we were parties to the CFA from the start.*" Paragraph 10 of the APOC appears, therefore, to be relying on the wrong CFAs.

56. Paragraph 11 of the APOC alleges that the CFAs were silent as to "*jurisdiction*" but contends that various factors "*point to the jurisdiction of England and Wales governing.*" In context (particularly the use of the word "*governing*"), I understand the reference to "*jurisdiction*" to be a reference to the governing law of the relationship with Leigh Day (rather than to the jurisdiction of this court). Paragraph 12 of Leigh Day's Defence contends that <u>all</u> the CFAs were, in fact, expressly governed by English law. Certainly, the CFA in respect of the Community Claim against SPDC dated 25 February 2011 contains a governing law clause, specifying English law (clause 25). Despite the confusion, therefore, it does not appear to be in dispute that the relationship between Leigh Day and its clients for the purposes of the Community Claim against SPDC was governed by English law.

57. Paragraph 12 of the APOC refers to the commencement and pursuit of the Community Claim against SPDC. Paragraph 13 refers to SPDC's offer of settlement. Paragraphs 14 to 17 refer to letters prepared by Leigh Day on around 11 December 2014 which are alleged to have been sent "*to each client.*" These letters are alleged to have advised "*the Community as a whole*" to accept the offer of £20 million in relation to the Community Claim against SPDC but to have said nothing suggesting "*expressly or impliedly that the figure would be subject to substantial or any reduction.*" These allegations form the basis of a misrepresentation claim against Leigh Day.

58. Paragraphs 18 and 19 refer to the distribution of the settlement money in 2015 and 2016, and the provision by Leigh Day of a statement of account, from which it is alleged to have become clear that £6,080,000 had been deducted from the £20 million paid in respect of the Community Claim against SPDC. (I note that some of the evidence suggests that the Eight Claimants may now consider that the figure should be £8 million, but there has been no application to amend the APOC and the precise figure has no bearing on the determination of this preliminary issue.)

59. Then, under the heading "*The Claims*" it is alleged in paragraph 20 that the Eight Claimants "*bring these claims against the Defendant on the grounds of breach of duty, breach of trust, misrepresentation and in tort (negligence)*". Paragraphs 21 to 25 then give details of the alleged breaches, which are, in brief outline, as follows.

60. Paragraph 21 alleges that Leigh Day owed, and breached, various obligations to inform "*each client*" about deductions from the settlement money, either as a result of fiduciary duty (said to be owed "*to the Claimants*") or contractual duty. Paragraph 22 alleges that Leigh Day "*was not entitled*" to enter into an agreement to pay a contingency fee to the Nigerian attorneys without the "*clear approbation*" in writing of the GA and that the agreement was accordingly invalid. Paragraph 23 alleges that the agreement with the Nigerian attorneys was an unlawful referral agreement, prohibited by both English and Nigerian rules of conduct. Paragraph 24 complains that the "*Irrevocable Power of Attorney*" dated 27 October 2011 was not referred to in the letters written on 11 December 2014, so that the advice given in those letters to accept the settlement "*was a misrepresentation to induce the clients and each of them to settle the claim.*"

61. Paragraph 25 sets out particulars of "*a breach of duty and negligence*" which repeat and develop the allegations made in the previous paragraphs. First, the agreement to pay of £4 million to the Nigerian attorneys is said to have been unlawful and unauthorised. Second, the same payment is said to have represented referral fees, unlawful both in England and "*in breach of the law and procedure in Nigeria.*" Third, Mr Day of Leigh Day is said to have made a misrepresentation in the letters of 11 December 2014 "*negligently or falsely*" which induced "*the clients*" to agree to the settlement with SPDC. Fourth, the sum of £2 million is said to have been deducted from the £20 million settlement money "*without proper or any accounting for the same.*" There is no clear allegation in the APOC about what happened to this sum of £2 million, but I understand from the evidence that it is alleged to have been wrongly distributed amongst various entities and individuals. Fifth, complaint is made of the "*deduction and/or conversion*" of £80,000 as "*likely legal fees*" when it is said that all such fees were to be paid from other sources. Finally, there is alleged to have been "*overall a breach of fiduciary duty to clients in receiving monies intended for the community and making substantial payments there from and misuse of trust monies which were held on behalf of the Bodo communities.*"

62. Paragraph 26 is the prayer for relief, as follows:

"*(i) an account particularising the payments made from the Settlements sum of £20m to include all documents supporting the same;*

(ii) the sums of £6 million and 80 thousand pounds by way of damages in respect of the monies wrongfully deducted from the settlement as described above;

(iii) interest pursuant to S 35A of the Senior Courts Act 1981;

(iv) Costs."

63. It can be seen from this summary that the principal causes of action asserted are breach of contract, breach of fiduciary duty, breach of a duty of care in the tort of negligence, and misrepresentation. None of these causes of action (or any other) is alleged to arise as a matter of Nigerian law.

64. It is axiomatic that, where a party relies on a foreign law, it must be pleaded and proved (see Dicey, cited above, rule 2(1) at paragraph 3R-001). Nigerian law is expressly referred to in the APOC in the context of referral fees, but that is not because the cause of action against Leigh Day arises under Nigerian law, but because Leigh Day is said to have breached its English law duties by entering into an agreement which is said to have been illegal under Nigerian law. Nigerian law is also implicitly relevant to the allegation that the "*Irrevocable Power of Attorney*" of 27 October 2011 was invalid without written consent from the GA, and that King Felix could not authorise that agreement by himself. Again, however, that issue is ancillary to the allegation of breach of a duty, which is not alleged to have arisen otherwise than under English law.

65. That being so, the critical question is: who is entitled to assert these causes of action which are expressly alleged to be governed by English law?

66. So far as the claim for breach of contract is concerned, no claim is asserted pursuant to the Contracts (Rights of Third Parties) Act 1999, so it is necessary to identify who Leigh Day's contractual counterparties were in relation to the agreement pursuant to which they acted in connection with the Community Claim against SPDC; in other words, their clients. Only those contractual counterparties have the privity of contract with Leigh Day which entitles them to bring a claim.

67. Whilst paragraph 14 of the Particulars of Claim in the Community Claim against SPDC stated that the King and Council brought the action "*as representatives on behalf of the Community*," that did not, in my judgment, turn the individual members of the Community into Leigh Day's clients for the purposes of that claim. The members of the Community were not parties to any contract with Leigh Day for the purposes of the Community Claim against SPDC. Moreover, it would have been impractical (if not impossible) for Leigh Day to have been instructed by every member of the Community for the purposes of bringing the Community Claim against SPDC. It makes sense for such a claim to be brought by the King and the CCE, who could act on the Community's behalf.

68. The fiduciary duties and duty of care alleged in the APOC are duties of the kind which frequently arise as incidents of a professional relationship between a firm of solicitors and its clients. They are owed by the firm to the individuals who are its clients and they complement the firm's contractual duties. Whilst it might, in theory, be possible to allege that a firm owed a duty of care in tort, or fiduciary duties, to a wider group of individuals than merely its clients, that would be unusual, and facts would need to be pleaded to establish that such a duty was owed by Leigh Day on the facts of this case. As I read the APOC, however, the individuals who assert the causes of action based on breach of fiduciary duty and negligence are the same as those who assert the cause of action based on breach of contract, being Leigh Day's clients in the Community Claim against SPDC.

69. The misrepresentation claim is theoretically different, because the alleged misrepresentations were made to each recipient of the letters sent on around 11 December 2014, each of whom could, in theory, have their own cause of action. The alleged misrepresentations are, however, said to have induced the settlement with SPDC. As already mentioned, the settlement was recorded in the Master Settlement Agreement dated 11 December 2014. The version of that agreement in evidence does not contain Schedule 1D, which was intended to list those who were entering into the agreement with SPDC. It is apparent from clause 6(ii)(d) of the agreement, however, that the individuals listed were the claimants in the Community Claim against SPDC (and the earlier claim which does not seem to have been pursued) and who were stated to have claimed "*as representatives of the members of the Bodo Community*."

70. I infer that the parties to the Master Settlement Agreement for the purposes of settling the Community Claim against SPDC were the claimants in that claim and no one else. Thus, when the APOC alleges in paragraph 25(iii) that "*the said misrepresentation was intended to act as and did so act as an inducement to have the clients and each of them agree to the terms of the proposed settlement,*" the "*clients*" of Leigh Day referred to must be the claimants in the Community Claim against SPDC, who were the individuals who agreed to the terms of the Master Settlement Agreement. In any event, there is no suggestion anywhere in the APOC that each of the Eight Claimants is seeking to bring his own individual claim for misrepresentation, and the damages claimed are not sought on that basis.

71. Accordingly, although the text of the APOC is potentially ambiguous about the individuals to whom Leigh Day is alleged to have owed duties, the claims asserted in the APOC are, in my judgment, all claims which can only be brought against Leigh Day by, or on behalf of, those individuals who actually instructed them in relation to the Community Claim against SPDC. It is only those clients who have the relevant causes of action.

72. One difficulty arising from that conclusion is that, as I have already mentioned, the individuals instructing Leigh Day in relation to the Community Claim against SPDC changed over time, although (on the basis of the evidence I have seen) they have always been individuals occupying positions of authority within the Community. Those who were members of the CCE when the claim was brought have ceased to be members, and new members have been appointed

from time to time. Some of the original claimants have died. I consider some of the evidence relating to these changes below.

73. Theoretically, there might now be an issue about whether the individuals with the relevant causes of action at the present time are those individuals who were instructing Leigh Day at the time of the events about which complaint is made in the APOC, or whether the causes of action can be regarded as now vested in the members of the CCE for the time being, even though the CCE does not have separate legal personality.

74. In closing submissions, I debated with Mr Pooles whether a term should be implied into the CFA to the effect that Leigh Day's clients are the members of the CCE for the time being. I do not think it necessary to consider that suggestion further, however, because I understood Mr Pooles to accept that, however the matter is analysed, if a validly appointed CCE properly resolved to do so, it would be competent to assert all the causes of action alleged in these proceedings and to pursue them, regardless of whether the members of the CCE who arrived at that resolution were different from the members of the CCE who had previously instructed Leigh Day in the Community Claim against SPDC. The dispute I have to resolve arises because it is not members of the CCE, but the Eight Claimants, who brought this claim. I understand it to be common ground that none of the Eight Claimants is, or was at any time, a member of the CCE, or involved in any way in giving instructions to Leigh Day in relation to the Community Claim against SPDC.

C. Outline of the Issues

75. Leigh Day served a request for further information relating to the Eight Claimants' authority on 1 June 2022. Paragraph 1(a) of the Eight Claimants' response dated 21 June 2022 (**the RFI Response**), which was not supported by a statement of truth, states as follows:

> "*(i) The Council of Chiefs and Elders acted upon the decision reached by the Bodo People's General Assembly on 04/12/2020 in Bodo City. The Council of Chiefs and Elders with a verbal approval from its meeting on 07/12/2020 endorsed and carried out the Bodo People General Assembly decision. The Council of Chiefs and Elders initially gave instructions orally for us to urgently proceed with the application for pre-action Disclosure on 09/01/2021 owing to the imminent problems that may arise in respect of limitation.*
>
> *(ii) The Bodo People's General Assembly decision was done by parole as is customary in Bodo. The Council of Chiefs and Elders subsequently signed the formal instructions on 23/07/2021.*
>
> *(iii) Owing to the findings of our investigation that there were two competing factions laying claim to the Council of Chiefs and Elders and out of an abundance of caution, we proceeded to receive instructions from both the factions that lay claim to be the correct Bodo Council of Chiefs and Elders. This is evident in the instructions dated 09/01/2021 and 30/08/21 respectively.*

(iv) The Lead Claimants were nominated by the Council of Chiefs and Elders and they accepted those nominations. Each and every one of the Lead Claimants being natural persons of the age of majority and being residents and indigenes of Bodo Community possesses the inherent right to act for themselves and on behalf of the Bodo Community."

76. It is clear from these allegations (supported by the expert evidence and the arguments made at trial) that the Eight Claimants explain their entitlement to bring these proceedings in two separate ways.

77. First, they say that they have been authorised to bring this claim by a decision, or decisions, of the GA and/or the CCE. I shall call this the "**Delegated Authority Claim**" (although that is not the way the parties referred to it). The constitution of the Bodo Community is governed by the "*Blueprint on the Governance of Bodo*" dated 22 September 2001 (**the Blueprint**). The Eight Claimants rely on evidence of several different decisions taken by various individuals which are said to represent authorisations by the GA or CCE in accordance with the Blueprint.

78. In response, Leigh Day does not dispute that, in principle, the CCE could delegate authority to individuals to bring a claim like the one being pursued by the Eight Claimants. I did not understand Leigh Day to contend that a resolution of the GA (or anyone else) was necessary, provided there was a valid resolution by the CCE. Leigh Day says, however, that there have been periods of dispute and factional instability in Bodo and that the Eight Claimants have never, in fact, been authorised by a properly constituted CCE to bring these claims. As I understand it, they also say in the alternative that, even if the Eight Claimants originally had authority, it has now been revoked by a resolution of the current King, the CCE and the CTR. The Eight Claimants say that, as a matter of Nigerian law, such authority cannot be revoked.

79. The Delegated Authority Claim, therefore, broadly involves the following three issues: (i) the correct interpretation (as a matter of Nigerian law) of the Blueprint; (ii) findings of fact relating to whether there was a valid resolution by the GA or CCE authorising the Eight Claimants to bring this claim against Leigh Day; and (iii) whether any authority given to the Eight Claimants can be revoked as a matter of law and, if so, whether it has been as a matter of fact.

80. The second way in which the Eight Claimants say they are entitled to bring this claim is that they say, as a matter of Nigerian law, a member or "*indigene*" of a community has an inherent right to take proceedings to protect community property on his own behalf and on behalf of the community as a whole. It will be appreciated that this was, essentially, the basis on which SPDC admitted that the Community Claim against SPDC could properly be brought by the eighteen individual claimants, although it must be remembered that that was a claim governed by Nigerian law about damage to land in Nigeria.

81. On proper analysis, this alleged basis for bringing the claim is not a question of authority so much as a question of standing or "*locus standi*" (for brevity I refer to this concept below as "*locus*"). It is not an assertion that someone who has the right to bring the claim has delegated that right to the Eight Claimants; rather

that the Eight Claimants each have their own right to bring a claim on behalf of the wider community. This is not (at least, not obviously) the way the claim is put in the APOC, although it is foreshadowed to some extent by the words at the end of the above quotation from the RFI Response. In any event, I understood both parties wished me to address this argument as part of the preliminary issue and I shall do so. I shall call this the "**Representative Claim**" (although, again, that was not terminology used by the parties).

82. Leigh Day contends that the relevant principle of Nigerian law does not extend to the kind of claim brought in this case. Further, Leigh Day says that, in the absence of authorisation from the CCE, the Eight Claimants do not have any cause of action because, as explained above, the pleaded causes of action are ones which can only be brought by Leigh Day's clients. Leigh Day says it did not owe the relevant duties (contractual and otherwise) to members of the Community as a whole or to the Eight Claimants in particular. The Representative Claim, therefore, broadly raises two further issues as to: (iv) the relevant principle of Nigerian law; and (v) whether that principle gives the Eight Claimants locus to maintain the causes of action asserted in these proceedings.

83. In addition to these issues, the Eight Claimants also contend that, in Nigerian law, a defendant cannot challenge a claimant's right to bring a claim. It is not entirely clear whether this alleged principle is said to be applicable only to the Representative Claim, or whether it is also said to be applicable to the Delegated Authority Claim, so I shall consider as a separate, final issue: (vi) whether it is open to Leigh Day to challenge the authority/locus of the Eight Claimants.

D. Issue (i): Delegated Authority Claim - Interpretation of the Blueprint

84. In paragraphs 3 to 11 of his report, Mr Lue gave a helpful commentary on the Nigerian legal system and on the provisions of the Blueprint. At the beginning of his oral evidence, Mr Sigalo confirmed that he did not dispute Mr Lue's description in those paragraphs.

85. It is, therefore, common ground that Blueprint is based on the recognised customs and traditions of the Community and that it now constitutes the source of the powers exercised by the various organs within the Community. The 1999 Constitution of Nigeria provides for the fundamental rights of individuals in relation to matters which are not governed by the Blueprint, such as the right of access to justice and the choice of counsel.

86. Section 2(A) of the Blueprint provides that "*Bodo shall have a Central Government with the Menebon-Bodo as head.*" The title of "*Menebon*" refers to the Paramount Ruler or King. For simplicity, I will generally refer to him as the "*King*" in this judgment. The "*main Organs of Governance*" are listed as: (i) the CTR; (ii) the CCE and (iii) the "*Community Development Committee.*" It has not been suggested to me that the Community Development Committee is relevant to this claim, nor any of the other organisations referred to in the Blueprint.

87. Section 3 of the Blueprint relates to the King. He is described in the Blueprint as the constitutional head of Bodo. The office is hereditary and is held by the head (or "*Menegan*") of the Gberedeela Royal House, which is one of the nine principal families in the Community (listed in Section 14 of the Blueprint). Section 5 of the Blueprint lists the King's functions, including being "*President-in-council of the Council of Chiefs*" and the custodian of the town gong, or "*Kele-Bon*", which is a symbol of his authority.

88. In his report, Mr Lue explains that, by custom, the King, in consultation with the CCE, can use the Kele-Bon to summon a GA at the Town Square (or "*Torgbo*"). The GA is the "*convocation of the entire community*" with all the relevant organs of governance, including the CCE, in attendance. The King is a member of both the CCE and the CTR. His role as "*president-in-council*" of the CCE means that, although he is not the Chairman of the CCE, he presides at their meetings. He signs resolutions of the CCE in his capacity as president.

89. Section 10 of the Blueprint provides for a second-in-command to the King, known as the "*Lah-Bon.*" It is also a hereditary role, but within the Gberedodooh House. Mr Lue says that the Lah-Bon attends meetings of the CTR and CCE.

90. The King may be suspended from office pursuant to Section 7 of the Blueprint "*in periods of crises and misbehaviour.*" Such a suspension requires the King to be "*fairly heard, tried and found guilty*" by the CTR at a meeting of the GA. If the King is suspended, a regent is chosen from the Gberedodooh House and confirmed by the CTR. The suspension lasts "*pending repentance and pardon by the Community.*" During his suspension, the King ceases to be the custodian of the town gong, and a GA may be summoned by the CTR using the "*Kele-Saan,*" of which the Lah-Bon (second-in-command) is the custodian.

91. Sections 13 to 16 of the Blueprint deal with the CTR. They are the custodians of the customs and tradition of the Community and, amongst other functions, they advise the CCE on all traditional matters, install the King and the Lah-Bon, carry out traditional rights and settle disputes between Chiefs, or between a Chief and the King.

92. Section 16 of the Blueprint addresses the functions of the head (or "*Menegan*") of each of the nine Ruling Houses, who are the members of the CTR. These include that each Menegan "*shall … in consultation with other members of the Ruling House, select or elect two persons to be their representatives on the CCE.*"

93. Section 18 provides:

> "*The Council of Chiefs shall be the highest decision implementing Organ of governance in Bodo while the GENERAL ASSEMBLY at TORGBO shall be the highest decision making body. It shall be made up of two representatives from each of the Ruling Houses – selected or appointed – eighteen members in all, and the Menebon-Bodo in Council.*"

94. Section 20 of the Blueprint provides, amongst other things, that the CCE "*shall rule the Community, attend to matters of general interest and look into cases referred to it from the Component Villages and Ruling Houses.*" It is also responsible for administering "*all public lands and property.*"

95. Section 23 of the Blueprint contemplates the election by a full session of the CCE of its officers, including a Chairman and Secretary. Section 22 is headed "*Quorum*" and provides, "*For any binding decision to be taken, at least two-thirds of the members must be present…*" In paragraph 5.19 of his report, Mr Lue explains that decisions of the CCE are reached on the basis of an overall majority.

96. Section 24 says that "*The tenure of office of the Council* [i.e. CCE] *members shall be a maximum of three (3) years after which it stands dissolved and to be reconstituted within one month through the normal process. In the case of external crises, only the General Assembly can extend the life span of the Council.*"

97. Section 25 enables the Ruling House to recall or replace their representatives on the CCE if they are not working in the interests of the House, or are incapacitated. Section 26 allows for the dismissal, suspension or fine of an errant member of the CCE after a fair hearing.

98. In the course of the trial, two disputes emerged concerning the interpretation of the Blueprint. The first, arising from section 18 quoted above, was whether the CCE is merely a "*decision implementing*" organ, with the GA being the sole "*decision making*" body, or whether the CCE is able to make, and then implement, its own decisions. The extent of the CCE's general powers do not matter. The relevant issues are whether the CCE has the power (without requiring approval from the GA), first, to commence proceedings in the interests of the Community, and second, to take all necessary decisions in relation to any such proceedings which have been commenced, including to bring those proceedings to an end.

99. Leigh Day say the CCE has those powers. They accept that a valid resolution by the CCE to authorise the Eight Claimants to bring this claim against Leigh Day would be sufficient to bestow the necessary authority on them, without the need to show that the GA had also given approval. The CCE would then have power to make any necessary decisions about the conduct of the proceedings, including bringing them to an end.

100. In support of this position, Mr Lue says in his report that section 18 of the Blueprint means "*in practice*" that the CCE is the main decision making body in Bodo. He says that "*the CCE (in terms of administration and decision making) with the Paramount Ruler is the main body in charge of running Bodo*" and that "*the day to day administration of the Community is vested with the CCE.*" Whilst the CCE informs the GA about certain matters involving the Community, it does not report to the GA in relation to all matters. For example, matters brought to the CCE for arbitration, and other "*domestic*" matters, would not be taken to the GA. Normally a GA meeting only involves the CCE providing information to the assembly, but on rare occasions approval or

ratification of the CCE's decisions might be sought from the GA, for example when approval for a suspension of the King is sought. If a decision involves the rights of the people, such as the allocation of community positions, or if the CCE is unable to reach a consensus, a GA might be summoned in order to obtain a decision. The GA does not, however, initiate or make decisions of its own accord. A lawsuit in the name of the "*Menebon in Council*" binds the Community.

101. The position of the Eight Claimants was inconsistent. For example, the view expressed by Mr Sigalo in paragraphs 3.10 and 3.11 of his report is that the CCE's decision implementing power was sufficient for them to institute this action. In his oral evidence, however, Mr Sigalo said that the CCE, as a decision implementing body, would not be able to decide what to spend any damages on, without consulting the people in a GA. Chief Ntete likewise shifted his position, depending on the context. In May 2018 Chief Ntete made a substantial witness statement to which I refer in more detail below. In paragraph 15 of that statement, he said the CCE was "*the highest decision making organ of governance of the Community and is responsible for ruling the Community.*" In his oral evidence before me, however, Chief Ntete suggested that the CCE was only able to begin these proceedings because it had the authority of a GA meeting, and likewise it could not, by itself, decide on the terms of any fees to be paid to Raegal.

102. In my judgment, Leigh Day's position is more consistent with the language of the Blueprint and with common sense. The description of the GA as the "*highest decision making body*" means, in my judgment, that if the GA makes a decision about a matter, the CCE is bound to follow and implement that decision. It does not mean that the CCE cannot make decisions in its own right, provided those decisions are within its areas of competence and do not conflict with a decision of the GA. Similarly, the description of the CCE in section 18 of the Blueprint as the "*highest decision implementing Organ of governance*" does not mean that the CCE can only implement, and not take, decisions. If that were so, it would be necessary to summon a GA whenever a decision of any kind needed to be taken, with the result that the process of governing the Community would become impractical. It would be impossible to take swift decisions and there would be a serious risk of inconsistent decisions.

103. Moreover, if the CCE's role were limited to implementation only, it would not be able to carry out the functions which the Blueprint contemplates it should have. The first function listed in section 20 includes to "*rule the Community* [and] *attend to matters of general interest*", which contemplates broad executive powers. Likewise, the third function of administering public lands and property necessarily involves decision making.

104. Given that the CCE has broad powers to take decisions in order to attend to matters of general interest, without the need for approval by the GA, it is, in my judgment, logical that the CCE has the power to commence litigation in the interests of the Community. Indeed, as already mentioned, that is the view Mr Sigalo expressed in his report. Once the decision to bring litigation has been taken, any further decisions concerning the conduct of that litigation, including bringing it to an end, naturally fall within the CCE's decision implementing

powers. It is illogical to contend that the CCE can start a claim but not settle it. Accordingly, I find that the CCE had the power to take all necessary decisions in relation to a claim of the kind brought by the Eight Claimants against Leigh Day, unless there was a GA decision to the contrary.

105. The second dispute which arose in relation to the interpretation of the Blueprint concerns the quorum requirement in section 22. Leigh Day says that "*at least two-thirds of the members*" of the CCE means at least 12 members, since section 18 requires "*eighteen members in all*". The Eight Claimants say that it means two-thirds of the members for the time being, so that, if the membership of the CCE falls below 18 for some reason, the quorum is two thirds of the number of remaining members. Thus, for example, if three of the members were to die, there would be 15 members in total and the quorum would be ten.

106. There is little to assist me in resolving this dispute, apart from the words of the Blueprint and common sense. Taken in isolation, the natural reading of section 22 might be that the quorum is two-thirds of the members for the time being. If an absolute requirement of at least 12 members were required, the Blueprint could simply have said so. When the Blueprint is considered as a whole and in context, however, the better view is, in my judgment, that at least 12 members must be present when any decision is taken, even if the CCE has fallen below 18 members.

107. There are two connected reasons why this is so. First, the Eight Claimants' approach leads to a potentially absurd result which, in my judgment, is not contemplated by the Blueprint. As I will explain below, the Eight Claimants contend that a small group of individuals led by Chief Ntete continue to constitute the lawful CCE. Depending on the date in question and the particular documents referred to, that group consisted of between three and eight people. The Eight Claimants say that decisions taken by that group are valid and that the quorum requirement was met, even if a decision was taken by only (say) eight members, because there were no more surviving members.

108. I do not accept that the Blueprint contemplates that such a small group should constitute the CCE, with power to "*rule the Community.*" Section 18 says that the CCE "*shall*" be made up of 18 members, two from each of the ruling houses. It, therefore, envisages that decisions should be taken by a body made up of representatives of all nine ruling houses, which means that those decisions can be regarded as representing a consensus across the Community. The Blueprint contemplates that there may be times when the CCE becomes temporarily short by one or two members, for example due to incapacity under section 25, or dismissal under section 26. It makes sense for the CCE still to be able to function in such circumstances, and a requirement for a quorum of 12 makes that possible. Having 12 as a fixed quorum means, however, that the CCE cannot decrease in size to a point at which it might no longer reasonably be regarded as representative of the Community as a whole. If the quorum had been intended to be set at two-thirds of the number of members for the time being, there would be no bright line beyond which the membership of the CCE could not decline.

109. The second (and connected) reason why the Blueprint must, in my judgment, have contemplated that the quorum would always be 12 is that, on a fair reading of the Blueprint, it contemplates that any missing members will be replaced so that any reduction below 18 will be temporary. Section 16(ii) of the Blueprint says that the head of each of the Ruling Houses "*shall*" (in consultation with other members of the house) select or elect two representatives from the house to be members of the CCE. The Eight Claimants would, no doubt, say that section 16(ii) is concerned only with the initial selection of members of the CCE every three years, rather than with the filling of vacancies arising in the meantime, but it is not expressed in those terms and the overall requirement in section 18 for the CCE to be made up of 18 members is consistent with the intention that any vacancies which arise will be filled by replacements selected by the relevant ruling house. Although Mr Sigalo accepted that the Ruling Houses might normally be expected to nominate replacements for missing CCE members, because otherwise they might lose influence on the CCE, he said they retained a discretion whether to do so or not. Mr Lue, on the other hand, said it would be surprising if there were no nominees to fill vacancies in the CCE. Mr Lue's view is more consistent with common sense. It is to be expected that the Ruling Houses would always want to ensure that they were fully represented on the CCE and able to influence decisions.

110. The Eight Claimants point out that section 25 appears to contemplate a "*recall*" of a member of the CCE as an alternative to "*replacement*", implying that members might not be replaced. Moreover, section 25 only refers to replacement where the member is either not working in the interest of the house, or is incapacitated; there is no provision relating to replacement in other circumstances, such as following a death. As I read section 25, however, it is focussed on prescribing the circumstances in which a ruling house may remove one of its representatives after they have been appointed. It is not concerned with listing all the circumstances in which a vacancy might need to be filled, because the Blueprint assumes that the ruling houses will want to fill those vacancies.

111. For these reasons, I have concluded that a decision by a meeting of less than 12 members of the CCE is inquorate and, accordingly, not "*binding*" under section 22 of the Blueprint.

E. Issue (ii): Delegated Authority Claim – facts related to the alleged authority bestowed on the Claimants by the GA and/or CCE

2014 to May 2018: establishment of CCE No. 1

112. As mentioned above, the parties to the Community Claim against SPDC (and others) entered into the Master Settlement Agreement on 11 December 2014, to which effect was given by a Consent Order approved by Akenhead J in January 2015. One effect of that agreement was to bring all aspects of the Community Claim against SPDC to an end, with the exception of what were described as the "Clean Up Claims". As the name suggests, these claims were for a mandatory injunction requiring the clean up and remediation of the Bodo Creek,

or for the reasonable cost of remedial works in lieu. The Clean Up Claims were stayed for a period to allow a remedial scheme to be put in hand, but they have since been revived and are ongoing. Leigh Day continues to represent the Community in the Clean Up Claims. The detail as to what has happened in respect of those claims does not matter for present purposes.

113. On 4 July 2017 Coulson J gave a judgment in relation to the Clean Up Claims which dealt, amongst other points, with a submission by SPDC that the claimants in those claims did not have the necessary title or capacity to make the application. One of the grounds for that submission was that King Felix, who had been one of the original claimants in the Community Claim against SPDC, had died in September 2013. King Felix was ultimately succeeded by his son, HRH King John Bari-Iyedum Berebon ("King John"), although the latter's title was initially disputed and he was only eventually confirmed as King by the Nigerian High Court in August 2016.

114. Another point raised before Coulson J was that the CCE no longer existed and had not existed for some time. Coulson J recorded (in paragraph 26 of his judgment) that Mr Leader of Leigh Day had acknowledged in his fourth statement in those proceedings that there was currently no CCE and that he did not know when, or if, it would be reconstituted. In the event, Coulson J adjourned the application before him to enable further enquiries to be made.

115. It is, therefore, clear that there was no CCE in July 2017, as Mr Leader acknowledged in paragraph 40.1 of his statement in the current proceedings. Although I concluded above that the Blueprint contemplates that there should always be a CCE with 18 members, it appears that, in practice, there have been times when there has been no CCE at all. That does not affect my conclusion about the interpretation of the Blueprint; it simply means that the Blueprint has not always been adhered to in practice.

116. In paragraph 40.2 of his statement in these proceedings Mr Leader says that a new CCE was constituted on 21 August 2017 with Chief Ntete as Chairman. That appears to be a slip, since in paragraph 31 of his fifth statement in the Clean Up Claim (referred to further below), Mr Leader's evidence was that Chief Vilola was appointed Chairman of the new CCE on 21 August 2017 and that Chief Ntete took over as Chairman on 27 November 2017.

117. That sequence of events is consistent with the proceedings issued shortly thereafter by Chief Vilola against Chief Ntete in the High Court of the Rivers State of Nigeria, to which I have referred above as the 2017 Vilola Case. Few of the court documents from those proceedings were in evidence before me, but so far as I can tell from the ruling of Judge Boma G. Diepiri given on 9 October 2018, the claim in the 2017 Vilola Case was filed on around 11 December 2017. Chief Vilola claimed that he had been wrongly removed from his office as Chairman of the CCE and was seeking an injunction restraining Chief Ntete from performing the functions of that office (or "*parading*" as the Chairman of the CCE, as it was put).

118. In paragraph 40 of his statement in these proceedings Mr Leader says that on 7 March 2018 King John was suspended by the CTR and Benedict Mboi Koottee

was appointed Regent the next day. On 29 March 2018 a communique from the CTR to SPDC confirmed that King John had been suspended, Chief Benedict Koottee was Regent, Chief Monday Koottee was Lah-bon, Chief Pius Menega was Chairman of the CTR and Chief Ntete was Chairman of the CCE, having taken over from Chief Vilola. I understand it to be common ground that this was the position in March 2018.

119. The communique is one of the many documents in evidence which is written on official headed notepaper and signed by various individuals. I intend no criticism of the members of the Community when I say that, for someone unfamiliar with that Community, these documents are not always easy to follow. This is partly because there is a proliferation of different notepaper for the CCE and other entities, so that it is not obvious whether all versions of that notepaper represent the "official" position. It is also because the names of individuals who are listed on the notepaper and who have signed the documents do not always appear in the same order, or with the same spellings. So, for example, I infer that Chief Clement Giogo Saah is the same individual as Chief Giogo Clement and Chief Saah Giogo, but all those variants appear on documents with an official appearance. Another example is that Chief Menegah's name is sometimes spelled "Menega". The position is further complicated by the fact that some members of the Community, understandably, have similar names to other members. There are, for example, three individuals with the surname "Lezor", to whom I shall refer below. With a little patience, it has been possible to reach a sufficient degree of confidence about who is being referred to in the documents, but in the interests of brevity I have not always set out the full process of reasoning below.

120. On 10 May 2018 Chief Ntete signed a substantial witness statement in the Clean Up Claim confirming, amongst other matters, that he was chairman of CCE. He gave an explanation of the governance of the Bodo Community, in which, as mentioned above, he described the CCE in paragraph 15 as "*the highest decision making organ of governance of the Community*."

121. The application in the Clean Up Claim which Coulson J had adjourned came back before Cockerill J on 22 May 2018. One of the issues she addressed on that occasion was the removal of those original claimants who had died, the addition of replacements for those claimants and the addition of further claimants, being those members of the then current CCE and CTR who were not already claimants. The evidence before her included Chief Ntete's statement referred to in the preceding paragraph and Mr Leader's fifth statement in the Clean Up Claim, dated 8 May 2018. Paragraphs 32 and 33 of the latter statement listed the 18 members of the CCE at that point in time, as follows: (1) James Ntete; (2) John Vilola Daatu (who I understand to be Chief Vilola); (3) Simeon Visangha; (4) Jude Visung; (5) Kana Gbaradom; (6) Felix Zorbiladee; (7) Richard Sunday Lezor; (8) John Lenu Lezor; (9) Jude Putonor; (10) Simeon Adagi; (11) John Nwachukwu; (12) Baridah Vizor Faanor; (13) Vigo Zagabel; (14) Saah Giogo; (15) Sunday Feemeh; (16) Bilalo Vikina; (17) Jude Kpee; and (18) Bernard Kiate. I shall call this "**CCE No.1**". I understand it to be common ground that CCE No. 1, with Chief Ntete as Chairman, was a legitimately

appointed CCE, which had originally been constituted on 21 August 2017 (albeit with Chief Vilola initially being Chairman).

122. In her judgment dated 24 May 2018 Cockerill J recorded that a new CCE had been appointed and that the proposed substitutions and removals of claimants were not, by that stage, opposed by SPDC. She said she was satisfied that these changes in parties were sensible and appropriate. In addition to all the members of the CCE, the new claimants were King John, the Regent, the Lah-Bon and the members of the CTR. Mr Leader explained in paragraph 40 of his fifth statement in the Clean Up Claim this was "*to ensure that all those in current, former or potential leadership roles in the Community are named as claimants.*" He said that all the claimants had instructed Leigh Day to add them to the claim form and that "*There are therefore consistent instructions from all members of the Bodo Community's leadership to continue with the clean-up claim.*" This reinforces my conclusion above that it was the members of the Community's leadership who were Leigh Day's clients in the Community Claim against SPDC, rather than the members of the Community as a whole.

June 2018 to November 2018: CCE No. 2 and the ruling in the 2017 Vilola Case

123. It seems to have been at around this time (June 2018) that proceedings were commenced in the High Court of Rivers State of Nigeria with claim number BHC/102/2018. I received very little evidence about this claim and the court papers in my bundle (which were put in evidence by Chief Ntete) are incomplete, but I have seen part of a witness deposition by Chief Ntete from which it is possible to glean some information. The claim was brought against King John and three other officials and complained that, despite his suspension, King John was "*going about seeking to run parallel government from the government presently headed by the Regent.*"

124. More importantly for present purposes, the 14 claimants were all said to be members of the CCE at that time, along with four other named individuals. Although the spellings and other variations make it difficult to be sure, it seems reasonably certain that four of the individuals who were members of CCE No. 1 according to the list provided in paragraphs 32 and 33 of Mr Leader's fifth statement were no longer regarded as members of the CCE. Those four individuals (numbered according to the above list) are: (2) John Vilola Daatu; (11) John Nwachukwu; (15) Sunday Feemeh; and (16) Bilalo Vikina. The following four names appear instead: John Mene Lezor (who I understand to be a different person from John Lenu Lezor); Dumba Brother Stephen; John N Berebon (who I understand to be a different person from King John); and Suny Brown Feeme. It seems possible that the last name is the same person as Sunday Feemeh who was a member of CCE No. 1, but nothing turns on that. It is a little curious that the composition of the CCE seems to have changed so soon after Mr Leader's fifth statement was made, but it rings true, given the 2017 Vilola Claim, that Chief Vilola would have been replaced on the CCE. There were, nevertheless, 18 members of the CCE at this point and I will refer to it as "**CCE No. 2**". I do not understand there to be any dispute that CCE No. 2 was legitimately constituted or that the tenure of its members would normally expire pursuant to clause 24 of the Blueprint on 20 August 2020 (unless extended by the GA), regardless of when the four replacement members were appointed.

125. On 9 October 2018 Judge Boma G. Diepiri gave the ruling in the 2017 Vilola Case to which I referred above. There were two applications before the court. First, Chief Ntete had applied for the claim to be struck out on the basis that Chief Vilola had been removed by 15 members of the CCE and that he had been "*recalled by his Dynasty … from being a chief.*" The Judge dismissed that application because the pleadings had disclosed a "*reasonable cause of action*" and the arguments raised by Chief Ntete were "*all contentious issues that require proof.*" The second application before the court was Chief Vilola's application for an interlocutory injunction restraining Chief Ntete from acting as Chairman of the CCE. The Judge also dismissed that application on the basis that "*there is no way this court can wade into the entire gamut of documents exhibited upon affidavit evidence to arrive at this stage at a decision whether or not* [Chief Vilola] *has been removed from office and to make that a basis for restraining* [Chief Ntete]."

126. This is one of the decisions relied on by the Eight Claimants in support of their contention that Chief Ntete is currently the Chairman of the CCE. It was exhibited to Chief Ntete's witness statement and to Mr Sigalo's expert report. Thereafter, Leigh Day served a witness statement from Mr Karibo, who had acted as counsel for Chief Vilola in the 2017 Vilola Claim, to which the Eight Claimants responded by serving a statement from Mr Warmate, who had acted as counsel for Chief Ntete. In his oral evidence, Chief Ntete explained his position by saying that the court had refused the injunction and had "*said that I should continue to act until the matter in court had been finally determined. Up until now that we are speaking the matter is still in court. That is why I cited the example that in Nigeria here if there is a matter that concerns a particular stool, if such matter is before a judge of the court until that matter ends, that person that was occupying that seat will continue until the court decides otherwise. So my tenure has not ended because the court has not determined the matter.*"

127. I do not accept this. It is clear on the face of the short ruling of Judge Diepiri that he did not make any decision on the merits of either party's case. He did not say that Chief Ntete should continue as Chairman of the CCE until the matter had been determined. He simply dismissed both applications before him on the basis that they involved factual disputes which could not be decided without a trial.

128. It appears to be correct that the 2017 Vilola Claim has not yet been concluded, although there is evidence that Chief Ntete filed an appeal against the refusal of his strike out application on 26 October 2018 and transmitted the record to the Court of Appeal on 5 November 2018. Mr Karibo pointed out, however, that the matter was 6 years old and purely academic. I agree. The Eight Claimants' expert, Mr Sigalo, did not produce any authority to support the proposition that, once a claim is brought in respect of someone's entitlement to an office, they must remain in office until that claim is resolved. That proposition is obviously implausible. The 2017 Vilola Claim concerned who was entitled to act as Chairman of the CCE at the time the claim was issued. It could not (and, at least on the evidence I have seen, did not seek to) determine who was entitled to be Chairman of the CCE in the future.

December 2018 to July 2020: CCE No. 3

129. According to paragraph 45 of Mr Leader's statement in these proceedings, King John was reinstated in around December 2018. On the other hand, there is evidence which suggests that King John was not reinstated at this time. In particular, the ruling given on 15 December 2020 in the proceedings to which I refer below as the 2020 Caretaker Committee Claim indicates that the claimants in those proceedings (who were members of the CTR) alleged that King John was under suspension in August 2020, although it does not say when that suspension commenced. I understood Chief Ntete's position in his oral evidence to be that the suspension of the King in March 2018 had never been lifted. I did not receive detailed evidence regarding the dispute whether King John was suspended at this time and, in my judgment, it is unnecessary to resolve it.

130. There is in evidence a curious letter purportedly written by King John on 20 January 2019 addressed to the High Court of England and Wales, in which he claimed to have recently learned that Leigh Day had claimed that his father, King Felix, had authorised various payments to be made from the £20 million paid by SPDC in respect of the Community Claim against SPDC. The letter described Leigh Day's claims to have been authorised by his father as "*lies from the pits of hell*" and suggested that Leigh Day had stolen the money. In a later letter dated 21 April 2021, however, King John described the letter of 20 January 2019 as a forgery and dissociated himself from the allegations made in it. It is not necessary for me to make any findings in relation to this letter, but I mention it because, so far as I am aware, it is the earliest document in evidence mentioning a potential claim against Leigh Day (assuming it is genuine).

131. Returning to paragraph 45 of Mr Leader's statement, it continues by saying that "*the majority of the CCE joined King John, who had the political power within the Community. A small group of just three Chiefs, including Mr Ntete, formed a rival faction.*" Some support for this comes from a document dated 11 June 2019, which was provided to Leigh Day to confirm that it continued to be instructed in relation to the Clean Up Claim and that the CFA entered into by the Community continued to be binding. This confirmation was signed by 13 individuals under the heading "*The Bodo Council of Chiefs.*" Each of those 13 individuals was a member of CCE No. 2. The five missing names were Chief Ntete; Richard Sunday Lezor; John Lenu Lezor; John Mene Lezor and John N Berebon.

132. There is also in evidence a draft work plan dated 10 March 2020 authored by the Bodo Mediation Initiative ("BMI"), an independent organisation conducting the clean up exercise in Bodo and facilitating mediation between the Community and SPDC to ensure the clean up progressed as planned. That listed certain representatives of the Community, including four from the CCE, each of whom had also been a signatory to the confirmation referred to in the preceding paragraph. In the BMI document, however, Chief Simeon Visangah is described as the Chairman of the CCE.

133. On 25 July 2020 Chief Visung (stating that he was acting as Secretary of the GA and CCE) signed a "*Letter of Authority*" addressed to Global Solicitors and

Advocates (a firm in New Cross, London) referring to a resolution passed by the GA and the CCE authorising five individuals "*to spearhead the case of illegal deduction of community compensation paid by Shell through Leigh Day & Co.*" It is on headed notepaper of the "*Bodo Council of Chiefs and Elders*". In the left-hand margin of the notepaper, below the names of the King and the Lah-bon, there is a list of the members of the CCE, identifying their various offices. Only 16 names appear, rather than 18. All 16 of them were members of CCE No. 2. The two members of CCE No. 2 whose names do not appear are Chief Ntete and John Mene Lezor. Chief Visangah is listed as "*Acting Chairman.*"

134. On the basis of this document, together with the confirmation regarding the CFA dated 11 June 2019, the BMI draft work plan referred to above and Mr Leader's evidence, I find that it is more likely than not that by July 2020 the CCE was, in practice, composed of the 16 individuals listed on this notepaper and did not include Chief Ntete or John Mene Lezor. Chief Ntete was no longer Chairman and Chief Visangah was fulfilling the role of Chairman, albeit it seems on a temporary basis as "*Acting Chairman*". I shall refer to this as "**CCE No. 3**".

135. The Eight Claimants say, as I understand it, that Chief Ntete (and presumably John Mene Lezor) legally remained a member of the CCE, even if he was not a member in practice. Whether that is right or not might depend on precisely how and why Chief Ntete ceased to be included as a member of the CCE. If he resigned voluntarily, he might have given up any rights he had to continue as a member of the CCE. I do not have any evidence about that, however, and I shall proceed on the basis that Chief Ntete and John Mene Lezor did legally remain members of the CCE, even if they were in practice excluded from it.

136. I do not, however, consider that Chief Ntete can have legally remained the Chairman of the CCE. Clause 23 of the Blueprint enables a full session of the CCE to elect its Chairman and there is nothing to suggest that a full session cannot replace one Chairman with another. In my judgment, it is more likely than not that this is what happened: at some stage in 2019 or early 2020 the CCE chose Chief Visangah to act as Chairman in place of Chief Ntete. In any case, it is difficult to see how someone who is excluded from meetings of the CCE can be Chairman of those meetings.

Chief Visung's Letter of Authority dated 25 July 2020

137. Returning to the Letter of Authority from Chief Visung dated 25 July 2020, this might be said, of course, to show that the CCE was in favour of proceedings against Leigh Day. I do not, however, consider that it assists the Eight Claimants in this case (and I do not understand them to rely on it). My reasons are as follows. First, the letter refers to a resolution of the GA and CCE, but there is no other evidence of any such resolutions in or around July 2020 and the Eight Claimants rely on resolutions at a later date (as I explain below).

138. Secondly, the letter is signed only by Chief Visung. As appears below, he does appear to have been one of the main backers of a claim against Leigh Day, along with Chief Monday Koottee (the Lah-bon), until around August or September 2021, when he seems to have changed his mind and Chief Ntete seems to have

taken over as the driving force behind the claim. Indeed, Chief Ntete produced Chief Visung's letter (in paragraph 5 of his supplemental witness statement) to demonstrate that Chief Visung had initially supported the claim. I do not consider that I can infer from the mere fact that Chief Visung signed the letter above rubric describing himself as secretary of the CCE that the other members of the CCE agreed with him, let alone that they had taken a decision at a quorate meeting.

139. Thirdly, the letter is addressed to Global Solicitors and Advocates who did not, in the event, commence the proceedings against Leigh Day. In paragraph 12 of his witness statement, Mr Nyiedah said that he instructed Raegal Solicitors because Global Solicitors had "*failed to advance this claim*" and Chief Ntete said in paragraph 11 of his statement that "*that firm did not appear to have the courage to go against*" Leigh Day. Fourthly, the letter authorises five named individuals, only four of whom are amongst the Eight Claimants. In these respects, events did not occur in the way Chief Visung's letter contemplated.

140. For all these reasons, I find that Chief Visung's letter of 25 July 2020 does not establish, on the balance of probabilities, that the GA or CCE No. 3 ever resolved to give authority to the Eight Claimants to bring these proceedings. The Eight Claimants rely on later documents to establish they were authorised, which suggests that they do not regard this letter as sufficient authorisation either.

August 2020: CCE No. 4 and the 2020 Caretaker Committee Claim

141. It will be recalled that CCE No. 1 was constituted on 21 August 2017. Since clause 24 of the Blueprint provides for the tenure of office of Council members to be a maximum of three years, that CCE would have automatically been dissolved on 20 August 2020, unless extended by the GA.

142. When that dissolution was imminent, a dispute seems to have arisen. On 19 August 2020 proceedings were issued in the Customary Court of Rivers State of Nigeria with Suit Number CCK/31/2020. The claimants were Chief Joseph Poiba and Chief Kabari Naa, who were both members of the CTR and were said to be claiming in their own right and as representatives of the CTR. The defendants were King John and Chief Monday Koottee who were said to be sued, "*For themselves and representing Members of the Bodo Community seeking to dissolve the Bodo Council of Chiefs & Elders and to appoint Caretaker Committee.*" I shall refer to these proceedings as the "**2020 Caretaker Committee Claim**".

143. Once again, there is only an incomplete set of court documents relating to the 2020 Caretaker Committee Claim in evidence, but I have the benefit of, first, a ruling of the court dated 15 December 2020 and, secondly, a notice of motion and accompanying affidavit in support, made by Chief Ntete, dated 20 August 2021. These documents make it possible to piece together what seems to have happened in August 2020. It appears from the third page of the ruling of the court, paragraphs 3 and 4 of the notice of motion and paragraph 6 of Chief Ntete's affidavit, that the GA met on 16 August 2020 (having been summoned by the CTR using the Kele-Saan) and extended the tenure of the existing CCE

for a period of one year. The evidence does not reveal which individuals were said to be the members of the CCE at that stage, but given the names on the official notepaper on which Chief Visung's letter of 25 July 2020 was written (see above) it seems entirely possible that it was only the members of CCE No. 3, without Chief Ntete and Chief John Mene Lezor. I have, however, been proceeding on the basis that Chief Ntete and Chief Mene Lezor legally remained members of the CCE and, in the absence of much evidence about the GA meeting, I shall proceed on the basis that the legal effect of the GA meeting was to extend Chief Ntete's and John Mene Lezor's tenure as well as that of the members of CCE No. 3. As will become clear, it does not ultimately make any difference to the outcome of this preliminary issue whether their tenure was extended for a year or not.

144. It appears from the third page of the ruling of the court in the 2020 Caretaker Committee Claim that King John and the Lah-bon (Chief Monday Koottee) then threatened to dissolve the existing CCE (which I infer was CCE No. 3) and appoint what was described as a "caretaker committee" of the CCE in its place. The 2020 Caretaker Committee Claim was issued on 19 August 2020 seeking an injunction to prevent the appointment of the caretaker committee, but it appears that, despite knowing that the proceedings had been issued, the King and the Lah-bon went ahead and appointed the caretaker committee on 22 August 2020. The documents relating to the 2020 Caretaker Committee Claim in evidence before me do not identify which individuals were said to be members of the caretaker committee, although they can be identified from the later documents to which I refer below. Without prejudice to whether the caretaker committee was or was not legitimately appointed, I shall refer to the caretaker committee as "**CCE No. 4**".

145. Perhaps understandably, Mr Leader appears to have become muddled in paragraph 51 of his statement in these proceedings because he says that, in around August 2020, "*King John dissolved the caretaker CCE and appointed a new, permanent CCE.*" As explained above, I find that what happened at this time was that King John dissolved the existing CCE, the tenure of which had been extended by the GA, and attempted to appoint a caretaker committee (CCE No. 4) in its place. Mr Leader continues in paragraph 51 by saying that the Chairman of the new CCE appointed by King John (CCE No. 4) was Chief John Vilola. Chief Vilola had, of course, been Chairman of CCE No. 1 prior to Chief Ntete and had brought the 2017 Vilola Claim against him. There is plainly a rivalry between these two chiefs.

The alleged GA and CCE meetings in December 2020

146. The RFI Response alleges that the GA met on 4 December 2020 and authorised the Eight Claimants to bring these proceedings, whereupon, on 7 December 2020, the CCE "*endorsed and carried out the Bodo People General Assembly decision,*" giving instructions to proceed with an application for pre-action disclosure. None of the witnesses gave evidence of any meetings of the GA or CCE on these dates and there is no documentary evidence either. On the contrary, the "*Resolution*" dated 31 January 2024, to which I refer below, expressly states that the signatories were not aware that such a GA meeting ever occurred. As noted above, the RFI Response is not supported by a statement of

truth. The Eight Claimants' case at trial was not based on any such meetings in December 2020 and I was given no explanation as to why these meetings had ever been alleged. I find that they did not happen.

December 2020: CCE No. 4 and the 2020 Caretaker Committee Claim continued

147. As mentioned above, on 15 December 2020 a ruling was given in the 2020 Caretaker Committee Claim by their Honours Peter B. Kiate (Chairman) and Vuladi S. Kamenebali (Member). The claimants applied for an interlocutory injunction which the court described as "*seeking restorative, restraining and mandatory Orders to undo and/or return the parties to the situation of affairs, as at 19/8/2020, when the suit and Motion on Notice for interlocutory injunction were filed, to the knowledge of the Defendants/Respondents.*" In brief outline, the court was satisfied that both defendants (King John and Chief Monday Koottee) knew about the application for an injunction before they went ahead with the dissolution of the CCE and appointment of a caretaker committee.

148. Accordingly, the court considered that it could "*invoke its disciplinary jurisdiction to reverse the supposed dissolution of the Bodo Council of Chiefs and Elders and setting up of a Caretaker Committee of Bodo Council of Chiefs and Elders and also make other relevant Orders, to guarantee the preservation of the res, that is before the Court.*" The court accordingly ordered, amongst other things, that the dissolution of the preexisting CCE was to be set aside, that the purported caretaker committee stood dissolved and could no longer act on behalf of the Bodo Community, and that "*every duty/function/activity carried out by the said purported Caretaker Committee, from the 22/8/2020, is hereby nullified.*"

149. Even without the court's order, there would be considerable doubt whether a "caretaker committee" of 12 members could ever have any legitimacy pursuant to the Blueprint. In my judgment, however, it must follow from the court's order that CCE No. 4 cannot at any time have been the legitimate CCE of the Bodo Community. I did not understand it to be disputed by any of the parties before me that the court had jurisdiction to make the order and that the order was not appealed. Neither side suggested to me that the order did not have effect. It is not entirely clear who were the members of the preexisting CCE, the dissolution of which the court set aside. But it is clear that the caretaker committee (i.e. CCE No. 4) was dissolved by the order and was no longer to be regarded as the legitimate CCE of the Community.

150. Nevertheless, in paragraph 56 of his statement for these proceedings Mr Leader says neither side took much notice of any of the orders made in the various court proceedings between what he described as the "*factions.*" This accords with the affidavit subsequently made by Chief Ntete in the 2020 Caretaker Committee Claim (dealt with further below), in paragraph 9 of which he said, "*Throughout the period of the one year extension [King John] never allowed us to function, I further aver that he was rather using the caretaker Committee that was dissolved by an order of this court made on the 15th December, 2021 to administer Bodo in outright disobedience to the said Order of this Honourable Court*."

151. I accept that CCE No. 4 seems to have been regarded by many, including Mr Leader, as in practice fulfilling the role of the CCE for various purposes. I have not considered, and should not be regarded as having decided, whether CCE No. 4 was competent to speak or act on behalf of the Community in relation to matters outside the ambit of the issues before me. Nevertheless, CCE No. 4 cannot in my judgment be regarded as the legitimate CCE for any purposes connected with the present claim against Leigh Day. In particular, I find that it did not have power either to bestow authority on the Eight Claimants to pursue the claim or to revoke any authority they had been granted.

The Confirmation of Authority documents dated 9 January 2021

152. There are two almost identical documents in evidence dated 9 January 2021. They are both in the form of a letter to Raegal. The first page of each one has the words "*Bodo People General Assembly*" and "*Bodo Council of Chiefs & Elders*" typed at the top right, with an address below, but the documents are not written on headed notepaper. (One of the documents in fact says "*Chief & Elders*" rather than "*Chiefs & Elders*", which further emphasises the unofficial appearance of these letters.) The letters begin with the following heading in capitals "*CONFIRMATION OF AUTHORITY ACT* [sic] *ON BEHALF OF BODO COMMUNITY IN A REPRESENTATIVE CAPACITY BY THE FOLLOWING LEAD CLAIMANTS*:". One of the letters then lists eight names, whilst the second lists nine. The first letter lists seven of the Eight Claimants plus Chief Cletus Mbari Bakor (the missing claimant being Godjudge Baribeela Bakel). The second letter lists all the Eight Claimants plus Chief Cletus Mbari Bakor.

153. The second page of each letter appears to be an identical page containing only names, offices held, signatures and dates. The individuals who signed are: (1) Chief Saint Emman P., described as "*Former Secretary of the Bodo Council of Chiefs*"; (2) Chief Jude Visung, described as "*Secretary of the Council of Chiefs and the Bodo People General Assembly*"; (3) Chief Micheal Kpaan P., described as "*Former Member, Bodo Council of Chiefs, and Elders*"; (4) Chief Joseph Kpai, described as "*Former Vice Chairman Council of Chiefs*"; (5) High Chief Monday Koottee, described as "*Lah-bon Bodo permanent member of the Council of Chiefs and Council of Traditional Rulers*"; and (6) Chief Sunny Brown Feeme, described as "*Member Council of Chiefs*".

154. It will be appreciated that only Chief Visung and Chief Feeme were amongst the members of CCE No. 2 and CCE No. 3, although Chief Monday Koottee, as Lah-bon, was regarded as an *ex officio* member of the CCE. The use of the word "*former*" in relation to the positions of the other three signatories shows that they did not purport to be members of the CCE at the time the letters were written. Mr Nyiedah told me in closing submissions that the Eight Claimants do not rely on either of these letters, although they are relied on in the RFI Response. In case it matters, the letters could not, in my judgment, confer authority from the CCE or any other body on the Eight Claimants. The existence of the two slightly different letters, with the inclusion of Chief Bakor who is not a claimant, the duplicated second page of signatures and the lack of headed notepaper, suggests that they were not carefully put together and were not the product of a proper resolution of the CCE. An insufficient number of

members of the CCE (whether CCE No. 4 or any previous CCE) have signed the letters for any resolution they may have taken to have been quorate, and the presence of "*former*" members indicates that any meeting of these individuals at which it was agreed to send these letters could not have been a meeting of the current CCE.

February to April 2021: pre-action disclosure and the minutes of 19 February 2021

155. The Eight Claimants issued an application for pre-action disclosure from Leigh Day in the Queen's Bench Division on 1 February 2021. Nine "*Letters of Authority*" dated 9 February 2021 were signed by each of the Eight Claimants, together with Chief Bakor. The signatories of these short documents authorise Raegal to act on their behalf in relation to "*my civil matter*" and to seek information in order to progress that matter. The documents also contain a request, presumably intended to be addressed to anyone to whom they were shown, to provide Raegal with "*all documents and/or materials relevant to this case*." Whilst the Eight Claimants authorised Raegal to act for them in these documents, the documents plainly do not involve the CCE (or anyone else) giving authority to the Eight Claimants.

156. In response to a witness statement filed on behalf of Leigh Day in connection with the pre-action disclosure application, Chief Monday Koottee and Chief Visung made a joint witness statement dated 22 April 2021. In paragraph 4 they said that the Eight Claimants had been duly authorised by the CCE "*as well as all other relevant official bodies of the Bodo Community, to act in a representative capacity for themselves and on behalf of the Bodo Community.*" To substantiate this, they did not refer to the letters of 9 January 2021 referred to above (which supports my finding that those letters did not bestow authority on the Eight Claimants). Instead, they referred in paragraph 6 to what they described as the "*minutes of the Bodo Council of Chiefs and Elders dated 19 February 2021*." Chief Cletus Mbari Bakor also made a witness statement on the same date, which also referred to the minutes dated 19 February 2021.

157. Those minutes were in evidence. They take the form of a single page on CCE headed notepaper. The names in the left-hand margin below the names of the King and the Lah-bon are different from those in the notepaper used for Chief Visung's letter of 25 July 2020 referred to above (CCE No. 3). There are only 12 names: (1) Chief Vilola (listed as the Chairman); (2) Chief Bernard Kiate; (3) Chief Jude Visung; (4) Chief John N Berebon; (5) Chief Godwin Zorama; (6) Chief Vipola Mememuu; (7) Chief Saint E. Pii; (8) Chief Sunny Brown Feeme; (9) Chief Saah Giogo; (10) Chief Patrick Pidomsi; (11) Chief Jude Kpee; and (12) Chief Priscilla Vikue.

158. The evidence before me includes a series of letters dated 16 September 2021 written by RPC, on behalf of Leigh Day, to different individuals whom Leigh Day considered either were legitimately appointed representatives of the Bodo Community, or who had a claim to have been so appointed. One of those letters was written to Chief Vilola "*in your capacity as chairman of the Interim Council of Chiefs and Elders.*" I infer from paragraphs 51, 53 and 58 of Mr Leader's statement in these proceedings that the "*Interim Council*" referred to in the letter was the same body as the caretaker committee appointed by King John on 22

August 2020, i.e. CCE No. 4. Appendix A to the letter listed the individuals whom Leigh Day understood to be members of that body, and they are the same 12 individuals as those listed in the left-hand margin of the minutes dated 19 February 2021 (plus Chief Monday Koottee, the Lah-bon). Accordingly, I find that those were the members of CCE No. 4 (the caretaker committee).

159. It follows that six members of CCE No. 4 were also members of CCE Nos. 2 and 3: Chief Jude Visung; Chief Bernard Kiate; Chief John N Berebon; Chief Sunny Brown Feeme; Chief Saah Giogo; and Chief Jude Kpee.

160. Returning to the minutes of 19 February 2021, they record that there was a "*diligent consideration of matters before the paramount Ruler-in-Council*" at which four matters were "*holistically addressed and consented to.*" The third of these matters was "*To confirm and give necessary backing in the case in London between Leigh day and Co-Solicitor* [sic] *and the Community being led by* [the Eight Claimants plus Chief Cletus Mbari Bakor] *that they are authorized to act as lead claimants on behalf of the whole Bodo Community.*" The minutes also record that "*In attendance were the Paramount Ruler, Labon, Chairman Council of Chiefs and others.*" They are signed by Chief Monday Koottee as Lah-bon and Chief Jude Visung as secretary (but no one else).

161. Mr Nyiedah told me in closing submissions that the Eight Claimants do not rely on these minutes as conferring authority on them. I infer that is principally because they are minutes of CCE No. 4, the legitimacy of which is contested by Chief Ntete. In case it matters, these minutes do not, in my judgment, confer authority on the Eight Claimants to pursue the present claim against Leigh Day. Amongst other reasons, this is because, as I have held above, CCE No. 4 cannot be regarded as the legitimate CCE for the purposes of bestowing such authority.

162. There are three additional reasons for my conclusion. First, the minutes are signed only by Chief Monday Koottee and Chief Jude Visung. As already mentioned, they seem to have been in favour of these proceedings on several occasions, but it does not follow that the remainder of the members of CCE No. 4 agreed with them. Secondly, the minutes do not identify which members of CCE No. 4 were present at the meeting, apart from the Chairman (Chief Vilola). The reference to "*and others*" under the statement of individuals "*in attendance*" might refer to individuals who were not members of CCE No. 4 at all. Even if there were other members of the CCE present, the evidence does not demonstrate that the meeting was quorate. Thirdly, the decision recorded in these minutes is contradicted by the later decision recorded in the resolution of 21 September 2021 referred to below and signed by all the members of CCE No. 4. It is, in my judgment, more likely than not that the minutes of 19 February 2021 reflect only the wishes of Chief Monday Koottee and Chief Visung, who prepared the joint witness statement for the purposes of the pre-action disclosure application. The evidence does not establish that they reflect the views of the other members of CCE No. 4, let alone that there was a valid resolution to that effect.

163. Since the claims in the joint witness statement of Chief Monday Koottee and Chief Visung dated 22 April 2021 that the Eight Claimants were authorised to pursue the claim against Leigh Day is founded upon the minutes of 19 February

2021, that witness statement takes the matter no further. In any event, Mr Nyiedah told me in closing submissions that the Eight Claimants do not rely on it.

164. On 21 April 2021 (the day before Chief Monday Koottee and Chief Visung signed their joint witness statement) King John and Sir Gabriel Pidomson wrote a letter addressed to whom it may concern (but intended to be relied upon by Leigh Day in the pre-action disclosure application). Sir Gabriel is the Chairman of a body called the Bodo Contact Committee, which (according to the letter of 21 April 2021) had been appointed by the Community to liaise with Leigh Day on matters concerning the clean up operation. Amongst other matters, the letter confirmed that "*our instructions*" were given to Leigh Day on behalf of the Bodo Community and were binding on Leigh Day as the Community's lawyers. It continued by stating, amongst other things, that "*The Paramount Ruler, the Bodo Contact Committee and Council of Chiefs have not given their authority to pursue any litigation against Leigh Day.*" As noted above, the letter also said that the document dated 20 January 2019 from King John was a forgery.

165. In his oral evidence, Mr Nyiedah said that King John's letter of 21 April 2021 "*does not seem authentic*" because, as I understood him, a letter would not normally be signed by the King together with someone else, at least someone like Sir Gabriel, who has no office or "*stool*" in the Community. There is insufficient evidence for me to decide whether the letter is genuine or not, and I do not need to do so. The letter is not a resolution of the CCE or the GA and is not signed by any member of the CCE. It was, no doubt, sufficient evidence for the purposes of the pre-action disclosure application that the Eight Claimants' authority was disputed, but it does not satisfy me on the balance of probabilities that they do not have authority.

166. The pre-action disclosure application was heard on 27 April 2021 by Master Sullivan. One of the issues canvassed before her was whether the Eight Claimants had authority to bring a claim. She gave an *extempore* judgment on 4 May 2021. (The date of 4 May 2022 on the first page of the transcript of the judgment appears to be an error, since the Master's order is dated 4 May 2021.) In paragraph 32 of her judgment, she said of the Eight Claimants that, "*Their authority and ability to maintain, and I use the word maintain rather than bring initially, a representative action is clearly a very contentious matter but it does seem to me that they are beneficiaries of that community settlement and I take that into account.*" As I understand the Master's reasoning, she did not make any concluded finding about the Eight Claimants' authority. As might be expected, she simply took account of the fact that there was a dispute about it when exercising her discretion. In the event, she ordered disclosure of a limited number of documents and dismissed the application in relation to all other categories of document sought.

May 2021: the alleged GA and CCE meetings

167. There is in evidence a document dated 4 May 2021, signed by Chief Ntete and Chief Richard Sunday Lezor, describing themselves respectively as Chairman and Secretary of the CCE. It appears to be on headed notepaper of the CCE, although the format is rather different from that of the headed notepaper to

which I have referred above. Amongst other differences, the list of members of the CCE appears in a footer, rather than in the left-hand margin. The list of members given is identical to that of CCE No. 2. The heading of the document is in capital letters: "*THE RESOLUTIONS OF BODO GENERAL ASSEMBLY, WHICH IS THE HIGHEST DECISION MAKING ORGAN OF BODO COMMUNITY DECIDED AT TORGBO TOWN SQUARE ON SATURDAY, 1ST MAY, 2021*." I shall refer to this document as the "May 21 GA Minute".

168. The May 21 GA Minute states that the CTR, CCE and entire Bodo people met on 1 May 2021 and that they were addressed by Chief Ntete as Chairman of the CCE. After referring to issues concerning the fresh fish and vegetables dealers' association and the Kanu Tete cultural dance group, the May 21 GA Minute records that Mr Kagbara and Mr Nyiedah (the first and eighth Claimants) spoke at the meeting, claiming to have discovered that Leigh Day had misappropriated some money belonging to the Community, whereupon the people resolved to mandate "*Jordan Kagbara, John Nyiedah and Co.*" to "*take every legal action against Leigh Day law firm to ensure that the money is being refunded to Bodo people.*" The people are also said to have directed the CCE to give the claimants necessary support. So far as I am aware, this is the earliest document which records involvement by Chief Ntete in the claim against Leigh Day. As noted above, prior to this date, the prime movers seem to have been Chief Visung and Chief Monday Koottee.

169. Leigh Day say that no such meeting took place. In paragraph 55 of his statement in these proceedings Mr Leader says that, despite being in constant communication with the Community in relation to the Clean Up Claim, Leigh Day had never been told about a GA taking place in May 2021. Mr Leader says (without stating the source of this information) that King John did not call the meeting and does not recall it having taken place. If the meeting was not called by King John with the Town Gong, the meeting would have been invalid, according to Mr Leader.

170. In his witness statement Chief Menegah also said that there was no GA on 4 May 2021 (although this is, in fact, the date of the May 21 GA Minute, whereas the meeting is alleged to have happened on 1 May 2021). Chief Menegah also says that the King's leadership "*was being challenged.*" I understand this to be a reference to the events surrounding the 2020 Caretaker Committee Claim, following which the CTR did not recognise King John's authority. Chief Menegah says that Town Square meetings are convened to pass information to the people, not to seek opinions.

171. In his oral evidence, Chief Ntete said that when there is a crisis in Bodo a GA can be initiated by the Kele Saan, rather than the Town Gong (Kele-Bon), and that this was how the meeting on 1 May 2021 was initiated, so that King John's involvement was not required. He said in this context that the CCE was the implementing body of the Community, but it was the GA which was the decision making body.

172. It is convenient to make findings about the alleged GA meeting on 1 May 2021 after considering the next document relied on by the Eight Claimants, which is on the same headed notepaper as the May 21 GA Minute and is also signed by

Chief Ntete and Chief Richard Sunday Lezor. It is headed, in capitals: "*MINUTES OF MEETING OF BODO COUNCIL OF CHIEFS AND ELDERS HELD ON THE 12TH OF MAY 2021*." I shall call this the "May 21 CCE Minute".

173. The May 21 CCE Minute records Chief Ntete, as Chairman, saying that the main purpose of the day's meeting was "*to deliberate on the information brought to council by Jordan Kagbara and John Nyiedah*" to the effect that "*a group of concerned indigenes of Bodo Community discovered that Leigh Day Law firm … misappropriated some of the money belonging to the community…*" A discussion is then recorded involving Chief Zagabel and Chief Vizor, whereupon "*the Chairman of Bodo Council of Chiefs and Elders, Mene James Ntete now called for the council's opinion. All the Chiefs voted in support.*" The resolutions passed included that the CCE "*unanimously mandated Jordan Kagbara, John Nyiedah and their group to go ahead to recover the money back to Bodo people.*"

174. The May 21 CCE Minute included a heading "*Attendance*", under which 8 names are listed: (1) Chief Ntete; (2) Chief Richard Sunday Lezor; (3) Chief John Mene Lezor; (4) Chief Gbaradom Kana B.; (5) Chief Vigo Zagabel; (6) Chief Stephen Dumba; (7) Chief Felix Zorbiladee; and (8) Chief Barida Vizor. In paragraph 4.3 of his report, Mr Sigalo identifies these eight individuals as the current CCE, although he acknowledged that Chiefs Gbaradom, Zagabel, Dumba and Zorbiladee were deceased by the time of his report. I shall call these eight Chiefs (or a sub-set of them) the "**Ntete Group**". They were all members of CCE No. 2, but none of them was a member of CCE No. 4.

175. In paragraph 55 of his statement in these proceedings, Mr Leader pointed out that Leigh Day first became aware of the May 21 CCE Minute when it was provided in disclosure. Nevertheless, I did not understand Mr Pooles to allege that the meeting recorded in the May 21 CCE Minute did not happen, only that it was not a valid CCE meeting. The principal point he put to Chief Ntete was that the meeting was not quorate.

176. In his oral evidence Chief Ntete insisted that the CCE meeting referred to in the May 21 CCE Minute was quorate. He said that some of the members of the original CCE were dead and most of the other members had been expelled. As to the latter point, he explained that "*In Bodo during this period if you have the record you will know that some members of the Council of Chiefs were recruited by the suspended Paramount Ruler to form the caretaker committee against the order of the court. And these people that were nominated by the suspended Paramount Ruler to form the caretaker committees, when the court ordered that the caretaker committee must be dissolved and my Council should stand, they were no longer members of the Bodo Council of Chiefs because they were recruited by the suspended Paramount Ruler into the caretaker committee, and that is why they are no longer here. This is one of the major causes of the shortage of members.*"

177. Accordingly, I understand Chief Ntete's position to have been that the legitimate CCE in May 2021 was still CCE No. 2 (which fits with the names listed in the footer of the headed notepaper) but that any members of CCE No.

2 who had been appointed to sit on CCE No. 4 (the caretaker committee) were automatically excluded from CCE No. 2. He said that, although the dynasties (i.e. the nine Ruling Houses) might nominate replacements for missing CCE members, that was not necessarily the case.

178. There are several features of the May 21 GA Minute and the May 21 CCE Minute that call for explanation. The first is that they both refer to Mr Kagbara and Mr Nyiedah discovering possible wrongdoing by Leigh Day and drawing the attention of the GA and the CCE to it as if this was new information. Even if one puts King John's letter of 20 January 2019 to one side because his later letter (the authenticity of which is itself in issue) says it was a forgery, Chief Visung had written the "*Letter of Authority*" addressed to Global Solicitors and Advocates, which purported to authorise Mr Kagbara and Mr Nyiedah to bring proceedings, as long ago as 25 July 2020. The "*discovery*" of a possible claim was old news by May 2021.

179. The second feature which calls for explanation is the timing of the alleged meetings. The hearing of the pre-action disclosure application was on 27 April 2021, just four days before the alleged meeting of the GA on 1 May, and Master Sullivan's judgment was given on 4 May 2021, between that alleged meeting and the meeting of the CCE on 12 May. It is implausible that there was no mention of these events at the meeting of the GA or the CCE.

180. The next matter which calls for explanation is why the RFI Response referred to a GA meeting on 4 December 2020, followed by a CCE meeting on 7 December 2020. There is no evidence for those meetings and I have already found above that they did not happen. But it was at least logical that, if there was to be a GA meeting to authorise the Eight Claimants to take proceedings against Leigh Day, it would have occurred before the pre-action disclosure application was launched, rather than in May 2021 when that application had already happened. Moreover, the RFI Response was filed on 21 June 2022, which is after the alleged meetings in May 2021 recorded in the May 21 GA Minute and the May 21 CCE Minute. If those meetings had happened when the minutes say they did, why were they not referred to in the RFI Response, rather than meetings in December 2020 which plainly did not happen?

181. The fact that the May 21 GA Minute and the May 21 CCE Minute only emerged when disclosure was given also raises doubts about whether they are truly the contemporaneous record of events in May 2021 which they purport to be.

182. Furthermore, I was sceptical of Chief Ntete's oral evidence that the GA meeting on 1 May 2021 was summoned using the Kele-Saan. It is correct that, pursuant to clause 15(vi) of the Blueprint (not all of which is fully legible in the copy before me), the CTR can summon the GA using the Kele-Saan. Mr Lue's evidence in paragraph 6.9 of his report, however, was that the CTR cannot summon a GA meeting unless the King is validly suspended. Whether or not King John was actually suspended in May 2021 (about which I make no findings), the political situation in May 2021 was sufficiently in doubt that I would have expected Chief Ntete to have mentioned the unusual use of the Kele-Saan to summon the meeting in one of his two witness statements, if it had happened. That is supported by the fact that, in his affidavit made in the 2020

Caretaker Committee Claim, to which I refer in more detail below, Chief Ntete did expressly state that the meeting of the GA on 15 August 2020 was summoned "*using Kelesan.*"

183. For all these reasons, I find it is more likely than not that the GA meeting recorded in the May 21 GA Minute did not happen.

184. As noted above, Mr Pooles did not suggest that the meeting recorded in the May 21 CCE Minute did not happen. As a result of my finding that the meeting of the GA recorded in the May 21 GA Minute did not happen, events at the meeting referred to in the May 21 CCE Minute cannot have occurred precisely as recorded and I am doubtful as to whether the May 21 CCE Minute is a contemporaneous record of the meeting it describes. Nevertheless, I find that there was a meeting of the 8 individuals referred to in that minute as attendees and that they did unanimously decide to mandate the Eight Claimants to bring a claim against Leigh Day to recover money which had allegedly been misappropriated. In my judgment, however, that did not amount to authorisation of the Eight Claimants by the CCE for two independent reasons.

185. First, the May 21 CCE Minute is recorded on headed notepaper, the footer of which records the members of the CCE whose meeting the document purports to record. There are 18 of them, so the quorum of two thirds equalled 12 members. On its face, therefore, the May 21 CCE Minute records a meeting of eight out of 18 individuals, which was necessarily inquorate. Chief Ntete contended that certain members had died or had been expelled, so that the quorum was reduced, although he never explained exactly how many members he contended the CCE had at the time. But that ignores the fact that the May 21 CCE Minute was plainly intended to record a decision of CCE No. 2, which I infer was because Chief Ntete regarded that as the legitimate CCE at the time. A meeting of 8 out of 18 members was, in my judgment, inquorate and any decision taken at the meeting was invalid.

186. The second reason is that the Ntete Group was not, in my judgment, the legitimate CCE of the Bodo Community. To explain why, it is necessary to have regard to the political situation at the time within the Community.

187. It is abundantly clear from the evidence before me that there was an ongoing dispute, or disputes, at this time in 2021, both between members of the CCE and in the wider Community, concerning which individuals actually had authority to act on behalf of the Community. The King had appointed CCE No. 4 (the caretaker committee) against the wishes of the CTR, resulting in the 2020 Caretaker Committee Claim. Despite the court ruling of 15 December 2020, CCE No. 4 had continued to function in conjunction with the King, but the propriety of the King proceeding in this way was not accepted by at least some of the official representatives of the Community. Mr Leader said in paragraph 51 of his statement in these proceedings that "*King John's position as head of the Bodo ruling councils had not changed, although the CTR did not recognise his authority.*" This is confirmed by Chief Menegah, who said in his witness statement that in May 2021 "*the Paramount Ruler's leadership was being challenged.*"

188. In his witness statements Chief Ntete referred to "*a few dissenters*" within the Community. He claimed that Raegal had "*out of an abundance of caution, obtained instructions from both factions claiming to be the genuine members of the Council of Chiefs and elders*", and indicated that he was in one faction and Chief Visung was in the other. Chief Visung was, of course, a member of CCE No. 4. Chief Ntete's use of the term "*faction*" in relation to his own group is revealing.

189. I have found that CCE No. 4 was never the legitimate CCE. It was nevertheless the case that six members of CCE No. 2 had become members of CCE No. 4, and I infer that those six members did not regard the Ntete Group as the current CCE. At the same time, Chief Ntete regarded those six individuals as disqualified from being members of the CCE. He said in his oral evidence that they had been "*illegally recruited into the caretaker committee, illegally formed by the suspended Paramount Ruler and from there on when the caretaker committee was dissolved on the order of the court they could not come back to be members of my Council again…*"

190. In addition to those six individuals who were members of CCE No. 4 and the eight individuals in the Ntete Group, there were four other original members of CCE No. 2 who were not members of CCE No. 4 (Chiefs Visangha, Putonor, Adagi and John Lenu Lezor). There is no evidence as to whether they considered Chief Ntete's group to be the legitimate CCE of the Bodo Community, but equally there is no evidence that they engaged with it at all (if they were still alive).

191. Moreover, as I have explained above, the CCE in place immediately before King John appointed CCE No. 4 was CCE No. 3. Chief Ntete and Chief John Mene Lezor were not, as a matter of fact, members of CCE No. 3, even though Chief Ntete would, no doubt, say that they had wrongfully been excluded. Even if Chief Ntete is right about that, that represents a further level of confusion and dispute about the composition of the legitimate CCE. Moreover, it seems to me unlikely that Chief Ntete could have remained the legitimate Chairman of the CCE, even if he remained a member. The Acting Chairman had been Chief Visangha, but as already mentioned, he was a member neither of CCE No. 4 nor of the Ntete Group.

192. In addition, there is no evidence that the Ntete Group were involved in the wider administration of the Bodo Community at all in May 2021 (or later). Chief Ntete accepted in his oral evidence that he had not been involved in the BMI clean up initiative since 2019. In answer to questions about the current year (2024), I understood Chief Ntete to accept that the group he calls the CCE did not meet once a month as required by the Blueprint, and that he was uncertain whether it had met at all during the year. There is no evidence of the Ntete Group having met during 2021 for any purpose other than in relation to this claim against Leigh Day.

193. In my judgment, the Blueprint cannot reasonably be interpreted as contemplating that a group of individuals like the Ntete Group, which was a minority of the 18 individuals originally appointed, could be regarded as the legitimate CCE of the Bodo Community, especially in circumstances involving

political unrest of the kind I have described. Clause 18 of the Blueprint envisaged two representatives from each of the Ruling Houses being on the CCE. Although the views of some of the Ruling Houses could be outvoted, the Blueprint did not contemplate that some of them would cease to be represented at all (other than temporarily, pending appointment of a replacement). A collective decision of the members of the Ntete Group could not represent a majority decision of the original 18 members of the CCE and would be unlikely to coincide with decisions taken by the rival CCE No. 4. The Blueprint did not envisage rival councils, each containing representatives of only some of the Ruling Houses, and cannot be interpreted as bestowing legitimacy on one of two rival councils, especially one which did not have the support of the King.

194. In my judgment, therefore, the Ntete Group was not the legitimate CCE of the Bodo Community. The true position was that there was no legitimate CCE in May 2021, a state of affairs which had occurred before.

June to July 2021: the Confirmation of Authority documents dated 23 July 2021

195. The claim form in these proceedings was issued on 23 June 2021. There is a letter of authority addressed to Raegal dated 23 July 2021 with similar appearance and wording to the two letters of 9 January 2021 referred to above. Mr Nyiedah told me in closing that this is relied upon by the Eight Claimants, and it is relied on in the RFI Response. In this letter the list of lead claimants said to be given authority "*on behalf of the whole Bodo Community*" correctly names the Eight Claimants. There are spaces for ten signatures, above each of which is the rubric "*Council of Chiefs & Elders Signatures:*". There are, however, only eight signatures. The first three are those of Chief Ntete, Chief Richard Sunday Lezor and Chief John Mene Lezor. The next signature purports to be that of Chief Menegah, although he denies signing it. I received little evidence to enable me to decide whether he signed it or not and I propose to proceed on the assumption that he did sign it (without deciding the issue).

196. The remaining four signatures are those of Chief Joseph Poiba; Chief Christopher Koigim; Chief Kpormon Baadom; and Chief Kabari Naa. Despite the rubric above the signatures referring to the CCE, these are not the names of individuals who were ever members of the CCE. All four of these individuals, together with Chief Menegah and two others, are listed in paragraph 35 of Mr Leader's fifth witness statement in the Clean Up Claim as the then current members of the CTR (May 2018). On the basis of the evidence before me, therefore, the eight individuals who signed the letter of authority constituted neither the CCE, nor the CTR. In so far as it purports to have been signed by eight members of the CCE, that is simply wrong. In so far as it was signed by three members of CCE No. 2, it does not evidence a meeting which was quorate. For those reasons, this letter did not confer the authority of the CCE on the Eight Claimants (nor, if it matters, did it confer the authority of the CTR).

August 2021: Chief Ntete's motion in the Caretaker Committee Claim

197. On 20 August 2021 Chief Ntete, Chief John Mene Lezor and Chief Richard Sunday Lezor issued a notice of motion in the 2020 Caretaker Committee Claim and Chief Ntete made an accompanying affidavit in support. Until this

application was issued, nothing appears to have happened in that claim after the ruling was given on 15 December 2020. The three applicants were not parties to the 2020 Caretaker Committee Claim, so the notice of motion first sought an order joining them as parties. The other orders sought were injunctions restraining both the claimants (Chiefs Poiba and Naa representing the CTR) and the defendants (King John and Chief Monday Koottee representing those seeking to dissolve the CCE and appoint a caretaker committee) from (i) dissolving or reconstituting the CCE, (ii) appointing a caretaker committee, or (iii) "*preventing or interfering with the Bodo Council of Chiefs and Elders led by* [Chief Ntete]*, from acting or performing their roles as Chairman and members of Bodo Council of Chiefs and Elders, pending the hearing and determination of the substantive suit.*"

198. The grounds stated in the notice of motion included that the three applicants were sworn in as members of the CCE on 21 August 2017 and that their three-year tenure was extended for one year at a GA meeting in the Town Square on 16 August 2020, so that their tenure was due to expire on 21 August 2021 (i.e. the day after the notice of motion was issued). Chief Ntete made similar statements in his supporting affidavit (which I note was sworn before a commissioner for oaths, albeit it is not formally part of his testimony in the proceedings before me).

199. These documents establish three material points. First, the number of former members of CCE No. 2 who supported Chief Ntete, or at least who were prepared to make the application with him, had reduced to just two individuals: Chief John Mene Lezor and Chief Richard Sunday Lezor. The other five individuals who had previously formed part of the Ntete Group are not mentioned. Secondly, these documents show that the Ntete Group was not aligned with either the CTR or the King's supporters, since they were seeking to prevent both sides from dissolving the CCE and appointing a new one. These factors suggest that the Ntete Group was becoming increasingly isolated from other Chiefs involved in the leadership of the Community.

200. The third matter established by the documents is that, even if CCE No. 2 had remained the legitimate CCE until that point, and even if (contrary to my findings above) the members of the Ntete Group could properly be regarded as able to act as that CCE by virtue of being its last surviving members, their tenure must have automatically come to an end on 21 August 2021.

201. There is no evidence that the motion filed by Chief Ntete, Chief John Mene Lezor and Chief Richard Sunday Lezor ever came before the court. Mr Warmate was evasive when asked if the motion been heard, but I am satisfied that there would be some evidence of what happened, if it had been. No court order made in response to the notice of motion was in evidence. I understood the Eight Claimants to contend that the effect of issuing the notice of motion was somehow to postpone the expiry of the tenure of the members of CCE No. 2. I do not accept that this can possibly be right. It is far from obvious to me that the court would have had the power to extend the tenure of members of the CCE, even if the motion had been pursued, but I do not see how merely filing a motion could have that effect. I find that, if and in so far as any of the members

of CCE No. 2 remained members of a legitimately appointed CCE prior to 21 August 2021, their tenure expired on that date.

The Authority Letter dated 30 August 2021

202. There is another "authority letter" addressed to Raegal Solicitors in evidence dated 30 August 2021. It is on yet another version of the headed notepaper of the CCE. This time the list of members of the CCE given in the footer (rather than the left-hand margin) is a list of members of CCE No. 3. It will be recalled that CCE No. 3 was a continuation of CCE No. 2, minus Chief Ntete and Chief John Mene Lezor. Accordingly, the tenure of the members of that CCE must have come to an end on 21 August 2021. Nevertheless, the letter states that its signatories are current members of the CCE. There are six signatories, as follows: (1) Chief Monday Koottee (who was, of course, the Lah-bon, rather than a member of the CCE); (2) Chief Jude Visung; (3) Chief Vizor Barida; (4) Chief Sunny Brown Feeme; (5) Chief Saan Giogo; and (6) Chief Jude Kpee. Consistently with the other documents signed by Chiefs Koottee and Visung, Mr Nyiedah told me in closing that the Eight Claimants do not rely on it. Nevertheless, I shall consider it in case it matters, especially since it is relied on in the RFI Response.

203. The letter is headed "*RE: AUTHORITY LETTER COLLECTIVE POSITION STATEMENT*" and records that "*the community has only mandated Jordan Kagbara and others to pursue community claim being handled by your chamber.*" It suggests that there is another group showing interest in making individual claims and warns that "*such group should not cross their boundary.*" The letter is also said to supersede an "*earlier letter signed by four (4) chiefs dated 26th February, 2021 and addressed to SCS solicitors of London purporting to be representing the community on both claims.*" The letter of 26 February 2021 is not in evidence.

204. I note that the RFI response says that, "*Owing to the findings of our investigation that there were two competing factions laying claim to the Council of Chiefs and Elders and out of an abundance of caution, we proceeded to receive instructions from both the factions that lay claim to be the correct Bodo Council of Chiefs and Elders. This is evident in the instructions dated 09/01/2021 and 30/08/21 respectively.*" The reference to the instructions dated 30/08/21 seems to be a reference to the authority letter referred to above.

205. This is a puzzling letter. Until this point, the competing factions laying claim to be the CCE were the CCE No. 4 and the Ntete Group. On its face, this letter does not seem to have been written on behalf of either of them. Chief Vizor Barrida was not (so far as I can tell) a member of CCE No. 4, but he was a member of CCE No. 3 and of the original Ntete Group. All the other signatories were members of CCE No. 4, but the footer plainly lists the members of CCE No. 3.

206. Moreover, in so far as this letter is said in the RFI response to have contained instructions from one of the rival factions it is baffling that the instructions said to have been obtained from the other faction are contained in one or both of the letters of 9 January 2021. As explained above, three of the signatories to that

letter were also Chief Monday Koottee, Chief Visung and Chief Sunny Brown Feeme. It is obviously implausible to contend that they were on two rival factions at the same time.

207. As I understand the letter, it is not purporting itself to be an authorisation of the Eight Claimants to bring the claim against Leigh Day, but rather a confirmation that it is the Eight Claimants rather than anyone else who had been authorised. Chiefs Visung, Koottee and Feeme had, of course, purported to authorise proceedings against Leigh Day at an earlier stage and this letter seems, in some way, to be a continuation of that earlier correspondence.

208. In any event, it does not, in my judgment, give any authority to the Eight Claimants on behalf of the CCE of the Bodo Community. It is signed by only six individuals, which could not reflect a quorate meeting of the 16 members of CCE No. 3, listed in the footer. The tenure of the members of that CCE had, in any event, expired. The six signatories were not all members of CCE No. 4, which was, in any event, not a legitimately appointed CCE. Moreover, the instructions in the letter are contradicted by the letter of 21 September 2021 considered below.

September to October 2021: the letter from CCE No. 4

209. As mentioned above, on 16 September 2021 RPC wrote identical letters on behalf of Leigh Day to different individuals whom Leigh Day considered either were legitimately appointed representatives of the Bodo Community, or who had a claim to have been so appointed. The letters in evidence before me were sent to: (1) Chief Vilola as Chairman of "*the Interim Council of Chiefs and Elders*" (i.e. CCE No. 4); (2) Chief Mike Porobonu as a member of the CTR; (3) Chief Ntete as Chairman of what was described in the Appendix to the letter as the "*B Council of Chiefs and Elders*" (whose members were identified as Chief Ntete, Chief John Mene Lezor and Chief Richard Sunday Lezor); and (4) the King. The letters referred to the claims brought by the Eight Claimants in these proceedings and to the fact that Leigh Day were acting in the Clean Up Claim. RPC explained that, whilst it was "*entirely right that the Bodo Community pursue the Claim if they believe that they have grounds to do so*", the effect of their doing so would be that Leigh Day would have to cease to act for the Community in relation to the Clean Up Claim because there would be an actual or potential conflict between the interests of the Community and those of Leigh Day. The letters asked, in summary, whether the recipients had authorised the Eight Claimants to bring the claim on behalf of the Bodo Community or were aware that they had been authorised by a GA meeting or in some other way.

210. In response, a letter dated 21 September 2021 was written "*to whom it may concern*" on the headed notepaper of CCE No. 4. The letter stated that it was written by King John and the CCE on behalf of the Bodo Community and said, amongst other things, "*we state unequivocally that we are not in support of any case in London against Leigh Day and Co, purported to be instituted on behalf of the Bodo Community*." It said that the authors of the letter had not authorised the Eight Claimants to bring the claim and that they had not "*convened the Bodo General Assembly to authorize the* [Eight Claimants] *to represent the Bodo*

community." The letter was signed by the King, Chief Monday Koottee and all twelve members of CCE No. 4. That included Chiefs Visung, Feeme, Giogo and Kpee who had signed the letter dated 30 August 2021 just three weeks earlier, which said that the Community had mandated "*Jordan Kagbara and others*" to pursue the Community's claim.

211. I have already found that CCE No. 4 was not the legitimate CCE of the Bodo Community. The letter of 21 September 2021 cannot, therefore, be treated as a conclusive statement on behalf of the Community that the Eight Claimants either never had, or had ceased to have, authority to pursue these proceedings. On the other hand, the letter is a powerful unanimous statement from the King, the Lah-bon and all twelve individuals who were, as a matter of fact, fulfilling the role of the CCE at the time. In so far as Chiefs Visung and Koottee had previously been in favour of the claim against Leigh Day, supported on occasion by Chiefs Feeme, Giogo and Kpee, they had all plainly changed their minds at this stage.

212. I do not find that change of mind suspicious. The Clean Up Claim is of enormous importance to the Community and it is entirely rational for leading members of the community to have decided not to jeopardise that claim by pursuing a claim of comparatively limited value against Leigh Day, which had only ever received minority support amongst the leadership.

213. The Defence in these proceedings was filed on 20 October 2021, denying the Eight Claimants' entitlement to bring the claim. The RFI Response was filed on 21 June 2022.

214. According to paragraph 62 of Mr Leader's statement in these proceedings, in October 2022 there was a vote of no confidence in King John, following which he was suspended for a second time and Chief Ekpien Kpai was appointed as Regent. As I have already mentioned, some members of the Bodo Community, including Chief Ntete, do not seem to have regarded King John as ever having been reinstated since his suspension in March 2018, but it is not necessary to make a finding about the period during which the King was suspended. Chief Polycarp said that a new CCE, of which he was the Chairman, was appointed in January 2023 by Chief Kpai, as Regent. This is disputed by the Eight Claimants. I consider whether Chief Polycarp is the Chairman of a new CCE below (but it is not necessary to make findings about the date of his appointment, or whether he was appointed by Chief Kpai).

Letters of Authority dated 9 and 14 May 2023

215. On 9 May 2023 a new "*Letter of Authority*" was produced by the Eight Claimants. This is not on headed notepaper and does not have the appearance of an official document. It is signed by five members of the Ntete Group: Chiefs Ntete, Richard Sunday Lezor, John Mene Lezor, Barida Vizor and Vigo Zagabel. The letter states that these individuals "*constitute the current members of the Bodo Council of Chiefs and Elders, inaugurated on 22 November 2022, with full authority of our current Regent and the people of Bodo.*"

216. For the reasons I have explained above, if (contrary to my findings) the signatories to the letter had remained members of a legitimate CCE until 21 August 2021, their tenure automatically terminated on that date. The letter implicitly acknowledges this, by claiming that a new CCE was inaugurated on 22 November 2022 of which the signatories were members. But apart from this letter, there is no evidence of a CCE being inaugurated then and it is contrary to Chief Ntete's oral evidence, in which I understood him to say that his tenure as a member CCE No. 2 had continued unbroken, as a result of events in the 2017 Vilola Case and/or the 2020 Caretaker Committee Claim. Moreover, as I understand the letter, it suggests that the five signatories were the only members of the CCE inaugurated on 22 November 2022. Whether or not the Blueprint contemplates that members of an original 18 member CCE might cease to be members without being replaced, it certainly does not contemplate a new CCE being constituted with only five members. For these reasons I find that there was no CCE inaugurated on 22 November 2022, so that the basis on which the letter claims to speak with the authority of the CCE is false.

217. Moreover, this letter does not purport to authorise the Eight Claimants to pursue the claim against Leigh Day. Indeed, it does not mention them at all. Rather it says that the "*undersigned*" have the authority of the Bodo Community to instruct Raegal to pursue the claim. The letter also claims that the Regent had endorsed and validated the instructions to Raegal, but there is nothing to corroborate this.

218. For all these reasons, I find that the letter of 9 May 2023 did not bestow the CCE's authority on the Eight Claimants.

219. Four of the five individuals who signed that letter (Chiefs Ntete, John Mene Lezor, Barida Vizor and Vigo Zagabel) also each signed an individual "*Letter of Authority*" dated 9 May 2023. Each of these five letters begins, "*I hereby re-confirm that we have instructed Messrs Raegal Solicitors … to assist me individually and collectively, to pursue … Leigh Day…*" They each conclude, "*This is simply to re-confirm and re-validate such instructions to Messrs Raegal to continue to act for me in my personal capacity and also on behalf of Bodo community in the recovery of our missing money from Leigh Day.*" These letters obviously do not authorise the Eight Claimants to do anything. The letters appear to confirm instructions to Raegal in respect of these proceedings, yet they are, curiously, signed by four individuals who are not parties to them. These letters do not, in my judgment, assist the Eight Claimants.

220. In addition to these letters, seven of the Eight Claimants (excepting Mr Bakel, the fifth Claimant) each signed a an individual "*Letter of Authority*" dated 14 May 2023, the substance of which is identical to the letters referred to in the preceding paragraph. These letters, therefore, authorise Raegal to act for the seven of the Eight Claimants in relation to these proceedings, but they self-evidently do not amount to an authorisation of the Eight Claimants by anyone. Again, these letters do not, in my judgment, assist the Eight Claimants.

October 2023 to January 2024: the Resolution of 31 January 2024 and CCE No. 5

221. According to paragraph 64 of Mr Leader's statement in these proceedings, "*in October 2023 King John returned to his position as Paramount Ruler and there is peace and unity in the leadership following a peace process which has reunited the CCE, the King and CTR.*" In his oral evidence Chief Polycarp said that "*Peace returned. We negotiated a series of meetings for peace to return and when it finally came back he* [i.e. King John] *pleaded at the Town Square to all citizens of Bodo and he was pardoned so he was reinstated.*"

222. Chief Ntete, on the other hand, told me that King John had not been reinstated. He said "*the matter concerning the Paramount Ruler is before the court and the matter is stayed there for his suspension and the matter has not been determined so I do not know how he has been so reinstated…*" Mr Nyiedah also said that the King had not been reinstated. I propose to resolve this dispute after considering the next document.

223. The final document relevant to whether the Eight Claimants have been authorised by the CCE is a "*Resolution of the Bodo Governing Council*" dated 31 January 2024. It is on headed notepaper of the CCE, with the members of the CCE mostly listed in the left-hand margin, and some in the footer. This is a different list from any of the previous CCEs, although some of the individuals listed are familiar from previous CCEs. The names given are: (1) Chief Polycarp (listed as Chairman); (2) Chief Dame Priscilla Vikue; (3) Chief Jude Visung; (4) Chief Clement Vulasi; (5) Chief Bernard Kiate; (6) Chief Emabie Peter; (7) Chief Saint Emma Pii; (8) Chief Sunny Brown Feeme; (9) Chief Clement Vido; (10) Chief John Tete Poi; (11) Chief Deezaa Kpenabel; (12) Chief Patrick Pidom; (13) Chief Vilola P.J. Lebari; (14) Chief Zorama Godwin; (15) Chief Giogo Clement; (16) Chief Kabaaridom Baribor; (17) Chief Kpee John. I shall refer to this as "**CCE No. 5**". This CCE appears to be one member short of the required total of 18, unless Chief Monday Koottee, listed as "*Deputy Paramount Ruler*", is to be regarded as the eighteenth member.

224. The document includes spaces for the signatures of King John, Chief Monday Koottee, three members of the CTR (including Chief Menegah) and all 17 members of the CCE. It has been signed by all of them except Chief Monday Koottee and three members of the CCE (Chief Bernard Kiate; Chief Deezaa Kpenabel; and Chief Vilola P.J. Lebari).

225. The document states that it is written by King John, the CCE and CTR as "*The Bodo Governing Authorities*". It refutes the claim that there was a GA meeting in December 2020, or at all, which conferred authority on the Eight Claimants to represent the Community in proceedings against Leigh Day. It continues "*The governing authorities hereby state that they have not and do not authorize nor endorse any litigation against Leigh Day*" and says, "*This is our current position and it supersedes any other decision reached past or present.*"

226. This resolution supports the evidence of Mr Leader and Chief Polycarp that the dispute between King John and the leadership of the Community has been resolved and a new CCE has been appointed. There is no evidence as to whether those who did not sign it had made a deliberate choice not to do so, or whether there was some other reason, but they are a relatively small minority.

227. Chief Ntete and Mr Nyiedah deny that there has been a reconciliation between the King, the CCE and CTR. One reason for that denial is that, in their view, Chief Ntete remains the Chairman of the CCE to this day. As touched on above, when asked who the other members of that CCE are, Chief Ntete seemed initially rather uncertain, but then gave seven names, some of which were difficult to hear, even after repetition, but seem to have been Chief Richard Sunday Lezor, Chief John Mene Lezor, Chief John Lenu Lezor, Chief Dumba, Chief Felix Zorbiladee, Chief Vigo Zagabel and Chief Vikina. Chief Ntete accepted that four of these individuals are now dead, although there is no evidence about when they died: Chief Zagabel, Chief Vikina, Chief Dumba and Chief Zorbiladee. Chief Ntete said that he thought the CCE of which he was Chairman might have met once this year and contended that, despite what the Blueprint says, there is no obligation to meet every month.

228. I do not doubt that Chief Ntete honestly believes that he is still the Chairman of the CCE, but in my judgment that belief is completely unrealistic. For the reasons I have given above, the Ntete Group was never the legitimate CCE and, even if that is wrong, the tenure of Chief Ntete and all other members of CCE No. 2 automatically terminated on 20 August 2021.

229. None of the documents relied by the Eight Claimants as establishing their authority has been signed by 12 or more members of a CCE, the number which I have found was required for a quorate decision. The contrast with the resolution of 31 January 2024 is striking. The latter has been signed by King John and seventeen Chiefs, including fourteen members of the CCE and three members of the CTR. Whilst I accept that the dwindling number of Mr Ntete's adherents do not accept the reinstatement of King John and the appointment of CCE No. 5, the evidence has satisfied me that they now form a small and isolated minority of the Community whose opposition does not undermine the otherwise clear evidence that CCE No. 5 is now the legitimate CCE.

230. In the Joint Statement, Mr Sigalo (for the Eight Claimants) contended that Chief Polycarp could not have become Chairman of the CCE because that was in violation of the orders made in the 2020 Caretaker Committee Claim. As explained above, the ruling of 15 December 2020 dissolved the caretaker committee (CCE No. 4) and reinstated the CCE in place immediately before the caretaker committee was purportedly constituted. The order did not purport to, and could not, prevent a new CCE legitimately being appointed in the future.

231. Accordingly, I find that CCE No. 5 was the validly appointed CCE on 31 January 2024 and that the document signed by 14 out of 17 members of that CCE is a valid resolution of the King and the CCE. The fact that there are only 17, rather than 18, members of the CCE does appear irregular, but I did not understand the Eight Claimants to be taking any point about that. If it matters, in the absence of any evidence as to why there was a shortage of one member, or as to the effect of that irregularity as a matter of Nigerian law, I find that the shortage of a single member did not invalidate decisions taken by the otherwise lawfully appointed CCE. As I explained earlier, there must be occasions on which a CCE is one member short (e.g. following a death) and it must be possible for the CCE to take valid decisions in such circumstances (assuming there is a quorum of at least 12 members). Indeed, there seem only to have been

17 members of the CCE when they were named as parties to the Community Claim against SPDC, but no one has ever suggested that, without another member, that claim, or the decision to issue it, was somehow invalid. The absence of a single member does not, in my judgment, prevent CCE No. 5 from being a CCE within the meaning and intention of the Blueprint.

232. It is, of course, a separate issue whether, as a matter of Nigerian law, if the CCE had previously authorised the Eight Claimants to bring the claim against Leigh Day, that authority could subsequently be, and has been, revoked. I deal with that issue next.

Conclusion on Issue (ii)

233. I have considered all the documents on which the Eight Claimants rely in support of their claim that they have been authorised to bring this claim by the GA or the CCE (or both). For the reasons I have given above, I am not satisfied, on the balance of probabilities, that any validly constituted meeting of the GA or the CCE has ever resolved to bestow such authority on the Eight Claimants.

234. In the interests of completeness, I note that, in his report, Mr Sigalo contended that the presumption of regularity applied to the CCE's grant of authority to the Eight Claimants. He relied on *Ogbuanyinya v Okudo (No. 2)* (1990) 4 NWLR (Pt. 146) 551 and *The Nigerian Air Force v. Ex-wing Commander James* (2002) LPELR-3191 (SC). I accept that there is a presumption in Nigerian law that, in the absence of evidence to the contrary, official acts are presumed to have been rightly and properly done ("*omnia praesumuntur rite esse acta*"). In my judgment, however, there is substantial evidence to the contrary before me, which I have considered above. Accordingly, I do not consider this presumption assists the Eight Claimants.

F. Issue (iii): Delegated Authority Claim - can authority be revoked once granted and, if so, has it been revoked in this case?

235. It is not strictly necessary for me to decide this issue, given my conclusion that the Eight Claimants have never been authorised to bring these proceedings. In case I am wrong about that, however, my decision on Issue (iii) is as follows.

236. In paragraphs 3.22 to 3.26 of his report, Mr Sigalo addresses the question "*Whether or not a new cohort or members of the* [CCE] *may withdraw or revoke any instruction that a previous cohort of the same body has given to this firm, owing to the fact that proceedings have commenced before the change in the composition of the* [CCE]*?*"

237. Although this question is framed in terms of instructions being given to Raegal, I understand Mr Sigalo's evidence to be intended to apply equally to the question whether a newly constituted CCE may revoke any authority granted to the Eight Claimants by a previous incarnation of the CCE.

238. There are two paragraphs numbered 3.24 in Mr Sigalo's report. In the first of them he cites *In Re Nwude* (1993) 3 NWLR (Part 282) and relies on the following summary from the headnote of the decision of the Court of Appeal, Enugu Division:

"*Where a case is prosecuted in a representative capacity, the fact that the person suing on behalf of the group or community develops cold feet and withdraws the case without their consent is no bar to the case being continued in a representative capacity by others having interest in the subject matter, who have applied for substitution. This is because a person who sues in a representative capacity does so not solely for his own benefit but for the benefit of the entire group or community he represents.*"

239. Based on this quotation, Mr Sigalo reasons as follows, in the second paragraph in his report numbered 3.24:

"*Mutatis mutandis, we submit that the powers of the claimants to continue to prosecute this case cannot be fettered by any purported withdrawal or revocation of the instruction that a previous cohort of the same body has given to your firm, owing to any change in the composition of the* [CCE], *as their right to continue to pursue their own personal and collective interest in the claim cannot be fettered by any such withdrawal by purported reconstituted* [CCE]. *Reliance is hereby placed on Exhibits JK1 which are the letters of reconfirmation of authority from affected and aggrieved members of the Community seeking to continue with the prosecution of the case.*"

240. My understanding of this argument is that:

i) A member of a community can bring a claim on behalf of the community to protect property held communally, even if the head of the community opposes the bringing of the claim. The scope and effect of this principle is the subject of Issue (iv), which I consider below and I shall refer to it as the "**Communal Property Principle**".

ii) Mr Sigalo says that the Communal Property Principle gives the Eight Claimants locus to bring this action independently of whether they have been authorised by the CCE (the question of whether they have been so authorised being the subject of Issue (ii) above).

iii) Both a claim brought on the basis that the Eight Claimants have been authorised by the CCE, and a claim brought on the basis of the Communal Property Principle, are claims brought by the Eight Claimants in a representative capacity.

iv) A claim brought by someone acting in a representative capacity who no longer wishes to pursue that claim can be continued by someone else also acting in a representative capacity.

v) So, says Mr Sigalo, if the action was commenced by the Eight Claimants in their capacity as representatives authorised by the CCE, but the CCE then revoked that authority, they could continue the action in their

capacity as members of the Community on the basis that of the Communal Property Principle.

241. The first point to note about this reasoning is that it does not depend on there being some principle of Nigerian law which renders a grant of authority by the CCE irrevocable. Mr Sigalo did not point to any Nigerian authorities considering the revocability or otherwise of decisions by a CCE in any context, let alone in the context of litigation against professional advisers.

242. It follows that Mr Sigalo's evidence does not establish that the CCE cannot revoke any authority which it previously bestowed on the Eight Claimants. On the contrary, his logic assumes that the CCE can indeed revoke that authority, but that the Eight Claimants can nevertheless continue the claim in a different capacity (i.e. pursuant to the Communal Property Principle). Accordingly, if the CCE reached a valid decision to revoke any authority it had previously given, the Eight Claimants could proceed with the claim, if at all, only if the Communal Property Principle entitles them to do so.

243. Moreover, Mr Sigalo's logic, outlined above, assumes that the Eight Claimants would be representing the same parties in a claim authorised by the CCE as they would in a claim based on the Communal Property Principle. But that is not so. In a claim authorised by the CCE, the Eight Claimants would be representing the CCE. As I understand it, it is because Mr Pooles accepts that the claims in this action can be brought by the CCE for the time being, that he also accepts that the Eight Claimants could pursue this action, if they had been authorised to do so by the CCE. In a claim pursuant to the Communal Property Principle, however, the Eight Claimants would not be representing the CCE, but would be representing the Community as a whole. I consider below whether they are entitled to bring a free-standing claim on that basis, but whether they are entitled to do so or not, a revocation of authority by the CCE would be effective to bring to an end any claim being brought by them on behalf of the CCE.

244. Mr Pooles put to Mr Sigalo in cross-examination that, if the CCE had initially authorised the Eight Claimants to issue this claim, but then decided that it was in the best interests of the Community to bring the action to an end, the CCE must be entitled to do that. Mr Sigalo answered that the members of the CCE could only bring the action to an end by applying to be joined as parties and asking the court to rule on the merits of the rival positions taken by the parties. He explained that this was necessary because the court would wish to ensure that minority interests were protected. As I understood it, Mr Sigalo's argument is that, if the members of the CCE decide to bring the action to an end, there is a risk that they might be preferring their own interests over the interests of the Community, perhaps because they had reached some deal which benefitted them personally. Consequently, the court would require them to prove that their decision was in the best interests of the Community before it would act on that decision.

245. In my judgment, this argument confuses the Eight Claimants' duties when acting for the CCE with the duties of the CCE to act on behalf of the Community. If the CCE bestows authority on certain individuals to represent it in a certain matter, then unless the authority is irrevocable for some reason, I

can see no reason why the matter cannot be brought to an end by a quorate decision of the CCE. It would be the CCE's claim and it makes no sense to say that such a claim must continue contrary to the CCE's wishes. Whether the CCE's decision to discontinue the claim is in the interests of the Community is a different question between different parties, which would have to be the subject of a separate action, presumably under Nigerian law, against the CCE by one or more individuals representing the Community.

246. The CCE's position may well be different in circumstances where claimants initially bring a claim pursuant to their own entitlement to protect Community property pursuant to the Communal Property Principle. I consider whether that is possible for the Eight Claimants in this case below, but if it is, it may then be that the CCE would be unable to bring such proceedings to an end without applying to be joined as parties and demonstrating that the Eight Claimants were not acting in the best interests of the Community. That is not the situation I am considering at the moment, however. This issue concerns whether the CCE can revoke any authority which it has granted to the Eight Claimants to bring proceedings on its behalf. Mr Sigalo's argument does not persuade me that they cannot; on the contrary, as explained above, the argument seems to assume that they can.

247. It is logical that, if the CCE authorises others to commence an action on its behalf, it retains full authority over the ongoing conduct of the proceedings, including the power to settle or withdraw the claim. If it were otherwise, the proceedings would have to be pursued to a conclusion, even if both parties were content to settle the claim on sensible commercial terms. That is contrary to common sense.

248. For these reasons, I am not satisfied that there is any principle in Nigerian law, or otherwise, which precludes the CCE from revoking any authority they have previously given to the Eight Claimants.

249. That being so, I am satisfied that the "*Resolution of the Bodo Governing Council*" dated 31 January 2024, which I considered above, amounts to a valid revocation by the CCE of any authority which it had previously bestowed on the Eight Claimants to bring these proceedings. As I have already found above, it is signed by 14 out of 17 members of CCE No. 5, which was the validly appointed CCE on that date. In so far as it matters, this document is also a valid revocation of any authority previously granted by King John. It expressly says that the "*governing authorities*" of the Bodo Community have not, and do not, authorise or endorse any litigation against Leigh Day and that "*This is our current position and it supersedes any other decision reached past or present.*" That is, in my judgment, a clear revocation of any authority previously granted by and King John and the CCE in any of its incarnations.

250. For completeness, I should address two further points raised by Mr Sigalo which are, in my judgment, irrelevant to the question of whether the CCE is able to revoke any authority it gave to the Eight Claimants. First, paragraph 3.24 of Mr Sigalo's report, quoted above, refers to the letters of reconfirmation of authority from affected and aggrieved members of the Community dated 14 May 2023,

which I considered above. These letters do not concern the CCE's grant of authority to the Eight Claimants at all.

251. Second, I note that in paragraphs 3.23 and 3.25 of his report, Mr Sigalo refers to his contention that Leigh Day cannot challenge the right or locus of a claimant to sue and/or instruct a solicitor to sue. This is the subject of Issue (vi) below. Obviously, if Mr Sigalo is right that there is a principle which precludes any challenge by Leigh Day to the Eight Claimants' authority, that is the end of the matter, at least in so far as Nigerian law might be said to govern the issue. I have concluded, however, for the reasons given below in relation to Issue (vi), that Leigh Day is not precluded from making such a challenge. Moreover, I do not consider that Leigh Day's entitlement (or not) to challenge the Eight Claimants' right to bring these proceedings has any logical bearing on whether the CCE can revoke authority which it has previously granted.

G. Introduction to the Representative Claim

The Eight Claimants' arguments

252. Since I have rejected the Eight Claimants' case based on the Delegated Authority Claim, it is necessary to consider their alternative case based on the Representative Claim. It will be recalled that the Eight Claimants allege that, as a matter of Nigerian law, a member of a community has an inherent right to take proceedings to protect community property on his own behalf and on behalf of the community as a whole.

253. In his report, and in more detail in his oral evidence, the Eight Claimants' expert, Mr Sigalo, said that, under Nigerian law, a member of a community can bring a claim on behalf of the community to protect community property. He said that is so, whether or not the claimant has authority from the community, and even if the head of the community opposes the bringing of the claim. As I understood it, the only condition Mr Sigalo considered needed to be satisfied before a member of a community has locus to bring such a claim is that he or she has some personal interest in the claim or has suffered some wrong or injury.

254. Given that Eight Claimants' pleaded case is that the law governing their claims ("*lex causae*") is English law, and that the law governing procedure ("*lex fori*") is also English law, I have wondered why Nigerian law as to locus is relevant at all. Mr Sigalo made three suggestions in his evidence.

255. First, at one stage in his oral evidence, Mr Sigalo seemed to go so far as to suggest that, as a result of Nigerian law, the members of the Community had somehow become parties to the contract with Leigh Day. He said that the contract was "*communal*" and that "*the entire community ceded their authority to Leigh Day both individually and collectively. That contract which is with the community and which affects their individual interests as members of the community creates a contract with every member of the community, who are the beneficiaries in the transaction and that is where the interest lies.*" I do not understand how Nigerian law concerning locus can overcome the general rule

of the English law doctrine of privity of contract, that contracts cannot be enforced by third parties. Moreover, in my judgment, none of the authorities referred to by Mr Sigalo (which I consider in detail below) support the notion that members of the community become parties to a contract entered into by the King and members of the CCE on their behalf. Mr Sigalo did not seem to me to advance this theory with much conviction, and I reject it.

256. Of more substance was Mr Sigalo's second argument on behalf of the Eight Claimants that this action is concerned with property belonging communally to the Community; that property being either the £20 million settlement money paid to Leigh Day, or else the causes of action asserted against Leigh Day, regardless of the identity of Leigh Day's clients. I understand the contention to be that, because the property is owned communally, each of the Eight Claimants has a sufficient interest in the claims to entitle him to assert those claims himself under Nigerian law.

257. Thus, Mr Sigalo expressed the conclusion in his report that the Eight Claimants "*were to be beneficiaries of the moneys appropriated (subject matter of this suit) by* [Leigh Day]*, and whose communal and personal interest are affected by the claims in this suit*" so that they "*have the locus standi to institute this action for themselves and on behalf of the Bodo Community with or without the authority of the Community.*" When it was suggested to him in cross-examination that none of the Nigerian authorities dealing with locus in the context of community claims was concerned with a professional negligence action, Mr Sigalo said that this case "*relates to the proprietary rights of the claimants to the benefits that ought to accrue to them from the contract between the parties.*" Whilst the cases are all either about land or leadership positions, the principles were equally applicable, in Mr Sigalo's opinion, to "*any proprietary interest in property of any nature that is family and communal,*" at least where the proprietary rights "*affect the benefit of the individual within the Community.*"

258. Mr Sigalo's third argument, in his oral evidence, was that a member of a community had a right to bring a purely personal claim connected with community property, in addition to, or instead of, a representative claim brought on behalf of the community. I am not sure I fully understood this argument, but I think Mr Sigalo was suggesting that a member of a community who could show that some wrong done to community property had caused that member some discrete loss particular to him or her would be entitled to bring a claim for the particular loss suffered.

Leigh Day's arguments and communal ownership

259. For Leigh Day, Mr Lue explained in his report that, under customary law, which is enforceable in Nigerian courts, land generally belongs to all the members of the community or family in the area where they are situated. This is supported by the judgment in *Ovie v Onoriobokirhie* (1957) W.R.N.L.R. 169, to which Mr Lue referred in his report. The decision in that case cited the judgment of the Privy Council in *Tijani v Secretary, Southern Provinces, Nigeria* (1921) 2 A.C. 399, to which I was not separately referred by the parties, but which I have subsequently found helpful (putting to one side the language of empire, which was a regrettable feature of the times in which it was written). In his speech,

Lord Haldane advised resisting the tendency to interpret title to land in Nigeria in conceptual terms which were only appropriate to systems which have grown up under English law. He referred to a "*usufructuary right*" in respect of land, which may not assume definite forms analogous to estates, and which may not belong to an individual, but to a community.

260. Mr Lue says that the Paramount Ruler (whom I understand to be the same person as the King) has "*actual managerial, supervisory and administrative authority over the communal or family land.*" It follows, says Mr Lue, that the King has the power to commence legal proceedings concerning communal land. From his comments in the joint statement, I understood Mr Sigalo broadly to agree with this, although he emphasised that communal land is "*administered*" by the Paramount Ruler, rather than being "*under the control of the Paramount ruler and chiefs.*"

261. Although in his report Mr Lue described the community head, or family head, as holding the land "*in trust*" for the community, I do not understand a "*trust*" of this kind to have all the attributes of a trust in English law. In particular, as I understand the customary law, it would be wrong to think of the community head as having "*legal title*" to the community land, or to the members of the community as having "*equitable interests*". When the Nigerian authorities speak about "*communal ownership*" or "*joint ownership*" of communal land, they are speaking of a species of "*ownership*" which has no precise equivalent in English law.

262. This is consistent with a passage from a report on land tenure in West Africa written by Rayner C.J., which Lord Haldane expressly endorsed in the *Tinaji* case referred to above. Lord Haldane's quotation from that report included the following:

> "*...Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build a house upon, goes to him for it. But the land so given still remains the property of the community or family. He cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger. This is a pure native custom along the whole length of this coast, and wherever we find, as in Lagos, individual owners, this is again due to the introduction of English ideas. But the native idea still has a firm hold on the people, and in most cases, even in Lagos, land is held by the family.*"

263. This is consistent with what was said in the more recent case of *Alli v Ikusebiala* (1985) 5 SC 93, to which Mr Lue drew my attention. I was not shown a full report of the decision of the Supreme Court in that case, only a copy of the headnote and an extract from the judgment of Karibi-Whyte J.S.C.. It appears from the headnote that the dispute concerned the validity of a sale of family land

by the head of a family, which turned on the question of whether the land in question had been vested in the family head. The extract from Karibi-Whyte J.S.C.'s judgment contains the following pertinent passages:

"*The immanent theory of the inalienability of land in our indigenous societies has resulted in the formulation of the legal principle that the title to family or communal land is vested in the community as a whole … Title to communal or family land was, and still never* [sic] *vested in the chief or Mogaji, or head of the family. The family or the community is the unit for the purpose of ownership…*

…Accordingly, despite the common error in describing the position of the chief as 'owner' of family land his position is clearly far from that … In strict legal terms, he is not even a trustee of family or communal land. This is because no legal estate vests in him. There is consequently no escape from the concept that the beneficial ownership of family or communal land is vested in the family, and the effective power of transferring any title is clearly not vested in the chief or head of family, but in the family as a whole. It is for this reason that unimpeachable title can only be transferred from the community to another when the head of the family or community does so with the consent or concurrence of the principal members of the family or community."

264. Although it is unsatisfactory not to have the full report of this decision, these dicta reflect my understanding of the general thrust of the decisions I have seen, namely that the individuals who make up a community at any one time are the communal owners of the community land. The fact that those individuals form a potentially numerous and ever-changing group gives rise to obvious difficulties about, for example, who is entitled to sell the land, or who is entitled to exercise ownership rights in order to protect the land from misuse or trespass. Those are the difficulties with which the Nigerian Courts have had to grapple in many of the cases I have been shown.

265. Mr Lue relied on the *Alli* case (amongst others) in his oral evidence to support the existence of a principle which he expressed in the Joint Statement as being that communal lands are "*special in nature and a communal land or community land cannot be subject of any litigation without the consent, authority and permission of the community itself through the Paramount Ruler and Chiefs.*" In relation to the case before me, his view was that it was the CCE, acting on behalf of the Community, who entered into the contract with Leigh Day in connection with the Community Claim against SPDC, and that the Eight Claimants could only pursue a claim against Leigh Day if they were authorised to do so by the Community. They could not bring such a claim on behalf of the Community, or in their own personal capacity, without such authority.

H. Issue (iv): Representative Claim – Nigerian law

266. In the light of the positions taken by the experts, it seems to me that there are two key matters of Nigerian law in dispute. First, do members of a community each have locus to bring a claim on behalf of the community to protect

community property by themselves, without the need for any authorisation by the CCE or anyone else and, potentially, even contrary to the wishes of the CCE (which I have called the Communal Property Principle)? Secondly, if they do have locus in principle, is the community property to which this principle applies limited to community land, or does it apply to other kinds of property (and, if so, what kinds)? In order to resolve these disputes, it is necessary to examine the authorities relied on by the parties. I will take them in chronological order.

The Nigerian authorities

267. As a preliminary point, Mr Sigalo confirmed his agreement with the summary of the Nigerian legal system in paragraph 3 of Mr Lue's report. The salient points include that: (i) for historical reasons, English law forms a substantial or significant part of Nigerian law; (ii) local customs are applicable in different areas within each of the States and are applied by the Customary Courts and the High Courts of the States; and (iii) there is a Court of Appeal and a Supreme Court which hear appeals from the High Courts of the States.

268. It may be helpful to point out at this stage that some of the authorities refer to "*family*" land, some to "*community*" land, and some to both. A large "*family*" could, of course, be described as a "*community*" and I do not understand there to be any relevant legal distinction between "*family*" and "*community*" for the purposes of the Communal Property Principle.

269. *Balogun v Balogun* (1943) 2 W.A.C.A. 290 was concerned with a building which had originally been family land, but had then been partitioned amongst the members of the family by deed, followed by a further partition and conveyance. The plaintiff claimed that, as a result of these transactions, he owned parts of the building absolutely, whilst the defendants said the building remained "*family property held under the native customary tenure distinguished from any conception of English form of tenure*." The plaintiff failed at first instance, but the Court of Appeal allowed his appeal. Graham Paul C.J. said that it had become clearly accepted law that "*by consent of all the members of the family, family property could be sold outright to a stranger.*" Kingdon C.J. agreed, saying "*it must now be taken as well established law that family land can lose its character of family land and come to be land which is owned absolutely by an individual.*" The effect of the partitions had been to vest the relevant parts of the building in the plaintiff absolutely.

270. Besides supporting the conclusion that the nature of the ownership of family or community land under customary law has no English equivalent, this is one of a number of cases relied on by Mr Lue which concern whether a sale of family property requires the consent of all the members of the family.

271. *Akano v Ajuwon* (1967) N.M.L.R. 7 was another case about the sale of family property, in the Supreme Court. The facts were a little complicated, but in essence the dispute was whether the head of a family had, in his capacity as head of the family, sold land to a predecessor in title of the respondent, as the judge had found, or whether it remained family land so that the respondent had no title to it. The Supreme Court upheld the judge's decision. One of the issues

arose from the respondent having alleged in his pleading that the land sold "*belonged to*" the head of the family. This mattered because the appellant argued that a sale of family land by the head of a family who claimed to be selling it as his own land (rather than family land) was void. The respondent replied that the expression "*belonged to*" in the pleading had been used loosely and was not an admission that the land was sold by the head of the family as his own land.

272. In that context, Bairamian, J.S.C. said, "*Plainly, in common parlance people speak of the land of X., the head of the family; and if the members of the family themselves do so, they cannot complain if strangers do. From a lawyer's point of view it may not be precise; but a lawyer too would find it hard to discover an English term by which to describe the position of the family head. In strictness he is not the owner: some think it is unwise to call him the trustee and import English ideas of trusts; perhaps manager is nearest but this term does not altogether fit either, for it is conceded that if the family head sells family land without having obtained the consent of the other members whom he ought to consult the sale is not void, but voidable at the instance of the others.*"

273. This passage further supports the conclusion that the nature of "*ownership*" of communally owned land in Nigerian customary law has no precise equivalent in English law. I understood Mr Lue to contend that this case supported the proposition that litigation concerning community land cannot be brought by a member of the community without the authority of the Paramount Ruler and Chiefs. Bairamian, J.S.C. does not say that, however. His judgment is concerned with a Paramount Ruler's powers of sale. He cannot sell community land without the consent of others within the community; it is not clear to me precisely whose consent is required, but nothing turns on that for present purposes. It does not follow, in my judgment, that a member of the community cannot bring a claim to protect community land without the consent of the Paramount Ruler. A power to sell land is different from a power to protect land; and, as a matter of logic, it does not follow from the Paramount Ruler requiring authority to sell from other members of the Community, that other members of the Community need authority from the Paramount Ruler to protect land.

274. *Sogunle v Akerele* (1967) NMLR 58 is a decision of the Supreme Court of Nigeria which has been cited in many subsequent cases. It concerned land at Onigbongbo. The respondents claimed that the land belonged to the family community of which they were members. The appellants claimed that the family community had granted the land to them many years ago and that they were entitled to sell it to third party purchasers. The respondents said that there had been no absolute grant of the land to the appellants, but that the appellants were "*customary tenants*" who were not permitted to sell the land without the permission of the owners. Although the trial judge agreed with the respondents on the merits, he non-suited them on two grounds, the first of which was that the respondents had sued in a representative capacity but had not proved that they had the authority of the entire community to bring the claim. The second ground does not matter for present purposes.

275. The Supreme Court dismissed the appellant's appeal on the facts but overturned the non-suit, entering judgment in favour of the respondents and declaring that

they were the owners of the relevant parts of the land in question. Onyeama, J.S.C. gave the only judgment on behalf of the court. In relation to the point about authority, he said:

"*Duke v Henshaw was a claim for a share of rents due on an area of land. The plantiffs claimed 'for themselves and members of Yellow Duke House.' They did not prove their authority to sue in a representative capacity and a judgment for them was, on appeal, set aside and a non-suit entered. Mr Agusto submitted that a similar order be made in this case.*

We do not agree with this submission. The case in hand can be distinguished from Duke's case, in which the claim was for a share of rents; here there is a claim for a declaration that the land in question is family land; there is authority for the view that a member of a family may take steps to protect family property or his interest in it: if he has not the authority of the family to bring the action the family would, of course, not be bound by the suit, unless for some reason the family was estopped from denying that the action was binding.

In the present case the appellants are claiming land which the respondents say belonged to their family: it would be odd if, as a result of an understanding between the appellants and certain members of the family, the respondents could not protect family rights in the land because those members refused to authorise an action."

276. I make the following observations:

i) First, this decision undermines Mr Lue's opinion that litigation concerning community land requires the consent and authority of the community through the Paramount Ruler and Chiefs. The Supreme Court expressly decided that a member of a family (or community) may take steps to protect family (or community) property or his interest in it, without the need for the consent or authority of the family (or community). This supports the existence of the Communal Property Principle in Nigerian law.

ii) Second, whilst I was not shown the *Duke* case referred to by Onyeama, J.S.C., it appears relevant that the Supreme Court did not say it had been wrongly decided, but merely distinguished it. A claim for a share of rents, even though obviously related to land, was treated differently from a claim protecting rights of ownership of land. This suggests that it is the special character of the ownership of community land under the customary law which gives rise to the right of a member to bring a claim on behalf of the community, even if the member does not have authority from the community. It suggests that there is no such right when the claim relates to sums of money (rents), which presumably fell due pursuant to an agreement.

iii) Third, I note the comment that it would be "*odd*" if some community members could not protect family rights in the land because other members refused to authorise an action, perhaps because they had reached a separate deal with the wrongdoers. The reason why the

community's authority is not required seems, therefore, to be the risk of a conflict of interests. If there were a trustee of community land in the full English law sense, the trustee would owe fiduciary duties which members of the community might be able to enforce in cases where the trustee acted contrary to the community's interests. Again, however, the special character of community land, in which ownership is shared amongst a potentially large and shifting group, with no fixed individual(s) in whom legal title is vested, provides a reason why individual members of the community require the right to bring a claim without needing anyone's authority, so that impropriety by other members can be prevented.

iv) Finally, whilst the comment that the family (or community) would not be bound by any judgment if it had not given authority for the claim is understandable from a procedural point of view, it gives rise to peculiarities, particularly in a case the like the present. If the Eight Claimants were to proceed with this action and fail, would it then be open to another group of community members to bring proceedings for the same alleged breaches of duty, on the basis that they were not bound by the result in this case? That seems an obviously unjust outcome and a potential reason why locus for members of the community to claim without the need for authority should not be extended to circumstances in which the Communal Property Principle was not intended to apply.

277. *Ejiamike v Ejiamike* (1972) 2 E.C.S.L.R. (Part 1) 11 is a case relied on by Mr Lue in his report. It is a first instance decision concerning who was entitled to manage a household and turned on the judge's findings about the proper custom of Onitsha. At one point in his judgment, Oputa, J. said that "*The 'Okpala' in Onitsha society occupies a position akin to that of a trustee or a manager or at the lowest a care-taker.*" I understand this to be the passage on which Mr Lue relies, but I do not consider that I can derive any useful guidance from it, or from the case as a whole. It did not concern claims brought in a representative capacity and turned entirely on its own facts.

278. In *Ugwu v Agbo* (1977) 10 S.C. 27 the trial judge found that the appellants and respondents were all members of a particular family and that certain land was communally owned by that family. The judge granted the respondents an injunction, restraining the appellants, one of whom was the head of the family, from selling parts of the land. One of the points taken on the appeal was that the judge ought to have held that the respondents did not have authority to bring the claim in a representative capacity on behalf of all the members of the family. Obaseki, J.S.C. rejected that argument, saying "*The law is now well established that any member of the family can, if the head of the family fails in his duty to protect family land, institute an action on behalf of the family to protect family interest in the land.*" He cited the *Sogunle* case as authority for this proposition.

279. It is not entirely clear whether Obaseki, J.S.C. intended to say that it was a condition of a member of the family bringing a claim that the head of the family had failed to protect the land, or whether he was only intending to indicate that those were the circumstances in which a member of the family was likely to need to bring such a claim. The former interpretation does not seem to me to

be supported by the *Sogunle* case on which Obaseki, J.S.C. relied, so I infer that he intended only the latter.

280. *Solomon v Mogaji* (1982) 11 SC 1 is another case concerned with a purported sale by the head of a family. The Supreme Court upheld the decision of the trial judge and the Court of Appeal that the family head did not own the land, the purported purchasers were aware of that, and that the sale was void or voidable. In the course of his leading judgment, K. Eso, J.S.C. said that it was settled law that the sale of family property by the head of the family alone without the consent of the other members of the family is voidable. I do not understand there to be any dispute about that principle in this case, but, as I have already said, it does not assist me in deciding whether a member of a family can bring a claim to protect family land without the consent of the head of the family.

281. I have dealt with the case of *Alli v Ikusebiala*, decided in 1985, above in so far as I can, based on the incomplete report of it. It appears to be another case supporting the proposition that the head of a family or community cannot sell land without the consent of others within the family or community. It does not seem to support Mr Lue's contention that members of the family or community require the consent of the head of the family or community in order to bring a claim to protect community land.

282. *Layinka v Gegele* (1993) 3 NWLR (Pt. 283) 518 was another case in which some of the appellants, one of whom was the head of a family, had sold some land which the trial judge found to be family land, without the consent of the principal members of the family. The Supreme Court agreed with the judge and the Court of Appeal that the sales were void, although the judge's order was not upheld in certain respects which do not matter for present purposes. One of the points taken was that the respondent was not a principal member of the family and so had no locus to bring the claim. The Supreme Court rejected this argument.

283. Ogundare, J.S.C. said, "…*a court is entitled, at the instance of any member of the family, whether principal or not, to declare the sales void. All arguments therefore on whether the plaintiff* [i.e. the respondent] *is, or is not, a principal member of the Galadima family are of no consequence. He, as a member of the family, has a right and a duty to protect family property and therefore, has locus to institute an action in respect of any wrongdoing to his family land. Moreso, as in this case, where the plaintiff is representing the family, the head of family having taken a stand against family interest.*" He cited both *Ugwu v Agbo* and *Sogunle v Akerele* in support of this proposition. Karibi-Whyte, J.S.C. agreed saying, "*Every member of the family has an interest in family property and is under a duty to protect such property. There is therefore a locus standi to institute an action in respect of wrong done to such a property…*" Ogwuegbu, J.S.C. also gave a reasoned judgment and agreed that "*A member of a family can take steps to protect family property or his interest in it even if he has not the authority of the family to bring the action.*"

284. *Olagbegi v Ogunoye II* (1996) 5 NWLR (Pt. 448) 332 is a decision of the Court of Appeal, Benin Division. The appellant was a former Paramount Ruler (the "*Olowo*") of the Owo community. Whilst he was Olowo, he had purported to

take an assignment of a lease of part of the community land, but the lease had, in fact, already expired at the time of the assignment and the judge had held that whoever purported to assign the lease to the appellant had no power to do so. The Court of Appeal upheld that decision. The claim had been brought by the new Olowo and another representative of the Owo community, suing in a representative capacity. Uwaifo, J.C.A. noted that the judge had, more than once, referred to the appellant and the respondents as holding the property "*in trust … for the entire people of Owo*" and explained that this was "*a term used here loosely in the customary sense.*" Although this dictum was not part of the essential reasoning of the case, it again supports the conclusion that there is no trustee of community land in an English law sense.

285. Uwaifo, J.C.A. described the grounds of appeal as "*remarkable for their weakness.*" One of them was that, since rent had been paid to, and received by, the Owo Local Council, only that body could bring the claim and the respondents had no locus. After explaining that the appellant had not employed the correct procedure to challenge the respondents' locus, he said "*Clearly a member of a community or family is competent to bring an action to protect the interest of the community or family in respect of communal or family property. This is so generally even if he has no authority of the community or family to bring that action.*" He then cited *Sogunle* case and concluded that the respondents "*eminently had the necessary standing to sue to protect communal land in Owo*".

286. *Owodunni v Registered Trustees of Celestial Church of Christ* (2000) 10 NWLR (Pt. 675) 315 is a decision of the Supreme Court of Nigeria. It concerned the validity of the proclamation of the second defendant as successor to the office of Pastor of the Celestial Church of Christ, after the death of its founder. The plaintiff's case was that the procedure for the appointment of the second defendant was contrary to the constitution of the Church and that he (the plaintiff) should have been appointed instead. The principal relief he claimed in his pleading, however, was a declaration that the appointment of the second defendant was null and void. He did not seek an order that he was entitled to be appointed instead.

287. The trial judge found in favour of the plaintiff. The majority of the Court of Appeal allowed the second defendant's appeal on the sole basis that the plaintiff did not have locus to bring the claim. Their reasoning, as I understand it, was that the plaintiff could not have locus without including, as part of the relief sought, a declaration that he was entitled to be proclaimed as Pastor. Although the plaintiff had an interest in the matter, he could not show that his rights had been infringed without claiming such relief, and he had no locus if his rights had not been infringed. The Supreme Court allowed the appeal and restored the order of the judge.

288. Given the reliance Mr Pooles placed on the Supreme Court's judgment, given by Ogundare, J.S.C., I think it is important to stress the obvious point (which Mr Pooles fairly accepted) that the case was not concerned with community land, or even with an appointment to a position of responsibility (a "*stool*") within a community governed by customary law. The claim turned principally on the terms of the Church's written constitution. Moreover, it is significant

that the plaintiff did not purport to bring the claim in a representative capacity; that was one of the reasons why the judge refused his claim for an account of the money received by the second defendant during his time as (purported) Pastor. If the second defendant was obliged to account to anyone, it was to the members of the Church, not to the plaintiff personally. The Communal Property Principle was not, therefore, engaged. It was a case about locus where the claim was brought in a purely personal capacity.

289. Ogundare, J.S.C. began his judgment by saying that the appeal "*raises once again the vexed question of locus standi which, in spite of a plethora of decided cases on it, still remains a Gordian knot.*" Mr Pooles asked Mr Sigalo about this comment, but I do not see how it assists me. Of more significance is the section beginning on page 13 of the copy of the judgment I was shown. Ogundare, J.S.C. said that "*The term 'locus standi' (or standing) denotes the legal capacity to institute proceedings in a Court of law.*" He continued by explaining the requirements of locus in a case concerned with public law, where he said that a "*claimant must show that he has some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action.*"

290. Ogundare, J.S.C. then turned to cases concerned with private law and said:

"*The position appears to be that in private law, the question of locus standi is merged in the issue of cause of action. For instance, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of the contract as he will simply not have a locus standi to sue the defendant on the contract. It is on this basis one can explain the decision in Momoh v Olotu. What cause of action has a member of a ruling house who has no interest in a chieftaincy title against the successful candidate. Note that I can imagine…*"

291. Mr Pooles emphasised this passage in his opening submissions and asked Mr Sigalo about it in some detail. I will come on to consider his submissions about it later. I note, at this stage, the reference in the above quotation to *Momoh v Olutu* (1970) 1 All NLR 117; (1970) ANLR 121. I was not shown the report of that case, but it came under further scrutiny in the case of *Ladejobi v Oguntayo*, which I was shown, and to which I refer below. As I understand it, *Momoh* was a decision of the Supreme Court which concerned a dispute about who was entitled to be appointed chief of a family. The Court held that not every member of a family has an interest in the chieftaincy title and that only someone who claimed entitlement to the chieftaincy title had locus to bring a claim.

292. Ogundare, J.S.C. continued his judgment in *Owodunni* with a review of the authorities, on the basis of which he concluded that it was not necessary for specific relief to be claimed by the plaintiff for himself before the plaintiff had locus to bring the claim. The plaintiff had pleaded that he had a claim to be appointed as Pastor and that gave him a sufficient interest in the matter to entitle him to apply to set aside the appointment of the second defendant.

293. *Ukpah v Udo* (2002) 8 NWLR (pt. 769) 326 is a decision of the Court of Appeal, Calabar Division. The appellants claimed as representatives of a sub-group of

the Ikpanya clan in respect of land which they claimed was communal property of that clan. The claim sought, amongst other things, a declaration that appellants and the respondents (but not the Ikpanya clan as a whole) were entitled to the customary right of occupancy of the land. The trial judge dismissed the claim on the basis that the appellants had failed to prove that the relevant land was communally owned. He also held that the capacity in which the appellants had sued was faulty and that the appellants were not entitled to seek a declaration which would have the effect of excluding other members of the Ikpanya clan from the land.

294. The Court of Appeal upheld the judge's decision on the facts that the land was not held communally. It also considered whether the appellants had the capacity to bring the claim. Edozie, J.C.A. said it was "*a well established principle that a member of a family may take steps to protect family property or his interest in it and if he has not the authority of the family to bring the action, the family would not be bound by the result of the action unless for some reason the family was estopped from denying that the action was binding*," and he cited the *Sogunle* case. He considered, however, that the appellants were not genuinely seeking protection for the communal land but were seeking to exclude other members of the Ikpanya clan from that land. He held, therefore, that the action failed, not because of a lack of capacity (which he treated as synonymous with locus), but because the declaration sought was inconsistent with the land being communal.

295. *Ladejobi v Oguntayo* (2004) 18 NWLR (pt. 904) 149 involved a dispute about whether the first respondent was qualified to be put forward for the vacant post of the Ajalorun chieftaincy title of Ijebu-Ife. The first appellant had also been nominated, but he brought the claim along with three other individuals who were the principal members of the relevant ruling house, and the judge had held that those three others did not have locus to bring the claim. The judge had relied on *Momoh v Olutu* (see above) in support of the proposition that a plaintiff in such a case needed to show that he had personal interest in the chieftaincy title (i.e. that he was a candidate for the post), which the three individuals did not. The Court of Appeal had agreed with the judge.

296. In the Supreme Court, Uwaifo, J.S.C. said that *Momoh v Olutu* had been misunderstood. It was concerned solely with a claim brought as a purely personal action, where no representative claim had been instituted. In addition to a personal claim, however, it is possible for the family or ruling house, whose turn it is to nominate a candidate for a vacant post, to bring a claim in a chieftaincy matter. That was described as the assertion of a "*corporate right*" which could be asserted in a representative capacity. Uwaifo, J.S.C. pointed out that the three individuals had pleaded that the claim was brought "*with the consent and authority of the bona fide members of the [Ruling House], on behalf of themselves and for and on behalf of the said Ruling House.*" That was sufficient to give the three individuals locus.

297. Uwaifo, J.S.C. then considered whether it was possible to challenge the averment that the three individuals had the consent and authority of the Ruling House and, in that context, said "*The law is that a person has the right to protect his family interest in a property* ***or title*** *and can sue for himself and on behalf of*

the family in a representative capacity" (my emphasis). He cited *Sogunle* and three later authorities, which I was not shown, saying there must be proof of substantial opposition in order to deprive the individuals of their representative capacity (which implicitly confirms that it is possible, even if difficult, to challenge that representative capacity). He went on to say that "*when an action has been instituted by representatives of a family or a Ruling House, either in land matters or chieftaincy matters as appropriate, and facts are pleaded and reliefs are claimed indicating, that it is in respect of the representative or corporate interest in the subject-matter, then the real plaintiff or plaintiffs should be seen as the family or Ruling House and not the individuals who have sued in a representative capacity … the locus standi should be broadly determined with due regard to the corporate interest being sought to be protected, bearing mind who the real plaintiff is, or plaintiffs are.*"

298. I observe that it is clear from the *Ladejobi* case that the Communal Property Principle has been extended beyond disputes about communal land to encompass disputes in what were described as "*chieftaincy matters*", which I understand to mean arguments about who is entitled to occupy a particular position (or "*stool*") within the community. In order to fit the principle to that new situation, the words "*or title*" (which I have emphasised in the above quotation) have been added to the broadly standard summary of the Communal Property Principle which appears in many of the cases. There is obviously some similarity between disputes about communal land and chieftaincy matters. Both types of dispute potentially raise an issue about who is entitled to represent the interests of the community as a whole, in circumstances where there is no obvious person to fulfil that role and there is a risk that those in positions of responsibility may have a conflict of interests.

299. The similarities between the two types of dispute do not extend much further, however. In particular, cases about chieftaincy matters do not, in my judgment, provide much assistance in answering the question about whether the Communal Property Principle applies to a dispute about a type of property other than communal land. Chieftaincy cases concern the internal governance of the community, and raise rather different considerations from disputes involving rights over land, which may well involve individuals who are not members of the community. That said, whilst I would accept that Uwaifo, J.S.C. was not addressing this particular question, his comment about a representative action "*either in land matters or chieftaincy matters as appropriate*" tends to point to the principle being limited to disputes about land, rather than other types of property.

300. I also note that the explanation of *Momoh v Olutu* given by Uwaifo, J.S.C. in *Ladejobi* means that the *Owodunni* decision (to which I referred above), in which considerable reliance was placed on *Momoh*, needs to be treated with care. It seems to me that *Owodunni*, like *Momoh* (according to Uwaifo, J.S.C.), was concerned solely with a claim brought in a personal capacity. It does not shed much light on whether a claim can be brought in a representative capacity on behalf of a community.

301. *Nwokafor v Agumadu* (2009) 3 NWLR (Pt. 1129) 638 is a decision of the Court of Appeal, Enugu Division. The appellants had commenced a claim for

themselves and for the benefit of the members of a particular village, claiming that the village square belonged to the community and seeking damages and an injunction against the respondent, who was said to have built on part of the land. The judge had held that the appellants failed properly to identify the land in dispute, failed to show that they had locus to sue on behalf of the community and failed to prove that they were in exclusive possession of the land.

302. The Court of Appeal dismissed the appeal on all points, except in relation to locus. In that regard, the respondent's argument was that the appellants were a dissident group which had failed obtain the consent of the whole community to institute the action. Tsamiya, J.C.A. said that this did not matter because "*a member of a community or family is competent to bring an action to protect the interests of community in respect of communal property. This is so generally even if he has no authority of the community to bring the action.*"

Discussion and conclusions concerning Nigerian law

303. The above decisions enable me to resolve the two disputes of Nigerian law to which I referred above.

304. The first dispute is about whether, under Nigerian law, members of a community each have locus to bring a claim on behalf of the community to protect community property by themselves, without the need for any authorisation by the CCE or anyone else and, potentially, even contrary to the wishes of the CCE. I have no doubt that they do. This is what I have called the Communal Property Principle. It was applied by the Nigerian Supreme Court in the *Sogunle* case and restated in varying formulations in six other cases to which I have referred above, three at Court of Appeal level and three in the Supreme Court.

305. Mr Lue's contention that community land cannot be the subject of any litigation without the consent, authority and permission of the community itself through the Paramount Ruler and Chiefs appears to me, with respect, to be wrong. In both *Ugwu v Agbo* and *Layinka v Gegele* the Supreme Court held that the plaintiffs had locus to bring a claim, not only when the head of the family had not consented, but where the head of the family was one of the defendants. That was obviously right in principle, because the head of the family had a clear conflict of interests.

306. The authorities relied on by Mr Lue deal with a different issue, namely whether the head of a family or community has the power to sell family or community land without the consent of (at least some of) the other members of the family or community. A rule requiring the consent of other members of the family or community to such a sale seems to me to be consistent in principle with a rule enabling members of the family or community to bring a claim to protect the land without the consent of the head of the family or community. Both rules enable community land to be protected from wrongs committed by the head of the community. They are also consistent with the principle that "*ownership*" of community land is vested in the community as a whole, and that whilst the head of the community has a role in the management of the land, he has no "*title*" to

it. I do not, therefore, consider that the cases to which Mr Lue referred me support the principle for which he contended, and I reject it.

307. The second dispute of Nigerian law is whether, given my conclusion that members of the community do have locus in principle, the community property to which the Communal Property Principle applies is limited to community land, or can be applied to other kinds of property (and, if so, what kinds)?

308. In my judgment, the Nigerian cases I have been shown establish that the Communal Property Principle is bound up with the way in which, under customary law, land generally belongs to all the members of the community in the area in which they are situated. Mr Lue is right to describe communal lands as "*special in nature*". As Lord Haldane explained in the *Tijani* case, this concept of ownership is unknown to the common law. Nevertheless, as Onyeama, Ag. J. explained in the *Ovie v Onoriobokirhie* case (referred to above), as a general rule, all the courts in Nigeria apply that concept to all lands in Nigeria.

309. Consequently, the courts in Nigeria, applying common law, have had to develop new principles to deal with disputes about land held communally in this way, and the Communal Property Principle is, in my judgment, one such development. Since communal land is owned by a potentially large and changing group of individuals, a rule had to be devised to determine who has locus to bring a claim to protect that land for the benefit of a community as a whole. The Communal Property Principle is the solution.

310. There is no reason, however, for such a principle to be applied in relation to property which is owned in one of the ways in which the common law contemplates it can be owned. The normal common law principles applicable to locus have developed to deal with disputes about such property and there is no reason to modify them merely because the dispute involves members of a community, or because the claim might be said to be for their benefit, in a broad sense.

311. I accept, of course, that the way the principle is formulated in *Sogunle* and the subsequent cases uses the language of communal "*property*" rather than merely communal "*land.*" As a matter of logic, if some kind of property other than land were to be vested in a community under customary law in the same way as land, the Communal Property Principle ought also to apply to it. I have seen no evidence, however, to suggest that any other kind of property is vested in a community in that way. With the exception of cases dealing with chieftaincy matters (which I consider below), all of the cases to which I was referred deal with the protection of community land, rather than other property.

312. Moreover, it is clear from the *Ovie v Onoriobokirhie* case that the Nigerian courts have been prepared to presume that land is held communally under the local customary law, wherever the land is situated in Nigeria, in the absence of proof to the contrary. It is, nevertheless possible for a claimant to show that the custom of a particular area treats land differently. Oneyeama, Ag. J. said in that case that, "*The onus is on the plaintiff to establish by credible evidence that under local custom land could be owned by individuals; that is to say, that the*

general principle of communal land ownership which has been recognised an acted upon in all the courts in West Africa does not apply in his locality, or is in any way modified in its application."

313. It follows from this, in my judgment, that the Nigerian courts have made a presumption about the ownership of land, which would not inevitably apply to other types of property. It might be open to a claimant in a particular case to show that the relevant local custom treated some other kind of property as communally owned, but the applicable custom would need to be proved. Whilst Section 20(iii) of the Blueprint includes amongst the functions of the CCE administering "*public lands and property*," thereby potentially acknowledging that property other than land might be held communally, I have had no evidence about the kinds of property which the Bodo Community does, or might, regard as held communally. I am simply asked to apply the Communal Property Principle to the claim in this case based on the Nigerian cases about land, without reference to any particular custom. In my judgment, that is not the right approach.

314. The extension of the Communal Property Principle to chieftaincy matters does not affect my conclusion. It appears that the Nigerian courts initially applied more restrictive rules about locus in chieftaincy disputes, particularly in *Momoh v Olotu*, but then became willing to extend the Communal Property Principle to such cases. It seems to me that the likely reason for this is that, in common with cases about communally held land, such disputes concern rights derived from local custom, which are unknown to the common law. The interests of the community, described metaphorically as a "*corporate right*," needed to be protected in such disputes, but there was no individual or body owing obligations to the community which could be enforced at common law to protect their interests. It might not be possible for the Paramount Ruler, or CCE, to fulfil that role, because of a conflict of interests. The Nigerian courts, therefore, had to develop a rule to determine who had locus to protect the interests of the community as a whole, and the Communal Property Principle was available to be adapted to that situation.

315. Be that as it may, a chieftaincy dispute cannot be regarded as concerned with property. A position of responsibility in a community, a "*stool*", cannot properly be described as being "*owned*" by anyone, and (on the basis of the cases I have been shown) the Nigerian courts have not approached disputes about who is entitled to be appointed to a stool as if they were concerned with some kind of property. Cases concerned with chieftaincy disputes do not, therefore, suggest that the Nigerian courts might regard property other than land as held communally in accordance with customary law.

316. For all these reasons, I find that (in the absence of proof that a community had a custom of treating property of a particular kind as vested communally in that community as a whole) the Nigerian courts would not extend the Communal Property Principle to hold that a member of a community has locus to bring a claim to protect any kind of property other than communal land.

I. Issue (v): Representative Claim – do the Eight Claimants have locus to maintain the causes of action asserted in these proceedings?

317. The next question is whether, in the absence of any delegation of authority from the CCE, the Eight Claimants have locus to pursue the claims in this action as members of a community with the right to protect community property under Nigerian law. Since I have held that a member of a community does not have locus to pursue a claim in respect of any property other than land, the short answer to that issue is "no". This is not, on any view, a claim to protect community land.

318. In case I am wrong about that, however, I have considered what the answer would be if I had accepted Mr Sigalo's contention that members of the community have locus under Nigerian law to bring a claim in respect of "*any proprietary interest in property of any nature that is family and communal.*"

319. I referred above to the dicta of Ogundare, J.S.C. in the *Owodunni* case on which Mr Pooles relied. It will be recalled that Ogundare, J.S.C. contrasted public law cases from private law ones, saying that the question of locus in the latter is merged in the issue of cause of action; in other words, the claimant has locus if he has a cause of action, but not otherwise. He gave the example of a claimant suing for breach of contract who has no privity of contract with the defendant. Such a claimant would have no locus.

320. On the basis of this passage, Mr Pooles submitted that:

> "*What the learned Justice is doing there is distinguishing between matters of public law or, as one might put it, in rem as against matters of private law. In that context it is not surprising that there are a significant number of cases where in dealing with whether or not property is Community property, it is accepted that members of the Community can seek to establish and enforce the rights of the Community. This is not such a case. The original underlying claim may have been a case in respect of Community land, but the claim was brought in respect of the Community claim by the King and the Council of Chiefs and Elders. Leigh Day acted upon their instructions at all material times, as you have seen in the witness statement of Mr. Leader, and they were not entitled to act upon anybody else's instructions. There was a fundamental distinction between the personal claims, which Leigh Day acted on in respect of Mr. Kagbara and others which were settled and which are not the subject of any complaint, and the Community claim which gave rise to a settlement which it was for the Community leaders to then disburse … My Lord, in this case, we are dealing with claims in contract, tort and fiduciary duty, and those are all duties which were owed to the Council of Chiefs and Elders and it is the Council of Chiefs and Elders alone, together with the King, who could initiate and maintain this action.*"

321. I do not find the contrast between public law and private law cases particularly helpful. If Mr Pooles intended to submit that the Eight Claimants cannot bring this claim simply because it is a private law claim, or because it does not seek relief "*in rem,*" then I disagree. The Communal Property Principle is not, so far as I can see, limited in that way, and Ogundare, J.S.C. was not addressing his

mind to that principle in Owodunni, nor was he considering community property.

322. Mr Pooles is right, however, to stress that the claim in this case concerns alleged breaches of duty arising out of a professional relationship between a firm of solicitors and its clients. I analysed the APOC at the beginning of this judgment and reached the conclusion that the claims brought are all based on causes of action under English law which can only be asserted against Leigh Day by, or on behalf of, their clients in the Community Claim against SPDC.

323. In those circumstances, saying that the Eight Claimants are "*the representatives of the communities known collectively as the Bodo Community*," as is said in paragraph 1 of the APOC, goes nowhere. Even if (contrary to my findings) the Eight Claimants have an entitlement in Nigerian law as members of a community to bring a claim to protect community property other than land, that entitlement does not turn the Eight Claimants into clients (or former clients) of Leigh Day. Nor does it make them the representatives of those clients or of the CCE. The fact that the Eight Claimants may be able to represent the wider Community for certain purposes under Nigerian law does not enable them to circumvent rules about privity of contract in a claim about professional services governed by English law.

324. In my judgment, contrary to Mr Sigalo's argument, the causes of action being asserted against Leigh Day in the APOC cannot be regarded as property which is owned communally by the Community in the sense used in the *Sogunle* case, or the decisions which have followed it (and they are not pleaded as such). Those causes of action are not vested in the Community as a result of customary law, or at all. As a matter of the application of English law, the causes of action being asserted have identifiable "*owners*" who can bring claims based on them, namely the members of the CCE who instructed Leigh Day. There is, accordingly, no room under Nigerian law for those causes of action to be "*owned*" communally by all the members of the Community, nor any room for English law to have regard to whatever locus the Eight Claimants may have under Nigerian law.

325. Mr Sigalo's alternative analysis was that the £20 million settlement money paid to Leigh Day was the communal property in which the Eight Claimants had a proprietary interest which entitles them to bring this claim. The first difficulty about this is that it is hard to understand how money in a bank account could be communally owned by a community under customary law. I am doubtful whether the debt owed by a bank to its customer is contemplated by customary law at all, and there is certainly no evidence that Nigerian law regards such property as communally owned. Put another way, if a debt owed by a bank is regarded as property, it has an identifiable legal "*owner*", namely the customer who is the account holder. The account holder may owe duties in respect of that property to third parties, but that does not make the debt communally owned in the sense used in the Nigerian authorities dealing with the Communal Property Principle.

326. Moreover, it is not pleaded in the APOC that the £20 million settlement money was communally owned in the sense used in the *Sogunle* case. On the contrary,

in so far as the APOC touches on the point, it is inconsistent with that money having been communal property. Paragraph 25(vi) alleges a "*misuse of trust monies which were held on behalf of the Bodo communities.*" That is consistent with there having been one or more individuals with legal title (presumably the representatives of the Community who were Leigh Day's clients) and all the members of the Community being beneficial owners in equity. The land which was the subject of the Community Claim against SPDC might have been communally held, but it does not follow, and is not alleged, that the compensation paid was owned in that way.

327. Further, the APOC does not claim any proprietary relief in respect of the £6,080,000 which is alleged to have been wrongfully disbursed by Leigh Day. The complaint in relation to £4 million of that sum is that it was paid by Leigh Day to the Nigerian attorneys who are said not to have been entitled to it; but those attorneys are not parties to this action. There is no allegation that any of the money can be traced into any property currently held by Leigh Day (or anyone else). The principal relief sought in paragraph 26 of the APOC is the sum of £6,080,000 "*by way of damages*" (together with interest). The claim is, therefore, a purely personal one for breach of duty. As already explained, the causes of action in relation to any breaches of duty are not property held communally by the Community. The claim for an account does not, in my judgment, turn the claim into a proprietary one (and it is not pleaded in that way). The purpose of the account, as I understand it, is to establish how the £20 million was disbursed, with a view to assessing the quantum of damages.

328. For these reasons, even if I had accepted Mr Sigalo's contention that members of the community have locus under Nigerian law to bring a claim in respect of a proprietary interest in communal property of any nature, I would have concluded that this did not entitle the Eight Claimants to bring the claims asserted in the APOC.

329. Mr Sigalo's remaining argument was that a member of a community had a right to bring a purely personal claim connected with community property. This is difficult to follow. In addition to the Community Claim against SPDC, the Individual Claims against SPDC were brought by many members of the Bodo Community. In so far as the Eight Claimants suffered discrete losses, those were the subject of the Individual Claims. £35 million was paid by SPDC in settlement of those Individual Claims and no complaint has been made about the distribution of that sum.

330. Paragraph 3 of the Particulars of Claim in the Community Claim against SPDC explained "*these proceedings are brought in conjunction with claims that have already been issued by individual residents for the discrete pecuniary and non-pecuniary losses that they have sustained as a consequence of the* [oil] *spills.*" By contrast, paragraph 4 says "*This action seeks to recover the discrete and distinct non-pecuniary losses caused to the Community arising from damage to community property and rights.*" The compensation in respect of the Community Claim against SPDC expressly related to losses which were not sustained by individual members of the Community. It is, therefore, difficult to understand what purely personal loss the Eight Claimants could have suffered

as a result of a wrongful distribution of the compensation paid in respect of the Community Claim against SPDC.

331. Mr Sigalo argued in his oral evidence that "*the earlier payment that was made* [by which I understood him to refer to a payment of part of the £20 million settlement amount in respect of the Community Claim against SPDC] *was shared and distributed to the members of the community for their benefits. What this implies is that if the court finds that those forms* [sic. – I assume this is a transcription error for "*funds*"] *were taken off the benefit of the Community then what members of the Community got was less than what they ought to have got, so it affects their benefit of interest.*"

332. It does not necessarily follow, however, from the fact that some of the £20 million settlement sum has previously been distributed to members of the Community, that members of the Community have a legal entitlement to a share of any of that sum. As Mr Pooles pointed out to Mr Sigalo in cross-examination, the leadership of the Community could decide to use part of that sum to build a school. That might, or might not, benefit the Eight Claimants directly, but they could have no expectation that they personally would receive a benefit, let alone a precise share of the money.

333. Moreover, the APOC does not purport to assert discrete claims by each of the Eight Claimants, even in the alternative. It begins by alleging that the Eight Claimants are the representatives of the Bodo Community and claims damages in the full sum of £6,080,000, not a *pro rata* share of that sum. There is an allegation in paragraph 21 of the APOC that Leigh Day was in breach of its fiduciary duty "*to the Claimants*" and in paragraph 24 that misrepresentations were made by Leigh Day to induce its clients "*and each of them*" but nowhere does the APOC identify any loss suffered by each of the Eight Claimants individually. Read as a whole, the claims asserted in the APOC are plainly claims brought solely in respect of losses alleged to be suffered by the Community as a whole, and not individually.

334. I add by way of footnote that it was not suggested to me that CPR 19.8, relating to representative claims, is of any relevance in relation to this preliminary issue (although the rule is mentioned in Leigh Day's opening skeleton argument). Whilst I have not heard any submissions about it, it seems to me unlikely that it could assist the Eight Claimants for reasons similar to those for which I have held that the claims based on Nigerian law cannot succeed. Before they could represent other members of the Community under CPR 19.8, each of the Eight Claimants would, at least, have to be able to argue that they (and those whom they sought to represent) can assert the causes of action alleged against Leigh Day in the APOC. They cannot do so, because those causes of action are vested in the CCE, not the members of the Community.

J. Issue (vi): Delegated Authority Claim & Representative Claim – is it open to Leigh Day to challenge the authority or locus of the Eight Claimants?

335. As I have explained earlier, the Eight Claimants argue that, whether or not they are in fact entitled to assert the claims in the APOC, it is not open to Leigh Day (as a party outside the Community) to challenge their entitlement. Mr Sigalo contended in his report that "*unlike locus standi generally, the validity of the instruction by a Claimant to his Solicitor to sue on his behalf cannot be challenged by the Defendant*" (paragraph 3.1); "*Leigh Day Solicitors as the Defendant not being a member of the Bodo Community (who the Claimants represent) cannot seek to challenge or invalidate the instruction granted Raegal Solicitors by the Bodo Community through its authorities*" (paragraph 3.17); and "*a Defendant (such as Leigh Day Solicitors in this case) cannot challenge the right or locus of a Claimant to sue and or instruct a Solicitor to sue*" (paragraph 3.23).

336. So far as instructions to a solicitor are concerned, it was common ground between the experts that one party to an action cannot challenge the authority of the other party's solicitor to sue on his behalf, even in a representative action. This uncontroversial point does not, in my judgment, have any impact on the issues I have to decide. No one is saying that the Eight Claimants did not have authority to instruct Raegal to conduct this litigation on their behalf and, in any case, they conducted the trial in person, so the point is academic.

337. Mr Sigalo gave little explanation in his report of the contention that a defendant cannot challenge a claimant's locus to sue. There is no pleaded reliance on Nigerian law in this respect. Question 30 in the Joint Statement asked, "*Is it correct that in a representative suit, a Defendant who is not a member of the Community cannot challenge the locus standi of the Claimant to institute the action…?*" Mr Sigalo answered that this was the case. In his oral evidence he said that "*Leigh Day is not a member of the Bodo Community and therefore cannot raise any challenge to the capacity of members of the Bodo Community or any person from Bodo Community's decision or action against it as a defendant. That is the law in Nigeria.*"

338. In the bundle of expert authorities there is a note (which does not seem to be a full report) of a decision which does appear to support Mr Sigalo's contention as a matter of Nigerian law, namely *DGBL Kwara State v Surulere* (2017) LPELR-45684(CA). So far as I can see, however, Mr Sigalo did not refer to this in the body of his report and he did not mention it in his oral evidence. In the absence of a full report of the decision and any assistance from Mr Sigalo, I have not been able to understand the rationale for the alleged rule. The case seems to be one in which the claimants were asserting their own individual claims as well as bringing representative claims on behalf of others. In those circumstances, it is possible to imagine that there might not have been much utility in challenging the claimants' authority to bring the representative claims, but it is difficult to be sure.

339. Mr Lue said in the Joint Statement that the claimant's "*capacity to bring an action can be challenged regardless of whether the matter is brought in a representative capacity or not.*" I note that, in both *Olagbegi v Ogunoye II* and *Nwokafor v Agumadu*, which were both cases in which the claimants relied on the Communal Property Principle, and which I have considered above, the defendants were permitted to challenge the representative capacity of the

claimants. No doubt Mr Sigalo would say that in both those cases the defendants were members of the relevant community, so the prohibition on challenging locus for which he contends would not apply. In both cases, however, the Court went into some detail about the proper procedure for challenging the representative capacity of the claimant, without suggesting that such challenges are only available when the defendant is a member of the relevant community.

340. Given the absence of any satisfactory support or explanation for it, Mr Sigalo has not discharged the burden of proving that there is a principle of Nigerian law which would preclude Leigh Day from challenging the Eight Claimant's locus in this case.

341. Moreover, Mr Pooles submitted that, whatever the position may be in Nigeria, this is a point of procedure and so a matter for English law. In my judgment, that is correct. Rule 3 in Dicey (see above) is that "*All matters of procedure are governed by the domestic law of the country to which the court wherein any legal proceedings are taken belongs (lex fori).*" Whilst there can sometimes be difficult questions about whether a particular rule is procedural or substantive, the principle for which Mr Sigalo contends is obviously not concerned with whether a claimant actually has locus as a matter of substance. The rule apparently applies, even if the claimant does not, in fact, have locus. Whatever the reasons for it, if it exists, it appears to be a purely procedural bar on certain categories of defendant raising the issue.

342. Furthermore, even if the rule for which Mr Sigalo contends were to be regarded as substantive, that would mean that the governing law of the claim (the "*lex causae*") should be applied. As I have explained above, there is no dispute that the governing law in this case is English law, pursuant to which there is no bar on a party challenging locus. In my judgment, whatever the Nigerian rule may be, it is irrelevant to the claims brought in these proceedings.

K. Conclusions

343. I have concluded that there is no principle in either Nigerian or English law which prevents Leigh Day from challenging the Eight Claimants' authority or locus to bring the claims made in this action.

344. So far as the Delegated Authority Claim is concerned:

i) For the reasons given above, the evidence does not satisfy me that the Eight Claimants have ever been authorised to bring this claim by a valid decision of the GA or the CCE.

ii) Moreover, I am satisfied that there has been a valid and effective decision of the King and CCE revoking any authority previously given to the Eight Claimants to bring these proceedings.

345. In relation to the Representative Claim:

i) For the reasons given above, I am satisfied that there is a principle of Nigerian law, to which I have referred as the Communal Property Principle, whereby each member of a community has locus to bring a claim on behalf of the community to protect community property by themselves, without the need for any authorisation by the CCE or anyone else and, potentially, even contrary to the wishes of the CCE.

ii) That principle, however, only applies to property which is communally owned under customary law, and the only kind of property which Nigerian law presumes to be communally owned under customary law is land. There is no evidence that any other kind of property is communally owned under the customs of the Bodo Community.

iii) In those circumstances, the Eight Claimants have not satisfied me that they have locus to bring this claim pursuant to the Communal Property Principle, since the claim is not concerned with protecting community land.

iv) In addition, even if the Communal Property Principle could be applied to any kind of communally owned property, I am not satisfied that it would entitle the Eight Claimants to assert the English law causes of action which are the subject of these proceedings, since those causes of action are vested in the members of the CCE who were Leigh Day's clients in the Community Claim against SPDC. Neither those causes of action, nor the £20 million compensation paid by SPDC, are (or were) communally owned property in the relevant sense.

346. For these reasons, the answer to the preliminary issue as to whether the Eight Claimants have authority to advance the claims made in the action is "*no*".

347. I will hear submissions as to the terms of the order I should make consequential on this decision.

Appendix: reasons for refusing the adjournment

348. As I have mentioned in the main part of this judgment, on 24 April 2023 Master McQuail ordered a trial of a preliminary issue regarding the Eight Claimants' authority to advance the claims made in the action. That order provided, amongst other things, that the Eight Claimants pay Leigh Day's costs of the application for a preliminary issue in the sum of £34,000. This sum has not been paid and, on 10 December 2023 the Eight Claimants offered to pay this sum in instalments of £200 per month. Mr Pooles pointed out that this would result in the debt not being satisfied until 2037.

349. On 28 July 2023 Master McQuail heard a Case Management Conference in respect of the trial of the preliminary issue, pursuant to which she gave case management directions including, amongst other things, that the trial should take place on the first available date between 8 July 2024 and 20 December 2024 which was defined as "*the Preliminary Issue Trial Window.*" Paragraph 2.2 of the order provided that "*By 4:00 pm on 4 August 2023 the parties shall email* [Chancery listing] *a copy of this order and a single list of dates of availability or if that cannot be agreed respective dates of availability within the Preliminary Issue Trial Window with a request to fix the Preliminary Issue Trial Date.*" Paragraph 2.3 of the order gave a trial time estimate of 3 days, with an additional day for the judge's pre-reading time.

350. On 3 August 2023 RPC (acting for Leigh Day) wrote to Raegal referring to paragraph 2.2 of Master McQuail's order of 28 July 2024 (then still in draft), setting out the availability of their counsel within the relevant window and asking Raegal to "*confirm your own counsel's availability within the same window…*" On 4 August 2023 Raegal responded by email approving the draft order subject to certain amendments and saying, "*Regarding paragraph 2.2, we have no dates to avoid.*"

351. On 4 August 2023 RPC wrote to the court providing the available dates for Leigh Day's counsel and noting that the Eight Claimants' solicitors had confirmed they had no dates to avoid. In due course, the court sent a Notice of Trial Date to RPC dated 8 August 2023 marked "*FOR SERVICE ON ALL PARTIES.*" Although the Notice is dated 8 August 2023, it appears from the evidence I have seen that it may have been sent out on 9 or 10 August 2023, but nothing turns on that. The Notice stated that, "*The trial is in a 5 day window from the 8th July 2024, time estimate 3 days plus 1 day pre reading.*" Thus, the first day of the trial, which was set aside for the judge's reading, would fall within the period of Monday, 8 July 2024 to Friday, 12 July 2024. I refer to that period below as the "**5 day window**." RPC duly sent the Notice to Raegal by email on 10 August 2023. RPC received an email response from Raegal saying that it was "*an automated email to notify you that your email has been received.*" In response to my question at the hearing, Mr Emezie accepted that Raegal had received the Notice. Raegal's email address to which the majority of communications were sent by RPC appears to have been a central administrative address, not related to a named individual. Mr Pooles told me that all the

communications sent to Raegal prompted a similar automated response, although I was only shown the one example.

352. On 21 February 2024 RPC wrote to the court asking that the trial be listed towards the end of the 5 day window and sent a copy of that letter to Raegal the same day. The request was stated to be made because one of Leigh Day's witnesses was attending a hearing abroad between 8 and 11 July 2024.

353. The case management directions given by Master McQuail on 28 July 2024 were varied several times by consent, including on 14 March 2024 and 24 April 2024. The various amended directions were plainly intended to ensure that all steps were completed in time for a trial commencing in the 5 day window.

354. On 1 May 2024 Master McQuail made a further order directing letters of request to be issued to the Nigerian judicial authorities seeking the necessary permissions for each of the Defendants' witnesses to give evidence by video link from Nigeria. The recitals in that order expressly referred to the 5 day window for the trial.

355. Also on 1 May 2024 RPC wrote again the to the court repeating their request that the trial be listed towards the end of the 5 day window, again copying in Raegal and enclosing RPC's letter of 21 February 2024 and the court's Notice of Trial Date. There was never any objection to that request from Raegal.

356. On 9 May 2024 Raegal wrote to RPC asking for an extension of time for the exchange of expert reports until 18 May 2024. RPC replied by email on 10 May 2024 agreeing to an extension of time until 17 May 2024 (since 18 May 2024 was a Saturday), pointing out that there could be no further extensions because of the proximity to the 5 day window and requesting a draft consent order. Having heard nothing further, RPC emailed again on 13 May 2024 attaching their email of 10 May and saying they were content for the agreed the extension to be recorded in email correspondence. Raegal replied the same day confirming its agreement. The expert reports were subsequently exchanged on 17 May 2024 in accordance with the parties' agreement, although there was a slight delay by Raegal in the provision of the authorities and legislation referred to in Mr Sigalo's report.

357. Meanwhile, on 15 May 2024 RPC wrote to Raegal in relation to the preparations required for its witnesses to give evidence remotely "*during the preliminary issue trial in July 2024.*" PRC asked what arrangements the Claimants were making for its witnesses. Raegal replied on 20 May 2024 saying that the Claimants were "*currently arranging the office from where they will give evidence and they intend to give evidence at one office. We will confirm the details of our clients' arrangements as soon as we receive them.*" Also on 20 May 2024 RPC wrote to the court confirming the arrangements for the video-link. The first paragraph of that letter, which was copied to Raegal, referred to the 5 day window.

358. On 3 June 2024 RPC emailed Raegal referring to Master McQuail's direction that the Claimants provide a draft bundle index no later than six weeks before the date fixed for trial. The email requested a draft index by 6 June 2024, "*on*

the basis that the trial is to be listed anytime in the window of the weeks commencing 8 July 2024 or 15 July 2024…" Raegal replied on 4 June 2024 requesting that RPC prepare the index and bundle on the basis that they understood "*the use of the word Claimant by the Judge to simply mean the Applicant of the Application for the preliminary Authority Issue.*" RPC took issue with that interpretation by email dated 12 June 2024, but nevertheless agreed to prepare the trial bundles and provided a draft index. The email also listed Leigh Day's counsel and requested the name of the Eight Claimants' counsel.

359. Also on 12 June 2024 Raegal wrote to RPC confirming that their witnesses would give evidence by video-link and identifying the venue at which that evidence would be given. The letter also confirmed the availability of the Eight Claimants' expert to meet with Leigh Day's expert on 13 June 2024. RPC replied on 13 June 2024 suggesting that the date by which the experts should produce a joint memorandum be extended until 28 June 2024. There was further correspondence regarding the meeting of experts, but, as it turned out, they had not been able to meet by the time of the hearing before me, which the Eight Claimants said was the fault of Leigh Day's expert. That is disputed, but I see no utility in my attempting to apportion blame at this stage.

360. On 13 June 2024 RPC wrote to the court again asking if the trial could be listed towards the end of the 5 day window, proposing that the reading day be on 12 July 2024 and the hearing the following week. On around 24 June 2024 the court listing office informed RPC that the trial would be listed in accordance with that proposal. On 25 June 2024 RPC emailed Raegal with a link to bundles A to D of the trial bundle, with bundle E to follow. That email stated, "*we have been informed by the Court's Listing Office that the reading day has been listed on Friday 12 July 2024 and the Trial will commence on Monday 15 July 2024.*" RPC again asked for the name of the Claimants' counsel.

361. Meanwhile, on 18 June 2024 Master McQuail made an order on Leigh Day's application dated 12 June 2024 permitting them to serve a witness statement of a further witness, Mr Karibo, and granting relief from sanctions in respect of that witness statement. On 1 July 2024 Raegal issued an application notice seeking permission to serve a witness statement from Mr Warmate in response to that of Mr Karibo. In the box on that application notice asking for details of any fixed trial date or period, Raegal stated, "*Trial in 4 days window from 8 July 2024.*" That potentially suggests that Raegal had not yet appreciated that the trial had been listed for 15 July 2024 (despite RPC having told them about it on 25 June 2024). Nevertheless, it shows that they were aware of the imminent window (wrongly described as a 4 day window, rather than a 5 day one) beginning on 8 July 2024, then only a week away, and that they appear still to have been fully engaged in preparing for the trial.

362. On 7 July 2024 (a Sunday) Raegal wrote to the court (copied to RPC). The letter began "*We write to inform the court that the parties have not yet agreed a list of the dates for availability of their Counsels in order for the Court to fix the Preliminary Issue trial date in accordance with para 2.2 of the order by Master McQuail dated 28 July 2023.*" The letter continued that the Claimants would confirm available dates as soon as they received them from their counsel.

It said that they had "*recently*" been told by RPC that the trial had been listed on 15 July 2024, but that "*The Claimants are not ready for the listing of the trial on 15 July 2023 because the Claimants are yet to confirm to the court the dates of availability of their Counsel and most importantly the Claimants' Counsel is not available on 15 July 2024.*" They asked the court to "*stand down any trial listed on 15 July 2024 in the interest of justice.*"

363. On 8 July 2024 RPC wrote to the court explaining why they contended that various statements made by Raegal in its letter of 7 July 2024 were incorrect and attaching supporting documents, some of which I have referred to above. On 9 July 2024 court listing wrote to the parties saying that any request to vacate the trial would need to be made by way of a formal application and would be heard on the first day of the trial. Also on 9 July 2024 Raegal wrote again to the Court, repeating much of the content of their letter of 7 July 2024, but now saying that their counsel had confirmed that she would be available in October and November. They added that they found it "*very troubling*" that they had received information about the listing from RPC rather than from the court and that the matter was not ready for trial because the experts had not yet settled a joint report to the court.

364. In response, court listing wrote to the parties on 10 July 2024, repeating that it was necessary to make a formal application to vacate the trial and pointing out that the soonest the trial could be relisted would be 3 June 2025. Later that day RPC filed an opening skeleton argument on behalf of Leigh Day, but no skeleton was filed on behalf of the Claimants.

365. Also on 10 July 2024 Raegal issued an application notice asking the court to vacate the trial and asking that the application be determined without a hearing. The application was supported by a two-page witness statement of Mrs Siobu Brady, who described herself as the "*Principal Solicitor*" of Raegal. The witness statement was unsigned and the statement of truth was not in the correct form. Mrs Brady was present at the hearing, but despite my indicating that I expected the statement to be signed with a proper statement of truth, that did not happen. I deal with the contents of the statement below.

366. On 11 July 2024 the application was passed to me and I directed that the Eight Claimants' representative must attend the hearing on 15 July 2024 to make the application. I also directed that a copy of the application should be sent to RPC; it transpired that RPC had not previously been aware of it. Later on 11 July 2024 RPC wrote to Raegal pointing out various defects in Mrs Brady's witness statement and requesting clarification regarding several matters. They also filed and served a witness statement from Nicholas Bird in opposition to the application.

367. Monday, 15 July 2024 was supposed to be the first day of the trial of the preliminary issue. As explained above, Mr Emezie represented the Claimants on 15 July 2024 for the purposes of making the application for an adjournment. He told me that he was not instructed to proceed with the trial.

368. Several reasons for an adjournment were suggested in Mrs Brady's statement and/or by Mr Emezie.

369. First, the opening paragraph of Mrs Brady's statement asked the court to vacate the hearing "*as our key witnesses are ill.*" No information was given as to which witnesses, or the details of the illness. Second, Mrs Brady said "*one of our key witnesses has lost a family member and our solicitor's mother has also just passed away.*" Again, no details were given.

370. In the course of the hearing, Mr Emezie first said that he did not know which witnesses were ill, but that a further witness statement could be provided giving details. Later, he said that that the witnesses were not, in fact, ill but bereaved. The suggestion in Mrs Brady's statement that they were ill was said to be "*a mistake.*" I was given no explanation as to how such a serious mistake came to be made. No further details of the alleged bereavement were given, but Mr Emezie rightly did not rely on that as a reason for seeking an adjournment. I would have required a much more detailed explanation before considering an adjournment on the grounds of a bereavement.

371. Next, it was said that the matter was not ready for trial because the experts had not yet met or prepared a Joint Statement. Whilst it was certainly a significant inconvenience that a Joint Statement had not been prepared by the beginning of the hearing, I did not consider that this would present an insuperable obstacle to the trial proceeding. Both sides had served expert reports, each exhibiting a substantial number of relevant Nigerian authorities, and the experts were available to give oral evidence. There was, therefore, no risk that the court would not have the benefit of relevant expert opinion. I considered that it ought to be possible for the experts to speak and prepare a short Joint Statement before they were called to give evidence and the delay in its preparation would affect both sides equally. As will have been apparent from my main judgment, a helpful Joint Statement was subsequently prepared.

372. Then it was said that the parties had not yet agreed a list of dates for the availability of counsel, as contemplated by paragraph 2.2 of Master McQuail's order of 28 July 2024. As is apparent from my summary of events above, that is not correct. On 4 August 2023 Raegal had written that there were no dates to avoid in the relevant period, with express reference to paragraph 2.2 of the order. It was not suggested to me that there had been any mistake at that stage. Mr Emezie submitted that Raegal's confirmation that there were no dates to avoid had been superseded by its subsequent indication that counsel would not be available until October and November. That indication was not, of course, given until 9 July 2024, after the start of the 5 day window. The whole point of paragraph 2.2 of the Master's order was to avoid such last-minute problems with counsels' availability.

373. The next point raised on behalf of the Eight Claimants was that no notice of the hearing had been received from the court. It was said to be "*troubling*" that the Eight Claimants received notification of the date from RPC, especially because there had been no agreement of the dates of counsels' availability. Mr Emezie submitted to me that "*we were not aware of this hearing until recently.*" That was seriously inaccurate. Whilst I accept that the Eight Claimants were, indeed, notified of the date on which the hearing had been listed by RPC rather than the court, there are (at least) three reasons why this does not justify an adjournment.

374. First, it is not true that there had been no agreement of the dates of counsels' availability, for the reasons given above. Second, the Eight Claimants acknowledge that they were notified of the hearing date by RPC on 25 June 2024, at which point the hearing was still more than two weeks away, which was a sufficient (although, I accept, not generous) time to instruct counsel, if one had not already been instructed. Moreover, RPC had, to Raegal's knowledge, been asking for a listing towards the end of the 5 day window since February 2024, without objection from Raegal, so the eventual start date on 15 July 2024 cannot have been a surprise.

375. Third, and most importantly, Mr Emezie confirmed (as the evidence showed) that the Eight Claimants had known that the trial would be listed within the 5 day window since 10 August 2023, nearly a year before the window. Raegal had been working towards a trial in that 5 day window for months. When various directions were varied by consent, there were repeated references to the 5 day window in the correspondence. Raegal had never suggested that a hearing within that window could cause them any difficulty. On the contrary, they had said they were making arrangements for their witnesses to give evidence by video-link, which necessarily required them to have the dates in mind and, as recently as 1 July 2024, they had issued an application notice referring to the trial window starting on 8 July 2024 (albeit mistakenly referring to a 4 day window). There was no suggestion then that they would not be ready.

376. Mr Emezie submitted that a window is not notice of a hearing, that counsel could not be instructed to attend within a 5 day window, and that a precise date was necessary. This is contrary both to the usual practice of the court and to common sense. The window was only for a short period of five days. It is perfectly normal to expect counsel to be available to start a trial within a narrow period of that length and, indeed, Leigh Day's counsel team did so.

377. Finally, it was suggested in Mrs Brady's statement that Leigh Day had "*previously confirmed that they will only be ready for this hearing in October, so it came as a surprise that this hearing has been listed.*" I am not aware of any evidence to support that suggestion.

378. Ultimately, I considered that the court had not been given a full and frank explanation as to why the adjournment was being sought. In the absence of any explanation, the inclusion in Mrs Brady's unsigned statement of false information about witnesses being ill seems likely to have been a misguided attempt to say whatever was thought most likely to persuade the court, without regard to accuracy. The suggestion that there had been no agreement as to counsels' availability was obviously wrong, and the complaint about notification of the start date not coming from the court was an unpersuasive attempt to come up with a justification for a last-minute adjournment.

379. It seems clear that, for some reason, the Eight Claimants did not have counsel available for the trial. I was, however, given no information about when (if at all) counsel had first been told about the 5 day window or what had happened thereafter. In the absence of a cogent explanation from Raegal about how and when counsel came to be unavailable and what steps (if any) had been taken to obtain alternative representation, there was no good reason for an adjournment.

380. I recognised the real prejudice to the Eight Claimants, if I refused an adjournment. They would either have to conduct the trial themselves, without the benefit of legal representation (as, in fact, occurred), or else the preliminary issue would inevitably be decided against them, with the real risk that their claim as a whole would be struck out.

381. Mr Emezie submitted that the injustice to the Eight Claimants of being unable to pursue their claim significantly outweighed the prejudice which Leigh Day might suffer because of an adjournment, which (he said) could be compensated by an order for costs. Mr Pooles told me that RPC had estimated the costs thrown away, if an adjournment were granted, to be in the region of £93,000. Even if the costs wasted were half that figure, it seems unlikely that the Eight Claimants would be able to pay them, at least in any realistic timescale. The Eight Claimants have so far been unable to pay any of the sum of £34,000 ordered by Master McQuail in April and have only offered to pay it in instalments of £200 per month. Whilst the overriding objective requires the court to have regard to the financial position of each party and to ensure that the parties are on an equal footing, so far as practicable, it would still be wrong to cause the party with greater resources to incur substantial irrecoverable costs without a good reason.

382. Moreover, my understanding was that, if I adjourned the trial, it could not be relisted until June 2025. Leigh Day was ready for trial and it would not have been fair to require them to wait that length of time, with the possibility that some of their legal team or witnesses might become unavailable, unless there was a proper reason for doing so. It is also important to take account of the potential delays caused to other litigants by relisting a trial.

383. If I had been given a full and frank explanation about why counsel was unavailable, Mr Emezie's point about the prejudice to the Eight Claimants might have carried more weight. As it was, for the reasons I have given, I concluded that it would not be in accordance with the overriding objective to adjourn the trial for more than the 24 hours which I allowed them to consider their position.