Neutral Citation Number: **[2021] EWHC 520 (QB)**

Case No: **QB-2020-000208**

BRITISH AIRWAYS DATA BREACH GROUP LITIGATION
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Date: Monday **1 March 2021**

Before :

The Honourable Mr Justice Saini sitting in the Crown Court at Birmingham

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Between :

Weaver & Ors	**Claimants**
- and -	
British Airways Plc (No.2)	**Defendant**

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- -

Nicholas Bacon QC, David Blayney QC and Andrew Nicol (instructed by **PGMBM**) for the **Claimants**
Anya Proops QC and Benjamin Williams QC (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: **1st March 2021**

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CCMC JUDGMENT NO.2

MR JUSTICE SAINI:

1. This is the third remote hearing in a lengthy CCMC in the British Airways Data Event Group litigation. There have been two earlier hearings in this CCMC (on 2 February 2019 and 17 February 2021). The background to the litigation is set out in my judgment following the first of these hearings: [2021] EWHC 217 (QB). These proceedings are progressing to a trial of generic issues of liability in the Summer term of 2022.

2. The final issue I need to resolve is the question of the budgets for the individual costs in the group litigation. I have already dealt with generic (or common) costs which are very substantial on both sides, running into many millions of pounds. Earlier in these proceedings (at the first hearing), I decided that there should be budgeting of individual costs where there was a dispute between the parties as to whether this had been intended. I noted that there was no express "carve-out" (excluding individual costs) from the costs budgeting which the parties had agreed to adopt but that the claimants' solicitors may have proceeded on the basis of a misapprehension or misunderstanding as to the position in this regard. I accordingly made directions for the submission of an individual costs budget. Since then they have provided an individual costs budget (in a number of forms) and I have heard argument in relation to that budget this afternoon (there having been insufficient time to resolve this question at the second CCMC hearing).

3. It is fair to observe at the outset that in terms of the individual costs per case, the claimants' solicitors' figures have varied quite substantially. Originally, the claimants were seeking a sum of about £1,200 per case. That was modified down to £800 per case and, on the figures before me this afternoon, the figure sought by way of estimated costs has come down further to £624 per

case. That £624 has been broken up into a detailed schedule of 25 specific sub-steps and I have been taken through those steps by counsel both by way of oral and written submissions.

4. In coming to my conclusions, I have taken into account the broad nature of the litigation, including the potential individual value of the claims. I have also taken into account the particular steps which the claimants are required to take under the original GLO, as well as the nature of the questionnaire sent out to potential clients.

5. I shall begin by addressing the issue of the general hourly rate that is claimed. Most of the work that has been claimed for in this individual budget is to be performed by a grade D fee-earner. At the first CCMC, I indicated that in relation to generic costs, and across the board, a reduction of 25% should be applied to fees. I have been asked today by counsel for the defendants to revisit that, given that I am considering individual costs. I do not propose to do that and that broad reduction will remain in place. I note that this is the basis upon which the current individual costs schedule has been prepared by the claimants' solicitors for this afternoon's hearing.

6. There are a number of specific points taken in relation to the individual items in the costs schedule but the broad preliminary general point made on behalf of the defendant is that certain of the steps which are set out in this schedule are what the defendant calls "clerical work", as opposed to true legal "fee-earner" work. Both parties have referred me in this regard to Motto v Trafigura [2011] EWHC 90201 (Costs).

7. In essence, the claimants say that I should defer resolution of this point to the detailed assessment and essentially follow the route taken by the Senior Costs Judge in the Motto case at paragraph 496. In that paragraph, the judge agreed with Mr Williams' submission (Mr Williams QC at that

stage was representing the claimant) that it was not possible to resolve the issue as to whether the particular data entry work in that case was recoverable. The costs judge left that issue over to the detailed assessment. In the present case, Mr Williams, by contrast, invites me to resolve that issue now in his client's favour. Mr Bacon QC for the claimants says that I should follow the approach of the Senior Costs Judge and leave this issue for later decision.

8. Given the information that I have in the schedule before me, I do not consider I have a sound evidential basis to make a decision (with final consequences for the claimants) on the question as to whether or not the work being claimed for by way of future costs is clerical or true legal work. Therefore, I propose to take the same approach as Judge Hurst in the Motto case, and that should be provided for in any order that accompanies this ruling.

9. However, I should say out of deference to Mr Williams' submissions, it does seem to me that steps 1, 8, 9, 19 and 20 appear on their face (and on the basis of the narrative description given by the claimants' solicitors in their schedule) to be more in the nature of clerical work than true legal work. They seem to be tasks in the nature of administrative data entry, creation of pdfs, sending texts, and accounting matters. Those would normally be matters for a firm's general overheads. But I say this with the qualification that this is a provisional conclusion and this is a matter which can be revisited. Those items are, for present purposes, to be within the budgeting process.

10. Having considered both the arguments made to me today and those made orally and in writing at the earlier hearings, I am now going to go through particular steps and indicate (by reference to either the minutes or the units claimed in the schedule) what I consider to be the reasonable figures for the purposes of individual budgeting. If I do not mention any particular item, I do not propose to alter the particular units or minutes claimed in the schedule before me.

11. I begin with items 6 and 7. As regards 6, it is described as "Manual time spent on average conducting a review of the client answer to the questionnaire and checking the information provided, establishing that the client complies with GLO 30.4….". Item 7 is "Solicitor time spent on average conducting a review of the draft SOI and the client instructions, checking statement of truth …". That continues with a particular entry which says "Consideration is also given to the claimant's individual aspects and whether they may be suitable to be considered as a lead claimant candidate and categorising as appropriate …".

12. Having considered the pleadings, and given my earlier knowledge of the case from the CMC, and also having considered the nature of the client answers to the initial questionnaire (to which I was taken at the last hearing) it seems to me that the amount claimed in item 6, which is in average units of 2.5 and in average minutes of 15 is excessive. It seems to me the average time should be 1 (one) unit.

13. As regards item 7 (which is currently two units of time at grade B, with average minutes of 12) in my view the unit time there should be 1 (one) unit and I am not persuaded that the extra unit and time claimed is justifiable on the basis that there may be lead claimants to consider. As I understand the litigation at this stage, lead claimants and their status will only be in issue, if at all, after the conclusion of the liability phase. At this stage I am simply budgeting for individual costs up to the conclusion of the liability judgment.

14. The next item which concerns me is item 16, which is a claim in relation to quantification resolution. In the narrative it is said:

"In this scenario it is assumed that agreement is reached in principle to settle the case by reference to allocation of claimants to categories where similar types and severity of harm has been suffered but this requires analysis on a case-by-case basis and information and reading must be collated and submitted for sign-off …..".

15. In respect of this step, an average of 24 minutes is claimed (i.e. 4 units). It seems to me, given what I apprehend will be the type and nature of any potential settlement and given the information which will already be to hand, a reasonable number of units for this step would 2 (two) units.

16. I turn then to items 19 and 20, which are essentially concerned with reviewing payment details and obtaining client instructions on sending payments following a settlement. Under item 19, an average number of 3 minutes is claimed, and under item 20, 18 minutes is claimed. It seems to me that 19 and 20 should be collapsed into a single allowance of 2 (two) units.

17. Going down the schedule, in relation to item 22, the narrative reads:

"Clients will also contact the solicitor with specific queries, be it both telephone and email, regarding their individual case as well as the overall litigation...."

18. Here two units are claimed and it seems to me that 1 (one) unit would be appropriate.

19. Finally, item 23 has been the subject of more detailed argument and it concerns what have been called "updating" or "round-robin letters". Under item 23, the narrative is as follows:

"Clients regularly must be provided with general updates on at least a quarterly basis in respect of the group litigation by way of an individual email. These updates will be until the liability trial and so there will be a minimum of six between this budget and then. This is claimed at a cost of one minute per update per claimant."

20. It seems to me that updates will need to be provided, but given what I know about the litigation thus far, it seems to me that it is an excessive number to claim six updates given the very broad issues which are going to be determined at this stage. In my view an appropriate number of

updates (round robin standard letters) is 2 (two) and therefore the budget should be reduced accordingly.

21. Following further argument on this issue (and reference by both Leading Counsel to the Motto case at para. 504, and to Langstaff J's judgment in Various Claimants v Morrisons (unrep.12 January 2017) at paras.22-27), I have determined there is no evidential basis for adopting a per capita approach (even to only two round robin letters) in the form suggested in the narrative I have set out above. That is, an approach which multiplies the claimed average unit cost of a round robin letter by the number of individual claimants (as if that unit cost would in fact be incurred in the sending of the standard letter).

22. I note that the costs of drafting the common letters to be sent to all clients have already been covered in the generic costs. So the real legal "brain work" is already accounted for. What is left is simply sending the product of such work to the many claimants. However, the claimants' legal representatives were not able to point to any evidential basis for the assumption that the simple electronic sending of those same letters to tens of thousands of individual clients would each take an average of 1 minute of chargeable time. It is obvious how the sums claimed under this head would increase by very substantial sums, potentially running into hundreds of thousands of pounds, if the multiplier per capita approach was endorsed.

23. I am not satisfied charging on the basis of this approach would be either reasonable or proportionate. As I explained at the hearing, my view is that the sums claimed are excessive for the relatively straightforward matter of what seems to me (based upon my own basic and limited technological knowledge) to be the act of undertaking some keystroke work to enable a mailing of the already drafted letters to clients whose details are already electronically stored.

24. I accordingly rule that no sum is claimable in the budget under item 23 for the round robin letters. For completeness, I should record that I did not find it easy to follow how the allowance for such letters was fixed in the Motto and Morrisons cases, where the facts were very different. It was however rightly not suggested that either of those cases applied some principle of law or practice which required me to take an approach different to that which I have decided to adopt on the evidence before me.