

Neutral Citation Number: [2024] EWHC 3300 (Comm)

Case No: CL-2022-000637

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**COMMERCIAL COURT**

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

Date: 8 November 2024

**Before :**

**Mr Justice Picken**

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**In Re:**

**The Russian Aircraft Litigation – Operator Policy  
Claims**

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**Tom Weitzman KC, Kate Holderness, Philip Hinks, Josephine Higgs KC, Michael Holmes KC, Henry Moore, Douglas Grant, Robert-Jan Temmink KC, Tom Nixon, Alexander Milner KC, Chirag Karia KC, Peter Stevenson and Benjamin Joseph on behalf of the MLB Claimants**

**Stephen Midwinter, Edward Ho, Sophie Bird and Sophie Shaw on behalf of the HSF / AerCap Claimants**

**Alistair Schaff KC, Rebecca Sabben-Clare KC, Sandra Healy, Daniel Corteville, Frederick Alliott, Alexander MacDonald and Julia Gibbon on behalf of the Clifford Chance Claimants**

**Emma Hughes and Sarah Parker on behalf of the Wordley Partnership / Shannon Engine Support Claimant**

**Matthew Reeve KC on behalf of the McGuireWoods / Genesis Claimants**

**Christopher Loxton on behalf of the Fieldfisher / Deep Sky Claimants**

**Timothy Killen and Eswar Kalidasan on behalf of the Reed Smith Claimants**

**David Bailey KC, Charles Kimmins KC, Susannah Jones, Michal Hain and Alex Demetriades on behalf of the Kennedys Defendants**

**Paul Stanley KC, John Bignall, Adam Board on behalf of the DLA Piper Defendants**

**Akhil Shah KC, Max Kasriel, Nick Daly and James Duffy KC on behalf of the CMS Defendants**

**Andrew Neish KC, James Leabeater KC, Bankim Thanki KC, Martyn Naylor and Rangan Chatterjee on behalf of the HFW WR Defendants**

**Guy Blackwood, Tom Bird and Robert Ward on behalf of the Weightmans Defendants**

**John Lockey KC and Edward Batrouney on behalf of the DWF Defendants**

**Nigel Tozzi, Sophie Allkins, Aidan Christie, Bajul Shah and James Hatt** on behalf of the **DACB Defendants**

**Ben Lynch KC, Daniel Schwennicke, Jeffrey Gruder KC, David Peters and Helen Morton** on behalf of the **Dechert / Chubb Defendants**

**Stephen Phillips KC and Sarah Cowey** on behalf of the **Penningtons / Swiss Re Defendants**

**Timothy Howe KC and Christopher Knowles** on behalf of the **RPC / Fidelis Defendants**

**Chris Smith, John Korzeniowski and James Payne** on behalf of the **Air Law Firm Defendants**

**Philippa Hopkins KC and Owen Lloyd** on behalf of **BMII (CPB)**

Hearing dates: **8<sup>th</sup> November 2024**

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**RULING 2**

**Mr Justice Picken**  
(15:28pm)

**Friday, 8 November 2024**

Ruling by **MR JUSTICE PICKEN**

1. This is the first CMC in this matter, as I explained in my earlier ruling. However, I am now dealing with a discrete point between two sets of parties concerning an application which was made in August this year concerning the amendment of four different claim forms in respect of the particular descriptions of particular parties as identified in those claim forms. That application was unopposed by the defendants, who, having been asked in relatively short order for their agreement to the amendments, gave their agreement. Indeed the application notice before me, supported as it is by a witness statement from Alison Proctor of Wordley Partnership, solicitors for the claimants in this respect, records at paragraph 7 the circumstances in which agreement to the proposed amendments came to be given.
2. In paragraph 8, the witness statement goes on to explain that the relevant claimants seek a costs order in their favour in respect of the applications to amend, and what follows sets out in detail, in clear detail at that, the circumstances which gave rise to the need to amend, including explaining how it is that the original descriptions which came to be revised through the proposed amendments, now actual amendments, came to be included as opposed to the correct ones.
3. The suggestion in paragraphs 1(a) and (b) of the application notice is that there was an inconsistency between the position of the so-called Shoosmith defendants prior to issue of the claim form, when confirming the proper description of the relevant parties, when compared with the position adopted in the defences as served and that that is what gave rise to the need to amend.
4. Then, the application notice, under the heading "Costs of the application", describes, consistent with paragraph 8 of Ms Proctor's witness statement, that costs are sought on the basis that the amendments were only required because of wrong information given to the claimants by the Shoosmith defendants' then solicitors.

5. The costs, I am told, amount to some £35,000 or so, which in the context of this litigation is a modest amount. However, that is a somewhat irrelevant consideration given the discrete nature of this particular matter before me. On behalf of the relevant claimants, Ms Parker submits that it is only right that there should be a costs order made against the Shoosmith defendants on the basis that the only reason for the amendment, as indicated, is the wrong information given to the Wordley Partnership in the lead-up to the issuance of the relevant claim forms. She goes on to submit that the amounts concerned are reasonable and the depth of information provided by Ms Proctor in her witness statement was also reasonable, given the need to explain to the court how the amendments came to be required.
6. On behalf of the Shoosmith defendants, Mr Killen does not accept that there was any conduct on the part of the Shoosmith defendants' then lawyers in the lead-up to the issuance of the claim forms which would justify the costs order sought being made. He goes on to submit that, in any event, the length and detail of Ms Proctor's witness statement was unnecessary in circumstances where agreement, as described in paragraph 7, had been forthcoming, and he observes that in those circumstances the only reason for the depth and detail of her witness statement is the costs order that is now sought before me. His invitation to the court is that there should be, as he might put it, the usual order of costs in the case.
7. I have considered this matter with some care and I have been greatly assisted by counsel for both parties. I do consider that the right order is costs in the case. This is large-scale litigation and there will be innocent mistakes made on both sides. I acknowledge that here the claimants operated on the basis of particular information and, when they discovered the error, as pleaded in the defence, they took the sensible and correct steps to ensure that the position was regularised, but in essence it seems to me that in litigation of this complexity and with so many parties, that is the type of situation that is to be expected will happen.

8. Even had I been inclined to make a costs order against the Shoosmith defendants, I have to say that it would have been at a considerably lower figure than that sought. I make absolutely no criticism at all of the witness statement that was submitted in support of the application; it is admirable, as I have indicated, in its detail, but I do question whether the detail was fully required in circumstances where the agreement of the Shoosmith defendants was obtained, and indeed it seems to me that there is some force in the submission made by Mr Killen that really the reason for the detail and the depth of the witness statement was the seeking of a costs order in circumstances where, had the witness statement been less detailed and less in depth, then the costs that have been incurred would not have been required. So even had I made a costs order against the Shoosmith defendants, it would have been in a much lesser sum. In those circumstances, whilst not a factor in my deciding not to make a costs order, it is something to be borne in mind in terms of what, had I been in favour of the claimants here and made a costs order, has been lost.