Neutral Citation Number: [2018] EWHC 534 (Ch)

Case No: HC-2016-003081

**IN THE HIGH COURT OF JUSTICE**
**CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 March 2018

**Before** :

**EDWARD MURRAY**
**(sitting as a Deputy Judge of the Chancery Division)**

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**Between :**

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|---|---|
| **BOTT & CO SOLICITORS LTD** | **Claimant** |
| **- and -** | |
| **RYANAIR DAC** | **Defendant** |

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**Mr George Bompas QC** and **Ms Anna Markham** (instructed by **Rosenblatt**) for the **Claimant**
**Mr Brian Kennelly QC** and **Mr Tom Coates** (instructed by **Oracle Solicitors**) for the **Defendant**

Hearing dates: 15, 16 and 17 November 2017

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# Approved Judgment

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

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EDWARD MURRAY
(sitting as a Deputy Judge of the Chancery Division)

**Edward Murray (sitting as a Deputy Judge of the Chancery Division) :**

1. This is a CPR Part 8 claim by Bott & Co Solicitors Ltd ("Bott") against Ryanair DAC ("Ryanair") for various forms of relief aimed at protecting its lien for costs in relation to recoveries of flight delay compensation obtained on behalf of its clients from Ryanair.

*The parties*

2. The claimant, Bott, is a solicitors' firm based in Wilmslow in Cheshire, specialising in consumer claims, with three core streams of business: personal injury claims, holiday claims and flight delay compensation claims. This business is conducted on a "no win, no fee" basis. Bott's business model in relation to flight delay compensation claims is based on the processing of a high volume of low value claims. A company with such a business model is often referred to as a "claims management company" or "CMC", although this is not a term that Bott accepts as applicable to itself. Being a solicitors' firm, Bott is authorised and regulated by the Solicitors Regulation Authority.

3. The defendant, Ryanair, is a company incorporated in Ireland providing airline services to customers seeking to travel to and from destinations in Europe and North Africa. Ryanair operates in 33 countries from 200 airports over 1,800 routes and operating over 1,800 flights per day. Its principal bases are at Dublin Airport and London Stansted Airport.

*Flight delay compensation under the Regulation*

4. An air passenger whose flight is delayed for a specified period beyond its scheduled time of departure is entitled, subject to certain conditions, to compensation for the delay under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights ("the Regulation"). The principal conditions, apart from the delay exceeding a prescribed length of time (which, in turn, depends on the distance covered by the flight), are broadly that (i) the air passenger is departing from an EU member state or is travelling to an EU member state with an EU airline and (ii) the delay is not caused by "exceptional circumstances". Compensation may be up to €600. The average gross compensation received by a customer of Bott is about €327. Bott's average fee per flight delay compensation claim is about £95.

5. The Regulation does not expressly provide for compensation for delay. It does provide for compensation under article 4 in a case where an air passenger is denied boarding against their will and under article 5 in a case where a flight is cancelled. In either such case, compensation is payable under article 7, subject to certain conditions, including, in relation to a case under article 5, that the cancellation does not arise as a result of "extraordinary circumstances". Examples of "extraordinary circumstances" are given in recitals (14) and (15) to the Regulation. Article 6 deals with delay of a flight

beyond its scheduled time of departure, but it provides only for assistance to be given by the carrier.

6. The Court of Justice of the European Union held in *Sturgeon v Condor Flugdienst GmbH, Böck v Air France SA* (Joined Cases C-402/07 and C-432/07) [2010] Bus LR 1206, [69] that the Regulation must be interpreted as meaning that a passenger who suffers a delay equal to or in excess of three hours is entitled to compensation under the Regulation in accordance with article 7, unless the delay was caused by extraordinary circumstances.

7. Article 16 of the Regulation requires each EU member state to designate a body as the competent authority responsible for enforcement of the Regulation in relation to flights from an airport situated in the territory of the member state and flights from a third country to any such airport. In the UK the designated body is the Civil Aviation Authority ("the CAA").

*The evidence*

8. The claimant's witness evidence for the trial was provided by Mr Jacob Benson, a solicitor at Bott and the Legal Manager of Bott's Flight Delay Compensation Department. Mr Benson is (or, at any rate, was at the time he gave his evidence) the only solicitor in Bott's Flight Delay Compensation Department, where he is assisted by paralegals in relation to Bott's flight delay compensation claim business. Mr Benson provided four witness statements, dated 27 October 2016, 17 February 2017, 26 April 2017 and 9 November 2017, respectively.

9. The defendant's witness evidence for the trial was provided by Ms Shamil Murthi, a solicitor employed by Ryanair, one of whose duties is to supervise the handling of claims for compensation arising under the Regulation by members of Ryanair's customer services department in Dublin. Ms Murthi provided two witness statements for the trial, dated 2 February 2017 and 13 April 2017, respectively.

10. Neither Mr Benson nor Ms Murthi were required to attend the trial for cross-examination. I was also referred to various other documents and items of correspondence to which I will make reference, as necessary.

11. I note at this stage that each of Mr Benson and Ms Murthi failed to limit their witness statements to setting out relevant factual evidence. Instead, each made lengthy submissions about the issues and the relevant law, including responding to evidence given and submissions made by the other. It was not helpful and is not consistent with the requirements of chapter 19 of the Chancery Guide, in particular, para 19.3.

12. Each of Bott and Ryanair have made a number of criticisms of the other's general conduct, business practices and motivations. It is not, in my view, necessary for me to engage with the majority of those criticisms to resolve the issues in this case.

13. I note, however, that Ryanair gave a considerable amount of evidence and made submissions about the problems posed to airlines generally by firms handling flight disruption compensation claims under the Regulation on behalf of airline passengers. A number of allegedly abusive practices by such firms, and the problems thereby caused, are not, however, specifically alleged to have been engaged in by Bott. I have been referred to the experience of other airlines dealing with other firms, and I have been referred to airline industry association and regulatory responses to issues raised by the claims management industry. In general, I have found that evidence to be of limited assistance.

*Procedural history*

14. This claim was issued under CPR Part 8 on 28 October 2016. On 24 November 2016 Ryanair applied for the claim to be transferred from the Part 8 to the Part 7 procedure. On 22 December 2016 Chief Master Marsh dismissed the application, permitted Bott to amend its claim to clarify that it was not seeking damages and to clarify the nature of the relief it was seeking. The Chief Master also ordered that suitable redactions be made to the witness statement of Mr Benson dated 27 October 2016 excising general allegations as to Ryanair's practices that the Chief Master considered irrelevant to the claim.

15. At a further directions hearing on 28 March 2017, the Chief Master gave further directions for the conduct of these proceedings to trial.

*Further background*

16. Bott began handling flight delay compensation claims in February 2013, since when it has acted on approximately 125,000 claims. Its business model is premised on advising on a large number of claims, the majority of which are expected to be settled by the relevant airlines without dispute.

17. Bott has developed an on-line tool, accessible on its website, which enables a prospective client to enter her flight details and then check whether her claim satisfies the basic eligibility conditions. Those conditions concern time limits and length of delay in article 6 of the Regulation, distance in article 7 of the Regulation and whether a flight was to or from an airport in an EU member state as required by article 1 of the Regulation. The on-line tool operates without human intervention on the data entered by the prospective client and includes a check against a database of weather reports in order to anticipate whether a problem with the weather might have caused the delay, constituting "extraordinary circumstances" and thus a defence of the airline to a claim for compensation for the delay.

18. After it has operated on the data entered by a prospective client, Bott's on-line tool confirms to the prospective client whether she has a claim that *prima facie* is eligible for compensation under the Regulation and, if so, for how much. The client is then invited to provide other relevant information on-line, including the client's contact details, and to confirm whether she wishes to instruct Bott on a "no win, no fee" basis. None of this, it appears, involves manual intervention by anyone at Bott.

19. If a prospective client confirms through the on-line tool that she wishes to proceed with her claim, Bott sends her an e-mail to confirm receipt of the claim, notifying her of Bott's reference number, indicating that Bott will verify the flight information entered, asking whether any other passengers need to be added to the claim and asking the prospective client to provide any documentation such as boarding passes, booking confirmations or correspondence with the airline. The e-mail message includes as an attachment a client publication prepared by Bott entitled "Flight Delay Compensation Guide: Are You Entitled to Hundreds of Pounds?". It sets out basic details of the flight delay compensation provisions of the Regulation, what counts as "extraordinary circumstances", how much can be claimed relative to flight distance and length of delay and how a claim should be submitted through Bott. The publication includes some other information, including contact and social media details for Bott.

20. One of Bott's paralegals then manually checks the claim under Mr Benson's supervision to verify whether the claim has more than a 50% prospect of success. That process is usually completed within 48 hours. If the claim is accepted by Bott, then Bott sends a further e-mail confirming that Bott is willing to accept the case on a "no-win no-fee basis" and that, if the claim is successful, Bott's fees will be 25% plus VAT of the total compensation amount awarded to the client, plus an administration fee of £25 per passenger, to be deducted from the compensation before Bott pays the compensation from its client account directly to the client's bank account. The e-mail notifies the client that, as a result of the client's having submitted their details through the website, Bott has started working on the claim and is in the process of drafting a first letter to the airline. The e-mail also informs the client that Bott's Terms and Conditions will follow. In a separate e-mail, Bott sends the client a link to its Terms and Conditions, requesting that the client read and then sign them electronically. The conditional fee agreement (CFA) is also sent by e-mail in a form that the client can download. The Terms and Conditions make it clear that if the airline does not accept the claim, Bott has permission from the client to issue court proceedings.

21. Having accepted a claim and confirmed the client's instructions following the procedure outlined above, Bott sends a letter before action in a standard format to the relevant airline, referring to the Practice Direction on Pre-Action Conduct, setting out the claim details (passenger's name, booking number, flight number, flight distance and details of delay), asking for a response within 30 days and, if the claim is admitted, for payment within 21 days of the admission. Bott requests that payment be made by the airline by cheque or by bank transfer to Bott's client account. The letter also asks the airline to confirm whether the statutory defence of "extraordinary circumstances" will be raised and, if so, asks that the airline clarify the exact nature of the circumstances to be relied upon and that it provide supporting disclosure. In the letter Bott reserves the right to issue proceedings and/or to apply to the court for pre-action disclosure if the airline does not respond within 30 days. The same letter may cover a single claim or multiple claims relating to the same flight. The compensation is claimed in euros, but Bott indicates to the airline that it will accept payment in sterling at a stipulated exchange rate.

22. Bott notifies the client by e-mail that it has sent the letter before action to the airline and informs her of the relevant timeframes, including next steps depending on whether the airline responds and, if so, whether it responds affirmatively or negatively. If the airline accepts the claim and makes payment without dispute, Bott simply checks that the right amount has been received, deducts its fees and pays the balance to the client from its client account.

23. If the airline does not respond or disputes the claim, Bott considers the merits of issuing court proceedings. If it decides that a claim is merited, Bott prepares pleadings, issues a claim, considers any defence and prepares written submissions for any hearing, usually without input from counsel. Counsel is normally only instructed for final hearings.

24. In relation to claims against Ryanair, Bott sends its letter before action to Ryanair's head office in Dublin for the attention of Ms Carol-Anne Bergin, Customer Service Solicitor. At the time of Mr Benson's first witness statement, Bott was handling approximately 1,100 flight delay compensation claims against Ryanair per month, with total claims then outstanding for approximately 6,500 clients.

25. According to Mr Benson, Ryanair initially dealt directly with Bott in respect of passenger claims notified to Ryanair by issuance of a letter before action, following the procedure I have described. Where claims were admitted, Ryanair would pay the compensation directly into Bott's client account as requested by Bott. Ryanair often made aggregate payments in relation to multiple claims, but by the beginning of 2016, according to Mr Benson, approximately £370,000 due in respect of multiple claims remained unpaid by Ryanair.

26. On 2 February 2016 Bott served Ryanair with a statutory demand in respect of this debt, which Ryanair paid on 17 February 2016. Thereafter, however, Ryanair stopped dealing directly with Bott on outstanding claims and instead began to communicate directly with Bott's clients and to pay compensation directly to them.

27. According to Mr Benson, this caused problems for Bott, as Bott no longer knew whether Ryanair was disputing or had paid a claim. In relation to claims that had been paid, Bott no longer knew whether the claim had been paid in the correct amount.

28. Once Ryanair stopped responding directly to Bott's letters before action, Bott found itself issuing proceedings against Ryanair in accordance with its agreement with a client, as outlined above. In some cases it would then discover post-issue that Ryanair had settled the claim or had responded directly to the client disputing the claim on the merits, without Bott having had the opportunity to consider Ryanair's arguments (or even being aware of them) before Bott had issued proceedings.

29. A further problem for Bott is that when Ryanair pays Bott's client directly, Bott loses the opportunity to deduct its fees from the compensation before it is

paid to the client. Bott, therefore, must pursue the client directly for payment. Its experience has been that only about 70 per cent of clients pay in response to a direct request.

30. Mr Benson's evidence was that, given the relatively small size of its fees for these claims, which as I have already noted average about £95 per claim, it is not "administratively or financially feasible" to pursue enforcement proceedings against non-paying clients, and it is damaging to Bott's reputation and goodwill with its clients to be pursuing a client for a sum relating to compensation she has already received and may already have spent. In his first witness statement dated 27 October 2016, Mr Benson estimated that Bott had incurred losses of at least £30,000 worth of fees in relation to matters where Bott was aware, usually from the client, that the matter had been settled.

31. Bott submits that Ryanair's dealing directly with a client in relation to a claim initiated by Bott on the client's behalf, including making payment of any compensation directly to the client, damages Bott's business model, goodwill and revenues.

32. On 22 September 2016 Rosenblatt, solicitors for Bott, sent a letter before action to Ryanair expressly notifying Ryanair of its lien over flight delay compensation monies owed by Ryanair to Bott's clients and requesting that Ryanair, upon receipt of a letter before action from Bott in relation to a flight delay compensation claim by a client, undertake:

    i) to preserve Bott's lien over the proceeds of the claim, if successful, in accordance with the judgment of the Court of Appeal in *Khans Solicitors (a firm) v Chifuntwe* [2013] EWCA Civ 481 (CA), [2014] 1 WLR 1185;

    ii) not to communicate directly with the client, seek to negotiate a compromise with the client or make any payment directly to the client; and

    iii) in each case where liability for the claim is admitted, determined in the client's favour by court proceedings or arises upon a settlement, to pay any sum due to the client directly to Bott's client account, as directed.

33. On 29 September 2016, Ince & Co, then solicitors for Ryanair, replied on behalf of Ryanair refusing to provide the undertakings on various grounds. In particular, Ince & Co disputed that the principles in the *Khans* case applied to Bott's flight delay compensation claims.

34. According to Ms Murthi, in February 2016 Ryanair instituted a policy of dealing directly with customers making claims for denied boarding, cancellation or flight delay ("flight disruption claims") under the Regulation. That timing is consistent with Mr Benson's evidence, summarised at [26] above.

35. Ms Murthi referred in her evidence to an initiative launched by Ryanair in March 2014, the "Always Getting Better" programme ("the AGB

programme"), the purpose of which was to improve the experience of customers dealing with Ryanair. Under the programme Ryanair made a number of changes, including the introduction of a new user-friendly website. Under the AGB programme, Ryanair introduced a new process permitting customers to claim flight disruption compensation using an on-line form. I was taken to a screen-shot of the page, which is headed "EU261 Disruption Compensation", the text and fields of which are as follows:

> "You may be eligible to claim monetary compensation if your flight was delayed more than 3 hours on arrival or cancelled within 14 days of departure. However, if the delay or cancellation was unexpected and therefore outside of our control (extraordinary circumstances) no monetary compensation is due under EU Regulation 261/2004. For validation please provide us with the last 4 digits of your credit/debit card number used to make your booking.
>
> First Name [Field]
>
> Last Name [Field]
>
> Email [Field]
>
> Reservation Number [Field]
>
> Last 4 digits of card [Field]
>
> Comment [Field]
>
> Attach Files [Select Files button]
>
> [Submit button]
>
> Please ensure you upload all documentation to support your claim, this includes your bank details (Bank Name/Account Holder/Account Number/IBAN/Swift). Failure to supply this information at the point of application will result in significant delays in processing your payment."

36. Under the Reservation Number field is a link marked "What is this", presumably leading to text explaining how a customer can find and identify their reservation number. By clicking on the Select Files button, a customer is able to upload documentation supporting their claim. Under the button is text indicating that the following file formats are supported: GIF, JPG, PNG, DOCX, XLSX, PPTX, TXT, PDF. In other words, documents may be uploaded in any of these formats. The customer submits their claim by clicking on the Submit button.

37. According to Ms Murthi, this form can be accessed from several different pages on the Ryanair website. In addition to the on-line form, Ryanair also accepts compensation claims submitted by post or e-mail. She noted in her

evidence that the CAA provides a template letter on its website for this purpose, which was exhibited to her second witness statement.

38. Ryanair does not require claims to be submitted in a specific format, provided that the claim identifies the name(s) of the passenger(s), the flight number, and the date and route of the flight. If Ryanair receives a claim that does not include sufficient information, its standard practice is to reply to the customer with a letter setting out what additional information is required.

39. In addition to developing the on-line form, Ryanair took steps to ensure that customers had information regarding their rights under the Regulation, in compliance with article 14 of the Regulation. According to Ms Murthi, there is a notice on its website setting out passenger rights under the Regulation headed "Notice of your rights in the event of denied boarding, flight delay or flight cancellation", with a link to text providing further information. Ms Murthi also said that where there is a disruption to a flight (where it is cancelled, delayed or diverted), Ryanair automatically notifies its customers by text and e-mail of their rights. A notice of passenger rights under the Regulation in relation to flight delays, cancellation and denied boarding is normally also displayed at Ryanair check-in desks, and leaflets containing a notice of those rights are also available from Ryanair check-in desks.

40. According to Ms Murthi, Ryanair introduced a policy under which passengers entitled to compensation under the Regulation would receive the whole of that compensation within 28 days of submission of a claim on-line. In practice, she says, claims submitted via the on-line form are dealt with more quickly than that. Once a claim has been submitted, there is an immediate automatic acknowledgement by way of e-mail, if the customer has provided an e-mail address. The claim is assessed by Ryanair, and Ryanair provides its substantive response to the claim to the same e-mail address within 24 to 48 hours of submission. If the customer has not provided an e-mail address, Ryanair sends its substantive response by post within 24 to 48 hours of submission. Where the claim is valid, Ryanair makes payment, usually by cheque, within six working days of submission of the claim. For UK customers, Ryanair prefers to pay by cheque, as it is easier and faster to post a cheque than chase for the customer's bank details if they have not already been provided. Ryanair sometimes pays by crediting the bank card upon which the relevant booking was made, but only where the card is still valid and matches the name of the customer making the claim.

41. Ms Murthi noted that Ryanair has committed to these response and payment times in part 7 of its Passenger Charter, a copy of the Passenger Charter having been exhibited to her witness statement of 13 April 2017. Although Ms Murthi only commented in her evidence on the response and payment times observed by Ryanair in relation to claims submitted via the on-line form, the Passenger Charter commitment appears to relate to all claims, however received.

42. Notwithstanding the introduction of the on-line form, Ryanair noticed a sharp increase in late 2015 and early 2016 in the number of claims being submitted

to it by "claims management companies and claimant solicitors". Ms Murthi indicated that Ryanair considered this an unwelcome development, as a result of which Ryanair introduced the policy, to which I have already referred, of dealing directly with customers in relation to flight disruption compensation claims.

43. According to Ms Murthi, Ryanair's reasons for seeking to avoid dealing with third parties making flight disruption compensation claims on behalf of their customers include the following:

    i) It is better for Ryanair's relationships with its customers to deal with them directly.

    ii) The involvement of third party firms in flight disruption compensation claims:

        a) raises reputational risk for Ryanair as Ryanair tends to be blamed if a dispute arises between the customer and the third party, especially as many customers wrongly assume that there is some form of relationship between Ryanair and some of these third party firms;

        b) contributes "hugely" to Ryanair's administrative burden in processing the claims and unnecessarily complicates and delays the resolution of complaints; and

        c) introduces an adversarial element into the relationship between Ryanair and its customers where, in the majority of claims, there is no dispute as to liability.

44. Ms Murthi's second witness statement sets out in some detail difficulties allegedly encountered by Ryanair in handling claims initiated by CMCs and other third parties, and she makes a number of complaints about their practices, referring mostly to firms other than Bott. For present purposes it is sufficient simply to allude to those general difficulties as the background for its decision in February 2016 to implement a policy of dealing directly with customers in relation to claims under the Regulation.

45. In implementing its policy to deal directly with customers, Ryanair introduced the following practices for all claims made by third parties, including Bott:

    i) Where Ryanair receives a claim from a third party and determines that it is valid, Ryanair responds directly to the customer offering payment of the relevant amount of compensation. It will make the compensation payment directly by cheque to the passenger or, in some cases, to the credit card that was used to make the booking, or it will request bank details in order to make an on-line transfer of funds. The third party firm is copied into that correspondence and is also sent a letter separately notifying it of Ryanair's direct correspondence with the firm's client. I was shown Ryanair's template for the letter to its

customer in such circumstances and the template for the letter it uses to notify the firm.

ii) The template letter to the customer includes as its final paragraph:

> "If you have engaged a representative in this matter, they have been copied to [sic] this letter to inform them of this payment. You should instruct them to immediately discontinue any legal proceedings which are ongoing."

iii) The substantive part of the template letter to the third party firm reads in its entirety as follows:

> "We refer to your letter dated <enter date of CMC letter>
>
> We confirm that the EU 261 compensation has already been paid in full directly to <Customer Names> in final settlement of this claim. Should you require further information please contact your client directly."

iv) I was also shown a template letter to a customer in relation to a claim where Ryanair has determined that the customer's claim is not valid. The template has alternative provisions for delay claims and cancellation claims. It indicates, in either case, that the claim was invalid because the relevant delay or cancellation, as the case may be, "was unexpected and therefore outside Ryanair's control". There are additional provisions dealing with cancellation that are not relevant for our purposes. According to Ms Murthi, a third party firm involved in such a claim would be copied on the letter to the customer and sent a separate letter confirming that "EU261 compensation is not applicable in this case", referring the firm to the firm's client for further information.

v) Ms Murthi also noted that once proceedings are issued, Ryanair does not seek to contact its customer directly. It retains the law firm Ince & Co to handle flight disruption compensation litigation (or did so at the time of Ms Murthi's second witness statement). In a case involving Bott representing the customer, Ince & Co would communicate directly with Bott, for example, in relation to the service of court documents.

vi) In a case where a claimant represented by Bott obtains a judgment against Ryanair using the English small claims track procedure, the final order specifies that payment is to be made to Bott, and Ryanair therefore makes payment to Bott.

vii) In a case where the claim is made using the EU Small Claims Procedure, the final order does not specify to whom payment should be made. Ryanair therefore makes its payment directly to the customer and writes to the customer to confirm that the payment has been made. I was shown a copy of Ryanair's template letter for use in such a case. Bott would be copied on that letter, if it were used, although it appears

from Mr Benson's evidence that Bott normally uses the English small claims track procedure.

46. Ryanair amended its General Terms and Conditions of Carriage ("GTCC") to reflect its policy of dealing directly with customers in relation to flight disruption claims. Article 15 (Claims Procedure) of the GTCC includes Article 15.2 (EU261 Compensation Claims), which has been in force since 26 July 2016 and which reads in its entirety as follows:

> "15.2 EU261 Compensation Claims
>
> 15.2.1 This Article applies to claims for compensation under EU Regulation 261/2004.
>
> 15.2.2 Passengers must submit claims directly to Ryanair and allow Ryanair 28 days or such time as prescribed by applicable law (whichever is the lesser) to respond directly to them before engaging third parties to claim on their behalf. Claims may be submitted **here**
>
> 15.2.3 Ryanair will not process claims submitted by a third party if the passenger concerned has not submitted the claim directly to Ryanair and allowed Ryanair time to respond, in accordance with Article 15.2.2 above.
>
> 15.2.4 Articles 15.2.2 and 15.2.3 above will not apply to passengers who do not have the capacity to submit claims themselves. The legal guardian of a passenger who lacks capacity may submit a claim to Ryanair on their behalf. Ryanair may request evidence that the legal guardian has authority to submit a claim on the passenger's behalf.
>
> 15.2.5 A passenger may submit a claim to Ryanair on behalf of other passengers on the same booking. Ryanair may request evidence that the passenger has the consent of other passengers on the booking to submit a claim on their behalf.
>
> 15.2.6 In any event, save for Article 15.2.4 and 15.2.5 above, Ryanair will not process claims submitted by a third party unless the claim is accompanied by appropriate documentation duly evidencing the authority of the third party to act on behalf of the passenger.
>
> 15.2.7 Passengers are not prohibited by this clause from consulting legal or other third party advisers before submitting their claim directly to Ryanair.
>
> 15.2.8 In accordance with Ryanair's procedures, any payment or refund will be made to the payment card used to make the booking or to the bank account of a passenger on the booking.

> Ryanair may request evidence that the bank account is held by the passenger concerned."

The word "here" in Article 15.2.2 contains a hyperlink to the on-line claim submission form I have described in [35] to [36] above.

47. Ms Murthi stressed in her evidence that these terms make clear that Ryanair will deal with any third party firm engaged by a customer, provided that the customer has first attempted to deal directly with Ryanair and either has received no response within 28 days or has been unsuccessful.

48. In a case where a claim is submitted by a third party firm without the customer having complied initially with Article 15.2.2, then, as noted in Article 15.2.3, Ryanair will not process the claim until the client has complied with Article 15.2.2. In such cases, Ryanair sends a letter to the third party firm requesting that the firm advise the customer to comply with Article 15.2.2. Several examples of such letters sent by Ryanair to Bott were exhibited by Mr Benson with his witness statement of 17 February 2017. In each case, the letter:

    i) confirms that the Ryanair customer referred to in the letter has a valid claim under the Regulation;

    ii) notes that the booking was made after 26 July 2016 and that therefore Articles 15.2.2 and 15.2.8 apply, setting out the text of each of these provisions;

    iii) requests that Bott advise its client to submit the claim directly in accordance with Article 15.2.2; and

    iv) threatens to seek costs against Bott if it ignores the letter and brings "unnecessary proceedings" against Ryanair and reserves the right to pursue Bott directly for inducing a Ryanair customer to breach the contract between Ryanair and its customer in relation to Article 15.2 of the GTCCs.

49. As further justification for Ryanair's commercial policy of dealing directly with customers in relation to flight disruption claims before proceedings have been issued, Ms Murthi referred in her evidence to a page on the CAA's website headed "Claiming for costs and compensation", which provides information on how to claim compensation following a flight delay or other problem. A screen print of the page was attached as an exhibit to Ms Murthi's witness statement of 3 February 2017. On that page under the heading "Contact your airline directly" the following text appears:

> "If you believe you have a case, you should contact your airline directly.
>
> Many airlines will have a claims procedure for you to follow. Often, a standard claim form is available. If so, using it will

> ensure you provide all the information the airline needs to process your claim.
>
> You can usually find the best way to put in a claim by calling the airline or checking its website.
>
> If no standard procedure is available, it may be best to make initial contact by email, so you have a record of the communication. You can also send a letter – always keep a copy, if you decide to do this.
>
> Your airline will probably need detailed information to process your claim.
>
> > **Find out how to write a good claim**"

50. The words "Find out how to write a good claim" contain a hyperlink to another page on the CAA website headed "Tips on complaining". On that page under the heading "Use your airline's preferred method", the following text appears:

> "Many airlines have a standard procedure for dealing with claims. If so, use it. You might have to send a letter to a particular address or fill in a standard form. Check the airline's website for instructions, or call them to find out what to do.
>
> If no standard procedure is available, it may be quickest to make initial contact by email. You can also send a letter."

51. Ms Murthi also referred to an Information Notice to Air Passengers published by the European Commission on 9 March 2017. The purpose of the Information Notice is stated to be "to provide passengers with information on the EU legal background to the activities of claim agencies in the field of air passenger rights". A "claim agency" is defined to be "a business that offers management services of claims for compensation under Regulation 261/2004 … to the public. Solicitors/lawyers acting as claim agencies are also covered by the present notice." So, the activities of Bott are within the scope of the Information Notice.

52. In particular, Ms Murthi referred to a sentence (in italics below) from the following passage of the Information Notice:

> "Passengers are reminded that under Article 16 of the Regulation, the national enforcement bodies are responsible for enforcing the Regulation and that "Alternative Dispute Resolution" procedures (ADR) can contribute to achieving a mutually satisfactory solution to disputes between passengers and operating air carriers. Both types of procedures are embodied in current EU legislation and can be used by passengers to make sure that their rights are respected. *In any case, passengers should always seek to contact the operating*

> *carrier before considering other means to seek redress for their rights.* [emphasis added]
>
> If passengers choose to use claim agencies, they should be aware that a number of allegations of incorrect practices and misbehaviour by some claim agencies have been brought to the attention of the Commission. In the first instance, possible infringements of these rules are to be assessed by the competent national authorities on a case-by-case basis, taking all relevant circumstances into account. The Commission's duty is to ensure that Member States supervise the activities of claim agencies to check if their activities are performed in accordance with applicable EU rules on consumer protection, marketing and data protection law.
>
> In order to protect passengers and help them to take an informed decision about pursuing their claims for compensation under the Regulation, the Commission would like to draw attention in the attached note to some of the key legal obligations of claim agencies to which passengers should pay special attention.
>
> This notice is without prejudice to other obligations imposed upon claim agencies stemming from national law."

53. The remainder of the Information Notice makes observations regarding correct conduct by claims agencies.

54. Ms Murthi stated that in a case where a customer has directly submitted its claim, via the on-line portal or by letter or e-mail, and Ryanair has concluded that compensation is not payable under the Regulation, it sends a letter to the customer to that effect, stating that the claim is not accepted and setting out briefly its reasons. The letter also advises the customer that if she is unhappy with the decision, she can take her complaint to Airline Dispute Resolution, a scheme operated by the Retail Ombudsman, which is impartial and independent of Ryanair. The letter notes that Ryanair is a member of the scheme and has agreed to be bound by decisions made under the scheme. It then sets out contact details in the form of a postal address, e-mail address and website URL for the scheme.

*The issues*

55. The issues that I need to decide in order to determine this claim are as follows:

    i) In a case where Ryanair has received from Bott a flight delay compensation claim under the Regulation made on behalf a client of Bott and where Ryanair is therefore on notice of the claim:

        a) is Ryanair obliged to refrain from communicating directly with the client in respect of that claim? ("the Direct Communication Issue")

b) is Ryanair obliged to pay compensation directly to Bott? ("the Direct Payment Issue")

c) is Ryanair obliged to indemnify Bott in respect of fees where it has paid compensation directly to Bott's client while on notice of the claim and where Bott has not recovered its fees in respect of the claim from the client? ("the Indemnity Issue")

ii) Is Article 15.2 of the GTCC enforceable, having regard to Article 15.1 of the Regulation and to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ("the Unfair Contract Terms Directive")? ("the Article 15.2 Issue")

56. In relation to the Article 15.2 Issue, Ryanair has indicated that, although Article 2.4 of the GTCC provides that Irish law shall govern the GTCC, it is content for the court to consider the Article 15.2 Issue on the basis that it involves a question of EU, rather than English or Irish, law. Ryanair notes that the court may do so in general terms, notwithstanding that Bott is not a party to the GTCC and no passenger is before the court. Bott considers that the issue is appropriate to determine given that Ryanair seeks to rely on Article 15.2 of the GTCC as an answer to Bott's claims for relief in respect of the Direct Dealing Issue and the Direct Payment Issue.

*The law in relation to equitable intervention to protect a solicitor's lien*

57. In relation to the Direct Dealing Issue, the Direct Payment Issue and the Indemnity Issue, Bott is seeking the intervention of the court to protect its interest in fees generated by its business handling flight delay compensation claims on behalf of passengers of Ryanair.

58. It is a longstanding principle of English law that a solicitor has a lien for her own fees over funds she holds on a client's account. Where relevant funds have not been received by the solicitor but instead directly by the client, the solicitor does not have the benefit of possession to protect her interest. The law has developed other principles to provide that protection in appropriate circumstances. The key question in this case is whether the circumstances outlined by Bott fall within those rules and whether, therefore, Bott is entitled to the court's equitable intervention to protect its interest in recovering from its clients its fees for acting in relation to flight delay compensation claims.

59. Bott relies principally on two recent cases, the *Khans* case, to which I have already referred in [32], and *Gavin Edmondson Solicitors Ltd v Haven Insurance Co Ltd* [2015] EWCA Civ 1230, [2016] 1 WLR 1385 (CA).

60. The facts of the *Khans* case are summarised in some detail in the first nine paragraphs of the judgment of Sir Stephen Sedley in that case. I attempt as brief a summary as possible. Khans Solicitors ("Khans") were instructed by Mr Chifuntwe to bring a claim for judicial review against the Home Secretary. He agreed to pay £1,500 upfront on account of their fees. Khans instructed counsel and issued proceedings. The Home Secretary settled the claim and

agreed to pay Mr Chifuntwe's costs. Khans submitted a bill for just under £9,500, and in July 2011 the Home Office offered £6,000 to settle it.

61. On 2 August 2011, Mr Chifuntwe wrote to the Treasury Solicitor, with a copy to Khans, withdrawing his instructions to his solicitors and to counsel with immediate effect, accepting the Treasury Solicitor's offer of £6,000 in settlement and requiring those monies to be paid directly to him. Khans wrote on 4 August to Mr Chifuntwe warning him not to interfere with the recovery of their costs and on 8 August to the Treasury Solicitor, confirming a telephone conversation earlier that day, setting out their concerns about Mr Chifuntwe's actions and motivation, asserting their claim to payment of their costs and asking the Treasury Solicitor to wait for five working days while they obtained counsel's advice.

62. After further correspondence and judicial review proceedings being initiated by Khans against the Home Office on 21 September, which were struck out by Thirlwall J on 19 October, the Treasury Solicitor paid Mr Chifuntwe the agreed sum of £6,000, after which he disappeared, as Khans had feared he would, without paying the costs to Khans, less the £1,500 he had paid on account. Khans then brought proceedings under CPR Part 8 seeking a declaration that Mr Chifuntwe's compromise of Khans' original costs claim of £9.500 was not valid and for a charge or lien upon the unpaid and unassessed costs. The Home Secretary successfully defended the action before the costs judge, Master Campbell, and before Mackay J on appeal on the basis that there was no proof that she had colluded with Mr Chifuntwe to cheat Khans.

63. After a detailed review of the decided cases, beginning with the decision of Lord Mansfield in *Welsh v Hole* (1779) 1 Doug KB 238, Sir Stephen Sedley (with whom Ryder and Rix LJJ agreed) set out his summary of the key principle at [33] as follows:

> "33. In our judgment, the law is today (and, in our view, has been for fully two centuries) that the court will intervene to protect a solicitor's claim on funds recovered or due to be recovered by a client or former client if (a) the paying party is colluding with the client to cheat the solicitor of his fees, or (b) the paying party is on notice that the other party's solicitor has a claim on the funds for outstanding fees. The form of protection ought to be preventive but may in a proper case take the form of dual payment."

64. Applying this principle in the *Khans* case, the Court of Appeal concluded that Mr Chifuntwe's compromise of the costs with the Home Secretary was binding, but that the Home Secretary was liable to pay the compromised sum of £6,000 to Khans, less a deduction of £1,500 for the amount paid by Mr Chifuntwe on account. In other words, the Treasury Solicitor's payment of £6,000 to Mr Chifuntwe was not a good discharge of Khans' net claim for £4,500. Accordingly, the Treasury Solicitor was required to pay that amount again. The appeal was therefore, to that extent, upheld.

65. In the *Gavin Edmondson* case, Gavin Edmondson Solicitors Ltd ("Edmondson") were appealing the order of HHJ Jarman QC dated 20 August 2014 dismissing Edmondson's claim against Haven Insurance Co Ltd ("Haven"). The claim related to Haven's settlement of personal injury claims arising from road traffic accidents directly with six clients of Edmondson, in cases where Edmondson had concluded conditional fee agreements with its clients. The effect of Haven's direct settlement with Edmondson's clients was that Edmondson was deprived of its costs in each case.

66. The underlying road traffic accident claims in that case fell within the Pre-action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ("the Protocol"). The Protocol came into effect on 30 April 2010 and applies where a claim for damages arises from a road traffic accident, the claim includes damages in respect of personal injury and the claimant values the claim, on a full liability basis including pecuniary losses but excluding interest, at not more than a specified limit, which was £10,000 in relation to the claims considered in the *Gavin Edmondson* case and is £25,000 in relation to accidents occurring on or after 31 July 2013.

67. The Protocol sets out the behaviour expected by the court prior to the start of proceedings in relation to a claim covered by the Protocol, with possible cost consequences if the Protocol is not followed. An important feature of the Protocol is that parties, lawyers and insurers are expected to send information to one another electronically using an on-line portal ("the Portal") that can be accessed at the internet address www.claimsportal.org.uk. The operation of the Protocol and of the Portal is described in some detail by Lloyd Jones LJ in his judgment in the *Gavin Edmondson* case at [4] to [9].

68. The aim of the Protocol set out in paragraph 3.1 (which has not changed from the version before the court in the *Gavin Edmondson* case):

> "The aim of this Protocol is to ensure that (1) the defendant pays damages and costs using the process set out in the Protocol without the need for the claimant to start proceedings; (2) damages are paid within a reasonable time; and (3) the claimant's legal representative receives the fixed costs at the end of each stage in this Protocol."

69. The Protocol creates a process that is divided into three Stages, providing for fixed costs to be paid in relation to each Stage, and CPR Part 36 and CPR Part 45 have been amended to take account of it. Paragraph 7.37 of the Protocol as it was before the Court of Appeal (paragraph 7.44 of the current version) provides that any offer to settle made at any stage will automatically include and cannot exclude the Stage 2 fixed costs, an agreement in principle to pay disbursements and a success fee. Paragraph 7.40 of the Protocol as it was before the Court of Appeal (paragraph 7.47 of the current version) provides that, subject to certain exceptions, the defendant must on settlement pay within a specified period the agreed damages (less certain specified deductions), any unpaid Stage 1 fixed costs, the Stage 2 fixed costs, the relevant disbursements allowed and the success fee.

70. In relation to each of the claims settled directly by Haven, Edmondson had been authorised by its client, the underlying claimant, to commence the Protocol process on her behalf and Edmondson had done so by entering the prescribed information on the Portal. Haven, as the insurer of the defendants in relation to each underlying claim, had voluntarily entered the Protocol by posting an acknowledgement on the Portal. The Court of Appeal noted that neither Edmondson's clients nor Haven had formally exited the Protocol process before Haven entered into its settlement agreements with each of Edmondson's clients, and it found at [32] that:

> "In each case Haven acted with the intention of defeating Edmondson's entitlement under the scheme [set out in the Protocol], of which Haven had notice at a time when the claim remained within the scheme."

71. Lloyd Jones LJ (with whom Elias and Laws LJJ agreed) concluded that Haven had express notice of Edmondson's interest in receiving its fixed costs and other sums due under the Protocol scheme by virtue of its knowledge of and participation in the Protocol and connected use of the Portal. In passing, although he had decided that Haven had express notice, Lloyd Jones LJ doubted at [29] the submission made by Lord Marks, counsel for Haven, that implied notice would not be sufficient for the principle in the *Khans* case to apply:

> "I can see no reason in principle why implied notice should not be sufficient for the operation of the principle stated in the *Khans* case."

72. Applying the principle in the *Khans* case, the Court of Appeal in the *Gavin Edmondson* case concluded that the court should intervene to protect Edmondson's claim on the funds recovered by its clients in relation to the underlying claims, being those sums payable under paragraphs 7.37 and 7.40 of the Protocol (as it then was), as described above. This was despite the fact that the Court of Appeal had concluded (at [18]) that Edmondson had no recourse against its clients for fees under the terms of the retainer it had agreed with each client, and Edmondson was therefore limited to what it could recover from the other side, although the Court of Appeal also noted (at [22]) that Edmondson's agreement with its client included its having the right to take action in the name of the client to enforce any right to damages or charges owed to the client by the defendant under any judgment, order or agreement.

73. Bott's position is that it gave express notice of its lien to Ryanair in its letter before action dated 22 September 2016, to which I have referred in [32] above. Bott's claim for an indemnity, in its claim form as amended pursuant to the order of Chief Master Marsh dated 28 March 2017, is limited to its fees in respect of any flight delay compensation claims submitted by Bott to Ryanair on or after 22 September 2016 where the fees have not been recovered by Bott from the relevant client after the client has been invoiced and sent three reminders to pay by e-mail on or about 14, 28 and 35 days after the original invoice. Bott does not concede, however, that Ryanair did not

have at least implied notice of Bott's lien in respect of fees invoiced before 22 September 2016, given Bott's high market profile in relation to airline flight delay compensation claims.

74. At the time of Ryanair's unsuccessful application to have this claim transferred to the CPR Part 7 procedure, Ms Murthi, in the witness statement she provided on that occasion, contended that the protective principle in the *Khans* and *Gavin Edmondson* cases only applies where substantive legal work has been involved and where this work has led to settlement. This did not apply to the flight delay compensation claims handled by Bott, which were processed automatically, involved no substantive legal work, and were not causative of settlement. Anticipating this argument in the claimant's skeleton for the trial, Mr George Bompas QC, counsel for Bott, summarised the protective principle in the *Khans* and *Gavin Edmondson* cases as follows:

> "The [protective] principle applies … where the solicitor has become entitled, as a consequence of action undertaken on behalf of the client, to charge the client for fees and expenses, and there is a recovery of property or money for or by the client. There is no qualitative investigation of the action undertaken on behalf of the client which a paying party can insist upon. The relevant principle applies so as to protect an interest arising out of the fact of the relevant parties' relationship to one another as solicitor and client (not out of qualitative factors specific to the particular engagement by a client of a solicitor), and equity does not confine its assistance in the way apparently contended for by the Defendant."

75. Mr Bompas submitted that, having given express notice of its lien, Bott is entitled to the limited indemnity it is seeking under the principle of equitable intervention set out in the *Khans* and *Gavin Edmondson* cases.

76. Ryanair disputes that the principle applies to protect Bott's interest in recovering its fees in relation to flight delay compensation claims where no legal proceedings have been commenced. Mr Brian Kennelly QC, counsel for Ryanair, submitted that the principle applies only to protect a solicitor's claim to fees on sums representing the fruit of litigation or arbitration. This is distinct from the common law lien that solicitors have in respect of client property in their possession, which merely gives a solicitor the right to retain property until she is paid.

77. To distinguish between the common law lien and the equitable lien, Mr Kennelly cited the explanation of Lord Goddard CJ in *James Bibby Ltd v Woods and Howard* [1949] 2 KB 449 (KB), at 453-454:

> "A solicitor has a lien on papers of his clients which are in his possession; he can refuse to give up those papers so long as his costs are not paid. He is also commonly said to have a lien on a sum of money which comes into existence owing to his exertions, but in that case the term 'lien' is really a misnomer.

> The solicitor's right in that case is not strictly and accurately a lien because it has not the characteristics of a lien. That was made clear by Cockburn C.J. in *Mercer v. Graves* [(1872) LR 7 QB 499, 503], in which he said: 'There is no such thing as a lien except upon something of which you have possession …. Although we talk of an attorney having a lien upon a judgment, it is in fact only a claim or right to ask for the intervention of the court for his protection, when, having obtained judgment for his client, he finds there is a probability of the client depriving him of his costs.' That passage was cited by Lord Merrivale P. in *Mason v. Mason* [[1933] P 199, 205]. When that case went to the Court of Appeal, Lord Hanworth M.R., referring to *Mercer v. Graves*, said [[1933] P 199, 214]: 'The nature of a solicitor's lien is pointed out in the course of that case. It is merely a right to claim the equitable interference of the court, who may order that the judgment obtained by the client do stand as security for her costs and that payment of such an amount as will cover them be made to the solicitor in the first instance. That lien is one which prevails over a fund which is in sight; the right is one which, so to speak, cannot prevail at large.' "

78. *Snell's Equity* (33rd edition) at para 44-023 notes that the solicitor's equitable lien has in some cases been referred to as a "common law lien", citing *Re Born* [1900] 2 Ch 433, at 435, and *Re Meter Cabs Ltd* [1911] 2 Ch 557, but:

> "it is more properly regarded as a right to apply to the court for a charge, or as an equitable lien, because it does not depend on the fund being in the possession of the solicitor."

79. Mr Kennelly submitted that it is well-established that no equitable lien arises in favour of a solicitor with respect to the fruits of a mere negotiation without litigation, citing *Meguerditchian v Lightbound* [1917] 2 KB 298 (CA) (per Swinden Eady LJ), at 306-307, approving the reasons of Rowlatt J at first instance, [1917] 1 KB 297, at 303 (KB).

80. In the *Meguerditchian* case, the plaintiff was the syndic or receiver in bankruptcy, appointed in Egyptian bankruptcy proceedings, for a Mr Zevurdachi. He was one of three originally appointed, but the only one remaining by the time of the trial. The defendants were a firm of solicitors who, acting on instructions from the plaintiff, had successfully recovered some valuable documents from the representatives of the estate of a Mr Bergheim. The documents related to concessions by the Ottoman Government of certain mines in Northern Syria that had been granted to Mr Zevurdachi and entrusted by Mr Zevurdachi to Mr Bergheim under the terms of an agreement entered into in September 1907 relating to the development of the mines. Mr Bergheim failed to fulfil his side of the agreement, but refused to return the documents to Mr Zevurdachi.

81. Mr Zevurdachi obtained a substantial default judgment against Mr Bergheim in Egypt but was unable to enforce it in Egypt as Mr Bergheim had no assets there, nor was he able to recover the documents from Mr Bergheim. Accordingly, in 1910 he instructed the defendants to take proceedings in England. The defendants spent several months, during which they incurred substantial costs, in gathering evidence, obtaining counsel's advice and preparing a writ. At some point, before the writ was issued, Mr Zevurdachi was made bankrupt in Egypt and shortly afterwards was arrested and then killed himself. Around this time, Bergheim also died in an accident.

82. The syndics looked into the matter of the concessions and ultimately in February 1912 instructed the defendants to take proceedings against Bergheim's executors seeking substantial damages and recovery of the documents. Following negotiations with the representatives of the executors, the syndics agreed to pay £300 to the executors in exchange for their surrendering all relevant documents they had, in particular the documents evidencing the concessions. The defendants obtained the documents but refused to deliver them to the plaintiff claiming a lien not only to secure their costs for acting for the syndics (which were relatively modest, were admitted by the plaintiff and were paid into court) but also their costs for acting for Mr Zevurdachi. The sole issue in the case was whether the defendants had such a lien. Rowlatt J said no, and the Court of Appeal agreed.

83. The key passage in the judgment of Rowlatt J ([1915] 1 KB 297, at 303) is:

> "I can find no authority for a lien of this character upon the fruits of a mere negotiation conducted by a solicitor, nor do I think it can be supported on principle. It is true that long before there was any statutory provision for the making of charging orders on property recovered or preserved the Courts had interfered to prevent suitors receiving the fruits of judgments recovered in the Courts, or of the compromise of litigation initiated in the Courts, without paying the attorneys or solicitors to whose efforts that result was due, and in that sense it may be said that there was a lien for costs in such cases at common law. If the principle on which this so-called lien rested was that a piece of business entrusted to a legal practitioner to carry through was to be likened to a chattel placed in the possession of a craftsman for the purpose of his bestowing labour upon it, it might be argued that such a principle was wide enough to cover the present case. If that was the principle, it rested upon a most fanciful analogy. But I do not think that was the principle. The so-called lien was a charge enforced by the Court in the cause, and its existence depended on the power of the Court to make the other party pay again if he paid direct to his adversary with notice of the attorney's claim: see for example *Ormerod v Tate* [(1801) 1 East 464]. It did not rest, like a true lien, on possession at all."

84. The *Meguerditchian* case is cited in *Snell's Equity* (33rd edition), at para 44-023, in support of the proposition that "[the equitable] lien is … only available where the property has been recovered by the solicitor's exertions in litigation or arbitration". *Ormerod v Tate* was itself a case in which the equitable lien was found to apply to an award made in arbitration rather than in respect of a judgment. *Re Meter Cabs Ltd* [1911] 2 Ch 557 (Ch) is another.

85. Mr Bompas's response to this point was to note that, notwithstanding the use made of that authority by *Snell's Equity*, the *Meguerditchian* case concerned a solicitor's common law lien, arising in relation to a client's property in the possession of the solicitor, rather than the equitable lien, or right to the equitable intervention of the court, which is the subject matter of the *Khans* and *Gavin Edmondson* cases.

86. With respect to Mr Bompas, however, it seems clear from a review of the first instance and Court of Appeal judgments in the *Meguerditchian* case that Mr Leslie Scott, counsel for defendants, was not only seeking to establish that the defendants were entitled to a common law (as opposed to equitable) lien but also that they were entitled to the solicitor's lien for property recovered or, in other words, an equitable lien. This is clear in the passage from the first instance judgment of Rowlatt J that I have set out above, and also in the judgments of Swinfen Eady LJ ([[1917] 2 KB 298, at 306-307) and Bankes LJ ([[1917] 2 KB 298, at 308) in the Court of Appeal.

87. *Meguerditchian* is therefore clear authority, binding on me, that no solicitor's equitable lien arises on the fruits of a mere negotiation conducted by the solicitor on behalf of its client. There must be some form of proceedings by way of litigation or arbitration. All of the many cases dealing with a solicitor's equitable lien from *Turwin v Gibson* (1749) 3 Atk 720 (a decision of the Lord Chancellor) and *Welsh v Hole* (1779) 1 Doug KB 238 (a decision of Lord Mansfield) to the *Khans* case have involved some form of proceedings by way of litigation or arbitration.

88. A number of cases confirm that the solicitor's equitable lien applies to a compromise of a claim, as in the *Khans* case and, indeed, *Welsh v Hole*. See also *White v Pearce* (1849) 7 Hare 276, *Ross v Buxton* (1889) 42 ChD 190 (Ch) and *Re Margetson and Jones* [1897] 2 Ch 314 (Ch).

89. All of the cases confirm that, in addition to there being some form of proceedings, whether compromised or resulting in a judgment or award, there needs to be (i) a "fund in sight" (*Re Fuld* [1967] P 727, at 736 (per Scarman J); see also *Mason v Mason and Cottrell* [1933] P 199 (CA), at 214) that is (ii) obtained as a result of the efforts and activity of the solicitor seeking to establish the lien: see, for example, *Read v Dupper* (1795) 6 Durn & E 361; *Ormerod v Tate* (1801) 1 East 464; *Ross v Buxton* (1889) 42 ChD 190; *Re Margetson and Jones*; *Re Meter Cabs* [1911] 2 Ch 557 (Ch); and *Re Fuld*.

90. *Re Sullivan v Pearson, ex parte Morrison* (1868-69) LR 4 QB 153 is an example of a case in which the court acknowledged that the plaintiff's attorney had undertaken work on behalf of the plaintiff. There was nonetheless no

equitable lien in the attorney's favour as the plaintiff and defendant had entered into a compromise of the plaintiff's claim at a time when the outcome of further proceedings by the plaintiff against the defendant was doubtful. There was, therefore, no existing fund or security to which the lien could attach ((1868-69) LR 4 QB 153, at 158).

91. The nature of the "fund in sight" will vary according to the circumstances of the case, but may include costs payable by a party to the solicitor's client (as in the cases of *Re Fuld*, *Khans* and *Gavin Edmondson*) as well as a judgment for damages or award in arbitration in favour of the solicitor's client, as already noted.

92. As to whether there is a "fund in sight" in this case, Mr Bompas says that the flight delay compensation owed by Ryanair to Bott's clients under the Regulation in respect of claims made by Bott on their behalf clearly satisfies this requirement. As far as Bott having undertaken efforts and activity to recover those monies, Mr Bompas says that this is clearly established by the evidence of Mr Benson. Bott uses an automated process, but that does not mean that Bott undertakes no efforts or activity on behalf of the client. Bott must make an assessment of each claim, anticipate a possible defence, correspond with Ryanair and, if there is no satisfactory response by Ryanair, evaluate whether proceedings should be brought and, in appropriate cases, bring those proceedings. Even in a case where Ryanair accepts immediately that the claim is payable under the Regulation, Bott has undertaken sufficient efforts to justify its lien. The cases do not impose a qualitative assessment of the efforts made by the solicitor to justify her lien.

93. Ryanair's principal position is that no lien arises in this case, as flight delay compensation claims payable to Bott's clients are not funds obtained by Bott as the fruit of litigation, arbitration or other proceedings. But even if that is wrong, Mr Kennelly submits that no lien arises where little or no legal work has been undertaken by the solicitor, which is the case for the vast bulk of the claims made by Bott on behalf of its clients. Its automated mechanism is, in fact, designed to filter out claims that are likely to be unsuccessful. This is simply claims handling. It does not involve substantive legal work. This is why Bott is able, on Mr Benson's own evidence, to handle 1,100 claims for flight delay compensation per month with only one qualified solicitor, Mr Benson, involved in that work.

94. Ms Murthi's own estimate was that the flight delay compensation team at Bott was handling roughly 140 claims per day or 3,000 per month, an estimate that Ryanair says was not disputed by Bott.

95. According to Mr Benson's evidence, there are 24 staff dealing with flight delay compensation claims, but only one solicitor, himself, and two litigation executives. The remaining staff have no legal qualifications and are simply claims processors. In such circumstances, according to Mr Kennelly, Mr Benson's input in relation to the vast majority of the claims must be minimal.

96. On the question of whether the cases require a qualitative assessment of the nature of the solicitor's work, Mr Kennelly noted the observation of Lloyd Jones LJ in the *Gavin Edmondson* case (at [31]) that:

> "… Edmondson has an interest which equity can protect [in the fixed costs and other sums payable under the Protocol] and which is deserving of protection."

97. Mr Kennelly also referred to the following observations of Scarman J in *Re Fuld* (at 736G, 737B):

> "The cases stress that the solicitor's right is to the exercise by the court of an equitable jurisdiction. … The question … becomes one of the exercise of discretion in the particular circumstances of the case."

98. In this case, according to Mr Kennelly, given the nature of Bott's business and the way it is handled, the court should hesitate to exercise its equitable jurisdiction where little or no legal work has been undertaken by Bott.

99. In my view, the following principles emerge from the cases prior to the *Gavin Edmondson* case. In order for a solicitor to have an equitable lien in relation to property recovered or preserved:

i) there must be a fund in sight;

ii) recovered, preserved or established by the solicitor's efforts or activity;

iii) as a result of litigation or arbitration, including a compromise resulting from the pressure of litigation or arbitration between the solicitor's client and the other party;

iv) in which the solicitor has an interest that equity can protect and which is deserving of protection.

100. The question raised by the *Gavin Edmondson* case is whether the limitation to litigation or arbitration or a compromise resulting from the pressure of litigation or arbitration has been extended and, if so, how far. Mr Bompas noted the following passage in the judgment of Lloyd Jones LJ (at [31]):

> "While Edmondson has no right to recover fees from its clients, I consider that in the normal course of events Edmondson would have an entitlement to recover the fixed costs and other sums payable under the Protocol scheme. This is either an entitlement in Edmondson itself or, alternatively, in light of the contractual arrangement between Edmondson and its clients referred to at para 22 above, an entitlement to bring proceedings in the name of the clients to recover the sums. In either case, Edmondson has an interest which equity can protect and which is deserving of protection. It is an interest of which Haven was aware by virtue of its knowledge of and

> participation in the Protocol scheme. I accept that this may involve an extension of the principle enunciated in the *Khans* case, but I can see no reason why it should not apply in the particular circumstances of this case."

101. I will return to this question in a moment.

*The Direct Communication Issue*

102. In relation to the Direct Communication Issue, Bott's principal argument seems to be that Ryanair's communicating directly with a client for whom Bott has advanced a flight delay compensation claim is a violation of rules of professional conduct applicable to Irish solicitors. It is a well-established principle of good professional conduct applicable to English solicitors that once a solicitor for Party A becomes aware that Party B has instructed a solicitor, then Party A will communicate exclusively with Party B's solicitor and not directly with the Party B in the absence of Party B's solicitor, except with the consent of Party B's solicitor or in other special circumstances.

103. Mr Benson exhibited to his witness statement dated 27 October 2016 a copy of an excerpt from the Law Society of Ireland's publication "A Guide to Good Professional Conduct for Solicitors" (3rd edition), which in the first paragraph of 7.2 sets out a guideline along the lines of the English principle. The implication of Mr Benson's evidence is that by virtue of Ryanair's direct communication with clients of Bott, Irish solicitors employed by Ryanair are somehow in breach of their professional conduct obligations. To be fair, that is not how Mr Bompas put the point in his skeleton or his submissions.

104. Ms Murthi's reply to this point in her evidence was that Ryanair has two lawyers in the Customer Services Department, herself and one other, and that they do not deal with flight delay compensation claims under the Regulation unless and until proceedings are taken, in which case they deal with legal issues relating to the Regulation. The letters sent to Ryanair's passengers in relation to their flight delay compensation claims are sent by non-lawyer customer service agents, under the supervision of a non-lawyer customer services manager.

105. Mr Bompas in his submissions puts this point on a different basis. He notes that by section 37(1)-(2) of the Senior Courts Act 1981, the High Court has the power to grant an interlocutory or final injunction in all cases in which it appears to be just and convenient to do so, either unconditionally or on such terms as the court thinks just. It is necessary for the court to grant the requested injunctive relief in order to give proper effect to the protective principle in the *Khans* and *Gavin Edmondson* cases. Ryanair's direct communications with its clients undermine Bott's proper interest in recovery of its fees.

106. There is nothing in the point raised by Mr Benson in his evidence regarding the rules of professional conduct applicable to Irish solicitors. Ryanair is not a firm of solicitors. I am not able to express a view as to whether the Irish professional conduct rule directly applies to Ms Murthi or any other legally

qualified employee of Ryanair subject to the supervision of the Law Society of Ireland, but, if it does, it appears to me that nonetheless Ms Murthi has given a complete answer to the point. She is not involved as far as Bott's flight delay compensation claims are concerned.

107. Mr Bompas's submissions depend on the view that I take of the application of the protective principle in the *Khans* and *Gavin Edmondson* cases to Bott's case in relation to the Direct Payment Issue and the Indemnity Issue. Accordingly, I turn now to those.

*The Direct Payment Issue and the Indemnity Issue*

108. Mr Bompas urged me to recognise that the *Gavin Edmondson* case represents a development of the law in relation to a solicitor's equitable lien. If it can be extended to that case, then it should be capable of further extension to the circumstances of this case. I have mentioned at [74], Mr Bompas's summary of the protective principle following Gavin Edmondson is as follows:

> "The principle applies … where the solicitor has become entitled, as a consequence of action undertaken on behalf of the client, to charge the client for fees and expenses, and there is a recovery of property or money for or by the client."

109. As I have already noted, in the *Gavin Edmondson* case, Edmondson did not, in fact, become entitled to charge its clients for fees and expenses, but the principle nonetheless applies by virtue of the fact that Edmondson became entitled to fixed costs and other sums payable under the Protocol. So, in that sense, Mr Bompas's formulation of the principle is too narrow. But in another more important sense it is, to my mind, too broad. The cases do not justify the proposition that it is sufficient that the solicitor has taken some action and that, as a result there is a recovery of property or money for or by the client. The *Meguerditchian* case makes it clear, for example, that no equitable lien arises as a result of a mere negotiation conducted by the solicitor. Something more is required.

110. In the *Gavin Edmondson* case, the justification for extending the solicitor's equitable lien to Edmondson appears to have been the participation of Edmondson's clients, through the efforts of Edmondson, in a voluntary but nonetheless formalised system under the Protocol, sanctioned by the judiciary, for the early resolution of claims involving personal injury and giving rise, once Haven had also engaged with claims entered into the Portal, to an entitlement of Edmondson to received fixed costs under CPR Part 45.

111. The current case is quite different. There is no formalised scheme, sanctioned by the judiciary, for the early resolution of small, but potentially factually complex, claims and no entitlement to costs from Ryanair.

112. The Regulation gives rise, in certain circumstances, to a right to compensation for flight delays. There could, of course, be a dispute about whether the right to compensation has arisen, but the Regulation does not provide a scheme for

resolving such a dispute, much less one giving Bott an entitlement to costs under the CPR.

113. In relation to the vast majority of the flight delay compensation claims submitted by Bott to Ryanair, there is not even what one could call a negotiation. A client is either entitled to compensation under the Regulation, or it is not. The criteria for claiming the compensation are relatively simple. The only real element of judgment involved appears to be whether "extraordinary circumstances" apply as a defence to payment of a claim. There is no comparison between the nature of the straightforward statutory compensation claims with which we are concerned in this case and personal injury claims arising from road traffic accidents.

114. Bott are, in effect, simply a claims handling agent in relation to the vast majority of flight delay compensation claims they make. Their automated system is specifically designed to ensure that that is the case. Their business model depends on their taking a percentage, by way of fees, of aggregate compensation due in relation to a high volume of straightforward, undisputed statutory compensation claims.

115. In saying this, I am not criticising Bott or its business model. The advantage that Bott offers a client, relative to a CMC that is not a firm of solicitors, is that Bott's conduct is subject to regulation by the Solicitors' Regulation Authority, and Bott is able, in a case where there is a genuine dispute, to initiate proceedings on behalf of the client. On the other hand, Ryanair has established a straightforward and easy-to-use process for its passengers to make their flight delay compensation claims, either on-line or by correspondence, without the assistance of a third party. It is entirely a matter for individual Ryanair passengers whether they consider that there is any advantage to them in using a firm such as Bott to handle their flight delay compensation claims rather than making their claims directly.

116. The nature of the work undertaken by Bott for its clients, however, is quite different from the work undertaken by Edmondson for its clients in the *Gavin Edmondson* case. The key difference, as I have already noted, is that, in this case, Bott is not engaging with a formalised scheme, sanctioned by the judiciary, for the resolution of claims that gives rise to an entitlement to fixed costs under the CPR. I can see no principled basis for extending to this case the protective principle exemplified in the *Khans* and *Gavin Edmondson* cases.

117. Accordingly, I conclude, in relation to the Direct Payment Issue, that Ryanair is not obliged to pay compensation directly to Bott in relation to claims submitted by Bott on behalf of its clients to Ryanair. It follows, in relation to the Indemnity Issue, that Ryanair is not obliged to indemnify Bott in respect of fees where it has paid compensation directly to Bott's client while on notice of the claim and where Bott has not recovered its fees in respect of the claim from the client.

118. In view of that conclusion, it is not necessary for me to consider the additional arguments raised by Ryanair that (i) no equitable lien arises in favour of Bott

by reason of the fact that Bott's business model means that little or no legal work is undertaken in relation to the vast majority of the flight delay compensation claims it submits to Ryanair and (ii) Bott has no entitlement to fees that is deserving of protection because it comes to the court with "unclean hands". Ryanair has also made a number of criticisms of the way Bott determines and charges its fees in relation to flight delay compensation claims, but it is not necessary for me to consider these or to make any comment upon them.

119. Before turning to the Article 15.2 Issue, I note the following:

i) It is open to Bott to protect itself from the risk of non-payment by clients by requiring money to be paid to it on account before it undertakes claim. Such a requirement may, of course, diminish the attractiveness to a client of using Bott rather than claiming directly, but that consequence is not itself a reason for granting the relief sought by Bott.

ii) Ryanair says that it now routinely copies Bott on its correspondence with Bott's clients. Bott insists that there are instances where this has not occurred, resulting in its initiating proceedings when its client has already received compensation from Ryanair. It seems prudent that Ryanair should continue to copy Bott on any correspondence with Bott's clients in order to avoid the issue of unnecessary proceedings and consequent waste of time and resources for both Bott and Ryanair that such proceedings will inevitably entail.

*The Article 15.2 Issue*

120. Bott's principal objection to Article 15.2 of the GTCC concerns the requirement in Article 15.2.2 of the GTCC that a passenger must submit her claim directly to Ryanair and allow Ryanair 28 days to respond directly to the passenger before the passenger may engage a third party to make the claim on her behalf. Article 15.2.3 reinforces this by providing that Ryanair will not process a claim submitted by a third party if the passenger concerned has not submitted the claim directly to Ryanair and allowed Ryanair time to respond in accordance with Article 15.2.2. Article 15.2.6 says that Ryanair will not process a claim submitted by a third party unless the claim is accompanied by appropriate documentation evidencing the authority of the third party to act on behalf of the passenger.

121. Article 15.2.7 of the GTCC clarifies that nothing in Article 15.2 prevents a passenger from consulting a legal or other third party adviser before submitting her claim to Ryanair. Article 15.2.8 states that Ryanair will make any payment or refund to the payment card or bank account of a passenger on the relevant booking.

122. Mr Bompas submitted that Article 15.2, in particular with respect to Articles 15.2.2, 15.2.3 and 15.2.6, is unenforceable by virtue of its incompatibility with Article 15.1 of the Regulation. Article 15 of the Regulation reads in its entirety as follows:

"*Article 15*

**Exclusion of waiver**

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation."

123. Mr Bompas for Bott submitted that Article 15.2 of the GTCC sets out clear limitations on the rights of a passenger by (i) restricting the circumstances in which a passenger is entitled to use a third party to assist the passenger in relation to a flight disruption compensation claim and (ii) limiting the way in which compensation will be paid when due.

124. Mr Bompas further asserted that such a term offends against the public interest in protecting the interests of the consumer in the context of air travel, where there are starkly unequal bargaining positions as between airline and passenger under a contract of carriage. Accordingly, Article 15.1 of the Regulation should be applied generously in favour of passengers. An airline should not be allowed to place obstacles in the way of a passenger seeking to assert her rights under the Regulation to obtain flight disruption compensation. In support of this point, he referred to the Advocate General's opinion in *Flight Refund Ltd v Deutsche Lufthansa AG* (Case C-94/14) [2016] 1 WLR 3567 at [16], citing, *inter alia*, the judgment of the CJEU in the *Sturgeon* case (see [6] above) at paras 40-69.

125. Mr Bompas urged me, on the basis of *Sturgeon*, to give a purposive interpretation to Article 15.1 of the Regulation. Mr Bompas also made clear that his submissions do not depend on my finding any unfairness in Article 15.2 of the GTCC. The question is simply whether Article 15.2 of the GTCC limits or waives a passenger's rights. It is not limited to "material" or "substantive" restrictions or limitations. If it restricts or limits, it is bad.

126. In this case, Article 15.2 of the GTCC sets conditions precedent to the obligation of Ryanair to pay flight disruption compensation under the Regulation, which are therefore clearly limitations on a passenger's right to compensation. In support of this point, Mr Bompas referred me to the case of *Bankers Insurance Company Limited v South* [2003] EWHC 380 (QB), [2003] PIQR P28, [11], [29]-[34] where Buckley J held, in the context of a holiday insurance policy, that clauses in the policy (under the heading "Conditions") that required the insured to report in writing to the insurance company as soon as reasonably possible full details of any incident that might result in a claim and to forward immediately upon receipt every writ, summons, legal process

or other communication in connection with the claim should be construed as conditions precedent to the liability of the insurance company, rather than innominate terms.

127. Mr Kennelly's principal arguments in response were as follows:

i) Article 15.2 of the GTCC does no more than prescribe a preliminary claims resolution procedure, which has no bearing on a passenger's substantive rights under the Regulation. There is no question of a passenger waiving any right and equally no limitation of its substantive rights. Furthermore, Article 15.2.7 of the GTCC clearly indicates that a passenger is free to consult a third party adviser at any time and is expressly disapplied in the case of a passenger who does not have the capacity to submit a claim herself or who was on the same booking with other passengers, in which case a lead passenger may claim on behalf of others.

ii) Rather than limiting a passenger's rights, Article 15.2 of the GTCC enhances those rights under the Regulation by allowing the passenger to recover compensation quickly and easily from Ryanair without incurring significant legal fees. The terms of the GTCC are brought to a passenger's attention when booking and are prominently displayed on Ryanair's website. The on-line claim form can be reached from various links on Ryanair's website and is easily found. When found, it is straightforward to complete. If a passenger is not content with the outcome of a claim, the passenger can bring a complaint to Airline Dispute Resolution, the independent, impartial scheme operated by the Retail Ombudsman.

iii) Article 15.1 of the Regulation should be interpreted as referring to substantive limitations on a passenger's rights under the Regulation or the imposition of serious procedural obstacles to presentation of a claim under the Regulation. Article 15.2 of the GTCC is designed to simplify the claims process for passengers and make it easier for them to enforce their rights. It therefore falls outside the scope of Article 15.1 of the Regulation.

128. Mr Kennelly also relied on the fact that, as I have already noted in summarising the evidence of Ms Murthi, both the CAA and the European Commission encourage a passenger wishing to make a flight disruption claim to contact the airline directly. Mr Bompas's response to that point was that those recommendations by the regulators do not provide a response to the argument that Article 15.1 of the Regulation prohibits the placing of any limitation on the rights of a passenger under the Regulation.

129. As I have noted, Mr Bompas urged me to give a purposive interpretation to Article 15.1 of the Regulation. As a general rule, interpretation of EU legislation requires a different approach by English lawyers and English courts to that taken in respect of UK legislation. A more purposive or teleological approach is necessary, as taken by the Court of Justice of the European Union

itself in interpreting EU legislation: see *Bennion on Statutory Interpretation* (7th edition) at pages 748-750 and the authorities cited there, in particular, the judgment of Hildyard J in *Re Olympus UK Ltd* [2014] EWHC 1350 (Ch), [2014] Bus LR 816, at [47]-[49].

130. Having regard to Article 15.1 in the context of the Regulation as a whole, including its objectives, it seems clear to me that Article 15.1 is not intended to restrict any and all contractual provisions bearing on how a claim might be made under the Regulation. Yet any such contractual provision could, in a sense, be viewed as a "limitation" (there is no question of "waiver" on these facts, so I focus on "limitation"). The key question is whether a passenger is prevented by any term in the contract of carriage from achieving a full realisation of her substantive right to compensation or any other relevant substantive right under the Regulation. Accordingly, a provision mandating that a certain procedure be followed in order to make a claim is not, in my view, a provision that "limits" the right to make the claim within the scope of Article 15.1 of the Regulation, unless the effect of the requirement is to put a material obstacle in the way of making such a claim or to result in the passenger recovering less than she is entitled to recover.

131. On the evidence, it is clear that Article 15.2 of the GTCC neither puts a material obstacle in the way of making a flight delay compensation claim nor results in the passenger receiving less than she is entitled to recover. Accordingly, Article 15.2 of the GTCC is not unenforceable by virtue of the prohibition in Article 15.1 of the Regulation.

132. I have reached this view without having to conclude that Article 15.2 of the GTCC "enhances" a passenger's rights. It seems to me, however, that Article 15.2 of the GTCC is fair and reasonable. It is easy for a passenger to comply with, it is limited in time and it imposes no substantive limitation on the passenger's right to compensation. In fact, as Ryanair argues, a passenger who complies with the provision will receive the whole of its compensation, without deduction of legal fees as would be the case where the claim is brought through Bott. If a claim is rejected after the passenger applies through the on-line form or in correspondence, the passenger is advised by Ryanair to use Airline Dispute Resolution, but there is nothing to prevent the passenger from instructing Bott at that point or, indeed, at an earlier point, provided simply that the passenger makes its claim initially directly with Ryanair.

133. In my view, Article 15.2.3 of the GTCC should be viewed as an innominate term, rather than as a condition precedent, but even viewed as a condition precedent it is reasonable, easily complied with and therefore not inconsistent with the policy to which Article 15.1 of the Regulation is seeking to give effect. Accordingly, whether construed as an innominate term or a condition precedent, it is not unenforceable by virtue of Article 15.1 of the Regulation.

134. I can deal more briefly with the question of whether Article 15.2 of the GTCC is unfair and therefore unenforceable by Ryanair by virtue of being "unfair" within the meaning of Article 3 of Council Directive 93/13/EEC of 5 April 1993 relating to unfair terms in consumer contracts.

135. Article 3 of the Unfair Contract Terms Directive reads as follows:

> "Article 3
>
> 1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
>
> 2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.
>
> The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.
>
> Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.
>
> 3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair."

136. The Annex is headed "Terms Referred to in Article 3(3)" and includes as paragraph 1(q) the following:

> "1. Terms which have the object or effect of:
>
> …
>
> (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract."

137. It is not in dispute that the GTCC are not individually negotiated between Ryanair and its passengers. Mr Bompas submitted that Article 15.2 of the GTCC causes a "significant imbalance" in the parties' rights and obligations under the contract to the detriment of Ryanair's passengers, who are consumers. Ryanair does this by depriving the consumer of an advantage that

she would otherwise have enjoyed under national law in the absence of that contractual provision: see *Cavendish Square Holdings BV v Makdessi* [2016] AC 1172 (SC) at [105] (per Lord Neuberger). In other words, Article 15.2 of the GTCC deprives a passenger of the right she would have under national law to engage and delegate to her preferred legal representative the pursuit of her flight delay compensation claim. Paragraph 1(q) makes it clear that a clause such as Article 15.2 of the GTCC is *prima facie* unfair as it has the effect of "excluding or hindering" a passenger's "right to take legal action or exercise any other legal remedy".

138. It will not be surprising, given my conclusions in relation to Bott's submissions in relation to Article 15.1 of the Regulation, that I do not consider that Article 15.2 of the GTCC causes a "significant imbalance" in the parties' rights and obligations. Article 15.2 of the GTCC sets out a straightforward procedure for initiating a flight disruption claim against Ryanair that is reasonable in scope. There is no question of the passenger being "excluded or hindered" in a material sense from her right to take legal action or exercise any other legal remedy in the event a dispute arises as to whether she is entitled to compensation under the Regulation. In such circumstances, she is free to seek redress through the Airline Dispute Resolution scheme or to instruct Bott or any other firm of solicitors to bring a claim, provided only that she has taken the simple steps of making her claim directly to Ryanair and allowing 28 days for a response.

139. Accordingly, I do not find that Article 15.2 of the GTCC is unfair within the meaning of that term in Article 3 of the Unfair Contract Terms Directive.

*Conclusion*

140. Having found in favour of Ryanair in relation to all of the issues set out in [55] above, it follows that I must dismiss the claim.

141. If, having read this judgment in draft, the parties are able to agree a form of order to deal with consequential issues and costs, I ask that the form of order be provided to the court in time for the order to be made on the day this judgment is handed down. If the parties wish to make any applications as to consequentials or costs, including any application for permission to appeal, and are content to do so on the basis of written submissions, I will deal with them in that way. Otherwise a hearing will be arranged.