

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

Royal Courts of Justice  
Strand, London  
WC2A 2LL

Date: 11 July 2024

Start Time: 12:34 Finish Time: 12:38

Page Count: 3  
Word Count: 0  
Number of Folios: 0.04

**Before:**

**MRS JUSTICE YIP**

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**Between:**

**(1) GUY CHRISTOPHER WESTGATE**  
**(Personal Representative of the Estate of Richard**  
**Mark Westgate (Deceased))**  
**(2) VARIOUS CLAIMANTS**  
**(Subject to collective case management)**  
**- and -**

**Claimants**

**(1) BRITISH AIRWAYS PLC**  
**(2) THOMAS COOK AIRLINES LIMITED**  
**(3) EASYJET AIRLINE COMPANY LIMITED**  
**(4) VIRGIN ATLANTIC AIRLINES LIMITED**  
**(5) JET2.COM LIMITED**

**Defendants**

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**MR A SMITH KC (instructed by Thompsons Solicitors) appeared for the Claimants**

**MR D PLATT KC (instructed by Clyde & Co) appeared for the Defendants**

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**JUDGMENT**

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**MRS JUSTICE YIP :**

1. The application notice dated 20 June 2024 seeks two orders: firstly, an order that the claimant shall file a Scott schedule and that the defendants will respond to that, and, secondly, an unless order that unless the first defendant writes to the court confirming that they consent to disclosure of the documents through an application being made in the United States then they will be responsible within these proceedings for the costs of the United States proceedings. I accept that matters have moved on a little today in the course of discussions.
  
2. As I have indicated to Mr Smith, the idea of using some other method to narrow the issues was not unattractive. However, having seen the form of the Scott schedule proposed, quite simply, I do not think that that will assist in narrowing the issues, particularly in circumstances where the first defendant does not think that it is helpful. The pleadings that have already been prepared, including the Master Particulars of Claim and the Defence, do identify sufficiently what is in issue. Given that there is now an agreed list of issues which will be incorporated into the order that I make today, it seems to me that that sufficiently identifies the issues as to which the parties need to address their evidence, both in terms of witness statements and expert evidence. I do consider now that it is simply a matter of the parties getting on with the preparation of the case to move towards the trial of these issues.
  
3. In relation to the second part of the application, it is my view that that application was misconceived. There is not any sufficient identification of the basis upon which an unless order is sought or the basis upon which I could make the order that is proposed. In the circumstances where Mr Smith has not pressed that part of the application today, I do not think it is necessary to say more about it. In any event, even if there

was power to make an order of that sort (as to which I have serious doubts), it seems to me that the claimants really ought to have set out in the clearest possible terms what it was that they were seeking from the defendants, probably by way of producing the form of wording itself.

4. It may well be that following this hearing, the claimants present something of that nature to the defendants. The defendants will then have to consider it on its merits. Given that the defendants do not seek to stand in the way of the claimants getting the material from the United States which they are seeking by way of the application, it seems to me that the defendants should do what they reasonably can, without exposing themselves to costs in the other jurisdiction, to assist. However, my clear view is that this application should be dismissed in its entirety.

**(See separate transcript for continuation of proceedings)**

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