

IN THE HIGH COURT OF JUSTICE

Claim No [BL-2019-001146]

QUEENS BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

Before: The Honourable Mr Justice Warby

Friday 4 October 2019



In the matter of an intended action to be known as

The British Airways Data Event Group Litigation

BETWEEN

Mr Stephen Andrew Weaver & others

Proposed Claimants

and

British Airways plc

Proposed Defendant

## GROUP LITIGATION ORDER

**UPON AN APPLICATION** for a Group Litigation Order pursuant to CPR Part 19 having been made by the proposed defendant by application notice dated 14 June 2019

**AND UPON** hearing David Blayney QC and Ben Silverstone for the proposed Claimants and Anya Proops QC on behalf of the proposed Defendant

**AND UPON** the Judge having read the written evidence filed with the court

**AND** provided that the President of the Queen's Bench Division consents to an order made in the following terms:

**IT IS ORDERED** that:

### Definitions

1. In this Order the following are defined terms:
  - 1.1 **"Personal Data"** means each Claimant's name, billing address, email address, payment card number, payment card expiry date and CVV for the payment card, as supplied to the Defendant in connection with the making of payment by the Claimant in relation to a booking with the Defendant (whether such booking was for the Claimant, the Claimant and other persons or only for other persons).
  - 1.2 **"Data Event"** means the breaches of the Defendant's systems, including systems containing Personal Data, which were notified by the Defendant to potentially affected customers in September and October 2018.

- 1.3 "DPA 1998" means the Data Protection Act 1998.
- 1.4 "DPA 2018" means the Data Protection Act 2018.
- 1.5 "GDPR" means General Data Protection Regulation.
- 1.6 "Defendant's Website" means [www.ba.com](http://www.ba.com) or [www.britishairways.com](http://www.britishairways.com)
- 1.7 "Standard Minimum Requirements" means the criteria set out in paragraph 30 of this Order.
2. This Order is made under Civil Procedure Rule 19.11 and applies to claims which (subject to sub-categorisation of the claims which may become necessary in the future) give rise to some or all of the following common or related issues of fact or law (the "GLO Issues"), the parties agreeing that the GLO Issues should be reconsidered after service of statements of case:
- 2.1 Whether the Defendant is liable to the Claimants, or any of them, for potential damages under the English law of contract and/or pursuant to the DPA 1998 and/or the GDPR as supplemented by the DPA 2018 and/or misuse of private information and/or breach of confidence in English law arising from the Data Event, or any of them;<sup>1</sup>
- 2.2 If so, which Claimants are entitled to damages and on what basis?
3. A trial of the GLO Issues (referred to at paragraph 2 of this Order) will take place as directed by the Management Court.
4. Those claims will constitute the **British Airways Data Event Group Litigation** and are to be conducted in accordance with this Group Litigation Order and any subsequent orders.

#### **Management Court**

5. The Court managing this litigation will be the High Court of Justice, Queen's Bench Division (Media and Communications List), Royal Courts of Justice, Strand, London, WC2A 2LL (the "Management Court").
6. All documentation (including claim forms, case statements, applications and witness statements) filed with the Management Court in respect of a claim which is the subject of this Order shall be marked with the short title of the claim and shall be marked in the top left hand corner "BRITISH AIRWAYS DATA EVENT GROUP LITIGATION ORDER".
7. The managing judge for the purposes of this Order in accordance with PD19B paragraph 8 is the Judge in Charge of the Media and Communications List, Mr Justice Warby (the "Managing Judge").
8. The Managing Judge shall be responsible for the procedural management of all claims to which this Order applies.
9. Pre-trial applications in this litigation shall be heard, where practicable, by the Managing Judge.

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<sup>1</sup> Lawsuits have been filed against BA in other jurisdictions related to the Data Event and BA, through this GLO, does not make any representations of law or fact regarding the cases in those other jurisdictions.

### **Claimants and transfer of existing proceedings**

10. The Claimants are those individuals whose names are included in the Group Register in the manner and under the terms set out in paragraphs 18 and 21 below ("**Claimants**"), and each such Claimant is represented by the firm of solicitors (the "**Claimant Firms**") set opposite each Claimant's name in the Group Register. In this Order, the Claimants from time to time who appear in the said group register shall be referred to as the "**Group**".
11. Any existing claim to which this Order applies which has been issued in a court other than the Management Court shall be transferred forthwith to the Management Court without further order and entered on the Group Register in accordance with CPR 19.11(3)(a)(i) and (iii), upon service of the claim form on the Defendant and provided that the Standard Minimum Requirements (as set out in paragraph 30 below) are met.
12. Solicitors for the parties are to co-operate in identifying such claims. On identification of such claims, the Lead Solicitor is to send a copy of this Order to each transferring court. Notices of Transfer in accordance with paragraph 4.1 of Practice Direction 30 are hereby dispensed with.
13. If the Defendant is or has been served with a claim form falling within paragraph 11 of this Order other than by the Lead Solicitors, then the Defendant shall inform the Lead Solicitor of the name of the Claimant, the Claimant's solicitors (if any) and all available contact details of the Claimant and/or the Claimant's solicitors (if any), within 28 days of: (a) such service or (b) of this GLO, whichever is the later.

### **Lead Solicitors**

14. Excello Law Limited trading as SPG Law, 5 Chancery Lane, London, WC2A 1LG shall be the Lead Solicitors under this Order and together with the Steering Committee (as set out at paragraph 17 below) shall be responsible for the conduct of the GLO Issues in this action on behalf of the Claimants from time to time.
15. The Lead Solicitors are responsible for:
  - 15.1 The service and receipt of documents under this Order;
  - 15.2 The management and co-ordination of the Claimant's actions in respect of the GLO Issues;
  - 15.3 Maintaining the Group Register;
  - 15.4 Conduct on behalf of the Claimants of all applications in respect of the GLO Issues;
  - 15.5 Preparation for and conduct of the trial of the GLO Issues;
  - 15.6 Such further purposes as the Management Court may direct.
16. Nothing in this Order shall preclude a solicitor instructed by a Claimant from communicating with the Court in respect of matters relating to such Claimant in place of the Lead Solicitors (provided that any such communication shall be copied to both the Lead Solicitors and the Defendant's solicitors); and provided that the Defendant need only communicate in relation to any such Claimant with the Lead Solicitors.
17. For the purposes of managing and consulting on the progress of this litigation, the Lead Solicitors will establish a Solicitors Group (comprised of all Claimant Firms) and a Steering

Committee (comprised of two or more of the Claimant Firms), both of which will be subject to the terms of a separate agreement.

**Group Register and cut-off date**

18. Subject to further Order, a group register ("**Group Register**") shall be established by 31 October 2019, and subsequently maintained by the Lead Solicitors and in which shall be recorded the information set out in paragraph 21 of this Order.
19. From the date on which the Group Register is established the Claimants in this litigation will be those individuals who have issued and served claim forms, whose claims meet the Standard Minimum Requirements and who have been added to the Group Register and joined as Claimants under the terms of this Order.
20. The Lead Solicitors shall serve an electronic copy of the Group Register in Microsoft Excel or other agreed format on the Defendant within 7 days of its establishment.
21. The information to be entered in the Group Register in relation to each Claimant shall be:
  - (i) a unique and sequential reference number (the "**Group Register Reference**"),
  - (ii) the full name, address and postcode of the Claimant and (if relevant) the Claimant's litigation friend,
  - (iii) the name and billing address of the Claimant as entered onto the Defendant's Website or app (if different from the Claimant's own name and address), to the extent that the Claimant knows this information following a reasonable search,
  - (iv) the email address of the Claimant as entered onto the Defendant's Website or app for the purposes of any booking related to their Claim,
  - (v) the date of birth of the Claimant,
  - (vi) the Claimant's booking reference provided by the Defendant in respect of each booking reference made and/or transaction date which is the subject of a claim under this GLO, to the extent that the Claimant knows this information following a reasonable search,
  - (vii) the last four digits of the payment card used by the Claimant in respect of each booking made which is the subject of a claim under this GLO, to the extent that the Claimant knows this information following a reasonable search,
  - (viii) where the Claimant has been sent a notification that BA does not consider them to have been affected by the Data Event, a note of the existence of that notification,
  - (ix) the claim number of the Claimant's case, Court in which it has been commenced, and the date of its commencement,
  - (x) the name, address, reference, DX, fax and telephone number of the Solicitors on record for the Claimant,
  - (xi) all Notices of Funding relating to the Claimant including the number and date of issue,
  - (xii) the date on which the Claimant's claim is discontinued (if applicable),
  - (xiii) a note of the existence of any notice of objection made in relation to that Claimant in accordance with paragraph 23 below, and



- (xiv) the date on which the Claimant was first entered in the Group Register.
22. Each month starting one month from the date of service of the Group Register upon its establishment, the Lead Solicitors will either file with the Management Court an updated Group Register or in the absence of any change will confirm that fact by letter to the Defendant's solicitors. The Lead Solicitors will serve a copy of the Group Register on the Defendant within 7 days of each update with all changes made to the Group Register since the last copy of the Group Register to be served clearly marked.
23. As to Notices of Objection:
- 23.1 The Defendant may give written Notice of Objection to the Lead Solicitors:
- 23.1.1. in respect of any Claimant whose claim has been entered on the Group Register, within 56 days of the service of the first version of the Group Register and 56 days after service of each and every subsequent version in which the Claimant is included for the first time;
- 23.1.2 as to the accuracy of any other information entered within the Group Register at any time;
- 23.2 The Notice of Objection shall state the nature of the objection and the ground(s) for it.
- 23.3 The parties concerned with any such objection shall seek to resolve the objection, but if they are unable to do so within 56 days, the objector may apply to the Court for determination of the objection. Such a Notice of Objection shall not affect the individual Claimant's entitlement to remain on the Group Register unless and until the court directs otherwise. The Court may impose any terms it thinks fit as a condition for the continued membership of the Group by a New Claimant.
24. Any party shall at any time be permitted to apply to the Management Court to remove a claim from the Group Register if that party has appropriate grounds for doing so.
25. A Claimant's claim shall remain on the Group Register until such time as he / she serves a notice of discontinuance or withdrawal or, if required, obtains permission to discontinue, or the claim is otherwise disposed of prior to trial. In any such event, the Claimant's claim shall be removed from the Group Register on the expiration of the last day of the period of account during which notice of discontinuance or withdrawal or permission to discontinue is given or the effective date of disposal occurs.
26. For the purposes of CPR 38.2(2)(c), consent to discontinuance by any Claimant on behalf of the other Claimants may be given by the Lead Solicitors. The Lead Solicitors shall promptly give notice of such discontinuance to the Defendant. Entry in the Group Register of the date of such discontinuance shall constitute notice of discontinuance on all other Claimants.
27. The Lead Solicitors shall maintain a list entitled 'British Airways Data Event Group Litigation - Discontinued Claims Register' ("**the Discontinued Claims Register**") detailing:
- 27.1 The name and Group Register Reference of any party discontinuing or withdrawing; and
- 27.2 The date of the filing of the notice of discontinuance, withdrawal or other form of disposal.

28. The Lead Solicitors will serve a copy of the Discontinued Claims Register on the Defendant on the first working day of each calendar month following a month in which the Discontinued Claims Register has been updated or amended, with all changes made to the Discontinued Claims Register since the last copy of the Discontinued Claims Register to be served clearly marked.
29. In order to be entitled to enter onto the Group Register, a Claimant must have issued and served a claim form or be named on an issued and served claim form. The final date on which a claim may be entered onto the Group Register is 17 January 2021.

#### **Standard Minimum Requirements**

30. The Standard Minimum Requirements for entry of a claim onto the Group Register are as follows:
  - 30.1 A claim form (in respect of which the issue fee has been paid) has been issued, on which the individual Claimant is named;
  - 30.2 The Claimant must claim to have been sent an email from British Airways (including emails sent in September 2018 and/or October 2018) notifying them of the Data Event (or any of them);
  - 30.3 The claim must raise one or more of the GLO Issues at paragraph 2 of this Order; and
  - 30.4 The Claimant must claim to have suffered damage (including but not limited to loss of control of their personal data and/or financial loss and/or distress) as a consequence of the Data Event (or any of them).

#### **Statements of Case and Schedules of Information**

31. Prior to the service of the Group Particulars of Claim:
  - 31.1 The Claimants shall by 4:30pm on 11 October 2019 write a letter requesting information and/or documents the Claimants say they require from the Defendant.
  - 31.2 The Defendant shall by 4:30pm on 25 November 2019 write a letter in response providing such information and/or documents as they are able and willing to provide and explaining any refusal or inability to provide such information or documents requested by that date;
  - 31.3 If so advised, the Claimants shall make an application for the information and/or documents requested by 4:30pm on 13 December 2019.
  - 31.4 In the event such application is made, further directions to be set at the hearing of that application.
32. The Claimants shall by 4pm on 17 January 2020 file and serve Group Particulars of Claim.
33. The Group Particulars of Claim are to contain general allegations in relation to all claims and a schedule containing entries relating to each individual claim specifying which of the general allegations are relied on and any specific facts relevant to the Claimant in accordance with PD19, §14.1.

34. The Defendant shall file and serve a Defence to the Group Particulars of Claim by 4pm on the date 2 months after the service of the Particulars of Claim.
35. The Claimants shall file and serve any Group Reply to the Defence within 28 days of receipt of the Defence.
36. The Statement of Truth for the Group Particulars of Claim and the Group Reply are to be signed by the Lead Solicitors.
37. A Schedule of Information on behalf of each Claimant who meets the Standard Minimum Requirements for entry on the Group Register shall be served by the Lead Solicitors on the Defendant as soon as reasonably possible and in any event by the later of (i) 4pm 28 days after service of the Group Particulars of Claim or (ii) 28 days after service of the Group Register on which the Claimant is first named. The Schedule of Information shall be in the form set out in Schedule 2 hereto, such information to be provided to the best of each Claimant's knowledge and belief.
38. In the event a Claimant who is named on the Group Register does not serve a Schedule of Information purporting to comply with paragraph 37 above, then, absent an agreement for an extension of time, or an application for relief issued within 56 days of the cut-off date provided for in paragraph 29, the Claimant's claim will be automatically struck out

#### **Extensions of time**

39. The parties may, by prior written agreement, extend the time for directions, in any Order relating to the British Airways Data Event Group Litigation, by up to 28 days without the need to apply to the court.

#### **Confidentiality**

40. The parties shall use their best endeavours to agree a protocol for the protection of confidential documents.

#### **Publication**

41. The Lead Solicitors are to take reasonable steps to publicise this Order in accordance with CPR r. 19.11(3)(c) in the form attached at Schedule 3. Nothing in this Order is intended to restrict the Lead Solicitors or any other Claimant Firm publicising their involvement in the British Airways Data Event Group Litigation on any platform in an appropriate form.
42. The Managing Judge is to arrange for details of this Order to be published on the Courts and Tribunal service website <https://www.gov.uk/guidance/group-litigation-orders> and in any and all reports that he considers appropriate.

#### **Costs**

43. Save as otherwise ordered, the liabilities for costs are to be determined in the following manner:
  - 43.1 The liability of each Claimant for costs, and each Claimant's entitlement to recover costs, shall be several and not joint.
  - 43.2 "Individual Costs" are those costs and disbursements incurred for and/or in respect of any individual Claimant in relation to matters which are particular and personal to each such Claimant.

- 43.3 "Common Costs" are all costs and disbursements of the relevant party other than individual costs.
- 43.4 The Claimants' Common Costs shall be apportioned between them by taking the total Common Costs incurred by or on behalf of the Claimants in any quarter and dividing that sum by the number of Claimants pursuing their claims on the first day of that quarter (the "Proportionate Share").
- 43.5 For the purposes of determining the amount of costs shared between the Claimants in accordance with paragraph 43.4 of this Order:
- 43.5.1 A Claimant whose claim is entered on the Group Register at any time shall be deemed to have been on the Group Register from the date of making of this Order.
- 43.5.2 A Claimant shall not be liable for any common costs incurred after his name has been removed from the Group Register in accordance with this Order and/or any rules of Court.
44. In the event of any Claimant discontinuing or settling its claim, any liability they may have for their Proportionate Share of the Common Costs shall be determined at the trial of the GLO Issues with permission to apply if such trial does not take place.
45. Any Claimant should be permitted to settle or accept a Part 36 payment in settlement of his/her claim and such Claimant shall be entitled to recover in addition to Individual Costs his/her Proportionate Share of any Common Costs ordered to be paid by the Court at the trial of the GLO Issues.
46. Liabilities for costs between the Claimants and the Defendant are, unless ordered otherwise, to be determined as follows:
- 46.1 Common Costs ordered to be paid shall (in the absence of agreement) be subject to a detailed assessment.
- 46.2 Any Common Costs ordered to be paid by the Defendant to the Claimants shall be paid to the Lead Solicitors.
- 46.3 If a Claimant compromises their claim with the Defendant on terms which provide for the Defendant to pay to that Claimant their costs, then that Claimant shall be entitled to recover in addition to his Individual Costs the Proportionate Share of the Common Costs which are ordered to be paid at the trial of the GLO Issues and which were accrued up to the last day of the quarter in which the compromise is reached, such costs to be apportioned upon the basis set out in paragraph 43.4 and 43.5 of this Order.
- 46.4 If a Claimant's claim is dismissed by an order of the Court with an order that the Claimant pay the Defendant's costs, then that Claimant will be liable to pay the Defendant's costs and disbursements incurred by it in relation to matters which are particular and personal to the Claimant, and shall be liable for his Proportionate Share of the Defendant's Common Costs during the period of time that they are or were deemed to be a Claimant on the Group Register.



### **Further case management**

47. A Case Management Conference is to be listed on the first available date after 1 April 2020, by reference to court and respective counsel's availability, before the Managing Judge with a time estimate of 1 day.
48. A copy of this order shall be lodged within 14 days:
  - 48.1 with the Senior Master of the Queen's Bench Division in Room E115 at the Royal Courts of Justice, Strand, London WC2A 2LL and
  - 48.2 with the Law Society at 113 Chancery Lane, London WC2A 1PL.
49. There be permission to apply to the Management Court for further directions in the group litigation.
50. The costs of this application shall be Common Costs, and shall be costs in the case.
51. The parties have permission to restore.

Dated 4 October 2019

**SCHEDULE 1**

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**SCHEDULE 2**

**FORMAT OF SCHEDULE OF INFORMATION REQUIRED FROM ALL CLAIMANTS PURSUANT TO  
PARAGRAPH 37 OF THIS ORDER**

<b>Claimant Personal Details</b>	
<b>Full Name (and litigation friend if applicable)</b>	
<b>Full Address</b>	
<b>Details of Data Event Notification</b>	
<b>Loss &amp; Damage</b>	
<b>Nature of Financial Loss</b>	
<b>Amount of Financial Loss</b>	
<b>Reimbursement Received</b>	
<b>Details of Distress</b>	
<b>Details of Inconvenience</b>	

### **SCHEDULE 3**

#### **FORM OF ADVERTISEMENT FOR PUBLICATION**

##### **The British Airways Data Breach Group Litigation**

The High Court made a Group Litigation Order on 4 October 2019 in relation to a Group Action to be pursued against British Airways PLC following breaches of their IT systems leading to the theft of customer personal data. Individuals who have received an email from British Airways PLC in either September or October 2018 pertaining to the breach may be eligible to join the proceedings.

The terms of the Group Litigation Order provide for determination of the following issues:

1. Whether the Defendant is liable to the Claimants, or any of them, for potential damages under the English law of contract and/or pursuant to the DPA 1998 and/or the GDPR as supplemented by the DPA 2018 and/or misuse of private information and/or breach of confidence in English law arising from the breaches of British Airways' IT systems, or any of them;
2. If so, which Claimants are entitled to damages and on what basis?

The court appointed Excello Law t/a/ SPG Law as Lead Solicitors to the Group Action.

The contact details for the Lead Solicitors are as follows:

Excello Law t/a SPG Law

5 Chancery Lane, London, WC2A 1LG

Email - [databreach@spglaw.co.uk](mailto:databreach@spglaw.co.uk)

[www.spglaw.co.uk](http://www.spglaw.co.uk)

[www.badatabreach.com](http://www.badatabreach.com)

Tel – 0151 318 9666

The following are, in addition to the above firm, members of the Steering Committee for the group litigation:

Your Lawyers Limited

18 Prospect House, Colliery Close, Chesterfield, S43 3QE

Email – [baclaims@yourlawyers.co.uk](mailto:baclaims@yourlawyers.co.uk)

[www.BAGroupAction.com](http://www.BAGroupAction.com)

[www.yourlawyers.co.uk](http://www.yourlawyers.co.uk)

Tel: 01246 474 487]



Potential claimants should be aware that the Court has ordered that 17 January 2021 is the cut-off date for claims to be issued and served in order to be entitled to enter on to the Group Register. If you wish to make a claim, it is in your interest to contact a solicitor as soon as possible, and no later than one calendar month before that date.

The making of a Group Litigation Order is a procedural matter only, to enable the Court to manage litigation affecting multiple parties and does not imply any view as to the merits of the claims put forward. This advertisement does not contain legal advice. If a potential claimant instructs a solicitor, the solicitor will be able to provide advice as to the benefits and risks of bringing a claim, and in relation to the funding and insurance of the claim.

This advertisement is published by Order of the High Court of Justice.