

Not enough information? How to comply with an order requiring an RFI response

The Gravity Highway v The Maritime Maisie [2020] EWHC 1697 (Comm)

8 July 2020

Mr Justice Butcher handed down judgment today in *The Gravity Highway and The Maritime Maisie* [2020] EWHC 1697 (Comm). The judgment is the first post-CPR authority to address directly the test for whether an order requiring a party to provide further information has been complied with. John Russell QC, Benjamin Coffey and Robert Ward appeared for the Claimants. Nigel Jacobs QC and Saira Paruk appeared for the Defendants.

The Facts

The two vessels collided in the Korea Strait on 29 December 2013, and both parties brought substantial claims for damages. GH was a newbuild car carrier on sea trials at the time of the collision, and her owners therefore carried out the repairs to GH themselves. Their claim was for the cost of those repairs.

MM interests served a document containing 155 requests for further information concerning the GH claim. After some delay on the part of the GH interests in responding, the Registrar made an unless order requiring GH interests to respond by a specified date, failing which a substantial part of their claim would be struck out.

GH served a document purporting to respond to the requests by the required date, but MM took the view that the response did not adequately address certain of the requests. MM therefore applied for a declaration that the strike-out sanction had come into effect. GH interests maintained that they had complied, but also appealed against the order and applied for relief from sanctions in the alternative.

The Judgment

The primary issue before the Judge was whether GH had complied with the order. Prior to the CPR, the Court of Appeal had held that a party would not be in breach of such an order just because one or more of its responses was found to be in some way inadequate. There would only be a breach if the response was plainly incomplete or insufficient: **QPS Consultants Ltd v Kruger Tissue (Manufacturing) Ltd** [1999] BLR 366.

The MM interests argued that **QPS** was no longer good law, because of the change brought about by the introduction of the CPR. In particular, **QPS** was decided at a time when the Court had a discretion as to whether to give effect to the sanction attached to an unless order. Under the CPR, there is no such discretion: the sanction takes effect automatically upon the occurrence of a material breach of the order: **Marcan Shipping (London) Ltd v Kefalas** [2007] 1 WLR 1864.

Mr Justice Butcher nevertheless held that **QPS** continues to govern the question whether there has been a breach of an order requiring further information. He said that the relevant principles were as follows:

- (1) *"In assessing whether there has been compliance with an unless order for the provision of further information the Court will consider whether the information is plainly incomplete or insufficient given the terms of the order... The further information will be plainly incomplete or insufficient if it could not reasonably be thought to be complete and sufficient."*
- (2) *"In examining completeness and sufficiency, the Court is not concerned with the truth of the answers or with their logical coherence unless any lack of coherence goes to the completeness or sufficiency of the response."*
- (3) *"In considering relief from sanction, amongst the other matters which will be taken into account, are the matters which were, in the pre-CPR context of QPS Consultants, regarded as going to the exercise of the discretion as to whether a sanction should be imposed."* Those matters included the number and proportion of inadequate replies; whether any inadequacies were due to deliberate obstructiveness or incompetence; and the importance of the responses to the overall litigation.

Applying that analysis, the Judge concluded that GH interests were not in breach of the Registrar's order.

The Court also upheld the appeal against the Registrar's order, and indicated that it would have granted relief from sanctions if necessary. Butcher J considered that the unless order was plainly disproportionate and should not have been made by the Registrar. He applied dicta of the Supreme Court in **Summers v Fairclough Homes** [2012] UKSC 26 where Lord Clarke said at [49] that *"The draconian step of striking a claim out is always a last resort, a fortiori where to do so would deprive the claimant of a substantive right to which the court has held that he was entitled after a fair trial."*

[JOIN OUR MAILING LIST](#)[FOLLOW QUADRANT](#) [FOLLOW QUADRANT](#) 

John Russell QC



"He makes matters seem so easy and simple by being clear, precise and straight to the point. On his feet he is cool under pressure and well organised."
(Chambers UK, 2020)

John is an experienced and determined commercial advocate and has acted as lead Counsel in numerous Commercial Court trials, international and marine arbitrations and appellate cases, including two successful appearances in the Supreme Court, including the landmark shipping decision in **Volcafe v CSAV**. He has also appeared as counsel in inquests and public enquiries.

[> View John's full profile](#)john.russell@quadrantchambers.com

Benjamin Coffe



"He is very calm and professional in his assessment, which conveys confidence and gravitas beyond his call." (Chambers UK, 2020)

Ben was named Shipping Junior of the Year 2019 at the Chambers & Partners Bar Awards and was shortlisted for Shipping Junior of the Year for the Legal 500 UK Awards 2020. He is described by the directories as "a rising star" (Legal 500, 2019); "a standout shipping and commodities junior" (Chambers & Partners, 2018) and "a star of the future" (Chambers & Partners, 2017). He is also recognised as a leading junior in the Legal 500 Asia Pacific Guide.

[> View Ben's full profile](#)benjamin.coffe@quadrantchambers.com

Robert Ward



Robert Ward joined Quadrant Chambers in October 2019 upon successful completion of pupillage. During pupillage he worked on aviation, commercial, civil fraud, insurance and shipping matters. He will continue to develop his practice in chambers' core areas.

Robert was a full time legal research assistant with the Law Commission as a member of the Commercial and Common Law Team. He was involved with reform of the Bills of Sale Acts. He also worked on a project with the Law Commissioner for Commercial and Common Law, Stephen Lewis, looking at possible reform of the Arbitration Act 1996 in its 20th anniversary year. In 2016/2017 Robert worked as judicial assistant to Lord Justice Longmore in the Court of Appeal.

[> View Rob's full profile](#)robert.ward@quadrantchambers.com

Nigel Jacobs QC



"He is very good on his feet and his forensic preparation of the case is incredible thorough and detailed." (Legal 500 UK, 2020)

Nigel Jacobs QC is a specialist in shipping, insurance, commodity and commercial disputes. His work covers the full range from casualty work (collisions, salvage, unsafe port and limitation) through to disputes in relation to commodities, marine insurance, joint ventures, guarantees, and letters of credit, as well as "traditional" charterparty, carriage of goods by sea and contractual claims. He appears both in the High Court and in arbitration. He is also regularly instructed in (worldwide) freezing injunction, anti-suit injunctions and jurisdictional disputes. His recent arbitrations (2019) include the shipment of a cargo of rail damaged during transit, a claim by brokers to commission and the construction of a Pool Agreement. He is currently involved in an unsafe port case (South America) and a number of other casualties, including the "Ever Smart" and the "Saga Sky". He also accepts appointments as an arbitrator.

[> View Nigel's full profile](#)

nigel.jacobs@quadrantchambers.com

Saira Paruk



"Effective at holding a court's attention. She goes the extra mile to get to the bottom of an issue and fight the client's corner." (Legal 500 Asia Pacific, 2020)

Saira has a broad commercial practice with particular experience in shipping, commodities and jurisdictional disputes. She regularly appears in the Commercial Court and in arbitration both as sole and junior counsel. Saira is recognised as a Leading Junior by the Legal 500 UK and Asia-Pacific editions.

[> View Saira's full profile](#)

saira.paruk@quadrantchambers.com