

## **NON-COMPLIANCE WITH COMMERCIAL COURT GUIDE LEADS TO STRIKING OUT OF PARTICULARS OF CLAIM**

*Tchenguiz (Vincent) & Ors v Grant Thornton UK LLP & Ors* [2015] EWHC 405 (Comm)

### **Introduction**

By a judgment handed down on 20 February 2015 in *Tchenguiz (Vincent) & Ors v Grant Thornton UK LLP & Ors* [2015] EWHC 405 (Comm), the English Commercial Court considered that statements of case drafted in a manner which flouted the principles of the Commercial Court Guide were to be struck out and disallowed the costs related to drafting them.

### **Background**

The Admiralty and Commercial Courts Guide (“the Guide”) provides assistance on procedural matters to parties in commercial litigation before the English Commercial Court.

The Guide has (since April 2009) provided that statements of case should not be longer than 25 pages. Permission to serve a statement of case exceeding this length would only be granted in exceptional circumstances and where a party could show good reasons for permission to be granted.

The Claimant was the subject of an investigation by the Serious Fraud Office in the United Kingdom. That investigation was subsequently declared unlawful by the English Divisional Court. The Claimant in the instant case brought a claim against the Serious Fraud Office seeking damages. The Claimant settled his claim against the Serious Fraud Office on 25 July 2014.

In the instant proceedings, the Claimant alleged that the Defendants conspired to induce the Serious Fraud Office to launch the investigation in particular by dishonestly making false statements to the Serious Fraud Office (which the Defendants did not believe were true) in order to obtain commercial advantages.

The Claimant served on the Defendants Particulars of Claim that were 94 pages long, of which 50 pages were narrative “liberally interspersed with assertions of fraud, falsity, dishonesty and improper motive which are not at that stage particularised”. Having served the Particulars of Claim, the claimant then retrospectively applied for permission to do so.

### **The Decision**

Leggatt J, concerned that counsel responsible for drafting the Particulars of Claim must either not be aware of the Guide’s requirements or have not followed them deliberately, invited each counsel to explain whether they were aware of the requirements.

Of the four counsel involved, two explained that they were not aware at all of the requirements and two explained that they were conscious of the requirements as to the length of statements of case but were not aware that permission was required to serve a statement of case in excess of 25 pages.

Leggatt J held the requirements of the Guide were to be adhered to as they were aimed at the important objectives of avoiding prolixity in complex commercial litigation and curbing the inevitable unnecessary costs that are a consequence of such prolixity.

Leggatt J struck out the Particulars of Claim and ordered fresh ones to be settled. Furthermore, an adverse costs order was imposed on the Claimant in order to reinforce the court's disapproval of non-compliance with the Guide.

### **Concluding Remarks**

The Decision (which was endorsed by the Judge in Charge of the Commercial Court) marks the need for legal representatives to be aware of and follow procedural guidance as failure to do so may give rise to adverse costs orders.

### **Postscript**

On 21 April 2015, the Judge in Charge of the Commercial Court gave directions (with immediate effect) on the length of skeleton arguments for applications in the Commercial Court. Skeleton arguments for 'heavy' applications should be not more than 25 pages in length, and skeleton arguments for 'ordinary' applications should not be more than 15 pages in length. The court will give permission for a longer skeleton argument where a party shows good reason for doing so.

21 April 2015