

“Let’s just say I’ve had an incredibly busy twelve months”



MAAIKE DE BIE | GROUP GENERAL COUNSEL, EASYJET

You joined easyJet in an extraordinary year.

We started 2020 with a serious cyber breach in January, followed by the pandemic and then a very public disagreement with our founder and majority shareholder. We’ve also had to raise a lot of financing and shrink our business. Let’s just say I’ve had an incredibly busy year.

What’s it like trying to navigate those risks?

When I joined easyJet in June 2019, it was a growing business, which frighteningly quickly was hit by the pandemic and we ended up having to ground our entire fleet for 11 weeks. Very quickly, we went from growth-mode to survival-mode. We went into the pandemic with a healthy balance sheet and now we’ve had to raise an extraordinary amount of debt, so from a risk perspective, the focus of the company is changing. Furthermore, on the back of the significant cyber breach earlier in the year, we are now facing a class action threat. The other risk seen over the summer has gone dormant for now, but I don’t think will go away: the activist behaviour of our founder and major shareholder. And all this at a time when we had to work very hard to keep the company going and unfortunately shrink the business by a third.

A pandemic was on our risk register, but it didn’t mean we were necessarily prepared for this pandemic – I don’t think anyone was. We are seeing light at the end of the tunnel now with test and tracing, the reducing amount of quarantining and positive news around vaccines, although we are under no illusions that it’s going to be a tough winter.

As an executive team and board, we’ve had to focus on these key areas, marrying that with our purpose and people focus. I’m very proud that amongst all of this, it hasn’t just been about finance and liquidity. Although we had to shrink our workforce, we’ve done that in consultation with our unions and achieved the best possible outcome with a focus on behaving with compassion, not just a focus on the bottom line.

What’s it like trying to deal with a cyber breach?

We’re a big name, so when something like this happens, people jump on it. We are successful at defending many cyber-attack attempts, but this was a very sophisticated attacker. We worked with forensic experts to understand the attack and then conduct something called ‘containment’, where you devise a plan to kick out the attacker and keep them out.

Then, on top of that, the ICO [Information Commissioner’s Office] is investigating and we’re in a process with them at the same time as litigation having started. We are facing litigation in a couple of jurisdictions and because GDPR is relatively new, there are aspects in the law that have yet to be clearly understood. For instance, it’s not clear yet exactly what loss really means, because distress is now also a loss category, but it hasn’t been fully defined.

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No doubt, we are looking at years of dealing with this, including getting some decisions from courts to provide further clarity. There's an important case going to the Supreme Court this year called *Lloyd vs Google*, and everyone is waiting for that decision to see where things land, because that will have a potential big impact on future cyber, data-related breaches and their follow-on litigation.

The cases are presumably structured as group actions?

Yes, but there are two types: you can have an opt-in, so you have to actively choose to be a part of the action, but there's also a representative action where a third party says: "On behalf of all the data subjects impacted, I am going to start an action and if you don't want to participate you need to opt out." The latter is far more challenging – especially considering that we notified close to nine million people.

What's it like dealing with a class action?

It's early days with the cases – we also have some individual claims, but we are staying those for the bigger case. From my end, it feels a little opportunistic, because we had the breach and contained it. But because of potential risk to the data subjects, the ICO wanted us to notify certain individuals. We didn't think there was a high risk to these individuals, and we have not seen anything to suggest there was an increased risk, but we followed the ICO's recommendation. It was only when that notification was sent out in May that, three days later, the class action started. Very much the law firms taking the opportunity to start calling up people and putting out adverts asking: "Have you been impacted by this breach?" For the vast majority, the type of data that was potentially accessed by the attacker was your email and travel information – there was no passport information, no password information, no financial information. For a very small group of people, their credit card information had potentially been accessed – we notified those individuals back in April and also offered them credit card monitoring. So far, we haven't seen any evidence of fraud or other loss, so it feels distasteful that a law firm is jumping on the bandwagon and advertising to get people to make claims against us – very much like a 'no win, no fee' case.

How difficult is it to mount a defence of having taken reasonable steps?

It's a matter of judgement. There isn't a lot of case law. What is adequate for one company may differ from another. The security you expect at a bank is probably very different to what you expect at a low-cost airline. That is all still to be figured out.

What are the wider trends in commercial disputes you are seeing?

I hope the UK courts are not going in the direction of US litigation. We have seen this type of opportunistic behaviour on the back of competition cases, for follow-on damages. These type of claims for data breaches is relatively new, but that is because GDPR is relatively new and so far only a few fines have come out of it. People also care more about their personal data – for good reason. I hope that once these cases go to court, we have sensible judges. Our world is becoming more and more digital and cyber-crime is on the increase. We will see more and more breaches – including those supported by hostile nation states.

Are you seeing other trends in disputes?

The other area where airlines face claims is if your flight is delayed or cancelled, and when in certain circumstances you can then ask for compensation. The trend is akin to PPI – that's now closed off, so we see claimant firms going into this area. We have, over the years, seen a significant increase in how many people claim for compensation. We face claims management firms that are making hundreds of claims on behalf of others.

So you're expecting more of an industry to build up around various forms of consumer claims?

Exactly.

Does that continue, or are there limitations on how that can be applied in other European jurisdictions?

These type of claims are on the rise across Europe. We've seen quite a few of these CMCs in Germany and Italy as well as in the Netherlands and Spain. Unfortunately, due to the pandemic, we've had to disrupt a lot of people's holidays – especially while we had our fleet grounded – so these claims will continue.

What's your sense of how litigation will evolve in the next five years?

From a retail or customer perspective, I expect there's going to be more group or class actions. On a more commercial contract view, unless you have very serious issues, I don't see those going to court so easily, because they're just so complex and often involve difficult issues on both sides. I know ADR or mediation was seen as an alternative, but that can be a lengthy process too.

If you were giving advice to peers on managing risk or avoiding disputes, what's your strongest tip?

Communication with your counterparties. Always try to keep the dialogue going. When you end up in litigation, especially commercial litigation, it is a sign of where you've failed.

Will the pandemic generate many disputes, or will businesses have more immediate concerns?

In my world, because we've had to cancel so many holidays, I would expect customers and compensation firms to continue to take action. I would expect a litigation spike in consumer claims. Unfortunately, we're also going to see insolvencies, so, yes, the pandemic will create plenty of time in court.

Will London hold its position in the years ahead for disputes?

To the extent that people are still contracting to English law, which a lot do, London does have a very good reputation. I don't see that changing overnight.

In terms of the service you get from providers, do they need to be investing in technology and new areas?

As general counsel, when I am spending time with my external advisers, what stands out are those that provide that more strategic lens. You're not just merely addressing the legal issues, you look also at the bigger picture. It's understanding the entire universe in which you operate – lawyers that have that broader viewpoint stand out.

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NOEL CAMPBELL

Global Head of Litigation

T +852 3983 7757

M +44 (0)7774 964184/+852 6113 9280

E noel.campbell@hfw.com

NICOLA GARE

Disputes PSL

T +44 (0)20 7264 8158

M +44 (0)7795 612270

E nicola.gare@hfw.com

DAMIAN HONEY

Head of International Arbitration

T +44 (0)20 7264 8354

M +44 (0)7976 916412

E damian.honey@hfw.com

SEAN TWOMEY

Director of Business Development

T +44 (0)20 7264 8546

M +44 (0)7976 282592

E sean.twomey@hfw.com

**Find us on LinkedIn at www.linkedin.com/company/hfw
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