

In the matter of an Arbitration

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; 10th June 2019

Between;

~~XXXXXXXXXX~~
~~Stephen Gill~~
~~XXXXXXXXXX~~

(the consumer)

And

Go Travelling Limited trading under the style On the Go Tours

(the trader)

ORDER

Introduction

The dispute between the parties concerns the additional cost of a flight incurred by the consumer as a result of an error in the passenger's name printed on an E ticket for a return flight from London Heathrow to Amman in Jordan flying on the Royal Jordanian Airlines (the 'Airline').

The E ticket should have been printed '~~Mary Gill~~' (the consumer's wife) but through an error was shown as '*Mary Stephen*'. The impact of the error in financial terms shows the original cost of the flight in the sum of £599.00 being turned into an actual cost in the sum of £2719.72- approximate four fold increase. I am told this increase is because the original booking had to be cancelled and a fresh booking made which could only be made on the same flight with a return journey in business class. I am told that the consumer was unable to sit with his wife on the aeroplane on either leg of the journey because of the cancellation.

The dispute has been brought to the London Arbitration Centre with the trader having already offered to share costs of the additional charges with the consumer. As I understand, the offer by the trader is a refund equivalent to 50% of the additional cost to the consumer in the sum of £1060.36. The consumer states in the claim form that "*The tour operator is offering to refund me 50% of the overall loss of £2120*".

The consumer and the trader have been unable to reach an agreement and the matter has been referred to Alternative Dispute Resolution (ADR) with the London Arbitration Centre.

The facts of the case

By an email dated 2nd October 2018 timed at 12.52 from the trader, headed '*your provisional booking*' a tour was shown starting in Amman on 13th April 2019 and ending on 20th April 2019 in Amman. The Travellers names are shown as ~~XXXXXXXXXX~~ and ~~Stephen ON~~. This is shown held until 9th October 2018. '*Against Deposit*' it states "*GBP200 per person with full payment payable by 12th February 2019*" The author of the email is ~~XXXXXXXXXX~~ who I understand is the trader's dedicated reservations consultant for the consumer.

I have also been provided an almost identical communication of the same date which states '*Your booking confirmation*'. The Travellers names are shown as ~~XXXXXXXXXX~~ and ~~Stephen ON~~ and against '*balance outstanding*' the sum of *GBP1892 with full payment by 11th February 2019*'. There is also a new tab which states '*manage my details*'.

By an email dated 2nd October 2018 timed at 13.56, headed '*Your provisional with On the Go Tours –Booking reference #3221471*' (in which the photographic image of passenger names has been replaced with reference with jpg files). I understand the passenger names are properly shown and the omission of the image of the text is accidental. The consumer is being asked to confirm;-

You agree the itinerary is correct

- *All names are correct as per passport*
- *Dates of birth are correct*
- *You understand the flights are non refundable and non changeable*
- *Each passenger has a minimum 6 month validity remaining on their passport at time of travel*

And then details of a proposed '*Aqaba extension*'

By an email dated 4th October 2018 timed at 17.35 from the trader headed '*Your provisional booking with On the Go Tours Booking reference #3221471*' flights are shown departing London Heathrow on 13th April 2019 and returning 24th April 2019 on Royal Jordanian Airlines. Otherwise the email is identical to the email dated 2nd October 2018 timed at 13.56 without the *Aqaba extension* except crucially;-

The passengers details are shown

Mr ~~XXXXXXXXXX~~ with his date of birth

Mrs ~~XXXXXXXXXX~~ with her date of birth

~~XXXXXXXXXX~~ on behalf of the trader "*I would also need in writing that:*

- *You agree the itinerary is correct*

- All names are correct as per passport
- Dates of birth are correct. You understand the flights are non-refundable and non-changeable".

By an email dated 5th October 2018 timed at 16;03, the consumer replied as follows;-

Hi Caroline further to our many conversations I can confirm the following:

- You agree the itinerary is correct YES
- All names are correct as per passport YES (Mary's middle name is CHRISTDINA)
- Dates of birth are correct YES (Stephen 06/12/1957) (Mary 13/02/1960)
- You understand the flights are non-refundable and non-changeable YES
- Each passenger has a minimum 6 month validity remaining on their passport at time of travel YES

Thanks for all your help in arranging this trip

Kind regards

Stephen

PS Have a great weekend

I am informed by the consumer that the passenger details were correctly shown on the email dated 2nd October 2018 (the Aqaba extension) and it was this to which he was replying when he did so by email on 5th October 2018 timed at 16.03 in relation to the passenger name aspect but in relation to the itinerary aspect set out in the email dated 4th October 2018 timed at 17.35 (without the Aqaba extension).

This (together with the name printed on the E ticket) is the crux of the dispute.

By an email dated 5th October 2018 timed at 1607, ~~XXXXXXXXXX~~ on behalf of the trader states;-

Thanks Stephen,

I have confirmed your flights. I will send you the E-ticket early next week when I have it from my flight team....

By an email dated 8th October 2018 timed at 1853, ~~XXXXXXXXXX~~ on behalf of the trader provides the consumer with the E-ticket (dated 4th October 2018) as an attachment. Under passenger information the details are shown as follows;-

Mr ~~XXXXXXXXXX~~ Ticket no. 5122668670491

Mrs ~~XXXXXXXXXX~~ Ticket no. 5122668670492

The next relevant communication is 9th October 2018. The consumer states;-

Hi Caroline

Hi Stephen,

Thanks for your call. I have checked and you can do online check in 24 hours prior to departure.

Please let me know if you have any questions.

Kind regards, Caroline

By email dated 9th March 2019, Caroline Shaw on behalf of the trader provides to the consumer the flight tickets again and by email dated 11th March 2019, we see that the consumer replies stating;-

Great, thanks Caroline, all printed off!

By email dated 12th April 2019, Caroline Shaw on behalf of the trader tells the consumer;-

Hi Stephen,

I am just currently on the phone to my flight department to find a solution.

Can you please send through a clear photo of Mary's passport photo page, as we may need this.

Kind regards, Caroline

I am informed by the trader (email dated 24th May 2019 timed at 11.01) that ;-

It was not until Mr ~~XXX~~ attempted to check in for his flights on the 12th of April 2019 that the name error was first noted by him and raised with Caroline. Caroline and her Line Manager contacted the online booking facilitator to see if they could assist in any way. They could not, and referred only to the airline's booking conditions. Subsequent calls made to the airline (Royal Jordanian) were also unhelpful except to verify that name changes would not be allowed, and the ticket would need to be submitted for refund and a new ticket purchased at the applicable available rates. Unfortunately, this is common-practice in the airline industry and is in line with the conditions outlined by Caroline in the message to Mr ~~XXX~~ on the 4th of October 2018: "You understand the flights are non refundable and non changeable". Although a change was not possible, the airline agreed to provide a partial refund after being advised that the new ticket would also be booked with them. The following option (from 3 suggestions) was thereby selected by Mr ~~XXX~~ "There would be a cancellation fee of £129.50 to cancel Mary's ticket. Then we would need to book a new ticket for Mary on the same flight. The cost would be £2719.72 as there is only business class available on the way back now. This would be our first option. Either way I am happy to cover the £129.50 cancellation fee as a gesture of goodwill." The new flight booking was subsequently confirmed for Ms ~~XXX~~ after receipt of the payment from the customers.

The only other information I believe relevant is the trader's response to a specific request by myself to provide details of the *airline rules* under which the ticket could not be amended. The trader set out those rules by email dated 30th May 2019 timed at 15.36 as follows (the wording in brackets is the annotations provided by the trader for my understanding);-

16. PENALTIES

FOR S- TYPE FARES

CANCELLATIONS

BEFORE DEPARTURE

CHARGE GBP 125.00 FOR REFUND. (cancellations made prior to the initial departure point will incur a GBP125 fee)

CHILD/INFANT DISCOUNTS APPLY.

WAIVED FOR DEATH OF PASSENGER OR FAMILY MEMBER.

NOTE -

YQ IS NON-REFUNDABLE (the YQ is one of the fare elements of the ticket and this portion of the price is ALSO non-refundable in addition to the GBP125 listed above)

AFTER DEPARTURE

TICKET IS NON-REFUNDABLE.(after the traveller has made their first departure, this ticket is deemed non refundable. This would even be true if there were many different travel sectors)

WAIVED FOR DEATH OF PASSENGER OR FAMILY MEMBER.

NOTE -

REFUND OF UNUSED FEES AND TAXES PERMITTED EXCEPT

FOR THE YQ/YR FUEL SURCHARGE IS NON-REFUNDABLE. (this is just a reiteration of the above but ertain to death of a passenger or family member only)

CHARGE GBP 125.00 FOR NO-SHOW.

CHANGES

ANY TIME

CHARGE GBP 75.00 FOR REVALIDATION.

CHILD/INFANT DISCOUNTS APPLY.

WAIVED FOR DEATH OF PASSENGER OR FAMILY MEMBER.

NOTE -

TICKETS MAY BE UPGRADED TO ANY HIGHER FARE OR

CABIN PROVIDED GBP 75.00 IS COLLECTED PLUS ANY

DIFFERENCE IN FARE .

NAME CHANGES NOT PERMITTED (the changes referred to above are in relation to dates or times etc, but not to name changes)

The consumer's case

The consumer's case is set out in his email dated 2nd May 2019 timed at 11.56 to the trader;-

Hi Caroline

Thanks for your email,

I note the insertions regarding the ATOL Certificate which we received in October along with our invoice/receipt which clearly states the passenger names correctly.

So, once we had that, we (not unreasonably) believed that you and your team had all the correct details to issue us with the correct E Tickets.....

My error was that I missed the mistake that was made either by your Company or by Royal Jordanian and assumed that having the ATOL certificate which was correct would have generated a correct E ticket, if you look at the email you sent me asking me to confirm the names, both christian names were down the left hand side and my surname down the right, I wrongly assumed that you would haven't sent me an email without having double checked it was correct. I am not an industry expert and am not used to checking different company's formats.

The consumer also says that he submitted to the trader the correct passenger details. He states;-

I advised Caroline Shaw at On The Go Tours by telephone of our decision (about flights in Jordan) and was sent the revised flight details on the 4th October, because I had already confirmed the details were correct as per On The Go Tour's email of 2nd October I did not pick up the fact that my wife's name had been amended in the email of 4th October.

He states that he believed that the information was electronically populated from the original information he had supplied and the only changes needed was the removal of a Aqaba- Amman flight trip (the Aqaba extension referred to above). He did think it was necessary to point out his 'wife's middle name was missing' but that he did not notice the error on the E ticket until the evening before they were due to fly. He also says "I thought by going via an agent I would get a level of service which would make the planning and execution of the trip stress free."

He believes that the trader submitted the incorrect details to the airline who sent the details back to the trader for checking and that the trader simply passed this over to him. He states on his claim form quite frankly that he is "prepared to take some of the blame but not all of it. I don't think they did their job properly".

The trader's case

The trader's case is set out in the email dated 6th May 2019 timed at 14.55 from Claire Basley in reply to the consumer as follows;

You are correct in stating that the passenger names were properly provided by you and that they were subsequently incorrectly loaded to our flight system despite having been accurately copied to our main booking system previously. It is for this reason that we have extended an offer to reimburse 50% of the associated costs for the changes to the booking.

However, there is still an onus on all travellers to check that the details are correct once they have been added, and this is explained in our Booking Conditions as follows;

If your confirmed arrangements include a flight, we (or if you booked via an authorised agent of ours, that agent) will also issue you with an ATOL Certificate. Upon receipt, if you believe that any details on the ATOL Certificate or booking confirmation or any other document are wrong you must advise us immediately as changes cannot be made later and it may harm your rights if we are not notified of any inaccuracies in any document within ten days of our sending it out (five days for tickets).

The emails sent to you at the time are clear in requesting that the names be checked once again and your response that a middle name should be added was taken as confirmation of that this had been done. While we are sympathetic that the surname of the second passenger was simply overlooked, we hope that the above provides some explanation into our offer to cover only 50% of these costs, and we sincerely believe that this gesture was fair in this instance.

The trader as also pointed out that the consumer's understanding about passenger details being passed between them and the airline is incorrect. I am informed that the international flight reservations system used by them is similar to that of any online booking portal, which simply asks for passenger details to be added and then allows these to be confirmed accordingly.

I am inclined to accept the trader's explanation as to how flights are booked and that the Airline was not the source of the error in the name. In my view, nothing turns on this aspect of disagreement as to the circumstances.

The decision

Before looking at the merits of the case, I make the observation that a small change to passengers details on a flight has had a huge financial impact on the air fare that was originally billed at £599.00. This has ended up costing £2719.72.

It is also to be noted that it is the Airline here who appear to be the net beneficiary of the error. This has generated a 'windfall' to them as a result of the mistake by one or both parties. It is clear that no part of the additional fare represents charges by the trader to the consumer. What I find curious about this case is why the Airline where not able to re-book the seats from the resulting cancellation.

Section 49 of the Consumer Rights Act 2015 ('the Act') states;-

Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

I find the trader in breach of section 49 of the Act in not using reasonable skill and care when booking the consumer's flight with Royal Jordanian Airlines by failing to accurately record the passenger names on the E ticket. The question I have to decide is how much (if any) of the additional fare should be reduced through an act or default of the consumer.

First off, in contract law there is no concept of contributory negligence. This is a concept unique to the law of tort. If any reduction is to be applied to the loss suffered by the consumer it must be on the basis of corresponding duty of care owed by the consumer to the trader in contract.

In legal terms the trader relies on its terms and conditions, in particular, under the clause headed '*Booking & Payment*' as follows-

In order to make a booking with us, you must pay a non-refundable deposit as stipulated to you at the time of booking, (or full payment depending on your trip/time before departure) and we issue you with a booking confirmation. All our tours are subject to availability and we reserve the right to return your deposit or payment and decline to issue a booking confirmation at our absolute discretion. A binding contract will come into existence between you and us as we have issued you with a booking confirmation that will confirm the details of your booking and will be sent to you or your travel agent. If your confirmed arrangements include a flight, we (or if you booked via an authorised agent of ours, that agent) will also issue you with an ATOL Certificate. Upon receipt, if you believe that any details on the ATOL Certificate or booking confirmation or any other document are wrong you must advise us immediately as changes cannot be made later and it may harm your rights if we are not notified of any inaccuracies in any document within ten days of our sending it out (five days for tickets).

I believe that the trader when referring to '*any other document*' is referring to the trader's email dated 2nd October 2018 timed at 13.56 and 4th October 2018 timed at 17.35 as well as the E ticket dated 4th October 2018.

It would appear that the duty owed by each of the parties is finely balanced between the implied duty owed by the trader to the consumer under Section 49 of the Act and the duty owed by the consumer to the trader under contract being by reason of the terms and conditions under which the supply is made.

I believe the otherwise finely balanced position between the parties should take account of Section 69 of the Act which states;-

If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.

I believe this is relevant in relation to the near identical emails from the trader dated 2nd October 2018 timed at 13.56 and 4th October 2018 timed at 17.35. I consider both emails to be 'consumer notice(s)' and under section 69 of the Act I consider that each has a different meaning. Applying Section 69 of the Act, it must follow that the email dated 2nd October 2018 is the one the most favourable to the consumer.

I therefore accept that when the consumer confirmed the passenger details as correct in his email dated 5th October 2018 timed at 16.03 he was doing so in relation to the passenger details shown in the email dated 2nd October 2018. I do this because it is the most favourable interpretation but also one that makes more sense.

I accept entirely what the consumer says in his reply to the response by the trader that he had already confirmed the details were correct by telephone and that the second email from the trader dated 4th October 2018 was simply to confirm the change in itinerary that was being discussed between the parties between the 2nd October 2018 and 4th October 2018 (the Aqaba extension). I also note that the E- Ticket is dated 4th October 2018 which can only make sense if I accept this version of events is correct in view of what I am informed by the trader as to when an E ticket will be issued.

The E ticket dated 4th October 2018 would already appear to have been issued at that point prior to 5th October 2018 when the consumer provided the confirmation. I am informed by the trader by email dated 24th May 2019 at 11.01 that the booking on 4th October 2018 was a provisional booking and that;-

“However, tickets will never be issued until acceptance of the booking details by the customer (ie: - You agree the itinerary is correct - All names are correct as per passport - Dates of birth are correct - You understand the flights are non refundable and non changeable - Each passenger has a minimum 6 month validity remaining on their passport at time of travel).”

I am informed by the trader in the response to the claim that *“Upon receipt of the above confirmation (which is the consumer’s email dated 5th October 2018 timed at 16.03), and in line with the Booking Conditions accepted by Mr ~~OX~~ upon original confirmation of his booking, the flight reservation was issued by Caroline”*. I find this to be incorrect on the actual timeline of events.

I therefore find as a fact that the consumer is not in breach of the trader’s terms and conditions in relation to the allegation that he did not advise of the error in the passenger name following the emails sent to him showing contradictory information as to passenger names.

This still leaves, however, the question of the incorrect passenger name shown on the E ticket. I do find that the consumer did not advise the trader of the incorrect details of the passenger on the E Ticket until 12th April 2019 when the consumer attempted to check in for their flight. I note this is in spite of the fact that E tickets also appear to have been printed out by the consumer on 11th March 2019. This means the consumer is in breach of the trader’s terms and conditions in relation to his obligation to inform the trader that the passenger details shown on the E ticket are wrong.

If scales of justice were ever required in any case, it is this case. I believe the only way to decide where justice lies, is to carry out a balancing exercise in relation to the parties conduct against the respective obligations towards each other.

The obligations on the consumer to the trader

- The consumer did not advise the trader that the passenger details on the E Ticket were incorrect that was supplied to him by email dated 8th October 2018 timed at 18.53. This is was a continuing obligation and therefore a continuing breach of the trader's contractual terms and conditions.

The obligations on trader to the consumer

- The trader incorrectly copied the passenger details shown in the booking confirmation. The booking confirmation is evidence of the contract between the parties and, as I understand, sent in compliance with the Package Travel, Package Holidays and Package Tours Regulations 1992.
- The trader, through ~~Catherine Shaw~~, should have asked the consumer to confirm as correct, the changes to the flight itinerary only by her email dated 4th October 2018 timed at 17.35 since this was the only change being discussed following the email dated 2nd October 2018 timed at 13.56 (the Aqaba extension). If I am wrong about this, she did not check the content of her own email to the consumer dated 4th October 2018 timed at 17.35 against the content of the email dated 2nd October 2018 timed at 13.56. It is no part of the obligation upon the consumer under (the traders terms & conditions) to check the work carried out by the trader for which the trader has been engaged. I accept as correct what the consumer as told me in reply to the response by the trader to the claim when he states;- *"I am being penalised for not checking the work of someone I am paying to do that work"*. In my opinion, the obligation upon the consumer is to provide information which cannot reasonably be known to be trader such as the passenger's middle name, as happened here, or variations in spellings for the same name. For example, 'Stephen' can be spelt at least two ways and 'Mohammed' can be spelt in multiple ways. In this case, it appears the trader is suggesting that the consumer should be checking the work for which the trader is engaged. The trader had assigned a specific customer service representative to the consumer and it is reasonable to assume that ~~Catherine Shaw~~ (the representative) knew or ought to know the identity of her clients.
- The trader did not act upon 'changes' notified by the consumer on 15th October 2018 through the online portal provided by the trader to the consumer; 'changes to the booking'. The trader failed to note or act upon notice that *Mary Stephen* was not a passenger. I also find that the trader ought to have entered the passenger's passport number onto the Airline Advance Passenger Information System (APIS) but did not do so (see below) on or shortly after 15th October 2018.

I should add that the trader was wrong to make the subject heading of all emails after 2nd October 2018 *'your provisional booking'* even though this issue is not a central issue between the parties. I find that a binding contract existed between the parties by 2nd October 2018 and consequently this shows a lack of attention to important detail. On the basis of my above findings, I believe that the balance of justice is tilted three quarters in favour of the consumer and I believe it is fair and just that the award should reflect exactly this imbalance between the parties.

I note the complaint by the consumer that he was unable to sit with his wife on either part of the flight. This does not, in my view, form the basis for a claim in a compensation absent any special needs by either passenger. One assumes business class to be better than economy class which is what the parties had originally contracted. Also getting out of one's seat on a long flight might sometimes be desirable in any event. There is nothing to suggest the consumer was unable to talk to his wife or this should form the basis of damages.

The Name Change

This part of the decision is advisory. I believe it is necessary to set out my opinion in relation to the Airline rules (although this does not change how I have apportioned 'blame' for want of a better word). The only real significance is that this would mean the party (or even both parties) against whom the incidence of the additional cost falls may be entitled to recoup the loss from the Airline itself.

In my opinion, I do not consider that the Airline rules to which I have been referred (NAME CHANGES ARE NOT PERMITTED) prevent the passenger from rectifying errors in passenger names. In my opinion '*Name Change*' refers to change of name where one passenger's name is being replaced by another passenger name.

I see from public information posted on the internet that instances of errors in names is quite a common occurrence on airline tickets and that there does not appear to be a common policy that provides for these situations.

<https://www.which.co.uk/news/2011/05/name-changes-on-airline-tickets-could-be-costly-253458/>

It is accepted that once an airline ticket has been issued with an error in a passenger name, charges will follow as night follows day (with exceptions). I do not accept, however, that it automatically follows that the ticket has to be cancelled and a new booking made. This is important here because of the obvious price difference between a flight in economy class and in business class. Like I say, I find bizarre that the 'cancelled seat' could not be re-booked (see above).

I do accept that dealings with the Airline over a passenger name shown on an E Ticket became much more difficult at the late stage at which the error was discovered. Clearly, it was going to be extremely difficult at that point to convince the Airline that the name was not a Name Change. I believe the trader would have stood in a better position with the Airline had the passenger passport number have already been entered into the APIS on or shortly after 15th October 2018.

I have come to the conclusion that the Airline took maximum advantage of this situation. Instead of charging what might be a reasonable administration fee, the Airline have sold a seat in business class. As I said at outset, I believe the Airline could simply have sold back to the consumer the seats that the consumer had to cancel in this case. I do not know whether the trader has already formally complained to the Airline about the conduct of the Airline in the situation described. It must be known to the trader in the travel business that information available to an Airline official at the check in desk the day before a flight might

not be the same as a considered response from the Airline to a complaint properly directed towards senior management.

If my opinion about the Airline rules is correct, I do not believe this would have a significant impact on my decision because the consumer would have had to pay an administrative fee to the Airline and an administrative fee to the trader in any event under the trader's terms and conditions. This might have led to a dispute as to how those charges should be apportioned but the amount in issue would not be anything like the dispute under adjudication.

The trader has not made any charges for the work it has carried out in rectifying the error—something I should not pass over without mentioning that the trader is legally entitled to do under its terms and conditions.

Summary

In summary, I consider the trader has failed to use *reasonable skill and care* and I also consider the consumer to be in breach of contract. For the reasons set out above, I am going to apportion the additional charges caused by the error in the ratio 75:25 or 3:1.

I should say the legal terms I have used in this decision (*reasonable skill and care*) are legal terms only. I would not want the consumer to be left with a bad impression about the service he has received from the trader. I am particularly impressed that the trader has made the offer that it did to the consumer to resolve the dispute and did not seek to raise its own additional charges. I believe the offer was made in good faith and on the basis of its analysis of the situation. The trader took a reasonable position and also offered to the consumer an effective internal dispute resolution process.

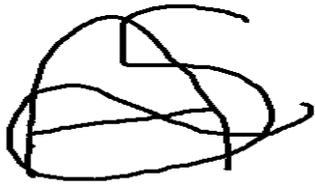
These are all considerations that any consumer should take into account when making any purchase. We live in an imperfect world and situations like this arise all the time. What is important to a consumer is how the trader reacts when things go wrong. In my view, there is nothing in this decision which should detract from the consumer giving the trader a five star review.

ORDER

On the basis of my decision, I have calculated the additional cost to the consumer for the flight is £2120.72 (£2719.72 less the original ticket price £599.00). Using the ratio 3:1 this is apportioned between the trader and consumer £1590.54 : £530.18. I therefore order the trader to pay £1590.54 in compensation to the consumer. (The consumer having already paid the trader £2719.72, the cost of the flight £599 plus apportioned sum £530.18 makes £1129.18. Therefore £2719.72 less £1129.18 leaves the consumer due a refund in the sum of £1590.54).

IT IS HEREBY ORDERED that the trader (re) pay the consumer the sum of £1590.54 within 14 days of the date hereof.

Date 10th June 2019



Signed

Mr Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited



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