

The Grande Island: What you delete is only half the story

The recent decision in *Olam International Ltd v Pacific Basin Supramax Ltd (The Grande Island)* [2026] EWHC 2136 (Comm) concerned a familiar feature of charter party negotiations where standard wording had been incorporated but parts of it deliberately deleted. The question was what those deletions meant for the provisions left behind.

Background

The Grande Island was chartered under an amended NYPE form for a trip from Ghent to Nigeria. The charter party incorporated the BIMCO Piracy Clause for Time Charter Parties 2013, but sub-clauses 81(a) and (b) were expressly deleted.

Had it remained, Clause 81(a) would have given Owners a broad right, based on the reasonable judgement of Owners or the Master, to refuse to proceed to or through an area considered dangerous because of piracy, or to leave such an area. Clause 81 (b) dealt with the alternative orders to be given by Charterers following the exercise of that right.

Furthermore, Clause 81(c) was retained, and it allowed Owners, where the vessel proceeded to or through an area exposed to piracy risk, to take reasonable preventative measures to protect the vessel, crew and cargo. The clause gave examples of such measures, including re-routing, proceeding in convoy and adjusting speed or course, but this list was not exhaustive.

After arriving off Warri, the vessel was unable to berth. Considering the background of piracy risk in the area, she left Warri and returned towards Lagos, before returning to Warri around three days later. The dispute was whether that temporary departure was permitted under Clause 81(c) and therefore whether the vessel remained on hire.

Charterers' case

Charterers' position centred on the parties' decision to delete Clause 81(a) and (b). In their view, this was important because Clause 81(a) contained their express right for Owners to leave an area on account of piracy risk. Having specifically removed that right, Charterers argued that the more general wording of Clause 81(c) should not be interpreted as giving it back.

They also relied on the types of preventative measures identified in Clause 81(c). Charterers argued that those examples were consistent with measures taken while navigating through or operating in the relevant area rather than leaving it altogether.

On that construction, the vessel's return towards Lagos was outside the protection of Clause 81(c) with Charterers maintaining that hire should not be payable for the concerned period.

Owners' case

Owners' case was that the deleted and retained provisions served different purposes.

Clauses 81(a) and (b) provided broader rights, including a right triggered by the reasonable judgement of Owners or the Master. Clause 81(c) was narrower, requiring actual exposure to piracy risk, with any preventative measure taken also having to satisfy an objective standard of reasonableness.

As such, the deletion of the broader rights did not mean that the parties had also removed the separate protection available under Clause 81(c). Furthermore, Owners relied on the breadth of the wording used in that provision and the fact that the listed preventative measures were examples rather than an exhaustive list.

What did the Court decide?

The arbitral tribunal found in Owners' favour. It was satisfied that there was a piracy risk at Warri and that temporarily leaving the area was a reasonable preventative measure. Therefore, the vessel remained on hire.

Charterers appealed under section 69 of the Arbitration Act 1966, but the Commercial Court upheld the award.

The Court considered the retained wording of Clause 81(c) sufficiently clear and broad to encompass leaving the area where doing so amounted to a reasonable preventative measure. The examples appearing in the clause did not confine the wider wording, particularly as the clause made clear that the measures identified were not exhaustive.

Importantly, the Court did not treat the deletion of Clause 81(a) and Clause 81(b) as meaningless. Those provisions would have given Owners additional and more extensive rights. As a result, removing them changed the parties' bargain but it did not narrow the separate right they had chosen to retain under Clause 81(c).

Practical considerations for Charterers

From a Charterers' perspective, the case illustrates why amendments should be tested against the charter party as a whole. Removing one contractual right may not achieve the intended result if another provision can authorise similar conduct under a different test. This is particularly relevant where standard wording sits alongside bespoke rider clauses, as similar or overlapping rights may operate independently of each other.

The treatment of the examples in Clause 81(c) is also worth noting. Where a contractual provision contains a broad right followed by a non-exhaustive list of examples, Charterers should be cautious about assuming that the right is confined to the situations expressly listed. If the parties intend the permitted measures to be limited to particular actions, clear wording may be required.

At the fixture stage, the question should therefore not stop at what is being deleted. Charterers should also consider what rights remain and how they interact. If the

commercial intention is that Owners should not be permitted to take a particular step, or that hire should cease if they do, it may be preferable to address that consequence expressly.

The decision is equally useful when a claim arises. If Owners rely on a safety or security clause to justify a diversion or other action, Charterers should focus on the particular requirements of that specific clause and the evidence supporting them. Here, the retained right depended on actual exposure to piracy risk and on the measure taken being reasonable. Those are matters capable of factual scrutiny, including what the risk was at the relevant time, what information was available to Owners and the Master, what alternatives were reasonably available and why the particular course was selected.

Before making an off-hire deduction, Charterers should consider the charter party as a whole. Where another provision permits Owners to take the relevant action and expressly addresses the resulting allocation of time or hire, that provision may determine the position irrespective of the general off hire regime.

Concluding, the drafting lesson from the *Grande Island* is a simple one. When negotiating what comes out of a charter party, equal attention should be paid to what stays in.