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Why everybody needs a Brave Betty

Simon Tatham tells how four weeks of intense negotiations led to a lone middle-aged woman making a perilous journey to deliver a ransom to hostage-takers in Nigeria

► *Simon Tatham*

Recently a middle-aged woman – let's call her Betty or, better still, Brave Betty – headed out in her small car on a 10-hour drive, mainly on dirt tracks, into the Nigerian delta region: if you were in England, roughly the same distance as from London to Manchester. In the boot of her vehicle were medicines, food and water but also iPhones, iPads and other desirable electronic kit, together with some modest bundles of cash. She was alone and for most of the time out of contact.

En route, she encountered a series of perils, not least being arrested at a checkpoint by local police once they had inspected the contents of the boot. Fortunately for Betty, who has done this before, she carried with her letters to and from the government, the regional head of police, the local governmental chiefs and so on.

Within two hours she was on her way again, the checkpoint officials appreciating that bigger players than they were involved.

Then a prolonged radio silence followed. Eventually the call came at night: safely in her car were now four crewmen, the unfortunate ones that had failed to make it into the citadel. The handover had gone according to plan, each side standing by their side of this unhappy bargain. Brave Betty said: "I know their mothers".

This was the outcome of some four weeks of intense and at all times difficult negotiations conducted by one of my colleagues over the phone from London. Betty's role, her trade or speciality – one born more out of a sense of righteousness than money – although she was paid, was to deliver this ransom into the hands of kidnappers and return with the crew.

She chose to do this in a low-key way, principally so as not to draw attention to herself.

Meanwhile, it has been a buyer's market in the offshore business, more so than anyone can remember in recent decades, with the oil majors and governmental exporters, themselves under pressure on account of a low oil price, forcing down contract rates.

Let's take tanker and terminal assist operations: always a competitive market, but at least one involving a long-term contractual commitment. Here the trend has been to oblige the contractor to assume increasing levels of risk, typically waiving claims for all incidents bar those wholly caused by the wilful conduct of the hirer and, in any event, excluding consequential or economic losses, or at least capping such liabilities, while requiring the contractor to include the hirer as co-assureds under the insurances at his own cost with waivers of subrogation applying.

However at least the contractors were getting well paid for it. I therefore have sympathy for contract managers now handling the renegotiations. Logically you would expect them to be able to push back on terms given the altered risk/reward equation.

Unfortunately, what has gone before in a contract is too often set in stone with no scope for change. Their legal advisers, undertaking a contract review, are faced with having to make sense of 150 pages of documentation where arguably 20 would suffice. At the same time, what should be the operative contract itself – say an amended BIMCO Supplytime – is tucked deeply away in a schedule along with other lengthy provisions on security and health and safety.

Large institutions have their own standard terms of business, developed over time, often covering a wide range of purchasing activity, and they wish to incorporate those terms, together with whatever else they can throw in "just in case". The rationale is that one document might not fully cover the situation so with enough of them saying more or less the same thing, but in different ways, the point surely must be covered.

For the sporting minded it is the contractual equivalent of having a second long stop fielder in cricket just in case a rogue ball was to sneak through.

Head office expects to see all this included. Since it is seldom possible to strike out provisions wholesale, the challenge for lawyers is to make sense of a draft contract, itself made up of a series of contractual documents containing conflicting terms – together with provisions that may simply not pertain to the operation at all.

There are solutions to this: for example, specifying the order in which contracts or contract provisions take precedence one over the other in the event of conflict, but these solutions, if agreed, are themselves complex and may be a time-consuming exercise.

Meanwhile, a problem for the contract manager is that these points, important as they may be, frequently do not go to the core of what is commercially important to the intended operation.

Some day, perhaps not so far away, an algorithm will be developed. One will feed the contractual terms in and out will come a neat drafting solution or contract advice.

Pending that, clients may be forgiven for wishing they could simply send in a Betty to pick her way through the contractual jumble and deliver one of her uniquely straightforward solutions.

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