

**MINUTES OF THE
CLLS ARBITRATION COMMITTEE MEETING
ON 18 SEPTEMBER 2023, 09:00-11:00**

Attendees: Michael Davison (Chair, Hogan Lovells), Kevin Hart (CLLS), Matthew Saunders (Vice-Chair, Ashurst), Alejandro Garcia (Stewarts Law), Marie Berard (Clifford Chance), Lisa Dubot (Mayer Brown), Robert Price (Latham Watkins)

Via Zoom: Hannah Ambrose (HSF), Karen Birch (A&O), Oliver Brown (Latham Watkins)

Apologies: Chloe Edworthy (Macfarlanes), Phillip Chong, (Ashurst), Sherina Petit (Norton Rose Fulbright), James Freeman (A&O – substitute Karen Birch), Matthew Skinner (Shearman Sterling), Stuart Dutson (Simmons & Simmons)

1. WELCOME

Michael Davison took the role as Chair and welcomed the Committee members to the meeting.

2. APPROVAL OF THE MINUTES OF THE MEETING ON 19 APRIL 2023

The committee approved the minutes without any comments.

3. LAW COMMISSION – ARBITRATION ACT REFORM

Michael Davison started the meeting by exploring how to deal with the responses received and how the Committee should take Reform results forward.

In that respect, Kevin Hart asked for a paragraph from the Committee to pass on to Colin Passmore so he can discuss with the Lord Chancellor (19 Sept) on why the response should be implemented within the next six months and form part of the King's speech later in the year.

The Committee then went on to take stock on where the Law Commission ended up with the responses.

Matthew Saunders expanded on the area of confidentiality which could give rise to issues when non-English practitioners handle this area as Confidentiality is a focus in the English legislation but less so in foreign jurisdictions. The Committee agreed that this is an outcome the Committee should comment upon.

Matthew Saunders explained that many users of arbitration expect Confidentiality to be included per se which is, according to the Law Commission, not the case even though it used to be an advantage of the English arbitration system.

Michael Davison suggested to prepare the a list of comparison between jurisdictions on Confidentiality without underlining the flaws of the English system but rather point out the risks it could bear. Matthew Saunders pointed out that the Bill should be used to promote London as preferred seat for arbitration.

The Committee also discussed that the reform is rather narrow and safe and not wide-reaching enough to put London at the forefront. It is, therefore, important for the Committee to emphasise this point in their publications and events to raise awareness.

The Committee went on to discuss the results of the Consultation Paper in general with the Committee agreeing that the expectation of the results had been low from the beginning and no surprises had come up.

The Committee agreed that it should support the Bill and discussed whether the point of Confidentiality should be pushed in the House of Commons and House of Lords. The Committee also discussed the aspect of how the press and public would react to further discussions in public on Confidentiality (i.e. would the public think that the legal industry wants to keep things from the public).

Michael Davison suggested that Colin Passmore should emphasise to the Lord Chancellor that the Committee would like the bill to be finalised as soon as possible. It should also be made clear that London should not be deprived from the status as arbitration seat and that the Bill should help to promote Arbitration.

Alejandro Garcia raised the point that the Committee should give some thought why London should continue to be promoted as the seat of arbitration, supported by data, and why this is important to the Arbitration space. A comparison to international seats like Dubai, Hong Kong, Singapore would be beneficial to point out the advantages of London.

Michael Davison raised the point that the Committee should put together an event before the end of the year. Kevin Hart confirmed that there is no set calendar for the CLLS and anything that helps to raise the Committee's issues is beneficial.

Michael Davison thought that somebody from the Law Commission would be good to have at the event for a fireside chat. Matthew Saunders raised the point of have somebody from outside London to speak at the event to give a view on how London is being seen.

Lisa Dubot suggested to invite members from other law firms who have provided comments on the reform. This could be in the form of a presentation, debate and/or panel discussion followed by Q&A. It was agreed that potentially two panels might be a good balance.

Matthew Saunders suggested to utilise the format of a survey to send to member firm's internal transactional lawyers who use arbitration to gather their views on what they think of arbitration.

The Committee agreed to put together an event before Christmas with member firms to attend.

It was agreed that the event should take place after the King's speech on 7 November but before December, if possible. Kevin Hart and Michael Davison will discuss details and where the event could take place. The plan is to invite around 200 people and to host as an in person event (with the option of recording the event).

Suggested topics:

- Has the Arbitration Reform done enough to promote London as arbitration seat?
- The use of the arbitration bill from outside with a view to promoting London

Invitations would be sent to CLLS members, barristers, chambers, contacts of arbitrators and transactional lawyers within member firms who are drafting arbitration clauses.

ACTIONS:

1. Michael Davison to put together paragraph for Colin Passmore
2. Comparative table of jurisdictions on Confidentiality internationally
3. Put together names in the House of Lords that the Committee could approach to move the Bill along

4. Committee members to confirm to Michael Davison / Patricia Irigei that the member firms are behind the statement provided to Colin Passmore
5. Michael Davison / Patricia Irigei to work on the details of an event before Christmas. Kevin Hart to share dates that are already committed from a CLLS perspective to avoid those dates. Committee members to feed in names for panel members / speakers to Patricia. Kevin Hart to speak to other committees within the CLLS and whether CMS could host the event.
6. Kevin Hart to put together press release to comment on the Reform (“Welcome the speedy publication of the Bill and moving to promoting London as arbitration seat.”)