

**MINUTES OF THE
MEETING OF THE COURT OF SESSION ARBITRATION COURT USER GROUP**

Tuesday 30 March 2021 at 4.30pm via WebEx

1. Attendance –

Lord Glennie

Lord Clark

Louise Cranston, Depute Clerk of Session

David Anderson, solicitor and partner in Shepherd and Wedderburn LLP

Garry Borland QC

Jonathan Broome, advocate

Robert Howie QC

Brandon Malone, Chair of the Scottish Arbitration Centre,

Andrew Mackenzie, CEO of the Scottish Arbitration Centre,

Donny Mackinnon, Chair of the Scottish Branch of CIArb

Janey Milligan, quantity surveyor, adjudicator and arbitrator, managing director of Construction Dispute Resolution,

Torquil Murray, Vice Chair of the Scottish Branch of CIArb

David Turner, representative from FDRS, previously the Faculty Arbitration scheme

Sheila Webster, solicitor and partner in Davidson Chalmers LLP,

Rob Wilson, CMS Cameron McKenna Nabarro Olswang LLP,

2. Apologies – none

3. Minutes of previous meeting – agreed

4. Membership of the group - Richard Farndale has stepped down and Torquil Murray has joined the group in his place. On behalf of the members, Lord Clark thanked Richard Farndale for his participation in the group and welcomed Torquil Murray to the group.

5. The ICCA Conference – due to the Covid-19 outbreak the ICCA conference scheduled for May 2020 has been deferred until 26 – 29 September 2021. This date will be kept under review and if the event does go ahead in September 2021 it may be a less international event and people may be able to join the conference virtually. The commercial judges, who are also the arbitration judges, had expressed their interest in being involved in the conference. The SAC was not involved in creating the programme but would be looking to invite certain people.

6. Publication of decisions by the Lord Ordinary on leave to appeal from an arbitrator's decision – Lord Clark issued a short paper to the group for discussion. This matter was recently the subject of some discussion among the arbitration judges who considered that before determining any

final policy it would be helpful to have any views from the group. Lord Glennie expressed the view that while the value of decisions on leave to appeal may be relatively limited, anonymity can generally be preserved and the preferred approach is to have the decisions published. Even where, to preserve anonymity and confidentiality, the full decision could not be published, there should be a record of the application and whether or not it had succeeded. Garry Borland QC also favoured publication, the important point of practice, and of help to solicitors and counsel, being access to precedents. He also suggested that counsel could raise the issue of sensitive information with the Court before the decision is published. Sheila Webster agreed, having had the recent experience of a reasoned decision as to why leave had been refused. Andrew Mackenzie stressed the importance of preserving confidentiality and anonymity, which may be difficult in some situations. Lord Clark explained that he had followed the practice of Lord Glennie in having the decision issued to parties before it was published to allow them to raise any issues. Rob Wilson agreed with the importance of anonymity but noted that in a leave to appeal decision the facts do not require to be narrated to the same extent as in other decisions and any important points of law would become known. Overall, the group's view was that these decisions should be published on the court website and that confidentiality and anonymity of parties should be retained by redacting information or not going into details of the case which would allow identification of the parties. Lord Clark will take the group's view back to the arbitration judges.

- 7. Website** – Lord Clark and Louise Cranston will update the web page with arbitration decisions that have been issued. Lord Glennie suggested that the information regarding the up and coming ICCA conference could be displayed on the web page. It would also be useful if there could be an article covering how the courts have dealt with arbitration matters since the 2010 Act and publication of it on the web page might be appropriate. Andrew Mackenzie will provide a brief note on the ICCA conference. Donny Mackinnon will speak with Lord Richardson, who is giving a CIArb lecture in April. The group also discussed including links or mentioning on the web page other bodies or groups who dealt with dispute resolution. Garry Borland QC raised the issue that the web page could also be expanded to include reference to decisions relative to arbitration cases but not arising under the 2010 Act.

Action point – Andrew Mackenzie to produce a note on the ICCA conference which will be displayed on the web page

Action point – Revised version of the web page will be prepared and circulated to the group and can be discussed at the next meeting.

- 8. AOB** – None
- 9. Next meeting** – the next meeting is likely to be scheduled for May/June. The usual email regarding availability will be sent.