

**MINUTES OF THE MEETING OF THE COURT OF SESSION ARBITRATION
COURT USER GROUP HELD WITHIN PARLIAMENT HOUSE, EDINBURGH ON
05 June 2018**

1. Attendance

Lord Glennie
Lord Clark (Chair)
Andrew Mackenzie, CEO of the Scottish Arbitration Centre,
Robert Howie QC,
Garry Borland QC,
Jonathan Broome, advocate
David Anderson, solicitor and partner in Shepherd and Wedderburn LLP,
Richard Farndale, solicitor and director of Burness Paull LLP, and Chair of the
Scottish Branch of CI Arb,
Rob Wilson of CMS Cameron McKenna Nabarro Olswang LLP,
Chris Munn, Depute Clerk of Session (Secretary),
Susan O'Brien QC, representative from the Faculty Arbitration scheme.

2. Apologies

Brandon Malone, Chair of the Scottish Arbitration Centre,
Sheila Webster, solicitor and partner in Davidson Chalmers LLP,
Janey Milligan, quantity surveyor, adjudicator and arbitrator, managing director of
Construction Dispute Resolution,
Shona Frame of CMS Cameron McKenna Nabarro Olswang LLP (Mr Wilson
attending).

3. Minutes of previous meeting - Agreed

4. Membership of the group

Lord Clark welcomed Ms O'Brien to the meeting, and she indicated that she would like the Faculty to have a permanent representative on this group for future hearings, but that the representative would not necessarily be herself. She confirmed there would soon be an updated Arbitration page on the Faculty website, and wondered if a link to this could be put onto the forthcoming SCS Arbitration page.

5. Website

The SCS Arbitration group webpage was designed, had been circulated previously, but was not live. A further final check would be needed, as a Faculty link referred to above could be added, as well as a reference to a member of the Faculty of Advocates Arbitration scheme now being in this group.

6. AOCB

The nature of the group was discussed, specifically whether there could be an initiative the group could think of, so as to provide some purpose for the group. Members were asked if there was any feedback on existing processes or previous applications, and Lord Glennie reiterated his view was that the remit of the group was to resolve issues that have arisen by identifying solutions, but not to actively identify them.

It was noted how few arbitration petitions there have been lodged with the Court of Session, but the view of some of the members of the group was that the amount lodged at the court may not truly reflect the amount of business there has been elsewhere, an arbitration's worth, or the decisions made. It was noted that arbitration is growing into new areas, and there was mention of the faculty starting a personal injury arbitration strand.

In regards to publicity of this group, it was thought that if the court does not interfere with arbitration decisions, there might not be many applications. Parties thought that it was useful having the names and designations of the group members on the forthcoming webpage, so as to help raise the profile, but might there be a direct invite, so that approaches and/or applications could be made?

There was discussion of the cost of arbitration. There was some discussion about the process of arbitration including the appropriate use of written submissions.

The question as to whether the principle of anonymity was working was raised, and Lord Clark mentioned that it is difficult to preserve whilst also keeping an opinion both legible and understandable. He thought the forthcoming webpage could be amended in regards to a link to a page listing previous arbitration applications. This would include more information in regards to the subject matter of the arbitration, to assist people in finding relevant decisions, whilst keeping anonymity procedures in place.

The forthcoming International Council for Commercial Arbitration (ICCA) was discussed, with the congress due to be held in Edinburgh between 10-13 May 2020, and that it would likely start being organised a year before the start. It was mentioned that the congress may require having speakers from this jurisdiction, and more information may be available at the next meeting of this group.

Action points –

- Chris to liaise with IT re faculty information on the forthcoming SCS webpage
- Chris to liaise with Lord Clark as to the previous arbitration cases at the court, and the possibility of having a brief description of them appear on a link via the webpage
- Chris to thereafter liaise with Lord Glennie & Lord Clark and Lord President's office re updated webpage going live
- Parties to reflect on issues of procedure, with a view to addressing them at next meeting

7. Next Meeting

The next meeting will be scheduled for December this year. Emails regarding availability will likely be issued in November.