

ELA ARBITRATION AND ADR GROUP

ARBITRAL INSTITUTIONS

1 INTRODUCTION

1.1 There are three overriding themes to this paper:

- (a) The use of arbitration in employment disputes has been growing in recent years.
- (b) There is considerable scope for, and real advantages in, greater use of arbitration in the future.
- (c) In order to benefit from this growth area, employment lawyers should understand the basics of arbitration rules and procedure, be clear as to the pros and cons of arbitration and consider some special features of arbitration in the employment field.

1.2 There are three further important points to make at the outset:

- (a) Arbitration has advantages for both employers and employees. The flexibility, confidentiality and finality of arbitration as well as the enforcement of awards internationally is often of benefit to all parties.
- (b) Arbitration is not restricted to high value claims. Whilst it is more commonly used in such disputes, it can also be effective for lower value claims where the issues are narrow and the hearing short.
- (c) Arbitration can also be used in a dispute concerning statutory employment claims. Such claims can be submitted to arbitration via a statutory settlement agreement.

1.3 In the UK, arbitrations are governed by the Arbitration Act 1996 (the Act). The Act is addressed in more detail in working paper no. 4. For an arbitration agreement to be enforceable under the Act, it must be in writing (s.5(1)). However, the agreement need not be signed by the parties and it could be found in an exchange of communications that has not been signed by the parties (s.5(2)) provided there is consensus between the parties to arbitrate.

1.4 Arbitrations may be ad-hoc or institutional. Ad-hoc arbitrations are where the parties agree upon a form of arbitration process and rules that is specific to a particular contract or dispute, without referring to any arbitral institution. Institutional arbitrations refers to arbitrations conducted in accordance with the rules and procedures of an arbitration institution

2 ARBITRAL INSTITUTIONS

2.1 Arbitration services are offered by a broad range of institutions. Each such institution has its own set of adopted rules and procedures. The arbitral institutions most commonly used in employment disputes in the UK include the following:

2.2 The London Court of International Arbitration (LCIA) (<http://www.lcia.org/>)

- (a) In 2015, 326 arbitrations were referred to the LCIA. No figures are published to confirm the number of these including employment law aspects. In our collective experience, the number has increased in recent years.

2.3 American Arbitration Association (AAA) (<http://www.adr.org/>)

- (a) The AAA has specific rules and protocols for employment disputes and has been used by over 3,000 organisations in the US for resolving employment issues.

- (b) The AAA's 2014 annual report states that the Labor, Employment and Elections Division had a 42% increase in the number of filings including "group" filings where a number of Claimants filed against the same Respondent. This trend continued in 2015 with further growth of 26% in the number of filings.
- (c) The AAA also provides international services through the International Centre for Dispute Resolution (ICDR).

2.4 Stockholm Chamber of Commerce (<http://sccinstitute.com/>)

- (a) The Arbitration Institute of the Stockholm Chamber of Commerce publishes annual statistics. In 2015, 181 cases were administered. 18 of those involved employment or partnership agreements.

2.5 International Chamber of Commerce (ICC) (<http://www.iccwbo.org/>)

- (a) The ICC provides a global forum of around 690 members who provide various Alternative Dispute Resolution (ADR) services including arbitration in the International Court of Arbitration.
- (b) 801 requests for arbitration were filed in 2015. Of these, around 1% concerned employment disputes (an increase from 0.1% in 2014 and 0.2% in 2013).

2.6 Singapore International Arbitration Centre (SIAC) (<http://www.siac.org.sg/>)

- (a) In 2014, SIAC had 222 new cases referred to it, with a case load (as at 1 June 2016) of over 600 cases.
- (b) In the most recent annual report published (2015), employment was not identified as an area of dispute. SIAC's areas of specialisation are identified on their website as "commercial, construction/engineering, corporate, shipping/maritime, trade and insurance".
- (c) SIAC have confirmed that in 2014 and 2015, it had a total of 6 employment related disputes. The value ranged between 1 and 10 million SGD (£500k - £5million).

2.7 Court of Arbitration for Sport (CAS) (<http://www.tas-cas.org/en/index.html>)

- (a) In 2013, 407 requests for arbitration were filed. These disputes were either commercial or disciplinary in nature. A significant number involved employment issues.

2.8 Hong Kong International Arbitration Centre (HKIAC) (<http://hkiac.org/>)

- (a) In 2014, HKIAC handled 252 new arbitrations. There are no available statistics on the number involving employment disputes.
- (b) Employment is not listed as a specific category of expertise for arbitrators. Sport is included, which would encompass employment law issues.

2.9 Kuala Lumpur Regional Centre for Arbitration (KLRCA) (<http://klrca.org/>)

- (a) Employment and Industrial Relations is listed as an area of specialism of KLRCA panellists.

2.10 Judicial Arbitration and Mediation Services (JAMS) (<https://www.jamsadr.com/>)

- (a) Based primarily in the US, JAMS lists Employment as one of its key practice areas and covers disputes including discrimination, wages, whistleblowing, and contractual issues.
- (b) JAMS handles approximately 12,000 cases (across all forms of ADR) each year.

2.11 A number of industries have provided for their own bespoke arbitration schemes. These include:

(a) RICS (Royal Institution of Chartered Surveyors) Dispute Resolution Service

The world's largest provider of alternative dispute resolution services to the property and construction industries - <http://www.rics.org/uk/join/member-accreditations-list/dispute-resolution-service/>

(b) British Coffee Association (BCA)

The BCA has developed its own set of arbitration rules - http://www.britishcoffeeassociation.org/the_bca/london_arbitration_service/arbitration_service/

(c) Chartered Institute of Archaeology

The arbitration service is provided in conjunction with the Chartered Institute of Arbitrators for disputes arising from archaeological disputes. This includes employment issues - <http://www.archaeologists.net/membership/arbitration>

(d) Institution of Civil Engineers

The ICE dispute resolution service states that it covers all types of contract – <https://www.ice.org.uk/disciplines-and-resources/professional-practice/dispute-resolution-service>

2.12 Chartered Institute of Arbitrators (CI Arb)

The CI Arb has a 'Dispute Appointment Service' (DAS) which offers a complete range of ADR methods (including arbitration and mediation) for quick and effective resolution of disputes:

<http://www.ciarb.org/dispute-appointment-services/arbitration/schemes>

<http://www.ciarb.org/dispute-appointment-services/arbitration/arbitration-rules>

3 AD-HOC ARBITRATIONS

Parties to a dispute can elect to appoint an arbitrator to conduct an arbitration in accordance with the Act without the need to refer to an arbitral institution. Industry bodies can potentially assist with the appointment of arbitrators for ad-hoc disputes. For example, the London Maritime Arbitration Association (LMAA) is not an institutional arbitrator, but does provide a set of rules and the LMAA President may be asked to appoint an arbitrator.