SCL Adjudication Scheme (SCLA) Launch Event

Thursday 15 October 2019, 6 pm

Welcome:
Matthew Lavy, SCL Trustee, Barrister, 4 Pump Court

Keynote:
The Honourable Mr Justice Fraser

Speakers:
Matthew Lavy, SCL Trustee, Barrister, 4 Pump Court
Michael Bywell, Partner, Hausfeld & Co LLP
David McIlwaine, Partner, Pinsent Masons LLP

Sponsored by Hausfeld & Co LLP, 4 Pump Court, 3VB & Pinsent Masons LLP
The Honourable Mr Justice Fraser
Key features of scheme

- Contractual process
  - Incorporated
  - Ad Hoc
- Sole pre-qualified Adjudicator
- Relatively swift
  - 30 Working Days for exchange of statements of case
  - Commencement to Decision just over three months
- Temporary finality with 6-month time bar
- Confidential
- Good faith obligation

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Process commencement

- Dispute Notice
  - Two A4 pages
  - Neutral description of nature, scope, technology, value
- Response Notice (3 Working Days)
  - Two A4 pages
  - Identification of disagreement
  - Counterclaim
- Appointment of Adjudicator (5 Working Days)
  - Parties’ right to substitute (2 Working Days)
- Dispute Notice & Response Notice define jurisdiction

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Statements of Case

- Pleadings & Timings
  - Statement of Case: 10 Working Days from Dispute Notice
  - Response and Counterclaim: 10 Working Days
  - Reply and Response to Counterclaim: 5 Working Days
  - Reply to CC: 5 Working Days

- Volume limits
  - Max 10 A4 pages
  - Max 1 lever-arch file of supporting documents
  - Unless directed or agreed

- Further directions at Adjudicator’s discretion

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Conduct of Adjudication

- Paper-based process generally anticipated
- BUT Adjudicator’s powers allow:
  - Oral hearings
  - An adversarial or inquisitorial process
  - Appointment of third-party experts (subject to cost caps)
  - Test and experiments
  - Extending time to suit (subject to three-month rule)
- Duty of fairness and impartiality
The Decision

- Written and with reasons
- Three calendar months from appointment
- May include interest
- Unless parties agree, may include costs
- Only clerical or typographic errors may be corrected
- Contractually enforceable
- Six-month “re-litigation” time bar
Schedule of Charges

- SCL fees payable by parties:
  - Commencement: £500
  - Other admin fees: £0

- Adjudicator and expert fees:
  - Capped at £450 p/h (subject to limited exceptions)

- Panel fees
  - Application: £150
  - Annual listing: £75

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MODEL A:

‘Any dispute arising under this agreement **shall be referred** to adjudication in accordance with the Society for Computers & Law Adjudication Rules (SCLA Rules) and no litigation or arbitration proceedings relating to that dispute may be commenced prior to the publication of the Adjudicator’s Decision …’

MODEL B:

‘**Either party may refer** any dispute arising under this agreement to adjudication … and, if a dispute is so referred …’

MODEL C:

‘The **parties may agree** to refer any dispute arising under this agreement to adjudication, in which case …’
Background - how did we get here?

- SCL Better Contracts Initiative
- Working groups and consultation
- Adjudication idea
Background - Key features (1)

- 3-month period for Decision
  - 28 or 42 days too short

- “Technology” disputes
  - Contractual including software licensing

- Size and scope of disputes
  - Only restriction is duration
Background - Key features (2)

- Pre-selected panel
  - Lawyers and non-legally qualified technology specialists

- Provisionally binding decision
  - 6 month limitation on time to litigate or arbitrate at end of procedure
David McIlwaine - Pinsent Masons LLP
Eligibility and Application

- 3 routes:
  - Legally qualified - Articles 5(a) and 6
  - Non-legally qualifieds - Articles 5(b) and 7
  - Other equivalents - Article 5(c) and 4

- Application Form
  - 2 referees and declaration
Questions?