Tea and tech session on SCL Adjudication Scheme

This week's tea and tech session discussed the SCL adjudication scheme which was set up towards the end of 2019.

Introduction to scheme

The scheme is well suited to situations where everyone is working remotely and to deal with disputes arising out of the COVID-19 crisis. Previous tea and tech sessions have discussed force majeure clauses and why supplier contracts go wrong, which are topical areas for disputes at the moment.

Ad hoc references are permitted, and the scheme is ideal for when quick decisions are needed, e.g. interpretation of clauses (such as force majeure) and contract issues such as service disruption.

SCL role

Caroline Gould outlined that SCL is really pleased to support the scheme. Panel member adjudicators have been approved and the SCL team will run the secretariat function for the scheme, as well as promoting it via email and social media. People can still apply for the Panel (more on that later).

How does the scheme work?

Michael Lazarus outlined the scheme, which is for technology disputes. It is loosely based on the scheme for construction disputes, but significant changes have been made from that scheme to suit the technology environment. It has four main pillars:

(a) a three-month procedure end to end;

(b) strict limits on the volume of documents allowed, so it is cheap and forces parties to concentrate on key issues;

(c) a provisionally binding decision is given. This can be "appealed" to the courts within six months or it becomes binding; and

(d) adjudicator is chosen by the SCL panel.

Cases might arise from disputes during the lockdown period or new contracts might allow for the scheme to be used in their dispute resolution terms. Companies are trying to save money at the moment so the scheme might be very attractive as it is likely to cost between ten and twenty percent of a High Court procedure, so a significant saving. Statements of case are limited to ten pages and only one lever arch file of supporting documents may be provided. There is no need for a hearing, decisions can be reached by reviewing the papers or by conference call, there is complete flexibility.

Enforcement

Matthew Lavy considered how an award is enforced. The process is contractual, the parties agree to be bound by the result so if an award is unpaid it is a debt. Therefore, you would issue proceedings for a

money debt and would probably be pursuing summary judgment. The TCC is familiar with the construction scheme and so would accommodate the SCL scheme while not giving it priority or special treatment.

Matthew does not think that the current COVID-19 situation affects anything, the TCC is working, it is carrying out hearings by phone and video and so hearings are taking place. He pointed out that having a well organised bundle is very important.

Becoming a panel member

David McIlwaine outlined the requirements to become a panel member. There is a list of adjudicators and eligibility criteria on the SCL website, they differ for those who are legally qualified and those who have worked in the technology industry. In either case 15 years' experience is required. Lawyers require experience of technology and dispute resolution. Non-lawyers must have arbitration or adjudication training.

Various questions were raised at the end of the meeting about issues such as how many adjudications had taken place so far – it is a new scheme and those involved wish to build a reputation for doing things really well.

It is a service from the IT law community to the industry. There were other issues raised such as quality control, whether the process is open (it is) and how it might be adapted to be an expert determination scheme.