



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



Matthew Lavy - 4 Pump Court



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



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**



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



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



Model Clauses

► 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 ...'



Michael Bywell - Hausfeld & Co LLP



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?