HOUSE OF LORDS

Special Public Bill Committee

Corrected oral evidence: Arbitration Bill

Wednesday 21 February 2024

10 am

Watch the meeting

Members present: Lord Thomas of Cwmgiedd (The Chairman); Lord Bellamy; Lord Hacking; Lord Haselhurst; Lord Marks of Henley-on-Thames; Lord Ponsonby of Shulbrede; Lord Roborough; Lord Sandhurst.

Evidence Session No. 3 Heard in Public Questions 28 – 53

Witnesses

II: Michael Davison, Chair, City of London Law Society Arbitration Committee; Dr John Fletcher, Executive Director, Royal Institution of Chartered Surveyors Dispute Resolution Service; Jaine Chisholm Caunt OBE, Director-General, Grain and Feed Trade Association.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Michael Davison, Dr John Fletcher and Jaine Chisholm Caunt.

Q28 **The Chair:** May I welcome the three of you to the second panel of this evidence session? We are very grateful to you indeed for coming along and assisting the committee in the way you do. You will have picked up the procedure that we adopt. We want to ask you broadly the same questions.

I wanted to begin by asking you each to explain a bit of your background so we understand the context in which you are giving your evidence. Ms Chisholm Caunt, can we start with you?

Jaine Chisholm Caunt: Thank you for the invitation to be here this morning. I am the director-general of GAFTA, the Grain and Feed Trade Association, which has been running for 146 years. It is estimated that over 80% of the world's trade in grain is shipped on GAFTA contracts. We conduct anywhere between 300 and 1,000 arbitration cases a year all based on English law with the arbitral seat also being here in England. Last year, we conducted 377 arbitration cases with a combined total of approximately $163 million.

I am not a lawyer, unlike almost everybody else you will hear from today. My perspective is the practical and commercial perspective of a person who is overseeing those activities.

Dr John Fletcher: I am the executive director for the Dispute Resolution Service at the Royal Institution of Chartered Surveyors.

I am also speaking from a slightly different perspective from the people on the previous panel, in that we come at this from the appointing body's perspective. In the course of last year, we made about 1,250 appointments of arbitrators. The vast majority of them were in the United Kingdom, but we are doing an increasing amount of work overseas, notably in the Middle East; India, where we have entered into an agreement with the India International Arbitration Centre to set up the construction arbitration panel; and sub-Saharan Africa, particularly in South Africa.

Our concerns, particularly with Clause 6A, are about how it is perceived by people seeking from us the appointment of an arbitrator in London but who have entered into a contract in one of those other jurisdictions and how this will impact on them. That is my background.

Michael Davison: I am here in my capacity as the chair of the arbitration committee of the City of London Law Society, which is a body that represents solicitors practising in the City of London. The arbitration committee comprises a dozen or so representatives from the major law firms in London, some of whom we have heard from this morning acting in that capacity.

I am also a partner at the firm Hogan Lovells. I should say that. In addition to being qualified as a solicitor in England and Wales, I am also qualified in France as a member of the Paris Bar.

The Chair: Thank you all very much for introducing yourselves and explaining the different perspectives from which you come to give evidence. From our perspective, it is very valuable to have evidence from the users of the service and who organise it in the way you so expertly do.

We will now turn to the first question in relation to Clause 6A, which Lord Haselhurst will ask.

Q29 **Lord Haselhurst:** The fundamental point on which we would like to get your reaction is whether you agree with the policy of the new Clause 6A.

Jaine Chisholm Caunt: Yes, we agree with the overall policy of Clause 6A. There has been a lot of discussion about the drafting of subsection (2) and alternative drafts. I do not propose to make any comment on that. The overall policy is something we agree with. I would like to make a point about retroactivity, but I will wait for your Lordships' question on this.

Dr John Fletcher: We are in a similar position. As for the general policy that it would be better for the law of the seat to be the law of arbitration, we agree with that. Our difficulty is with the impact that making this amendment in UK legislation will have on parties in places such as Johannesburg. Those parties do not know about UK legislation. They have entered into a substantial matrix contract that simply says, "The law applying to this contract is the law of South Africa".

If they want to use an arbitrator in London and have London as the seat, because the contract did not expressly state that the law of arbitration was different from the law of the matrix contract, they will suddenly find that they are in a legal position that they had not anticipated.

Michael Davison: On behalf of my own committee, I support the policy underlying the clause. It brings a degree of certainty to a position that might to some not be clear under the English law.

I also approach it as someone who works closely with practitioners negotiating complex international agreements. In this room this may come as somewhat of a disappointment, but the arbitration clause is rarely the most important clause or the one that is most heavily negotiated during the tense times of a contractual negotiation. Therefore, it is important that the position is clear and as consistent as possible.

That feeds into the drafting issue. The more complex we make the clause, the less clear it inevitably will become. Therefore, it is important to clarify the position, but the clarity of the drafting is paramount.

Q30 **Lord Sandhurst:** I have a question about how we implement the policy, if it is adopted. I am not certain who to go to first. Ms Chisholm Caunt,

you do not really want to get involved in the drafting side. Is that right? Do you want to make any observations about the terms of it?

Jaine Chisholm Caunt: Ultimately, the drafting will be a decision for legislators. I should not comment on it.

Lord Sandhurst: So the clearer it is, the better.

Jaine Chisholm Caunt: Yes, the clearer, the better. There has been a great deal of informed debate on this topic.

Lord Sandhurst: Dr Fletcher, we have heard your reservation about the policy, one that was also expressed by Mr Weiniger this morning. We might be going down that route none the less, regardless of your concerns. Have you had an opportunity to look at the draft produced today? Was it shared with you?

Dr John Fletcher: I confess it was not. I have not seen this document before sitting down at the table.

Lord Sandhurst: Shall I move to Mr Davison? Have you had a chance to look at it?

Michael Davison: Equally, I have not had a chance to look at it. Perhaps we can look at it on the hoof.

Lord Sandhurst: I am sorry about that.

Michael Davison: We looked at the one that came from Professor Mills.

Lord Sandhurst: This is a tweak on Professor Mills.

The Chair: I hope you have Professor Mills' draft.

Michael Davison: Yes, we do.

The Chair: You have a moment to think. We are doing quite well for time.

Lord Sandhurst: Perhaps I should ask you about Professor Mills' draft first, then. Do you consider it to be an improvement?

Michael Davison: Perhaps I can lead you through some of my thought process when I first read the first draft of the Bill, which was to linger over the word "expressly". I asked myself, "Why is that word there and what are the consequences of having it there?" Lawyers will look for the consequence of every word in every clause. My immediate reaction was to take out the word "expressly" in both 6A(1) and 6A(2), but then I lingered on that and I thought to myself, "Is that just opening up more of a can of worms?" We will then get into a position where people will seek to imply agreements or construe them in other ways. So I came to terms with word "expressly".

Professor Mills leaves "expressly" in one bit but removes it in another and adds "specifically". Again, I can see the merit of that. I have to be candid.

I am a simple soul. I rather think we are overcomplicating it. Having come to terms with the word "expressly", I was not sure why we were now overengineering it to have "expressly" and "specifically". What is the difference? I can see that leading us into error.

I do not feel strongly about the point, but I come back to my opening comment to my Lord Chair. What is important is that non-arbitration specialist legal advisers understand the importance of the clause. It is legislating for something that does not come naturally to people. There is part of the contract that is possibly subject to a different governing law from the underlying basis of it.

Lord Sandhurst: That might be English rather than South African law.

Michael Davison: Yes, or French law. We heard from Mr Diwan this morning about the open and closed rule. We all like certainty and to legislate for things. I thought this might be an exception to that rule, in allowing a degree of flexibility to the Commercial Court judges, two of whom are sitting behind me, to work out what the legislative intent is in relation to that.

I do not feel strongly about "expressly" or "specifically", but it is important that the cause is as clear as possible and that we do not allow scope for distinctions to be drawn between two adverbs. I hope that helps.

Dr John Fletcher: Chair, I have read this very quickly.

Chair: I realise that.

Dr John Fletcher: My feelings are much the same. I will carry on using the Johannesburg example, because it is easier and it is one that we have had to deal with recently.

The parties have a contract that says, "This contract will be governed by the law of the Republic of South Africa". It does not distinguish between different bits of the contract by making reference to the number of the arbitration clause, saying "the arbitration clause" or even saying that the arbitration clause will be treated somehow differently from the rest of the contract. It simply says, "This contract is subject to the laws of South Africa"

It would seem to me that the plain and ordinary meaning of that contract is that the parties intend for the entire contract to be governed by the law of South Africa and not for a little bit of it, if they want to use London as a seat, to be governed by the law of England and Wales. By inserting this clause, is the British Parliament somehow taking the people in Johannesburg by surprise? They have no idea about the existence of this legislation. Should it be taking them by surprise?

The question was how this should be implemented. However you read this, unless I have read it wrongly, it simply seems to be a restatement in more detail of what it means for this carve-out for the arbitration clause

to be expressly or specifically stated. It gives you a greater insight into how you might determine that that has been done, for instance by way of an incorporation by reference.

It does not address the central problem. That is not what the parties expected. Bear in mind that many of these arbitrations are now conducted online. No one is going to London to argue. They will sit in Johannesburg on a Teams meeting.

In the particular case that we are talking about—I will give you the context, because it is relevant—on one side you have a black empowerment company with a great deal of money to spend and on the other side you have the contractors. There is a concern that the arbitrators in South Africa are white, male and pale. They do not want to use them. They want to go to London where they know they will get an arbitrator who has no previous history in South Africa, given the politics of the country.

That is the justification behind coming to London. They could as easily go to Singapore, the DIFC or the lovely new building in Qatar. They could decide to stay at home, but they like London. There is a historical connection to London. There is a great deal of faith and trust in London as a seat of arbitration, and they want to use an arbitrator based in London. But they are perfectly happy for the matrix contract to be under the law of contract, company law and other applicable laws of South Africa, and for the South African Arbitration Act govern the process that they are involved in, which they will run from their offices in Johannesburg via Teams to London.

All of a sudden, they discover this: "Wait a minute. This is now going to be done under English law, even though we never anticipated that". That will mean the wealthy and more powerful party to the arbitration, who does not want it to happen and would do anything to avoid the matter going to arbitration, will latch on to this at the expense of the other party, who cannot afford to brief counsel to appear in an English court, paying them in pounds on a matter that is based in South African rand.

All of a sudden, because the seat is England and the law is English, the British courts will decide whether there has been an express carve-out and who is going to pay. Are they going to have to pay to brief British barristers to argue this in a court in London when in fact this is a Johannesburg matter?

These are the real and practical problems that we as an appointing body are facing. In its current form, this clause does not help us with those.

Lord Sandhurst: Would that be the case if it were the version in the Bill, Clause 1?

Dr John Fletcher: For Clause 1, the one that is in the Bill, yes. I have just had a look at this one. On my reading of it, it seems to be taking Clause 1 and simply providing a mechanism by which you can more

easily determine whether it has been specifically stated. It does not address this issue of taking by surprise people who never intended to be bound by that provision in the first place and who had no idea that they had to specifically mention the law of arbitration as opposed to the general law of the contract.

Q31 **Lord Hacking:** Dr Fletcher, you have spoken very eruditely on this issue. You may be gratified to know that we have already had evidence from a Mr John Fellas, who is an English arbitrator based in New York. He has argued exactly as you have.

If we turn to your submission, we understand the surprise difficulty. As a consequence, it will be a deterrent to parties when they hear about what has happened in your South Africa case, for example. This will be a disincentive to persons coming to England for their arbitrations.

Dr John Fletcher: That is our concern.

Lord Hacking: I have been in this since the 1979 Act, so I have a parliamentary history on this. One of the prime purposes of the 1979 Act, the 1996 Act and now this Act—it has been confirmed by the Government through Lord Bellamy—is to continue to make England an attractive location for the conduct of arbitrations.

At the bottom of page 2, you say 6A(2)—this clause has caused us more difficult than Clause 6A(1)—"lacks detail on where the law governing the arbitration should be construed, should it not be from the broader agreement". You then go on to say, "Section 6A(2) introduces unnecessary complexity in this regard". Lord Mance made that point. The logical conclusion is surely that Clause 6A(2) should be removed.

Dr John Fletcher: We are battling to understand why 6A(2) is there. It seems to be belt and braces. If that is going to be the policy, to my mind 6A(1) expresses it very clearly; 6A(2) seems to be a restatement of the same principles that are in 6A(1), if I have got the numbers right. You know what I mean. The second bit is a restatement of what is in the first bit.

My concern is that, whenever you wear belt and braces, lawyers will latch on to the braces and try to work out why those braces are there. Does it have some meaning that is subtly or completely different from the first bit? We will get a great deal of overinterpretation of the second bit, which is not necessary given the clarity of the first bit. That is our feeling.

Certainly, within that second bit the words "of itself" cause similar difficulties. What does that mean? Does it mean that one somehow has to construe the arbitration clause entirely differently from the rest of the contract? What are lawyers going to think that means? What is that going to give rise to? From our perspective, we think the second bit should just be scrapped.

Lord Hacking: That is very helpful.

Q32 **Lord Marks of Henley-on-Thames:** I have a very brief question. Dr Fletcher, you have raised a point that is undoubtedly of concern and troubling. Can that concern be addressed by a policy that, wherever an appointment of a London arbitrator or an arrangement that an arbitration is seated in London is mooted for an international contract that does not have the matrix law as English law, it is made quite clear that a choice of a seat in London will involve a default position, with a warning expressed that, if you do not want that to apply, you need an express agreement at the same time?

Dr John Fletcher: Yes. I started off by saying that we felt that making the law of the seat the law of the arbitration as a policy is a good one, for the reasons the people in the previous panel and in the evidence have outlined. The danger is catching people by surprise. There are two ways you could do it. You could, as you say, have this as a policy, but do you make this applicable to contracts entered into after the date of the promulgation of this amendment?

Q33 **The Chair:** We shall come to that in a moment. Could we then turn to you, Ms Caunt, for the question that you reserved? The policy is expressed that this should be retrospective, save for cases where the arbitration under the contract has started.

Jane Chisholm Caunt: Yes, certainly. I mentioned that GAFTA tends to deal with anywhere between 300 and 1,000 arbitration claims a year. It is possible for individuals claiming arbitration at GAFTA to then keep this claim live for a further six years, so it is no exaggeration to say that we may have thousands of pending arbitrations. Therefore, the consequence of retrospective legislation is one that rather concentrates the mind.

In very practical terms I suspect that, whichever way Clause 6 is drafted or redrafted, it will probably have little practical impact on those GAFTA claims, because our rules already make it very clear that you opt into English law for the governing contract and English law for the arbitration. Parties have to specifically choose a different jurisdiction for the arbitration, which we strongly advise against. We run training courses all around the world encouraging them not to do this, and we point out the practical difficulties of them doing so.

In practical terms, it will have little impact. My concern is perception. When Professor Sarah Green was here, she talked about the fact that the purpose of this was to effectively give an MoT to the Rolls-Royce of the 1996 Arbitration Act, and one of the clear benefits in mind was continuing to make England and London a desirable centre to arbitrate in.

There is a certain advantage to commercial people using GAFTA contracts, no matter whether they are based in China or in South America, for example. They may not speak English as their first language, but they still use GAFTA contracts; they choose English law; they choose GAFTA arbitration under English law. Part of this is about freedom of contract and legal certainty. I have concerns, probably very similar to my colleague over here, that the principle of enacting

retrospective legislation rather cuts across those features that make England and London a desirable centre in the first place.

Dr John Fletcher: I probably said much of what I need to say on it.

Michael Davison: I would respectfully disagree. I certainly do not want to underestimate the potential issue that you will have administrating the vast number of arbitrations that you have, but certainty is key. Therefore, I support the position taken by the witnesses on the first panel that to have a clear cut-off point is important.

Dr John Fletcher: Chair, could I address that point, because it raises something? I agree that certainty is very important, but certainty can be achieved in different ways. There would be nothing uncertain in saying that, if this Act gets Royal Assent on 1 June 2024, it will apply to all contracts entered into after 1 June 2024.

The Chair: That is very clear, but can I ask you one follow-up question arising out of what Ms Caunt said about GAFTA? Do the rules of the Royal Institution of Chartered Surveyors have an elaborate mechanism like GAFTA? Ms Caunt has been very clear about the way that operates. You do not have rules that would obviate this problem.

Dr John Fletcher: No, we go according to the pre-existing contract between the people, and we would appoint on the basis of that.

The Chair: You do not have the GAFTA solution.

Dr John Fletcher: No, we do not.

Q34 **Lord Hacking:** I have one question for the director-general of GAFTA. I speak to you as a former GAFTA arbitrator, as you well know. The truth is that this new Clause 6A is not going to affect GAFTA arbitrations at all, because the first thing is that the parties have to agree and adopt the GAFTA arbitration and the GAFTA rules. There is no question about it. English law is the matrix law and the procedural law for the seat of the arbitration. GAFTA is, I hope, completely clear from the complexities of Clause 6A.

Jane Chisholm Caunt: I believe that is correct, unless parties decide otherwise.

The Chair: We have now finished with 6A. Lord Ponsonby will ask the first question in relation to the amendments to Section 67.

Q35 **Lord Ponsonby of Shulbrede:** Does the clause make clear that the ultimate decision on the jurisdiction of the arbitrators is a matter for the court alone?

Jane Chisholm Caunt: Yes, we are happy with the drafting of this particular clause.

Dr John Fletcher: Similarly, so are we.

Michael Davison: Yes, it does make it clear.

Q36 **Lord Marks of Henley-on-Thames:** My next questions are concerned with the rules of court provisions and the restrictions on new grounds and on hearing evidence in a challenge to the jurisdiction. First, are the provisions sufficiently clear? In particular, do they make it clear that the rules of court can be made by the rules committee without limitation, notwithstanding the words of (3C)?

Jane Chisholm Caunt: I am happy to answer yes to both your questions.

Dr John Fletcher: I am not 100% certain that the authority of the rules committee to do that emerges absolutely clearly from the wording of the amendment as it stands. If that were to be the object of it, perhaps that could be made clearer by using more forceful wording to it.

I am not sure whether I am answering your question directly on point, but our question was this: why is this not just put straight into the Arbitration Act? It is pretty clear. Why is it going through the mechanism of changing rules of court, which also seems to be at odds with the rest of the Arbitration Act, which everybody agrees is a model of clarity. That would be our one concern there. The other concern is this: why does the justice provision apply only to subsection (c)? We think it should apply to all of them.

Q37 **Lord Marks of Henley-on-Thames:** I was going to come to that as the next question. You heard Mr Diwan's evidence about the need for the rules committee to be able to adapt and change, and it could be said that, if the provision was in the Act, it would be cast in stone. Do you accept that point?

Dr John Fletcher: With respect, it would seem unlikely to me that a rules committee would go beyond the provisions of the Act in shaping the rules. If what you have in (3C) is some fairly prescriptive bases upon which the matters can proceed, is it likely that the rules committee would be looking to change the rules to introduce something that is not in (3C)? That is the bit that I am struggling to get my head around, because it seems to me that they would be constrained by the contents of (3C).

Unless something very clear was said before that they could go beyond those constraints—I am still trying to work out quite what they would want to do that would take them beyond those constraints—it seems to me that that would be their first port of call in trying to work out what the limit of their authority is.

Lord Marks of Henley-on-Thames: Mr Davison, do you agree with that? Could you address yourself particularly to the words "provision is within this subsection if it provides that", and address the question of what happens if it does not provide that but provides something a little different?

Michael Davison: I do not want to burden the committee with my thought processes through this, but I started off from the premise that we should have a single code where a user of the arbitration process could look to see what the process was.

My starting position was that this should be legislated for in the Act, a bit like Dr Fletcher had. Then I thought to myself that that is going to be very constricting, and we need to give the court flexibility around how best to achieve that level of flexibility. I defaulted therefore to this idea of the rules of court provision, which I see as providing flexibility. I do not see it as a constraint.

I place quite a lot of emphasis, as previous witnesses on previous sessions did, on the word "may". Provision under this section "may, in particular, include provision within subsection (3C) in relation to a case where", and it goes on to deal with that. Then it says, "Provision is within this subsection if it provides that", so it provides guidance. The issue for you is whether legislation should be doing more than providing guidance, but that is a separate point.

I start from the premise that it is important to have some clarity about what can be considered and what cannot. The distinction between grounds for objection and evidence that was not heard seems to me to be a very sensible distinction, and it leaves discretion for the rules committee to go beyond that. The committee may decide, in proposing amendments to the Bill, that that should be made more express, and I would have some sympathy with that. Does that help you?

Lord Marks of Henley-on-Thames: Yes. Can any of you see any harm in adding words to the effect that (3C) was without limitation to the powers of the rules committee?

Dr John Fletcher: It would be helpful.

Michael Davison: I agree. It would be helpful.

Dr John Fletcher: My reading of this was that rules of court may include provision within subsection (3C) in relation to a case. That is the way I read it. I did not see anything in there that allowed the rules committee to go beyond the provisions of (3C), which is what you are trying to achieve.

Lord Marks of Henley-on-Thames: I then come to the interests of justice point, and I will cut it short because we have had a lot of evidence on this. Can any of you see any reason why the interests of justice, saving provision, as it has been called, should apply only to (c), which is the restriction on rehearing evidence, and not to (a), new grounds, or (b), new evidence?

Dr John Fletcher: I see no reason at all why it should be so limited.

Michael Davison: No.

Jane Chisholm Caunt: No.

Q38 **Lord Hacking:** I will move on to an entirely different subject. I am going to Mr Davison's statement, and it is relating to confidentiality. My question is to all three of you. I do not know whether you have had the opportunity, Dr Fletcher and Ms Chisholm, of seeing the written statement. Neither of you has. Then I will just read an excerpt from it.

It starts at the bottom of page 2. You move to the subject of confidentiality, and you head up the paragraph, "Confidentiality—a missed opportunity". "The committee"—that is referring to your committee—"consider that the Arbitration Act should be improved by directly addressing confidentiality". Then you go further and say, quite strongly, "We find it untenable that the Act will remain silent on such an important element of arbitration in this jurisdiction". Then you go on to suggest that at least a provision should be brought in under which the parties can agree to override confidentiality. That is the first question to all three of you, but first to Mr Davison.

Secondly, should the party, in certain circumstances, have the right to go to the courts and ask the courts to lift confidentiality? You may be aware of the recent Nigeria case where Mr Justice Robin Knowles, in his judgment, identifies very serious corruption that has taken place without the knowledge of the arbitral tribunal.

There are two questions, therefore, for all of you. First, should the Act at least contain a provision to allow the parties to override the confidentiality? Secondly, should it go further and give the parties the right to apply to the court to lift confidentiality?

Michael Davison: First, I am the representative of the committee. "Untenable" is not a word I would use personally, but, anyway, it is certainly open to Parliament to do whatever it wishes.

In terms of confidentiality, we felt strongly about that because, to be blunt, when people are, as we all do, comparing arbitration systems across the world, there are certain things that they look for in particular. We have spent a lot of time discussing it, and the confidentiality of the process is certainly one thing that parties attach a lot of importance to. When dealing with trade matters, it is important that trade information is not publicly available to the extent that that can be constrained.

It is a benefit of the arbitration system and I wish the Bill had incorporated such a provision. On the other hand, I want this Bill to be processed as quickly as possible, and having a big debate now is not going to sort it out. We could leave it perhaps for the next MoT, which will, I am sure, be at some point.

The case that Mr Justice Knowles dealt with was pretty unique and extreme, and we should not legislate necessarily for extremities. Nevertheless, it raised very important issues. It should be open to the parties to apply to the court to lift confidentiality in circumstances where it is in the public interest to do so.

Dr John Fletcher: I am manifestly underbriefed on this point, because I have not read anything in advance of speaking, so I am very reluctant to express any particular view on behalf of RICS. My general impression had been that the confidentiality point was already fairly well covered in terms of judicial precedent and the common law, and I was not conscious, from our perspective, of a particular need to address it in legislation. The moment you start to put something in legislation, you open a whole new dynamic and perhaps upset what is already a finely balanced position in common law.

Should the courts have the right to penetrate the confidentiality of arbitration on good cause being shown? I was naive enough to think that they already did have that in light of that judgment, but, yes, they should.

Jane Chisholm Caunt: Again, this is perhaps not a topic I had particularly read for, but the point that I would make is that the Act does not have to cover everything. The arbitral institutions themselves have the power to make changes to their rules to comply with what the users of those services require.

Certainly, in GAFTA's case, not only are the proceedings confidential; the very fact of going to arbitration is confidential, so only you, your counterparty and GAFTA will know. This enables trade to carry on without rumours, for example, of disputes between commercial parties. At the end of the GAFTA arbitration, unless for some very unusual reason it ends up in the English court system, the award itself is confidential. We do not share it; we do not produce redacted versions for other people to look at, so our system is already very confidential.

We have raised this issue with some of our members from time to time. In the year, for example, when we had 1,000 arbitration claims all relating to a particular incident in Paranaguá, there was a discussion about whether it would be helpful to release some arbitration awards to give parties a sense of which direction arbitrators might look in similar circumstances. There was a very strong continuation of, "No, we want it all to be confidential. It is just for us; we don't want it shared".

The case that Lord Hacking refers to is, fortunately, extremely rare. Hard cases make bad law, as they say. I have no further comments to add, other than this general point that it is important for the Bill to go through in a speedy fashion, but for the arbitral institutions themselves to be able to make tweaks to their own rules, should their users see fit.

The Chair: Do members of the committee want to ask any further questions of you? Is there anything you wish to add on any point?

Dr John Fletcher: No. Thank you for giving us the opportunity to give evidence.

The Chair: Can I, on behalf of the committee, express our deep gratitude for the views of the broader section of the legal community and

of the City of London Law Society? It has been particularly valuable to have the views of those who use arbitration rather than sit as arbitrators or act as lawyers, so we are particularly grateful to you, Ms Caunt and Dr Fletcher, for coming along and telling us your views, given how busy you all are with arbitrations in London. We must make sure that this continues. Thank you very much indeed.