



## ENGLISH HIGH COURT ORDERS DISCLOSURE IN ARBITRATOR DISCIPLINARY PROCEEDINGS

*The Chartered Institute of Arbitrators v B & Ors [2019] EWHC 460 (Comm) (07 March 2019)*

### **Introduction**

In a decision handed down on 9 March 2019, the English High Court granted an application by the Chartered Institute of Arbitrators for disclosure of documents relating to the disqualification of an arbitrator for use in disciplinary proceedings brought by CI Arb against that arbitrator.

### **Background**

The background to the current proceedings has been set out more fully in our previous mailing [here](#). Broadly, B was appointed arbitrator in an arbitration between C and D. C made an application by C to the English High Court pursuant to section 24 of the Arbitration Act 1996 for removal of B on the basis that circumstances gave rise to justifiable doubts as to his impartiality. In a judgement dated 17 February 2016, Hamblen J found that the grounds for removal were made out and following the judgment, B resigned as arbitrator.

Subsequently, the Professional Conduct Committee of CI Arb determined, following a complaint from a third party, that disciplinary charges should be laid against B and referred to a disciplinary tribunal.

CI Arb made two applications to the High Court:

- First application: to obtain copies of the following documents from the court records in the proceedings in the Section 24 Application: a) statements of case; b) witness statements, including exhibits; c) written submissions and skeleton arguments (together the "Documents");
- Second application: declarations that: i) CI Arb and B are entitled in the context of the disciplinary proceedings to refer to and/or rely on a) the Documents and b) the circumstances of B's nomination and appointment as arbitrator in matters concerning D; ii) use of such documents is in the public interest.

## Decision

The High Court granted both the first and second applications in part.

As to the first application, Mrs Justice Moulder set out the law application to a request for such an order, and in particular CPR 5.4 and *Cape Intermediate Holdings Ltd v Dring* [2018] EWCA Civ 795. CPR 5.4 provides, at relevant part:

*(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of –*

*(a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;*

*(b) a judgment or order given or made in public (whether made at a hearing or without a hearing), subject to paragraph (1B).*

...

*(2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.*

*(3) A non-party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if –*

...

*(d) judgment has been entered in the claim.*

Pursuant to the provisions of CPR 5.4, CIArb was entitled to obtain copies of the statements of case. The other documents requested were to be considered in the context of the discretion of the court. In the interests of justice, copies of the witness statements and transcript of the case would be given to CIArb. However, as the disciplinary proceedings were not based on the findings of Hamblen J and the arguments advanced before Hamblen J, it was not necessary therefore in the interests of justice to give access to the skeleton arguments and no order would be made in respect of those.

As to the second application, the High Court made the limited declaration that CIArb and B were entitled in the context of the disciplinary proceedings to refer to and/or rely on the documents which the court orders to be disclosed pursuant to CPR5.4, notwithstanding the obligation of confidentiality which would otherwise apply, by reason of the public interest, but the application for a declaration in relation to the circumstances of B's nomination and appointment was refused.