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KEY DEVELOPMENTS UPDATE
SEPTEMBER 2021

Message from Khawar Qureshi QC, Head of Chambers

I am delighted to introduce this update of some key developments in the areas of arbitration and claims against States.

Whilst the Covid-19 situation continues to limit travel, Courts and Tribunals have adjusted quickly to hybrid/online processes – as the selected decisions demonstrate.

It is with sadness that I must mention the recent passing at the age of 99 of a founder member of McNair Chambers, Professor William Ballantyne, a great scholar of Arab laws who lived a long and prosperous life. He contributed enormously to the development and understanding of the richness of culture and legal traditions of the Middle East. He will be missed by many of us.

In the past 6 months, as McNair Chambers continues to undertake advisory and representation work on high profile and high value commercial and international matters for large corporations, States and State entities across the GCC and beyond, it is a pleasure for me to announce the addition of new members. We are honoured that the Former Chief Justice of Malaysia Rt. Hon. Tun Arifin bin Zakaria has joined as an arbitrator member, together with Dato' Firoz Hussein bin Ahmad Jamaluddin, Anthony Wilson and Professor Francis Botchway. They bring to McNair Chambers a wealth of experience of Commercial and International law matters, as well as specific Arab Laws expertise.

Should you be interested in any of the headlines below, please click here to see the newsletter in full or visit www.mcnairchambers.com/publications for a full list of our previous publications.

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- ***Investment Treaty Update:*** *ICSID releases updated Caseload Statistics for 2021, as well as decisions on annulment, disqualification of arbitrators and damages in FET cases.*

- ***Privy Council hands down decision on setting aside of arbitration awards on grounds of public policy.*** *In a decision handed down on 14 June 2021 in Betamax Ltd v State Trading Corporation (Mauritius) [2021] UKPC 14, the Privy Council allowed an appeal against a decision of the Mauritian*

Supreme Court, and considered the extent to which a supervisory court could review an arbitration award on public policy grounds.

- ***UK Supreme Court rules on service of documents under State Immunity Act 1978 in arbitration proceedings:*** *In a decision handed down on 25 June 2021 in General Dynamics United Kingdom Ltd v Libya [2021] UKSC 22, the Supreme Court, overturning the decision of the Court of Appeal, held that the procedure for service set out in Section 12 of the State Immunity Act 1978 must be followed in all cases where proceedings were brought against a State, including those relating to the enforcement of an arbitration award.*

- ***English Commercial Court finds allegations of corruption cannot be used to challenge arbitration award where allegations not raised earlier:*** *In Province of Balochistan v Tethyan Copper Co Pty Ltd, the English Commercial Court dismissed a challenge under Section 67/68 Arbitration Act 1996 to an ICC award where a party had failed to specifically plead corruption in the underlying arbitral proceedings.*

- ***Australian Court declines to enforce Qatar arbitration award:*** *In Hub Street Equipment Pty Ltd (Hub) v Energy City Qatar Holding Company (ECQ) [2021] FCAFC 110, the Federal Court of Australia declined to enforce an arbitration award handed down by a Qatar arbitration tribunal on the basis that the tribunal had not been constituted in accordance with the parties' arbitration agreement but had been appointed by the Qatar court.*

- ***English Court of Appeal allows publication of judgment on arbitration challenge in football case despite opposition of parties:*** *In Manchester City Football Club Ltd v Football Association Premier League Ltd [2021] EWCA Civ 1110, the Court of Appeal upheld a previous decision allowing the publication of a judgment which dismissed a challenge to an arbitration award against the wishes of both parties to the arbitration on the basis that publication would not lead to the disclosure of confidential information, despite the opposition of both parties to the arbitration.*

ICSID Caseload Statistics, and recent decisions on annulment, disqualification of arbitrators and damages in a FET breach

ICISID publishes updated Caseload Statistics

The most recent version of the ICSID Caseload Statistics was published in July 2021. According to the latest update, by 30 June 2021, 35 new cases had been registered with ICSID, with 30% of these involving State parties from Eastern European and Central Asia (and a further 14% from each of South America and Sub-Saharan Africa). In contrast, over 60% of arbitrators appointed in disputes came from Western Europe and North America (most commonly, the UK, the US, France and Canada). Almost a third of new cases arose from the oil and gas sector, with a further third coming from construction and electric & energy.

In 2021, 15 awards were handed down, along with 4 decisions on annulment. Of the awards handed down, there was a relatively even split between cases in which all claims were dismissed (48%) and those in which claims were upheld in part or in full (45%), with the remaining 7% being dismissed on jurisdiction grounds.

A short summary of some of the awards and decisions handed down in the first half is set out below. A full list of the publicly available awards and decisions is available on the ICSID website.

Dismissal of annulment challenge: *Perenco Ecuador Ltd. Republic of Ecuador and Empresa Estatal Petroleos del Ecuador (PetroEcuador)* ICSID Case No. ARB/08/6 (Decision on Annulment, 28 May 2021)

Following an award dated 27 September 2019 in which a Tribunal awarded Perenco damages of over US$448 million, Ecuador sought annulment of the Award pursuant to Article 52(1) (b) (the Tribunal manifestly exceeded its powers); (d) (there was a serious departure from a fundamental rule of procedure), and (e) (the Award failed to state the reasons on which it was based).

Ecuador alleged 20 grounds for annulment: three related to the jurisdiction of the Tribunal which, if successful, would have resulted in the total annulment of the Award; 5 referred to findings of the Award on the merits, which the Committee also rejected; 7 grounds related to decisions in the Award concerning damages; and 5 grounds related to sections of the Award dealing with counterclaims by Ecuador.

Of the 20 grounds, all but 2 (both relating to damages) were rejected by the Tribunal. The Committee found that the Tribunal failed to state reasons in its decisions on loss of opportunity and tax deductibility of certain costs, with the result that the total damages was reduced from US$448,820,400 to US$412,182,000.

Taking into account that Ecuador had succeeded in reducing the amount of the award by over US35 million, but also that that a number of the grounds submitted by Ecuador were rejected because they were considered by the Committee as mere appeals of the Award, the Committee ordered that Ecuador should pay 90% of the costs of the arbitration proceedings and that each party would bear its own legal costs.

The decision is available here.

Breach of FET standard - *Infinito Gold Ltd. v. Republic of Costa Rica* (ICSID Case No. ARB/14/5) Award, Separate Opinion and Annex A (June 3, 2021)

In *Infinito Gold Ltd. v. Republic of Costa Rica*, the Claimant brought a claim against Costa Rica under the Canada/Costa Rica bilateral investment treaty in respect of its gold mining investment.

Prior to considering the merits of the claim, the Tribunal addressed the Respondent's allegations that the Tribunal had no jurisdiction over the matter on the basis that the investment was procured by corruption. However, it was subsequently established that the allegations of corruption related to matters that happened after the initial investment was made. If this was the case, then the Tribunal considered that this would not imply that the investment was unlawful – it may mean that the later conduct of the investor was tainted, which could be a defence on the merits, but it would not be an obstacle to jurisdiction.

The Arbitral Tribunal, by a majority, found that there had been a breach of the fair and equitable treatment standard as a result of the enactment and implementation of the 2011 Legislative Mining Ban. A breach of the full protection and security standard had not been made out as the Claimant had pled only a failure to provide legal security, not protection of physical harm to the investment. Similarly, the claim for expropriation was rejected.

However, no damages would be awarded in respect of the FET breach. The Tribunal had difficulty identifying the damage which the breach may have caused. Even if the Tribunal were to accept that the fact of harm was established, the Claimant's harm would essentially consist in the loss of an opportunity or chance to apply for an exploitation concession. However, the Claimant had provided a quantification for such a loss of opportunity, or enabled the Tribunal to calculate it. Considering the inherent uncertainty and regulatory risk involved, the monetary consequences of this loss of chance appear too speculative to give rise to an award of damages.

The decision is available here.

Dismissal of challenge to arbitrator: *Bob Meijer v. Georgia* (ICSID Case No. ARB/20/28) (Decision on the Proposal to Disqualify Professor Dr. Klaus Sachs (July 15, 2021)

In July 2020, Bob Meijer (a shareholder in Anaklia Development Consortium LLC) commenced ICSID arbitration proceedings against Georgia under the Netherlands/Georgia Bilateral Investment Treaty. In the same month, ADC (without Mr Meijer) commenced separate arbitration proceedings against Georgia pursuant to an ICC arbitration clause contained in an Investment Agreement between ADC and Georgia. Mr Meijer rejected Georgia's proposal to consolidate the arbitration proceedings.

In the ICSID proceedings, Georgia nominated Dr Klaus Sachs as arbitrator, who accepted this appoint and disclosed (although stating that it was already known to the parties) that Dr Sachs had also been appointed as arbitrator in the ICC proceedings. Mr Meijer raised concerns as to Dr Sachs' participation in both sets of proceedings.

In December 2020, both ADC and Mr Meijer filed challenges against Dr Sachs in the ICC and ICSID proceedings respectively. In the present proceedings, Mr Meijer's grounds were that Dr. Sachs had accepted concurrent appointments in the ICSID and ICC proceedings; he was repeatedly appointed by Georgia and/or White & Case LLP (counsel for Georgia); and his disclosure statement contained three "obvious and substantial errors which revealed that he has already prejudged the factual dispute."

In March 2021, the ICC Court upheld ADC's challenge to Dr Sachs. There was a risk of prejudgment (although it was difficult to speculate on the timetables of the concurrent proceedings), and although there no was reason to doubt that Dr. Sachs would fulfil his duties with fairness and integrity, the risk of unconscious biases resulting from the involvement in two overlapping proceedings could not be discarded. In addition, there was also the risk that Dr Sachs would have access to information that would not be available to his fellow arbitrators.

However, in a decision handed down on 15 July 2021, the Chair of the ICSID Administrative Council rejected the challenge. Given that Dr Sachs was no longer sitting in the ICC arbitration, there was no longer any concern in relation to concurrent appointments and any potential asymmetry of information. While the prior conduct of an arbitrator in connection with a challenge and feelings of enmity towards one of the parties and/or their counsel may in some circumstances be grounds for a successful challenge, the Chairman did not consider that the facts in this case (including the publication of the ICC Decision in GAR) evidenced an appearance of lack of impartiality with respect to the Claimant or his counsel. The other grounds put forward by the Claimant did not give rise to a manifest appearance of lack of independence or impartiality. Accordingly, the challenge would be rejected.

The decision is available here.

PRIVY COUNCIL HANDS DOWN DECISION ON SETTING ASIDE ARBITRATION AWARD ON GROUNDS OF PUBLIC POLICY

Betamax Ltd v State Trading Corporation (Mauritius) [2021] UKPC 14

Introduction

In a decision handed down on 14 June 2021, the Privy Council allowed an appeal against a decision of the Mauritian Supreme Court, and considered the extent to which a supervisory court could review an arbitration award on public policy grounds.

Background

The underlying dispute arose out of a contract of affreightment (the "COA") entered into in 2009 between the appellant, Betamax, and the respondent, STC, a public company which operates as the trading arm of the Government of Mauritius responsible for the import of essential commodities. Under the COA (which was governed by the laws of Mauritius), Betamax was to build and operate a tanker and make available for a period of 15 years the freight capacity of the vessel for the transport of STC's petroleum products from India to Mauritius.

Following a change of government in 2015, STC gave notice that it was unable to use Betamax's services under the COA any longer and on 7 April 2015, Betamax terminated the COA under its default provisions. In May 2015, Betamax filed a notice of arbitration under the COA with the SIAC, in which it claimed damages of over US$150m in the arbitration for breach of the COA. STC, inter alia, disputed the jurisdiction of the arbitrator on the basis that the dispute was not arbitral as it concerned public order matters. Alternatively, STC contended that the COA was illegal and enforceable as it had been entered into (i) in breach of the Public Procurement Act 2006 ("PP Act") and associated Regulations (as no approval had been given by the Central Procurement Board as required under the Act), and/or (ii) as a result of a criminal conspiracy.

In an award dated 5 June 2017, the Sole Arbitrator handed down an award in favour of Betamax and awarded damages of US$115.3m together with interest and costs.

In August 2017, an application to set aside and enforce the Award was made to the Supreme Court of Mauritius on the grounds that the dispute was not arbitrable, that the arbitration agreement was not valid, and that the Award was in conflict with the public policy of Mauritius.

On 31 May 2019, the Supreme Court held that the Award was in conflict with the public policy of Mauritius and set it aside under section 39(2)(b)(ii) of the International Arbitration Act. It considered that the COA had been entered into in breach of the Public Procurement Act 2006 and therefore it was illegal. Betamax appealed to the Privy Council.

Decision

The Privy Council (Lord Hodge; Lady Arden; Lord Leggatt; Lord Burrows; Lord Thomas) allowed the appeal.

Having considered case law from Singapore and England, the Privy Council observed that it was common ground that it was within the jurisdiction of the arbitrator to determine the issue of the interpretation of the legislative provisions and whether the provisions had the effect of making the COA illegal. The Supreme Court had no power to review his decision on that point unless it could do so under section 39(2)(b)(ii) of the International Arbitration Act (which allowed for setting aside of the award where the award was in conflict with the public policy of Mauritius).

However, the Supreme Court had considered its review was not restricted to what constituted public policy, but extended to whether the contract was unlawful. Section 39(2)(b)(ii) did not permit the reopening of substantive issues relating to the interpretation and legality of the contract. The Supreme Court had erred in reviewing the arbitrator's decision that the contract was exempt from the procurement regime. That decision was final and binding and no issue arose as to whether the award conflicted with Mauritian public policy.

In any event, the Supreme Court had erred in its findings on the exemptions from the procurement regime.

The decision is available here.

UK SUPREME COURT RULES ON SERVICE OF DOCUMENTS UNDER STATE IMMUNITY ACT 1978 IN ARBITRATION ENFORCEMENT PROCEEDINGS

General Dynamics United Kingdom Ltd v Libya [2021] UKSC 22

Introduction

In a decision handed down on 25 June 2021 in *General Dynamics United Kingdom Ltd v Libya* [2021] UKSC 22, the Supreme Court, overturning the decision of the Court of Appeal, held that the procedure for service set out in Section 12 of the State Immunity Act 1978 must be followed in all cases where proceedings were brought against a State, including those relating to the enforcement of an arbitration award.

Background

General Dynamics United Kingdom Ltd (General Dynamics) sought to enforce an arbitration award of over £16 million handed down in 2016 by an ICC arbitral tribunal. Following Libya's failure to make any payments in respect of the award, in June 2018, General Dynamics issued proceedings to enforce the Award in England and Wales.

On 20 July 2018, the High Court granted an order giving General Dynamics permission to enforce the award pursuant to section 101 of the Arbitration Act 1996. Given the civil unrest and political instability in Libya at that time, the High Court exercised its discretion under rules 6.16 and 6.28 of the Civil Procedure Rules to dispense with formal service of the arbitration claim form and enforcement order on Libya.

In September 2018, Libya filed an application to vary the enforcement order and require formal service through the Foreign and Commonwealth Development Office ("FCDO") in line with Section 12(1) of the State Immunity Act 1978 ("SIA").

At first instance, Males LJ granted the application and concluded that the court did not have a discretion to dispense with service of the enforcement order under CPR rules 6.16 and/or 6.28 as this would be contrary to the mandatory terms of Section 12. On appeal, the Court of Appeal overturned this decision.

Libya appealed to the UK Supreme Court, which was required to determine whether:

- the SIA requires service of certain documents to the state concerned through the FCDO;
- an arbitration claim form is within the category of documents required by Section 12(1) of the SIA to be served on a state through the FCDO; and
- in exceptional circumstances, the court can make use of certain rules of English civil procedure (which govern litigation proceedings) to dispense with such service.

Decision

By a majority, the Supreme Court allowed the appeal.

The majority of the Supreme Court (Lord Lloyd-Jones, Lady Arden and Lord Burrows) held that Section 12 did require the relevant documents to be served upon a State party to be served through the FCDO. In a case where a party was seeking to enforce an arbitration award, the appropriate document to be served would be either the arbitration claim form or the enforcement order. Section 12 was a mandatory section, and the Courts could not, even in exceptional circumstances, dispense with this form of service under CPR rules 6.16 and/or 6.28.

The minority (Lord Stephens and Lord Briggs) concluded that Section 12 was not of mandatory application. To enforce a strict interpretation of this Section could allow a State which was not (or arguably not) immune nonetheless to obtain immunity *de facto* by being obstructive about service, or by putting diplomatic pressure on the United Kingdom's FCDO not to serve or to delay the service of the proceedings.

The decision is available here.

COMMERCIAL COURT DISALLOWS AN ALLEGATION OF CORRUPTION BEING RAISED AT A LATER STAGE IN THE PROCEEDINGS

Province of Balochistan v Tethyan Copper Co Pty Ltd [2021] EWHC 1884 (Comm)

Introduction

In *Province of Balochistan v Tethyan Copper Co Pty Ltd*, the English Commercial Court dismissed a challenge under Section 67/68 Arbitration Act 1996 to an ICC award where a party had failed to specifically plead corruption in the underlying arbitral proceedings.

Background

Balochistan, one of four provinces of the Islamic Republic of Pakistan, brought a Section 67/68 challenge against a Partial Award dated 8 July 2019 handed down in an ICC arbitration between Balochistan and Tethyan Copper Company Pty Ltd ("TCCA").

TCCA alleged that in breach of contract the Province of Balochistan denied an application in 2011 for a Mining Lease in the Chagai District, which contains what is believed to be the world's fifth largest goldmine.

Arbitration proceedings were commenced under ICC Rules and ICSID Rules. The ICSID proceedings culminated in an award dated 12 July 2019 in which the tribunal awarded TCCA almost US$6billion in damages and interest (believed to be the second largest award in ICSID history). In its award (currently being challenged in annulment proceedings, including on grounds of lack of jurisdiction), the ICSID tribunal considered and rejected allegations of corruption.

In the present claim before the High Court, Balochistan challenged the jurisdiction of the ICC arbitral tribunal on the basis that the ICC tribunal lacked jurisdiction because the contract at issue – the Chagai Hills Exploration Joint Venture Agreement (CHEJVA)- and related agreements were void due to the existence of corruption.

The CHEJVA was entered into in July 1993. Among other allegations, Balochistan alleges that TCCA and its predecessors paid significant bribes to Balochistan officials over a period of many years (before and after the commencement of the agreement), causing the officials to award various illegitimate benefits in relation to the agreement and the natural resources in the Chagai District.

Decision

In a lengthy judgment, the Commercial Court (Mr Justice Robin Knowles CBE) dismissed the application, finding:

- The allegation by the Province of Balochistan that the ICC tribunal lacked jurisdiction because the CHEJVA and related agreements were void due to the existence of corruption) was precluded by section 73(1) of the 1996 Act and the doctrine of waiver by election;
- TCCA was not precluded by an issue estoppel arising from the Judgment of the Supreme Court of Pakistan from alleging separability of the arbitration agreement or from denying that the arbitration agreement is governed by the law of Pakistan;
- Balochistan was precluded by section 73 of the 1996 Act from denying separability of the arbitration agreement;
- The allegations of corruption were an impermissible attempt to challenge the ICC tribunal's decision on the merits of the claim before it;
- Balochistan could not pursue the corruption allegations because they were not included in the arbitration claim form, and permission to amend the claim form would be refused.

Section 73(1) of the Arbitration Act 1996 precludes a party from raising an objection to jurisdiction where a party takes part or continues to take part in arbitration proceedings without raising that objection. In the present case, Balochistan had made general references to corruption but had not made a specific jurisdictional objection on that basis. Accordingly, Section 73(1) precluded such claims being invoked in these proceedings.

The decision is available here.

AUSTRALIAN COURT DECLINES TO ENFORCE QATAR ARBITRATION AWARD

Hub Street Equipment Pty Ltd (Hub) v Energy City Qatar Holding Company (ECQ) [2021] FCAFC 110

Introduction

In *Hub Street Equipment Pty Ltd (Hub) v Energy City Qatar Holding Company (ECQ) [2021] FCAFC 110,* the Federal Court of Australia declined to enforce an arbitration award handed down by a Qatar arbitration tribunal on the basis that the tribunal had not been constituted in accordance with the parties' arbitration agreement but had been appointed by the Qatar court.

Background

The underlying arbitration proceedings were between Energy City Qatar (a Qatar company) and Hub Street Equipment Pty Ltd (an Australian company), who entered into a contract for Hub to supply and install street lighting equipment and accessories, and street furniture and accessories, in Qatar. The contract was subject to the law of Qatar, and provided for disputes to be settled by arbitration in accordance with Qatar arbitration rules. In the event of a dispute, each party was to appoint one arbitrator, with the two arbitrators mutually choosing a third arbitrator to chair.

A dispute arose between the parties. Rather than complying with the arbitration provision in the contract, ECQ filed a statement of claim in the Plenary Court of First Instance of the State of Qatar seeking orders that the Court appoint an arbitral tribunal of three arbitrators including an arbitrator nominated by ECQ pursuant to Article 195 of the Qatar Civil Procedure Code.

Hub did not participate in the Qatari Court proceeding. The Qatari Court made orders in January 2017 appointing an arbitral tribunal. Despite notices being sent to Hub's nominated address on six occasions by the arbitral tribunal (with the arbitration being adjourned on three occasions due to Hub's failure to attend), Hub did not participate in the arbitration proceeding.

On 1 August 2017, the arbitral tribunal issued the award obliging Hub to pay ECQ US$820,322.16, being the full value of the advance payment; US$75,000.00, as compensation against damages incurred by ECQ; and US$150,000.00, as full fees of the arbitration.

At first instance, the Australian court entered judgment against Hub. Hub appealed, contending that the award should not be enforced, inter alia, the composition of the arbitral tribunal was not in accordance with the agreement of the parties.

Decision

The Court allowed the appeal.

Article 195 of the Qatar Civil Procedure Code gave the court the power to appoint arbitrators where the procedure agreed by the parties for the appointment of arbitrators had not been followed. Article 195 could not override the agreement of the parties. The Qatari Court appeared to have acted on the misapprehension that the dispute resolution clause had been followed but had failed to produce the appointment of a tribunal and on that basis it exercised its power of appointment. Accordingly, under Qatari law as the applicable law, the composition of the arbitral tribunal was not in accordance with the agreement of the parties and the award could not be enforced.

Prior to handing down its decision, the Court was notified that the parties had settled their dispute in principle. Nonetheless, important considerations of public policy and public interest supported the judgment in this case being handed down, including that the appeal raised points of law of general interest pertaining to the nature of the burden and onus of proving grounds for the non-enforcement of arbitral awards, and, where such grounds have been made out, the nature of the discretion which permits enforcement notwithstanding the existence of vitiating irregularity.

The decision is available here.

ENGLISH COURT OF APPEAL ALLOWS PUBLICATION OF A JUDGMENT ON ARBITRATION CHALLENGE DESPITE OPPOSITION OF PARTIES

Manchester City Football Club Ltd v Football Association Premier League Ltd [2021] EWCA Civ 1110

Introduction

On 20 July 2021, the Court of Appeal upheld a previous decision allowing the publication of a judgment which dismissed a challenge to an arbitration award against the wishes of both parties to the arbitration on the basis that publication would not lead to the disclosure of confidential information, despite the opposition of both parties to the arbitration.

Background

The claimant football club appealed against an order which permitted the publication of a High Court judgment which determined a Section 67/68 challenge. The challenge arose out of arbitration proceedings between the claimant and the defendant (a company in which the shareholders were the football clubs that were part of the Premier League in that particular season).

The defendant began a disciplinary investigation into purported breaches by the club of its Rules in December 2018. In October 2019 the defendant began arbitration proceedings against the claimant seeking, among other things, a declaration that the claimant was obliged to provide requested documents and information.

The claimant challenged the jurisdiction of the arbitrators and alleged that the tribunal was not impartial. In an award dated 2 June 2020, the arbitral tribunal dismissed the challenges to its jurisdiction and impartiality. The claimant filed an application with the High Court in which it brought a Section 67 challenge in respect of the jurisdiction of the Tribunal; a Section 68 challenge alleging apparent bias; and sought an order that the arbitrators be removed under Section 24 of the Arbitration Act 1996.

The claimant's application was held in private pursuant to CPR 62.10. On 17 March 2021, the High Court Judge dismissed the Section 67/68 challenges (and accordingly the Section 24 application). The Judge indicated that she was minded to publish her judgment on the challenge, which was opposed by both parties. In a decision dated 24 March 2021, the Judge determined that the judgment should be published. The claimant appealed.

Decision

The Court of Appeal (Sir Geoffrey Vos MR; Sir Julian Flaux C; Males LJ) dismissed the appeal.

Sir Julian Flaux C delivered the judgment of the Court. Publication would not lead to disclosure of significant confidential information. Publication of the judgment would disclose details of the arbitration proceedings, which was already in the public domain; however, details of the substance of the underlying disclosure dispute would not be disclosed by publication, and there would be no detriment or prejudice caused by publication.

There was a legitimate public interest in how disputes between the Premier League and member clubs are resolved and, in particular, in the allegation of structural bias made by the claimant football club. This was confirmed by the Premier League's position that it should be free to disclose and rely on the judgment in other arbitration proceedings against other member football clubs. This demonstrated that whatever interest the parties had in confidentiality was far outweighed by the public interest in the publication of an important judgment on the scope of the Rules.

The fact that the parties to the arbitration were both opposed to publication was of some weight, but the Court should be mindful not to simply accept the parties' wishes without scrutiny.

The decision is available here.