

BAR COUNCIL PUBLISHES INFORMATION NOTE REGARDING BARRISTERS IN INTERNATIONAL ARBITRATION

Introduction

On 6 July 2015, the Bar Council published an Information Note regarding barristers in international arbitration, in which it considered concerns expressed in relation to cases in which a barrister appears before a barrister from the same chambers sitting as an arbitrator, in the context of international arbitrations.

Summary

The Information Note:

- sought to identify the relevant principles which will, of course, need to be viewed in the context of the particular type of dispute and arbitration tribunal;
- set out, by reference to problems which have occurred in practice, the types of considerations which barristers may wish to bear in mind in dealing with the practical problems which may from time to time arise; and
- sought to ensure that any concerns that the client may have as to the arbitrator/counsel situation are met, and to ensure that the valuable protection given to clients by the availability of the independent bar is not compromised.

Key points to note from the Bar Council's Information Note include:

- The current English law position is that there is no objection to a barrister acting as an arbitrator in an arbitration simply because one of the parties is represented by a barrister from the same chambers, although there may be other matters, specific to the individual case, that do lead to the existence of such justifiable doubts.
- Good practice would dictate that in circumstances where a barrister comes to understand that he or she has been instructed in an arbitration where one or more of the members of the Tribunal are barristers in the same set of chambers, prompt disclosure ought to be made by those instructing the barrister advocate to the legal representatives of the other side.
- Where a barrister is instructed by a party but is informed that another member of his chambers is already acting as arbitrator in the proceedings, the instructed barrister should consider the advice to be given to clients, including advising the solicitor and client of the potential for a challenge to the continued involvement of the arbitrator and/or of the barrister him or herself, together with the potential for delay and costs consequences; the steps which might be taken to minimise this potential (including ensuring that the barrister's involvement is notified to the other party and the arbitrator as soon as possible); and any potential risks in relation to the enforceability of the final arbitration award.
- Barristers who are asked to act as arbitrators should consider what steps should be taken to ensure early disclosure where an arbitrator and a party's legal representative are from the

same chambers at the time of appointment, bearing in mind all relevant obligations of confidentiality.

Concluding observations

The Information Note produced by the Bar Council once again highlights the importance of full disclosure in cases of actual or potential conflicts of interest.

Clients should ensure that where their legal representative is from the same chambers as a sitting or prospective arbitrator, full disclosure is made to both the arbitrator and the other party.

Absent consent from the parties and the arbitrators, it seems likely that a developing practice is emerging amongst international clients to avoid Barrister representation and party appointed arbitrator from the same chambers.

A copy of the full Information Note is available [here](#).

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