

Justice Committee

Alternative Dispute Resolution

Written submission from the Faculty of Advocates

1. Introduction

Faculty of Advocates Arbitration welcomes the opportunity to submit written evidence to the Justice Committee in regard to Arbitration. For the past year, we have been working hard to raise awareness and promote the benefits of arbitration. The interest of the Justice Committee in this area and the invitation to attend this session is very much appreciated.

The dedicated arbitration group within the Faculty is known as Faculty of Advocates Arbitration (FOA Arbitration). This body is tasked with promoting and raising awareness of arbitration. We have 40 members in this group and they require qualifications and experience in arbitration to be eligible to join. We are developing new and exciting projects including Personal Injury Arbitration and Professional Negligence Arbitration; and strengthening and expanding the existing work being done in other fields, such as Family Arbitration.

2. Use of Arbitration Globally

Arbitration is a developed and well used dispute resolution mechanism globally. Up to 90% of the world's disputes are resolved by this method. The increasing nature of cross-jurisdictional contracts and e-commerce makes arbitration attractive and the main choice for parties as the dispute resolution mechanism.

3. Importance to Scotland

In 2020 the global arbitration community is coming to Edinburgh. ICCA 2020 has awarded Scotland the honour of hosting its biennial conference. This is an enormous opportunity for arbitration in Scotland and will enable us to showcase our talents, experience, facilities and ability to host arbitration to a worldwide audience.

4. BREXIT and Arbitration in Scotland

We believe that BREXIT will not have any effect on arbitration in Scotland, nor in the UK. Arbitral Awards are recognised and enforced under the New York Convention 1958. Signatories to this Convention include 98% of the world's countries.

5. The Creation of a Specialised Arbitration Group in the Faculty of Advocates

Over the past year, FOA Arbitration has taken steps to educate and train members of Faculty and solicitors and to encourage arbitration in Scotland. We have trained 32 Counsel as Members of the Chartered Institute of Arbitrators (MCI Arb). We are presently training 18 QC's and advocates on a dedicated Fellowship course, leading to the gold standard FCI Arb qualification. We hosted an Arbitration Conference in the

Balmoral Hotel last September involving international and high profile speakers, including the Chair of the Justice Committee, Margaret Mitchell MSP. Currently, there are over 30 arbitrations ongoing involving Advocates, who are conducting or participating in these arbitrations as Arbitrators or as specialist Arbitration counsel.

6. Costs as a Barrier

At present, there is no legal aid available to fund arbitrations. FOA Arbitration has made a submission to the Independent Strategic Review of Legal Aid and we are soon to meet with SLAB. Legal Aid would only provide a partial solution and would not be available for the larger or commercial cases and so some alternatives are required. To this end, we are also in constructive dialogue with third party funders.

In our view, the most significant barriers to increased use of arbitration remain lack of awareness of the benefits; lack of education; and lack of funding. Fuller details on any aspect of dispute resolution can be provided through the Vice-Dean's email address: deans.secretariat@Advocates.org.uk

Faculty of Advocates
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