

COMMENTARY ON THE LMAA TERMS 2021

INTRODUCTION

1. This commentary identifies the main changes to the LMAA Terms 2017 which have been made in the LMAA Terms 2021, due to come into effect for appointments on or after 1st May 2021.
2. The committee responsible for revising the Terms has been much assisted by suggestions received from users of LMAA arbitration about possible revisions. The committee has taken account of all such suggestions in preparing this updated version of the Terms. It is gratifying to note that suggestions have mainly been as to “fine tuning” of the Terms; however, the committee has been conscious of the need to ensure that LMAA arbitration remains as effective and as cost-efficient as possible. The committee’s approach has been pragmatic and practical – updating wording to reflect changing procedures (including the increased use of virtual hearings), and to address specific issues which have arisen in recent years, whilst retaining the flexibility and “light touch” approaches which are characteristic of LMAA arbitration. There have been numerous minor changes of wording, by way of update and improvement, in this revision. The commentary below will focus on some of the more significant points.

LMAA TERMS 2021

3. *Paragraph 10:* The appointment procedure for a sole arbitrator now adopts the procedure in the LMAA Arbitration Clause (as now revised and set out at the end of this booklet), which is simpler and speedier than the procedure set out in the Arbitration Act 1996.
4. *Paragraph 12:* Concerns have been expressed by users about the difficulties, and waste of time and costs caused, where it becomes apparent shortly before a hearing that an arbitrator is unable to conduct the hearing, and where the original appointing party is unwilling or unable to appoint a substitute, and it is also impractical to get a substitute appointed in time by means of a Court application. The revised terms therefore now give the President power to appoint a substitute arbitrator where it becomes apparent that the original arbitrator is incapable of conducting the proceedings or attending the hearing (or there are justifiable doubts as to this point). It will be for the President in such cases to decide whether it is appropriate to make an appointment. It is anticipated that the power will be used rarely, and it is not intended to prevent a party from making a Court application for a substitute appointment, but it will provide an additional tool to ensure that LMAA arbitrations are conducted efficiently and effectively.
5. *Paragraph 15(c) and (d):* The Terms now expressly recognise that hearings may take place virtually, and provide for flexibility as to the manner in which hearings are conducted. The LMAA has taken an important initiative in publishing its Guidelines for the Conduct of Virtual and Semi-Virtual Hearings, and the Terms provide for the Guidelines to be used subject to any modifications issued by the LMAA or ordered by

a tribunal. For ease of reference, the Guidelines appear at the Sixth Schedule to the revised Terms.

6. *Paragraph 24:* The Terms now expressly provide that awards may be signed electronically, and in counterparts, and may be notified to parties by electronic means. This gives greater flexibility as to the preparation and publication of awards, particularly in circumstances in which it may be difficult to obtain handwritten signatures from arbitrators. However, parties and their lawyers should keep in mind that it is possible that enforcement issues could arise in relation to an electronically signed award. The Terms therefore stipulate that parties are responsible for informing the tribunal, prior to issue of the award, if they would like the award to be signed with original handwritten signatures. Furthermore, given the uncertainties as to enforcement, it is suggested that tribunals continue with the practice of obtaining handwritten signatures to an award, whenever possible, so that, even if an award is notified to the parties electronically, an original award, with handwritten signatures, can be made available if subsequently required.

SCHEDULES TO THE LMAA TERMS 2021

7. *Third Schedule:* The LMAA Questionnaire continues to be an important part of case management of arbitrations under the Terms. A new question has been inserted regarding arrangements for virtual, or semi-virtual, hearings. New text has also been included in paragraph 16 regarding breakdowns of costs which must be provided.
8. *Fourth Schedule:* The Checklist now requires the parties, in the case of virtual, or semi-virtual, hearings, to follow the guidance in the LMAA Guidelines for such hearings. It also contains in paragraph 2 important new wording aimed at ensuring that witness statements are, so far as possible, expressed in the witness's own words, and confined to relevant issues of fact.
9. *Sixth Schedule:* A new schedule contains the LMAA Guidelines for the Conduct of Virtual and Semi- Virtual Hearings.