

**4<sup>th</sup> Annual International Conference**

**“Practice of maritime business: sharing experience”**

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**THE LONDON MARITIME ARBITRATORS ASSOCIATION**

A Talk by Simon Gault, the Honorary Secretary of the Association

**Introduction**

1. In this short presentation, I would like to ask and try and answer two questions:-
  - (a) What is the LMAA?
  - (b) What does the LMAA do?

**What is the LMAA?**

**2. Introduction**

The LMAA is an association of arbitrators practising in London in the field of maritime law. Unlike some other arbitral institution it does not administer the arbitrations

conducted by its members or under its rules.

3. One of the main objects of the LMAA is: *"to advance and encourage the professional knowledge of London maritime arbitrators and, by recommendation and advice, to assist the expeditious procedure and disposal of disputes"*
4. It was founded in 1960, but its roots and traditions go back for more than 300 years. It arose out of an informal approach by ship-brokers in London to settling their clients' disputes without recourse to the courts.
5. LMAA arbitration today is professional and well disciplined. As we shall see, the degree of formality involved in an LMAA arbitration depends on the requirements of each individual case. LMAA arbitrations range from being almost as formal as a Court hearing, to a complete absence of formality, where for example the arbitration is on documents alone and there is no oral hearing.
6. Apart from appointing an arbitrator in circumstances in which the parties cannot agree upon the appointment of an arbitrator, the LMAA does not administer arbitrations conducted by its members or under its rules. In those arbitrations in which we appoint an arbitrator, our role is concluded with his appointment. In other arbitrations, the association does not get involved at all. This contrasts with the approach of other arbitral institutions which administer arbitrations and charge for this service. This is an important distinction and one which is often not understood.
7. The administration of LMAA arbitrations is conducted by the arbitrators themselves. The LMAA Terms make detailed provision for the procedures to be followed by the parties. By and large, the tribunal only needs to get involved if one or other party fails to follow the prescribed procedure, or where a decision is required because the parties fail to agree on the appropriate procedural course to be followed.
8. **Membership**

The membership of the association falls into essentially two categories:-

- (a) Full members.
- (b) Supporting members.

9. **Full Members**

Our full members are all experienced professional arbitrators, and form the core of the LMAA. They are all based in England. Most of their arbitrations are conducted in London, although most of them are willing to conduct arbitrations anywhere in the world.

10. There are currently 35 full members of the LMAA. The full members have a very wide range of experience and skill. Full members include naval architects, marine engineers, master mariners, surveyors, shipbrokers, lawyers and former judges (including a former member of the English Court of Appeal). Our full members can boast a very considerable experience of all aspects of shipping (including owning, managing, chartering, building, buying, selling and navigating ships of all sorts) as well as an extensive knowledge of maritime law and arbitration. A good idea of the breadth of expertise available can be obtained from studying the CVs of our full members, which are set out in our handbook and on our website ([www.lmaa.org.uk](http://www.lmaa.org.uk)).

11. **Supporting Members**

Our supporting members are individuals who are involved in or interested in maritime arbitration and who wish to support the LMAA. There are currently about 650 supporting members. They do not as a general rule practice as arbitrators, but they are in sympathy with and wish to lend their support to the association. They are a very wide and diverse group of people. In particular:-

- (a) Although not primarily arbitrators, some supporting members act from time to time as arbitrators. We publish a list of supporting members who are prepared to accept appointments. Provided the particular arbitration agreement permits it, parties can appoint either supporting members or full members as an arbitrator.
- (b) There is a wide pool of experience and expertise available among our supporting members. A list of supporting members is published in the handbook and on the

LMAA website ([www.lmaa.org.uk](http://www.lmaa.org.uk)), and their wide background is apparent from that list. In particular, the English legal professions (both in London and in overseas offices) are well represented, as are the P & I Clubs. But in addition, there are representatives from almost every category of maritime activity one can envisage. They include owners, charterers, managers, cargo interests, deck officers and engineers, naval architects and surveyors, brokers and many others maritime professions. They also include university academics, claims handlers, average adjusters, and foreign lawyers.

- (c) The supporting members are a very international group. The list of countries in which we have supporting members reads a bit like the United Nations. We have supporting members also in France, Germany, Holland, Belgium, Norway, Denmark, Switzerland, Luxembourg, Greece, Cyprus, Turkey, the Lebanon, the Oman, Russia, the USA, Canada, Belize, South Africa, Australia, New Zealand, Singapore, Thailand, Malaysia, India and China. This support network gives the LMAA a global reach.

## 12. **Organisation**

The LMAA is a small organisation consisting primarily of unpaid volunteers. It has:-

- (a) **A president** (elected by the committee) who is serves for a term of 2 years. This is currently Mr John Tsatsas.
- (b) **A committee** (elected by the full members) currently of 7 full members and 2 past presidents. The Committee is responsible for managing the affairs of the LMAA.
- (c) **An Honorary Secretary** (myself) to whom the committee delegates many of its functions.

The LMAA has one paid employee, Mrs Anne Wilson, the assistant secretary who mans the LMAA office, and to whom I delegate some of my functions. The office is in the City of London at: The Courtyard,124 Aldersgate Street, London EC1A 4JQ.

13. **Funding**

We have a small budget for our activities and our funds are derived from our membership subscriptions and the other fees which we charge for services such as appointing arbitrators (or mediators) in circumstances where the parties cannot agree upon an appointment. We do not get any funding from the state or from any other organisation. The LMAA is therefore completely independent of the state and of any other interest group. It represents only the interests of its members.

14. **SMLC**

The LMAA also has a committee drawn from its supporting members which is representative of the international shipping industry. This has a consultative function, but no executive role. It meets twice a year and discusses matters of current interest to the association. It is designed to identify problems which users encounter when arbitrating under LMAA Terms and find solutions for them. It is a very helpful sounding board for the association.

**What does the LMAA do?**

15. **Arbitration**

Obviously, LMAA members conduct maritime arbitrations. These cover all types of shipping disputes which are subject to an arbitration agreement. Such an agreement is usually to be found in a contract agreed before the dispute has arisen, but occasionally it may be found in an *ad hoc* agreement made after a dispute has arisen. Typically such disputes arise under charterparties, bills of lading, shipbuilding contracts, and sale and purchase contracts, but there are many other types of dispute which LMAA arbitrators handle. Examples are disputes involving contracts for the sale of goods, claims for brokerage commission, and so on. Where shipping is involved, we have the expertise to deal with any disputes which can arise. In practice, we do not deal with much casualty work. Salvage disputes are dealt with by legal arbitrators appointed by Lloyds under the Lloyds Standard Form of Salvage Agreement. Collision actions tend to be dealt with by the courts, as they are not often subject to an arbitration agreement.

16. **Statistics**

LMAA arbitrators conduct by far the greatest number of shipping related cases in England. In 2006, our full members received about 2,500 appointments and made about 450 awards. This compares well with our specialist shipping courts. In 2006, 1005 claims were brought in the Commercial Court and 128 claims were brought in the Admiralty Court. In the same year, there were 75 trials in the Commercial Court and 7 trials in the Admiralty Court. It is hard to tell as other arbitral institutions don't publish statistics, but we believe that we conduct more shipping arbitrations than all of the other arbitral institutions in the world, certainly more than any other single institution.

17. **Terms**

One of the most important functions of the LMAA is to publish terms under which its members (and other arbitrators) conduct maritime arbitrations or mediations. The LMAA recognises that there is a range of disputes of differing importance to the parties. The range is usually (but not always) determined by the amount of money at stake. To respond to this reality, the LMAA publishes different sets of terms and the parties are free to choose the terms which are proportionate to their disputes. They can choose anything from a thorough but more expensive service, or a quick but cheaper service.

18. The thorough but more expensive service comes in the form of the LMAA Terms (2006). These can be found in our handbook and are published on our website. They are appended to this paper. They are designed to be used in substantial cases, and make detailed procedural provisions for the conduct of arbitration. There are three features of these terms which are perhaps worth mentioning:-

- (a) They provide procedural rules which lay down a procedure for the conduct of arbitrations. This procedure gives scope for the parties to agree procedural matters without involving the tribunal. The tribunal will often only get involved as a fall back when the parties fail to reach agreement about some procedural matter.
- (b) Although many arbitrations conducted under these terms will involve one or more

oral hearings (with counsel, solicitors, witnesses, and experts) before a tribunal of three arbitrators, they can also be (and often are) used when the expense of an oral hearing need not be incurred and the arbitration can be conducted more cheaply on documents alone. We estimate that there is no oral hearing in about 80% of the cases in which an award is made. In many cases, the award is agreed between 2 arbitrators without the need for the appointment of a third person. We think that this reflects well on the impartiality of LMAA arbitrators. It also results in some saving of cost.

- (c) In an appropriate case, there is a limited right to appeal from an award made in an arbitration conducted under these terms to the English Court on a point of law. There is no provision for appeal on the facts found by the arbitrators.

19. The quick but cheaper service comes in the form of the LMAA Small Claims Procedure 2006. These terms can also be found in our handbook and are published on our website. They are appended to this paper. They are designed to be used in cases where the sums at stake are US \$50,000 or less, but the financial limit is for the parties to agree. In some cases, the parties will agree to a higher or no limit. However, a higher or no limit at all is not always a good idea because the terms are not really suitable for a complicated or difficult case. The following features are worth mentioning:-

- (a) Arbitrations conducted under these rules are almost invariably conducted on documents alone by a single arbitrator. Although the arbitrator has power to require an oral hearing, it is not one that it often used.
- (b) There is no right to appeal from an award in an arbitration conducted under these terms either on the law or on the facts.
- (c) The arbitrator=s charge is a flat fee of £1,750 (plus £1,000 if there is a counterclaim) and the parties' recoverable costs are limited to £2,500 (or £3,500 if there is a counterclaim).

20. The LMAA has identified a need to increase the range of its terms in order to give the parties a wider degree of choice in the method of arbitration (particularly its cost) which they consider to be appropriate for the determination of their disputes. We are currently involved in drafting a new set of terms which will provide a procedure which falls somewhere between the LMAA Terms and the Small Claims Procedure. The new terms are intended to deal with disputes where the claim falls between US \$50,000 and about US \$300,000. The terms will adopt features of both the other sets of procedure, and will enable disputes within this range to be determined at a cost which is proportionate to the amount of money at stake. We hope to publish these terms later this year.

21. The LMAA also provides a mediation service with a panel of experienced mediators and publishes its own mediation terms. Details of both the panel and the terms can be found on the LMAA website. The terms are also in the handbook. They are appended to this paper.

22. **Appointments**

The President of the LMAA also provides a useful and important service in appointing arbitrators or mediators if the parties cannot agree upon whom to appoint. The LMAA charges a modest fee for this service. The President made 78 appointments last year; almost all were of a full member of the association. In making these appointments, the President will appoint the arbitrator who is best qualified to determine a particular dispute by reason of his experience and qualifications.

23. **Quality**

LMAA arbitrators have a very high reputation as arbitrators. The LMAA has an important role in maintaining that reputation by ensuring that its full members meet its exacting standards and have proved themselves by acquiring a substantial arbitration practice before being elected. The criteria for full membership are published both in our handbook and on the website. The most important of these criteria are as follows:-

- (a) Because arbitration is a judicial function which requires judicial experience and a sound knowledge of the relevant law, prospective full members must have either a legal qualification or an appropriate qualification as an arbitrator.

- (b) Because maritime arbitration is a specialised area of the law, prospective full members are required to have been engaged for at least 15 years in a responsible position in the shipping industry in either a commercial, technical or legal capacity, and must be familiar with the English law of contract and tort.
- (c) Because, London maritime arbitrators have to work with each other, to be respected, and to be trusted by each other, prospective members have to demonstrate to their peers a substantial and recent degree of involvement on a regular basis working with other LMAA members as a member of a London maritime arbitration tribunal. They must also demonstrate an ability to draft reasoned awards.

#### 24. **Collegiate**

The LMAA also has a valuable collegiate role. This has several aspects:-

- (a) Although LMAA arbitrators sometimes differ about the correct answer to particular questions, they have developed a *AHouse@* style, through working together regularly. This results in LMAA arbitrators approaching arbitrations in a similar way and saves time and costs. This also means that users have a good idea what to expect from LMAA arbitrators.
- (b) The LMAA system provides a self disciplining mechanism because LMAA arbitrators will not want to let themselves or their colleagues down. It permits the President to deal informally with the very rare occasion when a party may fairly or unfairly complain about an LMAA arbitrator.
- (c) It enables the LMAA committee to ensure the use of good practices, uniformity of approach and compliance with the law by LMAA arbitrators by issuing any guidelines which may be required for that purpose.

#### 25. **Education**

The LMAA also has an educational function. In particular:-

- (a) It holds a seminar for its members and their guests each May, at which 3 distinguished speakers give talks on topics of current interest. These talks may range from the legal, to the commercial, to the technical. This seminar qualifies for the continuing educational requirements of many of the professions to which its members belong.
- (b) The LMAA publishes twice yearly a newsletter which contains not only news, but also articles and papers on a wide range of subjects, notes on relevant cases decided by the English courts, and summaries of LMAA awards (where the parties have agreed to publication).
- (c) From time to time, the LMAA also publish a law review which contains a variety of legal articles of current interest to the shipping industry.
- (d) The LMAA has a website and publishes a handbook which provides a huge amount of information about its current activities, membership, and terms. You have a copy of the latest handbook in your pack.
- (e) The LMAA also provides a service to the public by answering questions about LMAA arbitration (usually by e-mail) which are raised by users of its services or by academics researching maritime arbitration.

## 26. **Networking**

The LMAA also runs 2 social functions every year for its members and their guests:-

- (a) It holds a prestigious dinner in March which is attended by about 210 people engaged in the shipping industry, including a members of the higher judiciary.
- (b) It holds a less formal lunch in November each year which is attended by about 120 people engaged in the shipping industry, at which a prominent person will give an

educational talk on matters of current interest.

Both occasions provided an excellent opportunity not only for meeting friends and networking, but also for enjoying some of London=s historic venues.

27. **Publicity**

The LMAA also has a discreet role in publicising the merits of London maritime arbitration. We do this in a number of ways:-

- (a) We provide speakers at conferences all over the world which debate maritime arbitration. Last year, we provided a number of speakers for the ICMA Conference in Singapore in February. We provided speakers for a conference in London in November, and another one in December. This year we have provided speakers for conferences in London and in Tulane in the United States, in Dubai and 2 of us are speaking here today.
- (b) We meet delegations from different countries which are interested in arbitration in London and discuss London maritime arbitration with them. In 2006, we conducted a meeting with delegates from the Singapore Government. In 2007, we held meetings with representatives from the China Shipbuilding Industry, Corp the Wuhan Arbitration Commission, a firm of Chinese lawyers and 2 delegations of Vietnamese judges and arbitrators. In 2008, we had a meeting with a delegation from the Erasmus University in Rotterdam.
- (c) We also encourage our better looking committee members to give press and television interviews in which they discuss London maritime arbitration. In 2006 two of our past presidents gave interviews about London arbitration on Greek television.

28. **Conclusion**

I hope that we have given you a clear idea of the role of the LMAA and the value of

arbitrating maritime disputes under the LMAA Terms. I am sure you will have some questions. You are very welcome to ask whatever questions you would like to ask, either now or later after we have returned to England. I will do my best to answer them. I and my colleagues at the LMAA would also be very happy to meet any of you or your colleagues again either in London or in the Ukraine in order to have further discussions about arbitrating maritime disputes under LMAA terms.