Neutral Citation Number: [2026] EWHC 327 (Comm)

Case No: CL-2026-000025

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERICAL COURT (KBD)

Rolls Building, Business and Property Courts of England & Wales
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Before:

MR JUSTICE BUTCHER

Between:

Party "A"	**Claimant**
- and –	
(1) Party "B" **(2) Party "C"**	**Defendants**

Legal Representation

Robert-Jan Temmink KC (instructed by **McGuireWoods London LLP**) on behalf of the Claimant
John Brisby KC and Albert Sampson (instructed by **Payne Hicks Beach LLP**) on behalf of the First Defendant
The Second Defendant was not present nor represented

Judgment

Judgment date: 30 January 2026

Mr Justice Butcher:

1. This is an application made by the Claimant, Party "A", for what is described as a stay pursuant to CPR rule 3.1(2)(g) of two arbitrations which are pending between Party A and the First Defendant ('Party B'), before the same arbitrator (who is the Second Defendant), conducted under the LCIA Rules 2020. There is also an application by Party A for a stay of its own application under s. 24 Arbitration Act 1996. I am not dealing with that in the present judgment.

2. I take an account of the background largely from the parties' skeleton arguments. It is not intended to be controversial. The underlying arbitrations concern a number of high value contracts for the supply of artillery rounds and rockets to Ukraine. In the arbitrations Party B alleges that it has paid deposits towards some of the sums claimed by Party A in invoices for rounds and rockets but has not received the products. It claims for the return of the deposits and greater sums in penalties and interest.

3. For its part Party A alleges that Party B was not contractually entitled to choose what products it paid for against the relevant invoices and that armament production and supply in this case required the entire output from certain manufacturers to be bought and paid for in full before anything could be supplied to Party B. Party A contends that it has supplied everything that was paid for and that Party B is in breach for failing to pay for ordered and invoiced goods.

4. The contracts all contain an arbitration agreement in the same terms, providing for disputes to be determined by arbitration under the LCIA Rules by a sole arbitrator. A part of the arbitration agreement within each of the relevant contracts is clause 11.6, which states that 'the Expedited Procedure shall apply and the dispute shall be decided on the basis of documentary evidence only'. The parties are at issue as to the applicability and effect of this provision.

5. On 20 December 2025 the sole arbitrator issued two orders, one in each of the arbitrations. They were labelled 'Procedural Order No. 17' in the first arbitration and 'Procedural Order No. 10' in the second arbitration. They have been called 'the December Orders'. By the December Orders the sole arbitrator refused to consolidate the arbitrations, and refused to permit oral examination of witnesses and experts. As part of the December Orders he stated that consolidation of the arbitrations 'would require redrafting parts of the draft awards in order to merge them into a single draft award…' These decisions have prompted Party A both to pursue a section 68 challenge and also an application under s. 24 to remove the arbitrator. It is the latter which Mr Temmink KC described as now being the 'gravamen' of the claim.

6. The section 68 challenge which is brought in relation to the December Orders challenges the decision of the sole arbitrator declining to order that there be an evidentiary hearing in each of the arbitrations for the purpose of allowing cross-examination of the witnesses. The basis for Party A's section 68 challenge is that the arbitrator has:

> "Failed to comply with his general duty under section 33 of the act to act fairly and impartially between the parties and to adopt procedures suitable

to the circumstances of the particular case so as to provide a fair means for the resolution of the matters falling to be determined."

7. The matters particularly relied on by Party A are that the arbitrator has prejudged the arbitral proceedings because he has substantially written his final awards, and that in refusing to order an evidentiary hearing in which cross-examination could take place in each of the arbitrations the arbitrator has erred in his interpretation of clause 11.6 of the arbitration agreement.

8. In the section 68 challenge the relief sought is that the December Orders should be set aside or declared to be of no effect insofar as they deny the parties an oral hearing and that a new tribunal should reconsider the issue of an oral hearing and it be declared that any draft final awards produced by the arbitrator are of no effect.

9. As I have said, Party A also applies under s. 24 of the Arbitration Act for the removal of the arbitrator. The removal application relies on the assertion that the arbitrator cannot conduct the arbitrations fairly and impartially; and the particular matters relied upon are that the arbitrator has prejudged the proceedings and has shown himself to be biased or to display apparent bias.

10. The application before me is, as I have said, one to stay the arbitrations. That is put on the basis that, where it is contended that the arbitrator should be removed, and also that final awards in the arbitrations should not be made without an oral hearing and should not be partially written prior to the close of pleadings and finalisation of the evidence, it would be unjust and inappropriate for the arbitral proceedings to continue while the Court is seised of challenges to the arbitrator and to the procedure being adopted.

11. In my judgment it is, at least, a misnomer to describe the present application as an application to 'stay' the arbitrations. The power under CPR rule 3.1(2)(g) to stay proceedings relates to proceedings in court. It does not apply to arbitral proceedings. Insofar as this is an application for a stay of the arbitrations under that rule, it fails for that simple reason.

12. What is, in my judgment, really being sought here is an injunction to restrain the further pursuit of the arbitrations pending the determination of Party A's s. 24 and/or s. 68 applications. As to that, I accept Mr Brisby KC's general submission that no proper evidence has been put in which might support such an injunction. In any event I am of the clear view that the Court may not make such an order and that even if it may do so it should not do so.

13. The starting point is s. 1 Arbitration Act 1996. That section provides:

> "The provisions of this Part are founded on the following principles, and shall be construed accordingly --
>
> (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
>
> (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

(c) in matters governed by this Part the court should not intervene except as provided by this Part."

14. It is also necessary to refer to s. 24 Arbitration Act. It provides:

> "(1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds --
>
> (a) that circumstances exist that give rise to justifiable doubts as to his impartiality;
>
> (b) that he does not possess the qualifications required by the arbitration agreement;
>
> (c) that he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so;
>
> (d) that he has refused or failed --
>
> (i) properly to conduct the proceedings, or
>
> (ii) to use all reasonable despatch in conducting the proceedings or making an award,
>
> and that substantial injustice has been or will be caused to the applicant.
>
> (2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.
>
> (3) The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending."

15. There is no provision in s. 24 or anywhere else in Part 1 of the Arbitration Act for the Court to prevent the progress of an arbitration pending resolution of a s. 24 challenge.

16. In commenting on these provisions in the looseleaf text *Arbitration Law* edited by Professor Merkin the following is said at paragraph 10.83:

> **"**The fact that an application to remove an arbitrator has been made does not affect the arbitrator's jurisdiction, and under the Arbitration Act 1996 section 24(3) the arbitrators may continue the arbitration proceedings and indeed proceed to an award pending the outcome of the application to the court. This power was inserted into the arbitration bill following consultation on an earlier draft and is intended to ensure that the arbitration is not delayed by a tactical application. It is unclear whether the court has any jurisdiction to grant an injunction halting the proceedings pending the outcome of the application as there is no immediately obvious source of any such jurisdiction. Even if the power does exist it may be assumed that it would be exercised in exceptional circumstances only."

17. Consistently with the doubt expressed by Professor Merkin, I doubt that the Court has jurisdiction to halt an arbitration pending a s. 24 challenge. To do so would be to intervene otherwise than as provided for in Part 1 of the Act and inconsistently with the clear indication in s. 24(3) that the arbitration proceedings may continue notwithstanding a pending application under s. 24.

18. But if I am wrong that the Court is required by s. 1 not to intervene in such a way I consider that the Court should not intervene in any event. Any such intervention would, if ever appropriate, only be in exceptional circumstances. In a case such as the present where there is no doubt that there are arbitration provisions applicable to the disputes between the parties I consider that exceptional circumstances would involve that the continuation of the arbitration was vexatious, oppressive, or unconscionable.

19. The fact that there might be a challenge to the arbitrator under s. 24 would not of itself constitute exceptional circumstances and it would make no difference if the Court considered at the hearing when the injunction was sought that there was an arguable or a good arguable case in support of the s. 24 application. The question arises, ex hypothesi, only when there is a s. 24 challenge, and the existence of such a challenge would not constitute exceptional circumstances. To regard it as such would open the door to tactical applications designed to hold up the arbitration.

20. I do not consider that there are any other circumstances about the present case which are exceptional or which mean that the continued pursuit of the arbitration pending the hearing of the s. 24 application will be oppressive, vexatious, or unconscionable. In effect the only matters relied upon by Party A as constituting prejudice if the arbitration proceeds are twofold.

21. First, the potential waste of time and costs. Those are not exceptional factors. Moreover, they have to be considered against the prejudice which would be sustained by the Defendant if an injunction were granted, causing delay for an indeterminate time, and giving Party A a greater time to prepare its final submissions in the arbitration than is consistent with the timetable Party B has been working to up to now.

22. The other matter relied on by Mr Temmink KC is that if the arbitration goes ahead as planned there will be a process whereby questions are put to the witnesses and the witnesses have an opportunity of addressing them in writing. What he says is that, if subsequently it were decided that the witnesses should be cross-examined, they would have had what might be described as a dress rehearsal or at least a greater opportunity of thinking about points and responding to them. I cannot accept that that amounts or indeed comes near to amounting to oppression or vexation.

23. The points on which there may be cross-examination are likely to be relatively obvious and indeed in a properly pleaded case there should have been a proper particularisation of the allegations of fraud and thus a limited area for surprise. Furthermore, the fact that witnesses may already have put in answers to allegations in writing is quite as capable of benefiting as prejudicing the party alleging fraud because it gives that party foreknowledge of the best answer that the witnesses can think of and that answer can then be cross-examined on rather than the party putting the allegation and having to respond *ex tempore* to a new explanation given by the witness for the first time orally.

24. Insofar as what is being sought is that the arbitrations should be enjoined pending the s. 68 Arbitration Act application, the position is, in my view, no different. The ordinary position is that the Court does not have jurisdiction to interfere with the procedural conduct of an arbitration prior to the making of an award. That is apparent from a number of cases, including *Elektrim SA v Vivendi Universal SA* [2007] EWHC 571 (Comm) where Aikens J said at paragraph 75:

> "To attempt to invoke section 37 as a means of reviewing or overruling the tribunal's decisions would undermine the principles of the 1996 Act and would grant the court a general supervisory power which it has never had."

25. Party A seeks to argue that the December Orders were in fact interim awards. I reject that suggestion. The December Orders have the form of procedural orders and that reflects the reality. They do not settle substantive rights between the parties to the arbitrations. They deal with the procedural conduct of the arbitral process. They are not, therefore, awards.

26. In the event that there is a serious irregularity arising out of the procedure which has been or which the arbitrator has decided should be adopted, Party A's right will be to challenge the award or, as it is seeking to do, to seek the arbitrator's removal. Those rights are not prejudiced by the arbitrations proceeding at the moment. If I had considered that I had the power to interfere prior to an award I would not in any event do so. For reasons I have given I do not consider that there are any exceptional circumstances which would lead the Court to seek to intervene in the present case in the way suggested by this application.