

**JUDGMENT : MR JUSTICE AKENHEAD:** TCC. 16<sup>th</sup> June 2008

**Introduction**

1. This claim relating to an arbitrator's jurisdiction raises several matters of interest in respect of arbitration under the National House Builders Council ("NHBC") new dwellings insurance arrangements.
2. Crest Nicholson (Eastern) Limited ("CNEL") is part of the Crest Nicholson group which is a substantial house builder throughout the country.
3. By a written contract made in 2005 between CNEL and Mr and Mrs Western ("the Purchase Contract"), CNEL sold and the Westerns bought a dwelling, then in the course of construction, whose address is now 34 Witham Road, Wickham Bishops, Essex. It was then one of a number of houses being built by CNEL as part of a development.
4. The dwelling was sold with the benefit of the NHBC Buildmark Scheme by which CNEL and the NHBC gave certain undertakings in respect of defects and damage over a period of 10 years after completion of the construction.
5. Following completion and the Westerns moving in, a number of alleged defects were reported by the Westerns. In accordance with its normal procedure, the NHBC investigated and on 10 October 2006 published its Resolution Report which found that CNEL was responsible for a number of the defects. The NHBC called on CNEL to carry out various remedial works by 17 November 2006.
6. CNEL indicated that it was prepared to carry out the requisite work but a further dispute arose between the Westerns through their surveyor, Mr Antino, and CNEL which related to whether CNEL was responsible also for professional fees incurred by the Westerns as a result of the alleged defects.
7. For reasons which I do not have to decide, CNEL has not yet carried but the work. I was told by CNEL's Counsel that the Westerns would not allow the work to be done pending resolution of the professional fees dispute whilst the Westerns' Counsel rejected that. I can certainly see no good reason for the work not to be done.
8. On 18 April 2007, the President of the Royal Institution of Chartered Surveyors ("RICS"), at the invitation of the Westerns, appointed Mr E Malone BSC Dip Arb, FRICS, FCI Arb, MAPM as arbitrator. Mr Malone put forward his Terms and Conditions; his fees equated to £140 per hour.
9. Over the following months CNEL through its solicitors, Nabarro, asserted that Mr Malone did not have jurisdiction essentially on two grounds: that there was no arbitration agreement or, if there was, it was the Chartered Institute of Arbitrators ("CIA") which was required to appoint.
10. Following representations from the parties, Mr Malone considered that he had jurisdiction and so informed the parties in his letter dated 19 November 2007.
11. The underlying dispute is small. I was told by the Westerns' Counsel without demur from CNEL's Counsel that the remedial works cost is about £20,000 and the professional fees and costs are some £7,000. It is unfortunate both that the parties cannot resolve at least how their dispute is to be resolved and that they now come to court for a decision as to whether Mr Malone was properly appointed.

**The Contract**

12. The Purchase Contract in relation to the dwelling was in a relatively common form:  
*"Clause 3*  
*The Seller sells and the Buyer buys the Property at the Price*  
*(b) Clause 6*
  - 6.1 *The Seller will complete the Dwelling in a good and workmanlike manner in accordance with the plans and specifications of the Dwelling ... and in compliance with all relevant planning permissions and building regulation approvals.*
  - 6.2 *Unless a date for completion is specified in clause 1 of this Agreement completion shall take place on the eighth working day after whichever is the later of the following dates:-*
    - 6.2.1 *service of notice in writing by the Seller or his Solicitors on the Buyer or his Solicitors that the Dwelling has been substantially completed*
    - 6.2.2 *the receipt by the Buyer's Solicitors or Licensed Conveyancers of the Warranty Scheme Cover Note issued by the National House-Building Council which Cover Note shall be sent by the Seller's Solicitors by post, DX or fax.*  
*when the Buyer shall pay the balance of the Price together with any outstanding monies payable under this Agreement.*  
*(c) Clause 13 NHBC Insurance*  
*The Seller undertakes to provide the form of Buildmark Scheme as prescribed by the National House-Building Council and the liability of the Seller for defects shall be governed in all respects by the terms of such Agreement or Scheme and the Seller shall not be responsible for any consequential loss suffered by the Buyer due to the existence in the Property of any defect."*
13. There is no definition in this Contract as to what the expression "the form of Buildmark Scheme as prescribed by the National House-Building Council" actually was.

### The NHBC Cover

14. The Court has been provided with three documents which are said by one side or the other to comprise "the form of Buildmark Scheme as prescribed by the National House-Building Council":
- (a) A document entitled "NHBC Buildmark Your warranty and insurance cover Applicable to newly built or converted properties registered with NHBC from 1 October 2005". This document is said to be "a winning document" for the purpose of Clear English Standard awarded by the Plain Language Commission.
  - (b) The NHBC Claims Charter
  - (c) The Rules for Builders and Developers registered with NHBC.
- These are all documents said to be available on the NHBC website.
15. It is necessary to consider each of these sets of documents to determine whether any or all of them can be considered to be "the form of Buildmark Scheme" referred to in Clause 13 of the Purchase and Sale Contract.
16. As to the NHBC Buildmark Warranty and Insurance Cover document, this document is, as its front page suggests, a warranty and insurance. The first inner page of the document has two sub-chapter headings "Your right to cancel" and "Accepting the cover". In the first sub-chapter, the Purchaser is entitled to cancel cover under Buildmark within 14 days of receiving the Buildmark policy documents, which must be returned to the NHBC with the cancellation request. Under the second sub-chapter, the following is stated:
- "In accepting this cover you agree to enter into a contract with NHBC and that as an Owner you require the insurance, subject to the relevant financial limits, to protect you*
- (1) *if the Builder becomes insolvent or fails to meet his obligations before completion of the Home, or during the first two years after completion.*
  - (2) *against Damage caused by Defects in specified parts of the Home during years three to ten.*
- There is also additional cover where NHBC Building Control Services Ltd carried out the building control."*
17. On page 1, the Definitions are set out. The relevant ones seem to be:
- "Builder – the Company or person named on the Buildmark Offer document who is responsible for the building or conversion of the Home.*
- Buildmark – the document contained in the cover provided by NHBC and the Builder.*
- Buildmark Offer -The form which contains the offer of cover on the Buildmark made by NHBC and the Builder.*
- Insurance certificate – The certificate we issue on Completion, which brings sections 2, 3 and 4 of this cover into operation."*
18. On page 5, there is the Introduction:
- "To the Owner**
- This booklet describes the insurance cover given by NHBC and the Builder's obligations for newly built or converted Homes. Please note that this cover is different to that offered under your buildings and contents insurance. ...*
- There is useful information on our website – [www.nhbc.co.uk](http://www.nhbc.co.uk) – about NHBC, our insurance cover and our claims and resolution procedures.*
- Each section of the Buildmark is subject to a number of conditions, exclusions and financial limits, and you should read these with particular care. There are also special provisions for claims on Common Parts.*
- This is an important document. We suggest you keep it and your Insurance Certificate (which will be sent separately) in a safe place. If you sell your Home within ten years of the start of the cover (this date is printed on the Insurance Certificate), you should give this booklet and the Insurance Certificate to the New Owner.*
- ....
- The role of NHBC*
- NHBC is the standard setting body and leading warranty and insurance provider for new and newly converted homes in the UK.*
- NHBC registers around 85% of new homes in the UK and around 1.6 million home owners currently benefit from our 10-year warranty and insurance cover. NHBC has protected over 30% of the existing homes in the UK.*
- Established in 1936 as a non-profit distributing company, NHBC's primary purpose is to help to raise standards in the house-building industry and provide consumer protection for new home owners."*
19. The insurance cover is set out in five Sections: "Cover before completion", "The first two years after completion", "Cover in years 3 to 10", "Additional cover in years 3 to 10 if NHBC's subsidiary did the building control" and "Additional cover in years 3 to 10 for contaminated land". It is quite clear that in effect this is a policy of insurance. Each Section has a period of cover and financial limits on what the NHBC will or will not pay or be responsible for.
20. It is only in Section 2 that there is reference to "The Builder's obligations":
- "This part of the cover tells you what the Builder must do if he is given notice of Defects or Damage in your Home. This notice must be given as soon as possible within the period of cover.*
- The Builder must take the action shown in the green panel below, but he does not have to take action to deal with any of the items in the blue panel."*

21. The green panel is headed "What the Builder is liable for":  
*"Within a reasonable time and at his own expense to put right any Defect or Damage to your Home or its Common Parts which is notified to him within this period of the cover."*  
The period of cover is the period of 2 years from the date of the Insurance Certificate.
22. Section 2 goes on as to what is covered by the NHBC Insurance:  
*"This part of the cover only applies if the Builder does not meet his obligations under Section 2. We will either pay for the items in the green panel below or, at our option, arrange for the necessary work to be carried out at our expense. We will not pay for the items in the blue panel."*
23. In Section 2 there is a page (10) which tells the Purchaser "What you must do if you think there is a problem with your Home":  
*"1. It is important to inspect your Home before and after you move in. The Builder is responsible for investigating your complaints and for putting right Defects or Damage.  
2. Contact the Builder informing him of any items requiring attention as soon as you notice them. You should keep copies of any correspondence or any other information, such as notes of telephone conversations, as you may need these later to prove that problems were reported in the first 2 years.  
3. If the Builder does not deal with your complaint to your satisfaction, contact NHBC ... We will usually offer our Resolution Service ..."*
24. Details of the Resolution Service are set out on page 11:  
*"If there is disagreement about the Builder's obligations, we will usually try to resolve matters under our Resolution Service ...  
When we offer our Resolution Service, we will investigate any Defects or Damage which you have complained to the Builder about and which he has not put right within a reasonable time. We may need to visit your Home. We will then issue a report informing both you and the Builder of any work that he must carry out to fulfil his obligations under this Section ..."*
25. There are then two pages (21-2) which are headed "Complaints and disputes procedures". The first page deals with Complaints against NHBC (excluding the Resolution Service).
26. Page 22 is concerned with "Disputes with the Builder" and a reference to the Resolution Service. There then follows what in substance has involved the greatest area of dispute between the parties before this court:  
*"Other options for resolving disputes with NHBC or the Builder  
The following notes give guidance on ways of resolving different types of disputes. However, you may wish to seek advice about the most suitable method to meet your specific needs.  
Arbitration  
Arbitration means that an independent Arbitrator considers the facts of the dispute and decides how it will be settled ...  
Arbitration has the advantage of being generally quicker than court actions and can deal with any matters, provided both parties agree. An Arbitrator's award is legally binding and can be enforced in the same way as a court judgment. However, as in court proceedings, one party may have to pay the costs and Arbitrator's fees. Further details are available free of charge from the Chartered Institute of Arbitrators. If, after receiving details, you wish to proceed, the Institute will appoint an Arbitrator upon your application. Their address is:  
The Chartered Institute of Arbitrators  
12 Bloomsbury Square ...  
Small Claims Court  
The Small Claims Court may be suitable for resolving relatively small disputes where the amount falls below a specified level. It is quicker than other forms of court action and the proceedings are less formal. Details are available from any County Court office ...  
Other courts  
The court may be suitable for resolving different types of claims involving contractual, financial and boundary disputes, as well as disputes about standards of workmanship, where there is significant cost and complexity. You should seek advice from a solicitor or Citizen's Advice Bureau.  
Other forms of alternative dispute resolution  
There is a wide range of other methods of resolving various types of dispute. Many are informal and are intended to be used without legal representation.  
A Citizen's Advice Bureau or your legal adviser should be able to give you further advice on these methods."*
27. The NHBC Claims Charter current at the time of Sale and Purchase Contract has these words on the front page:  
*"Our commitment to our customers is to provide a claims handling and resolution service that is effective, professional, courteous, impartial and timely."*
28. This is clearly a document in which the reference to "our" and "we" is to the NHBC. On the second page, for instance, under the heading "When you first contact us", there appears this:

- "To provide you with the best possible service, it would be helpful if you could give us the following information when you contact us:*
- *Buildmark or other NHBC policy number*
  - *Property address, including postcode*
  - *Builder's name*
  - *Details of items causing concern."*
29. There is then a page headed "Complaints and disputes procedure" which first refers the house purchaser to internal NHBC procedures:
- "If you are not satisfied with the way we have handled your request for assistance or your claim, please write to the Claims Manager ...*
- If you are still not satisfied after review please write to the General Manager ..."*
- Then complaints can be made to the Financial Ombudsman:
- "If you remain dissatisfied after the General Manager has reviewed your claim, you are entitled to ask the Financial Ombudsman Service to investigate the handling of your claim ...*
- The Financial Ombudsman Service can only consider complaints against NHBC relating to our insurance cover. The Financial Ombudsman Service is unable to consider issues relating to the builder's obligations."*
30. There is then a heading "Arbitration":
- "If you do not wish to refer your dispute with us to the Financial Ombudsman Service, or if you do not agree with its decision, you may refer the dispute to independent arbitration. You may also refer a dispute with the builder to arbitration where we are unable to assist under our Resolution Service, or if you disagree with our Resolution Service report.*
- The Arbitrator ... will be appointed by the Chairman or Vice-President of the Chartered Institute of Arbitrators.*
- You can obtain details of the arbitration procedure and appropriate application forms from:*
- The Chartered Institute of Arbitrators*
- 12 Bloomsbury Square ...*
- The Arbitration Scheme is completely independent of NHBC ..."*
31. Finally, in the trio of documents referred to by the parties in argument, are the Rules for Builders and Developers registered with NHBC. It is clear on the face of these Rules that they apply to regulate the relationship between the NHBC on the one hand and Builders and Developers registered with the NHBC on the other. On the first page headed "Notes about the Rules", this is made clear:
- "The Rules that follow apply to all Builders and Developers registered with NHBC ...*
- Please read these Rules carefully. If you have any questions about them or your registration with NHBC, please contact the Builder Registration Department ..."*
- The reference to "you" is clearly the Builder or Developer.
32. In the Definitions section, NHBC Cover is defined as:
- "The warranty and insurance issued by NHBC or its subsidiary companies. It includes (but is not limited to):*
- i Buildmark, Buildmark Choice and Buildmark Link and their related forms;*
  - ii any House Purchasers' Agreement or House Purchasers' Insurance Policy;*
  - iii any PRC Home Owners' Agreement;*
  - iv any Notice of Cover;*
  - v any similar policy or agreement;*
- in each case as issued by NHBC."*
- This makes it clear that there are a number of different insurance policies which are or may be provided by the NHBC.
33. The "Register" is defined as *"The Register of Builders and Developers maintained by NHBC in England, Wales, Scotland, Northern Ireland and the Isle of Man respectively."*
34. It is clear when considering the contents of the Rules that they govern the relationship between the Builder or Developer and the NHBC:
- (a) Clauses 2 to 5 deal with the registration of Builders and Developers.
  - (b) Clauses 6 to 11 deal with the rights and duties of a Registered Builder or Developer. It requires for instance under Clause 6 for the Builder or Developer to pay the annual Registration subscription specified by the NHBC. The references in these clauses to "you" clearly are the Builder or Developer. Clause 12 to 14 deal with how the Builder or Developer is to enrol homes to secure that NHBC Cover is provided. Provision is made for charges for the NHBC Cover.
35. Clause 27 deals with defective work and the NHBC giving the Builder or Developer written notice of work which must be carried out to the Home to ensure that it complies with the NHBC's Requirements. Clause 27i states:
- "If you dispute any action taken by NHBC under this Rule, that dispute will be and is referred to arbitration in accordance with Rule 55 ..."*

36. Clause 30 to 41 (principally) set out the Powers of the NHBC including a right to cancel the registration of a Builder or Developer. There is provision in Clause 46 for the Builder or Developer to apply to have its registration reinstated.
37. Clause 26 states that: *"If you consider that NHBC is unreasonably withholding a Notice of Cover and you dispute its view that the Home has not been completed in compliance with NHBC's Requirements, you may give NHBC written notice that you want that dispute to be referred to arbitration under Rule 55 ..."*
38. Clause 55 is headed "Arbitrations"  
*"Arbitration Conditions:*  
*55a Any dispute under Rule 26 or under Rule 27 will be referred to arbitration. The Arbitrator ... will be appointed by the Chartered Institute of Arbitrators in London.*  
*55b The Institute will send you an application form in which you, as the claimant in the proceedings, must apply for the appointment of an Arbitrator ... Within 21 days of receiving it you must complete and return that form (together with any fee specified in it) to the Institute. If you fail to do so NHBC will be entitled:*  
*i to treat your application for the appointment of an Arbitrator ... as abandoned; and*  
*ii to proceed as if no dispute had arisen.*  
*55c If a dispute arises between you and the Owner out of your obligations under NHBC Cover and the Owner wishes to have that dispute determined at arbitration you must give your written consent to the appointment of the Arbitrator ... in whatever form is required and as soon as you are notified of that requirement. You must pay any fee required by the Arbitrator ... or the appointing body as soon as it is requested."*
39. Finally Rule 56 states:  
*"56a If at any time arbitration or legal proceedings are commenced between you and the Owner in respect of a Home in relation to which any NHBC cover has been issued you must as soon as possible give details of those proceedings to HNBC.*  
*56b You must, if NHBC requests, make any reasonable application and take any reasonable step specified by NHBC to enable it to take part in these proceedings. NHBC will reimburse you your reasonable costs of that application or step."*
40. Rule 58b however adds this:  
*"These Rules constitute a contract solely between NHBC and you. They do not, and are not intended to, confer any rights or benefits whatsoever on any third party."*

#### Discussion

41. Essentially the arguments between the parties are as follows:
- (a) CNEL argues that under the Purchase Contract the Buildmark Scheme as referred to in Clause 13 of the Purchase Contract is clearly the NHBC Buildmark Warranty and Insurance Cover document. That is said in effect to be the "deliverable" pursuant to Clause 13. The other documents, the Charter and Rules on their face clearly do not and are not intended to regulate the relationship between Owner and Builder and Developer. CNEL go on to say that the Complaints and Disputes Procedures part of the Buildmark Cover are insufficiently certain and clear to amount to a binding arbitration agreement under the Arbitration Act 1996. Even if the wording is such that it does amount to a binding arbitration agreement, then it is the Institute of Arbitrators which is left to appoint the Arbitrator. It is simply not open to either party (save with mutual agreement) to have another institution appoint the Arbitrator, no matter how much in good faith that other institution acts in purporting to appoint the Arbitrator.
- (b) The Westerns argue that the Scheme referred to in Clause 13 is to the overall Scheme promulgated by the NHBC and necessarily includes the three documents in question. Those three documents must be read together, they argue, and that, read together, it is only optional for the Institute of Arbitrators to be the appointing body. They argue that they have a right to go to arbitration and applying Rule 55(c) CNEL is bound to accept any impartial Arbitrator put forward by them or nominated at their request by an appropriate institution.
42. It is abundantly clear that the Rules for Builders and Developers Registered with the NHBC simply regulate the relationship between the Builder or Developer and the NHBC. The nature of the Rules themselves and Rule 58(b) in particular make it clear beyond doubt that the Rules govern simply and solely that relationship. I cannot see any intellectually proper ground upon which it can be argued that the Rules in some way are intended to govern the relationship between the Builder or Developer and the House Owner. The fact that the Rules require in some respects the Builder or Developer to do things for the benefit of the Owner does not mean that it can ever have been intended that the Rules govern the relationship between Owner and the Builder or Developer. Thus, so far as arbitration under these Rules is concerned, that relates to arbitration between the Builder or Developer and the NHBC. It can not therefore have been intended that the Rules should be part of the *"form of Buildmark Scheme as prescribed by the National House-Building Council"* envisaged under the Purchase Contract.
43. So far as the Charter is concerned, it is clear that this is intended to cover or at least to some extent cover the relationship between the NHBC and the Owner. The constant references to "you" are obviously to the Home Owner. The Complaints and Disputes Procedure is intended primarily to cover complaints against the NHBC and disputes between the Owner and the NHBC. The reference to the Owner being able to refer a dispute with the Builder to arbitration is simply a reflection of one of the options which is referred to in the Buildmark Cover; thus,

it is informative only. One cannot read the Complaints and Disputes Procedure in the Charter which is clearly intended to govern the relationship between NHBC and the owner as containing an arbitration agreement between the Owner and the Builder or Developer. In referring to the possibility of a reference of a dispute with the Builder to arbitration it is being informative rather than prescriptive.

44. In turning now to the Purchase Agreement, Clause 6.2.2 envisages that there will be "a Warranty Scheme Cover Note" to be issued by the NHBC. It is that Cover Note which will, often, dictate when completion of the purchase takes place.
45. Clause 13 on its wording makes it clear that there will be a document "prescribed by" the NHBC called "the Buildmark Scheme" which will be provided. The wording, overwhelmingly, suggests that there will be a document provided which will define and describe the Buildmark Scheme; for instance, Clause 13 uses the word "form": this must relate to a document rather than a raft of documents. The reference to the provision of "the form" can be read in no other way. It is clear that this document is to provide for "the liability of the Seller for defects".
46. The only document which readily falls into this category is the NHBC Buildmark Warranty and Insurance Cover document referred to in some detail above. I do not consider that the reference to "the form of Buildmark Scheme" can mean that it relates to some generic overall scheme or arrangement set up and operated by the NHBC. It must relate to the insurance policy to be provided.
47. Given that view, one must then go on to consider whether the Complaints and Disputes Procedures part of that Scheme contains an arbitration agreement. It is clear that there is no arbitration agreement as such at all. All that the Complaints and Disputes Procedures do is to provide for a number of options. Apart from the resolution of disputes by the NHBC's Resolution Service, the relevant page sets out the only and obvious "options" for resolving disputes: arbitration, small claims court, other courts, and other types of alternative dispute resolution. The wording is, probably, deliberately not prescriptive. All it purports to do is to "give guidance on ways of resolving different types of disputes". "You" may need to seek advice "about the most suitable method to meet your specific needs". There is then a discussion about the advantages of the various different types of Dispute Resolution Processes, only one of which is arbitration. The "clear English" which the NHBC has used in the drafting of this document goes nowhere near prescribing arbitration as the dispute resolution method. At best, it represents an agreement to agree whereby the parties, in this case the Builder or Developer and the House Owner, can decide and agree upon what is the most suitable dispute resolution process for the particular case.
48. Even if I am wrong about this and it does contain at the very least a right on the part of the House Owner to refer a given dispute to arbitration, the wording is prescriptive to secure or procure that the Chartered Institute of Arbitrators will be the appointing institution. Thus the wording is that if "you" wish to proceed "the Institute will appoint an Arbitrator upon your application".
49. Even if I were to construe all three documents together, which would not be correct, one could come to no conclusion other than that the Chartered Institute of Arbitrators was to be the nominating institution with regard to an Arbitrator in relation to any dispute between the Builder or Developer and House Owner.
50. Given that arbitration is a consensual process, if the parties have agreed on a particular body to nominate an Arbitrator in circumstances where the parties themselves cannot agree upon an Arbitrator, the courts should give effect to that which the parties have agreed. CNEL perceive, rightly or wrongly (and I do not have to decide which), that the Chartered Institute of Arbitrators' nomination and involvement is beneficial. It is clear that the Chartered Institute operate what it terms the "NHBC Arbitration Scheme". It is reasonable to assume that it will nominate as Arbitrators people who have particular experience of the NHBC Scheme and Requirements. It may be that given that many NHBC type disputes involve relatively small sums of money such Arbitrators are able at low cost to produce sensible awards.
51. Once the parties have agreed on a particular nominating body, it is simply not open to one party to go to another (albeit wholly respectable) institution to seek a nomination. It matters not that the person nominated by this other institution is highly qualified and experienced. He or she will simply not have jurisdiction to resolve the disputes arising between the parties out of an agreement, pursuant to which he or she has been nominated as Arbitrator by an institution not agreed upon by the parties. If the parties have not agreed upon a nominating body or if for some reason the nominating body is unable or unwilling to nominate, the parties' solution to that problem in the absence of agreement is to come to the court to seek a nomination under the provisions of the Arbitration Act 1996.
52. Thus, I conclude that there is no arbitration agreement in this case of any sort. Secondly, even if there is, it was or would have been the Chartered Institute of Arbitrators which should have nominated the Arbitrator; given that it was the RICS which nominated him, Mr Malone's appointment is simply invalid and he has no jurisdiction as Arbitrator to resolve the disputes between the parties.
53. It seems to me that the appropriate solution is for the court to grant a declaration that Mr Malone has no jurisdiction as Arbitrator to resolve the disputes between the Claimant and Defendants.

#### **The costs issues**

54. Two issues as to costs arose. The first concerned whether or not the Court had jurisdiction to make any order in relation to costs incurred by CNEL in the abortive or invalid arbitration proceedings. Doubtless, CNEL incurred costs in solicitors' fees and other expenses in relation to making representations to Mr Malone that he had no

jurisdiction. I am of the view that the Court has no jurisdiction to make any order in relation to costs incurred by the parties in those proceedings. There is nothing in the Arbitration Act which suggests that the Court has jurisdiction in relation to such costs albeit obviously the Court has jurisdiction over the costs of any proceedings under Section 67 of the Arbitration Act 1996. If the purported arbitration proceedings were invalid, the Court could only have power to make an order in relation to those costs if there was some clear statutory power to do so. There is no such power.

55. I ordered that the Westerns should pay £4,000 towards CNEL's costs of these court proceedings. I reduced the proffered Schedule of Costs from £7,532.50 for the following three reasons:
- (a) I formed the view that the solicitor's time allowances particularly for attendances on Claimants, attendances on Counsel and dealing with documents were sufficiently excessive as not to be justifiably charged against the Westerns. The bulk of the work had already been done in terms of written representations and the like before Mr Malone and the costs of preparation for this Claim and hearing should have been small.
  - (b) In the interests of proportionality, I am very conscious that the underlying claim involves a sum of money which is likely, soon, to be dwarfed by the costs incurred by the parties. It is appropriate for a costs order, particularly a summary one, to reflect proportionality.
  - (c) If this assessment was to proceed to a costs judge, it would be normal for a bill such as this to be reduced by one quarter and a third.

MR SEBASTIAN ISAAC (instructed by Messrs Nabarro) for the Claimant  
MR DANIEL CROWLEY (instructed by Messrs WSM Solicitors) for the Defendants