Judging the Judges: Five Years of LCIA Arbitrator Challenge Jurisprudence

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On 16 December 2024, the London Court of International Arbitration (**LCIA**) published a batch of 24 new arbitration challenge decisions, accompanied by commentary[1]. The decisions cover the period from 22 July 2017 till 31 December 2022 in arbitrations administered under various editions of the LCIA and UNCITRAL Rules. What sets this latest release apart from the 2010–2017 publication is that all 24 decisions are published in full, with only limited redactions to preserve confidentiality.

This publication is aimed at enhancing transparency and accountability, building predictability and consistency in LCIA-administered decision-making, as well as promoting good practice among arbitrators. The LCIA's initiative coincides with a broader trend for transparency and impartiality in the English arbitration landscape, following the UK Supreme Court's seminal decision in *Halliburton v Chubb* [2020] UKSC 48, which clarified the test for apparent bias, and the enactment of the Arbitration Act 2025 (**Arbitration Act**). Among its particularly significant reforms, the Arbitration Act introduces a statutory arbitrators' duty of disclosure under the newly added Section 23A—further aligning English statutes and common law with the constantly evolving international standards on arbitrator independence and impartiality.

It is notable that objections based on pre-appointment disclosures are not classified by the LCIA as formal challenges and, accordingly, are not included in the bundle. Moreover, as the UNCITRAL and LCIA arbitration frameworks differ, particularly in how arbitrators are appointed and how disclosures are reviewed, challenge statistics from UNCITRAL cases can't be meaningfully compared to LCIA cases. The LCIA has no oversight of most UNCITRAL appointments and doesn't track the total number of such cases. Despite the above-mentioned differences, the core principles governing challenges based on arbitrators' impartiality and independence are the same under both frameworks. Accordingly, successful and unsuccessful challenge patterns are not distinguished separately in this article.

Overview of data supplied by the LCIA decisions

I. Legal Framework

The majority of challenges were governed by the LCIA Rules 2014, with only one involving earlier version (1998) and the 2020 update. While the UNCITRAL Arbitration Rules (1976 and 2010) featured in a smaller subset of cases compared to the LCIA Rules 2014, each UNCITRAL version was applied in an equal number of instances—three under each set of the UNCITRAL Rules.

As most arbitrations were seated in London, the challenges were predominantly governed by English law. However, a number of cases involved non-UK seats, bringing other legal systems into play—including Brazilian law, French law, the U.S. Federal Arbitration Act 1925 and New York law, Singaporean law, and Swiss law. While variations in the applicable legal standards occasionally influenced how disclosure obligations and procedural fairness were assessed, the fundamental principles of arbitrator impartiality and independence remained consistent across all these legal systems.

The IBA Guidelines were often referenced by parties and, in multiple cases, applied by the LCIA Court as a source of guidance—even where one party had not expressly agreed to their use. As noted in one decision, the IBA Guidelines were considered relevant because they "*reflect actual practice in a*

[1] https://www.lcia.org/News/lcia-releases-additional-challenge-decisions-online.aspx

significant part of the arbitration community".[2] At the same time, the LCIA Court consistently acknowledged that the IBA Guidelines constitute soft law and are not binding on the determination of a challenge.[3]

II. Statistical Overview

The success rate of challenges to arbitrators remains very low. Of the 39 challenges filed during the period—including 32 under the LCIA Rules and the rest under UNCITRAL Rules—only two were successful: one under each set of rules. The remaining challenges were either rejected or discontinued before reaching a determination by the LCIA Court.

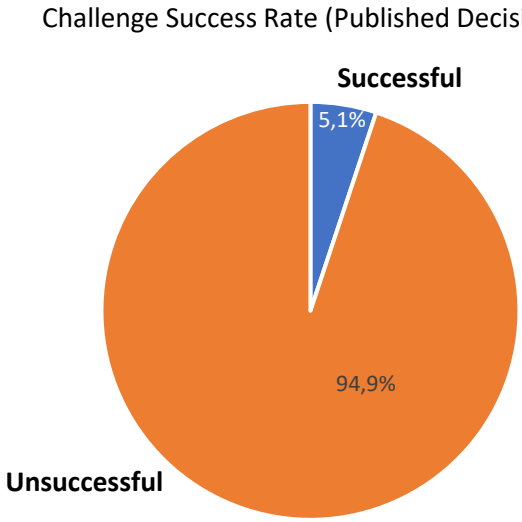

Figure 1: Challenge Success Rate (2017–2022) (Published Decisions)

Out of these 39 challenges, 24 resulted in published decisions, 18 of which were issued under the LCIA Rules. As the accompanying commentary notes, '*[t]he number of challenges as a percentage of new cases pursuant to the LCIA Rules between 2017 and 2022 is 1.7% (32 challenges out of 1,864 cases)*'.

As for the challenges under UNCITRAL Rules or other ad hoc frameworks, the LCIA provided administrative or appointment services in 55 arbitrations. During this period, the LCIA Court received 7 challenges in UNCITRAL cases: one was upheld, five were rejected, and one was not determined due to non-payment of the advance on costs.

These low figures for different sets of rules reflect, among other factors and despite multiple differences between the LCIA/UNCITRAL appointment procedures, the high threshold for disqualifying arbitrators.

Under all sets of the rules, respondents initiated more challenges than claimants, accounting for 15 of the 24 published decisions. The difference is too small to draw any definitive conclusions, however, this disparity could be caused by respondents sometimes invoking a challenge as a procedural tactic—to delay proceedings, increase costs, or pressure claimants into settlement or withdrawal.

[2] Para 34, Decision 5 dated 18 July 2018.
[3] E.g. Para 41, Decision 24 dated 7 March 2022.

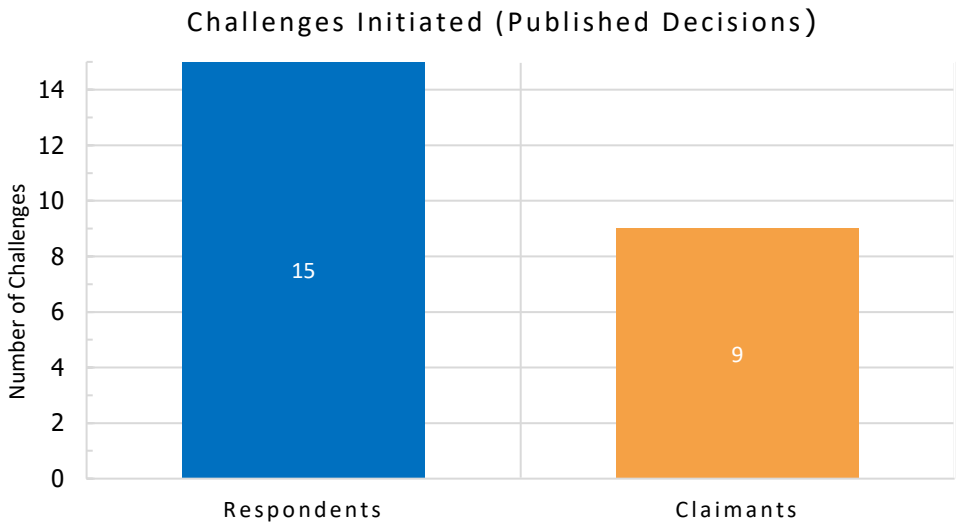

Figure 2: Challenges Initiated by Party

Out of the 24 published decisions from 2017 to 2022, eight were brought against full three-member tribunals, matching the number of challenges to sole arbitrators, and exceeding those against co-arbitrators (7) and chairs (2). Compared to the previous period, when only four challenges were directed at full tribunals, this figure has doubled. Strikingly, every challenge to a full tribunal was initiated by a respondent, whereas challenges to sole arbitrators were evenly split between claimants and respondents.

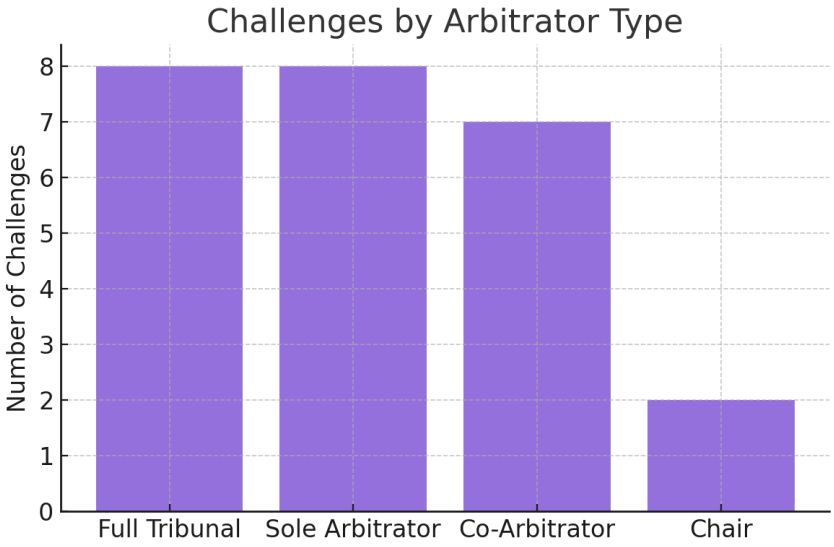

Figure 3: Targets of Challenge Applications

Timing of Challenge Decisions

Most decisions were rendered within 2–3 months of the first indication of the intention to challenge an arbitrator or filing the challenge. Overall, the duration ranged from just over 1 month to 9 months, depending mostly on the substantive complexity and procedural posture of the challenging party (e.g. requesting extensions), and less on other administrative issues, including re-appointment of the LCIA-appointed challenge decision-maker.

III. Grounds for Challenge: Typology and Trends

The most frequent grounds of challenge under the LCIA Rules are:

- procedural decisions and conduct of proceedings by an arbitrator,
- failure to provide reasoning and/or neglect of certain issues in the award, and
- ties with another participant in the arbitration proceedings, including multiple appointments.

Under the UNCITRAL Rules, a higher number of challenges were based on prior connections, such as multiple previous or parallel appointments, relationships with a party or its affiliate, links to counsel or law firms, or prior involvement in drafting model contracts—compared to challenges under the LCIA Rules.

IV. Successful Challenges: Case Studies

a) Long-term prior Employment with Respondent, followed by Career in the Same Industry and Area of Practice

The arbitrator's prior employment with the respondent for over two decades gave rise to justifiable doubts regarding both their independence and impartiality. The LCIA Court found that arbitrator's financial independence within fifteen years after the employment terminated was not enough to dispel justifiable doubts because long-term relationships could have created other types of dependence, including referrals, networking recommendations and work-related information. As for impartiality, a long-standing professional relationship—such as over 20 years of employment—naturally fosters loyalty and personal bond, which may cast doubt on an arbitrator's impartiality, even long after the relationship has ended.

b) Ongoing Academic and Professional Ties with Respondent's Counsel, Alongside Prior Employment with Respondent

The arbitrator's three ongoing joint research projects with the respondent's in-house counsel representing the respondent in the arbitration, together with a wider team, raised justifiable concerns regarding the arbitrator's impartiality and independence.

c) Arbitrators' Close Ties to a Key Law Firm in a Conspiracy Case Undermine Their Independence

The challenge succeeded due to the relationship between the presiding arbitrator and a co-arbitrator with Law Firm C—an entity central to the respondent's allegations of fraud. These serious allegations could have brought Law Firm C's conduct directly before the tribunal. In this context, the presiding arbitrator's prior consultancy role with Law Firm C for approximately eight years, regular co-organization of events, reliance on the firm's lawyers in other matters, and the exchange of personnel between their respective firms collectively gave rise to justifiable doubts regarding the chair's impartiality and independence.

Although less personal and not as close, the co-arbitrator's relationship with Law Firm C also extended over several years. The sustained efforts to build and maintain ties between Law Firm C and the co-arbitrator's firm were sufficient to raise justifiable doubts about impartiality and independence as well.

V. Unsuccessful Challenges: Frequent Pitfalls

a) Procedural Disagreement ≠ Bias

Challenges in the LCIA arbitrations have arisen from a broad range of circumstances, often rooted in dissatisfaction of the challenger with an arbitrator's or Tribunal's conduct of the proceedings. Parties

have cited arbitrators' specific rulings as grounds for alleging bias on various issues occurring in arbitration proceedings:

- procedural timetable and extensions,
- security for costs,
- interim measures,
- bifurcation,
- document production,
- evidentiary matters,
- stay applications,
- adverse inference,
- adjournment,
- relocation of hearing venues, and
- procedural sanctions, including for failure to timely pay deposit/LCIA costs.

Such challenges were typically brought against either sole arbitrators or entire tribunals, most of whom were appointed by the LCIA Court. As the purpose of a challenge is not for the LCIA Court to "*second-guess [an arbitrator's] approach to procedural issues',*[4] and as far as "*Article 17(1) of the Rules gives broad discretionary powers to the arbitrator regarding procedural decisions, so long as the parties are treated with equality and are given a reasonable opportunity to present their case*",[5] —have been unsuccessful. The LCIA Court's decisions consistently reinforce the principle that dissatisfaction with procedural outcomes does not in itself establish bias.

Likewise, challenges that effectively amount to an appeal on legal or substantive grounds—such as attempts to remove an arbitrator for insufficient reasoning or failure to address specific issues in the award—are also unlikely to succeed as '*it is not "a function of the LCIA Court to review the conclusions (whether of fact or of law) of an arbitrator's award in order to determine whether or not such conclusions were properly supported by the parties' submissions or the evidence adduced*"'[6].

Furthermore, the late invocation of challenges to arbitrators based on arbitrator's procedural decisions may render such objections entirely inadmissible: unless filed in a timely manner—typically within 14 days of becoming aware of the relevant circumstances—a party may be barred from even raising procedural concerns as a basis for its challenge. As the LCIA Court explained in Decision 18, "*[t]he LCIA Rules do not allow a party to 'reserve' potential grounds to challenge an arbitrator until that party feels confident to have accumulated enough material to rely on the cumulative effect of successive events as bases for its challenge.*"[7]

b) Connections and Repeat Nominations

Connections That Undermine Confidence

In contrast to the rare successful challenges described above, the published decisions are filled with allegations of bias based on tenuous connections—such as relationships between co-arbitrators, ties

[4] Para. 183, Decision 24 dated 07 March 2022.
[5] Para. 68, Decision 1 dated 23.10.2017.
[6] Para. 90, Decision 1 dated 23 October 2017 citing prior LCIA decisions: LCIA Reference No. 96/X22, 22 July 1998, at para. 4.3, 27:3 *Arbitration International* 326; LCIA Reference No. UN0239, 22 June, 3 July and 3 October 2001, at paras. 4.2-4.4, 27:3 *Arbitration International* 340.
[7] Para. 124, Decision 18 dated 14 October 2020 citing LCIA Reference No. 122232, paras. 5.3-5.6 (3 February 2014).

to law firms involved in drafting relevant agreements, or links between arbitrators and experts. As the LCIA Court emphasized in Decision 8, "*the mere fact that some connection may exist between an arbitrator and the parties or personnel involved in an arbitration is not of itself a matter of criticism and is unlikely of itself to be sufficient to disqualify a prospective arbitrator*".[8]

Accordingly, in Decision 8[9], the LCIA Court found that none of the following connections gave rise to justifiable doubts about the arbitrator's impartiality and independence:

1) A prior relationship between a co-arbitrator and a law firm linked to the arbitrator's former employer, which had represented affiliates of one of the respondents. The connection was considered too remote, particularly given that the arbitrator's employment had ended 2.5 years earlier and the arbitrator had no knowledge of the specific affiliates involved.
2) The arbitrator's membership as chair of an industry association responsible for drafting a standard form agreement relevant to the dispute;
3) The arbitrator's past involvement in drafting an earlier version of the same standard form agreement, which was viewed as too indirect to support a finding of bias.

Similarly to Decision 8, in Decision 11[10], one of the respondent's challenges concerned the arbitrator's involvement in drafting the [Group X] Model Agreement that allegedly created a bias in favour of the validity of clauses based on that model. However, the LCIA Court found the situation more akin to Section 4.1.1 of the IBA Guidelines (Green List), as if the arbitrator has previously expressed "*a legal opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration (but this opinion is not focused on the case)*". The Court also noted that contract validity depends on the case's circumstances and applicable law, rendering the challenge ground unfounded.

In Decision 10[11], the challenge was based on the sole arbitrator's appointment by the LCIA Court, whose Vice-President was also a partner at the law firm representing the respondents. Finding no justifiable doubts as to the arbitrator's impartiality, the LCIA Court emphasized that the Vice-President played no role in the appointment, as it was prohibited by the LCIA's constitution, and cannot be equated with the Court as a whole. The Court also rejected the notion that the arbitrator's independence was compromised by the Vice-President's law firm representing one of the respondents against one of the claimants in the concurrent court proceedings.

In another case, the LCIA Court rejected a challenge based on the arbitrator's alleged connection to the claimant's expert, who was simultaneously acting in an unrelated arbitration instructed by the arbitrator's law firm. In Decision 14[12], the LCIA Court found the connection too remote, noting that the arbitrator had not selected or worked closely with the expert—who had been engaged by another partner—and that the subject matters of the two arbitrations were unrelated. A single meeting and a few phone calls occurring months before the expert's report were deemed insufficient to establish a relationship of dependency or partiality. Notwithstanding that, the Court cautioned that a closer or contemporaneous working relationship could have led to a different result.

Multiple Appointments

[8] Para. 59, Decision 8 dated 20 February 2019.
[9] Decision 8 dated 20 February 2019.
[10] Decision 11 dated 21 May 2019.
[11] Decision 10 dated 10 May 2019.
[12] Decision 14 dated 19 August 2019.

While some challenge decisions were based on repeated appointments of the same arbitrator by the same party/counsel, or multiple appointments in the overlapping matters, the outcome remains consistent: such challenges are rarely successful.

Multiple appointments by the same party/counsel

Generally, multiple appointments of the same arbitrator by the same party/counsel are not per se sufficient evidence of lack of impartiality or independence. However, depending on frequency and other factors, suggesting that the arbitrator's decision-making could be influenced by factors beyond the merits of the case, prior multiple appointments by the same party or the same counsel may raise concerns about an arbitrator's impartiality. Thus, it is considered a red flag when an arbitrator derives a significant portion of their income from cases involving a specific party.

Part II of the IBA Guidelines is instructive on how frequent repeat appointments must be to give rise to justifiable doubts about an arbitrator's impartiality or independence. As for previous appointments by a party, paragraph 3.1.3 of Part II of the IBA Guidelines (Orange List), notes:

"The arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties, or an affiliate of one of the parties."

In a similar vein, paragraph 3.3.8 of the IBA Guidelines (Orange List) addresses the issue of multiple appointments by the same counsel:

"The arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm."

Thus, in Decision 7[13], the LCIA Court considered whether three prior appointments of the challenged co-arbitrator constituted evidence of partiality or lack of independence. Regarding the first appointment, the LCIA Court concluded that a single prior appointment by the same appointing party (respondent), made approximately 7 years ago, did not, on its own, amount to a valid ground for challenge. This conclusion was further supported by the fact that, in the earlier case, the arbitrator served as a jointly appointed sole arbitrator and ultimately rules against the appointing party.

As for the second appointment, the co-arbitrator served as a chair in a separate, concurrent arbitration involving "Government B", which the LCIA Court treated as equivalent to the respondent for the purposes of the challenge. However, even assuming that the appointment was made by the same party, the LCIA Court held that this circumstance alone did not give rise to justifiable doubts as to the arbitrator's impartiality or independence.

Regarding the third appointment, which involved the same law firm currently representing the respondent, the arbitrator had previously been appointed by an unrelated party represented by that firm. The LCIA Court concluded that this, even when considered cumulatively with the other appointments, did not support a finding of bias.

Multiple appointments in the overlapping matters

Similarly, multiple appointments of the same arbitrator in overlapping cases—whether in parallel or consecutive proceedings—do not, in themselves, constitute sufficient evidence of a lack of impartiality or independence.

[13] Decision 7 dated 3 December 2018.

Under the laws of England and Wales, the bar is high to successfully challenge an arbitrator on the basis of multiple prior appointments, even when they involve overlapping subject matters. "*The mere fact that the tribunal has decided the issue before is therefore not enough for apparent bias. There needs to be something of substance to lead the fair-minded and informed observer to conclude that there is a real possibility that the tribunal will not bring an open mind and objective judgment to bear*".[14] Therefore, most of the efforts fail.

Guided by these principles, in Decision 5[15], the LCIA Court found no substantial overlap, concluding that the arbitrator was capable of approaching the case with an open mind and objective judgment. The challenge was based on the arbitrator's prior appointment by the respondent in an earlier gas price review arbitration involving the same parties, contract, and price review clause. The LCIA Court rejected the claim of apparent bias, emphasizing that since both parties participated in both arbitrations, no insider knowledge was available to one party that was not equally accessible to the other.

Similarly, in Decision 11[16], the LCIA Court rejected the respondent's challenge based on the similar principles of the French law. It was not enough that the arbitrator had sat as arbitrator in the previous resolved arbitration involving an affiliate of a party, particularly where the arbitration concerned different parties, a different contract and a different governing law.

Likewise, in Decisions 21 and 22[17], the LCIA Court rejected the first and the second respondents' challenges to the full tribunal. The challenges were based on the tribunal's repeated appointment in related arbitrations, where it had already ruled on similar factual and legal issues raised by the respondents. The LCIA Court held that any concern arising from this overlap stemmed from the parties' own decision to appoint the same tribunal across multiple related proceedings, and thus could not be grounds for disqualification.

c) Not Every Misstep Is Misconduct

Challenges based on an arbitrator's tone, language, or communication style were raised in few cases but consistently rejected by the LCIA Court. Those included:

1) Language and tone used by the arbitrator in correspondence or hearings—even when firm or "strident"—were not found to indicate animus, particularly when applied consistently to both parties. Even where the arbitrator's tone may appear assertive or contentious, unless part of a broader pattern of hostile conduct, a one-off communication is insufficient to raise justifiable doubts as to impartiality.
2) Failure to confirm receipt of certain emails, which, while potentially an oversight, did not affect the arbitrator's impartiality.
3) A one-off *ex parte* communication with a party to request contact information for the opposing party—acknowledged as a regrettable oversight, which was later cured—was not sufficient to raise justifiable doubts as to the arbitrator's impartiality.
4) Expressions of a "strong tentative view" on procedural matters, which the Court clarified as permissible; a tentative view, even if strongly stated, is by definition preliminary and may be subject to change after hearing both parties' comments.

[14] *Amec Capital Projects Ltd. v Whitefriars City Estates Ltd.* [2004] EWCA Civ 1418, paragraph 21.
[15] Decision 5 dated 6 September 2018.
[16] Decision 11 dated 21 May 2019.
[17] Decisions 21 and 22 dated 2 June 2021.

5) The arbitrator's request for comments on potential conditions for a hearing adjournment or for administrative information from new counsel of a party was not considered a "pre-determination" of any issue or otherwise improper.
6) Failure to issue the award within a previously expressed "hopeful" timeline; the LCIA Court held that a total four-month timing to issue award did not justify a challenge.

These cases confirm that firmness, minor procedural oversight, or arbitrator's tone—absent clear and repeated signs of partiality—do not meet the high threshold required to disqualify an arbitrator.

d) Inexperience Is Not Bias

A few challenges were brought on the basis of arbitrators' experience and expertise, including allegations of limited prior arbitral appointments or unfamiliarity with specific procedural frameworks. However, the LCIA Court consistently held that a lack of prior experience as an arbitrator does not, on its own, constitute a valid ground for challenge. Without concrete evidence of unfairness, bias, or improper conduct, such challenges will not succeed.

VI. Practical Implications for Arbitrators and Parties

A new batch of decisions provides valuable insights into the LCIA Court's arbitrator challenge procedure and its timing, providing guidance to different stakeholders on how to approach challenges to arbitrators reasonably and efficiently.

<u>Lessons for Arbitrators</u>

(i). Maintain rigorous standards of disclosure

Even indirect or historic ties—whether to parties, counsel, or experts—can raise justifiable doubts if not properly disclosed. Transparency at the outset serves to mitigate challenges and reinforces the integrity of the proceedings.

(ii). Avoid strong or casual language that could be misconstrued

Language perceived as overly firm, strident, or dismissive may be misinterpreted as partiality, especially in contentious proceedings. Consistent tone and professionalism are essential to maintaining neutrality in both written and oral communications.

<u>Lessons for Parties</u>

(i). Obtain a realistic understanding of the high threshold for a successful challenge

Challenges require clear and substantiated evidence of bias or misconduct—not mere dissatisfaction. This is particularly important given that arbitral tribunals have wide discretion in managing proceedings, especially on procedural matters. Tactical or speculative applications often fail and can lead to unnecessary delays, increased costs, and harm to a party's credibility.

(ii). A dismissed challenge should not be conflated with a miscarriage of justice

The dismissal of a challenge does not indicate a flaw in the system—it reflects the strong presumption of an arbitrator's independence and professionalism, alongside the requirement for transparency to safeguard against bias. Understanding this is essential to maintaining confidence in the arbitral process.

(iii). Unrepresented parties should be aware

A few challenges brought by unrepresented parties or those represented solely by in-house counsel appeared to reflect difficulties in navigating the procedural framework and articulating a challenge in line with the applicable standards. While the LCIA and arbitrators ensure equal treatment of all parties, the absence of external legal representation may have contributed to missed procedural steps or unfocused arguments. Early engagement with experienced counsel can help parties better understand their rights and obligations, avoid preventable missteps and ensure meaningful participation in the arbitral process.

VII. Implications for Reform and Institutional Practice

The LCIA's commitment to transparency and reasoned decisions in publishing challenge outcomes marks an important step in institutional practice. The data reveal not only the robustness of arbitrator independence under English arbitration law, but also the increasing sophistication of challenge strategies. In light of the Arbitration Act 2025 and the new statutory disclosure duties, institutions may consider further formalization of thresholds for repeat appointments and enhanced guidance for arbitrators on professional proximity to counsel or parties.

Moreover, institutions may wish to reassess how procedural complaints are framed and filtered in challenge contexts. Procedural dissatisfaction—particularly over interim measures or costs—is frequently dressed as bias but rarely satisfies the applicable legal standards. Clearer articulation of admissibility rules and early screening of procedural objections could enhance procedural economy.

Finally, ongoing dialogue with users through anonymized reporting, empirical surveys, and academic forums will help arbitration remain both impartial and responsive to evolving party expectations.