Neutral Citation Number: [2026] EWHC 534 (Comm)

Case No: CL-2025-000520

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9 March 2026

Before :

MR JUSTICE MICHAEL GREEN

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Between :

CLYDE & CO LLP	**Claimant**
- and -	
MR ABHIMANYU JALAN	**Defendant**

- -

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Mr Charles Béar KC (instructed by **Addleshaw Goddard LLP)** for the **Claimant**
Ms Diya Sen Gupta KC and **Ms Marlena Valles** (instructed by **Fox Williams LLP**) for the **Defendant**

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Approved Judgment

This judgment was handed down remotely on 9 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives on 17 March 2026.

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MR JUSTICE MICHAEL GREEN

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1. On 26 February 2026, I handed down judgment in this matter – [2026] EWHC 403 (Comm) (the "**Judgment**"). I adopt the same definitions and abbreviations as in the Judgment. I shall assume that anyone reading this ruling will have read the Judgment. I dismissed Clyde's application for an ASI. I directed that any consequential matters arising out of the judgment be dealt with on paper and that, by 4pm on 2 March 2026, the parties should file written submissions of no longer than 7 pages each. Both parties filed their submissions and this is my ruling on the contentious issues.

2. There appear to be three such issues:

   (1) Publication of the Judgment;

   (2) Permission to appeal; and

   (3) Costs.

(1) Publication of the judgment

3. When I handed down the Judgment I was minded, in accordance with the open justice principle, to publish it, despite it being an arbitration claim and the hearing having taken place in private. I considered that because I had decided that there was not a high probability of there being an arbitration agreement covering the dispute between the parties and the fact that there was no real confidential material referred to in the Judgment, there was no good reason to derogate from the open justice principle. Indeed it was in the public interest that the Judgment be published. However, I asked the parties whether they had any good reason to object to publication.

4. Mr Jalan said that it is important that it be published and there is no basis for it remaining private. However Clyde's solicitors, in a letter to the Court dated 25 February 2026, objected to publication on the grounds that publication should be deferred until after Clyde's proposed appeal is disposed of because in the meantime Clyde has a "*reasonable expectation that the normal privacy of arbitration claims would apply*". They also suggested that Clyde's "*contractual and remuneration structures and arrangements with its partners and equivalents are of a nature typically regarded as commercially sensitive*".

5. In the light of that objection, I decided not to publish the Judgment on the hand-down date but asked the parties to address this issue, together with the other consequential issues, in their written submissions to be filed by 2 March 2026. I made clear that I would decide whether it should indeed be published now rather than deferring until after the proposed appeal is determined.

6. Mr Jalan's submissions, filed by Ms Sen Gupta KC and Ms Valles, stress the importance of the open justice principle derived from *Scott v Scott* [1913] AC 417. In relation to publication of judgments in arbitration claims, they referred to the accepted general principles set out by Mance LJ, as he then was, in *Department of Economic Policy and Development of the City of Moscow v Bankers Trust Co* [2004] EWCA Civ

314 [2005] QB 207 ("***City of Moscow***"). Those principles have since been endorsed and applied in *Newcastle United Football Company Ltd v The Football Association Premier League & Others* [2021] EWHC 450 (Comm); and *Manchester City Football Club Ltd v The Football Association Premier League Ltd v Others* [2021] EWCA Civ 1110. In both the latter cases, the Court ordered publication of the judgments in full despite the hearing having been in private. An important factor was that there was no significant confidential information disclosed in the respective judgments.

7. The following are relevant principles for this case from *City of Moscow* (with paragraph references to Mance LJ's judgment):

(1) CPR 62.10 deals with the hearing of arbitration claims being in private but that does not necessarily mean that the resulting judgment should not be published – [37]; "*a reasoned judgment following the hearing in private of an arbitration claim stands at a different point on the spectrum to the hearing itself, and so raises distinctly different considerations*" – [43];

(2) Even if the hearing was in private, judgment should be made public "*where this can be done without disclosing significant confidential information*" – [39] and see [40];

(3) There is a balancing exercise to be carried out with "*the factors militating in favour of publicity have to be weighed together with the desirability of preserving the confidentiality of the original arbitration and its subject matter*" – [40];

(4) "*When weighing the factors, a judge has to consider primarily the interests of the parties in the litigation before him or in other pending or imminent proceedings…The concerns or fears of other parties cannot be a dominant consideration. Nor can there be any serious risk of their being deterred from arbitrating in England, if the court weighs the relevant factors appropriately*" – [41].

8. It is not clear that the principles in *City of Moscow* are wholly applicable to a case such as this where I have found that there is not a high probability of there being a valid and enforceable arbitration agreement. *City of Moscow*, and the cases following it, all concerned valid arbitration agreements and where the arbitration itself had either concluded with an award that was under challenge or there was a preliminary issue during the course of the arbitration. In this case, there is no arbitration and likely no arbitration agreement, and these are, in my view, important factors in favour of publication and not derogating from open justice.

9. Furthermore, this point is reinforced by the fact that the case law cited by Clyde in favour of the grant of an ASI to enforce an arbitration agreement which I considered in the Judgment were all published judgments. The expectation would be that, following the grant of an ASI, a confidential arbitration would then proceed. But the confidentiality of the existence of an arbitration agreement was not, it seems, a basis for withholding publication. There is an even stronger case for publication of a judgment that refuses an ASI on the basis that there is not an enforceable arbitration agreement.

10. Mr Jalan argues that it is in the interests of justice to publish the Judgment because it contains important points of principle in particular as to the circumstances in which an ASI will be granted in the employment context where the employee works and lives in a foreign jurisdiction and the employment contract is governed by that foreign law. There is also an analysis of the proper approach to delay in making an ASI application. Therefore it is important that the Judgment is available for future litigants and judges to consider on similar applications.

11. Mr Jalan also asserts that it is in the public interest that the conduct of Clyde in relation to its own current and long-standing employees should be open to public scrutiny as it has chosen to apply to the Court and it should therefore be treated like other litigants subject to the open justice principle. He says that it is important that other employees of Clyde with similar arrangements should be able to see that it was unsuccessful in obtaining an ASI against him. This is a fair point and is one of the purposes of the open justice principle. However, I am not sure that Mr Jalan's further argument that potential future employees and members should be able to see from the Judgment how Clyde has behaved is a particular factor to take into account.

12. Mr Jalan is also concerned about not being able to refer to the Judgment and to share it with the Dubai Labour Court, MOHRE, experts and translators appointed by the Dubai Labour court, regulators including the SRA, family and friends, colleagues and former colleagues, current and prospective clients and any prospective employers to explain why he had to leave Clyde, if that is the result of all this. I think it is prejudicial and unfair that Mr Jalan should not be able to refer to and share the Judgment for whatever purpose he wishes to do so.

13. As noted above, Clyde's opposition to publication of the Judgment at this stage is based on two matters: (i) that it should not be published until after disposal of its appeal; and (ii) that its remuneration and contractual structure, together with the details of the present dispute with Mr Jalan, are confidential and commercially sensitive.

14. Clyde accepts that a finding that there is no arbitration agreement would mean that publication could not be restricted on the basis that arbitration proceedings are private. But it says that it has an expectation of privacy and that should be protected until any appeal is disposed of. It recognises that there needs to be a balancing exercise between the expected and contracted-for privacy of arbitration and the open justice principle. That expectation should not be pre-empted before Clyde has the opportunity to argue before the Court of Appeal that there was a valid and binding arbitration agreement that should have led to an ASI being granted.

15. In my view, it is indeed important to carry out the balancing exercise, weighing all relevant factors, before deciding how to exercise the Court's discretion to publish a judgment. As Mance LJ said in [39] to [41] of *City of Moscow*, there is a spectrum with the private arbitration itself at one end and an order of the Court, say after an application under s.68 of the Arbitration Act 1996, at the other. To my mind the Judgment falls much closer to the open justice end of the spectrum, particularly where the main finding is that there is not a high probability of there being a valid and enforceable arbitration agreement. The expectation should be that such a judgment should be given in public, particularly "*where this can be done without disclosing significant confidential information*" ([39] of *City of Moscow*).

16. This leads to Clyde's point (ii) which I do not accept. There is no significant confidential information disclosed in the Judgment and Clyde has not identified any particular passages in the Judgment that it says should be redacted. It just makes a generalised assertion about the confidentiality of its private contractual arrangements between its members and the expectation of privacy, whereas in reality the Judgment does not refer to any details in the Members' Agreement or the value of the PSUs. I do not believe that the fact that Clyde has a lockstep model is either unexpected or commercially sensitive. These sorts of arrangements are commonly referred to in public judgments, especially in employment litigation. A successful appeal by Clyde would only establish that there was a valid and enforceable arbitration agreement; it will not affect whether there is significant confidential information disclosed in the Judgment.

17. Accordingly, in weighing the relevant factors, I consider that the Judgment falls far enough along the spectrum to require publication and that there is no good reason to derogate from the open justice principle. Such publication does not undermine the privacy of arbitral proceedings; that remains preserved and protected. And it is important in the public interest that not only the Judgment be available for public scrutiny and to be used as a possible precedent, but also that Mr Jalan, the principal party, be allowed to refer to and share the Judgment.

18. I will therefore direct that the Judgment should be published not before 7 days after delivery of this consequentials ruling. Not that I wish to encourage it to do so, but the 7 days gives Clyde the opportunity to apply to the Court of Appeal for a stay on publication. I do not give permission for such an application to be made and I do not see any basis for it. But I will give that limited time if it considers that I have erred in the exercise of my discretion as set out above.

(2) Permission to Appeal

19. Clyde seeks permission to appeal on three grounds:

    1. That I erred in law in eliding the question whether the parties entered into a binding English law arbitration agreement in 2006 with the separate question of whether such agreement was subsequently displaced, superseded or rendered inoperative by the MOHRE contracts and in failing to find that Clyde was likely to establish a binding arbitration agreement under English law notwithstanding the invalidity of such an agreement under UAE law;

    2. That I failed to give any detailed consideration to the expert evidence cited by Clyde in support of its alternative case, leading me to conclude that there was no evidential support for that case;

    3. That I misdirected myself as to the principles applicable to the exercise of my discretion, failed to adhere to the assumptions on which that discretion was to be exercised, and ultimately relied on an invented principle that lacks no [sic] basis in – and is contrary to – established case law.

20. Clyde acknowledges that my decision not to grant an ASI was a discretionary one and therefore it will be difficult to challenge on appeal. Furthermore, even if Clyde were to succeed on grounds 1 and 2, it would also need to succeed in overturning the exercise of discretion on the matters raised in ground 3, as I held in the Judgment that, even if

Clyde was right on Issues (1) and (2), I would still have refused an ASI. I do not think there is a real prospect of Clyde persuading the Court of Appeal that I acted so perversely as to be outside the broad ambit of my discretion.

21. As to ground 1, Clyde suggests that I elided issues as to whether the parties entered into a valid arbitration agreement in 2006 at the outset and whether the arbitration agreement was later varied or rendered inoperative by the MOHRE contracts continuously entered into over the years. I would say that in fact Clyde has conflated issues in this ground by having as part of it my alleged failure to find a binding arbitration agreement under English law, irrespective of what UAE Law might say about the validity of such an agreement. I was quite clear in the Judgment that the issue was not about validity under one law or another – see [74]. Rather it was whether, as a matter of English law, the parties "*could reasonably be said to have intended all employment disputes to be subject to a London arbitration*." That gave rise to two issues: was there, as a matter of contract formation, a binding arbitration agreement at the outset in 2006; and if there was, did the later MOHRE contracts render it inoperative.

22. I decided that Clyde had not satisfied the burden on it to show a high probability of there being a still valid and binding arbitration agreement covering the matters in dispute in the Dubai Proceedings. That was not a conclusion based on any elision of the issues. It was because the evidence did not show a still valid arbitration agreement. In short, I did not feel that the MOHRE contracts could be dismissed as mere pieces of paper as Clyde submitted, and it therefore needed to be assessed how the various contractual documents could fit and work together. At this early stage of the proceedings and with only some limited written evidence available, it was not unreasonable to place some reliance on what Mr Jalan said was represented to him at the time by the person who signed the documents, including the MOHRE contracts, on behalf of Clyde.

23. I therefore do not think there is a real possibility of Clyde succeeding in overturning my finding that it had not sufficiently proved to a high probability that there was a valid and binding arbitration agreement.

24. Ground 2 concerns the alternative argument raised for the very first time in Mr Béar KC's oral submissions in reply. It had not been raised before, whether in Clyde's evidence or in its written or oral submissions. I do not see that there is any substance to this ground. I had to work out for myself the passages from Mr ElBanna's report that Clyde were relying on (Mr Béar KC ran out of time to take me there himself) and I dealt with them in [78]. However, because Mr ElBanna was not considering this question (as it had not been raised before by Clyde) it is unsurprising that he does not address the alternative argument directly. I was therefore bound to conclude that his statement that under UAE Law "*employment disputes are not arbitrable*" was the only relevant evidence before me. There is no real prospect of Clyde succeeding on this ground.

25. As I said above, ground 3 concerns the exercise of my discretion. Clyde relies most heavily on an alleged principle in [99] of the Judgment that employment relationships should be treated differently to ordinary commercial relationships in the context of ASI relief. I should point out that I was and remain concerned more generally about how Clyde was treating its still current employee, and as Clyde would have it, de facto partner/member, Mr Jalan, in relation to their dispute. This weighed heavily in the exercise of discretion.

26. As for saying that different considerations might apply in relation to the discretion to grant an ASI in the context of an employment dispute to an ordinary commercial dispute, that is a fairly obvious point to make. There was no authority put before me where an ASI had been granted so as to enforce an arbitration agreement in an employment contract. And employment contracts are heavily regulated by domestic statutory and other law, thus bringing into play difficult issues as to compliance with different and potentially conflicting laws. I do not think it undermined the exercise of my discretion to point this out.

27. In the circumstances I refuse permission to appeal on all three grounds.

(3) Costs

28. Mr Jalan is seeking an order that Clyde pay his costs of the application to be assessed on the indemnity basis. Originally, he was seeking a summary assessment of his costs but in his latest submissions, he realistically accepts that that might be inappropriate given the size of those costs and the length of the hearing. He instead asks for an interim payment on account of those costs in the sum of £173,693.17, being 50% of his incurred costs to date and for that to be paid in 7, rather than the normal 14, days.

29. Clyde accepts that it must pay Mr Jalan's costs but says that they should be assessed on the standard basis. Clyde rightly submits that indemnity costs should only be awarded where the conduct of the paying party both pre-action and during the proceedings is considered "out of the norm" and that that conduct has likely caused the receiving party to incur increased costs.

30. Mr Jalan has focused on two particular matters in support of his case that Clyde has acted out of the norm: (i) Clyde's aggressive tactics to force him to abandon the Dubai Proceedings; and (ii) the allegation of dishonesty against him in relation to his evidence as to the representations made to him by Mr Silver and Mr Gill. I commented unfavourably on Clyde's conduct in such respects in the Judgment – see [32], [45], [48] and [98].

31. I do consider that Clyde's behaviour has been disproportionately aggressive and unnecessary. Nevertheless, while extraordinary, I do not think it has caused Mr Jalan to incur increased costs or that the Court should express its disapproval by ordering indemnity costs in relation to the whole application. Whatever tactics were used by Clyde, Mr Jalan had already decided to initiate the Dubai Proceedings. And the express accusations of dishonesty happened during Mr Béar KC's reply submissions, so could not have caused any increased costs, the hearing still finishing in its allotted time.

32. I therefore reject the application for indemnity costs and instead order Clyde to pay Mr Jalan's costs of the application (which include any costs incurred on these consequential matters) to be assessed on the standard basis.

33. I will also order an interim payment on account under CPR 44.2(8). Mr Jalan's updated statement of costs shows that he has incurred £347,386.33. That is considerably less overall than Clyde's costs. Nevertheless Clyde has challenged the reasonableness of those costs by reference to excessive counsel's fees, solicitors' costs in excess of guideline rates and incurring costs on both an UAE Law expert and Pinsent Masons in

Dubai. Clearly these matters will have to be looked at on a detailed assessment if the parties are unable to agree.

34. For the purposes of an interim payment on account, I must take a broad brush view, ensuring that there is a sufficient margin in case of an erroneous estimation as to the sum reasonably likely to be recovered on a detailed estimate. In my view, 50% of the incurred costs to date – ie £173,693.17 - does incorporate a sufficient margin for error, and that is what I will order. That is the sum that Mr Jalan sought in his 2 March 2026 submissions.

35. The only other matter outstanding is whether that sum should be paid in 7 or 14 days. Mr Jalan's request for 7 days was really based on the same material as he relied on for his indemnity costs application. However I rejected that application and I see no reason to deviate from the normal payment order, which is 14 days.

36. There is one final point concerning the Order in relation to Mr Jalan's application for a declaration that this Court had no jurisdiction. In my view, there should be no order on Mr Jalan's application.