Who Agreed to Arbitrate? Consent, Authority and Section 67 after *A1 and Others v P*

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This article examines A1 and Others v P [2025] EWHC 3372 (Comm) and its significance for jurisdictional challenges under section 67 of the Arbitration Act 1996. It argues that the decision reaffirms consent as the foundation of arbitral jurisdiction and clarifies the limits of solicitors' authority, apparent authority and ratification. It also highlights the importance of raising jurisdictional objections promptly under section 73 and considers the decision in the context of the recent reforms to section 67.

INTRODUCTION

The Commercial Court's decision in *A1 and Others v P*[1] contributed to the growing jurisprudence on arbitral jurisdiction in the context of section 67 of the Arbitration Act 1996.[2] While not undermining English courts' traditional support for arbitration, the judgment reiterates the long-standing position of English arbitration law that arbitration is a dispute resolution method based on consent. Thus, the judgment reiterates that, despite the desirable finality of arbitration, it cannot take place without the parties' agreement to arbitrate.

The dispute in *A1 and Others v P* concerned the engagement of a third party (on the facts, a provider of intelligence services) by solicitors representing a client in international, high-value proceedings. Despite the unusual context, the questions before the English courts were far from unorthodox. At issue was whether a solicitor's contract with a third-party provider of services, concluded in the specific commercial context and in the ordinary course of litigation, binds the client or companies from the client's corporate group.[3] Henshaw J was also asked, if that were answered in the affirmative, whether the solicitor's authority extends to an agreement to arbitrate included within the contract. Furthermore, it was asked whether, if the solicitor was found to lack actual authority, the agreement could bind the companies *via* subsequent ratification or through apparent authority.[4]

Henshaw J's judgment addressed each of these issues by drawing from established principles of contract, arbitration and agency law. His judgment reiterates that obtaining a benefit or convenience from a contract, or being part of a larger business enterprise, cannot form the foundation of jurisdiction. Instead, and in line with English arbitration law's principles, jurisdiction will be established based on the relevant

[1] *A1 and Others v P* [2025] EWHC 3372 (Comm).

[2] Arbitration Act 1996.

[3] *Nayyar v Denton Wilde Sapte* [2009] EWHC 3218 (QB).

[4] Herbert Smith Freehills Kramer, 'Authority at its limit: English Commercial Court upholds jurisdictional challenge' (*Arbitration Notes*, 9 January 2026) <https://www.hsfkramer.com/notes/arbitration/2026-01/authority-at-its-limit-english-commercial-court-upholds-jurisdictional-challenge> accessed 20 July 2026.

party's consent, which itself must derive from a recognised legal foundation.

This article proposes that *A1 and Others v P's* judgment does not contradict the notion of the finality of arbitral awards, nor does it narrow the scope of arbitration. Rather, the case strengthens arbitration's legitimacy by reiterating the importance of consent. In addition, the judgment offers timely guidance on the scope of a solicitor's authority in the context of engaging third-party providers of services, the requirements for establishing ratification and apparent authority, and the importance of filing any section 73 objections in good time.

I. THE ROLE OF CONSENT IN ARBITRAL JURISDICTION

Despite the complexity and number of litigation issues, which touched on procedural and agency law, as well as the law of arbitration, the *A1 and Others v P* dispute came down to one core question: who, among the parties, had agreed to arbitrate. Thus, the case linked directly to section 67 of the Arbitration Act 1996: challenging the award based on substantive jurisdiction (which the court would review *de novo*)[5], rather than on a point of law or serious irregularities, reviewed under sections 68 and 69 respectively.[6] The court did not consider the quality and reasonableness of the tribunal's decision in light of the evidence presented but its jurisdictional authority to engage with the case in the first place. As well established in case law, a tribunal's authority stems from the parties' valid agreement to arbitrate.

Indeed, this principle's importance has long been recognised in UK domestic law. For example, the Supreme Court of the United Kingdom reiterated in the well-known *Dallah* case[7] that a party's ability to arbitrate is firmly rooted in consent and not coercion, as a tribunal cannot establish its jurisdiction over a party which has failed to agree to arbitrate. What the *A1 and Others v P* case did was to highlight the continuing validity and relevance of this principle, particularly in complex, commercial contexts, involving a multitude of parties and arrangements.

In this particular case, the dispute arose in the course of international proceedings, related to the termination of a concession contract. The issue was whether the engagement of a third-party provider of intelligence and investigation services by the representing solicitor binds the solicitor's client – the corporate entity respondent in the specific arbitration. The engagement letter was not signed by the client, but by the service provider and the solicitors, acting in the ordinary course of the broader legal dispute. Thus, the central question was framed around the solicitors' authority not only to engage external services but also to bind their client and its related companies to the terms of the contract, including the relevant arbitration clause.

The arbitral tribunal and Henshaw J reached opposite conclusions based on these facts. The tribunal found that the solicitors had the necessary authority to contract on behalf of their client, including sufficient authority to bind all three companies to both the contract and the arbitration agreement. This differed fundamentally from Henshaw J's approach, which, while recognising that solicitors have a broad authority in the ordinary course of litigation, noted that this authority is not limitless, particularly where it exposes a client to contractual liabilities that are both direct and in favour of a third party.

This distinction has potentially far-reaching practical significance given solicitors' normal practice of engaging the services of third parties for translation, interpretation, investigation, e-discovery, forensic accounting and other litigation support. These services are often contracted

[5] *Republic of Korea v Dayyani* [2019] EWHC 3580 (Comm); *Czech Republic v Diag Human SE* [2024] EWHC 2102 (Comm).

[6] Arbitration Act 1996 (n 2), s 67.

[7] *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2010] UKSC 46, [2011] 1 AC 763 (Lord Mance).

and paid for by the solicitors themselves, who later recover their expenses from their client. However, this broad authority does not, in itself, extend to contractually binding a client to an agreement, concluded by the solicitors with a third-party provider. In the former, narrower case, the solicitors act as principals. In the latter scenario, they purport to create contractual obligations between two parties, one of which is their client and the other is the service provider, without the former's express authorisation.

Furthermore, the distinction between these two situations matters because a direct contractual obligation exposes the client beyond just paying the price of the services offered by the third-party provider. The exact liability would depend on the contractual terms, but it may include requirements for confidentiality, limitation of liability, indemnities or an agreement to resolve disputes through arbitration, which was the issue in the *A1 and Others v P* case. By imposing such liability, the solicitors would inevitably change the legal position of their client, suggesting that solicitors' authority cannot extend that far, unless expressly authorised by their client.

This approach is consistent with English agency law, which establishes that an agent's authority cannot be inferred from the commercial utility of the transaction under scrutiny. Rather, English agency law would look at whether the principal had actually conferred on their agent, whether expressly or implicitly, the necessary authority for the transaction entered into. Suggesting otherwise would unduly expand agency powers beyond what may have been intended by the principal, undermining legal certainty and predictability and, crucially, eroding the consensual foundation of arbitral jurisdiction and contractual liability.

Thus, the judgment makes a subtle but necessary distinction between solicitors' practical autonomy in the course of legal proceedings – which it does not seek to limit – and their authority to alter their client's substantive legal position, which requires a separate legal basis. In *A1 and Others v P*, the lack of such legal basis justified the exclusion of two of the related companies (A1 and A3) from the arbitral agreement.

II. APPARENT AUTHORITY AND RATIFICATION

The intelligence services provider (P) submitted alternative arguments, based on the notions of apparent authority and ratification. Henshaw J rejected the former on grounds of orthodox principles of agency law.[8] Apparent authority is established by proving that a representation was made by a principal that led a third party to reasonably believe that an agent is authorised to act on their behalf.[9] This could not be established in *A1 and Others v P*, which is why the judge rejected P's apparent authority argument. Specifically, it was noted that a solicitor, acting as an agent, cannot expand their authority by representing themselves as possessing powers which the principal has never conferred on them.[10] The practical consequence of this aspect of the judgment is that agency law's ordinary principles will continue to govern arbitration agreements, seeking to establish that consent is binding on a non-signatory.

The ratification argument was similarly unconvincing. Ratification requires the principal's unequivocal and informed adoption of an originally unauthorised act.[11] Although it had been established that A3 had actual knowledge of P's provision of services, beneficial to the broader dispute and perhaps also to A3 itself, there was nothing to suggest that A3 had rat-

[8] *H Clark (Doncaster) Ltd v Wilkinson* [1965] Ch 694 (CA) 702 (Lord Denning MR).

[9] *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 (CA) 502–506 (Diplock LJ); *Armagas Ltd v Mundogas SA* [1986] AC 717 (HL) 777–778 (Lord Keith); *Waugh v H B Clifford & Sons Ltd* [1982] Ch 374 (CA) 383 (Brightman LJ).

[10] *A1 and Others v P* (n 1).

[11] *Sea Emerald SA v Prominvestbank* [2008] EWHC 1979 (Comm), [2008] 1 Lloyd's Rep 96.

ified the contractual agreement and, even less so, its arbitration clause. A3's mere acceptance of the benefit derived from P's services was not a substitute for the principal's knowledge of contractual obligations, purportedly created by their agent on their behalf. Holding otherwise would negate the importance of consent in the context of arbitration by making parties subject to arbitral jurisdiction solely by virtue of the benefit derived by them from someone's work carried out in pursuance of a contractual agreement concluded by another party.

A2's position differs from that of A1 and A3 in that its jurisdictional challenge, regardless of its merits, failed on procedural grounds: it was not raised promptly. Under section 73 of the Arbitration Act 1996, a party that has already taken part in arbitral proceedings and obtained an undesirable award is precluded from later challenging jurisdiction unless it could not reasonably have discovered the grounds of objection earlier.

In Henshaw J's view, however, the exception to section 73 did not apply in A2's case. This illustrates an important aspect of English arbitration law. While it ensures that arbitration will always be subject to the parties' prior consent, it requires objections to arbitral jurisdiction to be raised at the earliest realistically possible moment.[12] The Arbitration Act 2025's reforms,[13] aimed at reducing duplication in proceedings under section 67, strengthen these expectations further and maintain the supervisory role of courts in matters of jurisdiction.

CONCLUSIONS

As suggested in this article, the judgment in *A1 and Others v P* does not impose limitations on arbitration's scope. Rather, by employing contractual and agency law principles, it strengthens the notion of consent and reiterates the continuing importance of party autonomy without rejecting or undermining judicial support for arbitration. At the same time, the aspects of the decision relevant to A2 demonstrate that courts will insist on procedural discipline and balance section 67's protections with an obligation to advance jurisdictional objections promptly. The practical significance of this judgment for legal practitioners is that they should never assume the existence of authority, particularly when engaging third-party service providers in legal proceedings conducted on behalf of corporate groups. The judgment reinforces England's position as a leading seat of arbitration by highlighting English courts' continued focus on consent as a ground for arbitral jurisdiction.

[12] *Czech Republic v Diag Human SE* [2024] EWHC 708 (Comm); *Czech Republic* (n 5); Clifford Chance, 'English Commercial Court Upholds Rare Successful Section 67 Jurisdiction Challenge to Award' (*Arbitration Insights*, 18 February 2026) <https://www.cliffordchance.com/insights/resources/blogs/arbitration-insights/2026/02/english-commercial-court-upholds-rare-successful-section-sixty-seven-jurisdiction-challenge-to-award.html> accessed 20 July 2026; Morgan Lewis, 'English High Court Ruling Marks Rare Successful Jurisdiction Challenge Under Section 67, Arbitration Act 1996' (*LawFlash*, 2 February 2026) <https://www.morganlewis.com/pubs/2026/02/english-high-court-ruling-marks-rare-successful-jurisdiction-challenge-under-section-67-arbitration-act-1996>accessed 21 July 2026.

[13] Arbitration Act 2025.