



Costs-ADR (CADR)/PICArbs Costs Arbitration Rules

Rule 1: Starting the Costs Arbitration / Appointment of the Costs Arbitrator / Staying the Arbitration

To start a CADR PICArbs Costs Arbitration

1.1 To start a CADR PICArbs Costs Arbitration the Party receiving costs (or exceptionally the Party paying costs or an Insurer with a right of subrogation to defend a claim) must make an online request using the CADR PICArbs Costs Arbitration Agreement signed by the Parties ("the Request") to the CADR Registrar ("the Registrar") at www.PICArbs.co.uk/filing/.

At the time of making the request, the applying Party must state the Parties' choice between a written arbitration or a full hearing arbitration.

a) The online request form requires the applying Party to provide the following information: the names, addresses, telephone numbers and e-mail addresses and file references of the Parties to the arbitration and of their legal representatives and of the Arbitrator, if the Parties have chosen and agreed one and of counsel to be instructed by the Parties (if known); and

b) The online request form requires the applying Party to upload the following "accompanying documents":

- **the bill of costs;** copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill; written evidence as to any other disbursement which is claimed and which exceeds £500; and, any comment on matters relating to the conduct of the arbitration;
- the CADR PICArbs Costs **Arbitration Agreement** signed by the Parties;
- a CADR **Acceptance of Appointment Form** signed by the chosen Arbitrator (if the Parties have chosen and agreed who the Arbitrator shall be); and,

c) The filing of the online request will make the applying Party liable to pay the Commencement Fee prescribed in the CADR Schedule of Costs. An invoice will be sent by PICArbs to the applying Party which must be paid forthwith on receipt; the

applying Party can then recover half the fee from the other Party (unless the Parties have agreed otherwise); and

d) The filing of the Request will generate an arbitration number for the arbitration if no PICArbs arbitration number has been provided previously. E-mail notification of the start of the costs arbitration and the arbitration number will be sent simultaneously via www.PICArbs.co.uk/filing/ to all other Parties to the arbitration.

The Appointment of a Costs Arbitrator (from the CADR Panel of Arbitrators or by the Parties)

1.2 The CADR Registrar will within 28 days of receipt of the Request send to the Parties by e-mail via www.PICArbs.co.uk/filing/ Notice of Appointment of the CADR Arbitrator containing the name of the person who has been appointed as the Arbitrator from the CADR Panel of Arbitrators, or if the Request and enclosures with it already set out the name of the Arbitrator whom both Parties have agreed will act as Arbitrator and the Parties or the Arbitrator have filed a CADR Acceptance of Appointment Form signed by the chosen Arbitrator, then the Notice of Appointment will set out that Arbitrator's name.

Commencement of the Costs Arbitration

1.3 The date of the e-filing of the Request together with the CADR Arbitration Agreement signed by both Parties shall be the date on which the arbitration is deemed to have commenced, regardless of when the fee is paid.

1.4 If the Parties agreed to a CADR cost arbitration in the PICArbs Arbitration Agreement for resolution the substantive dispute the receiving Party is required to e-file the bill of costs within 28 days of the service of the final PICArbs award on the Parties, or the date of the settlement agreement, as the case may be.

Stay the Arbitration

1.5 The Parties can stay the arbitration by agreement at any time and continue to use the e-filing system to exchange evidence and settle the arbitration.

Rule 2: The Response

2.1 Within 28 days of service of the bill of costs the paying Party shall, if so advised, e-file points of dispute.

2.2 Failure to e-file points of dispute shall not preclude the paying Party from denying any claim for costs, but the extent to which argument may be permitted shall be entirely at the discretion of the Arbitrator. Similarly, if having e-filed points of dispute the paying Party seeks to raise matters not set out in those points, the extent to which such argument will be permitted shall be entirely at the discretion of the Arbitrator.

Rule 3: The Arbitrator and the Registrar

3.1 The functions of the Arbitrator under these Rules shall be performed by the Arbitrator appointed by CADR from the CADR Panel of Arbitrators or by the CADR Arbitrator chosen and agreed and named by the Parties as the Arbitrator.

3.2 The functions of the Registrar under these Rules shall be performed by a member of the CADR staff.

Rule 4: Serving documents, Notices and Time

4.1 Any notice, document or other communication that may be or is required to be given or served or filed by a Party under these Rules shall be filed and served via www.PICArbs.co.uk/filing/.

4.2 Service is effected via www.PICArbs.co.uk/filing/ by uploading a document to the individual arbitration file and by PICArbs sending the other Parties by e-mail notification of the said e-filing at every Party's lawyers' last filed e-mail address and that e-mail address shall be the valid address for the purpose of any service or notice or other communication in the absence of any notification of a change to such address by that Party to the other Parties and to the Arbitrator via www.PICArbs.co.uk/filing/.

4.3 For the purpose of determining the date of service of a document or notice or other communication, the document/notice/communication shall be treated as having been received on the day it was uploaded onto www.PICArbs.co.uk/filing/ so long as this was done before 4 pm.

4.4 For the purpose of determining compliance with a time limit, a document, notice or other communication shall be treated as having been served if it is uploaded in accordance with Rules 4.1, 4.2 or 4.3 onto the correct arbitration e-file at www.PICArbs.co.uk/filing/.

4.5 Notwithstanding the above, any communication by one Party may be addressed to another Party (but not to the Arbitrator) in the manner agreed in writing between them or in any manner ordered by the Arbitrator but no service can take place other than through the PICArbs e-filing system.

4.6 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is sent via www.PICArbs.co.uk/filing/. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating that period.

4.7 The Arbitrator may at any time extend (even where the period of time has expired) or abridge any period of time prescribed under these Rules or under the CADR Arbitration Agreement for the conduct of the arbitration, including any notice or communication to be served by one Party on any other Party.

4.8 If there is a dispute about the date of service of a document, notice or other communication the Arbitrator may ask the CADR Registrar to search CADR's records and to provide a copy of the email notification sent to the Party being served.

Rule 5: Arbitrator's Conduct

5.1 The Arbitrator conducting an arbitration under these Rules shall be and remain at all times impartial and independent of the Parties and shall not act in the arbitration as an advocate for any Party. No Arbitrator, whether before or after appointment, shall advise any Party on the merits or outcome of the dispute save that the provision of a written neutral evaluation under these Rules is permitted.

5.2 The Arbitrator shall on appointment assume a continuing duty forthwith to disclose any actual or potential conflict of interest or other matter or circumstance that may give rise to justifiable doubts as to the Arbitrator's impartiality or independence to all the Parties if such circumstances should arise after the date of such declaration and before the arbitration is concluded.

Rule 6: The CADR Panel of Arbitrators

6.1 After an arbitration has started in which the Parties have requested the Registrar to appoint an arbitrator from the CADR Panel of Arbitrators, the Registrar will contact Panel arbitrators and offer the appointment. To accept an appointment a CADR Panel arbitrator must sign and e-file an acceptance of appointment form through www.PICArbs.co.uk/filing on the e-file for the arbitration.

6.2 Any arbitrator proposed by the Parties who fails within a reasonable period to comply with Rules 5 and 6 will be unable to act as an arbitrator under the CADR service and the CADR Registrar will appoint a replacement from the CADR Panel of Arbitrators.

Rule 7: Revocation of Arbitrator's Appointment

7.1 If either: (a) any Arbitrator gives written notice via www.PICArbs.co.uk/filing/ of his desire to resign as Arbitrator, or (b) any Arbitrator dies, falls seriously ill, refuses, or becomes unable or unfit to act, or (c) any Party provides via www.PICArbs.co.uk/filing/ written Notice of Complaint to the CADR Registrar along with a Complaint Fee as set out in the Schedule of fees published from time to time by CADR, alleging that any Arbitrator has delayed providing responses to correspondence unreasonably or failed to deliver decisions within 28 days of hearings, then CADR may (in its absolute discretion) revoke that Arbitrator's appointment and appoint another CADR Arbitrator. The replacement Arbitrator shall decide upon the amount of fees and expenses to be paid for the former Arbitrator's services (if any) as may be considered appropriate in all the circumstances. The defaulting Arbitrator shall accept the decision of the replacement Arbitrator on such fees.

7.2 If any Arbitrator acts in deliberate violation of the CADR Arbitration Agreement (or these Rules) or does not act fairly and impartially as between the Parties or does not conduct or participate in the arbitration proceedings with reasonable diligence, so as to avoid unnecessary delay or expense, that Arbitrator may be considered unfit in the absolute discretion of the CADR Registrar and may be removed by the CADR Registrar on the application of one or both Parties.

7.3 An Arbitrator may also be challenged by any Party if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence. A Party may challenge an Arbitrator it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

7.4 A Party who intends to challenge an Arbitrator shall, within 15 days of becoming aware of any circumstances referred to in Rules 7.1, 7.2 or 7.3, send via www.PICArbs.co.uk/filing/ a written Statement of the Reasons for its challenge to the Arbitrator, the CADR Registrar and all other Parties and shall pay the CADR Challenge Fee set out in the Schedule of Costs published by CADR/PICArbs from time to time. Unless the challenged Arbitrator withdraws or all other Parties agree to the challenge within 15 days of receipt of the written statement, the CADR Registrar shall have absolute discretion to decide on the challenge.

Rule 8: Replacement of Arbitrators

8.1 In the event that an appointed Arbitrator is to be replaced for any reason, the CADR Registrar shall have complete and unfettered discretion to decide upon the replacement from the CADR Panel of Arbitrators unless the Parties agree the name of the replacement.

Rule 9: CADR Neutral Evaluation

9.1 The Parties may at any time jointly request a neutral evaluation (NE) by the Arbitrator (or if the Parties so choose by another CADR Arbitrator) on the written evidence which each Party has filed via www.PICArbs.co.uk/filing/ before the NE.

9.2 The Arbitrator shall either:

(a) provide his NE Award within 28 days of receiving via www.PICArbs.co.uk/filing/ the last of (1) the agreed request for NE and (2) the evidence from each Party; or

(b) notify the Parties by email through the e-filing system that he suspends his role as Arbitrator in accordance with the terms of the Arbitration Agreement during the period whilst the Neutral Evaluator is appointed and provides the NE.

9.3 If the Parties have chosen for the NE to be carried out by another Arbitrator, they shall:

(a) contact the CADR Registrar for a Neutral Evaluator to be appointed either as agreed and identified by the Parties or from the CADR Panel of Arbitrators; and

(b) receive from the CADR Registrar within 28 days of the request, confirmation of the Neutral Evaluator's name and email address; and

(c) as soon as is reasonably practicable, revise the access details on the online arbitration file so that the Neutral Evaluator can gain access to the file and shall ask the Neutral Evaluator to carry out the NE.

9.4 If both Parties accept the evaluation of the Neutral Evaluator then the arbitration shall be settled on that basis, save that the costs of the arbitration shall be agreed by the Parties or shall be determined by the Arbitrator.

9.5 If one or both Parties reject the evaluation of the Neutral Evaluator then the arbitration will proceed.

Rule 10: Communications between Parties and the Arbitrator

10.1 All communications between Parties and the Arbitrator and any Neutral Evaluator shall be made to the Arbitrator/Neutral Evaluator not to the CADR Registrar and shall be via www.PICArbs.co.uk/filing/.

10.2 If the Parties consider or the Arbitrator requests that paper bundles are necessary for any hearing then bundles may be sent to the Arbitrator/Neutral Evaluator in hard copy of the documents already filed and served via www.PICArbs.co.uk/filing/.

Rule 11: Conduct of the proceedings,

11.1 The Parties may agree on the conduct of their arbitral proceedings and shall co-operate with each other and are encouraged to do so at all times. Such agreements shall be made by the Parties in writing or recorded in writing by the Arbitrator at the request of and with the authority of the Parties and must be filed and served via www.PICArbs.co.uk/filing/ so that the Arbitrator can see the progress of the arbitration on the e-file.

Arbitrator's discretion

11.2 Unless otherwise agreed by the Parties under Rule 11.1, the Arbitrator shall have the widest discretion to discharge the duties allowed under such law(s) or rules of law as the Arbitrator may determine to be applicable and at all times the Parties shall do everything necessary for the fair, efficient and expeditious conduct of the arbitration.

11.3 Subject to rule 2.2, at all times, the Arbitrator shall:

- (a) act fairly and impartially as between all Parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent; and
- (b) adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and/or expense, so as to provide a fair and efficient means for the final resolution of the Parties' dispute; and
- (c) take account of the principles and practices set out in the Civil Procedure Rules in so far as they may be relevant and do not conflict with the CADR Rules; and
- (d) in the event that the Parties make offers within the arbitration that otherwise comply with CPR Part 36, have the same powers as a Judge has under that Part.

Rule 12: Seat of Arbitration, Place of Hearings, Applicable Law

12.1 The arbitration law (Lex Arbitri) applicable to all CADR arbitrations shall be the law of England and Wales and the Arbitration Act 1996 shall apply and the seat of the arbitration shall be London.

12.2 The Arbitrator may hold hearings, telephone hearings, meetings and deliberations at any convenient geographical place in his discretion, and if elsewhere than the seat of the arbitration, the arbitration shall be treated as an arbitration conducted at the seat of the arbitration and any award as an award made at the seat of the arbitration for all purposes.

Rule 13: Language of Arbitration

13.1 The language of the arbitration shall be and the arbitration proceedings are to be conducted in English.

13.2 If any document is expressed in a language other than the language(s) of the arbitration and no translation of such document is submitted by the Party relying upon the document, the Arbitrator may order that Party to submit a translation.

Rule 14: Party Representation

14.1 All Parties shall be represented by a Solicitor, a Barrister, a Costs Lawyer, a Law Costs Draftsman or a fellow of the Legal Executives throughout the arbitration and at any hearing before the Arbitrator.

14.2 At any time the Arbitrator may require from any Party proof of authority granted to its

Rule 15: Hearings

15.1 Subject to rule 1.1, any Party which expresses a desire to that effect has the right to be heard orally before the Arbitrator on the merits of the dispute, unless the Parties have agreed in writing on a documents-only hearing or arbitration.

15.2 The Arbitrator shall fix the date, time and physical place for any telephone hearings, video or Skype hearings, meetings and final hearings in the arbitration and shall give the Parties reasonable notice thereof.

15.3 All meetings and hearings shall be in private and confidential unless the Parties agree otherwise in writing.

15.4 The Arbitrator shall have the fullest authority to establish time-limits for meetings and hearings, or for any parts thereof.

Rule 16: The Award

16.1 Unless the Parties grant further time and subject to Rule 16.2, the Arbitrator shall file and distribute his award in writing within 28 days of the final hearing via www.PICArbs.co.uk/filing/ and, unless all Parties agree in writing otherwise, shall state the reasons upon which the award is based. The award shall also state the date when the award was made and the seat of the arbitration and it shall be signed by the Arbitrator.

16.2 The Arbitrator shall NOT be responsible for delivering the award to the Parties if the deposit for the costs of the arbitration (if any has been directed by the Arbitrator) has NOT been paid in accordance with the Rules and/or the Arbitrators fees have NOT been paid in full after delivery of a fee note and in accordance with these Rules.

16.3 An award may be expressed in any currency or more than one currency.

16.4 The Arbitrator may order that interest shall be paid by any Party on any sum awarded at such rates as the Arbitrator determines to be appropriate, in respect of any period which the Arbitrator determines to be appropriate ending not later than the date upon which the award is complied with.

16.5 The Arbitrator may make separate awards on different issues at different times. Such awards shall have the same status and effect as any other award made by the Arbitrator

16.6 In the event of a settlement of the Parties' dispute, the Arbitrator may render an award recording the settlement if the Parties so request in writing (a "**Consent Award**"), provided always that such award contains an express statement that it is an award made by the Parties' consent. A Consent Award need not contain reasons. If the Parties do not require a consent award, then on written confirmation by the Parties to the Arbitrator that a settlement has been reached, the Arbitrator shall be discharged and the arbitration proceedings concluded, subject to payment by the Parties of any outstanding costs of the arbitration.

16.7 All awards shall be final and binding on the Parties. By agreeing to arbitration under these Rules, the Parties undertake to carry out any award without any delay.

Part 36 offers

16.8 Unless the Parties otherwise agree the provisions of CPR part 36 are incorporated into these Rules here.

16.9 The wording of CPR part 36 shall be interpreted as follows:

- (a) "Judge" and "court" means "arbitrator";
- (b) "trial" means "hearing";
- (c) "proceedings" means "arbitration proceedings";
- (d) "judgment" means "award";
- (e) all other words shall be interpreted in such a way as to facilitate the application of CPR rule 36 to the arbitration.

Rule 17: Correction of Awards and Additional Awards

17.1 Errors: Within 30 days of receipt of any award, or such lesser period as may be agreed in writing by the Parties, a Party may by written notice to the Arbitrator via www.PICArbs.co.uk/filing/ request the Arbitrator to correct in the award any errors in computation, clerical or typographical errors or any errors of a similar nature. If the Arbitrator considers the request to be justified, the corrections will be made within 30 days of receipt of the request. Any correction shall take the form of a separate memorandum dated and signed by the Arbitrator.

17.2 The Arbitrator may likewise correct any error of the nature described in Rules 17.1 of its own initiative within 30 days of the date of the award, to the same effect.

17.3 Omissions: Within 30 days of receipt of the final award, a Party may by written notice to the Arbitrator via www.PlcArbs.co.uk/filing/ (copied to all other Parties), request the Arbitrator to make an additional award as to claims presented in the arbitration but not determined in any award. If the Arbitrator considers the request to be justified the additional award will be made within 28 days of receipt of the request. The provisions of Rules 16 shall apply to any additional award.

Rule18: Arbitration Costs and Legal Costs

Arbitration costs

18.1

(a) Unless the Arbitration Agreement states otherwise, during the course of the arbitration the Claimant/s and/or the Defendant/s shall jointly and severally pay the costs of the arbitration (the Arbitrator's fees and expenses and the costs of CADR).

(b) The Parties (not CADR) shall be jointly and severally liable to the Arbitrator for the arbitration costs should any liable Party fail to pay such costs.

18.2 The Arbitrator shall specify in the final award the total amount of the costs of the arbitration (but not the legal costs) as determined by the Arbitrator. Unless the Parties agree otherwise in writing, the Arbitrator shall determine the proportions in which the Parties shall bear all or part of such arbitration costs. If the Arbitrator has determined that all or any part of the arbitration costs shall be borne by a Party other than a Party which has already paid them, whether to PlcArbs, CADR or the Arbitrator, the latter Party shall have the right to recover the appropriate amount from the former Party.

Legal Costs & Disbursements

18.3 The Arbitrator shall have the power to order in the award that all or part of the legal or other costs of the CADR arbitration incurred by a Party be paid by another Party, unless the Parties agree otherwise in writing. The following provisions apply to the legal costs and disbursements:

(a) Unless the Parties provide agreed figures the Arbitrator will make the costs award and will assess the costs.

(b) After an award is made or a settlement is reached, on any assessment of costs the CADR Arbitrator will determine and fix the amount of each item of costs or disbursements on such reasonable basis as is thought fit but in so far as any hourly rates are set out in the Schedule of Rates attached to the Arbitration Agreement those rates must be used (subject to any inflationary rise permitted).

(c) **Success fees, additional liabilities and ATE premiums.** The same rules apply to the recovery of these items in CADR arbitrations as apply in civil proceedings at the time of the award.

Costs Principles

18.4 Unless the Parties otherwise agree in writing, the Arbitrator shall make his orders on both arbitration costs and legal costs in accordance with the general principle that costs should reflect the Parties' relative success and failure in the award or the arbitration, except where it appears to the Arbitrator that in the particular circumstances this general approach is inappropriate. Any order for costs shall be made with reasons.

18.5 If the arbitration is abandoned, suspended or concluded whether by agreement or otherwise before the final award is made, the Parties shall remain jointly and severally liable to pay PICArbs and CADR's fees and the Arbitrator the costs of the arbitration as determined by the Arbitrator in accordance with these Rules. In the event that such arbitration costs are less than the deposits made by the Parties, there shall be a refund by the Arbitrator in such proportion as the Parties may agree in writing, or failing such agreement, in the same proportions as the deposits were made by the Parties.

Rule 19: Limited Appeals

19.1 Save to the extent permitted by the Arbitration Act 1996 the decisions of the Arbitrator with respect to all matters relating to the arbitration shall be conclusive and binding upon the Parties.

19.2 Except to the extent permitted by the Arbitration Act 1996, the Parties shall be taken to have waived any right of appeal to any State court or other judicial authority in respect of any decisions of the Arbitrator.

Rule 20: Confidentiality – Anonymised reports

20.1 Unless the Parties expressly agree in writing to the contrary, and subject to Rule 20.5, the Parties undertake to keep confidential all awards in their arbitration, together with all evidence and materials in the proceedings created for the purpose of the arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by a legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

20.2 The deliberations of the Arbitrator are likewise confidential.

20.3 The Arbitrator will not publish any award or any part of an award without the prior written consent of all Parties.

20.4 CADR shall be entitled to keep a copy of all arbitration awards on a database and unless the Parties agree otherwise may publish the same on Lawtel, Lexis or elsewhere in anonymised form to aid consistency of approach for arbitrators in future.

20.5 The Parties may publish any CADR arbitration award in anonymised form on Lawtel, Lexis or elsewhere. Anonymised form means that the first and last names of the Parties shall be anonymised and the names in the body of the award shall also be anonymised.

Rule 21: Exclusion of Liability

21.1 None of CADR, PICArbs, the Arbitrator, the CADR Registrar or any deputy Registrar, shall be liable to any Party howsoever for any act or omission in connection with any arbitration conducted by reference to these Rules, save where the act or omission is shown by that Party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that Party.

21.2 After the award has been made and the possibilities of correction and additional awards referred to in Rule 17 have lapsed or been exhausted, neither CADR, the Arbitrator, the CADR Registrar, any deputy Registrar, shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration, nor shall any Party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

Rule 22: General Rules

22.1 A Party who knows that any provision of the Arbitration Agreement (including these Rules) has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be treated as having irrevocably waived its right to object.

22.2 In all matters not expressly provided for in these Rules, the Arbitrator and the Parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that an award is legally enforceable.

Rule 23: Application of the PICArbs Rules

23.1 To the extent that these rules do not deal with any situation arising in the course of a CADR arbitration, the PICArbs Rules shall apply with any necessary modification.

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