



THE BUSINESS ARBITRATION SCHEME GUIDANCE NOTE FOR PARTIES

1. What is Arbitration?

Arbitration is a non-judicial process for resolving disputes where an independent third party – an arbitrator – makes a decision that is final and legally binding, and which can be enforced in the same way as a Court judgment. The party bringing the claim is usually called the Claimant/Applicant and the other party the Respondent. The role of an arbitrator is similar to that of a judge, though the procedures can be less formal and an arbitrator is usually an expert in their own right.

There are many advantages to arbitration – the process can be tailored to suit parties' particular needs, arbitrators can be chosen for their expertise, it is private and confidential, and often speedier and cheaper than court.

In order to use arbitration to resolve a dispute, there must be agreement between the parties to do so. This agreement can either be put in place before any dispute has arisen, as is commonplace when parties enter into a contract, or can be made after a dispute has arisen, although it may be harder for the parties to reach such an agreement after the dispute arises.

2. What is the Business Arbitration Scheme?

The Business Arbitration Scheme (BAS) is a special arbitration scheme that has been developed by CI Arb with small businesses in mind. In the climate of rising court fees, businesses have been seeking alternative forms of dispute resolution to litigation, as a means of resolving their disputes quicker and cheaper.

BAS aims to provide simple, cost-effective, and timely resolution of disputes of low to medium monetary value (£5,000 - £100,000), by arbitration before a sole arbitrator.

Whilst the scheme has been developed with small business disputes in mind, it can be used for other disputes which fall into the monetary parameters of the scheme.

BAS is a fixed fee scheme, giving the parties' certainty as to costs. A fixed fee of £1,250 + VAT is payable by each party on commencement of the arbitration, to cover CI Arb's administrative costs and the arbitrator's fees.



BAS also offers certainty as to the time the arbitration will take. A final and legally binding Award is to be issued in less than 90 days from the appointment of the arbitrator.

BAS enjoys all of the benefits of arbitration, including it being private and confidential, and the award being enforceable in the same way as a court judgment.

For an arbitration to take place under the scheme, the parties to the dispute have to agree to use the process. An arbitration agreement can be built into a contract, e.g. as one of the terms and conditions, or a separate arbitration agreement can be entered into. A sample contract clause can be found below:

“Any dispute, controversy, or claim arising out of or in connection with this contract, or the breach, termination or validity thereof, shall be submitted to the Chartered Institute of Arbitrators (CI Arb) and settled by final and binding arbitration in accordance with the Rules of The Business Arbitration Scheme. Judgment on any award issued under this provision may be entered by any court of competent jurisdiction.”

3. How do I commence arbitration with BAS?

Arbitration is commenced under the Business Arbitration Scheme by requesting the Chartered Institute of Arbitrators to appoint an Arbitrator by completing the application form found [here](#).

The application form asks for the contact details of the parties to the dispute and of any legal representatives they have instructed, details of the nature and circumstances of the dispute and the relief sought, and invites the parties to put forward any proposals as to the background and experience of the arbitrator to be appointed.

The Claimant must complete and sign either Part A or Part B of the application form. Part A should be completed if the Claimant is relying on a pre-existing written agreement between the parties to use the Business Arbitration Scheme (for example, an arbitration agreement in a contract). Evidence of that agreement must be provided. Part B should be completed if the parties are making the application jointly. By all parties signing the application form at Part B, this shows their agreement for the Business Arbitration Scheme to apply, and for CI Arb to appoint a sole arbitrator under the scheme.



The application form should be accompanied by all of the items listed at paragraph 5 of the [BAS Rules](#).

4. What are the costs involved?

BAS is a fixed fee scheme. At the outset of the arbitration, each party is required to pay a fixed fee of £1,250 (plus VAT) in respect of CI Arb's administrative costs and the Arbitrators fees. This fee will cover CI Arb's costs and the Arbitrator's fees for the duration of the arbitration.

If the Respondent does not pay any or all of its share of the fee required, the Claimant may be directed to pay the remainder of the fee due. Any payment made by the Claimant in respect of the Respondent's share of the fee will be treated as a debt which the Claimant will be entitled to recover immediately from the defaulting Respondent.

If the Respondent advances a counterclaim in the case, but does not pay any or all of its share of the fee required, the Respondent's counterclaim may be treated by the Arbitrator and by DAS as withdrawn.

5. How will the Arbitrator be appointed?

The arbitrator will be appointed by the Chairperson of the Applicant's Local Branch of CI Arb from a Branch approved panel within 10 days of commencement of the arbitration.

When an application is received, DAS will propose to the Chairperson of the Applicant's Local Branch (or to the Branch Secretary in the absence of the Chairperson) a list of all suitable candidates from a special Panel of Arbitrators created for BAS. The Chairperson will advise DAS who has been appointed from that list, by ranking the candidates in order of preference, and removing any candidates which the Chairperson deems unsuitable. It will be for DAS to contact the candidates, using the order of preference indicated by the Chairperson. DAS will also complete the formalities for the appointment of the highest ranked candidate who accepts appointment and is conflict free, within 10 calendar days of the commencement of the arbitration, and will notify the parties of the appointment.

The appointed Arbitrator will deal with the case from start to finish. The Arbitrator should have no connection with the parties or the dispute.



If for any reason the Applicant's Local Branch is unable to make an appointment, it will be made by the President of CI Arb.

6. What happens next?

Once an Arbitrator is appointed, he/she will issue a timetable for the arbitration within 7 days of being appointed. Any timetable issued by the Arbitrator should meet the objective of the Scheme, and meet the 89 day deadline for the issue of an Award.

Often, one of the initial steps on the timetable will be the exchange of written statements of case. The usual order is for the party making the claim (***the Claimant***) to set out their case first (the Statement of Claim) and for the other party (the Respondent) to respond (the Defence). Any Counterclaim is added to the Defence. To ensure that the Arbitrator has the full picture the party making the claim may want to reply to the Defence to clarify its response to any issues raised, especially if there is a Counterclaim.

There is no particular format for a written statement of case, but it should be broken down into numbered paragraphs, set out as a summary of the facts relied on, the basis of the claim/counterclaim/defence, the issues to be decided by the Arbitrator, the amounts claimed, and how they are arrived at/why they are disputed. A statement of case is easier to read if it sets out the facts in chronological order and should be dated and signed by someone authorised to do so.

Your witness evidence will take the form of written statements. Again there is no special format, but the statement should start with the name and address of the witness, and be signed at the end by him/her. It is easier for the Arbitrator to read a witness statement that is broken down into numbered paragraphs and sets out the evidence being given in chronological order. Sub-headings can be useful to tell the Arbitrator your witness is moving on to a new subject. If you do not include something relevant in a witness statement the Arbitrator may not get to hear about it.

Each side's written statement of case and witness statements should, collectively, be no more than 5,000 words.

The Arbitrator will deal with the dispute either by reading the documents (without a hearing) or by holding a short hearing if the parties require it. An additional fee of £500 (plus VAT) is payable by each party if a half day hearing is required. If a hearing is required, you should make sure your witnesses will be available to attend a hearing on that date if requested. If you want any of your opponent's witnesses to



attend a hearing in order to question them, you will have to tell your opponent. The parties may be asked to arrange a venue for any hearing.

The Arbitrator will decide between the parties' cases on the evidence provided to the Arbitrator. It is for each party to provide sufficient evidence to prove every aspect of its case, unless the facts are admitted. Where there is a conflict of evidence, the Arbitrator will decide which case to accept on the balance of probabilities, i.e. which is most likely to be correct.

Once the Arbitrator has considered the evidence, he will produce a written decision, called an Award, which will be available by the 89 day deadline prescribed in the BAS Rules. That Award, including any order for costs, can be registered with a Court and enforced as if it was a court judgment.

The Award is final, there are very limited grounds for challenging an Arbitrator's decision.

7. What costs can I recover in the arbitration?

It is for the Arbitrator to decide if one side can recover from the other any costs of the arbitration, which includes the fixed fee paid by that side, and reasonable legal fees if a lawyer is instructed.

Unless the parties agree otherwise, one side shall not be able to recover more than the fixed fee paid by them plus a further £1,000 towards their costs of the arbitration. This is because BAS is intended to be simple enough for most businesses to present their own cases, and the amount of £1,000 is only intended to cover the cost of some limited help. This does not mean that you have to represent yourself, just that you will not be able to recover all your expenditure on advice if you spend more than £1,000. In more complex cases both sides may feel they need to be represented throughout, and the scheme is flexible enough to allow them to agree that they should be able to recover more of their costs and set their own costs ceiling, however, the Arbitrator must be made aware of this. The Arbitrator can always limit recoverable costs if the Arbitrator feels it appropriate.

8. What can I do if I have a complaint about the Arbitrator?

The arbitration will be governed by the Arbitration Act 1996 which, amongst other things, requires the Arbitrator to act fairly and impartially, to give each party the opportunity of putting their case and responding to their opponent's case, and to



adopt procedures which avoid unnecessary delay or expense. The objective of BAS is to do just that.

If, however, the parties have cause to complain about the conduct of the Arbitrator, they should email complaint@ciarb.org, or write to:

Tom Cadman
Director of Governance and Legal Services
12 Bloomsbury Square
London WC1A 2LP (Please mark the envelope Private & Confidential)

CI Arb will acknowledge receipt of the complaint within a maximum of 5 working days. A response to the complaint will normally be sent within 25 working days. Guidance as to how CI Arb investigates complaints of misconduct against its members can be found [here](#).