

Institute of Professional Willwriters

Estate Planning Arbitration Scheme (EPAS)



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1 Introduction

1.1 This arbitration service is part of the Customer Redress procedure as set out in the Institute of Professional Willwriters (IPW) Code of Practice, and applies to claims by customers for compensation or other remedy. It is administered independently by IDRS Ltd (the administrator), a wholly owned subsidiary of the Chartered Institute of Arbitrators.

1.2 The service does not apply to claims for compensation exceeding £10,000, or to claims concerning physical injury, illness or nervous shock or their consequences.

1.3 The rules apply to disputes between two parties, generally the Willwriter and their customer but, if they and the arbitrator agree, the rules may be adapted for disputes involving three or more parties.

1.4 In considering the parties' cases, the arbitrator shall have regard to the IPW Code of Practice. Where there is a conflict between a rule of law and a provision of the code, the interpretation most favourable to the customer shall prevail.

1.5 The parties must confirm on the application form that every reasonable effort has been made to resolve the dispute through the Willwriter's in-house complaints procedure and by conciliation unless the customer has elected to proceed directly to arbitration.

1.6 The application for arbitration must be received by the administrator within 12 months of the date of that the dispute arose. However, applications may still be made outside this time limit if the Willwriter agrees.

1.7 The service is designed for use without the need for legal representation. However, any party may choose to be legally represented, but do so at their own cost which may not be recovered within the service or any subsequent legal action.

2 Commencement of arbitration proceedings

2.1 If either party wishes to proceed to arbitration then a joint application must be submitted to the administrator on its application form, accompanied by the appropriate registration fees from the parties, which are specified on Schedule 1 to these rules. If the parties have previously attempted to resolve their dispute using conciliation then either party may advise the administrator in writing within 28 days of the end of the conciliation proceedings that they wish the dispute to be referred to arbitration. Where the customer wishes to proceed to arbitration the Willwriter is bound to proceed. However, where the Willwriter wishes to proceed to arbitration they can only do so with the customer's agreement.

7.4 Neither the administrator nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules, save that the arbitrator (but not the administrator) shall be liable for any wrongdoing on his / her own part arising from bad faith.

Schedule 1 – Registration Fees

1. The case fee of £500 plus VAT applies and is payable by the parties as set out below:

Willwriter £450 plus VAT

Client £50 plus VAT

2. In the event of a meeting or inspection (see rule 6.3), the party requesting the meeting or inspection will bear the costs of the meeting or inspection, including an additional case fee of £500 plus VAT (£350 plus VAT for the arbitrator and £150 plus VAT for the administrator), and any travel expenses of the arbitrator at reasonable cost, plus the cost of any facilities for the hearing or inspection. The parties are jointly and severally liable for such costs.

5.2 Subject to rule 5.4 below, each party shall bear its own costs of legal representation, preparing and submitting its case and of attending any hearing. No legal action may be brought to recover these costs.

5.3 The arbitrator may award that the Willwriter shall reimburse the customer their registration fee if the customer is successful in their application. Alternatively, the arbitrator may award that the customer shall reimburse all or part of the Willwriter's registration fee where the arbitrator finds that the customer has acted unreasonably and caused the Willwriter unnecessary expense.

5.4 The arbitrator may also order one party to pay all or part of the other's costs where the former has acted unreasonably and caused the opposing party unnecessary expense.

5.5 These provisions for costs will not apply to any appeal to the court.

6 Confidentiality

6.1 No party involved in any dispute under the rules, or the administrator or the arbitrator, shall disclose details of the proceedings to any stranger to the proceedings unless it is necessary to do so in order to enforce a binding settlement or as may be required by law. Notwithstanding the foregoing, the administrator may collate and process data pertaining to the use of the service, compile, analyse and publish statistics therefrom and monitor and review the operation of the service provided always that (save with the express consent of the parties) no personal data, privileged or confidential information shall be published.

7 Miscellaneous

7.1 The law to apply (English, Scottish etc) shall be determined by the arbitrator if the parties fail to agree.

7.2 The administrator reserves the right to appoint a substitute arbitrator if the originally appointed arbitrator dies, is incapacitated or is, for any reason, unable to deal expeditiously with the dispute. The parties shall be notified of any substitution.

7.3 Subject to the right of either party to request the administrator to draw the arbitrator's attention to any accidental slip or omission which he / she has power to correct by law, neither the administrator nor the arbitrator can enter into correspondence regarding an award made under the service.

2.2 The arbitration commences when the administrator writes to the parties telling them that their application has been accepted. The customer will also be sent a claim form.

2.3 The administrator will appoint a Chartered Arbitrator and inform the parties.

2.4 If the arbitrator believes that the dispute is not capable of proper resolution under these rules, the parties will be so advised. In that case the arbitrator's appointment shall be cancelled, the parties' application for arbitration treated as withdrawn and the parties' registration fees shall be refunded. The parties will then be able to pursue the matter either through other appropriate arbitration rules provided by the administrator or through the courts.

2.5 Once appointed, the arbitrator will communicate with or issue directions to the parties through the administrator. Correspondence with the arbitrator must be copied to all parties.

3 Arbitration procedure

3.1 The arbitrator shall have the jurisdiction and power to direct the procedure of the arbitration including the amendment of any time limits and other procedural requirements. The arbitrator shall also have the power to:

- (a) Allow submission of further evidence and the amendment of claim or defence;
- (b) Order the parties to produce goods, documents or property for inspection;
- (c) Conduct such enquiries as may appear to the arbitrator to be desirable;
- (d) Receive and take in to account any oral or written evidence as the arbitrator shall decide to be relevant;
- (e) Appoint an expert to report on specific issues or take legal advice. Any expert will be appointed by the Independent Chairman of the Disciplinary Committee from a Panel appointed by the IPW Council, and fees for the expert will be limited to a maximum of £250 plus VAT, such fees to be paid through the administrator by the Willwriter;
- (f) Award interest, whether or not claimed;
- (g) Proceed with the arbitration if either party fails to comply with these rules or with the arbitrator's directions, or if either party fails to attend any meeting or inspection ordered by the arbitrator but only after giving that party written notice;
- (h) Terminate the arbitration if the arbitrator considers the case to be incapable of resolution under the service, or if the parties settle their dispute prior to an award. If the case is settled the parties must immediately inform the administrator in writing of the terms of the settlement and the arbitrator shall record them in an agreed award enforceable under the Arbitration Act 1996, if requested.
- (i) Order the customer to pay the Willwriter for outstanding fees.

3.2 In addition to the powers conferred by these rules, the arbitrator shall have the widest discretion permitted by law to resolve the dispute in a just, speedy, economical and final manner and in accordance with natural justice.

3.3 The arbitration will normally proceed on the basis of written argument and evidence, which must be submitted in duplicate and in accordance with the following procedure. However, if either party requests it and / or if the arbitrator considers it appropriate, a meeting or inspection may be held. Any such meeting or inspection shall be made in the presence of both parties who may be questioned by the arbitrator in order to clarify matters in dispute.

3.4 Within 21 days of receipt of the arbitration claim form, the customer shall send the completed form to the administrator, together with all supporting documents to prove the case. The customer may not raise issues or claim amounts not covered by the application form without the arbitrator's consent.

3.5 A copy of the claim documents will be sent by the administrator to the Willwriter, who then has 21 days in which to submit a written defence.

3.6 The administrator will send a copy of the defence documents to the customer, who is entitled to submit written comments within a further 14 days. Such comments must be restricted to points arising from the Willwriter's defence. The customer may not introduce any new matters or new points of claim.

3.7 If the parties have previously attempted to resolve their dispute using conciliation, statements of claim and defence used in conciliation may be submitted or they may be added to or amended. In addition the arbitrator may request further relevant information or other evidence from the parties.

3.8 The arbitrator will make an award, with reasons, after considering all submissions and evidence.

3.9 The administrator will send a copy of the award to each party and to the IPW, who are entitled to inspect a copy of the award for the purposes of monitoring complaint resolution procedures under the Code of Practice of the IPW.

3.10 Unless otherwise directed, any amount awarded shall be paid within 21 days of dispatch of the award to the parties. Such payments shall be made direct to the party entitled to receive it, which may include a payment from the customer to the Willwriter for outstanding fees.

3.11 Any award made under this scheme is final and legally binding on all parties, subject to either party's right under the provisions of the Arbitration Act 1996 to seek leave to appeal in the courts.

3.12 Any party may request the return of its original documents but must do so within 42 days of the date of dispatch of the award, after which date the administrator will destroy them.

4 Content of submissions for arbitration

4.1 The claim shall include:

- (a) Nature and basis of the claim;
- (b) The amount of compensation claimed or other remedy sought;
- (c) All supporting documents relied on as evidence.

4.2 If the customer is unable to submit a copy of any original contract or terms of business, the Willwriter shall submit a copy of that document with the defence, if it existed.

4.3 The defence shall include:

- (a) What matters in the opposing documents are accepted or agreed;
- (b) What matters are disputed, with reasons why;
- (c) Details of any outstanding amounts which remain unpaid by the customer;
- (d) Any supporting documents relied on as evidence.

4.4 The response by the customer to any defence shall include:

- (a) What matters in the opposing documents are accepted or agreed;
- (b) What matters are disputed, with reasons why;
- (c) Any supporting documents relied on as evidence in support of such response.

4.5 If any party fails to deliver anything required by these rules and does not supply it within 7 days of a reminder by the administrator then:

- (a) Where a claim is not delivered it shall be deemed to be abandoned;
- (b) Where a claim is abandoned the arbitration will not proceed and all or part of the Willwriter's registration fee may be refunded;
- (c) Where the failure concerns information requested by the arbitrator, the arbitration shall proceed as the arbitrator considers appropriate;
- (d) Where the failure is the non-delivery of the defence, the arbitrator may make the award on the basis of documents already received.

5 Arbitration costs

5.1 The registration fees, paid by the customer and the Willwriter, include the arbitrator's fees and the administrator's administration costs (save for expenses which are paid in addition at reasonable cost). The Willwriter pays the fees of any expert or legal adviser through the administrator.