

CEDR Arbitration Procedure for Surveying Disputes



70 Fleet Street,
London EC4Y 1EU

Tel: +44 (0)20 7536 6060

Fax: +44 (0)20 7536 6001

email: adr@cedr.com

www.cedr.com



Arbitration Procedure for Surveying Disputes

2007 Edition*

(*amended to reflect the transfer of service from IDRS Ltd to CEDR in 2012)

1. Introduction

- a. These rules have been developed to resolve issues between parties involved in surveying disputes. The Rules were developed by IDRS Limited in 2007, which is now a part of the group of companies owned by the Centre for Effective Dispute Resolution (CEDR). The service is now operated by CEDR. In order to use the rules at least one party to the dispute must be a member of the Royal Institution of Chartered Surveyors (RICS).
- b. These rules apply to arbitrations conducted under the Arbitration Act 1996 (the Act) and incorporate all parts of the Act unless these rules say otherwise or you and the person or organisation with whom you are in dispute (the parties to the dispute) agree otherwise.
- c. The parties may not alter these rules or any procedure under them after CEDR (we) have appointed an arbitrator, unless the arbitrator agrees to that alteration.

2. Start of the arbitration

- a. The party wishing to commence an arbitration under these rules (the claimant) must ask the other party (the respondent) in writing, by post, fax or email, to agree to an arbitration under these rules. This written request is called the arbitration notice. The notice must include or be accompanied by:
 - each party's postal or registered address, phone number, e-mail address, fax number and as relevant;
 - copies of any document (if any) which allows for the dispute to be settled by arbitration;
 - a brief statement describing the nature and circumstances of the dispute and the remedy being claimed;
and
 - any proposal the claimant has for any qualifications, expertise or experience they wish the arbitrator to have.
- b. Within 14 days of receiving the arbitration notice the respondent may send the claimant a response that:
 - admits or denies all or any part of the claim;
 - explains the nature and circumstances of any proposed counterclaim (claim made against the claimant);
 - confirms or rejects any proposals contained in the arbitration notice;



- any proposal the respondent has for any qualifications, expertise or experience they want the arbitrator to have
- c. If the respondent does not send a response, or does not include any relevant information referred to in 2b above, this will not prevent the respondent from denying any claim or making a counterclaim in any defence they provide in the arbitration.

3. Our role

- a. Any application to CEDR requesting the appointment of an arbitrator under these rules must be accompanied by:
- copies of the arbitration notice and any response or other related documents; and
 - confirmation that a copy of the application has been sent to the other party.
- b. Under these rules we can appoint an arbitrator from any panel kept by CEDR for this purpose.
- c. Each party must pay to CEDR an appointment fee of £250 plus VAT to accompany the arbitration notice.

4. Appointing the arbitrator

- a. Where these rules refer to the arbitrator, this means a single arbitrator. Only we have jurisdiction to appoint an arbitrator under these rules.
- b. We will appoint an arbitrator within 21 days of receiving the application and will tell the parties the arbitrator's name and details.
- c. We will appoint another arbitrator if the original arbitrator becomes unable to act for any reason.
- d. When we appoint an arbitrator under these rules, we will consider any qualifications, expertise or experience the parties have told us they wish the arbitrator to have.

5. Communication between the parties and the arbitrator

- a. When the arbitrator sends any communication to one party, he will also send a copy to the other party.
- b. If a party sends any communication to the arbitrator, that party must also send a copy to the other party.
- c. During the course of the arbitration, the addresses to which any communication must be sent will be the last known addresses, and section 76 of the Act will apply to such circumstances.
- d. If the parties agree, the arbitrator may appoint CEDR to act as arbitration administrator for any arbitration where the parties have agreed to a hearing. Our administration fee will be limited to £100 plus VAT per hour. Also all written



communications or notices will be sent through CEDR and communications that are addressed to the arbitrator will be considered to have been delivered when they are received by us.

6. Powers of the arbitrator

- a. The arbitrator will have all the powers provided under the Act (including those contained in sections 35 and 39, which are limited as explained in paragraphs 6c to 6h below).
- b. The arbitrator may:
 - limit the number of expert witnesses any party can call;
 - state that no expert can be called on a particular issue or issues; or
 - state that expert evidence may be called only with the arbitrator's permission.
- c. If, under these rules, the same arbitrator is appointed over two or more arbitrations which appear to raise the same issues or be governed by the same law (whether or not they involve the same parties) the arbitrator may decide that the arbitrations (or any specific claims or issues arising from them) are either consolidated (treated as one proceeding) or heard together.
- d. If an arbitrator has ordered arbitrations to be consolidated or heard together (under 6c above), he may give any other directions needed for the arbitrations to proceed and may exercise any powers given to him under these rules or the Act.
- e. If arbitrations are consolidated, unless the parties agree otherwise the arbitrator will make a single decision that is binding on the parties to the consolidated arbitrations.
- f. If the arbitrator orders arbitrations to be heard together, the arbitrator will, unless the parties agree otherwise, make separate decisions for each arbitration.
- g. If an arbitrator has ordered arbitrations to be consolidated or heard together, he may, at any time, withdraw that order and give further instructions for the arbitrations to be heard and settled separately.
- h. The arbitrator can help the parties avoid expensive bills by granting provisional orders for:
 - money or property to be exchanged between the parties;
 - an interim payment to be made towards the costs of the arbitration; or
 - granting any relief claimed in the arbitration.

- i. The arbitrator may apply 6h through his own choice or when asked by a party to the arbitration. The arbitrator must give all parties notice of his intention to apply 6h and give each party the chance to give their views.
- j. The arbitrator may order any money or property which is the subject of a provisional order to be paid or handed over on terms he considers to be appropriate.
- k. All or part of a provisional order may be confirmed, changed or withdrawn by the arbitrator (or any other arbitrator who may take over the arbitration).

7. Form of procedure

- a. Unless all parties agree to be heard before the arbitrator, the arbitration will be based on consideration only of formal written statements and evidence from each party.
- b. Each party's written statement should contain their allegations (of fact or opinion) which they intend to prove and must set out what they expect the other party to do (the remedy sought). If money is being claimed, the written statement should show how that figure is reached. If a respondent denies an allegation, he must give his reasons for doing so. If the respondent intends to put forward a different version of events from that given by the claimant, his written statement must state his own version.
- c. Each party's written statement may:
 - include statements of law or of evidence;
 - be accompanied by a copy of any document they think is relevant to their claim, including any expert report; and
 - In the event of a hearing being held, give the name of any witness they propose to call.
- d. If a claim is based on a written agreement, a copy of the contract or any documents forming the agreement should accompany the claimant's written statement.
- e. Unless the arbitrator says otherwise, the parties will exchange written statements as follows.
 - Within 28 days of the claimant receiving notice that the arbitrator has agreed to act, the claimant must send the arbitrator and the other party his written statement.
 - Within 28 days of the respondent receiving the claimant's written statement, the respondent must send the arbitrator and the other party their written statement in defence. If they do not provide their written statement within this time limit (or within any extended time limit the arbitrator allows), only the claimant's written statement will be considered.
 - If the respondent wants to make a claim against the claimant, they must set this out in their written statement.

- Within 28 days of the claimant receiving the respondent's written statement, the claimant may send a reply (and their defence of the respondent's claim) to the arbitrator and the respondent. If this deadline (or any extended deadline the arbitrator allows) is not met, the arbitrator will consider only the written statements already provided.
 - The respondent has 14 days to send the claimant and the arbitrator a response to the claimant's most recent written statement. At the end of this time, further written statements can be made only if the arbitrator gives permission.
 - If a respondent or claimant has not provided their written statement or comments in the time allowed, the other party will still have to prove their allegations.
- f. The arbitrator may give detailed instructions, including timescales, for further procedural steps in the arbitration. The further steps could include:
- changes to time limits for written statements;
 - details of documents to be exchanged between the parties;
 - for witness statements to be exchanged;
 - for expert reports to be exchanged;
 - for meetings to be held between experts;
 - new arrangements for any hearing;
 - the procedures to be adopted at any hearing; and
 - any time limits for oral statements or questioning witnesses.
- g. The arbitrator may demand any of the following.
- Documents from either party
 - Written details of questions intended to be put to any witness
 - A witness's answer to any question

8. The arbitrator's decision

- a. The arbitrator will give their decision in writing and will sign and date it, which will form the written 'Award' (the decision). The Award will explain the reasons for that decision.
- b. The arbitrator may give the parties a draft or proposed decision and consider any further comments made within a set time.



- c. A copy of the Award will be sent to the RICS for their private information.

9. Costs

- a. The arbitrator's fees for all work on the case will be charged at £220 per hour plus VAT, and will be capped at £2,200 plus VAT for a documents only case and £4,400 plus VAT where there is a hearing. The arbitrator will also charge reasonable travel and other expenses associated with conducting any hearing.
- b. The general principle is that the losing party will pay the arbitrator's fees and any administrator's fees, costs and expenses associated with a hearing. However, the arbitrator can decide which party will pay which percentage of these costs. In any event, the parties are responsible, jointly and severally (together and separately), for paying all fees, costs and expenses related to the arbitration.
- c. At our sole discretion, we may require the parties to make advance payment of fees, costs and expenses as Security for Costs.
- d. When considering evidence of any offer of settlement or compromise made by the respondent (whether that offer was made before or after the arbitration started) the arbitrator will normally follow the principle that a claimant who receives less or the same as was offered should be able to recover their costs up to the date when the offer could have been accepted. The party who made the offer should recover their costs from that point unless the arbitrator has good reason to decide otherwise.
- e. When considering evidence of any offer of settlement or compromise by the claimant (whether the offer was made before or after the arbitration started), the arbitrator will normally follow the principle that a claimant who is awarded more than or the same as the amount offered, or receives a better remedy, should recover his or her costs from the date when it was reasonable to expect the offer to be accepted, unless the arbitrator has good reason to decide otherwise.

10. Appeals

- a. Neither party can ask the court, under section 45 of the Act, to decide upon any question of law arising in the course of the arbitration proceedings.
- b. Neither party can ask the court, under section 69 of the Act, to decide upon any question of law arising out of any decision made in the arbitration proceedings.

11. General

- a. Any party may be represented by one or more people as long as those people provide any proof of authority the arbitrator asks for.



- b. For the purposes of communication, including serving papers or notices, the arbitrator and any administrator that is appointed will keep a record of each party's postal or registered address, phone number, e-mail address and fax number (as relevant). The arbitrator and administrator will also keep these details for any representatives.
- c. Periods of time will be calculated as described in section 78 of the Act.
- d. If the parties agree to a settlement or compromise, they must immediately tell the arbitrator and the requirements of section 51 of the Act will then apply.
- e. If any party plans to refer the dispute to court, they must immediately tell the arbitrator and send him or her copies of all documents they intend to use.