Independent Arbitration Service

Service Rules for domestic consumer disputes

September 2020 Edition

These Rules apply to application forms received by CEDR on or after 1 September 2020.

If you require this document in an alternative format, please contact us for further details.

1 Introduction

1.1 The Independent Arbitration Service ("the Service") is administered by the Centre for Effective Dispute Resolution ("CEDR") on behalf of the Renewable Energy Consumer Code Administrator, Renewable Energy Assurance Ltd ("REAL") and The MCS Service Company Ltd ("MCS"). The Renewable Energy Consumer Code ("the Code") is open to all those businesses active in the small-scale renewable energy generating sector that have contact with consumers when selling or leasing heat and power generators as well as any product connected or linked to the energy generator. Any business that has joined the Code is referred to as a 'Code Member'. For the avoidance of doubt, a 'Code Member' includes a previous Code Member in respect of whom a current Code Member has signed an Honouring Agreement with REAL. MCS is an important quality assurance certification scheme that creates and maintains standards that allows for the certification of products, installers and their installations. MCS certifies low-carbon products and installations used to produce electricity and heat from renewable sources. MCS standards dovetail the requirements set out in the Code. The Service has been designed to resolve disputes between Code Members and their consumers. The Service is the final stage of the Code's dispute resolution process as set out in section 9.2 of the Code.

1.2 The Code outlines a dispute resolution process that must be followed should a domestic consumer ("the Consumer") register a dispute with the Code Administrator. A domestic consumer is defined as a person who has signed a contract, or intends to sign a contract, with a Code Member for a system which is installed at or near private domestic premises occupied by them, and who intends to use an amount of electricity or heat generated

Centre for Effective Dispute Resolution
70 Fleet Street
London EC4Y 1EU

T: +44 (0)20 7520 3800
W: www.cedr.com
E: applications@cedr.com

Registered in England no. 2422813 Registered Charity no. 1060369 © CEDR 2020

by a micro-generation system, which will not exceed the amount of electricity or heat consumed in those premises.

1.3 The Consumer, as defined under Rule 1.2 above, can apply to use the Service if they have been unable to resolve their dispute in line with the Code's dispute resolution process.

1.4 In some circumstances, the Code Administrator may permit a domestic consumer to apply to use the Service without having made use of the Code's first stage of the dispute resolution process (mediation).

1.5 These Rules apply to disputes between two parties, a Consumer (as defined in Rule 1.2 above) and a Code Member (as defined in Rule 1.1 above).

1.6 Use of the Service is mandatory for Code Members when an application is made by the Consumer.

1.7 Where a Consumer has been offered the option of using the Service, the Consumer will be informed by the Code Administrator of the timeframes for submitting an arbitration application form to CEDR. The Consumer will be advised that: if the period between the Consumer first having complained in writing to the Code Member and the Consumer receiving the arbitration application form from the Code Administrator exceeds 12 months, the Consumer must submit an application to CEDR within 3 months of receiving the application form. Otherwise, the Consumer must submit an application to CEDR within 15 months of first having complained in writing to the Code Member.

2 The timescales referred to in Rule 1.7 can be extended by CEDR or the Code Administrator where in its opinion, it is reasonable to do so. CEDR or the Code Administrator can exercise this power either upon its own initiative or upon the request of either party.

2.1 In cases where the Code Administrator informs the Consumer that an application should be submitted before a set deadline, and that Consumer requests an extension, the Code Administrator will consider the reasons for the request and inform the Consumer whether the extension has been granted. If the extension is granted the Code Administrator will update the Code Member in writing.

2.2 All arbitrations under the Service will be governed by the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force ("the Act") and these Service Rules. For the purposes of the Act, all arbitrations conducted under these Service Rules will be deemed to take place in London, UK.

2.3 The Service cannot be used for:

(a) any claim for compensation exceeding a total of £25,000.00; or

(b) any claim for compensation for personal injury, illness, shock or their consequences.

2.4 The Service cannot be used where:

(a) the same Consumer(s) has brought a claim against the same Code Member regarding the same subject matter before a court or tribunal or equivalent body, which has jurisdiction over the claim and the parties and which has jurisdiction to issue, or has already issued, a legally binding and final determination regarding the claim;

(b) the same dispute is actively being investigated by another dispute resolution body (including, but not limited to, another Chartered Trading Standards Institute Approved Consumer Code, the Financial Ombudsman, the Energy Ombudsman or an MCS Certification Body); or

(c) in the opinion of CEDR or the Arbitrator, the Consumer's claim is frivolous and/or vexatious.

2.5 In considering the parties' cases, the Arbitrator will take the Code, the Code's Bye-Laws ("the Bye-Laws"), and MCS Installation Standards incorporating generic scheme installation requirements detailed in MCS 001 and technology specific requirements for the supply, design, installation, set to work commissioning and handover of installations ("the MCS Standards") into consideration.

2.6 The Consumer may appoint a representative to make an application on their behalf. If the Consumer wishes to do so, they must provide CEDR with their written permission for this representative to act on their behalf.

3 Applying for arbitration

3.1 If the Consumer wishes to use the Service, they must first notify the Code Administrator. The Code Administrator will inform the Consumer how to apply and provide a copy of the prescribed application form. In order to use the Service, the Consumer must send a completed application form to CEDR with the appropriate supporting materials, as specified in Rule 5.1 below (together "the Claim Documents"), along with the appropriate registration fee.

3.2 Where the Consumer wishes to use the Service, the Code Member must agree to use the Service. The Code Member is required to pay a separate registration fee directly to

Registered in England no. 2422813 Registered Charity no. 1060369 © CEDR 2020

CEDR along with its defence to the claim. It is a condition of the Bye-Laws that Code Members must pay the registration fee to CEDR when requested to do so. Failure to do so will result in appropriate action being taken by the Code Administrator, as set out in the Bye-Laws. In these situations, CEDR will notify the Code Administrator of the Code Member's failure to pay the registration fee within the appropriate timeframe. The Code Administrator will then agree to pay the registration fee on behalf of the Code Member and will recover the monies from the Code Member separately.

3.3 The registration fees paid by the parties are non-returnable except as provided for in Rule 3.6 and Rule 5.3.

3.4 The arbitration begins on the date that CEDR sends correspondence to the parties telling them that the Consumer's application has been accepted.

3.5 Upon receipt of the Claim Documents from the Consumer, CEDR will appoint an Arbitrator from its Panel of Arbitrators and inform the parties of the appointment.

3.6 If CEDR or the Arbitrator considers 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 will be cancelled, the application for arbitration will be treated as withdrawn and the registration fees will be refunded to both parties.

3.7 Once appointed, the Arbitrator will communicate with or issue directions to the parties through CEDR. All correspondence with the Arbitrator will be copied to all parties and CEDR.

4 Arbitration procedure

4.1 The Arbitrator will have the widest discretion permitted by law to resolve the dispute in a final manner in accordance with natural justice. In particular, the Arbitrator has the power to direct the procedure of the arbitration, including varying time limits and other procedural requirements, and to:

(a) allow the parties to submit further evidence and/or amend any of the submissions already made;

(b) order the parties to produce goods, documents, property or other items for inspection;

(c) conduct enquiries and receive and consider additional evidence as the Arbitrator considers appropriate;

(e) award interest on any sum awarded, even if not claimed;

(f) proceed with the arbitration if either party fails to comply with these Rules or with the Arbitrator's directions;

(g) end 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 being made. If the case is settled, both parties must immediately inform CEDR and the Code Administrator in writing of the terms of the settlement; and

(h) order the Consumer to pay the Code Member any outstanding fees.

4.2 The arbitration will proceed on the basis of written argument and evidence. No oral hearing will be convened as part of the arbitration.

4.3 The arbitration will proceed as follows:

4.3.1 CEDR will send a copy of the Claim Documents to the Code Member, who has 15 working days from the date on which the Claim Documents were sent in which to either submit a written defence to the claim ("the Defence"), prepared in accordance with Rule 5.4 below, or to notify CEDR in writing that the claim has been settled. If no Defence or notification of settlement is submitted after 15 working days, the Arbitrator will proceed with the arbitration as they see fit.

4.3.2 Where a notification of settlement is submitted to CEDR in writing by both parties, the Arbitrator will have the power to bring the arbitration to an end.

4.3.3 On receipt of the Code Member's Defence (if any), CEDR will send a copy to the Consumer, who is entitled to submit written comments within a further 10 working days from the date on which the Defence is sent as indicated in the covering communication. Such comments must be restricted to points arising from the Defence, and shall not introduce any new claim or evidence.

4.3.4 CEDR will send a copy of the Consumer's comments to the Code Member. The Code Member cannot make any further comments without the Arbitrator's written approval.

4.3.5 On receipt of all submissions, documents and evidence, CEDR will send the complete case file to the Arbitrator. The Arbitrator will consider all documentation and other evidence and may, via CEDR, ask for further information from the parties.

4.3.6 Within 20 working days of the case file being sent to the Arbitrator, or of the date on which the last of the information required by the Arbitrator is submitted to them, CEDR will send a copy of the Arbitrator's Award ("the Award") to each party and to

the Code Administrator, who are entitled to inspect a copy of the Award for monitoring purposes.

4.4 Unless otherwise directed by the Arbitrator, all parties shall comply with the Award within 20 working days of the date on which the Award is sent to the parties.

4.5 If the Code Member is for any reason unable to comply with the Award within the timescale at Rule 4.4 above, the Code Member must advise the Consumer and CEDR why that is before the above timescale expires. At the same time, the Code Member must specify a substitute date by which the Award will be complied with. Failure by a Code Member to comply with the Award within the timescale directed by the Arbitrator will not prevent the Consumer from enforcing the Award through the courts.

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

4.7 Any party may request the return of its original documents from CEDR but must do so within two months of the date on which the Arbitrator's Award was issued. If no such request is made within two months, CEDR will securely destroy the documents.

5 Content of submissions for arbitration

5.1 The Claim Documents shall include:

(a) the nature and basis of the claim;

(b) the amount of compensation claimed or other remedy sought;

(c) all supporting documents relied on as evidence; and

(d) confirmation that all reasonable efforts have been made to resolve the dispute directly with the Code Member in writing or through the Code's dispute resolution process.

5.2 If the Consumer is unable to submit a copy of any original contract or order, the Code Member shall submit a copy of that document with the Defence, if it exists.

5.3 An Award cannot be made for any amount that is more than the total amount claimed by the Consumer on the application form. This Rule does not affect the Arbitrator's power under Rule 4.1(e) above to award interest on any sum awarded, even if not claimed.

5.4 The Defence response shall include:

(a) what matters in the Claim Documents are accepted or agreed;

(b) what matters are disputed, with reasons why;

(c) details of any outstanding amounts which remain unpaid by the Consumer, and any associated counterclaim for such amounts; and

(d) any supporting documents relied on as evidence in support of their response.

5.5 In the reply to the Defence, the Consumer must state which matters in the Defence are now accepted, and the matters which remain disputed, with reasons. Any comments made by the Consumer at this stage must be restricted to points arising from the Defence, and shall not introduce any new claim or evidence.

5.6 If any party fails to deliver anything required by the Arbitrator, the arbitration shall proceed as the Arbitrator considers appropriate.

6 Costs

6.1 The registration fee paid by the parties constitutes a contribution towards CEDR's administration fee and the Arbitrator's fee. The balance is paid by the Code Administrator.

6.2 Subject to Rules 6.3, 6.4 and 6.5 below, each party shall bear its own costs of legal representation, and of preparing and submitting its case. No legal action may be brought to recover these costs. It should be noted that the Service has been designed for use without the need for legal representation. However, any party may choose to be legally represented if they wish.

6.3 The Arbitrator will award that the Code Member must reimburse the Consumer their registration fee if the Consumer is successful in their application. Alternatively, the Arbitrator may award that the Consumer must reimburse all or part of the Code Member's registration fee where the Arbitrator finds that the Consumer has acted unreasonably and caused the Code Member unnecessary expense.

6.4 Where the Arbitrator exercises his or her powers under Rule 4.1 to require additional evidence to be submitted, the Arbitrator may award the reimbursement of any costs incurred by either one or both parties in obtaining such additional evidence. In most cases the costs of obtaining such additional evidence will be shared equally between the parties, but this does not preclude the Arbitrator from awarding on a different basis.

6.5 These provisions for costs will not apply to any appeal of the Award to the courts.

Registered in England no. 2422813 Registered Charity no. 1060369 © CEDR 2020

7 Confidentiality

7.1 Both the Consumer and the Code Member undertake not, at any time, to disclose to any person any details of the arbitration, except where necessary to uphold the Award.

7.2 CEDR will provide a copy of the Award to the Code Administrator and MCS for monitoring purposes. The Code Administrator may also provide a copy of the Award to the Non-Compliance Panel or the Applications Panel if appropriate. MCS may also provide a copy of the Award to their standards management community including a specific technical Working Group.

7.3 CEDR, the Code Administrator and MCS may gather and retain details, in summary form, of individual cases and, while preserving the anonymity of the parties, may publish such summaries on their respective websites and to other Arbitrators as a resource in order to encourage consistency of practice under these Rules. CEDR, the Code Administrator and MCS may also publish statistical and outline information on such disputes whilst preserving the anonymity of the parties.

8 Other Rules

8.1 The law of England and Wales shall apply to the arbitration. The seat of the arbitration shall be London, UK. The Arbitrator shall determine the applicable law of the contract.

8.2 All references to 'working days' in these Rules shall be interpreted by reference to public and bank holidays in England and Wales.

8.3 CEDR will appoint a substitute Arbitrator if the Arbitrator originally appointed is unable to deal with the dispute for any reason. CEDR will inform the parties and the Code Administrator if such an appointment is made and reasons for that appointment.

8.4 With the exception of amending the Award following any minor error or omission which the Arbitrator has power to correct by law, neither CEDR nor the Arbitrator will enter into correspondence relating to the Award.

8.5 Neither CEDR nor the Arbitrator nor the Code Administrator will be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, save for any wrongdoing on the part of the Arbitrator arising from bad faith.

8.6 These Rules are subject to revision and amendment from time to time. The edition of the Rules in force at the time the application is made will govern any arbitration under the Service.

 © CEDR 2020

CEDR
70 Fleet Street
London EC4Y 1EU
Tel: 020 7520 3800
Email: applications@cedr.com

Registered in England no. 2422813 Registered Charity no. 1060369 © CEDR 2020