

## Independent Arbitration Service Funeral Planning Authority

### Service Rules

To apply to applications received on or after 1 August 2017

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#### 1 General

- 1.1 The Independent Arbitration Service (Funeral Planning Authority) (“the Service”) provides an independent and legally binding process for resolving disputes between the Funeral Planning Authority’s (“FPA”) Registered Providers (“Respondents”) and their customers (“Claimants”). The Service is administered by the Centre for Effective Dispute Resolution (“CEDR”), an independent dispute resolution body.
- 1.2 Under the FPA Code of Practice, the Respondent, by virtue of being an FPA Registered
- 1.3 Provider, has agreed to participate in the Service if the Claimant wishes to do so, and has agreed to honour any arbitration award made under the Service.
- 1.4 CEDR will appoint an independent arbitrator to decide the outcome of eligible disputes under the Service. The arbitration will proceed on the basis of written evidence and submissions only. The arbitrator will make an award with reasons after considering all of the evidence and submissions. Awards made under the Service are final and binding on all parties, though
- 1.5 any party has the right to seek leave to appeal in the courts.
- 1.6 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. All arbitrations will be deemed to take place in London, UK.

#### Scope of the Scheme

- 2 Before applying to use the Service, the Claimant must first make a written complaint to
- 2.1 the Respondent. If the Respondent has been unable to resolve the customer’s complaint, the Claimant must then contact the FPA directly. The Claimant can apply to use the Service if the FPA has been unable to resolve the complaint.
- 2.2 A dispute may only be referred to arbitration under the Service where either:

- 2.2.1 The Claimant's complaint has first been referred to CEDR's Independent Conciliation Service but a settlement has failed to be agreed. In this circumstance, the Claimant must apply to the Service within 20 working days of the conclusion of the conciliation process; or
- 2.2.2 The parties have agreed to go directly to arbitration without using CEDR's Independent Conciliation Service. In this circumstance, the parties must provide CEDR with written confirmation of their agreement to go directly to arbitration.
- 2.3 The Scheme cannot be used to settle disputes which fall into one or more of the following categories:
  - 2.3.1 A dispute brought by someone other than a customer of an FPA Registered Provider;
  - 2.3.2 A dispute brought against an organisation that is not an FPA Registered Provider at the time the application is made to the Service;
  - 2.3.3 A dispute which has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended);
  - 2.3.4 A dispute that is the subject of an existing or previous valid application made to the Service;
  - 2.3.5 A dispute in which the Claimant is seeking redress for death, personal injury, illness or other non-pecuniary loss;
  - 2.3.6 A dispute involving a claim for a total sum of money exceeding £10,000.00.
  - 2.3.7 A dispute which, in the opinion of CEDR or the arbitrator, is frivolous and/or vexatious;
  - 2.3.8 A dispute which, in the opinion of CEDR, would seriously inhibit the effective operation of the Service if it were dealt with.
- 2.4 Exceptionally, a dispute which does not meet the eligibility requirements above can be eligible for arbitration under the Service where all parties to the dispute and the FPA and CEDR agree. In such circumstances, additional charges to use the Service may apply and would have to be agreed between the relevant parties prior to the acceptance of such a dispute by the Scheme. The power to determine whether a dispute falls within the scope of the Service rests with CEDR. The decision of CEDR as to the eligibility of a dispute is final.
- 2.5 In the event that CEDR decides that a dispute is not eligible, CEDR will notify the Claimant of
- 2.6 this and will provide reasons as to why the dispute is not eligible.

### **Applying for arbitration**

- 3 An application for arbitration must be made by the Claimant on the prescribed form, accompanied by payment of the arbitration fee, as detailed in Schedule 1. This application, along with all supporting evidence (together "the Claim Documents") must be sent to CEDR.
  - 3.1
  - 3.2 The Claim Documents must include:

- 3.2.1 A full description of the claim or claims made against the Respondent and the reasoning for that claim or claims; and
  - 3.2.2 All evidence that is available to support the claim, including, but not exclusively, correspondence between the parties, photographs, video evidence, receipts for any expenses which are claimed; and
  - 3.2.3 A breakdown of the remedy or remedies that the Claimant is seeking from the Respondent; and
  - 3.2.4 A declaration that every reasonable effort has been made to resolve the dispute through the Respondent's own complaints procedure and the FPA;
  - 3.2.5 Payment of the prescribed arbitration fee, as detailed in Schedule 1.
- 3.3 Upon receipt of the Claim Documents, CEDR will have the right to refuse to refer the dispute to arbitration if it considers the dispute to fall outside the scope of the Service, by reference to these Rules.
- 3.4 Upon receipt of the Claim Documents, and provided CEDR considers the dispute to fall within the scope of the Service, CEDR will send a copy of the Claim Documents to the Respondent.

#### **4 Respondent's challenge to an application**

- 4.1 On receipt of the Claim Documents, the Respondent may challenge the validity of the dispute on the grounds that it contravenes these Rules. In the event of such a challenge, the Respondent may request the early appointment of the arbitrator to decide on the validity of the dispute.
- 4.2 In support of such a request, the Respondent must within 10 working days from the date of receipt of the Claim Documents submit in writing reasons why the dispute raised by the Claimant is not eligible under these Rules, accompanied by payment of the prescribed arbitration fee as detailed in Schedule 1. Failure to provide such submission and payment will result in the challenge being disallowed.
- 4.3 Upon receipt of a challenge with reasons and the prescribed arbitration fee from the Respondent, CEDR will give the Claimant a period of 10 working days within which to provide in writing reasons why the dispute is eligible under these Rules.
- 4.4 If the arbitrator decides that the dispute is not eligible under the Rules, the parties will be so advised and CEDR will close the case and 75% of the arbitration fees will be refunded to both parties. The parties will remain free to pursue the claim elsewhere.
- 4.5 If the arbitrator decides that the dispute is eligible under the Rules, the parties will be so advised and the case will proceed. The Respondent will be given a period of 15 working days from the date on which the arbitrator's decision to allow the application during which to defend or settle the claim.

#### **5 The arbitration procedure**

- 5.1 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:
- 5.1.1 allow the parties to submit further evidence and/or amend any of the submissions already made;
  - 5.1.2 order the parties to produce goods, documents, property or other items for inspection;
  - 5.1.3 conduct enquiries and receive and consider additional evidence as the arbitrator considers appropriate;
  - 5.1.4 award interest on any sum awarded, even if not requested;
  - 5.1.5 proceed with the arbitration if either party fails to comply with these Rules or with the arbitrator's directions;
  - 5.1.6 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;
  - 5.1.7 order the Claimant or Respondent to repay the other for the cost of the arbitration procedure.
- 5.2 The arbitration will proceed on the basis of written argument and evidence only. No oral hearing will be convened as part of the arbitration.
- 5.3 Upon receipt of the Claim Documents from the Claimant, CEDR will send a copy of the Claim Documents to the Respondent. The Respondent will have a period of 10 working days from the date of receipt of the Claim Documents to challenge the eligibility of the dispute under Rule 4 above. If the Respondent does not challenge the eligibility of the dispute, the Respondent will have 20 working days from the date of receipt of the Claim Documents to either settle the claim with the Claimant or to submit to CEDR a defence to the claim ("the Defence"), accompanied by payment of the prescribed arbitration fee.
- If a settlement is reached between the parties within 20 working days from the date of the Respondent's receipt of the Claim Documents, the Claimant and the Respondent must
- 5.4 notify CEDR in writing that a settlement has been reached and that the arbitration should not proceed. Once such notification has been received from both parties, CEDR will close the case.
- 5.5 Any Defence provided by the Respondent must be in writing, and must include:
- 5.5.1 Details of those matters in the Claim Documents which are accepted or agreed;
  - 5.5.2 Details of those matters in the Claim Documents which are disputed, with reasons why;
  - 5.5.3 Any supporting evidence which the Respondent wishes to rely upon;
  - 5.5.4 The prescribed arbitration fee set out at Schedule 1.
- 5.6 If a Respondent does not submit its Defence with the prescribed arbitration fee within the time allowed and does not send it within 10 working days of a reminder by CEDR, and subject to CEDR's general discretion to refuse to make an appointment, an arbitrator will be appointed by

CEDR. Subject to any directions given by the arbitrator, which may include the submission of the overdue Defence within a specified time period, the dispute will be decided by reference only to the Claim Documents.

- 5.7 On receipt of the Defence and subject to CEDR's general discretion to refuse to make an appointment, an arbitrator will be appointed by CEDR. At the same time, CEDR will forward a copy of the Defence to the Claimant, who then has 10 working days from the date of receipt to submit, if they choose to do so, any comments they have on the Defence ("the Comments"). The customer cannot introduce any new claims in the Comments; the arbitrator will disregard any new claims if made.
- 5.8 If Comments are submitted, they must include:
- 5.8.1 Details of those matters in the Defence which are accepted or agreed;
  - 5.8.2 Details of those matters in the Defence which are disputed, with reasons why;
  - 5.8.3 Any further supporting documents relied on as evidence.
- 5.9 CEDR will send a copy of any Comments received to the Respondent, but the Respondent is not permitted to make any further comment without the written approval of the arbitrator.
- 5.10 The arbitrator may request from either party the provision of further documents and/or information. If either party fails to submit such further documents and/or information within the timescale prescribed by the arbitrator, the arbitration will proceed on the basis of the documents already before the arbitrator.
- 5.11 The arbitrator may, at his or her absolute discretion, accept or refuse to consider documents that are submitted outside the timescales set down by these Rules.
- 5.12 In considering any dispute under the Service, the arbitrator shall give effect to the FPA's Code of Practice. In the event of a conflict between a rule of law and a provision of the FPA's Code of Practice, the interpretation most favourable to the Claimant shall prevail.
- 5.13 If at any time 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 75% of the case fees will be refunded to both parties.

## **6 The arbitrator's award**

- 6.1 Within 20 working days of the date on which the last of the information or documents provided by the parties has been submitted to the arbitrator, CEDR will send a copy of the arbitrator's award ("the Award") to each party.
- 6.2 The Award 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.
- 6.3 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.

- 6.4 Any party may request the return of its original documents from CEDR but must do so within 30 working days of the date on which the Award was issued. If no such request is made within 30 working days, CEDR will securely destroy the documents.
- 6.5 Subject to the right of either party to request CEDR to draw the arbitrator's attention to any accidental slip or omission which he has power to correct by law, neither CEDR nor the arbitrator can enter into correspondence regarding the Award.

## **7 Costs**

- 7.1 The case fees paid by the parties, as detailed in Schedule 1, constitute payment of CEDR's administration fee and the arbitrator's fee.
- 7.2 Subject to rules 7.3 and 7.4 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. The parties are entitled to use legal representation if they wish, but there is no requirement to do so.
- 7.3 The arbitrator will usually direct in the Award that the losing party will reimburse the arbitration fee of the other party, although the arbitrator has an overriding discretion to decide whether or not to apportion the costs of the arbitration in some other manner.
- 7.4 These provisions for costs will not apply to any appeal of the Award to the courts.

## **8 Confidentiality**

- 8.1 Both the Claimant and the Respondent undertake not, at any time, to disclose to any person any details of the arbitration, except as required or permitted by these Rules and the law.
- 8.2 CEDR may gather and retain details, in summary form, of individual cases and, while preserving the anonymity of the parties, may publish such summaries on its website and to other arbitrators as a resource in order to encourage consistency of practice under these Rules. CEDR may also publish statistical and outline information on such disputes whilst preserving the anonymity of the parties.

## **9 Other**

- 9.1 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 any contract or contracts between the parties.
- 9.2 All references to 'working days' in these Rules shall be interpreted by reference to public and bank holidays in England and Wales.
- 9.3 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 if such an appointment is made and the reasons for that appointment.



- 9.4 Neither CEDR 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 CEDR) shall be liable for any wrongdoing on his or her own part arising from bad faith.
- 9.5 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 Scheme.

August 2017



Schedule 1 – Case Fees

1. The Claimant will pay an arbitration fee of £100.00 plus VAT to CEDR when submitting an application form.
2. The Respondent will pay a case fee of £500.00 plus VAT to CEDR when submitting the Defence.