



The Arbitration Scheme for the Travel Industry
Rules: 2010 EDITION
(To apply to applications received on or after 1st May 2010)

Guidance Notes

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Guidance Notes for the Parties

Welcome to the Arbitration Scheme for the Travel Industry (2010 Edition) (the ASTI scheme).

To proceed with your application for arbitration you should have the following:

- A copy of the Rules for the ASTI scheme
- A copy of the Application Form / Schedule of Claim
- A copy of the Consumer / Member Evidence Checklist

NOTE:

You should ensure that you thoroughly read the ASTI scheme Rules and these Guidance Notes. The Rules govern the procedure of the ASTI scheme and the Guidance Notes will give you general advice. The Rules and Guidance notes contain everything you need to know about the ASTI scheme and the law that covers it.

By signing the application form you are bound by the Rules and failure to comply with them may affect the outcome of your claim or even invalidate it.

A. Guidance notes for the claimant

Questions and Answers

Here are some basic questions about the arbitration procedure that you might want to ask.

What is Arbitration?

Arbitration is a private process by which an independent person, called an arbitrator, resolves a dispute by making a legally binding decision (called an “award”). It is a long established and effective method of resolving disputes and is the only legal alternative to resolving your dispute through the courts. Be aware that you may win your case, partially win your case or lose your case. Remember that whether successful or unsuccessful you and the holiday company remain legally obliged to comply with the arbitrator’s final decision, subject to any Review or Appeal made by either of the parties.

Who are IDRS Limited?

IDRS Limited (“the administrator”) is a fully owned subsidiary of the Chartered Institute of Arbitrators (CI Arb), a UK charity. For further information please see the IDRS website at www.idrs.ltd.uk or phone IDRS on 020 7520 3800.

What is an Arbitrator?

An arbitrator is an independent, fully qualified person appointed by IDRS to decide your claim. The appointed arbitrator will decide your case on the basis of the evidence you submit. His or her role is similar to that of a judge and he or she will make a legally binding award about your case. They will do so fairly and neutrally. Arbitrators cannot help you to make your case; they can only determine the outcome as justly and speedily as they are able. The arbitrators that IDRS appoints are all qualified by the CI Arb and are experienced in travel arbitrations.

The arbitrator will:-

- Consider the parties’ arguments and evidence
- Act fairly and impartially
- Act according to the law

What is a Claimant?

You are the Claimant. The Claimant is the person making the claim against the holiday company.

What is a Respondent?

The Respondent is the holiday company. Respondents have the right to defend themselves against the claims you are making.

What is an Arbitrator's Award?

The award is the judgement that the arbitrator makes in the case. The award is binding on the parties and enforceable in the courts, subject to Rule 8. A copy of the award is sent to all the parties at the end of the case. The document contains two parts - the 'award' and the 'reasons'. The 'award' contains the legally binding orders for the parties and the 'reasons' contain the details of the case and the arbitrator's explanation as to why he or she decided the case as they did.

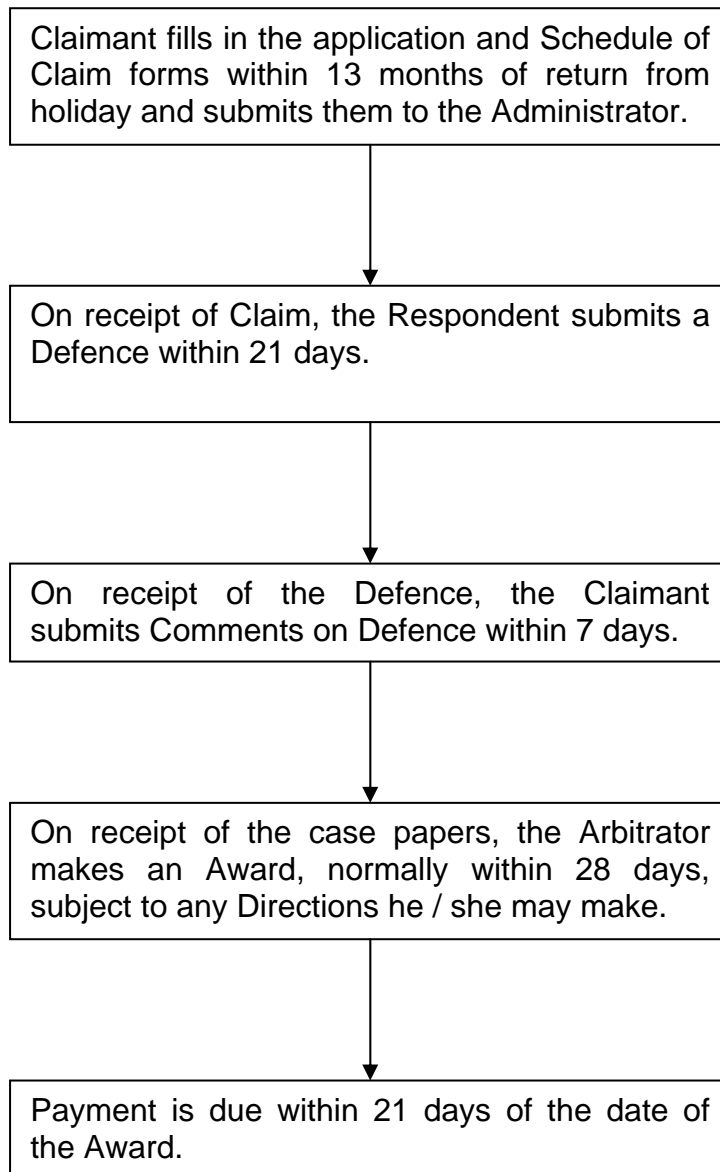
How is the case conducted?

The case is conducted on a "documents only" procedure. This means that the arbitrator makes an award based only on studying and considering the documents and evidence submitted by the parties in the dispute. It is in the interests of each party to state its case clearly and to produce all relevant supporting documents.

How long will the arbitration procedure take?

Approximately 8 weeks from the date that the application for arbitration is received.

Timetable of Arbitration



How much compensation can I claim for?

A claim for compensation can be made up to but not exceeding £5,000 per person, and for a total amount of £25,000.

If my case is unsuccessful will I have to pay the costs of the Respondent?

If you fail in your claim it is likely that you will be ordered to pay an amount which is equal to the sum you paid as the registration fee. You will not be liable for any other costs unless, for example, you (or the other party) have failed to accept an offer of settlement which equals or exceeds the arbitrator's award.

How much will arbitration cost to go through?

A registration fee is applicable. You can see the scale of costs on the application form.

The parties are responsible for the cost of making their case – that includes postage, stationary, photocopying and legal representation if used.

If my case is successful, how will the claim money be sent to me?

The holiday company will send to you the money they owe you directly. Payment is due within 21 days from the date the award is issued.

What is a Schedule of Claim?

The Schedule of Claim and your supporting evidence (together called 'the bundle') is the most important part of your case. This is where you set out your complaint against the holiday company and try to prove to the arbitrator that you are entitled to win your case and be awarded compensation. You must ensure that all the documents, letters, videos or photos that support your claim and that you wish the arbitrator to view are sent in with the Schedule. You will not have the opportunity to submit evidence at a later stage.

How do I present my case?

Complete the application form, sign and date it, and fill in the Schedule of Claim form detailing each item of claim, and then send in all relevant documents and letters with the Schedule of Claim, in duplicate or triplicate as required.

You would have been asked by ABTA to send a "Pre Arbitration Notice" to the holiday company.

You must include a copy of the “Pre Arbitration Notice” when making your application.

You must prove your Claim

In order to prove your claim you should submit all the evidence that you feel supports it.

Your Schedule of Claim should set out in chronological order the events which have led to the Claim and refer to each supporting document in respect of each allegation. The information included in the Schedule of Claim should include references to:

- (a) The relevant parts of any contract;
- (b) Any specific requirements;
- (c) What was promised and what was received;
- (d) Relevant dates;
- (e) The names of persons concerned (e.g. Respondent's employees or agents);
- (f) The amount(s) claimed, clearly and precisely quantified;
- (g) The remedies sought, whether compensation or specific action.

You should avoid merely sending a bundle of all documents in your possession and calling this bundle 'the claim'. The 'claim' is the written Schedule of Claim and the bundle of documents is the supporting evidence.

You should avoid 'dressing up' or exaggerating claims to add weight.

Allegations that are not supported by evidence will not assist your case and may in fact damage it.

It is not enough for you to show that your dealings with the Respondent led to disappointment. You must show that there was a breach of some term of the contract, express or implied, and that, where appropriate, you took steps to reduce your loss (called “mitigation”).

Allegations must therefore be set out precisely.

So far as presentation is concerned, you must follow the guidance on the evidence checklist. You must also ensure:

- (a) That all documents are produced in a simple and presentable form. It is not essential that case documents are typed but if they are hand-written, they should be written clearly or printed. Photocopied documents must be legible;
- (b) That case statements are supported by copies of all relevant documents, e.g. booking forms, brochures, orders, invoices, statements, contracts, quotations, conditions of engagement, photographs, correspondence, witness statements, certificates, drawings, specifications and calculations;
- (c) That all case statements and supporting evidence are submitted in duplicate or triplicate depending on how many Respondents are included in the arbitration and, where applicable, arranged in a chronological sequence with all pages numbered. If you send your evidence by email, duplicate copies are not required;
- (d) Case statements and supporting documents must be submitted attached together and not piecemeal.

You should keep a copy of all documents submitted for possible future reference. You may need to refer to them if the arbitrator asks questions.

Can I put forward video evidence?

Yes; videos and photographs are acceptable. Photographs should be on JPEG or in print. Video evidence should be on MPEG or VHS format, and where videos or photographs are being submitted two or three sets should be sent, depending on how many Respondents are included in the arbitration. Videos and photographs should be clearly labelled with your name, the name of the holiday company and a booking reference if available.

What are the Comments on Defence and what should I include in my Comments?

The Comments on Defence enable you to view the holiday company's statement of defence (the Defence) and to put forward any comments on the points contained in the Defence. You cannot submit new evidence or points of claim at this stage. The administrator cannot issue extensions of time for the submission of Comments and the arbitrator will only allow such extensions if you can provide a valid reason for needing it.

Can either the Arbitrator or the Administrator advise me on my case?

The arbitrator and the administrator must be impartial and cannot act as a consultant or adviser to either party. The administrator can only advise you on procedural matters.

If necessary, advice should be sought from a solicitor, a Citizens Advice Bureau, a law centre or a neighbourhood advice centre.

Is there a hearing?

There is no formal oral hearing or meeting; the procedure is based on documents only.

Do I need legal representation?

No, not necessarily. The ASTI scheme was set up expressly to allow the parties to present their cases without the need for legal representation. The holiday companies often have in-house legal staff or may employ solicitors to help them. However, arbitrators do not expect Claimants to have legal representation, but they may choose to have it.

How does the Arbitrator decide the case?

The arbitrator decides the case purely on the arguments and evidence presented by the parties. The parties must prove their cases on the balance of probability to the satisfaction of the arbitrator. The arbitrator assesses the evidence and analyses the terms of the contract which have been agreed to by the Claimant and the holiday company when the holiday booking was made. The arbitrator specifically looks for a proven breach of this contract.

The arbitrator will try to help the parties resolve their dispute in any way possible but he / she is restricted to consideration of the documents and evidence submitted. You must therefore make every point and submit all supporting evidence that you consider relevant. You must also retrieve and submit any documents sent previously to any other body and upon which you intend to rely.

Neither the arbitrator nor the administrator are investigators. Thus, if you have witnesses to support your case, you must obtain their statements and submit them. It will not be acceptable for you to send a list of witnesses and ask the arbitrator to contact them. It is not sufficient for you merely to say that you have evidence. You must produce it.

Subject to any Directions that the arbitrator makes, an award will be made within 21 days.

What if I decide to settle the case during the Arbitration?

Either party has a right to enter into settlement negotiations at any time before the arbitrator makes an award. Negotiations are private discussions between the parties and you should correspond directly with the other party and not through the administrator. Both parties, however, must notify successful settlements to the administrator, in order that the arbitration can be terminated. Registration fees are non-refundable in the event of settlement, so they should be taken in to account as part of the negotiated settlement.

Can I refuse the offer of settlement?

Yes – the Respondent has the right to offer you settlement monies. You have the right to accept or to refuse such offers and it is solely your decision which you choose.

When offers of settlement are made, you should consider the following:

- Settlement offers are not necessarily viewed by the arbitrator as an admission of guilt or as a delaying tactic.
- If the arbitrator awards you an amount equal to, or less than, the amount previously offered by the Respondent, you may be liable to pay the Respondent a sum equivalent to your registration fee.

If my Claim is unsuccessful what can I do next?

If you lose your case there are only two routes for challenge against the arbitrator's award. You can appeal through the High Court within 28 days of receiving the award, or you can request a review under the *IDRS Consumer Arbitration Review Procedure*. Details of this procedure are available from the administrator. Applications for Review must be made within 21 days of receiving the award. Both of these deadlines are strictly enforced and if you do not act within the deadline you will lose the right of Appeal / Review. Apart from these two methods there is no other way to challenge the award and if no Appeal is initiated through the High Court or a Review through the administrator the award will remain legally binding on the parties.

Remember: The mere fact that you may not like an award made against you (or even in your favour but not for the total amount claimed) does not mean that the award is wrong in law.

How do I ask for a Review of the Award within IDRS?

In order to begin proceedings for Review you must apply in writing to the administrator. You will then be sent further details on how the Review Procedure works and how much it costs.

General Notes

1. Please note that the application form constitutes a binding agreement to go to arbitration. Once signed, you are committed to proceeding in accordance with the ASTI scheme Rules. The form must be completed and forwarded to the administrator within 13 months of completion of the return journey or of the events giving rise to the dispute.
2. Make sure that all information required by the application form is provided, along with the relevant registration fee. Failure to do so will delay the arbitration getting under way.
3. Ensure that your address is correct and written in full with the postcode.
4. You must not delete the section of the application form for arbitration which states that you agree to be bound by the arbitrator's award. To do so will invalidate the application.
5. The arbitrator will normally only deal with the matters referred to and/or the amounts claimed in the application form. Make sure that all claims have been covered in the application form.
6. All correspondence and case statements must quote the administrator's case reference and the name of the case.
7. If a lawyer or other professional adviser represents you, you should communicate with the administrator, or the arbitrator, only through your adviser. Direct communication may cause unnecessary work and thus delay.
8. Minor illness and personal injury claims may be made under the ASTI scheme, but it is not designed to deal with claims arising solely from personal injury or illness and such claims will be rejected by the administrator.

B. Guidance notes for the travel company (“the Respondent”)

1. Please note that the application form constitutes a binding agreement to arbitration. Therefore, once the Claimant has signed, you are committed to proceeding in accordance with the ASTI scheme Rules.
2. Remember that the arbitrator decides the case purely on the arguments and evidence presented by the parties. The parties must prove their cases on the balance of probability to the satisfaction of the arbitrator.
3. The ASTI scheme Rules are intended to allow the parties to present their cases without the need for legal representation.
4. So far as presentation is concerned, you must follow the guidance on the evidence checklist. You must also ensure:
 - (a) That all documents are produced in a simple and presentable form. It is not essential that case documents are typed but, if they are hand-written, they should be written clearly or printed. Photocopied documents must be legible;
 - (b) That case statements are supported by copies of all relevant documents, e.g. booking forms, brochures, orders, invoices, statements, contracts, quotations, conditions of engagement, photographs, correspondence, witness statements, certificates, drawings, specifications and calculations;
 - (c) That the Defence and supporting evidence are submitted in duplicate or triplicate depending on how many Respondents are included in the arbitration and, where applicable, arranged in a chronological sequence with all pages numbered. If you send your evidence by email, duplicate copies are not required;
 - (d) That jargon or abbreviations used in case statements are explained in plain English.
5. All correspondence and case statements must quote the administrator’s case reference and the name of the case.
6. Case statements and supporting documents must be submitted together and not piecemeal.
7. You should keep a copy of all documents submitted for possible future reference. You may

need to refer to them if the arbitrator asks questions.

- 8 The arbitrator will try to help the parties resolve their dispute in any way possible but the arbitrator is restricted to consideration of the documents and evidence submitted. You must therefore make every point and submit all supporting evidence that you consider relevant. You must also retrieve and submit any documents sent previously to any other body and upon which you intend to rely.
- 9 The arbitrator and the administrator are not investigators. Thus, if you have witnesses to support your case, you must obtain their statements and submit them. It will not be acceptable for you to send a list of witnesses and tell the arbitrator to contact them. It is not sufficient for you merely to say that you have evidence. You must produce it.
- 10 The administrator will send the Respondent a reminder for the Defence within 7 days of the end of time limit for submission of the Defence.
- 11 It is essential that you deal fully with each and every allegation made in the Schedule of Claim. If you do not challenge valid evidence put forward by the Claimant, the arbitrator will usually treat an allegation supported by that evidence as proved.
- 12 Neither an arbitrator nor the administrator may advise a party as to the merits of its case or assist a party in presenting its case
- 13 By agreeing to arbitration, the parties are committing themselves to proceeding and to accepting the final and binding effect of the award, subject to Rule 8. Thus, a Respondent ignores the existence of arbitration proceedings at its peril because the arbitrator may make an award on the basis of whatever documents have been submitted by the claimant.
- 14 The mere fact that you may not like an award made against you (or even in your favour but not to the extent to which you would have liked) does not mean that the award is wrong in law.
- 15 The Defence must be submitted within the time limit allotted. Failure to comply with this may result in the arbitration proceeding without notice.
- 16 If you believe that the Claimant has exceeded the financial limits of the ASTI scheme, you must say so in your Defence so that the arbitrator may deal with the matter. It is no use objecting afterwards because your silence will have been treated as acceptance.

17 You do not have an automatic right to reply to the Claimant's Comments on your Defence. However, you may submit a reply to those comments and the arbitrator will decide whether they should be admitted as evidence. If you wish to reply to the Claimant's Comments, you must telephone the administrator and follow this up in writing immediately.