

## **Arbitration Scheme for the Travel Industry**

Rules 2010 Edition (Effective from 1<sup>st</sup> May 2010)

### **1 Introduction**

- 1.1 The Arbitration Scheme for the Travel Industry (the scheme) applies to claims for compensation or other remedy sought in respect of disputes between members of the ABTA Ltd (The Travel Association) and their customers, arising from breach of contract and / or negligence. Where a contract exists, claims may be made by or on behalf of any person named in the booking form or other contractual documents. In these rules “customer” includes prospective customers of an ABTA member and includes all persons on whose behalf a claim is made under one booking reference. All claims made under each booking reference must be made at the same time. It is administered independently by IDRS Ltd (the administrator).
- 1.2 Any arbitration under the scheme will be conducted under the provisions of the Arbitration Act 1996 (the Act) and these rules. For the purposes of the Act, all arbitrations under these rules will be deemed to take place in London.
- 1.3 Awards made under the scheme shall be final and binding on the Parties except as provided for in Rule 8.
- 1.4 The scheme does not apply to claims for compensation or remedy exceeding £5,000 per person or £25,000 in total; or to claims concerning physical injury, illness or nervous shock or their consequences and which exceed £1,000 per person.
- 1.5 The rules apply to disputes between two parties, generally the ABTA member (the respondent) and the customer (the claimant), together “the parties”, but, if they and the arbitrator agree, the rules may be adapted for disputes involving three or more parties. Reference in these rules to one or more parties shall include multiple claimants and multiple respondents where relevant.
- 1.6 In considering the parties’ cases, the arbitrator shall have regard to the provisions of the ABTA Code of Conduct for its members (the ABTA code). Where there is a conflict between a rule of law and a provision of the ABTA code, the interpretation most favourable to the customer shall prevail.
- 1.7 The customer must confirm on the application form that they have made every reasonable effort to resolve the dispute through the respondent’s in-house complaints procedure.

- 1.8 The application for arbitration must be received by the administrator within 13 months of completion of the return journey or of the events giving rise to the dispute, whichever is the later. However, applications can still be made outside this time limit if the respondent agrees but the ABTA code does not require such agreement.
- 1.9 The application for arbitration must be accompanied by a copy of the completed Pre-Arbitration Notice that was issued to the customer by ABTA.
- 1.10 The service is designed for use without the need for legal representation. However, any party may choose to be legally represented but will do so at their own cost.

## **2 Commencement of arbitration proceedings**

- 2.1 If the claimant wishes to proceed to arbitration then an application must be submitted to the administrator on its application form, accompanied by the appropriate registration fee as specified on the application form, and by the documents and supporting materials, as specified on the customer arbitration evidence check list for claims, together "the claim". Applications forms and evidence check lists are available from the administrator or online from its website [www.travelredress.co.uk](http://www.travelredress.co.uk).
  - a) Where the only claimant is a child who was under the age of 12 at the date when the holiday was booked, a registration fee is payable by the person making the claim on that child's behalf.
  - b) Any claims arising from the same booking will be consolidated and the limits in rule 1.4 above will apply
- 2.2 Where the claimant wishes to proceed to arbitration the respondent is bound to proceed. The respondent is required to pay a separate registration fee to the administrator when submitting their defence to the claim but where two members of ABTA (for example, a travel agent and a tour operator) are joined in the same application, each shall pay half that fee.
  - a) Failure by a respondent to pay their registration fee may result in disciplinary action being taken against them by ABTA.
  - b) Counterclaims cannot be made by respondents.
- 2.3 Registration fees are non-returnable except as provided for in rule 2.7.
- 2.4 The arbitration commences when the administrator writes to the parties telling them that the application has been accepted.
- 2.5 On receipt of all forms, fees, evidential documents and / or materials from the parties, the administrator will appoint an arbitrator from the panel it maintains for the purpose and inform the parties of the arbitrator's name.

- 2.6 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
- 2.7 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 will be 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.

### **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 the 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 into account any written evidence as the arbitrator shall decide to be relevant;
  - e) Award interest, whether or not claimed;
  - f) Proceed with the arbitration if either party fails to submit any evidence when required, or either fails to comply with these rules or with the arbitrator's directions;
  - g) Terminate the arbitration if he or she considers the case to be incapable of resolution under the scheme, or if the parties settle their dispute prior to an award. If the case is settled after appointment of the arbitrator the parties must immediately inform the arbitrator and the administrator in writing of the terms of the settlement and the arbitrator shall record them in an agreed award enforceable under the Act, if requested.
  - h) Where the arbitrator considers that a claim made on behalf of the claimant and others should be the subject of two or more separate arbitrations, he or she may in his or her absolute discretion refuse to deal with multiple claims in the single reference.
  - i) When deciding on liability and the amount of any award, the arbitrator must not take into account any offers of settlement that have been made by either party. It shall be open to the arbitrator to take such offers into account when awarding to any party the reimbursement of the registration fee under rule 5.5 below.

- 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
- 3.4 On submitting the application the claimant shall send the completed form to the administrator, together with all supporting documents and materials, in accordance with rule 4.1 below and the administrator's evidence checklist, in order to prove the case. The claimant may not raise issues or claim amounts not covered by the application.
- 3.5 The administrator will send a copy of the claim documents to the respondent who then has 21 calendar days in which to either submit their registration fee and a written defence, prepared in accordance with rule 4.5 below and the administrator's evidence checklist, or to give written notification to the administrator that the claim has been settled, together with the appropriate settlement fee (if charged) and details of the settlement.
  - a) Any settlement made at this stage will be subject to confirmation by the administrator of the claimant's written acceptance of the settlement before the arbitration procedure will be closed. The administrator will confirm this acceptance to both parties.
- 3.6 On receipt of the respondent's defence the administrator will send a copy to the claimant, who is entitled to submit written comments within a further 7 calendar days. Such comments must be restricted to points arising from the respondent's defence. The claimant may not introduce any new matters, new evidence or new points of claim.
- 3.7 The administrator will send a copy of the claimant's comments to the respondent but the respondent cannot make any further comments without the arbitrator's express approval.
- 3.8 The arbitrator will make an award, with reasons, normally within 28 calendar days of appointment, after considering all submissions and evidence.
- 3.9 The administrator will send a copy of the award to each party and to ABTA, who are entitled to inspect a copy of the award for the purposes of monitoring complaint resolution procedures under the ABTA code.
- 3.10 Unless otherwise directed, any amount or other remedy awarded shall be paid or complied with within 21 days of dispatch of the award to the parties. Such payments shall be made directly to the party entitled to receive it.
- 3.11 Any award made under this scheme is final and legally binding on all parties, subject to any party's right under the provisions of the Act to seek leave to appeal in the courts and to Rule 8 below.

3.12 Any party may request the return of its original documents but must do so within 6 weeks 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 be stated on the application form and shall include:

- a) The nature and basis of the claim;
- b) The amount of compensation claimed or other remedy sought;
- c) All supporting documents, materials and images (including video) relied on as evidence, in duplicate and enclosed with their application form.

4.2 An award cannot be made for any amount that is more than the total amount claimed on the application form.

4.3 The arbitrator may take into consideration when deciding upon his award any claim amounts set out on the Pre-Arbitration Notice submitted by the claimant.

4.4 If the claimant is unable to submit a copy of any original contract or booking form, the respondent shall submit a copy of that document with the defence, if it existed.

4.5 The 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 duplicate and enclosed with their agreement and defence form.

4.6 The response by the claimant 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.

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

- a) Where a claim is not delivered in accordance with rule 4.1 it shall be deemed to be abandoned;
- b) Where a claim is abandoned the arbitration will not proceed and the registration fee will 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 claimant and the respondent, include the arbitrator's fee and the administrator's administration costs.

5.2 Subject to rules 5.3 and 5.5 below, each party shall bear its own costs of any legal representation and of preparing and submitting its case. No legal action may be brought to recover these costs.

5.3 Subject to the limitation in Rule 5.5 below, the arbitrator has the power to make such orders for costs as in his absolute discretion he or she thinks fair, including the power to apportion costs payable or recoverable as between multiple respondents.

5.4 In exercising his or her discretion, the arbitrator may have regard only to offers made to settle the dispute prior to commencement of the arbitration.

5.5 The maximum amount that may be awarded to any party as recompense for costs expended in the arbitration shall be an amount equal to the customer's registration fee for the arbitration.

5.6 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 scheme, compile, analyse and publish statistics therefrom and monitor and

review the operation of the scheme 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 or she has power to correct by law, neither the administrator nor the arbitrator can enter into correspondence regarding an award made under the service.
- 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 or her own part arising from bad faith.

## **8 Consumer Arbitration Review Procedure**

- 8.1 If any party considers that the arbitrator's award is one that no reasonable arbitrator should have reached on the basis of the documents presented by the parties, they may write to IDRS applying for the award to be reviewed by an independent arbitrator under the IDRS Consumer Arbitration Review Procedure (the Procedure), a copy of which is available from the administrator.
- 8.2 Application for a review of the arbitrator's award must be made within 21 days of the date that the award was dispatched to the parties by IDRS, in the manner described in the Procedure.
- 8.3 If an application for review is made, the obligation to make payment under the award is no longer due. Payment as directed by the Review Award shall be made within 21 days of the receipt of the Review Award by the party or parties with the obligation to make such payment.