

PROPOSED
PIcArbs-NHS Resolve 25K
***slimline* ARBITRATION SYSTEM**

1. **The system is designed for claims up to £25,000**
2. **Statute:** Under the Arbitration Act 1996.
3. **The PIcArbs Rules:** Guided by the CPR but: *no Mitchell* strike outs and *no costs budgeting*. The overriding objective is justice between the parties not the convenience of the court or Arbitrator.
4. **Arbitration Agreement:** The Parties sign an arbitration agreement in PIcArbs standard form to be agreed between NHSR and PIcArbs and APIL/AVMA.
5. **Stay:** The Parties agree no Court proceedings will be started and any extant action will be stayed save for the purpose of enforcing the arbitration agreement and the award.
6. **Limitation:** 3 years.
7. **Paperless:** The Arbitration process is paperless. Arbitrations are started and pleadings, orders, correspondence with the arbitrator, witness statements, expert reports and medical notes are e-filed & e-served online. e-filing saves substantial costs. The parties' lawyers register and have user names and passwords, as do the arbitrator and counsel for quick internet access to the whole online file 24/7.
8. **The arbitrators:** PIcArbs panel barristers (all over 15 years call with substantial clinical negligence experience).
9. **Neutral Evaluation:** The parties should ask the arbitrator to carry out a NE on paper and make a potential award when the evidence is pretty much complete. If accepted, the case is settled. If rejected the case continues to JSM.
10. **Confidentiality:** The rules make the arbitration confidential unless the parties decide otherwise save that they permit PIcArbs to publish any final award to be in an anonymised form on Lawtel etc.
11. **Court fees:** No Court fees
12. **Accommodation for hearings:** Most hearings will be by video conferencing or telephone. Arbitration final hearings will be in the arbitrator's chambers or at the solicitors' or NHS Resolve offices.
13. **Costs:**
 - **Budgets:** There is no costs budgeting.
 - **Claimant costs:** Industry IPs to negotiate fixed fees for claimant and defendant lawyers. The fees should reflect current civil litigation fees with a reduction by a *% for (1) co-operation; (2) reduced work; (3) e-filing/e-service (4) early admission of liability; (5) fewer case management

conferences; (6) an uplift should be agreed for central London/Manchester/Birmingham.

- **Defendant's costs:** Claimant's liability to pay the Defendant's costs is capped at 80% of the total damages recovered. QOCS apply.
 - **CFAs:** LASPO CFAs as normal.
 - **ATE premiums:** not recoverable.
14. **Administration fees:** (1) The fee for commencement of a PIcArbs 25K system arbitration is £1,000 + VAT and covers: (a) entry to the PIcArbs system and (b) opening an individual arbitration e-file (c) providing e-filing & e-service for the duration of the arbitration.
15. **Filing fees:** None.
16. **Payment of arbitrators:** The Parties are jointly liable and pay the arbitrator throughout the arbitration on submission of arbitrator's fee note. Once costs are agreed or awarded the loser pays. Arbitrators hourly rates: £250 + VAT.
17. **The ADVANTAGES FOR CLAIMANTS & CLAIMANT LAWYERS**
- All decisions taken by experienced clinical negligence barristers.
 - Certainty over which arbitrator will decide the whole of the case.
 - Speed. Claimant lawyers will recover their costs faster. The Claimants will recover damages faster.
 - Control over procedure.
 - More co-operation.
 - Simplicity of procedure.
 - Paperless e-filing, e-serving and communication with arbitrator.
 - Neutral Evaluation – quicker resolution.
 - No Mitchell strike outs for procedural default – time and costs savings.
 - No or fewer case management hearings and applications for relief /extension – time and costs saving.
 - Less risk of professional negligence insurance claims – reduced PII insurance premiums.
 - No Costs budgets and no costs for the time preparing them – reduced costs.
 - Certainly over fees recovered.
 - Cap on Defendants costs taken from damages at 80%.
 - QOCS.
 - No court fees to pay.
 - No delays caused by courts.
18. **ADVANTAGES FOR DEFENDANTS AND NHS Resolve**
- All decisions taken by experienced clinical negligence barristers.
 - Certainty over which arbitrator will decide the whole of the case.
 - Speed.

- Control over procedure.
 - Simplicity and flexibility of procedure.
 - Paperless e-filing, e-serving and communication with arbitrator –costs savings.
 - Neutral Evaluation promotes early settlement.
 - No costs budgets and no costs for the time preparing budgets and attending hearings.
 - No or fewer case management hearings.
 - Certainty of fees payable to Claimant lawyers.
 - Defendants costs recoverable from damages up to 80%.
 - No court fees to pay.
 - No delays caused by the courts.
 - Limited appeals on the law only.
 - Saving the costs of detailed assessment.
19. **Inappropriate cases for arbitration:**
Multiple defendants may not sign up.
Protected Parties should not go through the system until the CPRC decide whether PIcArbs arbitrators can approve settlement and whether final and interim awards can stand without court approval.
20. **What do the Interested Parties need to do?** Negotiate two documents: (1) a fixed fees sheet and (2) a procedure protocol, both to be attached to the standard form of arbitration agreement.

March 2018

END