

# Guidelines for Arbitrators on independence and declarations of interest

1. These Guidelines have been drafted and approved by PlcArbs' Steering Committee and represent guidance to Arbitrators and Parties. They are based in part on the Guide to Judicial Conduct issued by the Supreme Court and the IBA Guidelines on Conflicts of Interest in International Arbitration. However, they should be read as Guidelines specifically designed for the present form of arbitration.
2. Each Arbitrator will be required to indicate by filling in the acceptance of appointment form in each case in which he or she is asked to arbitrate that he or she:
  - (a) has read these Guidelines and
  - (b) is satisfied that there is no conflict of interest arising (unless it has been disclosed and the Parties expressly indicate a mutual desire that the Arbitrator should continue to act notwithstanding such declaration and the Arbitrator is willing to continue).
3. If a conflict of interest arises in the course of the arbitration, and the Parties become aware of it, they must promptly draw it to the Arbitrator's attention. Failure to do so is likely to lead the Arbitrator to conclude that the Party now raising the issue has waived any right to object to the Arbitrator continuing to act as such.
4. If the Arbitrator becomes aware of such a conflict in the course of the arbitration, he or she must promptly draw it to the attention of the Parties.
5. A conflict of interest will arise when there is any good reason for the Arbitrator to feel or any Party to the arbitration may reasonably feel that there are circumstances which may compromise the Arbitrator's ability to act independently, impartially and dispassionately in the discharge of his or her duties.
6. A guiding principle should be that, if in doubt, the Arbitrator ought to disclose anything that might reasonably be thought to be relevant and, if in doubt, the Parties should ask if there is something which concerns them.
7. It is not possible to prescribe every possible situation in which impartiality may be or might reasonably be thought to be compromised so that such a conflict of interest arises. We offer the following examples of circumstances in which such a conflict of interest might exist.

- a. The Arbitrator has a close family relationship with a Party or witness or with the spouse or domestic partner of a partner or witness. In such a case, it is very unlikely that the Arbitrator should continue to act.
- b. The Arbitrator has a close friendship with a Party or with a Party's legal representatives or a witness whose evidence is likely to be controversial or significant. Such a relationship should be disclosed and, if either Party objects to the Arbitrator continuing, he or she should ordinarily stand down. The fact that the Arbitrator and a party's legal representatives are in the same chambers should be disclosed but would not ordinarily be regarded as a good reason for the Arbitrator to recuse himself/herself.
- c. Where an ongoing and substantial commercial relationship exists between the Arbitrator and a Party, it may not be appropriate for the Arbitrator to act unless the nature of that relationship is clearly understood and disclosed to the Parties and they are content that the Arbitrator should continue. For example, an Arbitrator should disclose that he 'does a lot of work for the NHSLA' or for X Insurance Co if such organisations are involved in the arbitration.
- d. Where an ongoing commercial relationship exists between the Arbitrator and the Parties' lawyers, whether there is the potential for a conflict of interest to exist will be infinitely fact-sensitive. There would not ordinarily be any reason for an Arbitrator to disclose that he had worked for the solicitors instructed by one Party or the insurers of another unless the relationship is of such substance as to give rise to a reasonable concern as to the Arbitrator's ability to remain independent and take a dispassionate view of the case. If in doubt, the Arbitrator should explain to the Parties what is the nature of the ongoing commercial relationship in question
- e. The Arbitrator feels any personal animosity towards a Party to or witness in the arbitration.
- f. The Arbitrator has any personal or commercial interest in the outcome. This would include, for example, the situation in which the Arbitrator's shareholding in a company would suffer or benefit from the outcome of the arbitration. It would be very unlikely to include a situation in which the Arbitrator has reason to know that a legal representative in on a CFA and he/she is in the same chambers.

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END