PIcArbs
Don’t litigate, arbitrate

The Guide
to Arbitrating
Personal Injury
and
Clinical Negligence
Claims
in England
and Wales
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Don’t litigate, arbitrate...

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<tr>
<th>Filing and service:</th>
<th>Litigation</th>
<th>Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All on paper</td>
<td>e-filing</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Start to end (cycle) time:</th>
<th>Slow</th>
<th>Fast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overriding objective:</td>
<td>Justice and the convenience of the courts</td>
<td>Justice</td>
</tr>
<tr>
<td>Issuing, listing and applications fees:</td>
<td>Yes - £10,000 (over £200k)</td>
<td>No, £1600 max</td>
</tr>
<tr>
<td>Parties right to choose Judge/arbitrator:</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Control over procedure:</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Multiple case management hearings:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Risk of striking out for default:</td>
<td>Moderate</td>
<td>low</td>
</tr>
<tr>
<td>Hearings &amp; trials listed on a fixed date:</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Costs budgeting:</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Assessment of costs:</td>
<td>Slow</td>
<td>Fast</td>
</tr>
</tbody>
</table>
Welcome to …

Why we use Arbitration instead of Litigation:
For decades a substantial proportion of shipping, building and commercial disputes have been resolved by arbitration under the Arbitration Acts. The first Arbitration Act in England and Wales was passed in 1698. Now arbitration is being used to resolve personal injury and clinical negligence claims in England, Wales and Scotland.

It is quicker, much more cooperative and flexible and less expensive than the civil justice system. Parties are taking back control over the process of dispute resolution. That is achieved best by a robust and fair arbitration system. The key to the justice in such a system lies in the quality of the arbitrators, so PlcArbs have gathered experienced, independent, personal injury and clinical negligence silks and senior barristers as panel arbitrators from a wide range of established chambers.

The key to procedural fairness in such a system is reliance on the Arbitration Act 1996 S.33 and Civil Procedure Rules before April 2013 where the overriding objective was solely justice between the parties.

The key to keeping the costs in such a system reasonable is for the parties to agree hourly rates in advance, thereby creating certainty and abolishing the need for lengthy costs hearings on hourly rates. The greatest costs saving are achieved by the parties cooperating in the process and through e-filing.

The benefits of arbitration are multiple. The inefficiencies, delay and court fees of the county courts and the High Court are avoided. Multiple case management hearings are avoided. There are no costs budgeting hearings, no waiting around at court for hearings to be started, no last minute adjournments, no lost trial bundles, no lost skeleton arguments, no paperwork costs, no trial “windows”. There are no Mitchell strike outs and no wasteful procedural punishments for minor infringements of timetables.

Most important of all in arbitration there is be co-operation between the parties lawyers. Co-operation is at the root of efficient handling of claims.

E-filing:
PlcArbs uses the Disputes e-filing platform to abolish GDPR issues, save paper and increase efficiency. The Claimant opens an e-filing and gathers evidence. The Defendant does the same. When the parties are ready they exchange evidence into the open e-file.
At an early stage the parties simply sign the Arbitration Agreement, choose their arbitrator from the panels and either convert their existing e-file into an arbitration or start the arbitration e-file through the e-filing system. Pleadings and orders, witness statements and medical reports are uploaded onto the system. The parties and the arbitrator have a user name and password to access all of the filed documents.

Running the procedure:

The parties then set their own timescales; e-file their evidence and settle the case. If they cannot reach agreement they simply plead out the case and progress. The Parties only contact the arbitrator when they cannot reach agreement on an issue and the arbitrator then makes a decision either on paper or at the end of a telephone hearing, or a face to face hearing in chambers or a solicitor’s office.

Neutral Evaluation:

When the evidence is complete a neutral evaluation on paper can be requested from the arbitrator and that will settle the claim if the parties accept the evaluation. The parties can arrange joint settlement meeting whenever they like (or if necessary a mediation).

Arbitration is binding:

If no settlement emerges the claim can go on to a final arbitration hearing (trial). Arbitration hearings are face to face and take place either in the arbitrator’s chambers or in the solicitors’ offices or in commercially hired rooms.

Rights of appeal from arbitrators’ decisions are restricted to points of law in the main. But the Court of Appeal rarely allows decisions on the facts to be appealed in any event.

Costs penalties for refusing to engage in ADR:

The case law has developed since Halsey [2004] in which the Court of Appeal gave guidance on when costs penalties for refusal to engage in ADR should be applied. In PFG [2013] the Court of Appeal approved a costs penalty imposed on a winning defendant for refusing to mediate. In Garritt-Critchley [2013] the winning claimant was granted indemnity costs for the defendant’s refusal to mediate. In Laporte [2015] the winning defendant was deprived of 1/3rd of his costs due to his failure to engage in ADR. In Reid [2016] the defendant failed to beat the claimant’s calderbank offer on costs and refused to mediate. Master O’Hare awarded indemnity costs to the winning party after the date of a calderbank offer due to the losing party’s refusal to mediate. In Bourne [2016] the winning defendant was deprived of 50% of his costs due to his refusal to engage in mediation. These developing rules mean that parties who refuse to arbitrate will suffer costs penalties.

Conclusions:
Despite the enormously high quality and undoubted independence of our High Court and County Court judges, a change away from litigation has already started.

It is time for the parties, the insurers and the injured to co-operate again. To litigate through arbitration. To settle with properly paid professional advice under the guidance of experienced arbitrators.

Don’t litigate, arbitrate... it is better for insurers and those injured by tortfeasors.

Notes:

Protected parties and children:

Currently protected parties should not use the PlcArbs arbitration system unless and until the courts have approved of the PlcArbs system *in advance* for protected parties and children. Settlements and Awards in arbitration currently have to be approved by the civil courts so if the claim is arbitrated the approval process will the same as that for any other settlement. But if the arbitration is not settled and goes to a full hearing even an arbitrator’s full award will need approval from the courts at present. See Rule 33 for the full detail. Without prior court approval any arbitration started for a child (including a fatal accident claim where a child is a dependent) or protected party is a nullity.

Multiple defendant cases may still need to be litigated if one or more of the defendants do not consent to arbitration.

PlcArbs, London
Is Arbitration the same as mediation?

No, different. Arbitration is binding, mediation is not.

Is Arbitration similar to civil litigation?

Yes. Arbitration is very similar to civil litigation. The parties use both solicitors and barristers to represent them. The “claim” is commenced and pleaded out between the parties using e-filing. Directions are agreed for exchange of lay and expert evidence and documents. Interim payments can be ordered and so can disclosure. The vast majority of cases settle. If the case is not settled a trial takes place and the arbitrator will make decisions on liability, quantum and costs.

Is Arbitration different from civil litigation?

Yes. The difference is in two main areas. Firstly there is no judge used in arbitration, instead there is an arbitrator chosen by the parties. Secondly the court service is not used. Instead the parties use the PIcArbs online e-filing service, so the process is easy, fast and paperless. All of the “arbitration file” is stored on the e-filing system, the lawyers and the arbitrator have access to it whenever they like. Arbitration is much more flexible and the procedure is controlled by the parties not the courts.

Can I train my staff?

There is nothing new to know about personal injury or clinical negligence law for arbitration. The procedure for a PIcArbs arbitration is very similar to the civil litigation procedure. The pleadings are the same and directions are the same and applications are the same.

Is Arbitration simpler and more cooperative than civil litigation?

Yes. The Court Service has become slow, clogged up with multiple case management hearings and costs budgeting hearings and less focussed on justice between the parties than it is on its own convenience. It is unlikely that the Court will offer e-filing or e-service any year soon for personal injury claims. Further funding cuts in the court service are still taking place.

In the Court system you cannot chose your judge and you are stuck with the new overriding objective which raises the interests of the courts to the same level or higher than justice between the parties.

In arbitration justice between the parties is the only objective and the parties control the directions and the speed of the process. Now that most PI and clinical negligence claims are funded by CFAs there is pressure on claimant lawyers to complete the claim as quickly as possible so that they can receive payment of their fees as well as the damages for the claimant. But if defendants or claimants delay arbitrations the disadvantaged party can apply for an unless order.
from the arbitrator and if default continues the arbitrator can strike out the claim or the defence so the same penalties are available but are applied to counteract persistent default.


**What happens in relation to costs?**

Normal costs orders are made. The costs follow the event. QOCS applies in PlcArbs arbitrations so claimants are protected if they lose. If the case settles the parties will agree the costs order. If the arbitration goes to trial the arbitrator will make a costs order which will usually follow the event. Part 36 of the CPR applies to PlcArbs arbitrations.

If the parties cannot agree the amount of costs the parties can issue an application in the High Court for the costs to be assessed. However the better route is to arbitrate the costs: PlcArbs and CADR (Costs ADR, see www.costs-adr.com) have collaborated to create an end to end arbitration service. Once you have completed your PlcArbs arbitration you simply arbitrate the costs. The CADR panel of costs arbitrators includes ex-judiciary: Master Hurst and Master Colin Campbell, and current Queen’s Counsel: Nicholas Bacon QC, Simon Browne QC, Ben Williams QC. This process is faster and less cumbersome. There are two options for such arbitrations: one with an oral hearing and the second without which will be less expensive, both will involve a bill of costs and points of reply. The process takes 3 months to complete.

**What about fixed costs?**

When fixed costs are imposed in civil litigation on the intermediate-track they will create a powerful inducement for parties to use arbitration. In arbitration claimants are able to focus their fixed fees on gathering evidence rather than multiple costly permission applications before interlocutory judges in the civil courts. Co-operation reduces the procedural costs and allows parties to focus energy on evidence. Insurers will gain the advantage of no court fees; reduced paperwork; reduced legal fees and earlier settlement.

**So how do I actually start an arbitration?**

The parties just take the PlcArbs form of Arbitration Agreement and sign it. The parties can agree their lawyers and experts hourly rates. Both lawyers register on the e-filing system.

Then to start the arbitration the Claimant’s lawyers fill in the online form to “Start the Arbitration” and upload a Summary of the Claim (a short summary of liability and quantum) and pay the commencement fee. This notice starts the arbitration and ends the limitation period.

Then PlcArbs will appoint a panel arbitrator (if the parties themselves have not actually chosen who the arbitrator should be) and notice of appointment is given to the parties.
One arbitration is started for each separately represented claimant. Two or more arbitrations can be linked later and tried together after commencement.

**Can I just negotiate the claim?**

Yes: the parties can then choose either to stay the claim and negotiate it by e-filing their evidence and holding settlement negotiations.

Alternatively the defendant can upload a Response (defence) and the arbitration moves on in the normal way. Once the pleadings are finished the parties agree the directions which they want and gather and serve their evidence by uploading it onto the e-filing site.

**How does an arbitration settle?**

Once the evidence is complete the parties should request the arbitrator to provide a Neutral Evaluation of the issues. In many cases this will settle the arbitration and substantial costs savings will be achieved. If the case does not settle then the parties can go on to a JSM. Calderbank offers (just like part 36 offers) can be made and accepted as normal.

**How does an arbitration end?**

95% of PlcArbs arbitrations are settled. If not the case will go to trial in front of the arbitrator. Any rooms can be used for the trial, often the solicitors offices are used. When the award is given by the arbitrator the case will be over. The appeal rights are limited to procedural irregularities and errors of law.
SUMMARY OF
PlcArbs ARBITRATION SERVICE

1. **The Personal Injury and Clinical Negligence claims arbitration service is designed for Intermediate-track and multi-track claims.**

2. **Statute:** Under the Arbitration Act 1996.

3. **Procedural Rules:** Guided by the CPR mainly but: *no Mitchell* strike outs and *no costs budgeting* and no multiple applications for permission for every step in the action. The only objective is justice between the parties not the convenience of the court or Arbitrator.

4. **Arbitration Agreement:** The parties sign an arbitration agreement in PlcArbs format amended as they wish.

5. **Stay:** The parties agree no Court proceedings will be started and any extant action stayed save for the purpose of enforcing the arbitration agreement and the award and for approval if C lacks capacity.

6. **Limitation:** 3 years. Starting the arbitration stops the limitation period.

7. **Paperless:** The Arbitration process is paperless. Started and filed online through PlcArbs secure and simple e-filing system. All pleadings and orders and correspondence with arbitrator and witness statements and expert reports and disclosure are filed and served online. Substantial costs savings are achieved. Hard copy bundles can be delivered to the arbitrator for final or interlocutory hearings if the parties so desire but online bundles are generally used. The parties register and have user names and passwords. So do the arbitrator and counsel. All have quick internet access to the whole online file.

8. **Neutral Evaluation:** The parties can agree to ask the arbitrator (or another PlcArbs 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.

9. **Mediation:** The parties can mediate the claim at any stage.

10. **Confidentiality:** the rules make the arbitration confidential unless the parties decide otherwise. The standard form agreement contains a clause allowing the award to be published in an anonymised form on Lawtel etc.

11. **Budgets:** There is no cost budgeting. The parties must inform their arbitrator and the opposition of the total base costs plus disbursements quarterly.

12. **Arbitrators:** The parties can choose their own arbitrator or use a PlcArbs arbitrator from one of the panels. A QC for cases over £250,000. For cases between £25,000 and £249,999 the PlcArbs junior barrister panel is provided. All arbitrators are paid at set hourly rates during the course of the arbitration. The parties share the costs 50/50 until the end. Qualifications: arbitrators must be practising PI/Clin neg silks or juniors over 15 years experience in
established sets with clerks. All PlcArbs panel arbitrators must complete a recognised course run by PlcArbs.

13. **Court fees:** There are no Court fees.

14. **Hearings:** Most hearings will be by e-mail or telephone. Arbitration final hearings will be in the arbitrator’s chambers or at the solicitors’ offices or in commercial rented accommodation. The parties hold an account at the end.

15. **Costs** Normal costs orders are made between parties, the loser pays.
   - If in future the MoJ and the Courts fix costs on the multi-track for any cases, those same fixed costs will be recoverable in PlcArbs arbitrations.
   - For all other multi-track cases the parties can agree the recoverable hourly rates for solicitors, counsel and experts at the start of the arbitration or leave them for assessment.
   - Lawyers hourly rates should be 10% lower than the usual civil litigation hourly rates.
   - Defendant’s costs: Claimant’s liability to pay the Defendant’s costs is capped at 80% of the total damages recovered and QOCS apply.
   - CFAs are used as normal: LASPO CFAs or DBAs.
   - ATE premiums: the same rules apply as with civil proceedings (at present only some ATE premiums are recoverable in clin neg cases).
   - Paperless e-filing produces costs savings.
   - CPR Part 36 applies to PlcArbs arbitrations.

16. **Administration fees:** The fee for commencement of a PlcArbs arbitration is £1,600 + VAT and covers

17. **Filing fees:** None.

18. **Payment of arbitrators:** the parties are jointly liable and pay the arbitrator throughout the arbitration on submission of arbitrator’s fee note. Account between the parties at the end of the arbitration.

**The ADVANTAGES FOR CLAIMANTS & CLAIMANT LAWYERS**

- Reduced cycle times, faster payment of damages and costs.
- All decisions taken by experienced PI/Clin Neg QC or barrister not District Judges or Circuit Judges with little/no PI/Clin neg experience.
- Certainty over which arbitrator will decide the whole of the case.
- Speed: Claimant lawyers will recover their costs faster.
- Control over procedure.
- Increased co-operation.
- Simplicity and flexibility of procedure.
• Privacy.
• Paperless e-filing and serving and communication with arbitrator –costs savings.
• Early neutral evaluation – quicker resolution.
• No Mitchell strike outs for procedural default – time and costs saving.
• No 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 hourly rates recovered.
• Cap on Defendants costs taken from damages at 80%.
• No court fees to pay.
• No delays caused by courts.

ADVANTAGES FOR DEFENDANTS AND INSURERS

• Reduced costs.
• All decisions taken by experienced QC or barrister not District Judges or Circuit Judges with no PI experience.
• Certainty over which arbitrator will decide the whole of the case.
• Speed.
• Control over procedure.
• Simplicity and flexibility of procedure.
• Paperless e-filing and 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.
• C must provide updated figures for base costs plus disbursements quarterly.
• Certainly over hourly rates payable to Claimant lawyers.
• Reduced Claimant lawyers’ hourly rates.
• Defendants costs recoverable from damages up to 80%.
• No court fees to pay.
• No delays cause by the courts.
• Less risk of professional negligence insurance claims.
• Very limited appeals and appeal costs.
Summary:
There is a growing body of case law showing that costs sanctions are imposed on Defendants for refusing to enter ADR after it has been offered.

The case law has developed since Halsey [2004] in which the Court of Appeal gave guidance on when costs penalties for refusal to engage in ADR should be applied. In PFG [2013] the Court of Appeal approved a costs penalty imposed on a winning defendant for refusing to mediate. In Garritt-Critchley [2013] the winning claimant was granted indemnity costs for the defendants refusal to mediate. In Laporte [2015] the winning defendant was deprived of 1/3rd of his costs due to his failure to engage in ADR. In Bourne [2016] the winning defendant was deprived of 50% of his costs due to his refusal to engage in mediation. In Reid [2016] the defendant failed to beat the claimant’s calderbank offer on costs and refused to mediate. Master O’Hare awarded indemnity costs to the winning due to the losing party’s refusal to mediate.

Pre-action protocols:
The PAPs encourage ADR and warn of costs penalties for refusal and silence. The Clinical Negligence PAP states:

“5 ALTERNATIVE DISPUTE RESOLUTION

5.1 Litigation should be a last resort. As part of this Protocol, the parties should consider whether negotiation or some other form of alternative dispute resolution (‘ADR’) might enable them to resolve their dispute without commencing proceedings.

5.2 Some of the options for resolving disputes without commencing proceedings are—

(a) discussion and negotiation (which may or may not include making Part 36 Offers or providing an explanation and/or apology)

(b) mediation, a third party facilitating a resolution ;

(c) arbitration, a third party deciding the dispute; 

(d) early neutral evaluation, a third party giving an informed opinion on the dispute; and

(e) Ombudsmen schemes.

5.3 ...

5.4 If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR, but a party’s silence in response to an invitation to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.”

The Personal Injury PAP states:
“9. Alternative Dispute Resolution

9.1 Litigation should be a last resort. As part of this Protocol, the parties should consider whether negotiation or some other form of Alternative Dispute Resolution (“ADR”) might enable them to resolve their dispute without commencing proceedings.

9.1.2 Some of the options for resolving disputes without commencing proceedings are—
(a) discussions and negotiation (which may or may not include making Part 36 Offers or providing an explanation and/or apology);
(b) mediation, a third party facilitating a resolution;
(c) arbitration, a third party deciding the dispute; and
(d) early neutral evaluation, a third party giving an informed opinion on the dispute.

9.1.3 If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR but unreasonable refusal to consider ADR will be taken into account by the court when deciding who bears the costs of the proceedings.”

Offers to arbitrate:

Lawyers for claimants and defendants are now inviting each other to arbitrate and warning of the costs penalties for failing to do agree to do so.

Claimant lawyers propose arbitration to the NHSLA, the MIB and Insurers to arbitrate claims instead of litigating. Where this is done a copy of the PlcArbs standard form Arbitration Agreement is filled in and sent to the insurer with the Claimant’s lawyers suggested fixed recoverable hourly rates. Insurers and defendant lawyers then negotiate the rates and sign the agreement. Insurers are also proposing arbitration to claimant lawyers.

Costs sanctions for refusal and silence:

If the claimant, the NHSLA, the MIB or the insurers refuse to agree to arbitration, and in law silence is taken as failing to engage in ADR, then costs sanctions will probably follow whether the refuser wins or loses.

Per Master O’Hare in Reid: “If the party unwilling to mediate is the losing party, the normal sanction is an order to pay the winner’s costs on the indemnity basis, and that means that they will have to pay their opponent’s costs even if those costs are not proportionate to what was at stake. This penalty is imposed because a court wants to show its disapproval of their conduct. I do disapprove of this defendant’s conduct but only as from the date they are likely to have received the July offer to mediate.”
Average Costs Savings

[1] CASES – £100,000 to £249,999 - settled
The savings involved in arbitrating multi-track cases valued at between £100,000 and £249,999 are between £20,000 and £50,000 per case. Our Junior barrister panel of arbitrators manage these cases.

When the courts do introduce fixed costs on the multi-track then the recoverable fees in PlcArbs arbitrations will be exactly the same. The savings for losing defendants will be in court fees, through e-filing and e-service and through lawyers costs reduction through co-operation. The benefits for claimants will be that their lawyers will be able to focus the fixed fees on evidence gathering rather than multiple permission applications, there are no court fees to pay, throughput will be faster and the system is paperless.

[2] FOR CASES OVER £250,000 – Settled @ JSM
Set out below are the estimated usual costs savings for parties who chose arbitration to resolve personal injury or clinical negligence claims rather than litigation issued through the civil courts in England and Wales and settle at a JSM or ENE.
For each multi track case about £70,000 should be saved.

A: Court fees saved:

<table>
<thead>
<tr>
<th>Item</th>
<th>Fee: £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuing fee:</td>
<td>£10,000</td>
</tr>
<tr>
<td>2 Applications on notice</td>
<td>£510</td>
</tr>
<tr>
<td><strong>Total A</strong></td>
<td><strong>£10,510</strong></td>
</tr>
</tbody>
</table>

B: Claimant’s costs saved:

B.1 Communicating with 1 Defendant on paper, instructing experts, copying, printing and posting

<table>
<thead>
<tr>
<th>Item</th>
<th>detail</th>
<th>Estimated cost of printing, serving and filing per party</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 pleadings</td>
<td>10 pages each, 1 Def, each: 10 pages x 20p per page = 200p + 63 p stamp + 2p per</td>
<td>£30.30</td>
</tr>
<tr>
<td>Description</td>
<td>Calculation</td>
<td>Cost</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Envelope + secretarial time</td>
<td>0.5 hour = £12.50, total: £15.15 x 2</td>
<td>£305</td>
</tr>
<tr>
<td>100 inter parties letters</td>
<td>each 2 pages x 20ppp = 40p + 63p stamp + 2p envelope + 10 mins sec time each for printing, folding, signing and enveloping and post room = £2¹, total £3.05 each x 100 =</td>
<td>£14.60</td>
</tr>
<tr>
<td>4 witness statements</td>
<td>5 pages each @ 20ppp = £1 + 63p stamp + 2p envelope + 10 mins secretarial time each for printing, folding, signing and enveloping and post room = £2, total: £3.65 x 4 =</td>
<td>£1,500</td>
</tr>
<tr>
<td>5 medical reports</td>
<td>Instructing experts: Send instruction letter with bundle of medical notes and witness statements. Say 3 lever arch files with 500 pages in each: 1500 pages x 20ppp = £300 x 5 experts:</td>
<td>£326.05</td>
</tr>
<tr>
<td></td>
<td>Printing and posting reports to other side: 20 pages each @ 20ppp = £4 + 63p post + 2p per envelope + 10 mins sec time each for printing, folding, signing and enveloping and post room = £2, total: £6.65 x 5 =</td>
<td>£208.05</td>
</tr>
<tr>
<td>Disclosure bundles</td>
<td>medical notes, 3 lever arch files with 500 pages in each @ 20ppp = £100 x 3 = £300 + index cards @ £5 per file = £15, + DX bag 5p + DX cost of £1 plus 3 lever arch file cost £2 each = £6 + 20 mins secretarial time each for printing, hole punching, inserting and enveloping and post room £4, total:</td>
<td>£326.05</td>
</tr>
<tr>
<td></td>
<td>Wage slips, personnel file, pension, receipts, expenses etc 2 lever arch files with 500 pages in each @ 20ppp = £100 x 2 = £200 + index cards: £1 each x 2 = £2 + DX bag 5 p + DX cost of £1 plus 2 lever arch file cost £2 each = £4 + 15 mins secretarial time each for printing, hole punching, inserting and enveloping and post room £3, total:</td>
<td>£208.05</td>
</tr>
</tbody>
</table>

¹ Assume secretary paid £26,000 gpa.

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The Guide to the Personal Injury Claims Arbitration Service:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>20 pages x 20ppp = £4, + post 63p + envelope 2p + + 10 mins secretarial time each for printing, folding, signing and enveloping and post room = £2, total = <strong>£6.68</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Amended schedule and pleading</td>
<td>**£15.15 + **£6.68 = <strong>£21.83</strong></td>
</tr>
<tr>
<td>Fee earner's time serving other party</td>
<td>e-filing rather than paper serving, pleadings, witness statements, schedule, disclosure documents, say 2 hour @ £250 ph²</td>
</tr>
<tr>
<td>Total B1: for serving 1 Defendant</td>
<td><strong>£2,945.76</strong></td>
</tr>
</tbody>
</table>

**B.2: Court filing and communication on paper: costs of copying, printing and posting**

<table>
<thead>
<tr>
<th>Communication with court</th>
<th>20 letters: each 2 pages each @ 20ppp = £4, + envelope = 1p, + stamp @ 63p + 5 mins sec time each for printing, folding, signing and enveloping and post room = £1, total per letter: <strong>£5.64</strong> x 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing Pleadings</td>
<td><strong>£5.15 x 2</strong></td>
</tr>
<tr>
<td>Filing Witness statements</td>
<td><strong>£3.65 x 4</strong></td>
</tr>
<tr>
<td>Filing Medical Reports</td>
<td><strong>£6.65 x 5</strong> =</td>
</tr>
<tr>
<td>Filing Schedule</td>
<td><strong>£6.68</strong></td>
</tr>
<tr>
<td>Filing Amended pleading and schedule</td>
<td><strong>£15.15 + £6.68 =</strong></td>
</tr>
<tr>
<td>Filing Disclosure bundles</td>
<td>Medical notes + other disclosure <strong>£326.05 + £208.05</strong></td>
</tr>
<tr>
<td>Total B2: for filing at court</td>
<td><strong>£753.56</strong></td>
</tr>
</tbody>
</table>

² Assuming a fee earner charging this hourly rate.
## B.3: Instructing Counsel on paper: costs of copying, printing and posting

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 sets of instructions to counsel</td>
<td>3 lever arch files each, 500 pages @ 20ppp = £100 x 3 = £300, + 3 lever arch file @ £2.50 each = £7.50, plus dx bag 5p, plus DX charges £2, + index cards @ £1 per file = £3, + 20 mins secretarial time each for printing, hole punching, inserting and enveloping and post room £4. Total= £316.55 x 4 sets</td>
<td>£1,266.20</td>
</tr>
</tbody>
</table>

## B.4: Legal Costs of budgeting + applications + CMCs

<table>
<thead>
<tr>
<th>Type of Cost</th>
<th>Calculation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No costs budgeting:</td>
<td>legal fees of 1 party solicitor + Counsel + Costs draftsperson for costs case management hearing: £14,000</td>
<td>£14,000</td>
</tr>
<tr>
<td>3 CMCs/Mitchell strike out/enforcement/relief/extension applications</td>
<td>Solicitors and counsels legal fees of £7,000 per CMC/application, £7,000 x 3 = £21,000</td>
<td>£21,000</td>
</tr>
<tr>
<td><strong>Total of B4</strong></td>
<td></td>
<td>£35,000.00</td>
</tr>
<tr>
<td><strong>Total of B1-B4:</strong></td>
<td></td>
<td>£39,965.52</td>
</tr>
</tbody>
</table>

## C: Defendants costs saved:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1-4</td>
<td>Like for like with B1-4 (but half the legal costs)</td>
</tr>
</tbody>
</table>

## D: Saved legal fees incurred by Claimant and Defendant due to cooperation

Estimated total fees for Claimant and Defendant: £200,000.  
A 10% reduction for cooperation saves:  
<table>
<thead>
<tr>
<th>Cost</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£20,000</td>
</tr>
</tbody>
</table>

## E: Reduced disputes on costs assessment

Estimated reduction due to e-filing and using Costs ADR  
<table>
<thead>
<tr>
<th>Cost</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£5,000</td>
</tr>
</tbody>
</table>

**Total A-E:**  
<table>
<thead>
<tr>
<th>Cost</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£95,458</td>
</tr>
</tbody>
</table>

### Conclusions:

The estimated total fees and costs incurred by two parties in civil litigation on items which should be saved using the PlcArbs arbitration system is set out above at items A-E. Total cost = **£95,458**

Compared with like for like costs of cooperative arbitration with e-filing and no paper:

- **Commencement Fee:** £1,600;
- **Arbitrators fees of 3 directions hearings (3 hours preparation and 1 hour hearings, parties write the order = 4 x £375**
The Guide to the Personal Injury Claims Arbitration Service:

- £1,500 \times 3 = £4,500;
- One ENE:
  (6 hours preparation and 3 hours writing the evaluation
  \Rightarrow 9 \times £375 = £3,375)

Total cost: £9,475

Total estimated saving: £95,458 - £9,475 = £85,983
### Flowchart of PIcArbs Arbitrations

<table>
<thead>
<tr>
<th>Event</th>
<th>Comment</th>
<th>Arbitrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tortious event</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solicitors instructed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PAP Letter of claim</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PAP completed</td>
<td>Issues remain</td>
<td></td>
</tr>
<tr>
<td>Propose PIcArbs Arbitration</td>
<td>Use PIcArbs proposal letter</td>
<td></td>
</tr>
<tr>
<td>Sign PIcArbs Arbitration Agreement</td>
<td>Agree hourly rates</td>
<td></td>
</tr>
<tr>
<td>Register on PIcArbs efiling system</td>
<td>Free</td>
<td></td>
</tr>
<tr>
<td>e-file signed Arbitration Agreement and</td>
<td>Limitation stops running &amp; pay £1600 + VAT</td>
<td>Arbitrator appointed within 28 days Arbitrator signs acceptance of appointment</td>
</tr>
<tr>
<td>Summary of Claim, request to Start the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>arbitration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>STAY THE ARBITRATION BY AGREEMENT</td>
<td>e-file evidence and schedules, negotiate settlement with or without neutral evaluation</td>
<td>Nothing to do</td>
</tr>
<tr>
<td>If the case does not settle, lift the stay</td>
<td>Within 14 days</td>
<td></td>
</tr>
<tr>
<td>and e-file Response of defendant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e-file Statement of Claim and Schedule</td>
<td>Within 30 or just rely on Summary filed earlier</td>
<td></td>
</tr>
<tr>
<td>e-file Defence and Counter Schedule</td>
<td>Within 30 days of service of Statement of Claim or just rely on Response filed earlier</td>
<td></td>
</tr>
<tr>
<td>e-file proposed directions</td>
<td>When you choose Agree directions</td>
<td>If there is a dispute emails the Arbitrator and ask for the directions to be ordered. Hearing either in writing or on telephone. Order made.</td>
</tr>
<tr>
<td>Gather evidence</td>
<td>In accordance with directions</td>
<td></td>
</tr>
<tr>
<td>e-file evidence</td>
<td></td>
<td>If a party breaches the directions, e-file a complaint to the Arbitrator and ask for an Unless Order. Hearing either in writing or on telephone or face to face in Arbitrator’s chambers. Unless Order made</td>
</tr>
<tr>
<td>e-file Schedule</td>
<td>In accordance with directions</td>
<td></td>
</tr>
<tr>
<td>e-file Counter Schedule</td>
<td>In accordance with directions</td>
<td></td>
</tr>
<tr>
<td>Mediate Issues?</td>
<td>Contact Trust Mediation</td>
<td></td>
</tr>
<tr>
<td>e-file application for interim payment</td>
<td>By consent if possible</td>
<td>If payment is not agreed then e-file application. Phone or paper hearing or face to face in Arbitrators chambers. Order made.</td>
</tr>
<tr>
<td>e-file request for NE</td>
<td>By consent if possible</td>
<td>Arbitrator or Neutral Evaluator reads online file and any written representations and gives Early Neutral Evaluation.</td>
</tr>
<tr>
<td>NE from Arbitrator or Neutral Evaluator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim may settle here</td>
<td>If the Parties do not reach agreement after the ENE then agree directions for trial</td>
<td></td>
</tr>
<tr>
<td>Gather further evidence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e-file amended Schedule and further evidence</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Guide to the Personal Injury Claims Arbitration Service:

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>e-file amended Counter Schedule and further evidence</strong></td>
<td>JSM: The parties will reach agreement in 95% of Claims</td>
</tr>
<tr>
<td><strong>Ask Arbitrator to turn consent agreement into consent award</strong></td>
<td>Consent Award made by email</td>
</tr>
<tr>
<td><strong>Trial</strong></td>
<td>If the parties do not reach agreement at the ENE or JSM go to trial. Hearing in solicitors rooms or counsels chambers or hired rooms. Say 3 days of evidence and submissions</td>
</tr>
<tr>
<td><strong>Award</strong></td>
<td>Pay Arbitrator in advance for 1 days reading and 3 days sitting at £375 ph</td>
</tr>
<tr>
<td><strong>Within 28 days of end of hearing</strong></td>
<td>Award made by Arbitrator in writing. Costs award made.</td>
</tr>
<tr>
<td><strong>COSTS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Start CADR Costs Arbitration</strong></td>
<td>Pat £600 + VAT issuing fee. Choose written arbitration or full hearing arbitration</td>
</tr>
<tr>
<td><strong>e-file Bill of Costs</strong></td>
<td>28 days after Award</td>
</tr>
<tr>
<td><strong>e-file Points of Dispute</strong></td>
<td>28 days after Bill of Costs</td>
</tr>
<tr>
<td><strong>Agree directions</strong></td>
<td>By consent</td>
</tr>
<tr>
<td><strong>e-file evidence</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ENE</strong></td>
<td>By costs Arbitrator Suggested award by costs Arbitrator</td>
</tr>
<tr>
<td><strong>Hearing</strong></td>
<td>Before costs Arbitrator Costs award</td>
</tr>
</tbody>
</table>
STANDARD FORM LETTER PROPOSING ARBITRATION

sent by Claimant

To: name of Defendant’s solicitors

Dear *

Re: Claimant v Defendant, proposal to arbitrate the issues

We have received the pre-action protocol response from your firm in this case and it is clear that ** liability, causation and quantum remain in dispute.

Pursuant to **clause 5 of the Clinical Negligence PAP/**clause 9 of the Personal Injury PAP we have instructions to propose to arbitrate the issues using the PIcARBS system instead of litigating the issues.

Arbitration of the issues will save your clients and their insurers court fees and legal costs and will be more cooperative and efficient. Our client will recover his/her damages earlier and will endure a less combative procedure for doing so.

We also propose arbitrating the costs through CADR at the end of the determination or settlement of the substantive issues.

We enclose a copy of our firm’s standard form of PIcARBS Arbitration Agreement completed for this case with the recoverable hourly rates which we propose (at 10% below civil action rates). We can still arbitrate this case even if you wish to leave the hourly rates at large for assessment.

We invite you to agree to arbitrate and in addition to agree our hourly rates. In any event please respond to this proposal within 14 days.

If you fail to accept this proposal or ignore it or refuse it without justifiable, reasonable and clear reasons, we will seek an indemnity costs order in the civil proceedings if the claimants succeeds and we will seek to reduce your costs by 1/3rd if the defendants wins. The claimant will rely on Halsey v Milton Keynes NHS Trust [2004] EWCA Civ 576 and the subsequent case law including Reid v Buckinghamshire NHS Trust [2015] EWHC B21 and Laporte v Commissioner of Police [2015].

Yours Sincerely
STANDARD FORM LETTER PROPOSING ARBITRATION

sent by insurers/defendants

To: name of Claimant’s solicitors

Dear *

Re: Claimant v Defendant, proposal to arbitrate the issues

We have now completed the pre-action protocol in this case and it is clear that **liability, causation and quantum remain in dispute.

Pursuant to **clause 5 of the Clinical Negligence PAP/**clause 9 of the Personal Injury PAP we have instructions to propose to arbitrate the issues using the PlcARBS system.

Arbitration of the issues will save your clients and/or our insurers: court fees and legal costs and will be more cooperative and efficient. Should he/she succeed your client will recover his/her damages earlier and will endure a less combative procedure for doing so. Should our insurer clients win, the legal costs both they and you will pay will probably be lower.

We also propose arbitrating the costs through CADR at the end of the determination or settlement of the substantive issues.

We enclose a copy of our firm’s standard form of PlcARBS Arbitration Agreement completed for this case with the recoverable hourly rates which we propose (at **10% below civil action rates). We can still arbitrate this case even if you wish to leave the hourly rates at large for assessment.

We invite you to agree to arbitrate and in addition to agree our hourly rates. In any event please response to this proposal within 14 days.

If you fail to accept this proposal or ignore it or refuse it without justifiable, reasonable and clear reasons, we will seek an indemnity costs order in the civil proceedings if the defendant succeeds and we will seek to reduce your costs by 1/3rd if the claimant wins. The defendant will rely on *Halsey v Milton Keynes NHS Trust [2004] EWCA Civ 576* and the subsequent case law including *Reid v Buckinghamshire NHS Trust [2015] EWHC B21* and *Laporte v Commissioner of Police [2015]*.

Yours Sincerely
Standard Form Arbitration Agreement

BETWEEN

- Claimant

and

- Defendant

Arbitration Agreement

Please fill in the parts highlighted in yellow

1. The parties to this agreement (and their representatives) are:

   The Claimant: ...........................................................................................................; a party
   lawyer Mr/Miss/Mrs: ..............................................................................................
   of the legal firm/LPP: ............................................................................................
   address: ..............................................................................................................
   Ref: .....................................................................................................................
   Email address (for service): ................................................................................
   and

   The Defendant: ....................................................................................................; a party
   lawyer Mr/Miss/Mrs: ............................................................................................
   of the legal firm/LPP: ............................................................................................
   address: ..............................................................................................................
   Ref: .....................................................................................................................
   Email address (for service): ................................................................................
   Insurer: ................................................................................................................

2. The scope of the Agreement:

   2.1 The parties hereby agree to submit the following disputes, controversies, issues or claims
   to be determined by arbitration in accordance with the PIcArbs Arbitration Rules. The seat
   of the arbitration shall be London and the governing law shall be the law of England &
   Wales.

   2.2 Issues: The parties hereby agree that the issues of liability, causation and the quantum, *
   of damages (if any) arising from the events/accident which occurred to the Claimant on
   ............................................................................................................................ (hereinafter referred to as “the Accident/Events”) and all
   other related disputes, will be resolved by a binding PIcArbs Arbitration.
   * (If the governing Law is in issue please say so here)

3. The Arbitrator: (please complete relevant option):

   3.1 The parties request PIcArbs to appoint a panel Arbitrator:
   
   Tick here: QC (> £250,000) .......... Barrister (<£250,000) ............
   [NB: We recommend that you tick this box. PIcArbs panel arbitrators have a judicial college
   approach and are all trained and certified].
3.2 The Arbitrator nominated by the parties is:

Mr/Ms…………………………………………………………………………;
Email address (for access): …………………………………………………;

who has agreed to the nomination and signed a PICARBS form of acceptance of appointment.

3.3 Arbitrator’s fees: Unless otherwise agreed between the parties and the Arbitrator, the Claimant and the Defendant/s are jointly and severally liable for the Arbitrators fees during the course of the Arbitration. [If relevant, please insert any alternative arrangement here]

3.4 The agreed hourly rates for the Arbitrator/s are those published by PlcArbs from time to time.

4. Commencement:

4.1 For the purposes of Limitation periods, the arbitration is deemed to have commenced when the ‘Start an Arbitration’ page has been completed.

4.2 Unless agreed otherwise, the Claimant and the Defendant/s are jointly and severally liable for the Commencement Fee which the Claimant will pay when starting the arbitration. The Claimant’s solicitor will then send an invoice for half of the fee to the Defendant’s solicitor who will settle the same within 7 days. [If relevant, please insert any alternative arrangement here]

5. Costs:
The parties hereby agree that:

5.1 The legal costs of the arbitration recoverable by one party from another shall be assessed in accordance with the attached Schedule of Rates unless fixed recoverable costs would apply under the Civil Procedure Rules if the claim had been litigated in the civil courts, in which case the said fixed costs are the recoverable legal costs in addition to the Arbitrators fees.

5.2 Once the final costs order in this Arbitration has been made or agreed then any assessment of the costs of the Arbitration shall be resolved by:

Either:
binding CADR arbitration: Tick here: ……………
(using the PlcArbs e-filing system and CADR arbitrators)

Or:
The courts: Tick here: ……………

6. Online serving and filing and data protection:

6.1 The parties agree to use the PlcArbs online e-serving and e-filing system.

6.2 The parties Lawyers confirm that they have visited www.PlcArbs.co.uk/filing and have registered and obtained user names and passwords or will do so as soon as reasonably practicable after signing this agreement.

6.3 The parties agree that on registering for use of the PlcArbs e-filing service they will be bound by and will abide by the User Terms published on the PlcArbs website.

6.4 The parties agree that PlcArbs is permitted to hold and process the data in this Agreement and the data about the claim entered on the “fill in” forms in the e-filing system, for instance the names and addresses, telephone numbers, dates of birth of the parties and
their lawyers/insurers, the start of the arbitration and including the orders and final award made in the arbitration and the date of the end of the arbitration.

6.5 The parties understand that the PlcArbs e-filing system will store all of their e-filed documents, some containing specific identifiable health data concerned with the claim the subject of this Agreement and PlcArbs will store but will not use or process the information in these documents in any way beyond e-storage for the arbitration.

6.6 No data will be shared by PlcArbs with any person other than those registered by the parties as users for each individual arbitration and their firm administrators.

7. **Changes to the PlcArbs standard form:**
Any changes to this Arbitration Agreement shall be in writing, shall not contravene the PlcArbs Rules and shall be signed by all parties and filed via www.PlcArbs.co.uk/filing. The following clauses of this PlcArbs standard form of arbitration agreement cannot be altered: 2.1; 3.4; 4.1; 5.1; 6; 7; 8; 10; 11; 12.

8. **Binding nature of this Agreement:**
The Claimant understands and has been advised by his/her lawyers that this Arbitration Agreement is binding, that he/she has waived his/her right to a civil trial as well as all appeals save for those allowed under the Arbitration Act 1996. Similarly, the Defendant and any other parties understand and have been advised by their lawyers that this Arbitration Agreement is binding, that they have waived their right to a civil trial as well as all appeal rights save for those allowed under the Arbitration Act 1996.

9. **Confidentiality:**
[NB: Rule 30 of the PlcArbs Rules requires the parties to keep the arbitration confidential but permits awards to be published in anonymised form. If you wish to alter this Rule do so here]

10. **Authority:**
All lawyers who sign this Arbitration Agreement have the full expressed authority of their client(s) fully to bind their clients to the terms of this Arbitration Agreement.

11. **Capacity:**
11.1 The parties all have capacity to litigate.
11.2 If the Claimant does not or may not have capacity then he is represented by a Deputy/person with power of attorney appointed by the Court of Protection/OPG who has power to act on the Claimant’s behalf in this arbitration.
11.3 The Deputy/Attorney certifies that he has obtained the approval of the court to arbitrate the issues set out above.
11.4 If the Claimant is a child then he is represented by a parent or guardian who has power to act on the Claimant’s behalf.
11.5 The parent or guardian certifies that he has obtained an order from the court declaring that this agreement is for the child’s benefit (and hence is enforceable) pursuant to *Slade v Metrodent [1953]* 2 QB 112.

[NB, currently PlcArbs does not recommend putting claims by protected parties through the system. However if you wish to do so prior court approval must be sought under PlcArbs Rule 33.]
12. **Careful understanding:**
All of the individuals with capacity and deputies and litigation friends who have signed this Arbitration Agreement have: a) carefully read the entire Arbitration Agreement, b) are of sound mind, c) have had this Arbitration Agreement fully explained by their lawyers, d) fully understood its contents e) have not been pressured or coerced to enter into this Arbitration Agreement, f) believe the terms of this Agreement to be fair and, g) will be bound by all of terms of this Arbitration Agreement.

**Signature block**
Signed by .................................................... (Lawyer for the Claimant)
Dated: .............................
AND
Signed by .................................................... (Lawyer for the Defendant)
Dated: .............................
OR
Signed by .................................................... (Insurer for the Defendant with the subrogated right to sign for the Defendant)
Dated: .............................
AND
Signed by .................................................... (The Arbitrator [if chosen])
Dated: .............................

___________________________

*If the parties can reach agreement on recoverable hourly rates set these out in the schedule attached hereto*
Effective from January 2017. These rates are agreed between the parties as the recoverable rates for legal costs. All fees and charges which are not agreed will be assessed at the end of the arbitration.

**PARTIES AGREED RECOVERABLE HOURLY RATES/FEES:**

<table>
<thead>
<tr>
<th>Experts</th>
<th>Claimant lawyer’s normal rates for civil litigation</th>
<th>Claimant’s agreed rates for this arbitration (10% less)</th>
<th>Defendant’s rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical experts (consultants)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Employment Experts</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Care/OT Experts</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Physiotherapy Experts</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Speech and Language Experts</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Engineering expert</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>RTA reconstruction expert</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td><strong>Lawyers</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solicitor (over 15 years experience)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Solicitor (8-14 years experience)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Assistant Sol (under 7 years exp)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Barrister (QC)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Senior junior (over 15 years call)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Junior (under 15 years call)</td>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

**PlcArbs Fees** *(not capable of reduction by the parties)*
- PlcArbs commencement fee: £1,600 + VAT
- PlcArbs arbitrator complaint fee: £1,000 + VAT

**PlcArbs ARBITRATOR’S RATES** *(not capable of reduction by the parties and recoverable in addition to the legal costs, all + VAT)*
- Arbitrator’s work: QC: £375ph; Junior: £250ph;

**Maximum cancellation fee for face to face hearings only** *(no cancellation fee for telephone hearings)*
- Case settled &/or hearing cancelled over 2 months b4: £0 per diary day 0
- “ hearing cancelled 22 dys – 2 months b4: £750 per diary day £500
- “ hearing cancelled 21 - 15 days b4: £1,000 per diary day £750
- “ hearing cancelled 14 - 8 days b4: £2,000 per diary day £1,250
- “ hearing cancelled 7 days or less b4: £3,000 per diary day £2,000 + reading time

**Annual review** Unless the parties otherwise agree, hourly rates increase/decrease by RPI on the anniversary of the start of the arbitration and each year thereafter.

**CADR Costs arbitration Fees:**
- Issuing fee for CADR arbitration: £600 + VAT
- CADR Level 1 arbitrators fees: see CADR website.
PlcArbs Arbitration Rules

V37 Effective from 28th March 2019

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   B. The Agreement to Arbitrate
   C. Online e-filing, Registering, Document Storage and Communication

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Preliminary Matters

A. Pre-action Protocols

Before commencing a PlcArbs Arbitration the Parties should comply with the relevant personal injury or clinical negligence protocol. If any Party to a PlcArbs Arbitration fails to comply with the relevant protocol this may be taken into account by the Arbitrator when making any costs decision in the Arbitration.

B. The Agreement to Arbitrate and Fees

Where any actual or potential Parties to any actual or potential personal injuries or clinical negligence dispute or claim wish to resolve their dispute or claim by a PlcArbs arbitration they should:

[1] agree in writing to resolve their issues by an arbitration under the PlcArbs Rules or by a “PlcArbs arbitration”; and

[2] download the PlcArbs standard form of arbitration agreement from the PlcArbs website: www.PlcArbs.co.uk; and

[3] negotiate the terms of their arbitration agreement and then both sign it.

No PlcArbs arbitration can start without the Parties first having signed a PlcArbs arbitration agreement form (whether amended or not) and that agreement will set out the Parties lawyers email addresses for service.

Where the Parties have agreed in writing to resolve their claim or dispute by an arbitration under the PlcArbs Rules or by a PlcArbs arbitration the Parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the following rules (“the PlcArbs Rules”) or such amended rules as PlcArbs publish from time to time on the PlcArbs website.

If the Parties fail to reach agreement on recoverable hourly rates then the rates will be assessed after the arbitration is settled or the award is made. The Parties cannot alter the hourly rates or the cancellation fees charged by PlcArbs Panel of Arbitrators or PlcArbs which are published from time to time at www.PlcArbs.co.uk.

C. Online e-filing, Registering, Document Storage and Communication

[1] All PlcArbs arbitrations shall be conducted through the dedicated PlcArbs e-filing/e-serving system at www.PlcArbs.co.uk/filing/.

[2] All Parties to a PlcArbs arbitration through their lawyers must visit www.PlcArbs.co.uk/filing/ and register by creating a user name and password. Insurers who are Parties or have a subrogated right to defend a claim are also entitled to access to the e-filing system.
All Arbitrators and PlcArbs Arbitrators and counsel instructed by any Party must visit www.PlcArbs.co.uk/filing/ and register by creating a user name and password.

Once an arbitration has started no document shall be sent to and no communication will take place with the PlcArbs Arbitrator save through the www.PlcArbs.co.uk/filing/ system. Save that any interlocutory or final hearing may take place in any way in which the Parties and/or the Arbitrator may chose and save as set out in [6] below.

Where any Rule set out below states that one Party should send anything to or should communicate with or serve upon another Party or the Arbitrator or the PlcArbs registrar or should file anything then the www.PlcArbs.co.uk/filing/ system must be used whether or not any PlcArbs Rule expressly states that the www.PlcArbs.co.uk/filing/ should be used.

The Parties may communicate with the Arbitrator’s clerks in any way which is expedient including directly by e-mail or telephone.

**RULES**

**Rule 1**

Starting the Arbitration, Appointment of the Arbitrator, Staying the Arbitration

**The Request to Start an Arbitration**

1.1 To start an arbitration the Claimant (or exceptionally the Defendant or an Insurer with a right of subrogation to defend a claim) must make an online request to start a PlcArbs arbitration ("the Request") to the PlcArbs Registrar ("the Registrar") at www.PlcArbs.co.uk/filing/.

(a) The online request form requires the applying Party to provide the following information: the names, addresses, telephone numbers and e-mail addresses and file references of the Parties to the arbitration and of their legal representatives and of the Arbitrator if the Parties have chosen and agreed one and of counsel to be instructed by the Parties (if known); and

(b) the online request form requires the applying Party to upload the following "accompanying documents":

- a Summary of the Claim containing a description of (1) the nature and circumstances of the Accident/events allegedly causing the personal injuries and (2) the negligence or breaches of statutory duty advanced by the Claimant against another Party to the arbitration ("the Defendant") and (3) the approximate quantum of the claim, and, if necessary, (4) any comment on matters relating to the conduct of the arbitration;

- the PlcArbs Arbitration Agreement already signed by the Parties;

- a PlcArbs Acceptance of Appointment Form signed by the chosen arbitrator, (if the Parties have chosen and agreed who the Arbitrator shall be); and

(c) the filing of the online request will make the applying Party liable to pay the Commencement Fee prescribed in the PlcArbs Schedule of Costs. An invoice will be sent by PlcArbs to the applying Party which must be paid forthwith on receipt; the
applying Party can then recover half the fee from the other Party (unless the Parties have agreed otherwise); and
(d) the filing of the Request will generate an arbitration number for the arbitration. E-mail notification of the start of the arbitration and the arbitration number will be sent simultaneously via www.PlcArbs.co.uk/filing/ to all other Parties to the arbitration.

Note: in some circumstances the Defendant/s may be the Party applying to start the arbitration. In which case the Rules above and below will be read in such a way as to cater for this.

The Appointment of an Arbitrator (from the PlcArbs Panel of Arbitrators or by the Parties)

1.2 If the Parties have chosen their arbitrator, the Party starting the arbitration will enter the Arbitrator’s email address into the online form and will e-file an Arbitration Agreement signed by the Arbitrator and e-file an Acceptance of Appointment Form signed by the Arbitrator at the start of the arbitration. If the Parties have requested the Registrar to appoint a panel arbitrator that will be done and within 28 days the Registrar will notify the Parties of the appointment and the name of their Arbitrator and the email address and the Parties shall enter the email address on the e-file thereby granting the Arbitrator access to the e-file.

Start of the PlcArbs Arbitration

1.3 The date of the e-filing of the Request to Start an Arbitration along with the Arbitration Agreement signed by both Parties shall be the date on which the arbitration is deemed to have commenced regardless of when the fee is paid.

Stay the arbitration

1.4 The Parties can stay the Arbitration by agreement at any time and continue to use the e-filing system to exchange evidence and settle the arbitration.

Rule 2

The Response

2.1 Within 14 days of receiving from the PlcArbs Registrar via www.PlcArbs.co.uk/filing/ the e-mail notifying the Defendant of the Request to Start an Arbitration and the filing of the Arbitration Agreement, the Defendant shall, through its lawyers, register at www.PlcArbs.co.uk/filing/ and shall:
(a) check and confirm on the e-file the contact details of its lawyers (solicitors and counsel) including the postal and e-mail address and telephone number; and
(b) e-file/e-serve the Response document setting out a brief summary of the defence, any admissions or denials of all or part of the claims advanced by the Claimant in the Request and setting out a summary of the facts and matters relied upon and any counterclaims advanced by the Defendant against the Claimant and including any comment in response to any statements contained in the Summary of Claim on matters relating to the conduct of the arbitration.
2.2 Failure to e-file a Response shall not preclude the Defendant from denying any claim or from advancing a counterclaim in the arbitration.

Rule 3

The Arbitrator and the Registrar

3.1 The functions of the Arbitrator under these Rules shall be performed by the arbitrator appointed by PlcArbs from the PlcArbs Panel of Arbitrators or by the arbitrator chosen and agreed and named by the Parties as the arbitrator (but only if such person is a QC/barrister over 15 years experience and has signed the PlcArbs Acceptance of Appointment form and those forms have been e-filed).

3.2 The functions of the Registrar under these Rules shall be performed by a member of the PlcArbs staff.

Rule 4

Serving documents, Notices and Time

4.1 Any notice, document or other communication that may be or is required to be given or served or filed by a Party under these Rules shall be filed and served via www.PlcArbs.co.uk/filing/.

4.2 Service is effected via www.PlcArbs.co.uk/filing/ by uploading a document to the individual arbitration file and by PlcArbs sending the other Parties by e-mail notification of the said e-filing at every Party’s lawyers’ last filed e-mail address and that e-mail address shall be the valid address for the purpose of any service or notice or other communication in the absence of any notification of a change to such address by that Party to the other Parties and to the Arbitrator via www.PlcArbs.co.uk/filing/.

4.3 For the purpose of determining the date of service of a document or notice or other communication, the document/notice/communication shall be treated as having been received on the day it was uploaded onto www.PlcArbs.co.uk/filing/ so long as this was done before 4 pm.

4.4 For the purpose of determining compliance with a time limit, a document, notice or other communication shall be treated as having been served if it is uploaded in accordance with Rules 4.1, 4.2 or 4.3 onto www.PlcArbs.co.uk/filing/.

4.5 Notwithstanding the above, any communication by one Party may be addressed to another Party (but not the Arbitrator) in the manner agreed in writing between them or in any manner ordered by the Arbitrator but no service can take place other than through the PlcArbs e-filing system.

4.6 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is sent via www.PlcArbs.co.uk/filing/. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended.
until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating that period.

4.7 The Arbitrator may at any time extend (even where the period of time has expired) or abridge any period of time prescribed under these Rules or under the Arbitration Agreement for the conduct of the arbitration, including any notice or communication to be served by one Party on any other Party.

4.8 If there is a dispute about the date of service of a document, notice or other communication the Arbitrator may ask the PIcArbs Registrar to search PIcArbs’ records and to provide a copy of the email notification sent to the Party being served.

**Rule 5**

**Arbitrator’s Conduct**

5.1 All references to an Arbitrator shall include the masculine and feminine (references to the Registrar, an expert, a witness, a Party and a legal representative shall be similarly understood).

5.2 The Arbitrator conducting an arbitration under these Rules shall be and remain at all times impartial and independent of the Parties and shall not act in the arbitration as an advocate for any Party. No Arbitrator, whether before or after appointment, shall advise any Party on the merits or outcome of the dispute save that the provision of a written neutral evaluation under these Rules is permitted.

5.3 The Arbitrator shall on appointment assume a continuing duty forthwith to disclose any actual or potential conflict of interest or other matter or circumstance that may give rise to justifiable doubts as to his impartiality or independence to all the Parties if such circumstances should arise after the date of such declaration and before the arbitration is concluded.

**Rule 6**

**The PIcArbs Panel of Arbitrators**

6.1 There is no restriction on the gender or nationality of any PIcArbs arbitrator.

6.2 All PIcArbs Panel Arbitrators shall be personal injury or clinical negligence QCs or barristers with over 15 years experience in practice at the English and Welsh Bar and working in a Chambers in England or Wales.

6.3 Any personal injuries or clinical negligence QC/barrister with over 15 years experience who wishes to become a PIcArbs Panel Arbitrator:

   (a) shall complete, sign and send to the Registrar a PIcArbs Application to join the PIcArbs Panel of Arbitrators and shall provide the information required therein; and

   (b) shall within 6 months of appointment complete the PIcArbs approved domestic arbitration course so that he/she is familiar with the Arbitration Act 1996 and the PIcArbs Rules and all relevant legislation.
6.4 After an arbitration has started in which the Parties have requested the Registrar to appoint an arbitrator from the PlcArbs Panel of Arbitrators, the Registrar will contact Panel arbitrators in rotation and offer the appointment. To accept an appointment a PlcArbs Panel arbitrator must sign and e-file an acceptance of appointment form through www.PlcArbs.co.uk/filing.

6.5 Any arbitrator proposed by the Parties who fails within a reasonable period to comply with Rules 5 and 6 will be unable to act as an arbitrator under the PlcArbs service and the PlcArbs Registrar will appoint a replacement from the PlcArbs Panel of Arbitrators.

Rule 7
Nomination of an Arbitrator by the Parties who is not on a PlcArbs Panel
7.1 The Parties may jointly nominate any person to be their Arbitrator under the PlcArbs Rules whether or not such person is on the PlcArbs Panel of Arbitrators. If the Parties wish to do so, the Request made under Rule 1 above should state the full name and contact details of the Arbitrator.

7.2 Any person chosen and agreed by the Parties who is not on the PlcArbs Panel of Arbitrators and agrees to take an appointment as an arbitrator for a PlcArbs arbitration shall:
(a) visit www.PlcArbs.co.uk/filing/ and register as an arbitrator and provide a user name (work email address) and password;
(b) provide to the PlcArbs Registrar via www.PlcArbs.co.uk/filing/ a link to his/her cv or résumé of his past and present professional positions and experience in personal injury and clinical negligence work; and
(c) complete, sign and e-file a standard PlcArbs Acceptance of Appointment form for the individual arbitration.

Disputes over nomination of Arbitrator
7.3 Where the Parties have a dispute over the nomination of an arbitrator but have signed an Arbitration Agreement for a PlcArbs arbitration then PlcArbs shall appoint the Arbitrator from the PlcArbs Panel of Arbitrators by rotation.

Rule 8
More than one claimant/defendant
8.1 Where all Claimants are represented by one firm/organisation of solicitors/lawyers only one e-file needs to be opened on the PlcArbs system. Where two or more Claimants are represented by different firms/organisations of solicitors/lawyers one e-file must be opened on the PlcArbs system for each separately represented Claimant.

8.2 Where two arbitrations are to be conjoined or heard together the “open” e-files for each and all shall be linked by PlcArbs once the Parties have made the relevant request on the PlcArbs system.
Rule 9

Expedited Arbitration

9.1 In exceptional urgency, on or after the commencement of the arbitration, any Party may apply to the Arbitrator for the expedited arbitration, including the appointment of any replacement arbitrator under Rules 10 and 11 of these Rules.

9.2 Such an application shall be made via www.PlcArbs.co.uk/filing/ in writing to the Arbitrator, and will automatically be copied to all other Parties to the arbitration and it shall set out the specific grounds for exceptional urgency in the arbitration. For instance, if the Claimant is dying and wishes to give evidence in the arbitration before his death.

9.3 The Arbitrator may, in his complete discretion, abridge or curtail any time-limit under these Rules for the arbitration, including service of the Defence and of any matters or documents adjudged to be missing from the Request.

Rule 10

Revocation of Arbitrator's Appointment

10.1 If either (a) any Arbitrator gives written notice via www.PlcArbs.co.uk/filing/ of his desire to resign as Arbitrator, or (b) any Arbitrator dies, falls seriously ill, refuses, or becomes unable or unfit to act, or (c) any Party provides via www.PlcArbs.co.uk/filing/ written Notice of Complaint to the PlcArbs Registrar along with a Complaint Fee as set out in the Schedule of fees published from time to time by PlcArbs, alleging that any Arbitrator has delayed providing responses to correspondence unreasonably or failed to deliver decisions within 28 days of hearings, then PlcArbs may (in its absolute discretion) revoke that Arbitrator's appointment and appoint another PlcArbs Arbitrator. The Registrar shall decide upon the amount of fees and expenses to be paid for the former Arbitrator's services (if any) as he may consider appropriate in all the circumstances. The defaulting Arbitrator shall accept the decision of the replacement Arbitrator on such fees.

10.2 If any Arbitrator acts in deliberate violation of the Arbitration Agreement (or these Rules) or does not act fairly and impartially as between the Parties or does not conduct or participate in the arbitration proceedings with reasonable diligence, so as to avoid unnecessary delay or expense, that Arbitrator may be considered unfit in the absolute discretion of the PlcArbs Registrar and may be removed by the PlcArbs Registrar on the application of one or both Parties.

10.3 An Arbitrator may also be challenged by any Party if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A Party may challenge an Arbitrator it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

10.4 A Party who intends to challenge an Arbitrator shall, within 15 days of becoming aware of any circumstances referred to in Rules 10.1, 10.2 or 10.3, send via www.PlcArbs.co.uk/filing/ a written Statement of the Reasons for its challenge to the Arbitrator, the PlcArbs Registrar and all other Parties and shall pay the PlcArbs Challenge
Fee set out in the Schedule of Costs published by PlcArbs from time to time. Unless the challenged Arbitrator withdraws or all other Parties agree to the challenge within 15 days of receipt of the written statement, the PlcArbs Registrar shall decide on the challenge in his absolute discretion.

Rule 11
Replacement of Arbitrators
11.1 In the event that an appointed Arbitrator is to be replaced for any reason, the PlcArbs Registrar shall have complete and unfettered discretion to decide upon the replacement from the PlcArbs Panel of Arbitrators unless the Parties agree the name of the replacement QC/barrister with over 15 years experience Arbitrator.

Rule 12
Neutral Evaluation
12.1 The Parties may at any time jointly request a neutral evaluation (NE) by the Arbitrator (or if the Parties so choose by another PlcArbs Arbitrator) on the written evidence which each Party has filed via www.PlcArbs.co.uk/filing/ before the NE.

12.2 The Arbitrator shall either:
(a) provide his NE Award within 28 days of receiving via www.PlcArbs.co.uk/filing/ the last of (1) the agreed request for NE and (2) the evidence from each Party; or
(b) notify the Parties by email through the e-filing system that he suspends his role as Arbitrator in accordance with the terms of the Arbitration Agreement during the period whilst the Neutral Evaluator is appointed and provides the NE.

12.3 If the Parties have chosen for the NE to be carried out by another Arbitrator, they shall:
(a) contact the PlcArbs Registrar for a Neutral Evaluator to be appointed either as agreed and identified by the Parties or by rotation from the PlcArbs Panel of Arbitrators; and
(b) receive from the PlcArbs Registrar within 28 days of the request, confirmation of the Neutral Evaluator’s name and email address; and
(c) as soon as is reasonably practicable, revise the access details on the online arbitration file so that the Neutral Evaluator can gain access to the file and shall ask the Neutral Evaluator to carry out the NE.

12.4 If both Parties accept the evaluation of the Neutral Evaluator then the arbitration shall be settled on that basis, save that the costs of the arbitration shall be agreed by the Parties or shall be determined by the Arbitrator.

12.5 If one or both Parties reject the evaluation of the Neutral Evaluator then the arbitration will proceed.

Rule 13
Communications between Parties and the Arbitrator
13.1 All communications between Parties and the Arbitrator and any Neutral Evaluator shall be made to the Arbitrator/Neutral Evaluator not to the PlcArbs Registrar and shall be via www.PlcArbs.co.uk/filing/.

13.2 If the Parties consider or the Arbitrator requests that paper bundles are necessary for any hearing then bundles may be sent to the Arbitrator/Neutral Evaluator in hard copy of the documents already filed and served via www.PlcArbs.co.uk/filing/.

**Rule 14**

**Conduct of the proceedings, Directions and Updates on Costs**

**Filing Agreed Directions**

14.1 The Parties may agree on the conduct of their arbitral proceedings and shall co-operate with each other and are encouraged to do so at all times. Such agreements shall be made by the Parties in writing or recorded in writing by the Arbitrator at the request of and with the authority of the Parties and must be filed and served via www.PlcArbs.co.uk/filing/ so that the Arbitrator can see the progress of the arbitration on the e-file.

**Arbitrator’s discretion**

14.2 Unless otherwise agreed by the Parties under Rule 14.1, the Arbitrator shall have the widest discretion to discharge his duties allowed under such law(s) or rules of law as the Arbitrator may determine to be applicable and at all times the Parties shall do everything necessary for the fair, efficient and expeditious conduct of the arbitration.

14.3 At all times, the Arbitrator shall:

(a) act fairly and impartially as between all Parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent; and

(b) adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and/or expense, so as to provide a fair and efficient means for the final resolution of the Parties’ dispute; and

**The Civil Procedure Rules (CPR)**

(c) take account of the principles and practices set out in the Civil Procedure Rules in so far as they may be relevant and do not conflict with the PlcArbs Rules; and

(d) in the event that the Parties make offers within the arbitration that otherwise comply with CPR Part 36, have the same powers as a Judge has under that Part; and

(e) not apply the amendments to the CPR made in April 2013 pursuant to the recommendations made by Lord Justice Jackson and thereafter relating to Costs Budgeting or “Mitchell” strike outs or the alteration of the overriding objective to take into account the convenience of the courts.

**Quarterly updates on costs etc**
(f) require the Parties to keep him (and each other) informed via the e-filing system of (1) the level of their base costs and their disbursements and (2) the progress of the arbitration once every 3 months during the arbitration.

Preliminary Meeting

14.4 30 days after the close of pleadings the Parties shall agree and file their directions for the future conduct of the arbitration. If they fail to do so the Arbitrator may encourage the Parties to attend a preliminary meeting (either on the phone or face to face). Such a meeting is not compulsory and the Parties may decide not to have any preliminary meeting and may instead draw up their arbitration directions by consent and e-file them for the Arbitrator to convert into an order for directions and the Arbitrator will do so if he considers that the directions agreed are appropriate. In the event that the Parties do not wish to take part in a meeting and still do not draw up their own agreed directions, the Arbitrator may invite written submissions and/or make such directions as appear appropriate on the material available.

14.5 At any preliminary meeting (whether it be face to face or on the telephone) all relevant matters should be discussed including all procedures, directions, disclosure, third Party disclosure by way of a court order, liability and quantum issues, evidential matters, payments on account to the arbitrator, the timing of the Joint Settlement Meetings, mediation and the NE, the timing and form of the final arbitration hearing, any interim awards and all other relevant matters. The Arbitrator may then make directions for the future conduct of the arbitration.

Rule 15

Pleadings and supporting documents

15.1 Unless the Parties have agreed otherwise under Rule 14 or the Arbitrator should determine differently under Rule 14, the Pleadings stage of the proceedings shall be as set out below.

Statement of Claim

15.2 Within 30 days of the start of the arbitration the Claimant shall e-file and serve via www.PlcArbs.co.uk/filing/ a full Statement of Claim and Schedule of Loss in the similar form as is required under the Civil Procedure Rules (CPR) setting out in sufficient detail the facts and any contentions of law on which he relies, together with the relief claimed against all other Parties. If the Summary of Claim filed with the Request was sufficient to satisfy this rule then the Claimant may elect to treat the Summary of Claim as its Statement of Claim. The Claimant must inform the Arbitrator and Defendant of that election.

Defence

15.3 Within 30 days of receipt of the Statement of Claim the Defendant shall e-file and serve via www.PlcArbs.co.uk/filing/ a full Defence to the Claim and a Counter schedule in the similar form as is required under the Civil Procedure Rules (CPR) setting out in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies and the grounds for so doing and setting out the facts and contentions of law on which it relies. Any counterclaims shall be submitted with the Defence in the same manner as claims are.
to be set out in the Statement of Claim. The Defendant may instead rely upon its Response if it is sufficiently full and contained a counter schedule in which case the Defendant shall notify the other Parties of such.

Reply
15.4 Within 14 days of receipt of the Defence, the Claimant shall (if necessary) e-file and serve via www.PlcArbs.co.uk/filing/ a Reply which, if there are any counterclaims, shall also include a Defence to Counterclaim.

15.5 If the Reply contains a Defence to Counterclaim, within 14 days of its receipt the Defendant may e-file and serve via www.PlcArbs.co.uk/filing/ a Reply.

Documents attached to Pleadings
15.6 All pleadings referred to in this Rule shall be e-filed with copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been e-filed by any Party, and (where appropriate) by any relevant samples and exhibits.

Close of Pleadings
15.7 The pleadings close on the day of the service of the Defence or the Reply, whichever is latest.

15.8 If the Defendant fails to e-file and serve a Defence or the Claimant fails to e-file a Defence to any Counterclaim, or if at any point any Party fails to avail itself of the opportunity clearly to set out its case in writing in the manner required by Rule 15 or directed by the Arbitrator, the Arbitrator may nevertheless proceed with the arbitration and make an award.

Rule 16

Seat of Arbitration, Place of Hearings, Applicable Law
16.1 The arbitration law (Lex Arbitri) applicable to all PlcArbs arbitrations shall be the law of England and Wales and hence the Arbitration Act 1996 shall apply and the seat of the arbitration shall be London.

16.2 The Arbitrator may hold hearings, telephone hearings, meetings and deliberations at any convenient geographical place in his discretion, and if elsewhere than the seat of the arbitration, the arbitration shall be treated as an arbitration conducted at the seat of the arbitration and any award as an award made at the seat of the arbitration for all purposes.

16.3 The law applicable to the contractual or non-contractual obligations which are the subject matter of the arbitration shall be the law of England and Wales unless one of the Parties raises the issue of applicable law in the arbitration agreement and/or in the pleadings, in which case the Arbitrator shall determine the applicable law to the extent required to determine the issues in the Arbitration.
Rule 17

Language of Arbitration
17.1 The language of the arbitration shall be and the arbitration proceedings are to be conducted in English.

17.2 If any document is expressed in a language other than the language(s) of the arbitration and no translation of such document is submitted by the Party relying upon the document, the Arbitrator may order that Party to submit a translation.

Rule 18

Party Representation
18.1 All Parties shall be represented by a Solicitor or a Barrister or both from the start of the pleadings stage and thereafter throughout the arbitration and at any hearing before the Arbitrator.

18.2 At any time the Arbitrator may require from any Party proof of authority granted to its representative(s) in such form as the Arbitrator may determine.

Rule 19

Hearings
19.1 Any Party which expresses a desire to that effect has the right to be heard orally before the Arbitrator on the merits of the dispute, unless the Parties have agreed in writing on a documents-only hearing or arbitration.

19.2 The Arbitrator shall fix the date, time and physical place for any telephone hearings, video or Skype hearings, meetings and final hearings in the arbitration and shall give the Parties reasonable notice thereof.

19.3 The Arbitrator may in advance of any hearing submit to the Parties a list of questions which he wishes them to answer with special attention.

19.4 All meetings and hearings shall be in private and confidential unless the Parties agree otherwise in writing.

19.5 The Arbitrator shall have the fullest authority to establish time-limits for meetings and hearings, or for any parts thereof.

Rule 20

Witnesses – lay and expert
20.1 Before any hearing and in any written directions, the Arbitrator may require any Party to give notice via www.PlcArbs.co.uk/filing/ of the identity of each witness that the Party wishes to call (including rebuttal witnesses), as well as the subject matter of that witness's
testimony, its content and its relevance to the issues in the arbitration. All witness statements should include a signed statement of truth.

20.2 The Arbitrator may also determine the time, manner and form in which such materials should be exchanged between the Parties and presented to the Arbitrator; and he has a discretion to allow, refuse, or limit the appearance of witnesses (whether witness of fact or expert witness) but should as a general rule allow Parties to call such witnesses to prove their case or to rebut the other Party’s case as they consider that they need so to do.

20.3 Subject to any order otherwise by the Arbitrator, the testimony of a witness may be presented by a Party in written form, either as a signed statement or as a sworn affidavit.

20.4 Subject to any agreement made between the Parties to the contrary a Party may request that a witness, on whose testimony another Party seeks to rely, should attend for oral questioning at a hearing before the Arbitrator. If the Arbitrator orders that other Party to produce the witness and the witness fails to attend the oral hearing without good cause, the Arbitrator may place such weight on the written testimony (or exclude the same altogether) as he considers appropriate in the circumstances of the case.

20.5 Any witness who gives oral evidence at a hearing before the Arbitrator may be questioned by each of the Parties under the control of the Arbitrator. The Arbitrator may put questions at any stage of the hearing.

20.6 Subject to the mandatory provisions of any applicable law, it shall not be improper for any Party or its legal representatives to interview any witness or potential witness for the purpose of presenting his testimony in written form or producing him as an oral witness. However no witness training relating to the evidence in the arbitration shall be carried out by any Party.

20.7 Any individual intending to testify to the Arbitrator on any issue of fact or expertise shall be treated as a witness under these Rules notwithstanding that the individual is a Party to the arbitration or was or is an officer, employee or shareholder of any Party.

Rule 21
Experts to the Arbitrator
21.1 Unless otherwise agreed by the Parties in writing, the Arbitrator:

(a) may, if the Parties have failed or refused to instruct an expert on a relevant issue and the Arbitrator considers that expert evidence is necessary fairly to decide the issue, appoint one or more experts to report to the Arbitrator on specific issues, who shall be and remain impartial and independent of the Parties throughout the arbitration proceedings; and
may require a Party to give any such expert any relevant information or to provide access to any relevant documents, goods, samples, property or site for inspection by the expert.

21.2 Unless otherwise agreed by the Parties in writing, if a Party so requests or if the Arbitrator considers it necessary, an expert shall, after delivery of his written or oral report to the Arbitrator and the Parties, participate in one or more hearings at which the Parties shall have the opportunity to question the expert on his report and to present expert witnesses in order to testify on the points at issue.

21.3 The fees and expenses of any expert appointed by the Arbitrator under this Rules shall be paid as directed by the Arbitrator or out of the deposits payable by the Parties under Rule 24 and shall form part of the costs of the arbitration.

**Rule 22**

**Powers of the Arbitrator**

22.1 Unless the Parties at any time agree otherwise in writing, the Arbitrator shall have the power, on the application of any Party or on his own motion, but in either case only after giving the Parties a reasonable opportunity to state their views:

(a) to allow any Party, upon such terms (as to costs and otherwise) as he shall determine, to amend any pleading;

(b) to extend or abbreviate any time-limit provided by the Arbitration Agreement or these Rules for the conduct of the arbitration or by the Arbitrator's own orders;

(c) to conduct such enquiries of the Parties as may appear to the Arbitrator to be necessary or expedient, including whether and to what extent the Arbitrator should himself take the initiative in identifying the issues within the scope of the Arbitration Agreement particularly in circumstances where the Parties have not complied with Rule 14.3(e) or in response to issues raised by the Parties;

(d) to order any Party to make any property, site or thing under its control and relating to the subject matter of the arbitration available for inspection by the Arbitrator, any other Party, its expert or any expert to the Arbitrator;

(e) to order any Party to produce to the Arbitrator and to the other Parties for inspection and to supply copies of any documents or classes of documents, e-mails, e-documents in their possession, custody or power which the Arbitrator determines to be relevant;

(f) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a Party on any matter of fact or expert opinion; and to determine the time, manner and form in which such material should be exchanged between the Parties and presented to the Arbitrator;
(g) to order the correction of any contract between the Parties or the Arbitration Agreement, but only to the extent required to rectify any mistake which the Arbitrator determines to be common to the Parties and then only if and to the extent to which the law(s) or rules of law applicable to the contract or Arbitration Agreement permit such correction; and

(h) to allow, only upon the application of a Party, one or more third persons to be joined in the arbitration as a Party provided any such third person and the applicant Party have consented thereto in writing, and thereafter to make a single final award, or separate awards, in respect of all Parties so implicated in the arbitration.

Provisional damages and Periodical Payments

(i) to award provisional damages on the same grounds as are set out in S.32A of the Senior Courts Act 1981 and/or periodical payments on the same grounds set out under the Damages Act 1996 as amended and/or the Damages (Variation of Periodical Payments) Order 2005.

CPR Part 36 and effect of offers

(j) to award additional interest and damages strictly in accordance with CPR part 36.

Rule 23

Jurisdiction of the Arbitrator

23.1 The Arbitrator shall have the power to rule on his own jurisdiction, including any objection to the initial or continuing existence, validity or effectiveness of the Arbitration Agreement. For that purpose, an arbitration clause which mentions PlcArbs which forms or was intended to form part of another agreement (for instance a legal expenses insurance or personal accident insurance policy or another type of insurance policy, or a contract of employment) shall be treated as an arbitration agreement independent of that other agreement. A decision by the Arbitrator that such other agreement is non-existent, invalid or ineffective shall not entail ipso jure the non-existence, invalidity or ineffectiveness of the arbitration clause.

23.2 A plea by a Defendant that the Arbitrator does not have jurisdiction shall be treated as having been irrevocably waived unless it is raised on or before the date for service of the Statement of Defence; a like plea by a Defendant to Counterclaim shall be similarly treated unless it is raised on or before the date for service of the Defence to Counterclaim. A plea that the Arbitrator is exceeding the scope of its authority shall be raised promptly after the Arbitrator has indicated its intention to decide on the matter alleged by any Party to be beyond the scope of its authority, failing which such plea shall also be treated as having been waived irrevocably. In any case, the Arbitrator may nevertheless admit an untimely plea if he considers the delay justified in the particular circumstances.

23.3 The Arbitrator may determine the plea to his jurisdiction or authority in an award as to jurisdiction or later in an award on the merits, as he considers appropriate in the circumstances.
Agreement not to Litigate
23.4 Subject to Rules 26.8 and 33, by agreeing to arbitration under these Rules, the Parties shall be treated as having agreed not to apply to any state court or other judicial authority for:
(a) any relief regarding the Arbitrator’s jurisdiction or authority, or
(b) any damages or other relief arising from the accident or events set out in or covered by the Arbitration Agreement;

except with the agreement in writing of all Parties to the arbitration or the prior authorisation of the Arbitrator or following the latter’s award ruling whether made at an interlocutory hearing or a final hearing or a ruling on an objection to the Arbitrator’s jurisdiction or authority.

Stay of action
23.5 (a) By entering into the Arbitration Agreement, the Parties consent to a stay of any issued or pending Court action.

(b) The Claimant may not reinstate any existing Court case or file any lawsuit against the Defendant/s seeking any damages or other relief arising from the Accident/Events set out in or covered by the Arbitration Agreement save for the purpose of approving (where the Claimant lacks capacity) or enforcing the Arbitration Agreement and any settlement made within the arbitration or any award made within the arbitration or any appeal permitted by law. Applications under or permitted by or ancillary to the Arbitration Act 1996 may still be pursued.

Rule 24
Deposits for arbitration costs and arbitrator appointed experts
24.1 The Arbitrator may direct the Defendant/s and/or the Claimant/s in such proportions as the Arbitrator thinks appropriate, to make one or several interim or final payments on account of the costs of the arbitration.
(a) Such deposit payments shall be paid to the Arbitrator and at least 14 days shall be given from the date of the order for payment to be effected.
(b) Such deposits may include the costs of any expert appointed by the Arbitrator under these Rules.
(c) The Arbitrator may pay his own fees and the fees of any expert he has appointed out of the deposits from time to time.

24.2 In the event that a Defendant or a Claimant fails or refuses to provide any deposit as directed by the Arbitrator, the Arbitrator may direct the other Party or Parties to effect a substitute payment to allow the arbitration to proceed (subject to any award on costs). In such circumstances, the Party paying the substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting Party.

24.3 Failure by a Claimant or counterclaiming Party to provide promptly and in full the required deposit may be treated by the Arbitrator as a withdrawal of the claim or counterclaim respectively but only once a 2nd order has been sent by the Arbitrator to the Claimant or counterclaiming Party via www.PlcArbs.co.uk/filing/ setting out in “unless order” terms
that such a consequence will result. If payment is not made in accordance with the unless order but is made soon thereafter the Arbitrator will have discretion to dis-apply the penalties imposed in the unless order.

24.4 Failure by the Defendant to pay promptly a deposit for the Arbitration costs or the Arbitrator’s fees after submission of his fee note from time to time, in accordance with these Rules and in full may be treated by the Arbitrator as a withdrawal of the defence but only after a 2nd order has been sent by the Arbitrator to the Defendant via www.PlcArbs.co.uk/filing/ setting out in “unless order” terms that such a consequence will result. If payment is not made in accordance with the unless order but is made soon thereafter the Arbitrator will have discretion to dis-apply the penalties imposed in the unless order.

Rule 25
Interim Orders
25.1 The Arbitrator shall have the power, unless otherwise agreed by the Parties in writing, on the application of any Party:
(a) to order any Defendant to a claim or counterclaim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitrator considers appropriate. Such terms may include the provision by the claiming or counterclaiming Party of a cross-indemnity, itself secured in such manner as the Arbitrator considers appropriate, for any costs or losses incurred by such Defendant in providing security. The amount of any costs and losses payable under such cross-indemnity may be determined by the Arbitrator in one or more awards;
(b) to order the preservation, storage, sale or other disposal of any property or thing under the control of any Party and relating to the subject matter of the arbitration; and
(c) to order on a provisional basis, subject to final determination in an award, any interim relief which the Arbitrator would have power to grant in an award, including an interim payment, a provisional order for the payment of money or the disposition of property as between any Parties.

25.2 The Arbitrator shall have the power, upon the application of a Party, to order any claiming or counterclaiming Party to provide security for the legal or other costs of any other Party by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitrator considers appropriate. Such terms may include the provision by that other Party of a cross-indemnity, itself secured in such manner as the Arbitrator considers appropriate, for any costs and losses incurred by such claimant or counterclaimant in providing security. The amount of any costs and losses payable under such cross-indemnity may be determined by the Arbitrator in one or more awards. In the event that a claiming or counterclaiming Party does not comply with any order to provide security, the Arbitrator may stay that Party’s claims or counterclaims or dismiss them in an award.
25.3 The power of the Arbitrator under Rules 25.1 shall not prejudice howsoever any Party's right to apply to any state court or other judicial authority for interim or conservatory measures before the appointment of the Arbitrator and, in exceptional cases (for instance in those cases where a third Party who is not a Party to the Arbitration Agreement is involved as the defendant to the application for disclosure, relief or interim relief) thereafter. Any application and any order for such measures after the appointment of the Arbitrator shall be promptly communicated by the applicant to the Arbitrator and all other Parties. However, by agreeing to arbitration under these Rules, the Parties shall be taken to have agreed not to apply to any state court or other judicial authority for any order for security for its legal or other costs available from the Arbitrator under Rules 25.2.

Rule 26
The Award

26.1 Unless the Parties grant further time and subject to Rule 26.2, the Arbitrator shall file and distribute his award in writing within 28 days of the final hearing via www.PICArbs.co.uk/filing/ and, unless all Parties agree in writing otherwise, shall state the reasons upon which the award is based. The award shall also state the date when the award was made and the seat of the arbitration and it shall be signed by the Arbitrator.

26.2 The Arbitrator shall NOT be responsible for delivering the award to the Parties if the deposit for the costs of the arbitration (if any has been directed by the Arbitrator) has NOT been paid in accordance with the Rules and/or the Arbitrators fees have NOT been paid in full after delivery of a fee note and in accordance with these Rules.

26.3 An award may be expressed in any currency or more than one currency.

26.4 The Arbitrator may order that interest shall be paid by any Party on any sum awarded at such rates as the Arbitrator determines to be appropriate, in respect of any period which the Arbitrator determines to be appropriate ending not later than the date upon which the award is complied with.

26.5 The Arbitrator may make separate awards on different issues at different times. Such awards shall have the same status and effect as any other award made by the Arbitrator.

26.6 In the event of a settlement of the Parties' dispute, the Arbitrator may render an award recording the settlement if the Parties so request in writing (a "Consent Award"), provided always that such award contains an express statement that it is an award made by the Parties' consent. A Consent Award need not contain reasons. If the Parties do not require a consent award, then on written confirmation by the Parties to the Arbitrator that a settlement has been reached, the Arbitrator shall be discharged and the arbitration proceedings concluded, subject to payment by the Parties of any outstanding costs of the arbitration.

26.7 Subject to Rules 26.9, 29 and 33 all awards shall be final and binding on the Parties. By agreeing to arbitration under these Rules, the Parties undertake to carry out any award without any delay (subject only to Rule 27).
Periodical payments
26.8 Where any final award contains an order for periodical payments the Parties will draw up an agreement in a common form to implement the Arbitrator’s award and shall, if necessary, present it to a Court in England and Wales for enshrining in an Order of the Court.

Provisional damages
26.9 Where any final award contains an award of provisional damages the Award shall comply with CPR 41 and the Claimant shall apply to the High Court to enshrine the award in an Order of the Court under S.32A of the Senior Courts Act 1981.

Part 36 offers
26.10 Unless the Parties otherwise agree the provisions of CPR part 36 are incorporated into these Rules here.

26.11 The wording of CPR part 36 shall be interpreted as follows:
(a) “Judge” and “court” means “arbitrator”;
(b) “trial” means “hearing”;
(c) “proceedings” means “arbitration proceedings”;
(d) “judgment” means “award”;
(e) all other words shall be interpreted in such a way as to facilitate the application of CPR rule 36 to the arbitration.

Rule 27
Correction of Awards and Additional Awards
27.1 Errors: Within 30 days of receipt of any award, or such lesser period as may be agreed in writing by the Parties, a Party may by written notice to the Arbitrator via www.PlcArbs.co.uk/filing/ (copied to all other Parties) request the Arbitrator to correct in the award any errors in computation, clerical or typographical errors or any errors of a similar nature. If the Arbitrator considers the request to be justified, he shall make the corrections within 30 days of receipt of the request. Any correction shall take the form of a separate memorandum dated and signed by the Arbitrator.

27.2 The Arbitrator may likewise correct any error of the nature described in Rules 27.1 on its own initiative within 30 days of the date of the award, to the same effect.

27.3 Omissions: Within 30 days of receipt of the final award, a Party may by written notice to the Arbitrator via www.PlcArbs.co.uk/filing/ (copied to all other Parties), request the Arbitrator to make an additional award as to claims or counterclaims presented in the arbitration but not determined in any award. If the Arbitrator considers the request to be justified, he shall make the additional award within 28 days of receipt of the request. The provisions of Rules 26 shall apply to any additional award.

Rule 28
Arbitration Costs, Legal Costs and QOCS

**Arbitration costs**

28.1  
(a) Unless the Arbitration Agreement states otherwise, during the course of the arbitration the Claimant/s and/or the Defendant/s shall jointly and severally pay the costs of the arbitration (the Arbitrator’s fees and expenses and the costs of PlcArbs) and shall pay any deposit for any fees of any expert appointed by the Arbitrator under Rule 24.  
(b) The Parties (not PlcArbs) shall be jointly and severally liable to the Arbitrator for the arbitration costs should any liable Party fail to pay such costs.

28.2  
The Arbitrator shall specify in the final award the total amount of the costs of the arbitration (but not the legal costs) as determined by the Arbitrator. Unless the Parties agree otherwise in writing, the Arbitrator shall determine the proportions in which the Parties shall bear all or part of such arbitration costs. If the Arbitrator has determined that all or any part of the arbitration costs shall be borne by a Party other than a Party which has already paid them, whether to the PlcArbs or the Arbitrator, the latter Party shall have the right to recover the appropriate amount from the former Party.

**Legal Costs & Disbursements**

28.3  
The Arbitrator shall have the power to order in the award that all or part of the legal or other costs incurred by a Party be paid by another Party, unless the Parties agree otherwise in writing. The following provisions apply to the legal costs and disbursements:

(a) Unless the Parties provide agreed figures the Arbitrator will make the costs award but will not assess the costs.

(b) After an award is made or a settlement is reached, on any assessment of costs, the Court or any Costs Arbitrator/Mediator will determine and fix the amount of each item of costs or disbursements on such reasonable basis as he thinks fit but in so far as any hourly rates are set out in the Schedule of Rates attached to the Arbitration Agreement those rates must be used (subject to any inflationary rise permitted).

(c) **Qualified One Way Costs Shifting: QOCS** Any costs awarded by the Arbitrator to the Defendant against the Claimant are only enforceable up to a limit of 80% of the total lump sum damages plus interest awarded to the Claimant, excluding periodical payments and structured settlement periodical payments and CRU sums to be repaid.

(d) If the Claimant does not recover any award of damages in the arbitration then the Defendant/s may not enforce any costs award which the Arbitrator has made against the Claimant.

(e) QOCS applies unless the Arbitrator has ruled that the Claimant’s claim or a substantial part thereof was fundamentally fraudulent and has lifted the QOCS barrier.

(f) **Success fees, additional liabilities and ATE premiums.** The same rules apply to the recovery of these items in PlcArbs arbitrations as apply in civil proceedings at the time of the award.

**Costs Principles**

28.4  
Unless the Parties otherwise agree in writing, the Arbitrator shall make his orders on both arbitration costs and legal costs in accordance with the general principle that costs should reflect the Parties' relative success and failure in the award or the arbitration, except
where it appears to the Arbitrator that in the particular circumstances this general approach is inappropriate. Any order for costs shall be made with reasons.

28.5 If the arbitration is abandoned, suspended or concluded whether by agreement or otherwise before the final award is made, the Parties shall remain jointly and severally liable to pay to PlcArbs it’s fees and the Arbitrator the costs of the arbitration as determined by the Arbitrator in accordance with these Rules. In the event that such arbitration costs are less than the deposits made by the Parties, there shall be a refund by the Arbitrator in such proportion as the Parties may agree in writing, or failing such agreement, in the same proportions as the deposits were made by the Parties.

Rule 29
Limited Appeals

29.1 Subject to Rules 26.8 and 33 the decisions of the Arbitrator with respect to all matters relating to the arbitration shall be conclusive and binding upon the Parties.

29.2 Except to the extent permitted by the law of England and Wales, the Parties shall be taken to have waived any right of appeal to any State court or other judicial authority in respect of any decisions of the Arbitrator.

Rule 30
Confidentiality – Anonymised reports

30.1 Unless the Parties expressly agree in writing to the contrary, and subject to Rule 30.5, the Parties undertake to keep confidential all awards in their arbitration, together with all evidence and materials in the proceedings created for the purpose of the arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a Party by a legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

30.2 The deliberations of the Arbitrator are likewise confidential.

30.3 The Arbitrator will not publish any award or any part of an award without the prior written consent of all Parties.

30.4 PlcArbs shall be entitled to keep a copy of all arbitration awards (whether final or interim) on a database and unless the Parties agree otherwise may publish the same on Lawtel, Lexis or elsewhere in anonymised form to aid consistency of approach for arbitrators in future.

30.5 The Parties may publish any PlcArbs arbitration award in anonymised form on Lawtel, Lexis or elsewhere. Anonymised form means that the first and last names of the Parties shall be anonymised [For example: Andrew Smith v Hertfordshire NHST could be called A v X NHST] and the names in body of the award shall also be anonymised.
Rule 31
Exclusion of Liability
31.1 None of the PlcArbs, the Arbitrator, the PlcArbs Registrar or any deputy Registrar, or any expert to the Arbitrator shall be liable to any Party howsoever for any act or omission in connection with any arbitration conducted by reference to these Rules, save where the act or omission is shown by that Party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that Party.

31.2 After the award has been made and the possibilities of correction and additional awards referred to in Rule 27 have lapsed or been exhausted, neither PlcArbs, the Arbitrator, the PlcArbs Registrar, any deputy Registrar, or expert to the Arbitrator shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration, nor shall any Party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

Rule 32
General Rules
32.1 A Party who knows that any provision of the Arbitration Agreement (including these Rules) has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be treated as having irrevocably waived its right to object.

32.2 In all matters not expressly provided for in these Rules, the Arbitrator and the Parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that an award is legally enforceable.

Rule 33
Capacity
This Rule only applies when a Party is a child or lacks capacity or where a Party loses capacity during an arbitration.

Arbitration Friend
33.1 The Party must be represented in the arbitration by an Arbitration Friend appointed in accordance with the provisions of CPR r.21 save that any reference in the CPR rule to the Court shall be interpreted as the Arbitrator and any reference to proceedings as a reference to the arbitration.

Arbitration Agreement
33.2 The Arbitration Agreement must be signed by a parent or guardian for a child or by a duly appointed deputy or person with a valid power of attorney for a Party lacking in capacity and (if that be a different person) the Arbitration Friend.

Court Order before the arbitration can start
33.3 Any Arbitration Agreement made by or on behalf of a child or person who lacks capacity shall only be made after the Party has obtained an order or orders from the Court/s:

(a) **in the case of a child**: declaring that the Arbitration Agreement is beneficial to the child and enforceable and that no substantive review and approval for any final Award made by the Arbitrator is required by any Court under CPR 21 and so that the Award will be enforceable in the normal way under S.66 of the Arbitration Act 1996;

(b) **in the case of a protected Party**: declaring that the Arbitration Agreement is approved by the Court of Protection and a further Court order declaring that no review or approval for any Award made by the Arbitrator is required by any Court under CPR 21 and so that the Award will be enforceable in the normal way under S.66 of the Arbitration Act 1996.

33.4 The above stated Court orders must be filed with the Arbitration Agreement at the Start of the Arbitration under Rule 1.

**Effect of breach**

33.5 Any breach of Rules 33.1, 33.2, 33.3 and 33.4 shall lead to the Arbitration Agreement being declared a nullity under these Rules by the Arbitrator (save the purpose of the Parties liability for the fees of the PlcArbs Institution and the Arbitrator’s fees).

**Approval of settlements**

33.6 CPR r.21 and PD 21 shall apply to any arbitration involving a child or protected Party save that: any reference to the Court shall be interpreted as to the Arbitrator; and any reference to proceedings as a reference to the arbitration; and that instead of a part 8 application to the Court the Parties or the Claimant will apply through www.PlcArbs.co.uk/filing/ to the Arbitrator for review and potential approval of the settlement.

33.7 Any settlement made by the Parties must be reviewed and may be approved by the Arbitrator who shall ensure that the settlement is only approved if it is fair and reasonable for the child or protected Party.

33.8 If so required by Law or the Rules of Court, before or as soon as possible after the Arbitrator has made a final award in an arbitration involving a child or protected Party/protected beneficiary to whom damages are awarded, those representing the child or protected Party/beneficiary shall apply to the Court for directions about payment of money into the Court Funds Office.

Note:

*Further Rules may be promulgated in the event that an order is made by or procedures are agreed with the High Court in relation to arbitration of claims by Parties who are children or are lacking in capacity.*  END
ATE and BTE legal costs support
for claimants in PIcArbs Arbitrations

**ARAG:**
ARAG are providers of ATE and ATE insurance for personal injury and clinical negligence claims.

“ARAG are generally supportive of the idea ... I am confident that” when the case is “ready to go to arbitration our policy will support this.”

**DAS:**
DAS are providers of BTE insurance for personal injury and clinical negligence claims.

“as ADR is to our advantage, we will consider covering the costs on a case by case basis. All we ask is firms give us an indication in advance what the costs to be incurred are likely to be. With the probable introduction of RFC later this year, all ATE products are going to be re-written so cover for ADR exposure can be included.”

**Allianz:**
Allianz ATE/BTE support arbitration for personal injury and clinical negligence claims and will approve claims being arbitrated on a case by case basis.

**Abbey Legal**
Abbey Legal ATE services support using PIcArbs arbitration to resolve personal injury and clinical negligence claims.

**Legal Protection Group**
LPG support arbitration for personal injury claims and will approve claims being arbitrated on a case by case basis.

“A solution which reduces legal costs and speeds up dispute resolution is clearly advantageous and therefore LPG is happy to support and protect claims run through PIcARBS on a case by case basis.”
The PlcArbs Rules Committee

Consists of representatives from across the personal injury and clinical negligence industry and advises the Registrar on keeping the Rules of the institution fair between claimants and defendants.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Who</th>
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<tbody>
<tr>
<td>1. PlcArbs Registrar</td>
<td>Andrew Ritchie QC</td>
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<td>2. The legal advisor to the committee on arbitration</td>
<td>Professor Rashda Rana SC,</td>
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<td>3. ATE/BTE Insurers</td>
<td>Sian Brookes, Allianz ATE</td>
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<td>4. APIL</td>
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<td>5. MASS</td>
<td>Susan Brown, Prolegal</td>
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<td>6. FOIL</td>
<td>James Arrowsmith, Browne Jacobson</td>
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<td>7. Trust Mediation</td>
<td>Tim Wallis</td>
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<td>8. PlcArbs panel of arbitrators</td>
<td>James Rowley QC, Byrom Street</td>
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<td>9. Insurers: Sabre</td>
<td>Bryn Hesketh, Morris Orman Hearle</td>
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<td>10. Clyde &amp; Co</td>
<td>Toby Scott/Tom Allison</td>
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PlcArbs Panels of Arbitrators

Experienced barristers of the highest quality from the leading chambers.

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<tr>
<th>QC Panel</th>
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<tr>
<td><strong>Name</strong></td>
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<tr>
<td>1. Robin Allen QC</td>
<td>Laura Begley</td>
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<td>2. Patrick Blakesley QC</td>
<td>Camilla Church</td>
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<td>3. Simon Browne QC</td>
<td>Jason Cox</td>
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<td>4. Edward Bishop QC</td>
<td>Darrel Crilley</td>
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<td>5. Neil Block QC</td>
<td>Stephen Cottrell</td>
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<td>Charlie Cory-Wright QC</td>
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<td>Patrick Limb QC</td>
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<td>William Norris QC</td>
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<td>Katherine Deal QC</td>
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<td><strong>Sarah Lambert QC</strong></td>
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**PIcArbs**

Don’t litigate, arbitrate
PlcArbs/CADR:

Arbitration of the Costs

If the parties wish to take advantage of the PlcArbs-CADR system to resolve the costs issues after the PlcArbs arbitration is settled or resolved, they can tick the box on the PlcArbs Arbitration Agreement to have the costs of the arbitration assessed and resolved by a binding CADR arbitration.

CADR have an impressive panel of costs arbitrators who will manage the process of arbitrating the costs and will achieve assessment of the costs within 3-6 months of the presentation of the bill of costs. The issuing fee for CADR arbitration through the PlcArbs e-filing system is £600 + VAT.

See: www.costs-adr.com for the CADR arbitrators charges.

For more information contact: CADR, 218 Strand, London, WC2R 1AT;
Tel: 0203 282 7565;

The CADR Panel Arbitrators are:

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<td>COLIN CAMPBELL</td>
<td>PETER HURST</td>
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<tr>
<td>NICK BACON QC</td>
<td>SIMON BROWNE QC</td>
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Terms and Conditions of all Disputes e-filing and PlcArbs e-filing User Agreements

Registered Users

By registering as a User (being the person and the organisation applying to register online) you agree to the following terms and conditions which take effect on the moment that the User is given access to the PlcArbs e-filing or Disputes e-filing (DEF) system.

Registering as a User of the DEF system

1. To use the DEF e-filing and e-service software you will need to register by providing accurate details on the registration page and creating a user name and password and agreeing to these terms and confirming your email address. (Please keep your User name and password secret).

Commencement Fee

2. On registration as a User you pay nothing. On starting an e-file of any sort you will pay DEF for the service. On starting an arbitration your organisation will incur a Commencement Fee to PIcArbs. This covers:
   (a) the registration of you and/or your organisation’s or department’s administrator as Users;
   (b) the opening of the individual arbitration file to commence the individual arbitration;
   (c) the registration of your chosen arbitrator or the selection and appointment of a PIcArbs panel arbitrator; and,
   (d) access to the PIcArbs e-filing system throughout the arbitration.

3. After commencement of each arbitration e-file PIcArbs will provide each user with access to the PIcArbs e filing and e-service system and on starting a DEF e-file DEF will provide access.

4. The Commencement Fee is payable on starting the individual e-file on the DEF system. An invoice will be sent electronically to the organisation’s Administrator. Payment must be made by bank transfer forthwith to PIcArbs’ bank account for arbitrations and DEF for other e-files.

5. Interest is charged on the late payment of any Commencement Fee at 10% above the Bank of England base rate.

You as a User agree as follows

6. Rules
   (1) to abide by the DEF terms, and on starting and arbitration to abode by the PIcArbs Arbitration Rules published at the time of registration and the amendments made to those Rules from time to time thereafter and published at www.PlcArbs.co.uk; and

Payments

(2) to pay (by bank transfer) the relevant fees to DEF for starting and e-file or PIcArbs (for starting an arbitration) and for any application to remove or complain about an arbitrator forthwith on receipt of an invoice; and

Failure to pay fees

(3) if any User fails to pay any fees when they fall due to DEF or PIcArbs then each is entitled to withdraw the User’s access to the e-filing system and interest is charged on the late payment of any Commencement Fee at 10% above the Bank of England base rate; and

Permitting access

(4) accurately and carefully to complete the starting an e-file or and arbitration online form so as to ensure that you permit the other parties’ representatives, the Arbitrator/Mediator/Neutral Evaluator and Counsel involved in the case proper access to the system forthwith by provision of correct email addresses; and

e-filing

(5) to file and serve all documents in all PIcArbs arbitrations through the PIcArbs e-filing system; and

Software integrity

(6) not to and not to try to copy or emulate the DEF or PIcArbs e-filing software and not to cause any third party to do so; and

Professional communication
(7) not to send any insulting or abusive or rude communication through the e-filing service and never to use the service for private communications. The service is for arbitrations only. If such communications are sent then DEF and PlcArbs reserve the right to terminate the User’s access and another User from the organisation will have to register; and

Viruses
(8) to bear responsibility for the virus free cleanliness of the documents which you upload. DEF and PlcArbs shall not bear any liability whatsoever if a User uploads a document which infected with a virus or damaging macro or other damaging content and that document is then downloaded by another User and causes damage of some sort. The e-filing system is a filing system not a filtering system; and

Communication with the Registrar
(9) to permit DEF and PlcArbs to contact the User to keep the User up to date with the PlcArbs Rules and procedures and DEF or PlcArbs charges and to effect service of all notices sent under the terms of this User Agreement to the User’s email address; and

Tampering
(10) not to alter the registered user details of any other party to any individual DEF e-file or arbitration e-file or any solicitor or counsel or arbitrator with access to any individual arbitration, unless permitted by that person so to do; and

Service
(11) to treat uploading a document into the open cabinet on the e-filing system as good service by all Users and to accept that uploading into the open cabinet on the e-filing system by all other parties to an arbitration as good service on the User; and

Spam & Virus filters
(12) to ensure that emails from DEF and PlcArbs are enabled by the User’s spam and virus filters; and

Non receipt of emails
(13) to accept that email notification of e-filing and service on the User will be given by DEF or PlcArbs through the e-filing system to the User’s registered email address and the User agrees that service takes place when the document is uploaded by any User and the notification by email from DEF or PlcArbs has been sent by DEF or PlcArbs to the Users registered email address whether it is received there or not.

Security
(14) not to leave the e-filing platform open on the User’s computer whilst the User leaves his desk for any period of time, but instead to log off immediately before leaving the computer.

Type of Documents you can file
(15) The system caters for the following types of documents, photos and videos: Word, PDF, Richmond Text Format, Excel, Jpeg, WMV and some other formats. Please ensure you only upload documents in these formats.

Data protection processing consent
By using this system you understand and accept that:
(16) DEF and PlcArbs are permitted to hold and process the data in the registration pages and in the filed Arbitration Agreement and the data entered onto the system by you as a User and entered in the “fill in” forms in the efil system, for instance the names and addresses, telephone numbers, dates of birth of the parties and their lawyers/insurers, the start of the arbitration and dates of interim orders and final awards made in your arbitrations and the date of the end of each arbitration.

(17) the e-filing system will store all of their e-filed documents, some containing specific identifiable health data concerned with the arbitrations. DEF and PlcArbs will store but will not use or process the information in these documents in any way beyond e-storage for the arbitration.

(18) no personal identifiable data will be shared by DEF or PlcArbs with any person other than those registered by the parties as users for each individual arbitration and their firm administrators. Anonymised data may be shared with law firms and other organisation users from time to time under commercial terms entered into with those users. No such data will contain any personal details and is shared in permanently anonymised form only for the purpose of statistical analysis, trend reviews and the like.

PlcArbs responsibilities for registration, appointment and commencement
7. In consideration for the User paying the Commencement Fee PlcArbs or DEF will register his or her details as a User and will create an individual User page. In addition PlcArbs will create an e-file or arbitration number and create 3 individual e-files for the case (one confidential to the Claimant, one open and one confidential
to the Defendant). In addition for arbitration e-files PlcArbs will appoint the parties chosen arbitrator or will chose a panel arbitrator for the arbitration and will notify the parties of the appointment.

**PlcArbs e-filing service for PlcArbs arbitrations and DEF e-filing for other users**

8. The e-filing software is provided by DEF or PlcArbs to assist the User in each dispute or arbitration.

9. DEF or PlcArbs will make all reasonable efforts to ensure that the e-filing and service software is fully functioning during work hours (9 am to 5 pm) on business days each week (and out of normal working hours too if possible) save as follows:
   (1) when DEF’s or PlcArbs’ storage provider’s facilities are interrupted;
   (2) when DEF’s PlcArbs’ storage provider’s internet facilities are interrupted;
   (3) when the power is cut in any link in the chain necessary to provide the online service;
   (4) when any Government or terrorist action prevents the provision of the service;
   (5) when the e-filing website is being upgraded or repaired or maintained which will usually occur over a weekend or overnight between 6 pm and 9 am on any day of the week but may overrun into working hours.

10. The User hereby permits DEF or PlcArbs to store the documents which the User files for the duration of the individual dispute or arbitration and any subsequent costs arbitration and warrants that the User has permission from the party which he/she represents to e-file all such documents.

11. The User may keep electronic “back up” copies of all documents which the User has filed through the e-filing system and of all documents which have been filed or served by any other User in all individual disputes or arbitrations in which the User is involved.

12. 28 days after any final settlement is reached in any individual dispute or arbitration or after any final award (so at the termination of each individual dispute or arbitration) PlcArbs will entitled to and shall destroy the arbitration e-file without further notice unless the Users have agreed to arbitrate their costs through C-ADR in which case the file will be maintained until 28 days after the costs are settled or determined.

13. DEF or PlcArbs will make all reasonable efforts to ensure that the e-filing system is as secure as reasonable industry standards require.

14. Neither DEF or PlcArbs shall be liable for any damages or costs if the User’s user name and password are hacked, stolen, or used by another person and in some way any particular arbitration is interfered with.

15. DEF or PlcArbs shall only use the data provided by Users for the purposes of the individual dispute or arbitration and the proper functioning of the system for the Use. Users agree that DEF and PlcArbs may store User’s data on the UK servers used by the DEF and PlcArbs e-filing system until such time as it is deleted as set out in these terms.

**Cessation of e-filing service**

16. DEF and PlcArbs will not be liable to the User in damages or costs for any break in the e-filing service:
   (1) for any reason beyond its control; and
   (2) no liability will flow from DEF’s or PlcArbs’ own failure for any reason or for any period to provide the e-filing service.

17. The User acknowledges that DEF and/or PlcArbs may withdraw the e-filing service on 4 weeks’ written notice at any time.

18. If DEF’s or PlcArbs software or data storage service providers should at any time in future cease to provide the current e-filing service for any reason then the User agrees that DEF and/or PlcArbs may either at its absolute discretion:
   (1) recreate the DEF or PlcArbs e-filing service by using a different or substitute software provider; or
   (2) notify the User that e-filing is no longer available and the User will continue the arbitration on paper. In this event the e-filed documents for each individual arbitration will all be destroyed forthwith by DEF or PlcArbs.
   (3) DEF and PlcArbs shall not be liable to return any copies of e-filed documents to any User.

19. No liability will attach to PlcArbs for the cessation of the e-filing service in any circumstances. All arbitrations will continue on paper in any event.

**Substitute software**

20. In the event of the withdrawal of the service under clause 17 occurring DEF or PlcArbs will notify the User by email that DEF or PlcArbs is making efforts to arrange for the redesign and recreation of the DEF or PlcArbs e-filing software and to provide it to the User within 56 days of the sending of the notification email.

21. In these circumstances no guarantee is given by DEF or PlcArbs that there will not be a gap in the provision of the service and no liability will follow if there is a service gap.
22. If DEF or PlcArbs is unable for any reason to re-create and to provide the e-filing service after the 56th day of any such service gap then DEF or PlcArbs will notify the User forthwith and the e-filing service will terminate without any liability between the User and PlcArbs.