



**The PlcArbs –  
Clyde & Co Pilot**

**Arbitrating Personal Injury cases**

**Forms, Documents, Rules**

# Clyde & Co/PIcArbs Pilot

Standard Forms

Rules

Documents

Terms



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A not for profit Company

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# STANDARD FORM LETTER PROPOSING ARBITRATION

sent by Claimant

To: *Clyde & Co/Insurance company*

Dear \*

**Re: Claimant v Defendant, proposal to arbitrate the issues through  
the Clyde & Co Pilot**

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.

We understand that the Defendant's insurer is taking part in the Clyde & Co Pilot for arbitrating claims through the PICArbs system.

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 response to this proposal within 14 days.

Yours Sincerely

# STANDARD FORM LETTER PROPOSING ARBITRATION

sent by Clyde & Co

To: *name of Claimant's solicitors*

Dear \*

**Re: Claimant v Defendant, proposal to arbitrate the issues through  
the Clyde & Co Pilot**

We have delivered the pre-action protocol response to your firm in this case and have indicated 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.

We understand that your firm is taking part in the Clyde & Co Pilot for arbitrating claims through the PICArbs system.

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 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 response to this proposal within 14 days.

Yours Sincerely

## Standard Form Arbitration Agreement

**BETWEEN**

**\* - Claimant**

**and**

**\* - Defendant**

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### Arbitration Agreement

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*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(s): .....; 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].**

**OR**

**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 PICArbs 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 PICArbs 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 PICArbs online e-serving and e-filing system.**

**6.2 The parties Lawyers confirm that they have visited [www.PICArbs.co.uk/filing](http://www.PICArbs.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 PIcArbs e-filing service they will be bound by and will abide by the User Terms published on the PIcArbs website.**
  - 6.4 **The parties agree that PIcArbs 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 PIcArbs 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 PIcArbs 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 PIcArbs with any person other than those registered by the parties as users for each individual arbitration and their firm administrators.**
- 7. Changes to the PIcArbs standard form:**  
Any changes to this Arbitration Agreement shall be in writing, shall not contravene the PIcArbs Rules and shall be signed by all parties and filed via [www.PIcArbs.co.uk/filing](http://www.PIcArbs.co.uk/filing). The following clauses of this PIcArbs 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 PIcArbs 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 PICArbs 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 PICArbs 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 ..... (Clyde & Co, 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*

**SCHEDULE OF HOURLY RATES, PlcArbs fees & CADR fees**

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/FEEES:**

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

**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)

**Panel:**

	<u>QC</u>	<u>Barrister</u>
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.

END

# PICArbs Arbitration Rules

V35 Effective from 21 July 2017

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## Preliminary Matters

### A. Pre-action Protocols

Before commencing a PICArbs Arbitration the parties should comply with the relevant personal injury or clinical negligence protocol. If any Party to a PICArbs 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 PICArbs arbitration they should:

- [1] agree in writing to resolve their issues by an arbitration under the PICArbs Rules or by a “PICArbs arbitration”; and
- [2] download the PICArbs standard form of arbitration agreement from the PICArbs website: [www.PICArbs.co.uk](http://www.PICArbs.co.uk); and
- [3] negotiate the terms of their arbitration agreement and then both sign it. No PICArbs arbitration can start without the parties first having signed a PICArbs 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 PICArbs Rules or by a PICArbs arbitration the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the following rules ("**the PICArbs Rules**") or such amended rules as PICArbs publish from time to time on the PICArbs 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 PICArbs Panel of Arbitrators or PICArbs which are published from time to time at [www.PICArbs.co.uk](http://www.PICArbs.co.uk).

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

- [1] All PICArbs arbitrations shall be conducted through the dedicated PICArbs e-filing/e-serving system at [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/).
- [2] All parties to a PICArbs arbitration through their lawyers must visit [www.PICArbs.co.uk/filing/](http://www.PICArbs.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.

- [3] All Arbitrators and PICArbs Arbitrators and counsel instructed by any Party must visit [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) and register by creating a user name and password.
- [4] Once an arbitration has started no document shall be sent to and no communication will take place with the PICArbs Arbitrator save through the [www.PICArbs.co.uk/filing/](http://www.PICArbs.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.
- [5] 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 PICArbs registrar or should file anything then the [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) system **must be used** whether or not any PICArbs Rule expressly states that the [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) should be used.
- [6] 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 PICArbs arbitration ("**the Request**") to the PICArbs Registrar ("**the Registrar**") at [www.PICArbs.co.uk/filing/](http://www.PICArbs.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 PICArbs Arbitration Agreement** already signed by the parties;
  - a **PICArbs 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 PICArbs Schedule of Costs. An

- invoice will be sent by PICArbs 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.PICArbs.co.uk/filing/](http://www.PICArbs.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 PICArbs Panel of Arbitrators or by the parties)

- 1.2 The Registrar will within 28 days of receipt of the Request send to the Claimant/s and the Defendant/s by e-mail via [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) **Notice of Appointment of the Arbitrator** containing the name of the person who has been appointed as the Arbitrator from the PICArbs Panel of Arbitrators, or if the Request and enclosures with it already set out the name of the Arbitrator whom both parties have agreed will act as Arbitrator and the parties or the Arbitrator have filed a **PICArbs Acceptance of Appointment Form** signed by the chosen Arbitrator, then the Notice of Appointment will set out that arbitrator's name.

### Start of the PICArbs 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 PICArbs Registrar via [www.PICArbs.co.uk/filing/](http://www.PICArbs.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.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) and shall:
- 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
  - 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 PIcArbs from the PIcArbs 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 PIcArbs 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 PIcArbs 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.co.uk/filing/).
- 4.2 Service is effected via [www.PIcArbs.co.uk/filing/](http://www.PIcArbs.co.uk/filing/) by uploading a document to the individual arbitration file and by PIcArbs 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 PIcArbs 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 PIcArbs Panel of Arbitrators, the Registrar will contact Panel arbitrators in rotation and offer the appointment. To accept an appointment a PIcArbs Panel arbitrator must sign and e-file an acceptance of appointment form through [www.PIcArbs.co.uk/filing](http://www.PIcArbs.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 PIcArbs service and the PIcArbs Registrar will appoint a replacement from the PIcArbs Panel of Arbitrators.

## Rule 7

### **Nomination of an Arbitrator by the parties who is not on a PIcArbs Panel**

- 7.1 The parties may jointly nominate any person to be their Arbitrator under the PIcArbs Rules whether or not such person is on the PIcArbs 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 PIcArbs Panel of Arbitrators and agrees to take an appointment as an arbitrator for a PIcArbs arbitration shall:
- (a) visit [www.PIcArbs.co.uk/filing/](http://www.PIcArbs.co.uk/filing/) and register as an arbitrator and provide a user name (work email address) and password;
  - (b) provide to the PIcArbs Registrar via [www.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 PIcArbs Acceptance of Appointment form for the individual arbitration.

## Rule 8

### **Disputes over nomination of Arbitrator**

Where the parties have not all agreed on the nomination of an arbitrator in writing then PIcArbs shall appoint the Arbitrator from the PIcArbs Panel of Arbitrators by rotation.

## 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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.PIcArbs.co.uk/filing/](http://www.PIcArbs.co.uk/filing/) written Notice of Complaint to the PIcArbs Registrar along with a Complaint Fee as set out in the Schedule of fees published from time to time by PIcArbs, alleging that any Arbitrator has delayed providing responses to correspondence unreasonably or failed to deliver decisions within 28 days of hearings, then PIcArbs may (in its absolute discretion) revoke that Arbitrator's appointment and appoint another PIcArbs 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 PIcArbs Registrar and may be removed by the PIcArbs 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.co.uk/filing/) a written Statement of the Reasons for its challenge to the Arbitrator, the PIcArbs Registrar and all other parties and shall pay the PIcArbs Challenge Fee set out in the Schedule of Costs published by PIcArbs 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 PIcArbs 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 PIcArbs Registrar shall have complete and unfettered discretion to decide upon the replacement from the PIcArbs 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 PICArbs Arbitrator) on the written evidence which each Party has filed via [www.PICArbs.co.uk/filing/](http://www.PICArbs.co.uk/filing/) before the NE.
- 12.2 The Arbitrator shall either:
- (a) provide his NE Award within 28 days of receiving via [www.PICArbs.co.uk/filing/](http://www.PICArbs.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 PICArbs Registrar for a Neutral Evaluator to be appointed either as agreed and identified by the parties or by rotation from the PICArbs Panel of Arbitrators; and
  - (b) receive from the PICArbs 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 PICArbs Registrar and shall be via [www.PICArbs.co.uk/filing/](http://www.PICArbs.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.PICArbs.co.uk/filing/](http://www.PICArbs.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 cooperate 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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 PIcArbs 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/](http://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/](http://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/](http://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/](http://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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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
  - (b) 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
  - (g) 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 2<sup>nd</sup> order has been sent by the Arbitrator to the Claimant or counterclaiming Party via [www.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 2<sup>nd</sup> order has been sent by the Arbitrator to the Defendant via [www.PIcArbs.co.uk/filing/](http://www.PIcArbs.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/](http://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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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.PIcArbs.co.uk/filing/](http://www.PIcArbs.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 PIcArbs) and shall pay any deposit for any fees of any expert appointed by the Arbitrator under Rule 24.

(b) The parties (not PIcArbs) 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 PIcArbs 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 PIcArbs 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 PICArbs its 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 PICArbs 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 PICArbs 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 PICArbs, the Arbitrator, the PICArbs 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 PICArbs, the Arbitrator, the PICArbs 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/](http://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*

## Terms and Conditions of all PICArbs e-filing User Agreements

### Terms and Conditions of all PICArbs e-filing User Agreements

#### Registered Users

By registering as a User (being the person and the firm 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 PICArbs e-filing system.

#### Registering as a User of the PICArbs e-filing system

1. To use the PICArbs e-filing and e-service software you will need to register at [www.PICArbs.co.uk/filing](http://www.PICArbs.co.uk/filing) 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 arbitration you will incur a Commencement Fee to PICArbs. This covers (a) the registration of you and/or your firm administrator as Users and (b) the opening of the individual arbitration file to commence the individual arbitration, and (c) the registration of your chosen arbitrator or the selection and appointment of a PICArbs panel arbitrator (d) access to the PICArbs e-filing system throughout the arbitration.
3. After commencement of each arbitration PICArbs will provide each user with access to the PICArbs e-filing and e-service system
4. The Commencement Fee is payable on starting the individual arbitration on the e-filing system. An invoice will be sent electronically to the User on starting an arbitration. Payment must be made by bank transfer forthwith to PICArbs bank account.
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

- a. to abide by the PICArbs Rules published at the time of registration and the alterations made to those Rules from time to time thereafter and published at [www.PICArbs.co.uk](http://www.PICArbs.co.uk); and

#### Payments

- b. to pay (by bank transfer) the relevant fees under the PICArbs Rules 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

- c. if any User fails to pay any filing fees when they fall due then PICArbs 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**

- d. accurately and carefully to fill in the *starting an arbitration online form* so as to ensure that you permit the other parties lawyers and the Arbitrator and the counsel involved in the case proper access to the system forthwith by provision of correct email addresses; and

## **e-filing**

- e. to file and serve all documents in all PICArbs arbitrations through the PICArbs e-filing system; and

## **Software integrity**

- f. not to and not to try to copy or emulate the PICArbs e-filing software and not to cause any third party to do so; and

## **Professional communication**

- g. 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 PICArbs reserves the right to terminate the User's access and another User from the firm will have to register; and

## **Viruses**

- h. to bear responsibility for the virus free cleanliness of the documents which you upload. PICArbs 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**

- i. to permit PICArbs to contact the User to keep the User up to date with the PICArbs Rules and procedures and charges and to effect service of all notices sent under the terms of this User Agreement to the User's email address; and

## **Tampering**

- j. not to alter the registered user details of any other party to any individual arbitration or any solicitor or counsel or arbitrator with access to any individual arbitration, unless permitted by that person so to do; and

## **Service**

- k. to treat uploading a document onto the e-filing system as good service by all Users and to accept that uploading onto the e-filing system by all other parties to the arbitration is good service on the User; and

## **Spam filter**

- l. to ensure that emails from PICArbs are enabled by the User's spam filter; and

## **Non receipt of emails**

- m. to accept that email notification of e-filing and service on the User will be given by PICArbs through the PICArbs 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 PICArbs has been sent by PICArbs to the Users registered email address whether it is received there or not.

## **Security**

- n. 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**

- o. PICArbs system caters for the following types of documents & photos & videos:

Word, PDF, Richmond Text Format, Excel, Jpeg, WMV. Please ensure you only upload such documents.

### **Data protection processing consent**

- p. agree that PICArbs is permitted to hold and process the data 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 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 dates of interim orders and final awards made in your arbitrations and the date of the end of each arbitration.
- q. agree that the PICArbs e-filing system will store all of their e-filed documents, some containing specific identifiable health data concerned with the arbitrations and PICArbs will store but will not use or process the information in these documents in any way beyond e-storage for the arbitration.
- r. understand that no data will be shared by PICArbs with any person other than those registered by the parties as users for each individual arbitration and their firm administrators.

### **PICArbs responsibilities for registration, appointment and commencement**

- 7. In consideration for the User paying the Commencement Fee PICArbs will register his or her details as a User and will create an individual User page. In addition PICArbs will create an arbitration number and create an individual e-file for the arbitration. In addition PICArbs will appoint the parties chosen arbitrator or will chose a panel arbitrator for the arbitration and will notify the parties of the appointment.

### **PICArbs e-filing service for PICArbs Users**

- 8. The e-filing software is provided by PICArbs to assist the User in each arbitration and was designed by PICArbs.
- 9. PICArbs will make all reasonable efforts to ensure that the e-filing and service software is fully functioning during work hours (9am to 5 pm) 5 days per week (and out of hours too if possible) save as follows:
  - a. when PICArbs' storage provider's facilities are interrupted;
  - b. when PICArbs' internet facilities are interrupted;
  - c. when the power is cut in any link in the chain necessary to provide the online service;
  - d. when any Government or terrorist action prevents the provision of the service;
  - e. when the e-filing website is being upgraded or repaired or maintained which will usually occur over the 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 PICArbs to store the documents which the User files for the duration of the individual 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 will keep electronic “back up” copies of all documents which the User has filed through the PICArbs e-filing system and of all documents which have been filed or served by any other User in all individual arbitrations in which the User is involved.
12. 28 days after any final settlement is reached in any individual arbitration or after any final award (so at the termination of each individual arbitration) PICArbs will be entitled to and shall destroy the arbitration e-file without further notice unless the Users have agreed to arbitrate their costs through CADR in which case the file will be maintained until 28 days after the costs are settled or determined.
13. PICArbs will make all reasonable efforts to ensure that the e-filing system is as secure as reasonable industry standards require.
14. PICArbs shall not 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. PICArbs shall only use the data provided by Users for the purposes of the individual arbitrations and the proper functioning of the system for the Use. Users agree that PICArbs may store User’s data on the UK servers used by the PICArbs e-filing system until such time as it is deleted as set out in these terms.

### **Cessation of e-filing service**

16. PICArbs 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 PICArbs own failure for any reason or for any period to provide the e-filing service.
17. The User acknowledges that the PICArbs may withdraw the e-filing service on 4 weeks notice at any time.
18. If PICArbs should at any time in future cease to provide the current e-filing service for any reason then the User agrees that PICArbs may either at its absolute discretion:
  - a. recreate the PICArbs e-filing service by using a different or substitute software provider; or
  - b. 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 PICArbs.
19. No liability will attach to PICArbs 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 17 occurring PICArbs will notify the User that PICArbs is making efforts to arrange for the redesign and recreation of the PICArbs e-filing software and to provide it to the User within 56 days.
21. In these circumstances no guarantee is given by PICArbs 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 PICArbs is unable for any reason to re-create and to provide the e-filing service after the 56<sup>th</sup> day of any such service gap then PICArbs will notify the User

forthwith and the e-filing service will terminate without any liability between the User and PICArbs.

END

## Forms Rules & Documents



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