

Neutral Evaluation (NE) Agreement

made between:

Please fill in the parts highlighted in yellow

1. **The Claimant:** a party

Claimant's lawyer:

of the legal firm/LPP:

Address:

Ref:

Email address:

and

The Defendant: a party

Defendant's lawyer:

of the legal firm/LPP:

Address:

Ref:

Email address:

Insurer:

The Neutral Evaluator (filled in by PICArbs)

Name:

Email address:

(referred to as the 'NEvaluator')

2. **Disputes:**

The Parties agree to submit the following disputes, controversies, issues or claims to Neutral Evaluation by the NEvaluator: the issues of * liability, causation and the quantum, of damages * (delete as appropriate) arising from the events/accident which occurred to the Claimant on (date), approx value of claim £

Signature block

Signed by (Lawyer for the Claimant)

Dated:

AND

Signed by (Lawyer for the Defendant)

Dated:

OR

Signed by (other)

Dated:

AND

Signed by (PICArbs' Registrar)

Dated:

The Terms and Conditions for the NE are attached with Guidance Notes.

Terms and Conditions

3. The NEvaluator:

- 3.1 **Appointment:** At the Parties' request PICArbs have appointed the NEvaluator.
- 3.2 **Independence and impartiality:** The NEvaluator and PICArbs are neutral, impartial, independent of the Parties and their lawyers and do not give advice to the Parties. The NEvaluator will provide to the parties written confirmation of the lack of any conflict of interest.
- 3.3 **Evaluation:** Under this agreement the NEvaluator will provide an evaluation of the Disputes or issues within the Disputes which will be non-binding. All or part of the Evaluation may be in writing (if the Parties so choose) alternatively the Evaluation may take place at a Neutral Evaluation meeting (if the Parties so choose).
- 3.4 **Binding or not binding:** The Parties may agree to be bound by the outcome of the evaluation or not to be bound

4. Confidentiality:

The NE process is to be completely confidential. The Parties, the NEvaluator and PICArbs will keep all documentation and information relating to the NE private and confidential and will not disclose any facts or matters about the NE to any third party except when required to do so by law.

5. Procedure, evidence and documents:

- 5.1 **Role of PICArbs:** After appointment by PICArbs the NEvaluator is responsible for the procedure from then on. PICArbs may be consulted by any of the Parties to this Agreement in case of difficulty. Should the NEvaluator be removed by PICArbs or be unable to complete the task, PICArbs will appoint a substitute NEvaluator within a reasonable time.
- 5.2 **Meeting or written:** The Parties will choose whether they wish to have the Evaluation in writing or at a meeting.
- 5.3 The written or meeting based NE will be conducted along the lines set out in PICArbs attached procedure described below.
- 5.4 **Directions:** The NEvaluator will make reasonable efforts to agree directions with the parties covering the procedure to be used. If they cannot be agreed, the NEvaluator will issue directions which the Parties will comply with. If one or both Parties fail to comply with the directions, the NEvaluator can take that into account when providing the evaluation.
- 5.5 **NEvaluation fees and expenses:** Unless otherwise agreed between the Parties the Claimant/s and the Defendant/s are jointly and severally liable for the NEvaluator's and PICArbs' fees.
- 5.6 **The PICArbs' fee:** will be paid to PICArbs on appointment of the NEvaluator or the starting of the e-file.
- 5.7 **The NEvaluator's fees and expenses:** For a meeting evaluation the fees and expenses will be paid to the NEvaluator not less than 7 days before the NE meeting starts. If the fees are not paid the meeting will not go ahead. Interim bills may be raised by the NEvaluator to cover the NEvaluator's fees at the NEvaluator's option. If the meeting runs over the agreed times the additional hourly rate will be paid by the parties within 7 day after the evaluation.
- 5.8 In the case of a written evaluation a final account of the fees and expenses will be sent to the parties by the NEvaluator's clerk when the written Evaluation is

ready for issue to the Parties and the written Evaluation will be released on payment by the Parties of any further amounts due.

5.9 **The fees and agreed hourly rates for the NEvaluators/s and PIcArbs:** are in the schedule hereto.

6. **Online e-filing and data protection:**

6.1 The parties wish to use the PIcArbs online e-filing system.

6.2 The parties Lawyers confirm that they have visited 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 e-file and including the settlement made in the NE 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 NE and their firm administrators.

7. **Law and Jurisdiction:**

This Agreement shall be governed by English law and under the jurisdiction of the English courts. All the Parties to this Agreement agree to refer any dispute arising in connection with it to mediation first.

8. **Authority:**

All lawyers who sign this NE Agreement have the full expressed authority of their client(s) fully to bind their clients to the terms of this Agreement. All of the individuals with capacity and deputies and litigation friends who have signed this NE Agreement have: a) carefully read the entire NE Agreement, b) are of sound mind, c) have had this NE Agreement fully explained by their lawyers, d) fully understood its contents e) have not been pressured or coerced to enter into this NE Agreement, f) believe the terms of this Agreement to be fair and, g) will be bound by all of terms of this NE Agreement.

9. **Capacity:**

9.1 The Parties all have capacity to litigate.

9.2 If a Party 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 Party’s behalf in this NE.

9.3 If a Party is a child a parent or guardian must have the power to act on the child’s behalf.

10. No Liability:

The Parties agree and acknowledge that neither the NEvaluator nor PIcArbs shall be liable to the Parties for any act or omission whatsoever in connection with this NE.

11. No Evidence:

Neither PIcArbs nor the NEvaluator may be called as a witness by either Party in any subsequent proceedings.

- 12. After the Evaluation:** None of the Parties will seek to instruct the NEvaluator or PIcArbs (or any employee or representative of PIcArbs) as a consultant or arbitrator in any litigation or arbitration in relation to the Dispute and the NEvaluator and PIcArbs will not act voluntarily in any such capacity without the written agreement of all the Parties.

SCHEDULE OF NEvaluator's & PIcArbs' fees

Effective from November 2018. These rates are agreed between the Parties as the recoverable rates
4 hours = a half day; 8 hours = a full day

PARTIES AGREED RECOVERABLE HOURLY RATES/FEEES:

NE Type	Reading and researching	Providing Evaluation	NEvaluator's Fees QC £ + vat	Junior £ + vat
Written Evaluation	Half day	Half day	3,600	2,400
	1 day	1 day	7,200	4,800
	more	Please discuss this with us		
Meeting Evaluation	Half day	Half day	3,600	2,400
	1 day	1 day	7,200	4,800
Meeting rooms	The Parties arrange these and pay the cost			
Travel of NEvaluator	To be agreed with the NEvaluator's clerks			

PIcArbs Fees:

Appointment and e-filing fee: £500 + VAT
Parties request to remove NEvaluator fee: £300 + VAT

PIcArbs NEvaluators' Fees:

Additional hourly work: QC: £450 ph; Junior: £300 ph;

Cancellation fees:

Case settled &/or meeting cancelled over 2 months b4: £0 per diary day
 “ meeting cancelled 22 dys – 2 months b4: 25%
 “ meeting cancelled 21 - 15 days b4: 35%
 “ meeting cancelled 14 - 8 days b4: 50%
 “ meeting cancelled 7 days or less b4: 100%

Guidance Notes on this NE Agreement

- Please download this standard form agreement from www.picarbs.co.uk, then both parties sign it.
- Then both Parties must register at <http://oneplatform.disputesfiling.com>.

PlcArbs NE

3. Then the Claimant starts the new case e-file from his/her home page and uploads the signed NE Agreement.
4. PlcArbs will appoint a Neutral Evaluator who will sign the Agreement and upload it onto the e-file.
5. The Evaluator will then communicate with the Parties through the e-filing system.

Guidance on Neutral Evaluation

There are 3 forms of ADR: Mediation, Neutral Evaluation and Arbitration. To use any form the Parties need to agree to choose that way forwards for resolving their dispute.

Under a Mediation agreement a meeting is arranged between the parties and the independent mediator. With the mediator's neutral facilitation the parties seek to reach agreement. The mediator does not evaluate the issues and does not need to be an expert in the field of law of the dispute.

Under a Neutral Evaluation agreement the parties ask a neutral evaluator who is experienced in the field of law of the dispute to evaluate the issues on the evidence. The evaluation may be in writing or at a meeting between the parties facilitated and evaluated by the evaluator who will give a view on the issues. The parties can choose whether they wish the evaluation to be binding or non binding.

Under an Arbitration agreement the parties appoint an independent person to judge the issues and make a binding agreement that they will not use the courts. The arbitration is officially started within the limitation period and there is a structure to the process similar to civil procedure but much more flexible. The parties can settle the claim at any time by JSM or offers and if they do not then the claim is determined at a hearing before the arbitrator who makes a binding award.

You have chosen Neutral Evaluation: which is

- confidential;
- informal;
- quick and inexpensive;

The parties:

- receive an objective and independent assessment of the merits of the dispute from the NEvaluator; and
- either face to face or in writing, the evaluation is not binding on the parties (unless they agree that it will be binding) but is often persuasive enough to resolve issues.

PlcArbs NE Procedure

The procedure really is very simple. Both parties send their evidence and documents to the NEvaluator. Then the parties either: (1) meet together with the NEvaluator and seek to settle the claim with the issues being evaluated as they arise at the meeting, or (2) receive a written evaluation.

To reach the evaluation the NEvaluator will usually need to give directions for dates for delivery and exchange of evidence and documents.

PlcArbs and the NEvaluator will destroy all documents and e-files within 28 days after the evaluation.

PlcArbs accepts no liability for the acts or omissions of the NEvaluator.

END