



Impress/Ciarb REGULATED PUBLISHERS ARBITRATION SCHEME RULES (“the Rules”)

FOR USE IN ENGLAND, WALES, SCOTLAND, AND NORTHERN IRELAND

Where any claim is referred for arbitration under the Impress/Ciarb Regulated Publishers Arbitration Scheme (“**the Regulated Publishers Scheme**”), the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the Rules or any modified, amended or substituted Rules which the Regulated Publishers Scheme may have adopted and which have come into effect before the commencement of that arbitration.

Scope

1. The Regulated Publishers Scheme relates to civil claims (whether proposed or issued) between a Claimant and a participating Publisher (i.e. a publisher member of Impress’ Regulatory Scheme) for:
 - (a) defamation;
 - (b) breach of confidence;
 - (c) misuse of private information;
 - (d) malicious falsehood;
 - (e) harassment; or
 - (f) breach of data protection law.

The Regulated Publishers Scheme does not cover pre-publication matters which seek to prevent publication.

2. The Rules are intended to govern arbitrations under the Scheme. Arbitrations under the Scheme shall be conducted under the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010. These Rules incorporate the mandatory provisions of the relevant Act (‘the relevant Act’). For the avoidance of doubt:
 - (i) the seat of an arbitration under the Scheme will either be England and Wales, Northern Ireland or Scotland depending on which of the two Acts is the relevant Act; and
 - (ii) the applicable law will be that of the seat of the arbitration and where that is England and Wales or Northern Ireland, will be the law of the nation or nations in which a civil claim has been or would be brought;

unless the parties agree otherwise.

3. The parties may not amend or modify these Rules or any procedure under them after the appointment of an arbitrator unless the arbitrator agrees to such amendment or modification.
4. Under the terms of the Impress Regulatory Scheme, where Impress has determined that such a dispute is suitable for arbitration under the Regulated Publishers Scheme, the Publisher is required to participate in the arbitration.
5. The parties shall sign an agreement to arbitrate and submit it, through Impress, to Ciarb. In the case of a Publisher the document shall be signed by or on behalf of the individual notified to Impress as the legal and standards compliance manager. The arbitration shall be regarded as commenced when both parties have signed Form ARB1 and the signed Form ARB1 has been received by Ciarb.

Appointing authority and appointment of the arbitrator

6. Ciarb shall appoint a sole arbitrator. The arbitrator will manage the arbitration making enquiries of the parties as necessary, with administrative support from Impress (see Rule 15).
7. Arbitrators appointed under the Regulated Publishers Scheme may be subject to monitoring, supervision or scrutiny by Ciarb and by agreeing to arbitration under these Rules the parties agree that disclosure of documentation to Ciarb for the purposes of such monitoring, supervision or scrutiny, does not infringe any principle of confidentiality relating to the arbitration.

Representation, informality, fees and costs

8. Without restricting the right of a party to be legally represented, the arbitration shall be conducted as far as possible to avoid the need for legal representation and to ensure any unrepresented party is not disadvantaged.
9. No award of costs shall be made against the Claimant under any circumstances.
10. The fees of the arbitrator, which shall be paid by Impress, shall be set at no more than £3,500 unless:
 - (a) Impress agrees to the payment of a higher fee; or
 - (b) the arbitration commences but is not concluded with an award (for example, because the claim is struck out under Rule 22), in which case Impress will pay a proportionate fee for the work undertaken up to the point the arbitration process comes to an end which is based on the £3,500 set fee.
11. Where the Claimant has succeeded in whole or in part in their claim, the arbitrator may make an award of costs against the Publisher. The arbitrator shall approach the assessment of such costs on the basis that, in ordinary circumstances:
 - (a) the maximum sum to be awarded will be £3,000; and
 - (b) the hourly charging rate of a lawyer employed by the Claimant shall be reasonable and proportionate having regard to the nature of the claim and the rate shall not exceed £300 per hour;

and the arbitrator shall consider any submissions on costs made before making any costs award.

12. In making a decision to award costs, the arbitrator shall have regard to all the material circumstances, including such of the following as may be relevant:

- (a) whether the costs of the Claimant were reasonable and proportionate having regard to the nature of the claim;
- (b) any offer of settlement or compromise made by the Publisher.

The arbitrator's inquisitorial role

13. The arbitrator shall as far as possible adopt an inquisitorial process in the arbitration, taking the initiative to ascertain the facts and the law, managing the case, making enquiries of or putting propositions to either party, taking into account any inequality of representation. In doing so, the arbitrator must treat the parties fairly, ensuring that before any award is made, each party has had a reasonable opportunity to put its case and to deal with the other party's case.

14. In the case of a Publisher, notwithstanding that the Publisher may be legally represented, the arbitrator has the right to communicate direct with the Publisher's legal and standards compliance manager.

Procedure

15. The request for arbitration shall be handled by Impress, along with the arrangements for payment of the fee, collation of documents and other necessary administrative support. Electronic communication, audio and video conferencing will be available throughout the process to minimise costs.

16. It shall be for the arbitrator to decide all procedural and evidential matters. As soon as practicable after being appointed, the arbitrator shall give directions to:

- (a) the Claimant, requesting them to elaborate on or amend the information they provided when seeking arbitration about the nature of the claim and to supply any existing documents that they wish to rely upon by a specific date;
- (b) the Publisher, requesting them to elaborate on any information they provided in response to the Claimant's request for arbitration and to supply any existing documents that they wish to reply upon by a specific date;
- (c) both parties as to the procedure and the timings that will apply;

unless the arbitrator considers it is unnecessary or inappropriate to do so at this stage (for example, because sufficient information and documents have already been provided, or because mediation or strike out is being considered under Rules 21 or 22 respectively).

17. The arbitrator may give further directions at any time. These directions may include the order and timings within which further documents shall be exchanged, and whether or the extent to which expert evidence shall be admitted. In particular, once the scope of the dispute and its appropriateness for arbitration is clear, the arbitrator will direct:

- (a) the Claimant to set out in written form the allegations of fact or matters of opinion which it is intended to establish by evidence and set out the other remedies sought and the total value of all quantifiable sums if any claimed, together with a copy of all statements and any documents relied on that have not already been provided; and

- (b) the Publisher to then set out in written form the extent to which the allegations of the Claimant are accepted, and where allegations are denied, their reasons for doing so, and if they intend to put forward a different version of events from that given by the Claimant, that they must state their own version and supply all documents and or statements relied on that have not already been provided;

unless the arbitrator considers it is unnecessary to do so.

18. The arbitrator and the parties shall keep in mind throughout the process that one of its overarching aims is to provide a fair, low-cost alternative to litigation for all parties. Should either party consider that costs have, or may become, disproportionate to the issues and sums at stake, they may apply to the arbitrator for directions:

- (a) requiring information about costs to date and anticipated costs to be shared between the parties and the arbitrator;
- (b) on whether or not there should be a hearing (including remote hearing via an online platform);
- (c) to limit the length and number of documents to be considered; and
- (d) to limit the length of evidence and submissions at any hearing;

with a view to ensuring, as far as practicable, costs are proportionate.

Speed

19. The arbitrator shall take all reasonable steps to ensure that, in arbitrations conducted without a hearing, the arbitration is concluded within a period of 3 months of appointment of the arbitrator and, in all other cases (except the most complex), the arbitration is concluded within a period of 6 months of appointment.

20. Where, having considered the material submitted in response to directions made under Rule 16, the arbitrator considers the merits of the claim are unlikely to be strong, but none of the thresholds for a strike out under Rule 22(b) to (g) are met, the arbitrator shall consider whether directions can be given to fairly determine the claim as soon and as straightforwardly as practicable.

Settlement and Determination

21. The arbitrator shall seek to establish the facts underlying the dispute and exercise their powers accordingly. The arbitrator may explore with the parties whether an agreed settlement is possible, including by using Impress' Mediation Scheme. If not, subject to Rule 22, the arbitrator will decide the substance of the dispute in accordance with the applicable law (see Rule 2).

Default and striking out

22. The arbitrator shall have the powers under the relevant Act in the event of a party's failure to comply with directions. Notwithstanding the fact that Impress has referred a claim to arbitration, the arbitrator shall have the power to strike out all or part of a claim in the following circumstances:

- (a) part of the claim has been set out only after the date given for the Claimant's response to a direction made under Rule 16(a) and there was no good

reason why it could not have been set out by that date (in which case the strike out power may be used only in respect of that part of the claim);

- (b) in the case of a claim for libel that has been, or would be, brought in England, Wales or Scotland, there is no real prospect of the Claimant showing that the publication has caused or is likely to cause serious harm to their reputation;
- (c) the Claimant discloses no reasonable ground for bringing the claim;
- (d) the claim is an abuse of process;
- (e) the claim is trivial with the time and cost of the claim being wholly disproportionate to the potential award;
- (f) the claim is made in bad faith;
- (g) the claim is otherwise frivolous or vexatious; or
- (h) the nature of the claim means the arbitrator concludes that it can only be resolved by a court, or is significantly better suited for resolution by a court than by arbitration (for example, where there is a difficult point of law that needs to be resolved to justly determine the claim, or where the claim, or a significant part of it, is likely to turn on issues of disputed fact which are unlikely to be resolved by arbitration, bearing in mind the arbitrator's powers to order disclosure and call witnesses are less extensive than those of a court);

and where part or all of a claim is struck out under (h) above, the Claimant shall not be debarred from pursuing the struck-out part of their claim, or struck-out claim, through litigation.

Arrangements for any hearing

23. The arbitrator will decide:

- (a) whether or not to hold a hearing, and if so, after hearing representations from the parties, whether it should be held in public or in private, in person or remotely;
- (b) the procedures to be adopted at any hearing;
- (c) which, if any, witnesses shall attend; witnesses of fact will be questioned by the arbitrator or, in exceptional cases and with the leave of the arbitrator, the other party;
- (d) any time limits to be imposed on the length of oral submissions or the examination or cross-examination of witnesses.

24. The arbitrator may at any time direct any of the following to be delivered to him or her in writing:

- (a) submissions to be advanced by or on behalf of any party;
- (b) questions intended to be put to any witness;

- (c) answers by any witness to identified questions.

Awards

- 25. Any award shall be in writing, dated, and signed by the arbitrator, and shall contain sufficient reasons to show why the arbitrator has reached the decisions contained in it, unless the parties otherwise agree or the award is by consent.
- 26. Any award shall be final as to the issues determined in it, and shall be binding on both parties.
- 27. The award shall be made public. On application by the parties, the arbitrator shall decide whether any parts of the award shall be redacted to protect confidential information.
- 28. The arbitrator may award and/or direct:
 - (a) damages to the Claimant;
 - (b) that the Publisher shall publish a summary of the award, in a form to be agreed by the parties or directed by the arbitrator;
 - (c) that the Publisher shall not re-publish the information or statement in respect of which the claim has been brought; and/or
 - (d) such other award or direction as they may determine.

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