

The Chartered Institute of Arbitrators

JULY
2009



Dŵr Cymru
Welsh Water

Refno: LAR0012



Arbitration Procedure for the Water Industry

(Dŵr Cymru Cyf)
Rules (1990 Edition)

1 (i) This Procedure ('the Procedure') has been established by the Chartered Institute of Arbitrators for Dŵr Cymru.

(ii) The Procedure provides informal and inexpensive arbitration as a means of resolving those disputes between customers and Dŵr Cymru which, by virtue of the Water Industry Act 1991, shall be determined by arbitration. The Customer may, if he so wished, also refer to arbitration any dispute in respect of which a right is conferred on him by the Act to bring civil proceedings in the courts.

(iii) Arbitrator appointed under the Procedure will decide disputes by reference to submissions and documentary evidence supplied by the parties. As the Procedure is designed to be inexpensive, there is no provision for oral hearings.

(iv) Arbitrations under the Procedure are administered independently by the Institute and appointment of arbitrators under the Procedure is within the Institute's exclusive and unfettered control.

(v) A customer is not obliged to take advantage of the Procedure in any dispute to which it may apply, but if he does he will be bound by the arbitrator's decision and will not be able subsequently to start again with proceedings in the courts in respect of the same dispute, unless the dispute is incapable of proper resolution under the Rules of this Procedure, in which case Rule 8 (ix) applies.

2. (i) A dispute is admissible under the Procedure provided that:

a) The dispute does not involve a sum greater than £5,000; and

b) the dispute does not involve a complicated issue of law; and

c) the dispute is not otherwise unsuitable for arbitration on documents only; and

d) the dispute has previously been notified to the Company; and

e) application for arbitration under the Procedure is made within 12 months of the customer receiving the last reply on the matter from the Company (unless there are exceptional circumstances); and

f) legal proceedings in court in respect of the dispute have not been commenced.

(ii) Where the claim does not exceed £1,000 and the conditions in Rule 2 (i)(b)-(f) are satisfied, the Company will in every case agree to arbitration. Where the claim exceeds £1,000 and the conditions in Rule 2 (i) (b)-(f) are satisfied, the Company may agree to arbitration but reserves the right not to do so. Where the claim is otherwise outside the scope of the Procedure (see Rule 2 (i) (a)-(f)), the Company is not required to agree to arbitration.

(iii) The Procedure does not apply to disputes concerning any demands or accounts in respect of water supply and/or sewerage services or other services for which charges have been fixed by a Charges Scheme made under section 143 of the 1991 Act.

3. An application for arbitration under the Procedure in respect of a dispute does not relieve a customer from any obligation he may have to pay the Company any other amounts which are due and are not in dispute.

4. A registration fee is payable by both parties to the arbitration. This is applied towards defraying the Institute's administrative costs unless it is returned under Rules 6(ii), 8(ix) or 12.

Commencement of Arbitration

5. (i) A customer wishing to refer a disputed claim against the Company to arbitration under the Procedure ('the Claimant') must apply on the prescribed application form,

which can be obtained from the Institute or the Company, together with the registration fee specified in the application form.

(ii) The Claimant must return the completed application form and the appropriate registration fee to the Company, who will sign the form and send it to the Institute together with the Claimant's registration fees. Signature of the application form by the Company will bring it into the case as Respondent in the arbitration.

6. (i) Arbitration commences for the purposes of these Rules when the Institute has received the application form signed by both parties. The Institute will despatch notice to both parties that it accepts application. The Claimant's copy of such notice will be accompanied by a statement of claim form.

(ii) If the application, for any reason, is not accepted, the registration fees shall be returned and the Claimant may pursue the matter in courts.

Subsequent Proceedings

7. General

The arbitration will be on documents only. Subject to any directions of the arbitrator the will be as follows:

(i) The Claimant is required, within six weeks of the statement of claim form, to send to the Institute, in duplicate, the completed form together with the supporting documents. (The Claimant may not, without the consent of the arbitrator, claim an amount greater than specified on the application of arbitration).

(ii) A copy of the claim documents will be sent by the Institute to the Respondent, who is required, within six weeks of receipt of the documents, to send to the Institute, in duplicate, its written defence to the claim (including any counterclaim in respect of the subject matter of the dispute), together with any supporting documents.

(iii) A copy of the defence documents will be sent by the Institute to the Claimant who is entitled to send to the Institute (induplicate)

any written comments which he wishes to make on the defence documents within three weeks of their receipt. Such comments must be restricted to points arising from the defence, and may not introduce any new matters or points of claim.

(iv) Where the parties agree to pursue the arbitration by means of documents prepared in the Welsh language and the arbitrator subsequently appointed is not a Welsh speaker, he shall submit the parties' pleadings and supporting documents to a translator.

(v) The President or a vice-President of the Institute, at such stage of the proceedings as the Institute considers appropriate, will appoint a sole arbitrator to decide the dispute and the Institute will notify the parties of his appointment.

(vi) The arbitrator will make his award with reference to the documents submitted by the parties and transmit his award to the Institute for publication.

(vii) The arbitrator's reasons will be set out or referred to in his award.

(viii) The award will not contain any directions as to payment of interest, but in arriving at the sum to be awarded the arbitrator may, in appropriate circumstances, have regard to any lack of promptness by either party in dealing with the complaint and to any lack of proper effort to settle the matter amicably.

(ix) Where the arbitration is conducted in the Welsh Language, the award shall be published both in Welsh and in English.

(x) The Institute will publish the award by sending copies to each of the parties.(xi) Unless directed otherwise in the award, within three weeks of despatch to the parties of the copy award, payment shall be made of any monies directed by the award to be paid. Such payment shall be made by the party liable direct to the party entitled, and not through the Institute. Enforcement of the award is the responsibility of the parties and the Institute is unable to assist.

(xi) If either party has sent original documents in support of its case to the Institute that party may, within six weeks of publication of the award, request the return of those documents. Subject to that, case papers will be retained by the Institute and may in due course be disposed of.

Supplementary

8. (i) The arbitrator may, through the Institute, request the provision of any further documents/information which he considers would assist him in his decision. If the documents/information are not supplied to the Institute within such time as it prescribes, the arbitrator will proceed with the reference on the basis of the documents already before him. If the documents/information are supplied, they shall be copied to the other party to the arbitration, who shall be afforded an opportunity to comment on them within such time as the Institute prescribes.

(ii) Where in the opinion of the arbitrator it is desirable, he may make a site inspection. The parties shall afford the arbitrator all necessary assistance and facilities for the conduct of this inspection.

(iii) Where appropriate, the arbitrator may sit with one or more independent technical advisers appointed by the Institute when considering the documentary evidence submitted to him.

(iv) Where, in the opinion of the arbitrator, it is desirable that independent examination of the subject matter of the dispute be made, an independent examiner will be appointed by the Institute to make such examination and a written report thereon. The parties shall afford the examiner all necessary assistance and facilities for the conduct of this examination and copies of his report shall be sent by the Institute to the parties, who will then be given 14 days in which to comment thereon.

(v) If the Claimant does not furnish his claim within the time allowed and does not remedy his default within two weeks after despatch to him by the Institute of notice of that default, he will be treated as having abandoned his claim under the Procedure and the arbitration will not proceed.

(vi) If the Respondent does not furnish its defence within the time allowed and does not remedy its default within two weeks after despatch to him by the Institute of notice of that default, then, subject to any directions the arbitrator may give, the dispute will be decided by him by reference to the documents submitted by the Claimant.

(vii) If the Claimant does not furnish any comments on the Respondent's defence within the time allowed and does not request an extension before such time expires, the Institute will assume the Claimant does not wish to make any such comments and the case will proceed accordingly.

(viii) Either party may request an extension of time to any of the deadlines specified in these Rules within which to furnish its submissions. The other party will be notified of such request and if there is any objection then the arbitrator will be asked to give directions.

(ix) If in the opinion of the arbitrator the dispute is not admissible under the Procedure in accordance with Rule 2 or is otherwise incapable of proper resolution under the rules of this Procedure, he shall advise the parties through the Institute. The arbitrator's appointment shall be deemed revoked and the parties' application for arbitration deemed withdrawn, and the parties' registration fees will be refunded. The Claimant will then be at liberty to pursue the matter through the courts.

9. The arbitrator's fees and the administrative costs of the Procedure (including the fees of a translator appointed under rule 7(iv) above and of any independent technical examiner appointed under rule 8(iii) and (iv) above) shall be paid by the Company.

10. The arbitrator's fee shall be £200. Where a site visit is necessary, the arbitrator may charge up to £100 for travel and other out-of-pocket expenses.

11. Each part bears its own costs of preparing and submitting its case.

12. Subject to Rules 6(ii) and 8(ix), the arbitrator has a discretion to give in his award such directions as he considers appropriate with regard to reimbursement of either party by the other of the amount of its registration fee.

Miscellaneous

13. The law of England and Wales shall apply to all references to arbitration under the Procedure.

14. The Institute reserves the right to appoint a substitute arbitrator if the arbitrator originally appointed dies or is incapacitated or is for

any reason unable to deal expeditiously with the dispute. The parties shall be notified of any substitution.

15. Awards made under the Scheme are final and binding on the parties. Subject to the right of a party to request the Institute to draw the arbitrator's attention to any accidental slip or omission which he has power to correct, neither the Institute nor the arbitrator can enter into correspondence regarding awards made under the Procedure.

16. Rights of application or appeal (if any) to the courts are as under the relevant Arbitration Acts provided that:

- (i) The special costs provisions of the Procedure shall not apply to any such application or appeal;
- (ii) Any party making any such application or appeal (other than an application for leave to enforce the award) will bear its own and the other party's costs (including the costs of any resumed or fresh arbitration resulting from such proceedings) irrespective of the outcome of such proceedings.

17. Neither the Institute nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the arbitrator (but not the Institute) shall be liable for any conscious or deliberate wrong doing on his own part.

The Chartered Institute of Arbitrators

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Application for Arbitration

To: The Chartered Institute of Arbitrators
(To be submitted through Dŵr Cymru)

1.....
Claimant of
Phone and
.....Respondent of
Phone

Hereby apply to the Chartered Institute of Arbitrators for the following dispute to be referred to arbitration under the Rules of the Procedure of the Water Industry (Dŵr Cymru) for the time being in force for determination by an arbitrator appointed for that purpose by the Institute.

2. The dispute has arisen in connection with the following:

.....
.....

(NOTE: Only an outline is required here to enable the dispute to be identified by the parties. The Claimant will be asked to submit his specific claim in detail as soon as the arbitration request has been accepted by the Institute).

3. The amount (if any) claimed is (in £ Sterling) £..... and the amount (if any) counter claimed is (in £ Sterling) £.....
4. We, the parties to this application, are each in possession of the current Rules of the Procedure. We agree to be bound by them and by the award of the arbitrator.
5. A cheque or postal order for the sum of £..... * in respect of the claimant's registration fee, and a cheque or postal order for the same amount in respect of the respondent's registration fee are enclosed.

Signed Date
(Claimant)

Signed Date
(Respondent)

*The registration fee payable by the claimant (and therefore also by the Respondent) is in accordance with the following scale:

- Claims up to £1000 = £20.00 plus VAT (£23.54)
- Claims between £1001 and £5000 = £25.00 plus VAT (£29.37)

Cheques etc. should be payable to "the Chartered Institute of Arbitrators".