

# Introduction

## About the ACI Schemes

**ACI operates a number of schemes as follows:**

### **Arbitration Schemes**

- ~ *Fixed Fee Arbitration Scheme*
- ~ *Standard Arbitration Scheme*
- ~ *Fast Track Arbitration Scheme*

### **Alternative Dispute Resolution (ADR)**

- ~ *Mediation*
- ~ *Early Neutral Evaluation*
- ~ *Mini-Trials*

Arbitrations and Mediations are available on a fixed fee basis. ACI also offers an informal Preliminary Discussion for a small fee.

### **Informal Preliminary Discussion**

This enables the parties to have a preliminary discussion with an Arbitrator from the ACI Fixed Fee Panel in order to determine whether the dispute is suitable for arbitration or which scheme is most suitable.

The procedure may be helpful where the parties are not legally represented or where they have begun to litigate in court and are considering moving over to arbitration.

The parties may request a non-binding preliminary discussion of the issues with an Arbitrator from the ACI Fixed Fee Panel lasting not more than one hour before formally requesting the appointment. All applications for a preliminary discussion should be made in writing to ACI and accompanied by the Preliminary Discussion Fee, as set out in the Fee Sheet for the Fixed Fee Arbitration Rules.

Parties who have referred a dispute to an Arbitrator for the purposes of a preliminary discussion may request that ACI appoint that Arbitrator (subject to his being able and willing to act), or may request ACI to nominate another Arbitrator under the Fixed Fee or any other ACI Arbitration Rules when referring the dispute to arbitration.

**The Fixed Fee Arbitration Scheme**

The Fixed Fee Arbitration Scheme is intended to be quick, efficient and cost effective and is suitable where the parties are able to co-operate in seeking a speedy resolution of their dispute. Disputes that can be resolved within a half to two day hearing will fall within the Scheme. The main distinguishing features of the ACI Fixed Fee Arbitration Scheme are as follows:

- 1 The Arbitrator will be appointed by ACI. In doing so, ACI will have regard to any agreed proposal by the parties, subject to any conflict of interest and/or the availability of the Arbitrator. In any event, in appointing the Arbitrator, ACI will have regard, so far as possible, to the nature and circumstances of the dispute and the expertise of the Arbitrators on the Fixed Fee Panel.
- 2 The Arbitrator will hold an early preliminary meeting to assist the parties in defining the issues and give appropriate directions for the future conduct of the arbitration.
- 3 Any expert evidence required will be given by an Arbitrator-appointed expert. The expert's report will be provided to the parties and they will have an opportunity to comment on it and to examine the expert at the hearing.
- 4 The fee for the arbitration is fixed in advance and paid in two instalments. The Initial Fee covers the administrative charge and the early stages of the Arbitrator's work. The Second Stage Fee is payable following the preliminary meeting and covers the Arbitrator's fees to the conclusion of the arbitration. Expenses (for example for an expert to advise the Arbitrator) are payable in addition.
- 5 The Arbitrator may order the losing party to pay the costs of the arbitration but these costs will be limited to the Fixed Fees as set out in the current Fee Sheet. The Arbitrator has a power to order a party to pay the legal costs of another party in circumstances where those costs are caused by unreasonable conduct in the course of the proceedings. Otherwise each party will be responsible for his own legal costs and may not recover these from the other parties or become liable to pay any other party's costs.

- 6 The Fixed Fee documents-only procedure is suitable for simple cases, with limited documentation, not requiring oral evidence. It is intended that a preliminary meeting will nevertheless be held in most documents-only Arbitrations. If it appears at that meeting that the dispute is not suitable for the documents-only procedure then the Arbitrator will make an order for an oral hearing. If it appears at that meeting that the dispute is suitable for a documents-only hearing but is not suitable for the Fixed Fee Scheme, by reason of the complexity and volume of the documents, he may transfer the arbitration to the Standard Scheme.
- 7 The parties may request a split hearing in which the issues between the parties are to be determined at more than one hearing of not more than two days each (whether or not the parties request the Arbitrator to issue one or more Interim Awards). If the Arbitrator agrees that the dispute shall nevertheless proceed as a Fixed Fee Arbitration, the appropriate fee will be payable for the first hearing and again for each subsequent hearing in accordance with the Fee Sheet for Fixed Fee Arbitrations as if each hearing is a separate arbitration.
- 8 If, on consideration at the preliminary meeting, the Arbitrator considers that the dispute is not suitable for the Fixed Fee Arbitration Scheme, the Arbitrator may transfer it to the Standard Arbitration Scheme and the dispute may be heard either by the same Arbitrator (with the consent of the parties) or by another ACI Standard Panel Arbitrator in accordance with the rules for that scheme with the minimum of additional cost to the parties. In general the submissions made in the Fixed Fee Arbitration Scheme will stand as the submissions in the Standard Arbitration Scheme, subject to any order of the newly appointed Arbitrator.
- 9 The Arbitrator will normally aim to make his award within 4 weeks from the last day of the hearing or other representation.

### **The Standard Arbitration Scheme**

The Standard Arbitration Scheme is intended to be as quick, efficient and cost effective as is consistent with a just decision on the issues between the parties. Arbitrations will be resolved with as little formality and as quickly as is possible in each case. The main distinguishing features of the ACI Standard Arbitration Scheme are as follows:

- 1 The Arbitrator will usually hold an early preliminary meeting to assist the parties in defining the issues and/or give directions for the future conduct of the arbitration. This allows the Arbitrator to play an active and constructive role in the resolution of the dispute. The Arbitrator will look for an efficient and cost effective solution and will not hesitate to make an order for a preliminary issue or point of construction or law to be determined, where he considers that this may resolve the dispute or assist the parties in negotiating a settlement.
- 2 Most arbitrations will take place before a sole arbitrator. However, the parties may appoint a tribunal of more than one arbitrator, if they wish. The parties may choose an arbitrator, subject to any conflict of interest, or agree a method for appointment. In default of appointment by the parties, ACI will appoint an arbitrator from the Panel of Arbitrators for Standard Arbitrations, and in doing so will have regard to the nature and circumstances of the dispute and the expertise of the Arbitrators on the Panel. The parties may agree, either in a contractual arbitration clause or after the dispute has arisen, to the appointment of a non-legal assessor to sit with the arbitrator in appropriate cases.
- 3 The parties may have an opportunity to call their own experts in appropriate cases. Otherwise any expert will be appointed by the Arbitrator. In that event the expert will report to him. The expert's report will be provided to the parties and they will have an opportunity to comment on it and to examine the expert at the hearing.
- 4 Arbitrators on the Standard Arbitration Panel set their own individual fees details of which are obtainable from ACI. An Initial Fee, paid with the Request for arbitration, covers the administrative charge. A deposit on account will be requested to cover the estimated time to be spent by the Arbitrator up to the time of the Preliminary Meeting. In cases involving a substantial amount of work prior to the Preliminary Meeting, it may be necessary to request a further deposit prior to that meeting. Thereafter further deposits on account will be requested from time to time to cover the costs of the arbitration and any expenses.
- 5 Subject to any contrary agreement, the parties will be entitled to recover their legal costs. Costs will follow the event, save in circumstances where the Arbitrator considers that a party should be responsible for the whole or a part of the costs.

**The Fast Track Arbitration Scheme**

The Fast Track Scheme is intended for cases of real urgency, where an Award is required within days. This may be, for example, because the parties are in a continuing trading relationship, which is dependent upon the result.

The Arbitrator or tribunal will be selected in consultation with the parties, for immediate availability as well as suitable expertise. Preliminary directions for the conduct of the arbitration will be given by telephone where necessary.

The Arbitrator's fee will be individually negotiated and will depend upon the nature of the case and whether the Arbitrator is required to work unusual hours.

**ADR Schemes**

These rules apply to all forms of dispute resolution which do not produce a binding adjudication. They therefore exclude Litigation and Arbitration. The most common non-adjudicative forms are mediation, early neutral evaluation and mini-trials. All of these processes involve the assistance of a "Neutral" to assist in the resolution of the dispute. They involve quite different procedures as described in more detail below. These procedures may be conducted before or after the commencement of court or arbitration proceedings. If the dispute is already being arbitrated under ACI Rules, the parties may request the tribunal to adjourn or stay the proceedings. All ADR proceedings are conducted on an entirely confidential basis and neither party may disclose documents or other information arising from the process to a non-party or use that information in any other proceedings. Neither party may call, in any other proceedings, the Neutral or any other person involved in the process to give evidence concerning matters disclosed. All of these procedures have a proven high degree of success in helping the parties to reach a satisfactory settlement. Suitably trained and experienced lawyers can help the parties to analyse the issues and to assess the strengths and weaknesses of their case. This results in a higher degree of success in complex commercial cases.

**Mediation**

This is a process of structured negotiation carried out in a speedy and informal manner. The Neutral acts as an intermediary to help the parties reach their own settlement. Mediation is often successful

where negotiation, either directly between parties or between lawyers acting for the parties, is unsuccessful. This is because of the particular techniques that can be adopted with the intervention of an independent neutral third party.

- 1 Mediation is most commonly conducted by a sole Neutral but there may be two or more Neutrals if the parties so wish.
- 2 It is essential that those representing the parties at the mediation have full authority to settle the dispute. Experts and professional advisers may also (but need not necessarily) attend.
- 3 The mediator will meet with the parties in joint and private sessions as he considers fit. He may also meet with any experts or others attending the mediation with the parties. Closed sessions are conducted on a strictly confidential basis. Documents and information may be made available to the mediator on a confidential basis without disclosure to the other party.
- 4 The settlement reached may well be different from the decision a court or arbitrator would have reached. Very often it will more closely meet the commercial needs of the parties.
- 5 The rights of the parties including the right to proceed or continue with an arbitration or any other process in Court will be unaffected by the mediation unless the mediation results in a settlement.
- 6 Mediation is available on a fixed fee basis.

**Early Neutral Evaluation (ENE)**

ACI Panel Members may be appointed to carry out non-binding ENE of the issues in a dispute falling within their area of expertise. Senior Silks are particularly well placed to give an indication of the likely result in a dispute involving a point of law or the interpretation of a contract where mediation or settlement is difficult to achieve because of diverse views on those issues. The senior silks on the Panel are particularly suitable for this procedure.

- 1 ENE will be conducted by one sole Neutral.
- 2 The Neutral will make orders for an agreed list of issues, the exchange of any relevant documents and the creation of a small core bundle where necessary. No documents may be produced in confidence to the Neutral.
- 3 The procedure at the hearing will be determined by the Neutral. Witnesses will not usually be heard. The parties will be entitled to make short submissions within a time limit set by the Neutral.

- 4 The Neutral will publish a non-binding written decision at the end of the hearing.

**Mini-Trials**

Mini-Trials take a number of forms. The most common is a process by which the parties present the essence of their case by submissions and sometimes evidence to a Tribunal made up of senior executives (who typically were not involved in the matter) from the parties and a neutral chairman. This is done within a strictly limited time to enable the Neutral to make a non-binding evaluation. Whether or not an evaluation is actually given to the parties, negotiations can then take place and the process may proceed (if the Neutral considers it appropriate) as if it were a mediation. This process is particularly suitable for larger, more complex disputes where there are points of law or construction combined with substantial issues of fact.

- 1 Although this procedure will inevitably take longer than a mediation or simple early neutral evaluation, it has considerable value where the dispute would take a substantial period of time for hearing before a court or arbitrator and mediation is unlikely to be successful. Typically a case which might last several months in court or arbitration would be dealt with in a Mini-Trial within a few days. It enables the parties to assess the strength of their own and the other parties' cases and experience shows that the non-binding award or evaluation (which will include a determination of points of law or construction and issues of fact) often results in a settlement.
- 2 Parties should be represented by senior officers who will play an active part in any settlement negotiations which follow the evaluation, whether or not those officers are appointed to participate as part of the Tribunal.
- 3 The Neutral will make orders for an exchange of a list of issues, the exchange of any relevant documents and the creation of a small core bundle.
- 4 The procedure at the hearing will be determined by the Neutral. The parties will usually be entitled to call a limited number of witnesses who may be examined and cross-examined. The parties will also be entitled to make submissions. The Neutral will set strict time limits for each stage of the hearing.
- 5 The Neutral may give a non-binding recommendation or decision at the end of the process.