

ARBITRATION PRACTICE AND PROCEDURE

By Mair Coombes Davies

A paper presented at the

DISPUTE RESOLUTION FORUM

Glamorgan Business Court

University of Glamorgan, Treforest, Mid Glamorgan

For



THE CHARTERED INSTITUTE OF ARBITRATORS WALES BRANCH

In association with

THE UNIVERSITY OF GLAMORGAN



For further details or assistance please contact:

Dr. MAIR COOMBES DAVIES

BSc (First Class Honours), B.Arch, (Distinction), Ph.D.RIBA, F.C.I.Arb

Barrister, Arbitrator : Adjudicator : Mediator, Architect

Barristers Chambers, 30 Park Place, Cardiff, CF10 3BS

Tel : 02920 398421 Fax : 02920 398725 DX : 50756 Cardiff Email : m@coombesdavies.co.uk

ARBITRATION PRACTICE AND PROCEDURE

CONTENTS

- **Flow diagram for arbitration procedure.**
- **Sample schedule of arbitrator's fees**
- **Sample preliminary meeting agenda**
- **Sample order for directions**
- **Sample hearing agenda**



Profile

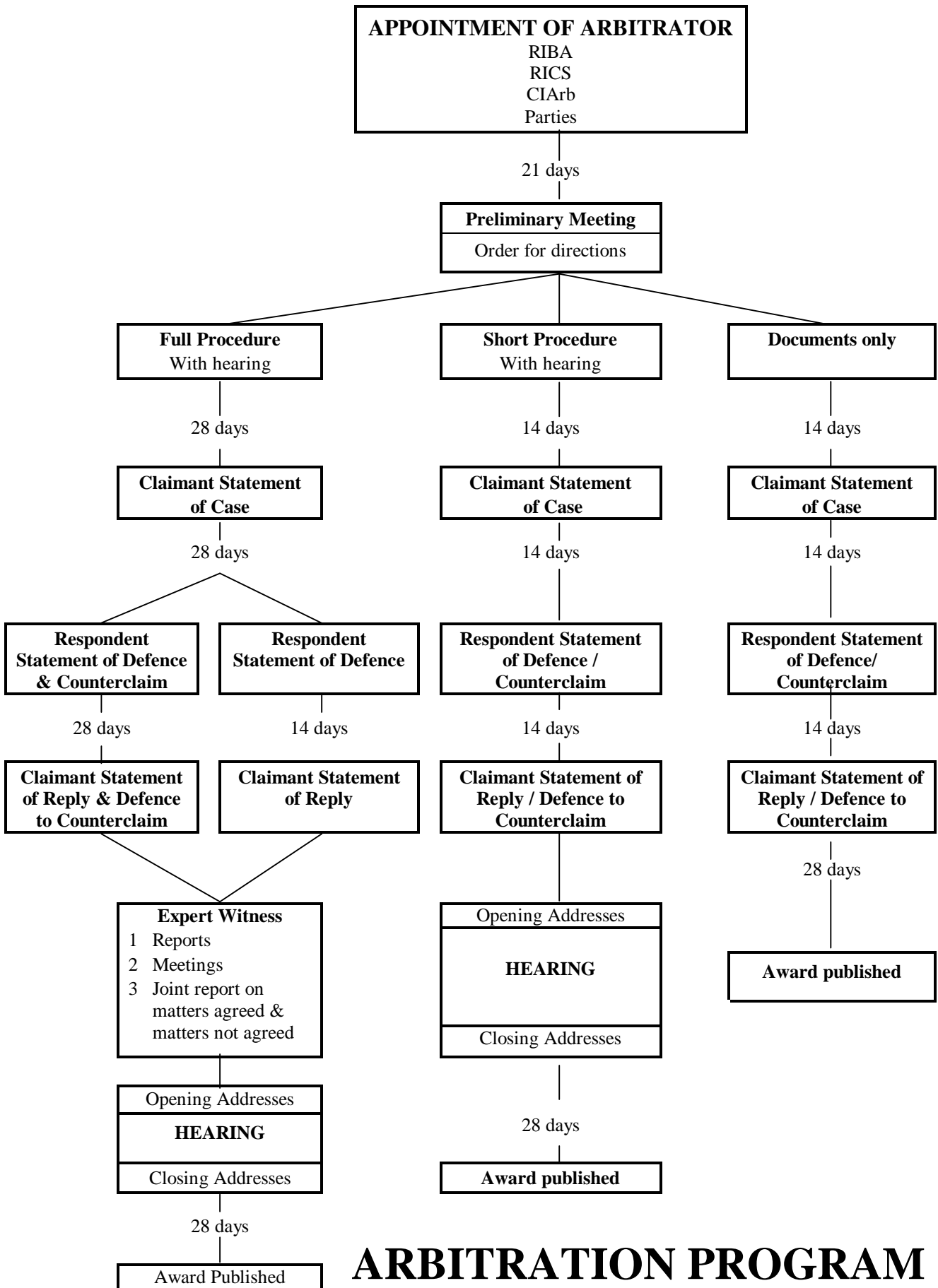
Dr Mair Coombes-Davies is dual qualified as a barrister and an architect, specialising in alternative dispute resolution for commercial, construction and land disputes. She sits as an arbitrator, adjudicator, and mediator and is head of the alternative dispute resolution team at Barristers Chambers, 30 Park Place, Cardiff (a leading set of chambers in the region, fielding in excess of 50 barristers).

She has had over 300 arbitration, adjudication and mediation appointments in the last 4 years; including appointments by the Office of the Deputy Prime Minister, the Welsh Assembly Government, the Chartered Institute of Arbitrators and RIBA.

Dr Coombes-Davies served on the national council of the Chartered Institute of Arbitrators and also served as Chairman of the Chartered Institute of Arbitrators Welsh Branch. She was a member of the South and West Wales Court Mediation Scheme working party, and a "Rethinking Construction Wales Forum" executive member, involved in drafting Chartered Institute of Arbitrators personal injury mediation rules and guidance and commercial mediation scheme.

Dr Coombes-Davies has numerous publications to her name and authored the best selling, '*A practical guide to avoiding claims*'. She lectures extensively on arbitration, adjudication and mediation and has undertaken a number of Chartered Institute of Arbitrators training seminars in mediation, including lecturing on mediation and demonstrating mediations.

ARBITRATION PRACTICE AND PROCEDURE



ARBITRATION PROGRAM

ARBITRATION PRACTICE AND PROCEDURE

ARBITRATION REFERENCE: 000.00

IN THE MATTER OF THE ARBITRATION ACT 1996
AND
IN THE MATTER OF AN ARBITRATION
BETWEEN:

M

Claimant

and

CD

Respondent

Draft / SCHEDULE OF ARBITRATORS FEES

Fees

- | | |
|-----------------------|---|
| 1. Hourly rate | £000.00 |
| Daily rate (hearings) | £000.00 |
| Preliminary fee | £000.00. Payable at the reference commencement. |
| Travelling expenses | At net cost. First class travel, refreshments and four star hotel accommodation where an overnight stay is necessary. Car mileage at 00 pence per mile. |
| Disbursements | At net cost. |
- VAT shall be added at the appropriate rate.
 - The above rates shall apply to all time spent upon or reserved for the arbitration.
 - The foregoing rates apply for time spent in the twelve months after the date of this appointment. The rates will be subject to review on the expiration of the twelve months and on an annual basis thereafter.
 - Fee accounts may, at the arbitrator's discretion, be issued at the commencement of the arbitration and thereafter at no less than monthly intervals.

Hearings

- Where time is reserved for a hearing non-returnable security shall be provided at 100% of the full daily rate, plus VAT, for each day reserved. Until security is provided any dates reserved will be provisional.
- The arbitrator may direct that such security shall be paid by either the claimant or the counterclaimant or by both parties in such proportions as the arbitrator deems appropriate.
- Where a hearing date has been fixed and is subsequently cancelled, the arbitrator reserves the right to charge a cancellation fee of the following proportions of the fees that would have been payable had it proceeded:
 - If cancelled at more than 2 weeks notice 75%.
 - If cancelled at less than 2 weeks notice 100%.

ARBITRATION PRACTICE AND PROCEDURE

Payment

- 9. Payment is due within 10 days of date of invoice.
- 10. The parties shall be jointly and severally liable to pay to the arbitrator the arbitrator's fees and expenses.
- 11. Interest on overdue payments shall accrue at 10 per cent over Bank of England base rate.
- 12. Should the payment of the whole or a part of any fee account be unduly delayed the arbitrator is entitled to take such action as the arbitrator may consider appropriate in the circumstances including charging for any action taken to recover the fees.

Signed:..... **Signed:**.....
Name & Address..... *Name & Address*.....
.....
.....

Date:.....2003 *Date:*.....2003

Claimant

Respondent

ARBITRATION PRACTICE AND PROCEDURE

ARBITRATION REFERENCE: 000.00

**IN THE MATTER OF THE ARBITRATION ACT 1996
AND
IN THE MATTER OF AN ARBITRATION
BETWEEN:**

M

Claimant

and

CD

Respondent

Draft / PRELIMINARY MEETING AGENDA

Appearances

1. Claimant.
2. Respondent.

Arbitration jurisdiction

3. Acts
 - i Arbitration Act 1996.
 - ii Other
4. Regulations.
5. Terms of arbitration clause within parties contract.
6. Applicable arbitration rules.

Outline of dispute

7. Claim
 - i. Subject.
 - ii. Value.
8. Defence / Counterclaim
 - i. Subject.
 - ii. Value.
9. Issues.

Jurisdiction

10. Do any questions of jurisdiction arise.

ARBITRATION PRACTICE AND PROCEDURE

Procedure

11. Whether:
 - i. Full procedure with hearing.
 - ii. Short procedure with hearing.
 - iii. Procedure without hearing - documents only.
Arbitrator reserves right to convene meeting / hearing if documents raise issues which in arbitrator's opinion cannot be satisfactorily resolved on documents only.

Pleadings

12. Claimant to serve Statement of Case by ...
13. Respondent to serve Statement of Defence (and Counterclaim if any) by ...
14. Claimant to serve Statement of Reply (and Defence to Counterclaim if any) by ...
15. Statements:
 - i. Each Statement to be accompanied by a list of documents and a copy of every document intended to be relied upon. The part relied upon within each document to be clearly identified.
 - ii. Statements in Reply may contain evidence and submissions in rebuttal of material contained in opposing party's Statement of Case.
16. Claimant to serve a list of agreed issues by...

Full procedure with hearing

17. If full procedure with hearing (pleadings as above):
18. Statements of evidence of witnesses of fact, to stand as evidence in chief, exchanged by...
19. Experts:
 - i. Number.
 - ii. Discipline.
 - iii. Expert witness reports exchanged by...
 - iv. Experts of like disciplines to meet without prejudice by...
 - v. Experts of like disciplines to prepare a joint report on matters on which they are agreed and not agreed by...
 - vi. Experts' reports to stand as evidence in chief.
20. Parties opening addresses served by...
21. Venue for hearing:
 - i. Barristers Chambers, 30 Park Place, Cardiff.
 - ii. Other.....Reserved by Claimant / Respondent.
22. Provisional date for commencing hearing ...

ARBITRATION PRACTICE AND PROCEDURE

23. Parties to send to arbitrator by...
 - i. Agreed time estimate for hearing failing agreement each party's estimate.
 - ii. Names of those (if any) who will represent each party.
 - iii. Numbers likely to attend hearing.
24. Transcript of hearing:
 - i. Is not required.
 - ii. Is required and will be arranged by Claimant / Respondent.
25. Parties written closing addresses exchanged by...

Short procedure with hearing

26. If short procedure with hearing (pleadings as above):
27. Claimant and Respondent exchange summary of oral submissions by ...
28. Date of hearing ...
29. Parties to send to arbitrator by...
 - i. Names of those (if any) who will represent each party.
 - ii. Numbers likely to attend hearing.
30. Transcript of hearing:
 - i. Is not required.
 - ii. Is required and will be arranged by the Claimant/Respondent.

Award

31. Interim award. Dealing with the issue of liability / quantum / other... Thereafter there will be a further meeting to consider what further directions are needed.
32. Final award.

Communications

33. Communications to the arbitrator:
 - i. To be made by e-mail, fax, post, or telephone to arbitrator's clerk.
 - ii. A copy of any communication to be sent to the other party.
 - iii. An indication to be given that a copy has been sent to the other party.

Arbitrator's terms

34. Agreement of the arbitrator's standard scale of charges and terms of engagement.

Costs

35. Provisions as to costs.

Any other business

ARBITRATION PRACTICE AND PROCEDURE

ARBITRATION REFERENCE: 000.00

IN THE MATTER OF THE ARBITRATION ACT 1996
AND
IN THE MATTER OF AN ARBITRATION
BETWEEN:

M

Claimant

and

CD

Respondent

ORDER FOR DIRECTIONS NO.1

Upon hearing on behalf of the Claimant and on behalf of the Respondent at the preliminary meeting held by telephone conference on 2003

The following directions are given

And it is ordered that:

Award

1. An award shall be made on the following issues:
1.1.....

Procedure

2. The Claimant shall serve a Statement of Case by 4.00pm on 2003.
3. The Respondent shall serve a Statement of Defence by 4.00pm on 2003.
4. The Claimant shall serve a Statement of Reply, if so advised, by 10.00am on 2003.
5. Each Statement shall be accompanied by:
 - 5.1 Written statements of any oral evidence intended to be relied upon.
 - 5.2 A list of documents and a copy of every document intended to be relied upon. The part relied upon within each document to be clearly identified.
6. The Claimant and the Respondent shall each serve a summary of their oral submissions by 4.00pm on 2003.
7. The Claimant and the Respondent shall send to the Arbitrator by 4.00pm on 2003:

ARBITRATION PRACTICE AND PROCEDURE

7.1 Confirmation that the Claimant will be represented by and the Respondent will be represented by at the hearing referred to in paragraph 8 below.

7.2 The names and status of those who will attend the hearing referred to in paragraph 8 below.

8. There shall be a hearing at 10.00am on 2003 at which will be reserved by the Claimant.

Communications

9. Communications by the Claimant and the Respondent to the Arbitrator shall be made by e-mail, fax, post or telephone to the Arbitrator's clerk.

10. A copy of any communication by the Claimant or the Respondent to the Arbitrator shall be sent to the other party and an indication shall be given that a copy has been sent.

Arbitrator's fees and expenses

11. The Claimant shall immediately obtain and forward to the Arbitrator and the Respondent written confirmation on headed paper from the that the fees and expenses of the Arbitrator shall be paid by

Costs

12. The Claimant and the Respondent shall immediately confirm in writing to the Arbitrator their agreement that each party shall pay its own costs of the arbitration.

DATED2003

M. Coombes Davies
Arbitrator

ARBITRATION PRACTICE AND PROCEDURE

ARBITRATION REFERENCE: 000.00

IN THE MATTER OF THE ARBITRATION ACT 1996

AND

IN THE MATTER OF AN ARBITRATION

BETWEEN:

M

Claimant

and

CD

Respondent

ARBITRATION HEARING AGENDA

Arbitration hearing to be held at 10.00am on 2003 at

Timetable¹

- 10.00am Opening
- 11.15am Short adjournment.
- 11.30am Re- commencement.
- 1.00pm Lunch
- 2.00pm Re-commencement.
- 3.15pm Short adjournment.
- 3.30pm Re-commencement.
- 4.45pm Conclusion.

Procedure

- 1 Opening of arbitration hearing. Arbitrator
- 2 Claimant's case.
 - Opening statement on behalf of the Claimant.

Claimant's witnesses²:

- 1. (Name and position).....
- 2. (Name and position).....
- 3. (Name and position).....
- 4. (Name and position).....

1 Times are provisional.

2 Evidence from each witness will be given as follows:
 The witness will take the oath or affirmation.
 The written statement of each witness will stand as the evidence in chief of that witness but the witness may be asked relevant supplemental questions by the representative of the party calling that witness.
 Cross examination of the witness by the representative of the other party.
 Re-examination of the witness by the representative of the party calling that witness on relevant points raised in cross examination and not already covered in evidence in chief.
 If a witness is the representative of a party then he shall give such further evidence in chief and at the conclusion of cross examination as the Arbitrator may order.
 The Arbitrator may seek information from the witness either after re-examination or at any time during the course of the witness's evidence.

