



Rules for Arbitration Board conciliation and mediation

**Adopted by the Arbitration Board
on 31 August 2015**

The purpose of conciliation and mediation is to ensure informed, fast and flexible dispute resolution in the field of building and construction through the use of a conciliator or mediator with relevant professional knowledge, primarily of a technical, financial or legal nature.

The differences between the two types of dispute resolution are set out in Parts 1 and 2. The procedural rules are otherwise by and large identical for the two processes.

The application of the Arbitration Board rules on conciliation or mediation may be laid down in building or construction contracts or be agreed after the dispute has arisen. The rules may be applied both before and after the handover of the works.

Part 1: Conciliation

1(1) In its capacity as conciliator, the Arbitration Board can appoint a person who is qualified to act as a conciliator based on his or her educational and professional background and his or her experience within the field the dispute concerns.

(2) The conciliator must be impartial and independent. He or she will not provide advice to, or act as a representative of, any of the parties involved in the dispute.

(3) The conciliator may present a conciliation proposal as well as his or her own assessment of the case, including legal, financial and technical matters. However, the conciliator will have no authority to decide how the dispute is to be resolved (see, however, Rule 12).

(4) The conciliator cannot continue to act as an arbitrator in any subsequent consideration of the same dispute after unsuccessful conciliation (see, however, Rule 12).

Part 2: Mediation

2(1) The Arbitration Board can appoint a person who is qualified to act as mediator based on his or her educational and professional background and his or her general experience in the field of building and construction.

(2) The mediator must be impartial and independent. He or she will not provide advice to or act as a representative of any of the parties involved in the dispute.

(3) Acting as chief negotiator, the mediator will chair the mediation process and assist the parties in clarifying their points at dispute as well as their positions and interests, and then help them resolve their dispute in a way that they find satisfactory. The mediator will have no authority to decide how the dispute is to be resolved and will not present any proposal for settlement, and thus will not provide any legal, financial or technical advice or assessment to the parties, either jointly or individually.

(4) During the process the parties may, however, agree to switch to the conciliation process (see Rule 1). The mediator may act as conciliator in this process if the parties and the mediator so agree.. If the parties ask the Arbitration Board to appoint a new conciliator, the board will treat the matter as a new case.

(5) The mediator cannot continue to act as an arbitrator in the resolution of the same dispute after unsuccessful mediation.



Part 3: Opening of case and appointment of conciliators and mediators

3(1) Applications for conciliation or mediation under the Arbitration Board Rules must be sent to the Arbitration Board by email and must include the following information:

- a) The names of the parties to the case.
- b) The addresses, telephone numbers and email addresses of the parties.
- c) The agreement or a confirmation by both parties that they wish to apply the procedure so that the Arbitration Board can be sure that they agree on conciliation or mediation under the Arbitration Board Rules.
- d) A brief description of the dispute that enables the Arbitration Board to select a suitable conciliator or mediator.

(2) If no signed agreement is received (see Rule 1(1)(c)), and the Arbitration Board has only received confirmation from one party, the board will ask the other party for confirmation. Such confirmation may be sent to the board by email. If no confirmation is received, the board will not proceed with the matter.

4(1) When the Arbitration Board confirms the opening of the case, it will also set a deadline of five working days for the payment of a deposit based on the fixed rates applied by the board. Each of the parties must pay half of the deposit, unless otherwise agreed. The deposit amount will cover the standard fee of the conciliator or mediator, the cost of premises, photocopying, transport, etc, as well as the fee and service charge payable to the Arbitration Board.

(2) If at some point during the process the Arbitration Board finds that the deposit originally paid is insufficient to cover the anticipated total costs (see Rule 13(1)), the board will ask the parties to pay an additional amount by a deadline determined by the Arbitration Board.

(3) The process will not begin until the deposit has been paid, and a process that has already started may be discontinued if an additional amount payable has not been paid by the deadline stipulated.

5(1) If the parties have requested conciliation, the Arbitration Board will appoint a suitable conciliator in accordance with the criteria set out in Rule 1 within five working days after having received such a request.

(2) If the parties have requested mediation, the Arbitration Board will appoint a suitable mediator in accordance with the criteria set out in Rule 2 within five working days after having received such a request.

(3) The parties may agree to propose a specific conciliator or mediator to be appointed by the Arbitration Board unless the board by way of exception finds the conciliator or mediator proposed unsuitable.

(4) If requested by the parties, the Arbitration Board may appoint more than one conciliator or mediator.

(5) When they are informed of the conciliator or mediator appointed (see (1) or (2) above), the parties will receive his or her CV as well as information about the hourly fee rate as well as the fee and service charge payable to the Arbitration Board for management of the case.

(6) The Arbitration Board will ask the conciliator or mediator selected to submit a declaration of impartiality in which he or she declares that he or she is impartial in relation to the parties and intends to remain so. The board will also inform the parties of factual matters or other circumstances that may raise questions as to the impartiality of the conciliator or mediator in relation to the parties. The declaration may be sent to the Arbitration Board by email.

(7) If the parties object to the conciliator or mediator selected, they must send a reasoned objection to the Arbitration Board within three working days after appointment. As grounds for the objection they may cite lack of qualifications, lack of impartiality or other legitimate grounds for lack of trust in the conciliator or mediator.



Part 4: Procedural rules

6(1) A protocol of meetings, including telephone conferences, etc will be kept and sent to the parties by email after each meeting.

(2) The protocol will contain information about meetings held in the case, including telephone conferences, etc. The time and location of each meeting, the names of persons attending the meeting and the outcome of discussions will be stated in the protocol, including information as to whether an agreement has been reached or whether the process was unsuccessful. The matters discussed and the reason for the conclusion of the process will not be stated in the protocol.

(3) In the event of a switch from mediation to conciliation (see Rule 2(4)), such switch must be recorded in the protocol, which subsequently will be sent to both parties to ensure common understanding of what was agreed.

(4) If a distribution of costs other than that stated in Rule 13 is agreed, this must also be stated in the protocol, which will subsequently be sent to both parties to ensure common understanding of what was agreed.

7(1) The conciliator/mediator and the parties have a mutual obligation to treat all information which emerges during the hearing of the case as confidential information, unless otherwise agreed. The parties thus agree not to disclose any information which emerges in connection with the case and which does not come from the party itself, unless otherwise required under applicable law.

(2) If the conciliation or mediation does not lead to resolution of the dispute, the legal position of the parties will not be prejudiced.

(3) Documents, statements, etc prepared in connection with the process will be without prejudice to any subsequent arbitration or court case. The parties undertake not to submit such

material in such cases or demand that it be submitted.

(4) The parties will not be entitled to see the conciliator's or the mediator's notes or to demand that the conciliator or mediator subsequently make a witness statement.

(5) The conciliator/mediator must not be involved in the dispute in question in any way that goes beyond the actual conciliation and/or mediation, unless otherwise agreed by the parties, for example as set out in Rule 12. This also applies after conclusion of the case.

8(1) In consultation with the parties the conciliator or mediator will plan how the process is to proceed and fix a date for a meeting regarding the case. The conciliator or mediator will agree with the parties who is to participate and whether advisers are to be present or not.

(2) The parties may be assisted by a legal counsel or some other adviser chosen by them, unless otherwise agreed in connection with the planning of each individual meeting.

(3) A conciliator may only have meetings with both parties being present at the same time. Separate meetings with each party will thus not be allowed.

(4) A mediator may hold both meetings with both parties present at the same time and separate meetings with each party. Whenever separate meetings are held, the non-participating party will be informed and the parties participating in the meeting will decide during the meeting what information the mediator may divulge to the other party.

9(1) Together with the parties, the conciliator or mediator will determine what information is to be presented in the proceedings, for example in the form of statements by the parties to the case and various documents.



(2) A conciliator or mediator may at any point in time during the process ask the parties to provide any information he or she deems necessary.

(3) If the parties so agree, parties other than the parties to the case may attend meetings to provide information or expert assessments. The cost incurred in connection with such third-party meeting participation is to be covered by the parties to the case as set out in Rules 4 and 13.

Part 5: Conclusion of the case and final payment

10(1) The aim should be for the process to be finalised within fifteen working days after the appointment of the conciliator or mediator. The conciliator or mediator may decide to prolong the process, in which case a new deadline for conclusion of the proceedings will be set.

11(1) The process will be concluded when

- a) the parties have agreed on a settlement of the case,
- b) the conciliator or mediator informs the parties that further conciliation or mediation would be pointless or unjustified;
- c) the parties have not managed to settle the matter by a predefined deadline; or
- d) one of the parties announces that the process is to be discontinued.

(2) In conciliation cases, the conciliator will draft an agreement between the parties if the dispute has been resolved. The agreement will then be signed by the parties.

(3) In mediation cases, the mediator will assist in the drafting of the agreement to be signed by the parties if the dispute has been resolved but will not prepare the actual agreement. It is not part of the mediator's task to ensure that agreements are consistent with applicable law or with the possible outcome of a subsequent award or ruling.

12(1) Notwithstanding the provisions of Rule 1(2) and (3), the Arbitration Board may appoint the mediator in a mediation case sole arbitrator in a procedure intended to result in the issuing of an arbitration award, provided that the parties so request and the mediator does not oppose this being done. If the parties wish the award to be consistent with the agreement reached by the parties, no new fee will be payable to the Arbitration Board and the arbitration tribunal will be paid on the basis of time spent.

13(1) The fee payable to the conciliator or mediator will be determined by the Arbitration Board on the basis of time spent and the hourly rate applied to the case in question; see Rule 5(5). In addition, the cost of renting premises, photocopying, transport, etc will be charged, as will the fee and service charge payable to the Arbitration Board for its administration of the case.

(2) The Arbitration Board will prepare a final statement of total costs once the case is concluded and will inform the parties accordingly in writing. Costs will be shared equally between the parties unless they agree otherwise. The parties will be jointly and severally liable for any amount that exceeds the deposit paid.

(3) Each party must pay its own costs in any respect.

These rules apply from 1 October 2015

