COLLAS CRILL

Business disputes: An alternative path to resolution

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We are often approached by clients with disputes that simply aren't financially viable to litigate. Where the sums involved will take the claim outside of the limits for Petty Debts or Small Claims (£10,000), there may not be enough at stake to justify the time and expense of litigation.

Ideally, the parties would be able to reach an agreement themselves, but lower value certainly does not mean less contentious, and we have all seen those situations where parties simply cannot resolve a dispute without third-party input. But what final and binding alternatives are there to litigation in Court when a matter cannot be settled?

To provide an alternative for the resolution of lower-value claims (£5,000 - £100,000), the Chartered Institute of Arbitrators (CIArb) has developed the Business Arbitration Scheme (BAS).

This simple process is completely private and confidential and keeps costs low by:

1. providing a fixed-fee service, where each party to the dispute pays £1,250 + VAT to cover the costs of the arbitration; and
2. discouraging the parties from accruing substantial lawyers' bills by limiting the legal fees recoverable to just £1,000.

It is designed to be straightforward enough for parties to navigate and to present their case without the need for legal representation.

Within 90 days of the arbitrator being appointed, the parties should have a final and binding arbitral award in their hands, with the same effect as a court judgment but significantly quicker and more affordable.

What is the process?

The three-month process follows five key steps:

1. Submit an application form (attached to the BAS rules) to the Dispute Appointment Service of the CIArb, giving brief details of the claim. Each Applicant will also submit a copy of their claim, which must not exceed 5,000 words, and their fixed fee.
2. Within seven days, each respondent will submit a copy of their defence (and any counterclaim), along with their fixed fee.

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3. Within 10 days of the initial application being submitted, an arbitrator will be appointed by the local branch of the CIArb (for example, the Channel Islands branch will maintain a list of approved arbitrators to act in such matters).
4. The arbitrator will set a timeline for the rest of the proceedings, including a hearing (for a small additional fee) if required.
5. Within 90 days of the arbitration commencing, the arbitrator will issue their arbitral award, which is a final and legally binding decision. Costs will be determined, with neither side being able to recover more than the fixed fee paid by them and up to £1,000 towards legal costs.

How can parties agree to arbitrate under the BAS?

The BAS can be used on an ad hoc basis, as long as both parties agree to it being used to resolve the dispute at hand.

However, it can also be agreed at the outset that any suitable disputes arising out of a particular contract will be submitted to the BAS for determination. Agreeing the process for potential disputes when relations between the parties are on a more positive footing may help to ease tensions curing times of conflict.

Having a contractual agreement to arbitrate can also allow and application to be made unilaterally, without the need for all parties to have signed the application form.

The CIArb provides a simple clause to be included in business contracts, agreeing the use of BAS in any future disputes.

If you require any advice on implementing such a clause or amending it to fit your circumstances, or advice on arbitration generally, please contact Collas Crill's Dispute Resolution team.

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