

The logo for IMPRESS, consisting of the word "IMPRESS" in a bold, black, sans-serif font, centered between two solid black horizontal bars.

IMPRESS CI Arb Arbitration Scheme Guidance

What is the IMPRESS/CI Arb Arbitration Scheme?

IMPRESS and the Chartered Institute of Arbitrators (**CI Arb**) have developed an Arbitration Scheme, as a means of resolving civil law disputes between publishers who have joined IMPRESS and individual “claimants” who may be individual persons or corporations.

An arbitration service offering affordable access to justice was one of Sir Brian Leveson's central recommendations for press regulators in his November 2012 report. The IMPRESS/CI Arb Arbitration Scheme aims to provide an alternative to litigation. Litigation is costly and can act as a barrier to access to justice for individual claimants as well as stifle free speech where smaller publishers are unable to defend unmeritorious claims brought by wealthy individuals. The latter can stifle investigative journalism.

Specifically, the IMPRESS/CI Arb Arbitration Scheme aims to resolve civil law disputes between individuals and participating publishers in defamation, breach of confidence, misuse of private information, malicious falsehood, harassment or breach of The Data Protection Act in an efficient and cost-effective manner. Pre-publication matters, such as those which seek an injunction to prevent publication, shall be directed to the courts where appropriate and will not be accepted by the Scheme. Individuals can now pursue arbitration without the fear of overwhelming financial risk and publishers can avoid the risks of costly litigation. At the same time, an arbitrator can strike out baseless claims, reducing the costs to publishers.

The Scheme is quick and easy to use and is intended to be conducted with minimum formality, without the need for legal representation. It is also free to access for both claimants and publishers because IMPRESS pays the fees of the arbitrator.

What is Arbitration?

Arbitration is a form of dispute resolution whereby an independent third party, commonly referred to as an Arbitrator, determines a dispute between two or more parties by providing a formal and legally binding decision. As an alternative to going to the courts, Arbitration seeks to provide a fair resolution of disputes impartially and without unnecessary delay or cost.

Arbitration provides parties with privacy as proceedings can be confidential, and, usually, the Award made by the Arbitrator is not published. However, under the IMPRESS/CI Arb Arbitration scheme, Awards shall be made public, although the Arbitrator may decide to redact parts of the Award to protect confidential information.

What is the Chartered Institute of Arbitrators?

The Chartered Institute of Arbitrators (**CI Arb**) is a professional membership body that seeks to promote and facilitate the use of Arbitration and other alternative dispute resolution (**ADR**) methods. With over 14,000 members worldwide, CI Arb has gained international presence in over 130 countries, and established itself as a leading force in the Arbitration community.

An integral part of CI Arb is its Dispute Appointment Service (**DAS**). DAS provides quick, cost-effective and confidential methods of dispute resolution (including Arbitration, Adjudication, Mediation, and Expert Determination), and can deal with many types of disputes in diverse areas. DAS acts as an appointing body, in that it assists with the appointment of Arbitrators and other dispute resolvers. It is not an advisory body, as it does not provide any legal advice, and it is not an administrative body, as it does not administer the case once the appointment has been completed. The duties of DAS are, therefore, limited to facilitating the appointment of neutral dispute resolvers.

If I have a dispute, how do I access the IMPRESS/CI Arb Arbitration Scheme?

When a dispute has arisen between an individual “claimant” (this may be a person or an organisation) and a publisher, it should first be established whether the nature of the dispute falls under the Scheme (i.e. does the dispute concern defamation, breach of confidence, misuse of private information, malicious falsehood, harassment or breach of The Data Protection Act). Secondly, it should be established whether the publisher concerned is regulated by IMPRESS. An up-to-date list of publishers regulated by IMPRESS can be found on their website: impress.press.

The aggrieved claimant should contact IMPRESS in the first instance to lodge their complaint. The claimant should identify the newspaper concerned, the article/articles complained of, and set out the grounds of the complaint and the remedy sought. IMPRESS will register the complaint, and, if necessary, help the claimant identify whether the complaint would amount to a breach of his/her legal rights.

How will IMPRESS decide whether a request is suitable for arbitration?

IMPRESS will make an administrative assessment as to whether the dispute is suitable for Arbitration under the Scheme. Arbitration will only take place once a claimant has completed a Request for Arbitration form and has satisfied IMPRESS that their complaint concerns a publisher who is regulated by IMPRESS; relates to one of the areas of civil law covered by the scheme; is not more suitably directed to the courts; and has described the harm or loss they have suffered and how this harm or loss has been caused to them by the publisher that IMPRESS regulates. Publishers will be given an opportunity to comment on any request for arbitration before IMPRESS considers whether the request falls within the scope of the scheme. If IMPRESS determines that the dispute falls within the scope of the scheme it will send details of its assessment to the publisher and the claimant. If the publisher does not respond within 10 days, and/or indicates it will defend the claim, the case will be referred to Arbitration in accordance with the IMPRESS/CI Arb Arbitration Rules. A decision by IMPRESS to accept a request for arbitration has no bearing on the strength of the claim or its chances of success. It is for an independent arbitrator to determine the merits of a claim.

What happens once a request for arbitration has been accepted by IMPRESS

The claimant and the publisher must then apply, jointly, to CI Arb, through IMPRESS, for the appointment of an Arbitrator to determine the dispute. This is done by completing an application form (**Form ARB1**), in which they both confirm their agreement to arbitrate under the Scheme, and in accordance with the Scheme's Rules and the Arbitration Act 1996 (or the Arbitration (Scotland) Act 2010, if applicable). A copy of the Scheme's Rules can be found on IMPRESS's website (impress.press) and on CI Arb's website (www.ciarb.org/das). The signed application form should be returned to IMPRESS, who will in turn refer the dispute to CI Arb. In the case of a publisher, the application form shall be signed by or on behalf of the individual notified to IMPRESS as the legal and standards compliance manager.

Who appoints the Arbitrator?

The Dispute Appointment Service (DAS) of CI Arb is responsible for appointing the Arbitrator in each individual case. The Arbitrator will be selected from a specialist panel of legally qualified arbitrators with experience of media law. All individuals on

the Panel are members of CIArb who possess an arbitration qualification, and have demonstrated to CIArb that they have a suitable level of knowledge, skill and experience in their discipline, together with a commitment to ongoing personal professional development and to following high ethical and professional standards of conduct.

DAS will make its selection based on the most qualified and suitable member of the Panel for the job. The Arbitrator selected will have to confirm in writing to DAS, in advance of his/her appointment, that they are willing and able to accept the appointment, and that they are impartial, independent, and conflict-free. A copy of that written declaration will be provided to the parties by DAS upon completion of the appointment, together with a copy of the Arbitrator's CV. Aside from any monitoring, supervision or scrutiny by CIArb of the Arbitrators appointed under the Scheme, CIArb's involvement in the case will cease upon the appointment of the Arbitrator.

What powers does the Arbitrator have?

An arbitrator has powers to give directions to the parties as to the procedure and the timings that will apply, including powers in the event of a party's failure to comply with the directions.

An arbitrator will have the power to strike out or dismiss an entire claim or part of a claim where there is no reasonable ground for a claimant to bring a claim; where in a libel action, there is no serious harm to the claimant's reputation (except in Scotland and Northern Ireland); the claim is an abuse of process; the claim is trivial; the claim is made in bad faith; or where the claim is frivolous or vexatious. A publisher who intends to ask the arbitrator to strike out or dismiss an entire claim or part of a claim should do so as soon as practically possible.

An arbitrator can award costs against a publisher to a maximum sum of £3000 and can make awards of damages to a claimant, a direction that a publisher not re-publish the information that is the subject of the claim; and any other award or direction that an arbitrator thinks is appropriate in the circumstances. An arbitrator does not have powers to make an award of costs against the claimant under any circumstances.

How will the arbitration be conducted?

The arbitrator has an inquisitorial role. This is different from the adversarial role of most judges and magistrates. An inquisitorial role enables an arbitrator to manage a case in a more informal manner and to ask questions directly of either party to an arbitration in order to ascertain the facts and the law. In doing so, however, the arbitrator must act fairly at all times and before any award is made will ensure that each party has an opportunity to put its case and to deal with the other party's case.

If a publisher intends to ask an arbitrator to strike out the claim then they should draw this to the attention of the arbitrator as soon as he or she is appointed. The arbitration process will start by the arbitrator issuing written directions which set out the timetable for deciding the dispute. This will normally require the claimant to describe their claim in detail in writing and to provide any relevant evidence in support of their claim. The publisher will then have an opportunity to respond to the claim in writing with any relevant evidence of their own. The arbitrator may explore settlement options with the parties and ask further questions, before deciding whether he or she has enough information to make a decision. Normally an arbitrator will make a decision based on the written submissions provided. However, if the arbitrator decides that an oral hearing is necessary he or she will also decide whether the hearing should be held in public or private, the procedures for the hearing and what, if any, witnesses should attend. An arbitrator may order parties to provide written or oral submissions.

If requested to, IMPRESS will provide administrative support to the arbitrator to ensure that papers are submitted in accordance with the directions made by the arbitrator.

What form will the arbitrator's decision take?

The decision of the arbitrator will take the form of a written arbitration award and will resemble a formal legal judgement. The award will set out the background to the dispute, summarise the submissions made by the parties, analyse the evidence provided and set out the facts. The award will consist of a summary of whether the claim is upheld or not, the reasons why, any remedial action required of the publisher and whether the publisher is required to pay the legal costs (capped at £3,000) of the claimant and any damages (unlimited).

How long will it take?

The arbitrator shall take all reasonable steps to ensure that, in arbitrations conducted without an oral hearing, the arbitration is concluded within a period of 3 months of appointment of the arbitrator and, in all other cases (except the most complex), within a period of 6 months of appointment.

If I don't agree with the decision made by the arbitrator, can I appeal?

Where an arbitrator makes an award or direction, that decision is final and binding on both parties and the rights of appeal are limited to specific grounds that are provided for in Sections 67-69 of the 1996 Arbitration Act. These include a challenge to the substantive jurisdiction of the tribunal, some serious irregularity affecting the tribunal or a point of law.

Do I have to be legally represented?

This is a personal choice. However, you will have to pay for your own legal representation and will only be able to get back up to £3000 of your legal costs if your claim is successful. If your claim is unsuccessful you will not get any of your legal costs back. The Scheme seeks to conduct Arbitrations in so far as possible without the need for legal representation. If one party is represented and the other party is not, it will be for the Arbitrator to ensure that a lack of legal representation does not disadvantage the unrepresented party.

How much will it cost?

Arbitration is free to access for both claimants and defendant publishers. The fees of the arbitrator will be met by IMPRESS.

If the claimant chooses to instruct lawyers to help them present their case, then they are required to meet the costs of doing so. Where the claimant has succeeded in whole or in part in their claim, however, the Arbitrator may make an award of costs against the publisher, which, in ordinary circumstances, will be no more than £3,000.

Publishers may also choose to instruct lawyers to help them defend their case. However, these costs are not recoverable under the scheme, even if the publisher successfully defends the claim.

How is the arbitration award enforced?

An arbitration award is a legally binding agreement between the parties and is enforceable by the courts. IMPRESS plays no role in enforcing an award on behalf of a claimant. Nevertheless, publishers who choose to be regulated by IMPRESS agree to participate in its Regulatory Scheme and IMPRESS expects member publishers to comply with the terms of an arbitration award.

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