

PROFESSIONAL STANDARDS

1. Who is this helpsheet for?

This helpsheet is for members and their clients who are considering using The Institute of Chartered Accountants in England and Wales's (ICAEW) fee arbitration scheme to help resolve a fee dispute.

2. What is this helpsheet about?

There are a number of practical steps which accountants and their clients can take to help resolve a fee dispute. One option is arbitration and this helpsheet explains the Institute's voluntary, fixed-cost **fee arbitration scheme**. The scheme is available to members and their clients, provided both agree to use it, but the Institute will not apply pressure to either side to reach such an agreement.

The other options for resolving fee disputes are described in our helpsheet, *Fee disputes*.

3. Other types of dispute

For issues other than fee disputes, the president of the Institute can appoint an arbitrator or expert. For details, contact:

The President's Appointments Scheme
The Institute of Chartered Accountants in England and Wales
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

The ICAEW also operates a mediation service to assist parties in resolving issues which could otherwise be dealt with only by arbitration or litigation.

4. When would I use the fee arbitration scheme?

If a client disputes the reasonableness of a member's invoice(s), the Institute will, if both parties agree, appoint an arbitrator to consider their arguments and decide whether the fee is fair and reasonable.

Before you consider using the fee arbitration scheme, you should consider whether the complaint is about overcharging or poor service.

5. Complaints about poor service

Firms of chartered accountants are required to investigate complaints about the service they have provided. If the complaint is about both inadequate service and the fees, the firm must investigate the client's complaint first. Then, if the client is not satisfied with the outcome of the firm's investigation into the service provided, they can raise the matter with the Institute. (For more information, visit www.icaew.com/complaints.)

6. Complaints about fees

Chartered accountants must provide reasonable details of outstanding fees to help clients understand the basis of their charges. You should find out how the fees have been worked out before considering arbitration. (See *Fee disputes*).

Sometimes, invoices are part paid (by standing order, part payments or set-offs, for example) and the parties disagree about the amount still outstanding. If such disputes go to arbitration, we will usually consider the total value of the invoices. This is because the arbitrator will probably have to consider all the work and the fees before reaching a decision, even on the outstanding fees.

The fee arbitration scheme is not suitable if:

- the work has been done for a fixed fee or
- there are counter-claims or any other claims, whether they arise out of fee disputes or not.

The scheme only applies to ICAEW members who practise in the UK, including the Isle of Man and the Channel Islands.

7. How does the scheme work?

Arbitrators are ICAEW members who are independent of the accountant and the client (the parties). Although the Institute appoints the arbitrator, once appointed, the arbitrator deals with the parties directly. The contract is between the parties and the arbitrator.

Each party puts its case to the arbitrator (client first, then accountant) attaching copies of any relevant documents to support their view. You must send a copy of your submission to the arbitrator and to the other party, at the same time. There is no need to send all your accompanying documents to the other party, but you must send them a list of your documents (with details of the date, type of document and subject matter) so that they can ask for any documents they need or have not already seen.

You are not allowed to contact the arbitrator by phone. This means that you must send the arbitrator a copy of any request you make to the other party, for example if you ask to see accompanying papers. Similarly, you must send the other party a copy of anything you send to the arbitrator.

After both sides have made their case in writing, the arbitrator will not necessarily invite them to provide further information (rule 6(d)). So, if, having seen the other party's submission, you want to make further statements, you must make them promptly and send copies to the other party. If the parties continue to make further representations, the arbitrator will decide when to call a halt. Neither party has the right to the last word.

In order to keep costs down, the arbitration will usually be conducted entirely in writing. If there is an oral hearing, neither party has the right to be represented by a solicitor or other expert. The arbitrator will decide whether you can be represented.

You must bear any costs involved in preparing your submission.

If both parties agree, the rules can be varied to suit the wishes of the parties. For example, if, during the arbitration, both parties ask for something to be done in a particular way, the arbitrator will not usually refuse. If you think that any irregularity has occurred during the arbitration, you must tell the arbitrator immediately. If you don't do this as soon as you become aware of a problem, you may not be allowed to raise the matter later. If either party is unsure about a point of procedure, the arbitrator will decide how to conduct the arbitration (rule 13).

8. How does the arbitrator reach an award?

Before making an award, the arbitrator will:

- look closely at the work invoiced
- ask whether the fee is fair and reasonable in the circumstances the parties have explained
- ask about the hours spent on the work, the hourly rates involved, and whether appropriate grades of staff were used
- study what the parties have to say and
- decide what weight to attach to the evidence.

In exceptional cases, the award will take into account the parties' behaviour during the arbitration, for example, continued delay, obstruction or deliberately unhelpful requests made to the arbitrator or the other party. Having examined both submissions and received any further information, the arbitrator will make an award in writing which is legally binding.

9. The award and who pays the arbitration cost

Although arbitration can be cheaper and quicker than court proceedings, it still entails costs.

The cost of arbitration is fixed according to the formula set out on page 7. Each party has to pay the cost (+VAT) in advance, and when the award is made, the cost will be allocated according to the following formula. Even if one party offers to settle, the allocation cannot be varied.

If the award reduces the fees by:

• more than 15%	the accountant will pay the whole of the arbitration cost
• more than 5% but not more than 15%	the parties will bear the arbitration cost equally
• 5% or less (or does not reduce them at all)	the client will pay the whole of the arbitration cost

Once the award has been published, we will refund any money that you are not required to pay.

We will charge each party £50 (+VAT). This is a non-returnable administration charge.

10. Key features of the ICAEW's fee arbitration scheme

- for fee disputes only (but not where the fee was the subject of a written, fixed-fee agreement)
- may not be appropriate for small fees
- both parties have to agree
- the cost of arbitration is fixed
- the costs are allocated between parties according to a fixed formula
- there is an administrative charge of £50 (+VAT) per party
- parties bear own costs when they submit their case
- the proceedings are conducted by correspondence
- the arbitrator is an independent third party appointed by the Institute
- the award is legally binding.

11. The next step

We will appoint an arbitrator once both parties have:

- made a request in writing for fee arbitration
- agreed to be bound by the rules of the fee arbitration scheme
- paid the arbitration cost (+VAT) (see page 7) and
- paid the Institute's administrative charge of £50 (+VAT).

The application form at the end of this helpsheet covers these four steps.

If you have any questions, please call the scheme's administrator on +44 (0)1908 546 229 before you fill in the application form. Once we have appointed an arbitrator, the Institute will play no further part in the arbitration or its consequences, apart from refunding money held as appropriate.

12. Contact details

Martyn Durbidge MCI Arb
Fee Arbitration Scheme Administrator
The Institute of Chartered Accountants in England and Wales
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

T +44 (0)1908 546 229

F +44 (0)1908 546 371

E martyn.durbidge@icaew.com

13. Fee arbitration scheme rules

These rules, effective from 1 May 1998, have been prepared by The Institute of Chartered Accountants in England and Wales to be used for the settlement by arbitration of disputes relating to fees.

Definitions

1. In these rules:

- “arbitrator”** means the person appointed pursuant to rule 3.
- “client”** means the individual, company or entity responsible for the payment to the member of the fees made the subject of an arbitration pursuant to these rules.
- “the Institute”** means The Institute of Chartered Accountants in England and Wales.
- “member”** means a member of the Institute practising in the United Kingdom, the Channel Islands or the Isle of Man.

Appointment of arbitrator

2. In the event of a dispute, difference or question arising out of or in connection with fees charged to a client by a member for services or advice, the parties in dispute may agree to submit the dispute to arbitration under these rules, in which case they shall each deliver to the Institute a request in writing, agreeing to be bound by these rules together with an administrative charge of £50 (exclusive of VAT), and the arbitration cost as set out in the appendix to these rules. The Institute’s administrative charge shall not be returnable. The Institute shall hold the amounts payable in respect of the arbitration cost as stakeholder, and following determination of the dispute shall distribute them in accordance with rule 18.
3. Following receipt of a request, administrative charge, arbitration cost and agreement to be bound by the rules an arbitrator shall be appointed by the Professional Conduct Department of the Institute. The Institute shall notify the parties in writing of the name of the arbitrator and his address for the purpose of the arbitration.
4. Should the arbitrator die or become permanently incapacitated or resign during the course of the arbitration the Institute shall nominate and appoint a person in accordance with this rule to act as an arbitrator in order to fill the vacancy so occurring.

Procedure

5. Unless the arbitrator in his discretion otherwise determines, or the parties agree otherwise, the dispute shall be determined on the basis of documents and written submissions delivered to the arbitrator in accordance with these rules.
6. (a) The client shall within 14 days of being notified of the appointment of the arbitrator make a written submission to the arbitrator (with a copy at the same time to the member) setting out, with reasons, the facts on which he relies in relation to the dispute.
- (b) The member shall within 14 days of receiving his copy of the client’s written submission (or within 14 days of receiving copies of the client’s accompanying papers) lodge with the arbitrator (with a copy at the same time to the client) his written submission setting out, with reasons, the facts on which he relies in relation to the dispute.

- (c) Submissions to the arbitrator may in each case be accompanied by copies of any documents which the party making the submission considers relevant to his case. A list identifying any accompanying documents must be sent to the other party with the copy submission. Either side is entitled to sight of the other's accompanying documents upon request and such requests shall be notified to the arbitrator.
 - (d) Only the client shall be entitled to make one further representation, but nothing in this rule shall prevent the arbitrator from allowing or seeking further representations as he thinks fit. The parties shall, at any time at which the arbitrator may require, make available and deliver to the arbitrator any documents in their possession, custody or power which are relevant to the dispute and which he requires them to produce.
7. All communications to the arbitrator shall be copied to the other party.
 8. If a party fails to comply with any request or requirement made under these rules, the arbitrator shall have power to debar that party from relying on the matters in respect of which he is in default, and the arbitrator may proceed with the arbitration and make his award accordingly, but only after giving that party written notice.
 9. The arbitrator may require that one party shall make an interim payment to the other party on account of such amount as the arbitrator may think fit, representing a reasonable proportion of the final amount which in his opinion the party is likely to be ordered to pay after determination of the dispute and after taking into account any facts upon which the other party may be entitled to rely.
 10. The arbitrator may require either or both parties to attend a hearing as part of the determination of the dispute, and such hearing shall take place at such address and time as shall be determined by the arbitrator. Neither party shall be entitled to legal or other professional representation at any such hearing. Entitlement to such representation shall be at the arbitrator's discretion.
 11. Each party shall bear its own costs in connection with the arbitration.
 12. All documents and matters relating to the arbitration shall be kept confidential by the parties, the arbitrator and the Institute, except to the extent that disclosure of such documents is required by law.
 13. Subject to these rules the arbitrator shall have power to conduct the arbitration, in whatever manner he considers necessary to ensure the just, expeditious, economical and final determination of the dispute. Any dispute between the parties as to the operation of these rules shall be decided by the arbitrator.
 14. The arbitrator conducting an arbitration under these rules shall remain at all times wholly independent and impartial and carry out his duties as expeditiously as possible.

The award

15. The arbitrator shall serve his award by post upon the parties and send a copy to the scheme administrator. The award need not state the reasons upon which it is based.
16. The arbitrator shall, when making an award, have power to provide that interest at such rate as he shall consider appropriate shall be payable by a party on any sum found to have been due, and he shall have power to determine the dates from and until which any such interest shall run.
17. The arbitrator may, on his own initiative or upon the application of either party, correct any clerical error on the face of the award or make an additional award in respect of any fee dispute that was presented to him but not dealt with in the award.
18. The arbitration cost shall be calculated in accordance with the formula in the appendix to these rules. The arbitrator shall direct as between the parties to the arbitration the proportion of his cost to be paid by each party as follows:
 - (a) if the amount of the award is greater than the amount of the fee which is the subject of the arbitration, or not more than 5% less than that amount, the client shall pay the amount of the award and the cost of the arbitration.
 - (b) if the amount of the award is more than 5% but not more than 15% less than the amount of the fee which is the subject of the arbitration the client shall pay the amount of the award and the parties will be ordered to bear the cost of the arbitration equally;
 - (c) if the amount of the award is more than 15% less than the amount of the fee which is the subject of the arbitration the client shall pay the amount of the award and the member shall pay the cost of the arbitration.

For the purposes of the apportionment of the arbitration cost neither VAT nor interest shall form part of the award.

19. If, before the award is made, the parties agree on a settlement of the dispute, the arbitrator shall either issue an order for the termination of the reference to arbitration or, if requested by both parties and accepted by the arbitrator, record the settlement in the form of a consent award. The arbitrator shall then be discharged and the reference to the arbitration concluded, subject to payment by the parties of any outstanding arbitration costs.

Exclusion of appeal

20. The arbitrator's award shall be final and legally binding on all parties as provided for in the Arbitration Act 1996. Nothing in these rules shall prevent the parties from appealing the award to the High Court under the provisions of the Arbitration Act 1996.

Exclusion of liability

21. Neither the Institute nor its officers, servants or agents will be liable to any party for any act or omission in connection with or arising from any arbitration conducted under these rules. The arbitrator will not be liable for any act or omission unless such act or omission is shown to have been in bad faith.

Governing law

22. These rules, including their construction, validity and performance, shall be governed by and construed in accordance with the Arbitration Act 1996 and the laws of England and Wales.

Appendix to fee arbitration rules

Arbitration costs

The arbitration cost is based on the size of the fee in dispute. Both parties must pay the cost before the arbitration can begin.

Rule 18 explains the circumstances in which:

- the client pays the cost of arbitration
- the parties bear the cost of arbitration equally or
- the ICAEW member pays the cost of arbitration.

If the other party is ordered to pay costs, we will refund the amount you have paid.

Size of fee in dispute (before VAT)	Arbitration cost
< £1,250	£250 minimum cost + VAT
< £5,000	20% of the amount in dispute + VAT
< £10,000	(£1000 + 12% of the amount in dispute over £5,000) + VAT
< £15,000	(£1600 + 6% of the amount in dispute over £10,000) + VAT
< £30,000	(£1900 + 5% of the amount in dispute over £15,000) + VAT
< £90,000	(£2650 + 3% of the amount in dispute over £30,000) + VAT
> £90,000	(£4450 + 2.5% of the amount in dispute over £90,000) + VAT

How to fill in the application form

It is important that both parties:

- discuss fee arbitration
- agree the idea in principle and
- agree the amount in dispute (section C of the application form).

Both parties must fill in an application form, and the names of the parties and the amount in dispute must be the same on each application form.

As soon as we receive both parties' application forms and cheques for costs and administration, we will appoint an arbitrator.

Sections A and B

If you are completing and signing the application form on behalf of an organisation or body, you must be authorised to commit that organisation to the arbitration and its consequences. The **client's application** must include the name of the person/organisation to whom the invoice(s) is addressed. The **ICAEW member's application** must include the name of the practice which issued the invoice.

Section C

The fee arbitration scheme is based on invoices or identifiable parts of invoices.

The amount you enter in section C is crucial. Once the arbitrator has made the award, the percentage variation from the amount on the application form will determine who pays the costs. Both parties must agree precisely what is to be the subject of arbitration (one invoice, more than one invoice, part of one invoice, etc).

The amount you enter in section C must not include VAT as VAT can never be subject to arbitration.

As well as the arbitration cost, there is an administration charge of £50 +VAT per party. You can write one cheque to cover both the arbitration cost and the administration charge. Please make your cheque payable to **Chartac**.

Check list:

- application form, filled in and signed
- the invoice(s) to be subject to arbitration
- a cheque (payable to Chartac) for the administration charge of £50 + VAT and the arbitration cost + VAT.

Fee arbitration application form

A

Name

Address

Name of party you are representing (if applicable)

B

Name and address of the other party

C Declarations and signature

- I am applying for arbitration under the ICAEW's fee arbitration scheme
- I enclose the invoice(s) to be subject to arbitration.
- The total disputed fee (excluding VAT) is £
- I have read the Institute's fee arbitration scheme rules and agree to be bound by them.
- I enclose a cheque, payable to **Chartac**, to cover the Institute's administrative charge (£50 +VAT) and the arbitration cost, including VAT.

Your name

Your signature

Date

Check list:

- application form, filled in and signed
- the invoice(s) to be subject to arbitration
- a cheque (payable to **Chartac**) for the administration charge of £50 + VAT and the arbitration cost + VAT.

Please send your application form, cheque and invoice(s) to:

Martyn Durbidge MCI Arb
Fee Arbitration Scheme Administrator
The Institute of Chartered Accountants in England and Wales
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Milton Keynes
MK9 2FZ