

## The Rules

### 1. Introduction

- 1.1 Hunt ADR is a leading provider of arbitration and mediation services, mediation training and CPD and supplies this Scheme.
- 1.2 ABTA's Arbitration Scheme 2018 has been designed to resolve disputes between Members of ABTA Ltd (The Travel Association) and their customers, arising from alleged breaches of contract and/or negligence. Awards made under the Scheme are final and binding on all parties, though any party has the right to seek leave to appeal in the courts or to use the ABTA's Arbitration Appeals Procedure 2018 (see Rule 8 for further information). The Scheme cannot deal with disputes arising from assault (both physical and sexual) or where a crime has been committed.
- 1.3 The Scheme is supported and promoted by ABTA as a cost-effective and speedy alternative to the courts. Use of the Scheme is mandatory for ABTA Members ("Members") where an application is made against it by a customer within 18 months of completion of the return journey or the intended return date.
- 1.4 Claims may be made by or on behalf of any person named in the booking form or other contractual documents. "Customer" includes prospective customers of a Member and includes all persons whose bookings were made under a single booking reference. All claims made under each booking reference must be made at the same time.
- 1.5 Any Arbitration under this Scheme will be governed by the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force (the Act) and the Scheme Rules. All Arbitrations will be deemed to take place in London, U.K.
- 1.6 Claims under the Scheme cannot be made for more than a total of £25,000, limited to £5,000 per person. Where a claim for personal injury/sickness claim is made the limit on the amount claimed is £1,500 per person. PLEASE NOTE; the personal injury/sickness element cannot be the majority of the claim.
- 1.7 Any arbitrator appointed by Hunt ADR under the Scheme will not consider whether or not a Member has acted in accordance with the ABTA Code of Conduct in relation to its complaint handling procedures.
- 1.8 In these Rules, reference to one gender shall include all genders.

### 2. Applying for arbitration

- 2.1 A Claimant may only apply for Arbitration once he has reached deadlock with the ABTA Member and has followed ABTA's complaint process.
- 2.2 ABTA will issue to the Claimant contact details in order to apply for an Application Form. If the Claimant wishes to proceed to Arbitration, the Application Form, along with accompanying evidence, must be returned to Hunt ADR (if a postal application). If the application is made on-line it must be accompanied by the documents the Claimant is relying upon.

- 2.3 Where a claim is made against a Respondent, the Respondent is joined in the arbitration automatically. The Respondent is required to pay a separate registration fee to Hunt ADR and will be invoiced at the appropriate time. It is an offence under the ABTA Code of Conduct for a Respondent to refuse or fail to pay its registration fee within a reasonable period after it becomes due.
- 2.4 The Claimant must send the Claim Documents and payment to Hunt ADR so as to be received by Hunt ADR within 18 months of completion of the return journey or the intended return date. The Respondent may, but cannot be compelled to, agree to the Arbitration proceeding if ABTA and or Hunt ADR receive the Claim Documents outside this time limit.
- 2.5 On receipt of the Claim Documents, Hunt ADR will contact the Respondent for their Defence to Claim, in line with 3.3.1.
- 2.6 The Arbitrator will conduct the Arbitration via Hunt ADR. Hunt ADR will copy all correspondence between any party and the Arbitrator to all other parties.

### 3. Applying for arbitration

- 3.1 The Arbitrator shall have the widest discretion permitted by law to resolve the dispute in a final manner in accordance with natural justice. In particular, he has the power to direct the procedure of the Arbitration, including varying time limits and other procedural requirements, and to:
  - 3.1.1 allow the parties to submit further evidence and/or amend the Claim Documents or the Defence Documents;
  - 3.1.2 conduct enquiries and receive and consider additional evidence as he sees appropriate;
  - 3.1.3 issue Directions for any procedural or evidential matters which he considers appropriate;
  - 3.1.4 award interest on any sum awarded, even if not claimed; (Only monetary awards can be considered under this scheme).
  - 3.1.5 continue with the Arbitration if either party fails to comply with these Rules or with the Arbitrator's Directions;
  - 3.1.6 end the Arbitration if both parties confirm to Hunt ADR in writing that they have agreed to settle the dispute prior to an award being made, any payment previously made to Hunt ADR will not be refunded.
  - 3.1.7 end the Arbitration if he or she considers the case to be incapable of resolution under the Scheme. If the case is incapable of resolution (under the Scheme) then the fees will be refunded.
- 3.2 The Arbitrator will take into account any offers of settlement made (up until the completed application form and payment has been received by Hunt ADR) by either party only when considering awarding to any party reimbursement of his/its registration fee by another party under Rule 5.3 below.
- 3.3 The arbitration will proceed as follows:
  - 3.3.1 Hunt ADR will send a copy of the Claim Documents to the Respondent who then has 28 days in which either to submit a written Defence, prepared in accordance with Rule 4 below, or to notify Hunt ADR and ABTA in writing that the claim has been settled. If no Defence or notification of settlement has been submitted after 21 days, Hunt ADR will issue a reminder

to the Respondent. On application by the Respondent stating the grounds of the Application, Hunt ADR (or the arbitrator if appointed at that time), may grant to the Respondent an extension of 14 days for the submission of the said documents.

- 3.3.2 The Respondent may not make a counterclaim against the Claimant.
- 3.3.3 On receipt of the Respondent's Defence Documents (if any), Hunt ADR will acknowledge receipt and send a copy of the Defence to the Claimant, who shall submit a Reply to Defence, prepared in accordance with 4.5 below, within a further 7 days. Such Reply to Defence must be restricted to points arising from the Respondent's Defence and shall not include any new claim, assertion or evidence.
- 3.3.4 Hunt ADR will send a copy of the Reply to Defence to the Respondent, who may within 7 days, highlight any new content, evidence or claim contained within it. The Respondent may not introduce any new matters or new evidence or points of Defence or comment by way of Defence on the Reply to Defence.
- 3.3.5 Before an arbitrator has been appointed, Hunt ADR may in exceptional circumstances, and at its sole discretion, grant either party an extension of time for submitting the Reply to Defence or the Defence on the Reply to Defence
- 3.3.6 On receipt of the Respondent's final observations, Hunt ADR will appoint an Arbitrator. The Arbitrator will consider all documentation and other evidence and may, via Hunt ADR, ask for further information from the parties.
- 3.3.7 Within 28 days of the case file being sent to the Arbitrator, or of the date on which the last of the information required by the Arbitrator is submitted to him, whichever is the later, Hunt ADR will send a copy of the Award to each party and to ABTA, who are entitled to inspect a copy of the Award for the purposes of monitoring complaint resolution procedures under the ABTA Code.
- 3.4 Unless otherwise directed by the Arbitrator, all parties shall comply with the Award within 21 days after the Award is sent to the parties.
- 3.5 Any party may request copies of their documents but must do so in writing, accompanied by the correct postage materials and funds, within 28 days of the date of the Award being sent. If no such request is made within 28 days, Hunt ADR and/or ABTA will destroy them.
- 3.6 The default method of all communications shall be on-line and where possible all documents should be transmitted on-line.

#### 4. What to include in the claim, defence and comments

- 4.1 When sending the claim to Hunt ADR, the Claimant must ensure that all sections of the Application Form have been fully completed.
- 4.2 If the Claimant is unable to submit a copy of any original contract or booking form, the Respondent shall submit a copy of that document.
- 4.3 In their Reply to the Defence (Comments), the Claimant must state which matters in the Defence Documents they now accept and agree with; and the matters, which remain disputed, with reasons.
- 4.4 The Respondent may make a final response. However, this must be limited to highlighting to the

Arbitrator any new content, evidence or claim contained within the Claimant's Reply to the Defence. The Respondent may not introduce any new matters, new evidence or points of Defence or comment by way of Defence on the Claimant's Reply to the Defence. The Arbitrator will not consider any additional matters of this nature.

- 4.5 If any party fails to deliver anything required by the Arbitrator, the Arbitration shall proceed, as the Arbitrator considers appropriate.

## 5. Costs incurred in the arbitration

- 5.1 The registration fees payable by the parties, set out on the Application Form, include Hunt ADR's administration fee and the Arbitrator's fee.
- 5.2 The Arbitrator shall award that the unsuccessful party pay the registration fee of the successful party to the successful party, limited in the Claimant's case to the equivalent registration fee they have paid. Any award made by the Arbitrator, which directs another sum or sums to be paid by either party, is distinct from any reimbursement of the registration fee.
- 5.3 Where a sum awarded to the Claimant is the same or lower than an offer previously made by the Respondent (irrespective of the amount claimed) the Claimant shall be treated as an unsuccessful party for the purpose of Rule 5.2.
- 5.4 Each party shall bear its own costs of preparing and submitting its case, including the costs of legal representation, if any, and no legal action may be brought to recover these costs.
- 5.5 Provisions within section 5 of these Rules shall not apply to any appeal to the court.

## 6. Confidentiality

- 6.1 Both the Claimant and the Respondent undertake not, at any time, to disclose to any person any details of the Arbitration, unless it is to uphold the Award.
- 6.2 ABTA Ltd and/or Hunt ADR may analyse Arbitration Awards in order to monitor the effectiveness of the Scheme and produce and/or publish findings.
- 6.3 Personal information will only be published for the purpose of upholding the Award or at the direction of a Court Order or any governmental or regulatory authority.

## 7. Other rules

- 7.1 The law of England and Wales will apply to the Arbitration and to the claim. The Arbitrator shall determine the applicable law of the contract.
- 7.2 Hunt ADR will appoint a new Arbitrator if the Arbitrator originally appointed is unable to deal with the dispute. Hunt ADR will inform the parties if such an appointment is made.
- 7.3 With the exception of amending the Award following any minor error/omission, which he has power to correct by law, neither Hunt ADR nor the Arbitrator will enter into correspondence or dialogue relating to the Award.
- 7.4 In the event that the Arbitrator has made a minor error/omission which he has power to correct by

law, the minor error/omission will be corrected. This can be done at the Arbitrator's own initiative, or on request of either party, providing the request is made within 14 days of the Award being sent to the parties. The timescale of 21 days to comply with the Award at Rule 3.4 above will run from the date that the amended Award is sent to the parties.

- 7.5 The Arbitrator shall not be liable to any party for any act or omission in connection with any Arbitration conducted under these Rules, save for any wrongdoing on his or her own part arising from bad faith. Hunt ADR separately can only be held liable for acts of bad faith.

## 8. Arbitration appeal

- 8.1 If any party considers that the Award is one which no Arbitrator should have reasonably made on the basis of the documents presented by the parties, they may write to Hunt ADR applying for the Award to be appealed to an independent Arbitrator under the ABTA Arbitration Appeals Procedure ("the Procedure"), a copy of which is provided below.
- 8.2 Application for appeal under the Procedure must be made to Hunt ADR within 14 days of the date on which Hunt ADR sent the Award to the parties.
- 8.3 If an Application for Appeal is made, any obligation under the Award is suspended pending the outcome of the Appeal. Any payment directed by the Appeal Arbitrator shall be complied with by the party subject to the obligation within 21 days of the receipt of the Appeal Award.

## 9. ABTA's Arbitration Appeal procedure 2018

- 9.1 ABTA's Arbitration Appeals Procedure 2018 ("the Appeals Procedure") is provided to claimants and respondents who wish to appeal an award made under the ABTA Arbitration Scheme ("the Scheme").
- 9.2 Hunt ADR administers the Appeal Procedure. The rules relating to the conduct of the Appeal Procedure are those applied to the Scheme except where they differ from these rules.
- 9.3 The party(ies) appealing ("the Appellant(s)") must do so within 14 days of issue of the award attaching:
- 9.3.1 Copy of the original Award.
- 9.3.2 Clear reasons why the original Award was wrong to have been made based on the documents presented by the parties.
- 9.3.3 The Appeal Procedure fee £350.00 plus VAT made payable to Hunt ADR.
- 9.4 Failure to note specific reasons for requesting an appeal will result in the appeal being refused and the fee being forfeited.
- 9.5 Hunt ADR will acknowledge receipt of the application for the Appeal Procedure and will notify the other Party or Parties ("the Respondent(s)") that an appeal has been made, sending a copy of the appeal to the Respondent(s). The Respondent(s) then have 14 days to send Hunt ADR a written response if they so wish.
- 9.6 Each party will bear its own costs (including any legal costs).

- 9.7 Hunt ADR will send a copy of the Respondent's(s') comments to all parties. Further representations shall only be allowed at the discretion of the Appeal Procedure Arbitrator. Hunt ADR will appoint an Arbitrator from its Appeal Procedure panel, notify all parties, and send all documents submitted to the original Arbitrator to the Appeal Procedure Arbitrator, including the Award. The Appeal Procedure Arbitrator will consider no new evidence or documentation.
- 9.8 The Appeal Procedure Arbitrator may either confirm the original Award or set it aside and deliver a new Award. In this case, the Arbitrator may consider any costs order where made under the original arbitration and at his/her discretion direct the reimbursement by one or more parties of any registration fee paid under the original arbitration.
- 9.9 The Appeals Procedure Arbitrator's decision is final and binding on all parties. There are no further steps that can be taken by any Party other than considering the possibility of an appeal to the courts. Before considering such a step the party considering making the Appeal may wish to seek legal advice.

Please read these general notes and frequently asked questions carefully before making your application

## General notes

1. The form and payment must be completed and forwarded (if a postal application is being made) to Hunt ADR within 18 months of completion of the return journey or the intended date.
2. Make sure that all parts of the application form have been completed and that your address (postal and email) are easy to read.
3. Do not delete any section of the application form. If you do, it will invalidate the claim. All correspondence and case statements must quote the name of the case and the ABTA reference numbers.
4. These rules are applicable to any claim registered by ABTA from 16 May 2018 and do not relate to any registration made prior to that date.

## Frequently asked questions

### What is the purpose of the scheme?

The scheme deals with alleged breaches of contract and/or negligence between customers and Members of ABTA and cannot deal with any criminal cases or those of assault either physical or sexual. The scheme is provided so that customers can have disputes resolved without having to go to court and without having to go to the expense of instructing solicitors (though you may choose to use a solicitor if you like, at your own expense).

### What is arbitration?

Arbitration is a form of alternative dispute resolution (ADR) and is a cost effective, speedier and a less formal alternative to resolving your dispute through the courts. It is conducted privately based on written documentation and evidence.

### What is an arbitrator?

An arbitrator is a neutral person who makes a legal and binding decision (Award) after considering the evidence that both the Claimant and Respondent submit. The role of an arbitrator is similar to that of a judge and the award will be conducted fairly and neutrally. Arbitration is a legal process and the arbitrator must make his decision based on the law.

The award is the document with the decision that the arbitrator produces once he or she has considered all the evidence. ***You and the respondent are legally bound by the arbitrator's decision, which is enforceable in the courts, subject to any provisions in the rules. It contains legally binding orders for the parties and details of the case and the arbitrator's explanation as to why he or she decided the case as they did.***

If you win (or partially win), the respondent will send you the money they owe you directly. Payment is due within 21 days from the date the award is issued, unless either party has approached Hunt ADR (within 14 days of the Award being issued) asking for an Appeal. If you do not receive payment within 21 days, then you should, in the first instance, contact ABTA.

If you lose or you're awarded less than, or the same as, an amount that was previously offered to you by the respondent, you'll be ordered to pay a further amount to the respondent, which will be less than or equal to the sum you paid as a registration fee – but no more than that. For example, if the respondent offers you £500 and you decline the offer, and then the arbitrator awards you £400, you will have to pay the equivalent of your registration

fee back to the respondent. The arbitrator does have the power to deduct any sum from what has been awarded. You are also responsible for the cost of making your case (e.g. photocopying, postage, etc.)

The arbitrator decides the case purely on the arguments and evidence presented by the parties. The parties must prove their case on the balance of probability to the satisfaction of the arbitrator. The arbitrator assesses the evidence and analyses the terms of the contract, which have been agreed to by you and the respondent when the booking was made. The arbitrator specifically looks for a proven breach of this contract.

The arbitrator is restricted to consideration of the documents and evidence submitted. You must therefore make every point and submit all supporting evidence that you consider relevant. You must also retrieve and submit any documents sent previously to any other body and upon which you intend to rely.

### Do I need to prove my claim or does the respondent have to prove I am wrong?

The burden of proof is on you, as it would be in court, and in order to prove your claim you should submit all the evidence that you feel supports it. Your claim should be set out in date order, listing the events which have led to the claim, and referring to each supporting document in respect of each allegation.

Do not exaggerate the claim, if you are unable to produce evidence to prove any aspect of the claim, consider whether that part should be included or what justifies it. Exaggeration may undermine the credibility of your evidence.

### How long will it be before I know the outcome?

You should expect to hear the outcome within 8 - 12 weeks from the date that the application for arbitration was received by Hunt ADR.

### Can ABTA, the arbitrator or Hunt ADR advise me on my case?

No. ABTA, the arbitrator and Hunt ADR are impartial and cannot act as a consultant or adviser to either party. ABTA, the arbitrator and Hunt ADR can only advise you on procedural matters. If necessary, advice should be sought from a solicitor or Citizens Advice Bureau.

### Do I need legal representation?

No, unless you chose to do so. Arbitrators do not expect claimants to have legal representation, though you may choose to have it, at your own cost. This is your right. Please remember that your legal costs cannot be reclaimed, even if you win.

### If my claim is unsuccessful, what can I do next?

There are only two routes for challenge against the award

- you can appeal through the High Court, within 28 days of receiving the award; or
- you can request an appeal under the ABTA Arbitration Scheme Appeals Procedure. Details of this procedure have been supplied within the pack. Any application for appeal must be made to Hunt ADR within 14 days of receiving the award.

***These deadlines are strictly enforced and if you do not apply in time, you will lose the right of appeal. There is no other way to challenge the award. You may not like an award (the amount awarded) but remember that does not mean that the award is wrong in law.***

Appeals will normally require evidence of a serious error in law or misconduct on the part of the arbitrator. In order to have an appeal considered by the High Court, you will need to instruct a solicitor.