

# The ABTA Conciliation Scheme Rules 2018

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## 1. Introduction

1. The Independent Conciliation Scheme (“the Scheme”) is a method of resolving disputes between ABTA member companies and their customers (reference hereunder to a customer can also include multiple customers on the same booking, or related bookings) related to personal injury and illness claims that have become deadlocked.
2. Conciliation is a flexible process conducted confidentially in which an ADR official actively assists the parties in working towards a negotiated agreement to resolve their differences with the parties in ultimate control of the decision to settle and the terms of resolution.
3. The conciliation process is voluntary, confidential and 'without prejudice' and nothing said during the conciliation process is admissible as evidence in legal proceedings.
4. The conciliator will work with the parties to try to find an agreed solution to the dispute and the conciliator may propose a solution to the parties in an attempt to help them reach a settlement.
5. Any settlement reached is legally binding once put into writing and signed by the parties. Parties will have a short 'cooling off' period after any oral agreement should they wish to take legal advice before they sign a final document.

## 2. Scope of the scheme

The Scheme can be used to settle a dispute between a customer and an ABTA company where:

- 2.1 The primary dispute is about an injury or sickness that the customer alleges was the fault of the company, from which the customer has made a complete recovery or is expected to make a complete or near-complete recovery; and the redress sought by the customer does not exceed £10,000.00; and both the customer and company agree to participate in the Scheme and the application is submitted to ABTA within eighteen months of completion of the return journey.
- 2.2 The Scheme cannot be used to settle disputes which fall into one or more of the following categories:
- 2.3 Claims brought by someone who was not listed as a traveller on the company's confirmation of booking;
- 2.4 Claims where personal injury or sickness is not the primary dispute;
- 2.5 Claims where the redress sought by the customer exceeds £10,000.00;

- 2.6 Claims which are made against a company that is not a member of ABTA;
- 2.7 Claims where the customer has not previously complained to the company about the subject matter of the claim;
- 2.8 Claims which the conciliator considers to be frivolous and/or vexatious; and
- 2.9 Cases where the customer's application to ABTA has been submitted more than eighteen months from the return journey, or where the statutory limitation period for making a personal injury claim has expired.

### 3. Applications

- 3.1 An application under the Scheme must be made by the customer on the designated application form, which will be provided by ABTA.
- 3.2 Upon receipt of a properly completed application form ABTA will contact the ABTA Member for their written Response to the claim (the Response) and the ABTA member must reply within 28 days of receipt.

### 4. The process

- 4.1 The process officially begins on the date on which ABTA acknowledges receipt of the customer's application and the ABTA Members written Response.
- 4.2 Following receipt of all the documents relating to the case that have been provided by the parties, ABTA will forward the case to the conciliator. The conciliator will endeavour to conclude the conciliation within 21 working days of their appointment.
- 4.3 The conciliator will communicate with the parties by telephone or in writing (including email), either together or individually, to request further information or to explore possible solutions.
- 4.4 If the parties reach a solution between themselves after discussions with the conciliator, then the conciliator will record the terms of that solution in writing and send it to the parties in the form of identical Settlement Statements (the Statements), for signature. The parties must sign and return the Statement within ten working days of the date on the Statement. Any amendment to the Statement at this stage, other than to correct a minor clerical error, will be regarded as notifying a failure to agree.
- 4.5 If the parties do not reach a solution between themselves after discussions with the conciliator, then the conciliator will produce two identical Settlement Statements containing a recommendation or recommendations for settlement, if appropriate. If both parties agree with the recommendation or recommendations made by the conciliator, the parties must sign and return their copy of the Statement within ten working days of the date on the Statements. Any amendment to the Statement at this stage, other than to correct a minor clerical error, will be regarded as notifying a failure to agree.
- 4.6 Upon receipt of both signed copies of the Statements, the conciliator will advise the parties accordingly and transmit copies of both documents to both parties. At this point the agreement becomes a binding contract and the parties must then take action to comply with the agreed outcome.

- 4.7 No terms of settlement reached will be legally binding unless or until set out in writing in the Statements and signed by or on behalf of each of the parties.
- 4.8 If either party chooses not to sign and/or return the Statement within ten working days, any agreement will not be binding on either party and the conciliator will write to the parties to confirm that the conciliation has ended without agreement.
- 4.9 The date on which the conciliation will be deemed to be concluded is the date of the letter from the conciliator which confirms that the process has ended.

## 5. Confidentiality

- 5.1 Every person involved in the conciliation:
- 5.1.1 will keep confidential all information arising out of or in connection with the conciliation, including the terms of any settlement, but not including the fact that the conciliation is to take place or has taken place or where disclosure is required by law, or to implement or to enforce terms of settlement or to notify their insurers, insurance brokers, suppliers and/or accountants; and
- 5.1.2 acknowledges that all such information passing between the parties, the conciliator and/or ABTA however communicated, is agreed to be without prejudice to any party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law. ABTA Ltd and/or Hunt ADR may analyse Conciliation Awards in order to monitor the effectiveness of the Scheme and produce and/or publish findings
- 5.2 Where a party privately discloses to the conciliator any information in confidence before, during or after the conciliation, the conciliator will not disclose that information to any other party or person without the consent of the party disclosing it, unless required by law to make disclosure.
- 5.3 The parties understand that the conciliator does not give legal advice and agree that they will not make any claim against the conciliator in connection with this conciliation.
- 5.4 The parties will not call the conciliator as a witness, nor require them to produce in evidence any records or notes relating to the conciliation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the conciliation; nor will the conciliator act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any party does make such an application (as listed above), that party will fully indemnify the conciliator in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the conciliator standard hourly rate for the conciliators time spent in resisting and/or responding to such application.

## 6. Legal status and effect of the conciliation

The process covered by these Rules is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with the conciliation.

## 7. Fees and costs

- 7.1 The fee for the conciliation will be paid by the ABTA Member.
- 7.2 The ABTA Member shall pay within 30 days of receipt of a valid invoice.
- 7.3 Failure of the company to pay the required fee within the agreed timescale will be reported to ABTA as a breach of the code of conduct for ABTA Members.
- 7.4 Where a claim is found to be fundamentally dishonest, the customer shall reimburse the fee paid by the company.
- 7.5 Save where agreed as part of the conciliation process, the costs incurred by the parties in preparation of their claim, including documentation and all other expenses are not recoverable under the Scheme.

## 8. Updates

The Scheme, including these Rules, may be updated from time to time. Disputes will be settled according to the Rules in force at the time the customer applies to use the Scheme.

### General notes

1. The form must be completed and forwarded to ABTA 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 March 2018 and do not relate to any registration made prior to that date.

### Frequently asked questions

#### What is conciliation?

Conciliation is an informal process for settling disputes through direct negotiations. A conciliator contacts the parties directly, usually by telephone, to attempt to encourage a negotiated settlement between them. The conciliator allows the parties to reach their own resolution to a dispute, although the conciliator has the power to recommend (but not impose) a particular solution in the event that the parties are unable to reach one themselves. Any settlement reached through conciliation will become binding as a contractual agreement once both parties sign a copy of it.

**How does it work?**

The conciliator will contact each party individually for a confidential discussion. Information shared with the conciliator by each party is confidential and only disclosed to the other party by prior agreement. The conciliator will work with the parties to facilitate a dialogue aimed at resolving the dispute to the mutual satisfaction of both parties. Once a way forward has been reached, a written settlement statement is drafted by the conciliator and sent to each party. If both parties return a signed copy of the statement within a predetermined period, the dispute will be resolved.

**Do I need a solicitor to represent me?**

You do not need a solicitor but you can instruct one to represent you if you wish. However, you cannot claim any charges they may make for their services unless a contribution is agreed as part of the conciliation.

**Will I be expected to attend a hearing?**

No, the entire process is conducted by telephone and in writing.

**Does the conciliator decide the outcome?**

No, the conciliator's role is not to take sides but to help find agreement. A conciliator will often help a party test the strength of a case in private and may suggest how a proposed solution might be received by another. However, both parties need to trust the conciliator to stay neutral, and conciliators are careful to avoid taking sides.

**How much does it cost?**

The service is free to the claimant.

**When can I apply?**

You can apply for conciliation if an ABTA Member has not been able to resolve the dispute to your satisfaction through their own complaints process and has volunteered to refer the matter to independent conciliation.

**What happens when ABTA receives my application?**

Once we receive your application we will check that it is valid and within our remit to handle under the relevant rules. We will then contact the ABTA Member to notify them that the application has been accepted and will get their contact details in order to confirm to the conciliator that the matter can proceed.

**How long will it take?**

In most instances the process takes approximately 50 days.

**What are the precise details of the process?**

All applications must comply with the rules and we will tell you if your application is not compliant, why that is the case, and what steps you need to take.

**What happens if we don't agree on a resolution?**

You remain free to pursue your claim through the courts or in some cases through other binding dispute resolution methods.

**Can I send copies of the settlement statement to consumer forums or publish it on a website?**

8.1.1 Conciliation is a contractually confidential process between you and the trader. If you choose to publish a copy of any material relating to the process or any information relating to your claim in a public forum the trader may seek to take legal action against you for breach of contract. A copy of the Outcome Statement will be sent to ABTA Ltd in order that they can analyse Conciliation Awards in order to monitor the effectiveness of the Scheme and produce and/or publish findings.

