

INDEPENDENT PRESS STANDARDS ORGANISATION

Arbitration Scheme Rules

31 July 2018

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Glossary of Terms:

The singular includes the plural (and vice versa), and any one gender includes the other gender(s).

Administrative Fee – The fee to be paid to the Arbitration Company in order for it to provide the Arbitration Services in respect of a documents-only arbitration.

Agreement – The contract by which the Parties agree to arbitrate a Claim under the Scheme.

Arbitration Company – The third party company IPSO has contracted with to provide the Arbitration Services and report upon the Scheme.

Arbitration Documents – The Claim Form, and copies of any article/s which are the subject of the Claim along with any further documentation or evidence upon which the Claimant seeks to rely in the Claim Form.

Arbitration Services – The functions carried out by the Arbitration Company in respect of a Claim as identified by the 'Agreement for Arrangement of Dispute Resolution Services' as signed by CEDR Services Limited and IPSO. In brief these functions include the administration of the arbitration, appointment of the Arbitrator and management of Fees paid by the Parties.

Arbitrator – A lawyer appointed by the Arbitration Company to arbitrate the Claim.

Arbitrator Panel – A list of Arbitrators pre-approved by IPSO from which the Arbitration Company must appoint an Arbitrator to the Claim. Any amendments made to the Panel during the Scheme must be approved by IPSO.

Arbitrator's Fees – Those fees that are paid to the Arbitration Company in respect of the work to be undertaken by the Arbitrator.

Assessment – A Ruling on the Fees to be reimbursed and Legal Costs to be paid by the Respondent to the Claimant, and/or the grant of appropriate Relief to the Claimant made by the Arbitrator during the Assessment Procedure.

Assessment Fee - The fee to be paid by the Respondent to the Arbitration Company in advance of an Assessment Procedure.

Assessment Procedure – The process by which the Arbitrator makes an Assessment in the event that the Parties reach an agreement on liability regarding the Claim or part/s of the Claim.

Claimant – The Party bringing a Claim against a Participating Member.

Claim – A claim pursued by the Claimant against the Respondent under the Rules.

Code Complaint – A complaint pursued under the Editors’ Code of Practice complaints system handled by IPSO.

Cost Cap – The maximum value the Arbitrator may require a Party to pay to the other Party in respect of Legal Costs as agreed by the Parties and allowed for in the Rules.

- The Cost Cap is set at £10,000 as standard.
A Litigant in Person shall be required to pay no more than £1,000 in total costs, in any event.
- The Cost Cap may be increased by Party agreement, up to a maximum figure of £25,000, subject to a cost management discussion with the Arbitrator to be conducted as soon as reasonably possible following the Parties reaching an agreement or in-principle agreement to raise the cap.

Damages Cap – The maximum sum of £60,000 which can be awarded by the Arbitrator under the Rules.

Fees – The Administrative Fee, Preliminary Ruling Fee, Final Ruling Fee, Assessment Fee and Oral Hearing Fee relevant to the Claim.

Final Ruling – A determination made by the Arbitrator during the Final Ruling Procedure that the Claim is successful or unsuccessful. A requirement for one Party to reimburse Fees and to pay Legal Costs to the other Party, as provided for in the Rules, and the grant of Relief to the Claimant can be included in a Final Ruling.

Final Ruling Fee – The fee to be paid by the Respondent to the Arbitration Company in advance of a Final Ruling.

Final Ruling Procedure – The process by which the Arbitrator can make a Final Ruling. The procedure is deemed to start upon the Final Ruling Fee being paid and finish upon the date on which the Final Ruling is handed down.

Governing Act – Either the Arbitration Act 1996 or the Arbitration (Scotland) Act 2010. The Arbitration Act 1996 Act applies to the Rules by default unless the Parties agree within the Agreement that the Arbitration (Scotland) Act 2010 should apply instead. These Acts are statutes which, where they apply, govern the manner in which the Agreement and the Rules function and may add provisions to the Rules in certain circumstances.

IPSO – The Independent Press Standards Organisation, the regulator of the majority of the UK press.

Interim Period – A stay in the proceedings which automatically follows the completion of a Preliminary Ruling Procedure during which time the Parties can assess the most appropriate way to proceed with the Claim.

Legal Costs – Fees payable by each Party to their respective legal advisors or representatives in relation to the Claim. Where the Claimant represents themselves the Legal Costs they may recover relate to the expenses and time spent in pursuit of the Claim.

Offer - An offer to settle any Relevant Claim made by either Party in accordance with clause 23.

Offer of Amends- An offer made under s. 2 Defamation Act 1996.

Oral Hearing – The process by which the Arbitrator conducts an inquisitorial, face-to- face meeting with the Parties, and any relevant witnesses or experts.

Oral Hearing Fee – The fee to be paid by the Respondent in advance of an Oral Hearing to include the cost of hiring a venue (if any) and the additional fees payable to the Arbitrator and the Arbitration Company in respect of that Oral Hearing.

Participating Member – A publication that has agreed to participate in either the voluntary or compulsory arbitration Scheme

Party – A party which agrees to arbitrate a Relevant Claim under the Scheme, either by express agreement or by a publication’s membership of the compulsory arbitration scheme.

Preliminary Ruling – An early determination made by the Arbitrator in respect of core issues relating to the dispute, the determination of which should encourage the Parties to resolve the Claim. The Arbitrator cannot, as part of a Preliminary Ruling, require a Party to reimburse Fees or pay Legal Costs to the other Party or grant Relief to the Claimant.

Preliminary Ruling Fee – The fee to be paid by the Respondent in advance of a Preliminary Ruling Procedure.

Preliminary Ruling Procedure – The process by which an Arbitrator can make a Preliminary Ruling. The procedure is deemed to start upon the appointment of the arbitrator and finish on the date upon which the preliminary ruling is handed down.

Referral Stage – The 28 day period, beginning with IPSO passing the Arbitration Documents to the relevant Participating Member, in which the Parties may explore the early and appropriate resolution of the Claim. At this stage, the Parties may determine whether the Claim should be withdrawn or settled, or proceed to arbitration, notwithstanding that Participating Members of the compulsory Scheme must proceed to arbitration if the Claimant notifies the Arbitration Company in their writing, of their wish for an Arbitrator to be appointed to arbitrate the Claim.

Relevant Claims – The claims that can be arbitrated under the Scheme, namely civil claims relating to: libel, slander, malicious falsehood, misuse of private information, breach of confidence, harassment and data protection. Under this definition harassment refers only to civil claims made in respect of the Protection from Harassment Act 1997, and data protection claims do not include appeals made in respect of a subject access request.

Relief – The remedy granted by the Arbitrator to the Claimant.

Respondent – The publisher of the Participating Member against whom a Claim is pursued.

Respondent’s Response – A written response provided by the Respondent in relation to the Arbitration Documents.

Rules – The provisions contained within this document, inclusive of the Glossary of Terms.

Ruling – An order, grant, requirement, decision, determination or award made by the Arbitrator including Preliminary Rulings, Final Rulings and Assessments.

Scheme - The arbitration scheme conducted under the Rules. References to Scheme are understood to relate to both the compulsory arbitration scheme and the voluntary arbitration scheme, unless otherwise stated.

Transfer Process – The stage at which the Parties have agreed to arbitrate, either by express agreement or by a publication's membership of the compulsory arbitration scheme, and IPSO passes the Claim onto the Arbitration Company. The claim will automatically be sent to the Arbitration Company upon the necessary documentation being completed (as defined by the Rules).

PART ONE: The voluntary arbitration Scheme

1. The Scheme

- 1.1. The Scheme will operate in accordance with the Rules.
- 1.2. Participating Members are not compelled to use the Scheme in relation to any particular Claim.
- 1.3. IPSO reserves the right to immediately terminate the Scheme at any point upon receiving information which IPSO believes to show that the Scheme is incapable of fulfilling the objective stated in clause 5.1 or that the Scheme otherwise hinders the fair application of justice.
- 1.4. A decision made by IPSO in relation to clause 1.3 shall not affect the progress of Claims through the Scheme where the relevant Parties agreed to arbitrate the Claim prior to the decision being made.
- 1.5. IPSO reserves the right to amend the Rules at any time save that such amendments shall not apply to arbitrations which have already commenced under the existing Rules and will not compel a Party or the Parties to arbitrate under the Scheme. Any alterations to be made to the Fees structure will only be made after inviting discussion on the matter from Participating Members, the Arbitration Company and the Arbitrator Panel. IPSO shall conduct a formal review of the Scheme and its Rules every two years in consultation with users and potential users of the Scheme and any other relevant people or bodies to be determined by IPSO.
- 1.6. The Arbitration Company appointed by the IPSO Board is the Centre for Effective Dispute Resolution (CEDR Services Limited).

2. Monitoring the Scheme

- 2.1. In addition to providing the Arbitration Services the Arbitration Company agrees to monitor and report on the Scheme in accordance with this clause.
- 2.2. The Arbitration Company is under a duty not to publish or share information pertaining to the Parties' submissions or confidential Rulings made by the Arbitrator to IPSO, or any other organisations or persons, except as otherwise required by law.
- 2.3. The Arbitration Company agrees to report on the effectiveness and operation of the Scheme to IPSO. Any report will not be published by the Arbitration Company unless by agreement with IPSO. For the purposes of this clause the Parties agree that the Arbitration Company is entitled to disclose information relating to the outcome of all Claims to IPSO.
- 2.4. If it is necessary under this clause for the Arbitration Company to provide information to IPSO, which would reasonably be deemed confidential or private,

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the Arbitration Company shall anonymise the relevant Parties.

- 2.5. Participating Members agree to provide reasons in writing to IPSO for not agreeing that a Claim should be arbitrated under the Scheme when a Claimant expresses a wish to do so.
- 2.6. Participating Members agree that IPSO may disclose the following information to any other organisations or persons:
 - a) The number of inquiries which IPSO have received under the Scheme;
 - b) The number of claims which have been transferred to CEDR and under which heads of claim;
 - c) Which titles have participated in the Scheme;
 - d) An explanation of a Participating Member's reasons not to arbitrate under the Scheme.
- 2.7. The Parties agree that the Arbitration Company and/or IPSO may contact them to obtain feedback on the Scheme.

PART TWO: The compulsory arbitration Scheme

3. The Scheme

- 3.1. The Scheme will operate in accordance with the Rules.
- 3.2. Participating Members are compelled to use the Scheme on a case by case basis, for the duration of the current Scheme Membership Agreement.
- 3.3. IPSO reserves the right to immediately terminate the Scheme at any point upon receiving information which IPSO believes to show that the Scheme is incapable of fulfilling the objective stated in clause 5.1 or that the Scheme otherwise hinders the fair application of justice.
- 3.4. A decision made by IPSO in relation to clause 3.3 shall not affect the progress of Claims through the Scheme which have already commenced under the existing Rules, prior to the decision being made.
- 3.5. IPSO reserves the right to amend the Rules at any time, in agreement with Scheme members, save that such amendments shall not apply to arbitrations which have already commenced under the existing Rules. Any alterations to be made to the Fees structure will only be made after inviting discussion on the matter from Participating Members, the Arbitration Company and the Arbitrator Panel. IPSO shall conduct a formal review of the Scheme and its Rules after 6 months, and then every two years, in consultation with users and potential users of the Scheme and any other relevant people or bodies to be determined by IPSO.
- 3.6. The Arbitration Company appointed by the IPSO Board is the Centre for Effective Dispute Resolution (CEDR Services Limited).

4. Monitoring the Scheme

- 4.1. In addition to providing the Arbitration Services the Arbitration Company agrees to monitor and report on the Scheme in accordance with this clause.

- 4.2. The Arbitration Company is under a duty not to publish or share information pertaining to the Parties' submissions or confidential Rulings made by the Arbitrator to IPSO, or any other organisations or persons, except as otherwise required by law.
- 4.3. The Arbitration Company agrees to report on the effectiveness and operation of the Scheme to IPSO. Any report will not be published by the Arbitration Company unless by agreement with IPSO. For the purposes of this clause the Parties agree that the Arbitration Company is entitled to disclose information relating to the outcome of all Claims to IPSO.
- 4.4. If it is necessary under this clause for the Arbitration Company to provide information to IPSO, which would reasonably be deemed confidential or private, the Arbitration Company shall anonymise the relevant Parties.
- 4.5. Participating Members agree that IPSO may disclose the following information to any other organisations or persons:
 - a) The number of inquiries which IPSO have received under the Scheme;
 - b) The number of claims which have been transferred to CEDR and under which heads of claim;
 - c) Which titles have participated in the Scheme.
- 4.6. The Parties agree that the Arbitration Company and/or IPSO may contact them to obtain feedback on the Scheme.

PART THREE: IPSO Arbitration

5. Introduction

- 5.1. The objective of the Scheme is to provide a quick, cost-effective, fair and impartial procedure for resolving Relevant Claims made against the press.
- 5.2. In accordance with clause 5.1 the Scheme aims to:
 - a) Take into account inequality of power between the Parties,
 - b) Provide a flexible process which may be tailored to individual Claims,
 - c) Support pro-active case management and inquisitorial arbitration,
 - d) Provide effective remedies,
 - e) Direct unsuitable Claims to more appropriate forums, and
 - f) Strike out vexatious or frivolous Claims at an early stage.
- 5.3. The Arbitration Company and Arbitrators must act in accordance with the objective set out in clause 5.1, and provide services consistent with the aims of the Scheme as far as reasonably possible in each case.
- 5.4. Parties agree to act in good faith and further agree to act in accordance with the objective and aims of the Scheme.
- 5.5. The Scheme will only be used to resolve Relevant Claims.

- 5.6. Claimants will not be entitled to pursue a Claim simultaneously with a Code Complaint which relates to the same subject matter.
- 5.7. The Rules should not be interpreted as extending the powers of IPSO beyond those provided in IPSO's Articles of Association, Regulations or Scheme Membership Agreements.

6. Standard IPSO Arbitration

- 6.1 The provisions set out under this clause apply unless otherwise agreed by the Parties and such agreement is permitted by the Rules.
- 6.2 Arbitrations under the Scheme shall be governed by either the Arbitration Act 1996 or the Arbitration Act (Scotland) Act 2010 and the choice of the Governing Act shall be determined by the parties in accordance with clause 9.3.
- 6.3 The seat of the Arbitration shall be deemed to be London (U.K) unless otherwise agreed between the Parties.
- 6.4 Arbitrations under the Scheme will apply the law of England and Wales except where the Arbitration (Scotland) Act 2010 has been chosen as the Governing Act in accordance with clause 9.3 in which case the Arbitration shall apply the law of Scotland.
- 6.5 The Claim shall be determined by a single Arbitrator.

- 6.6. Rulings made by the Arbitrator are final and binding on the Parties, subject to the right to appeal to the Court on the mandatory grounds of appeal provided for by the relevant Governing Act. The Parties agree that the right to appeal under the Rules does not include the right to appeal to the Court on a point of law, subject to any agreement made under Clause 9.3(c).
- 6.7. Claims will proceed directly to a Preliminary Ruling Procedure upon the appointment of an Arbitrator.
- 6.8. The presumption is that the Arbitration will be conducted as a documents-only procedure, notwithstanding that an oral hearing may take place in accordance with clause 14.

PART FOUR: Making a Claim

7. Submitting Claims to IPSO

- 7.1. IPSO will provide information relating to the Fees and processes of the Scheme.
- 7.2. Information provided by IPSO in relation to the Scheme does not amount to legal advice. It is the Parties' responsibility to consider whether or not they should obtain independent legal advice.
- 7.3. If the Claimant wishes to pursue arbitration the Claimant will be required to complete and submit the Arbitration Documents.
- 7.4. Upon receiving the completed Arbitration Documents from the Claimant, IPSO shall refer the Claim to the relevant Participating Member, unless it appears that the Claim falls outside of the Scheme.

8. Referral Stage

- 8.1 The process by which IPSO notifies a Participating Member of a Claim made against them, and provides the Participating Member with the Arbitration Documents, is known as "referral".
- 8.2. Following referral, and prior to the transfer of a Claim to the Arbitration Company for arbitration under the Scheme, there shall be a Referral Stage in which the Parties may explore the early and appropriate resolution of the Claim.
- 8.3 As soon as reasonably practicable, and in any event within 14 days of the commencement of the Referral Stage, the Participating Member shall provide the Claimant with a full response to the Arbitration Documents. The response shall include:
 - a) Whether or to what extent the Claimant's claim is accepted, whether more information is required or whether it is rejected;
 - b) If the claim is accepted in whole or in part, the Participating Member should indicate which remedies it is willing to offer;
 - c) If the claim is rejected in whole or in part, the Participating Member should explain the reasons why it is rejected, including a summary of the facts on which the Participating Member relies.

- 8.5. On receipt of the response by the Participating Member, the Claimant may seek to resolve the matter with the Participating Member. Alternatively, they may provide notice within 7 days of receipt of the response that they wish to waive the remainder of the referral period and proceed to the appointment of the Arbitrator
- 8.6. During the Referral Stage the Parties may determine whether the Claim should be withdrawn or settled, or to proceed to arbitration.

9. The Arbitration Agreement

- 9.1. If the Parties agree to proceed to arbitration, the Respondent agrees to provide the signed Agreement to IPSO.
- 9.2. Parties are at liberty to sign the Agreement independently of IPSO and the Referral Stage. In these circumstances the signed Agreement must be provided in writing by the Respondent to IPSO.
- 9.3. Within the Agreement the Parties may agree:
 - a) That the arbitration shall be governed by the Arbitration (Scotland) Act 2010;
 - b) That the seat of the arbitration should be moved to Scotland or Northern Ireland;
 - c) To allow for appeals to the Court against rulings made by the Arbitrator on points of law in accordance with the relevant Governing Act;
 - d) That the Claim should proceed directly to an Assessment Procedure upon the appointment of the Arbitrator;
 - e) To remove the Damages Cap; and/or
 - f) To increase the Cost Cap to £25,000.
- 9.4. Upon receiving a signed Agreement, IPSO will require the parties to submit finalised Arbitration Documents and the Respondent's Response before transferring the Claim to the Arbitration Company for arbitration.
- 9.5. In circumstances where the Respondent is considering making an Offer of Amends the Respondent's Response can be limited to submissions relating to issues to be determined within the Preliminary Ruling and need not provide a substantive defence at this stage.

10. Transfer Process

- 10.1 IPSO shall transfer a Claim to the Arbitration Company for arbitration under the Scheme, unless it appears that the Claim can no longer be dealt with under the Scheme or it has been settled in the referral period.
- 10.2. Where the Claim is to proceed directly to the Preliminary Ruling Procedure upon the appointment of the Arbitrator, the Claimant must pay their first Administrative Fee and the Respondent their Administrative Fee and the Preliminary Ruling Fee within 14 days of the Arbitration Company acknowledging receipt of the Claim.
- 10.3. Where the Claim is to proceed directly to the Assessment Procedure upon the appointment of the Arbitrator the Respondent must pay their Administrative Fee and

the Assessment Fee to the Arbitration Company, within 14 days of the Arbitration Company acknowledging receipt of the Claim. The Claimant is not required to pay any Fee for the Assessment Procedure.

- 10.4. Only upon receiving the required Fees shall the Arbitration Company appoint an Arbitrator.

11. Appointing Arbitrators

- 11.1. The Arbitration Company will appoint an Arbitrator from the Arbitrator Panel taking into account the complexity of the dispute, any disclosed conflict of interest, the availability of the Arbitrator and any objections made by either Party in relation to the selection of a particular individual.
- 11.2. The objection to the appointment of a particular Arbitrator by either Party shall not constitute an effective veto of that appointment.
- 11.3. Appointed Arbitrators must be independent of the Parties and the matters to which the dispute relates. They shall be under a duty to disclose any conflict of interest, actual or apparent, which may apply to their involvement in specific cases.
- 11.4. If an Arbitrator dies or is unable to continue to act as an Arbitrator for the Claim, the Arbitration Company will appoint another Arbitrator at the request of either Party.

PART FIVE: Arbitration Procedure

12. Suitability

- 12.1. The Arbitrator must, as a matter of priority, make a determination as to whether the Claim is suitable for arbitration under the Scheme:

- a) Upon the commencement of a Preliminary Ruling Procedure,
 - b) Upon the commencement of a Final Ruling Procedure, and
 - c) In the event that the arbitration has not been concluded within 90 days of the Arbitrator's appointment, not including the interim period and the commencement of the Final Ruling Procedure.
- 12.2. The Arbitrator must also have continuous regard as to whether the Claim is suitable for arbitration under the Scheme. In this regard the Arbitrator may make a determination on the Claim's suitability on their own initiative, or upon either Party requesting them to do so.
- 12.3. If the Arbitrator determines that the Claim is unsuitable they must - as soon as reasonably practicable after making such a determination - inform the parties and, subject to clause 12.4, discontinue the arbitration.
- 12.4. If the Arbitrator is minded to find that the Claim is unsuitable for Arbitration, before a final determination of unsuitability is made, the Arbitrator must allow the Parties to make submissions. The Arbitrator may set an appropriate deadline for such submissions to be made. Where either or both of the Parties disagree with the Arbitrator's determination, the Arbitrator's determination shall be final.
- 12.5. An arbitration must be discontinued as unsuitable if the Claim is outside the remit of the Scheme.
- 12.6. An arbitration may be discontinued as unsuitable on the following grounds:
- a) The Claim gives rise to a novel or complex point of law;
 - b) It is in the public interest or in the interest of the Parties to have a determination made by the Court;
 - c) It is unlikely that the Claim could be completed within a reasonable period of time;
 - d) It raises a substantial or serious dispute of fact which is relevant to the fair determination of the claim and which cannot fairly be resolved by the arbitration process, within the powers granted to the Arbitrator under Clause 14.
 - e) The Relief available under the Scheme would not provide an effective remedy were the Claim to be successful;
 - f) In respect of a specific claim, the Scheme is unable, or is unlikely to, fulfil the objective set out in clause 5.1.
- 12.7. In determining suitability, the Arbitrator must have regard for whether either Party is realistically able to pursue or defend the Claim in Court.
- 12.8. A decision under this clause is not made based upon the merits of the Claim but its suitability for arbitration under the Scheme. The Parties are at liberty to pursue the Claim further in Court, save that the Parties remain bound by any Ruling already given by the Arbitrator in relation to the Claim.

13. Evidence & Procedure

- 13.1. The Arbitrator has the power to determine the way in which the arbitration will proceed, subject to the Rules, and may in this regard tailor the process and/or disclosure requirements in order to achieve a fair resolution of the Claim.
- 13.2. The Arbitrator should act inquisitorially and may in particular make directions to:
- a) Allow or require the Parties to, or limit the extent to which the Parties may, submit or respond to evidence, clarifications or submissions;
 - b) Set deadlines for the provision of evidence, clarifications or submissions;
 - c) Conduct inquiries questioning the Parties, witnesses or experts and the evidence, clarifications or submissions they provide;
 - d) In exceptional circumstances, and only in accordance with clause 14, proceed by way of an Oral Hearing if it would expedite the fair resolution of the Claim; and/or
 - e) In the event that an Oral Hearing is deemed necessary, set a timetable for the completion of the hearing and limit the time allowed for submissions to be made by the Parties, witnesses or experts.
- 13.3. The Arbitrator may proceed with the arbitration, and is not precluded from making a Ruling in accordance with these Rules, in the event that either Party fails to comply with the Rules or the Arbitrator's directions.
- 13.4. In the event that the Claim is not completed within 120 days of the Arbitrator's appointment, not including the period between the completion of the Preliminary Ruling Procedure and the commencement of the Final Ruling Procedure, either Party may serve notice in writing to the Arbitrator, the other Party and the Arbitration Company terminating the Agreement. This notice shall have the effect of terminating the arbitration subject to the Arbitrator determining whether:
- a) Fees and Legal Costs should be awarded under clause 27, or
 - b) There may be grounds for the Claim to be struck out and proceeding under clause 19. If the Claim is not subsequently struck out it must be terminated without an award of Fees or Legal Costs to either Party.
- 13.5. If a Claim is discontinued but is not struck out under clause 13.5 (b) the Parties are at liberty to pursue the Claim further in Court, save that they remain bound by any Ruling already given by the Arbitrator.
- 13.6. If the Parties reach a settlement or require an Assessment Procedure to begin during the arbitration the Respondent must, as soon as reasonably practicable, or in any event within 48 hours, inform the Arbitrator and the Arbitration Company.

14. Oral Hearings

- 14.1. Should the Arbitrator consider that an Oral Hearing is likely to be beneficial in order to make a just determination of the Claim, they must first obtain agreement from the Parties in order to conduct the hearing.
- 14.2. The Arbitrator may continue with the arbitration on the papers if the Parties do not agree to an Oral Hearing where the Arbitrator determines that the Claim can still be

fairly resolved via a documents-only procedure. If the Claim can no longer be fairly resolved it should be discontinued under clause 12.

- 14.3. An Oral Hearing should be held on an inquisitorial basis.
- 14.4. The IPSO offices shall, when available, host Oral Hearings at no cost to the Parties. IPSO may provide the facility to enable the making of an audio recording of the hearing if directed to do so by the Arbitrator, at no cost to the Parties.

- 14.5. If the IPSO offices are unavailable, or not appropriate for such use, the Arbitration Company agrees to facilitate or aid the Parties in finding a suitable venue for an Oral Hearing.

15. Preliminary Ruling Procedure

- 15.1. The Preliminary Ruling Procedure is deemed to have commenced upon the appointment of the Arbitrator.
- 15.2. Under the Preliminary Ruling Procedure the Arbitrator must provide an early and binding determination on core issues which they identify as requiring a Preliminary Ruling.
- 15.3. The Arbitrator must take into account any submissions relating to the identification of the core issues submitted by the Parties when determining which issues require a Preliminary Ruling.
- 15.4. The Arbitrator's decision shall be final in relation to the identification of the core issues requiring a Preliminary Ruling.
- 15.5. In the event that the Arbitrator is unable to identify issues which would benefit from a Preliminary Ruling, the Parties agree that the arbitration should proceed directly to the Final Ruling Procedure, subject to the payment of the Fees required for a Final Ruling by the Parties.
- 15.6. The Arbitrator shall aim to give a Preliminary Ruling within 30 days of their appointment by the Arbitration Company.
- 15.7. The Preliminary Ruling Procedure is deemed to have been completed on the date the Preliminary Ruling is given by the Arbitrator in writing to the Parties.

16. Interim Period

- 16.1. The Interim Period shall begin upon the completion of the Preliminary Ruling Procedure and shall last for 21 days.
- 16.2. The Parties may agree to extend the Interim Period during the standard 21 days, but must inform the Arbitration Company in writing if this is the case. The Arbitration Company shall in turn inform the Arbitrator.
- 16.3. The purpose of the Interim Period is to allow the Parties to consider the Preliminary Ruling and to negotiate a settlement as appropriate, or to allow the Claimant to withdraw the Claim.
- 16.4. The Arbitrator will not act further in relation to the matter and in particular may not make a determination on suitability; on whether or not to strike out a Claim; or make any award of Relief, Fees or Legal Costs after the completion of a Preliminary Ruling Procedure until the commencement of a subsequent Final Ruling Procedure or Assessment Procedure. This clause applies whether or not the Interim Period has come to an end.

17. Final Ruling Procedure

- 17.1 After a Preliminary Ruling has been given, the Claim will not proceed to a Final Ruling Procedure unless one or both of the Parties makes a valid request in writing for it to do so.
- 17.2. During the Interim Period either Party may make a request in writing to the Arbitrator that the Claim should proceed to the Final Ruling Procedure in order to obtain a determination in relation to the outstanding issues. Both Parties must agree in writing to proceed to a Final Ruling Procedure during the Interim Period.
- 17.3. The Claimant is at liberty to withdraw the Claim notwithstanding a request to proceed to the Final Ruling Procedure having been made by the Respondent during the Interim Period.
- 17.4. Where the Claimant has made a request to proceed to the Final Ruling Procedure at the conclusion of the Interim Period the Respondent must submit to the Final Ruling Procedure and pay the Final Ruling Fee at the end of the Interim Period unless the Parties reach a settlement of the Claim or the Claimant withdraws the Claim before the Final Ruling Procedure begins.
- 17.5. Where the Respondent has served a notice on the Claimant under clause 19.4 (indicating an intention to invite the Arbitrator to strike out the claim) but the Claimant does not withdraw the Claim before the end of the notice period or the Interim Period (whichever is later) notwithstanding service of the notice both Parties agree to pay their respective Fees and to proceed to the Final Ruling Procedure where a valid request to do so has been made.
- 17.6. A Final Ruling Procedure is deemed to have commenced upon the Arbitration Company receiving payment of the Final Ruling Fee from the Respondent and the second Administrative Fee from the Claimant.

18. Assessment Procedure

- 18.1 The purpose of the Assessment Procedure is for the Arbitrator to determine the appropriate Relief to be awarded and/or Fees and Legal Costs to be paid to the Claimant by the Respondent where the Parties have reached an agreement in relation to liability.
- 18.2. The Claim must and may only proceed to the Assessment Procedure where the Parties have so agreed:
 - a) In the Agreement, or
 - b) After the commencement of the arbitration by making a joint request in writing to the Arbitrator.
- 18.3. The Parties must identify in writing the basis upon which the Arbitrator is to make an Assessment.
- 18.4. The Parties will not be entitled to make submissions as to the merits of the Claim within the Assessment Procedure except in so far as they relate to the appropriate Relief, Fees and/or Legal Costs to be awarded.

19. Strike-Out Procedure

- 19.1. The Arbitrator may, under their own initiative or upon receiving a request to do so from the Respondent, determine whether the Claim should be struck out on the following grounds:
- a) The Claim is wholly without merit;
 - b) The Claim is trivial with the time and cost of pursuing the claim further being wholly disproportionate to the potential award;
 - c) The Claimant's conduct has been such as to frustrate the arbitration process, and cause the Respondent to incur unnecessary Fees or Legal Costs; and/or
 - d) The Claim is otherwise frivolous or vexatious.
- 19.2. If the Arbitrator is minded to find that the Claim should be struck out the Arbitrator must give written notice of their intention to do so to both Parties.
- 19.3 Subject to the obligation first to assess the suitability of a Claim under clause 12.1 the Arbitrator shall endeavour to make a determination under this clause as soon as reasonably practicable following receipt of a request from the Respondent.
- 19.4. Before making a request to the Arbitrator, the Respondent must give written notice of their intention to do so to the Claimant. The notice must be copied to the Arbitrator and clearly state the following:
- a) That the Respondent intends to ask the Arbitrator to strike out the Claim in accordance with clause 19 of the Rules,
 - b) The Respondent's reasons for believing the Claim ought to be struck out,
 - c) The date on which the request will be made to the Arbitrator,
 - d) That, if the Claim is struck out, the Arbitrator will require the Claimant to reimburse the Respondent the Fees they have paid, and may also require the Claimant to pay Legal Costs to the Respondent in accordance with the Rules, and
 - e) That a decision made by the Arbitrator to strike out the Claim will act to prevent the Claimant from pursuing the Claim further in arbitration or in Court subject to the rights of appeal allowed by the Rules.
- 19.5. The Respondent must give the Claimant not less than 7 days in which to respond to the notice, or to withdraw the Claim, before making the request to the Arbitrator. Once the Claimant provides a response to the notice the Respondent may make the request to the Arbitrator and need not wait until the notice period has expired.
- 19.6. The Arbitrator must inform the Claimant that they are proceeding under clause 19 on their own initiative, or upon receiving a request to do so by the Respondent. In informing the Claimant under this clause the Arbitrator should provide a 7 day period in which the Claimant may provide a response to a notice made under Clause 19, if a response has not already been given. The Arbitrator may subsequently ask for further submissions from either Party in order to determine whether or not the Claim should be struck out.
- 19.7. The Respondent must inform the Arbitration Company if they give notice to the Claimant under this clause before an Arbitrator has been appointed.

- 19.8. Where clause 19.7 applies the Arbitration Company shall delay the appointment of an Arbitrator for the duration of the notice period to provide an opportunity to the Claimant to withdraw the Claim or to provide a response before an appointment is made.
- 19.9. Where the Arbitrator decides to act in accordance with clause 19 under their own initiative they must give notice to the Parties and give the Claimant not less than 7 days to respond.
- 19.10. A notice given by the Arbitrator under clause 19.6 must:
- a) State that the Arbitrator intends to proceed on their own initiative under clause 19,
 - b) State the reasons for the Arbitrator believing there may be grounds for the Claim to be struck out,
 - c) Seek a response from the Claimant and state the deadline for that response,
 - d) State that, if the Claim is struck out, the Claimant will be required to reimburse the Respondent the Fees they have paid, and may also be required to pay Legal Costs to the Respondent in accordance with the Rules, and
 - e) State that a decision made by the Arbitrator to strike out the Claim will act to prevent the Claimant from pursuing the Claim further in arbitration or in Court subject to the rights of appeal allowed by the Rules.
- 19.10. The Arbitrator may make a determination to strike out the Claim if the Claimant does not provide a response when requested to do so by the Arbitrator under clause 19, but only after the deadline for receiving that response has expired.
- 19.11. In determining whether or not to strike out a Claim the Arbitrator may have regard for whether the Respondent's request was made at an appropriately early stage.
- 19.12. If the Claimant wishes to proceed to a Final Ruling Procedure and the Respondent gives notice under clause 19 before the Final Ruling Procedure has commenced, the arbitration will be stayed until the notice period has ended.
- 19.13. A determination by the Arbitrator that a Claim is struck out is binding on the Parties.

20. [Withdrawing a Claim](#)

- 20.1. The Claimant may withdraw the Claim, at any point, subject to this clause.
- 20.2. The Claimant must serve notice of withdrawal in writing.
- 20.3. The notice of withdrawal must be sent by the Claimant to the Arbitration Company, the Respondent and the Arbitrator, if appointed.
- 20.4. A notice of withdrawal shall not be valid if it is made after a Final Ruling or a Ruling under clause 24 is given.
- 20.5. The Arbitrator must allow the Claimant to withdraw upon receiving a valid notice of withdrawal, unless the notice was served during the Preliminary Ruling or Final Ruling

Procedure and the Arbitrator believes there are grounds to proceed or continue under clause 19.

- 20.6. The Parties remain bound by Rulings already given by the Arbitrator if the Claimant withdraws the Claim.

PART SIX: Fees, Costs and Relief

21. Fees Introduction

- 21.1. A requirement imposed by the Arbitrator upon a Party to reimburse the Fees which have been paid by the other Party shall be binding on the Parties.
- 21.2. The Arbitrator is not entitled to require a Party to reimburse part of the Fees which have been paid by the other Party in circumstances where that part of the Fees has been or is to be refunded by the Arbitration Company under the Rules.
- 21.3. The Respondent's Administrative Fee shall be £500 plus VAT.
- 21.4. The Claimant's Administrative Fee in respect of a Claim that proceeds directly to a Preliminary Ruling Procedure shall be split into two payments of £50. The first payment shall be payable before the Arbitrator is appointed, and the second payment shall only be payable in the event that the Claim is to proceed to a Final Ruling Procedure. The Claimant shall not pay an Administrative Fee in the event that the Claim proceeds directly to an Assessment.
- 21.5. The Arbitrator's Fees are paid by the Respondent to the Arbitration Company but will not exceed £3,500 for a claim that is concluded at the preliminary ruling stage, £8,500 for a claim that is subject to a final ruling, and £500 for an Assessment.
- 21.6. The Oral Hearing Fee shall be paid by the Respondent but must be determined and notified to the Parties by the Arbitration Company before they can agree to proceed to an Oral Hearing.

22. Legal Costs Introduction

- 22.1 A requirement imposed by the Arbitrator upon a Party to pay Legal Costs to the other Party shall be binding on the Parties.
- 22.2. An order made by the Arbitrator requiring a Party to pay Legal Costs to the other Party must not exceed the Cost Cap.
- 22.3. In determining an award for Legal Costs, the Arbitrator shall act proportionately in respect of the value of the Claim and have particular regard for the importance of effective case-management within a low cost arbitration scheme. In any event, an award of Legal Costs may only be granted on the standard basis applied by the Court and never on an indemnity basis. The Arbitrator shall have discretion not to require either Party to pay Legal Costs to the other Party if it is fair and reasonable to

do so. Where the Claimant is a litigant in person, the Arbitrator should seek only to award such Legal Costs that were genuinely necessary to arbitrate the Claim and would represent a barrier to entry in the Scheme were they not awarded to the relevant Party.

- 22.4. In agreeing to arbitrate under the Scheme the Parties agree not to recover Conditional Fee Agreement success fees, or associated After-the-Event Insurance premiums, from the other Party in any event.
- 22.5. The Parties agree that Part 36 of the Civil Procedure Rules; Minutes of Tender; Chapter 34A of the Rules of the Court of Session 1994; and Chapter 27A of the Ordinary Cause Rules 1993 do not apply under the Rules.

23. Offers to Settle

- 23.1 A Party may make an offer to settle (an "Offer") in respect of any Relevant Claim at any point after the commencement of the Referral Stage.
- 23.2 Such an Offer must:
- a) be in writing;
 - b) make clear that it is an Offer under the Rules; and
 - c) state whether it relates to the whole or part of the Claim.
- 23.3 An Offer is made when it is served on the other Party and will remain open for acceptance for a period of 7 days or, where applicable, until the sooner of:
- a) the commencement of an Oral Hearing; or
 - b) the issuing of a Ruling.
- 23.4 An Offer is accepted by serving written notice of the acceptance on the offeror. Where an Offer is accepted, the Claim (or relevant part thereof) will be stayed and payment of any monies must be made within 7 days.
- 23.5 Where a Respondent makes an Offer which is not accepted by the Claimant, and the Claim is subsequently upheld, the Offer shall be placed before the Arbitrator prior to his determination of Relief. The Arbitrator may, at their sole discretion, rely on the Offer(s) to reduce any award of damages to the Claimant by up to [15]%.
- 23.6 Where a Claimant makes an Offer which is not accepted by the Respondent, and the Claim is subsequently upheld, the Offer shall be placed before the Arbitrator prior to his determination of Relief. The Arbitrator may, at their sole discretion, rely on the Offer(s) to increase any award of damages to the Claimant by up to [15]%.
- 23.7 In considering an Offer under clause 23.5 and 23.6 above, in addition to the monetary value of any Offer, the Arbitrator may, where applicable, take into account:
- a) any agreement not to republish material the subject of the Claim;
 - b) the sufficiency of any apology to the Claimant; and
 - c) the placement of any apology to the Claimant.

24. Rulings on Fees and Costs

- 24.1 When making a Ruling that may require an award of Fees and/or Legal Costs the Arbitrator shall first rule on the merits of the Claim before receiving submissions as to the Fees and/or Legal Costs to award. The Arbitrator shall then make a final determination, complete with an order for Fees and/or Legal Costs, which may include an amendment to any Relief awarded in accordance with clause 31.8.
- 24.2. Rulings on the merits under clause 24.1 shall be binding on the parties and are not subject to a final determination. However, the Arbitrator may correct minor errors or clarify the Ruling in the final determination if asked to do so by either Party.

25. Successful and Unsuccessful Claims

- 25.1. The Arbitrator must determine who the successful Party is.
- 25.2. A Claim shall be deemed successful if:
- a) The Claim is upheld or partly upheld; and
 - b) The Relief granted by the Arbitrator is more favourable than an offer previously made by the Respondent.
- 25.3. A Claim shall be deemed unsuccessful if:
- a) The Claim is dismissed; and/or
 - b) The Claim is upheld but the Relief granted by the Arbitrator is less favourable than an offer previously made by the Respondent.
- 25.4. The Arbitrator must require the Respondent to reimburse the Fees paid by the Claimant in the event that the Claim is successful.
- 25.5 The Arbitrator may require the Respondent to pay the reasonable and proportionate Legal Costs incurred by the Claimant in the event that the Claim is successful where it is fair and reasonable to do so.
- 25.6. The Arbitrator shall not require the Respondent to reimburse the Fees or Legal Costs paid by the Claimant in the event that the Claim is unsuccessful save by the application of clause 27.
- 25.7. The Claimant will not be required to reimburse Fees or pay Legal Costs to the Respondent in the event that the Claim is unsuccessful.

26. Timed-Out Claims

- 26.1. Where the Agreement is terminated under clause 13.4 the Arbitrator shall not require either Party to reimburse Fees or Legal Costs to the other Party unless the Arbitrator determines to do so under clause 13.4(a) or the Claim is struck out via clause 13.4(b).

27. Fees and Legal Costs Exception

- 27.1. Notwithstanding clause 25, where the Respondent's conduct has been such as to frustrate the arbitration process and cause the Claimant to incur unnecessary Fees or Legal Costs, the Arbitrator may require the Respondent to reimburse the Claimant's Fees and/or Legal Costs up to the Cost Cap.
- 27.2. Where the Claimant's conduct has been such as to frustrate the arbitration process and cause the Respondent to incur unnecessary Fees or Legal Costs, the Arbitrator may proceed under clause 19.1(c) to strike out the Claim. The exception detailed in clause 27 does not allow the Arbitrator to award Fees or Legal Costs against the Claimant in circumstance where the Claim is not struck out.

28. Unsuitable Claims

- 28.1. The Arbitrator shall not require either Party to reimburse Fees or Legal Costs to the other Party, where the Arbitrator determines that the Claim is unsuitable for arbitration under the Scheme.
- 28.2. Where the arbitration is discontinued under clause 12.1(a), the Preliminary Ruling Fee shall be refunded to the Respondent by the Arbitration Company less £500.
- 28.3. Where the arbitration is discontinued under clause 12.1(b), the Final Ruling Fee shall be refunded to the Respondent by the Arbitration Company less £500.

29. Struck Out Claims

- 29.1. The Arbitrator must require the Claimant to reimburse the Fees paid by the Respondent in the event that the Claim is struck out.
- 29.2. The full Preliminary Ruling Fee must always be paid by the Respondent in advance of the arbitrator being appointed, however where the Claim is struck out during the Preliminary Ruling Procedure as a result of the Respondent serving a notice of intent under clause 19.4 before the Arbitrator was appointed, the Respondent shall be refunded the Preliminary Ruling Fee by the Arbitration Company less £2000.
- 29.3. The full Final Ruling Fee must always be paid by the Respondent in order for the Claim to progress to the Final Ruling Procedure, however where the Claim is struck out during the Final Ruling Procedure as a result of the Respondent serving a notice of intent under clause 19.4 after the completion of the Preliminary Ruling Procedure but before the commencement of the Final Ruling Procedure, the Respondent shall be refunded the Final Ruling Fee by the Arbitration Company less £2000.
- 29.4. Where the Claim is struck out the Arbitrator may require the Claimant to pay the

Respondent's Legal Costs up to the agreed Cost Cap.

30. Withdrawn Claims

- 30.1 If the Claimant serves notice of withdrawal before the Arbitrator is appointed the Arbitration Company shall:
- a) Refund a proportionate sum of the Parties' Administrative Fees depending on the amount of work already undertaken by the Arbitration Company;
 - b) Refund the Preliminary Ruling Fee in full to the Respondent if this has already been paid.
- 30.2. The Respondent shall be refunded their Final Ruling Fee by the Arbitration Company if a notice of withdrawal is served before the Arbitrator begins work on the Final Ruling Procedure.
- 30.3. Subject to clause 20.5 the Arbitrator shall not require the Claimant to reimburse Fees or Legal Costs to the Respondent upon the Claimant serving a notice of withdrawal.

31. Awards

- 31.1. Final Rulings, whether to uphold or dismiss the Claim, shall be provided in writing by the Arbitrator who shall provide reasons for the decision, and details of the Relief granted where this is relevant.
- 31.2. Unless the Rules state otherwise the Arbitrator shall have the same powers to grant Relief as the Court and must apply the law applicable to the seat of the arbitration in this regard. In particular, the Arbitrator may:
- a) Award damages to the Claimant (including aggravated damages), if applicable under the appropriate governing law),
 - b) Require the Respondent not to re-publish the information or the words which are the subject of the Claim,
 - c) Require the Respondent to remove the information or the words which are the subject of the Claim from the Respondent's website or other online platforms over which the Respondent has control,
 - d) Require the Respondent to use all reasonable endeavours to secure the removal of the information or words which are the subject of the Claim from third party websites and/or other online platforms,
 - e) Require the delivery up or destruction of offending material,
 - f) Require the Respondent to desist from the conduct which is the subject of the Claim;
 - g) Award Fees and/or Legal Costs as provided for in the Rules; and/or
 - h) Direct the Respondent to publish a summary of the Final Ruling in Claims for defamation in accordance with s.12 Defamation Act 2013.
- 31.3. The total Damages in any single Claim awarded under clause 31.2 shall be limited to £60,000.
- 31.4. The Damages Cap may only be removed by the express agreement of the Parties in writing. The cap shall be deemed to have been expressly removed by the Parties if they so agree in the Agreement or subsequently make a joint request in writing to the Arbitrator.

- 31.5. If the Respondent wishes to rely on an Offer of Amends as a defence or in mitigation of damages, the Respondent must inform the Arbitrator, as soon as reasonably practicable, that an Offer of Amends has been made.
- 31.6. The Arbitrator does not have the power to award exemplary damages.
- 31.7. Where a Party is required to make a payment of Fees, Legal Costs and/or provide Relief the requirement must be complied with within 28 days of the date of notification of the requirement by the Arbitrator, unless the Arbitrator states otherwise.
- 31.8. If the Parties cannot agree upon the wording of a summary to be published under clause 31.2(h) the wording may be settled by the Arbitrator. Where the Parties cannot agree on the time, manner, form or place of publication, the Arbitrator may give such directions as to those matters as they consider reasonable and practicable in the circumstances.
- 31.9. It shall not be within the Arbitrator's power to award pre-publication injunctions or interim interdicts against the publication of material which is the subject of the Claim.
- 31.10. The Parties expressly agree to be bound by any Relief granted by the Arbitrator.

32. Rulings and Confidentiality

- 32.1 All correspondence sent between the Parties, the Arbitrator and/or the Arbitration Company relating to the Claim shall be treated as confidential, subject to the Arbitration Company's duty to provide information to IPSO under clause 2.
- 32.2. Upon the appointment of an Arbitrator all correspondence sent between the Parties must be copied to the Arbitrator by the sender of the correspondence.
- 32.3. All correspondence exchanged between one Party and the Arbitrator must be copied to the other Party by the sender of the correspondence.
- 32.4. If the Arbitrator agrees to conduct an Oral Hearing the hearing shall be conducted in private.
- 32.5. The Parties agree not to disclose details of the arbitration at any time to any third party unless it is necessary for the purposes of complying with the Relief granted by the Arbitrator, or as otherwise required by law or the Rules.
- 32.6. With the exception of Final Rulings, which may contain details relating to previous Rulings given in respect of the Claim, there shall be an assumption that Rulings shall be confidential, subject to duties imposed by the Rules, unless the Parties agree otherwise in writing.
- 32.7. The Arbitrator shall determine whether the Final Ruling should be published and if so whether the parties should be identified. In taking this decision the Arbitrator shall have regard for the following matters:
 - (a) Any submissions by the parties requesting that the Final Ruling, the identifies of the

parties, or any part of the ruling should remain confidential;
(b) The purposes of the scheme and of arbitration generally;
(c) IPSO's commitment to transparency in its work; and
(d) The public interest.

- 32.8. Unless the Arbitrator directs that the Final Ruling should be made confidential, it shall be published on IPSO's website. Final Rulings which have been anonymised or redacted shall not be treated as confidential.
- 32.9. Respondents have a duty to report the Final Ruling fairly and accurately save in circumstances where a summary has been published) or where the Final Ruling has been made confidential. In so doing the Respondent must not identify parties who have been anonymised in the Final Ruling or include redacted information.