

Independent Arbitration Service Boat Safety Scheme Examiners Appeals Service Rules

1. Introduction

- 1.1. The Independent Arbitration Service for Boat Safety Scheme Examiner Appeals (“the Service”) provides a legally binding way for examiners to appeal against decisions made by the Boat Safety Scheme (“BSS”) Management Committee.
- 1.2. The Service is operated by the Centre for Effective Dispute Resolution (“CEDR”), an independent dispute resolution body.
- 1.3. These Rules shall apply to BSS Examiners appealing against any decision of the BSS Management Committee in connection with any allegation of a breach or breaches of the BSS Examiner Conditions of Registration (“the Conditions of Registration”). The Conditions of Registration have the identifier BSS Quality Assurance Procedure BSSQA018.
- 1.4. The Service cannot be used to settle disputes which fall into one or more of the following categories:
 - 1.4.1. A dispute brought by someone other than a BSS Examiner;
 - 1.4.2. A dispute that does not relate to a decision of the BSS Management Committee in connection with an allegation of a breach or breaches of the Conditions of Registration;
 - 1.4.3. Where the application to the Service has been submitted more than 14 calendar days from the date on which the BSS Management Committee’s decision which the appeal relates to was made;
 - 1.4.4. A dispute that is the subject of an existing or previous valid application made to the Service;
 - 1.4.5. A dispute which, in the opinion of CEDR, is more appropriately dealt with by a court, regulatory body, or other formal process;
 - 1.4.6. A dispute which has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such proceedings or alternative procedure have been abandoned, stayed or suspended).

1.4.7. In the opinion of CEDR or the arbitrator, the dispute referred to the Service is frivolous or vexatious.

1.4.8. In the opinion of CEDR, dealing with such a type of dispute would seriously impair the effective operation of the Service.

2. BSS Internal Procedure

- 2.1. Allegations of breaches of the BSS Examiner Conditions of Registration shall be assessed by reference to the most recent revision of the Procedure for Investigation of Alleged Breaches of the Examiner Conditions of Registration ("BSSQA006").

3. The Arbitration

- 3.1. A BSS Examiner ("the Examiner") shall have the right to use the Service in order to appeal against any decision of the BSS Management Committee which relates to any action taken to remedy a breach or breaches of the Conditions of Registration.
- 3.2. The arbitration will proceed on the basis of written evidence and submissions only, and shall contain the evidence and submissions previously gathered by the independent investigator as provided for in Section 3 of the Boat Safety Scheme Quality Assurance procedure ("BSSQA006").
- 3.3. All arbitrations under the Service 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 these Service Rules. All arbitrations will be deemed to take place in London, U.K.
- 3.4. An independent arbitrator, who can only be appointed by CEDR, shall decide appeals under these Rules and in conjunction with the most recent version of BSSQA006 and the version of BSSQA018 in place at the time of the alleged breach or breaches.
- 3.5. Each party will be given the opportunity to comment upon the evidence and submissions, in writing.
- 3.6. The arbitrator will make an award with reasons after considering all of the evidence and submissions.
- 3.7. Unless otherwise directed, any amount awarded by the arbitrator shall be paid by the relevant party within 15-working days of publication of the arbitrator's award. Such payments shall be made directly to the party entitled to receive them.
- 3.8. Once appointed, the arbitrator will communicate with, or issue directions to, the parties via CEDR.

3.9. All correspondence from either party to the dispute must be directed to CEDR and copied to all parties.

4. Applying for Arbitration

4.1. An Examiner who wishes to lodge an application to the Service must notify the Chair of the BSS Management Committee in writing within 10-working days of the date of the notification of the Committee's decisions.

4.2. To apply to use the Service, both parties must each complete and submit a declaration requesting arbitration and agreeing to be bound by the outcome. Once completed, the declarations must be sent to CEDR by email to adr@cedr.com. In the event that completed declarations are not received from both parties, the arbitration process will not commence.

4.3. Upon receipt of declarations from both parties, CEDR will submit invoices for payment of the arbitration fee, as detailed in Schedule 1. Once payment of the arbitration fee is received from both parties, CEDR will send a notice of arbitration to both parties along with an appeal form for the Examiner to complete.

4.4. On the appeal form, the Examiner must provide the following details:

4.5. The element or elements of the BSS Management Committee decision that they are appealing against;

4.6. A full breakdown of the reasoning for the appeal on each aspect of the decision to which the appeal relates; and

4.7. The remedies the Examiner is asking the arbitrator to provide.

4.8. The Examiner must supply all supporting documents with the appeal form.

4.9. Upon receipt of the Examiner's appeal form, CEDR will have the right to refuse to refer the dispute to arbitration if it considers the dispute to fall outside the scope of the Service, by reference to these Service Rules.

4.10. The arbitration begins on the date that CEDR sends the parties confirmation of the identity of the arbitrator once a defence to the appeal has been received from the BSS.

4.11. Once appointed, the arbitrator will communicate with and/or issue directions to the parties through CEDR. All correspondence with the arbitrator will be copied to all parties and CEDR.

5. Arbitration Procedure

5.1. The arbitrator will have the widest discretion permitted by law to resolve the dispute in a final manner in accordance with natural justice. In particular, the arbitrator has the power to direct the procedure of the arbitration, including varying time limits and other procedural requirements, and to:

- a. allow the parties to submit further evidence and/or amend any of the submissions already made;
- b. order the parties to produce goods, documents, property or other items for inspection;
- c. conduct enquiries and receive and consider additional evidence as the arbitrator considers appropriate;
- d. proceed with the arbitration if either party fails to comply with these Rules or with the arbitrator's directions;
- e. end the arbitration if the arbitrator considers the case to be incapable of resolution under the Service, or if the parties settle their dispute prior to an award being made. If the case is settled, both parties must immediately inform CEDR in writing of the terms of the settlement;
- f. order the Examiner or BSS to repay the other for the cost of the arbitration procedure.

5.2. The arbitration will proceed on the basis of written argument and evidence only. No oral hearing will be convened as part of the arbitration.

5.3. The arbitration will proceed as follows:

- 5.3.1. CEDR will send a copy of the Examiner's appeal form and supporting documents to BSS, who will have 15 working days from the date on which the appeal form was sent in which to submit a written defence to the appeal ("the Defence") or to seek to settle the appeal directly with the Examiner.
- 5.3.2. If, during the 15 working days following the date on which the appeal form was sent to BSS, both parties confirm to CEDR that a settlement has been reached, CEDR will close the case and no arbitrator will be appointed.
- 5.3.3. If no Defence or notification of settlement is submitted after 15 working days, the arbitrator will be appointed and shall proceed with the arbitration as they see fit.
- 5.3.4. On receipt of the Defence, CEDR will send a copy to the Examiner, who is entitled to submit written comments within a further 10 working days from the date on which the Defence is sent. Such comments must be restricted to points arising from the Defence, and shall not introduce any new appeal, assertion or evidence.
- 5.3.5. CEDR will send a copy of the Examiner's comments to BSS. BSS cannot make any further comments without the arbitrator's written approval.
- 5.3.6. If at any time the arbitrator considers that the dispute is not capable of proper resolution under these Rules, the parties will be so advised. In that case the arbitrator's appointment will be cancelled, the application for arbitration will be treated as withdrawn and 75% of the case fees will be refunded to both parties.
- 5.3.7. Within 20 working 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/her, CEDR will send a copy of the arbitrator's award to each party.
- 5.3.8. Unless otherwise directed by the arbitrator, all parties shall comply with the award within 15 working days of the date on which the award is sent to the parties.

5.3.9. Any award made under the Service is final and legally binding on all parties, subject to either party's right under the provisions of the Act to seek leave to appeal in the courts.

5.3.10. Any party may request the return of its original documents from CEDR but must do so within 20 working days of the date on which the arbitrator's award was issued. If no such request is made within 20 working days, CEDR will securely destroy the documents.

6. Costs

6.1. The case fees paid by the parties, as detailed in Schedule 1, constitute payment of CEDR's administration fee and the arbitrator's fee.

6.2. Subject to rules 6.3 and 6.4 below, each party shall bear its own costs of legal representation, and of preparing and submitting its case. No legal action may be brought to recover these costs. It should be noted that the Service has been set up for the purpose of providing low-cost dispute resolution. The parties are therefore not encouraged to make arrangements for legal representation, although they are not precluded from doing so.

6.3. The arbitrator will direct in the award that the losing party will reimburse the case fee of the other party in their award, although the arbitrator has an overriding discretion to decide whether or not to apportion the costs of the arbitration in some other manner. In any exercise of this discretion the arbitrator will have regard to all the material circumstances.

6.4. These provisions for costs will not apply to any appeal of the award to the courts.

7. General

7.1. The parties will inform the arbitrator promptly of any proposed application to the courts and will provide them with copies of all documentation intended to be used in any such application in order that they may issue further directions on the arbitration procedure.

7.2. Where not expressly addressed by the contract, the national law will apply unless the parties otherwise agree.

- 7.3. Neither the administrator nor the arbitrator can enter into any correspondence regarding an award issued under the Service.
- 7.4. Neither the administrator nor the arbitrator shall be liable to any party for any act or omission in connection with the arbitration conducted under these Rules.
- 7.5. The law of England and Wales shall apply to the arbitration. The seat of the arbitration shall be London, UK. The arbitrator shall determine the applicable law of the contract.
- 7.6. All references to 'working days' in these Rules shall be interpreted by reference to public and bank holidays in England and Wales.
- 7.7. CEDR will appoint a substitute arbitrator if the arbitrator originally appointed is unable to deal with the dispute for any reason. CEDR will inform the parties if such an appointment is made and the reasons for that appointment.
- 7.8. With the exception of amending the award following any minor error or omission which the arbitrator has power to correct by law, neither CEDR nor the arbitrator will enter into correspondence relating to the award.
- 7.9. Neither CEDR nor the arbitrator will be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, save for any wrongdoing on the part of the arbitrator arising from bad faith.
- 7.10. These Rules are subject to revision and amendment from time to time. The edition of the Rules in force at the time the application is made will govern any arbitration under the Service.

Centre for Effective Dispute Resolution

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Schedule 1 – Case Fees

1. The Examiner will pay a case fee of £300.00 plus VAT to CEDR when submitting an appeal form.
2. The BSS will pay a case fee of £300.00 plus VAT to CEDR when submitting the Defence.
3. The award will usually direct the losing party to reimburse the other party directly in their award.

See Rule 6.3 for more details.