



**COST-CONTROLLED PROCEDURE FOR THE MEDIATION OF PERSONAL INJURY &
ILLNESS
DISPUTES IN THE TRAVEL INDUSTRY
(First Edition - 2003)**

1. INTRODUCTION

- 1.1 This Procedure has been designed by the Chartered Institute of Arbitrators (“Chartered Institute”) in association with the Association of British Travel Agents (“ABTA”) to offer consumers who have a claim relating to personal injury or illness suffered as a result of alleged failure by the tour operator to ensure their safety, an opportunity to have their dispute resolved through mediation - more quickly, cost-effectively and privately than it would be dealt with by litigation.
- 1.2 The parties should take care to read the guidance notes which accompany this procedure prior to submitting an application for mediation to commence.
- 1.3 The Procedure does not apply to disputes where one or other of the parties has already initiated legal action, unless that legal action is suspended or discontinued by agreement.
- 1.4 Mediation under the Procedure may be initiated by any party, although all parties to the dispute must agree in writing before the mediation can commence.
- 1.5 Upon receipt of the completed mediation application form signed by all parties to the dispute, or by their representatives, together with receipt of the relevant registration fees (see section 1.8), the Chartered Institute, after consultation, will appoint the mediator to resolve the dispute.
- 1.6 The Procedure generally applies to disputes between two parties but, if they and the mediator agree, the Procedure may be extended to cover disputes involving three or more parties. Where there are more than two parties to the dispute the mediator’s

fees may be renegotiated prior to any party, the Chartered Institute or the mediator incurring any cost in respect of the mediation.

- 1.7 A Registration Fee of £250 plus VAT is payable by the tour operator to the Chartered Institute when an application for mediation is submitted. If a second tour operator or travel agent is joined later under 1.7 above then they must also pay a Registration Fee of £250 plus VAT.
- 1.8 Registration Fees are non-refundable except in the circumstances laid out in Section 7.1.
- 1.9 The Chartered Institute administers the Procedure independently and the appointment of the mediator is at its discretion, following consultation with the parties or their representatives.
- 1.10 The parties are jointly and severally liable for all fees incurred in the mediation, including the Registration Fees, the Mediator's Fees and the costs incurred for accommodation and refreshments.

2. MEDIATION PROCEDURE

- 2.1 To commence mediation an application must be first submitted to the Chartered Institute on the Mediation Application Form, accompanied by:
 - (a) A short case résumé from each Party giving details of the dispute in order to help the Chartered Institute to identify a suitable mediator for appointment (see 1.10 above)
 - (b) The appropriate Registration Fees (see 1.8 above)
- 2.2 The Chartered Institute will contact the Parties with details of suitable mediators for their consideration prior to appointment. The President or a Vice-President of the Chartered Institute will appoint the Mediator. Only mediators with significant experience in the resolution of personal injury, illness, medical negligence or other health and travel related disputes will be made available for appointment. If the parties specifically request the appointment of a mediator with no experience in such disputes, that mediator will be drawn from the Chartered Institute's Panel of Civil & Commercial Mediators. The Chartered Institute will send the case file and Application Form to the Mediator, once appointed. All appointed mediators shall be bound by the Chartered Institute's relevant Codes of Ethics.

- 2.3 Once appointed the Mediator will agree arrangements with the Parties for the future conduct of the mediation, including his / her fees, meetings and submissions.
- 2.4 The mediation will be in the form of a meeting attended by the decision maker for each of the Parties in dispute and one additional representative for each Party, unless otherwise agreed by the Parties and the Mediator. Costs of representation are the responsibility of the Parties unless agreed otherwise in any settlement agreement.
- 2.5 The Mediator may request that a second mediator (“assistant”), who has reached the Chartered Institute’s standard of accreditation but who has not yet gained enough experience to act as a Lead Mediator, attends to assist him. The Parties may refuse to accept the attendance of an assistant but should bear in mind that the assistant is there to assist the Mediator and does so at no additional cost to the Parties.
- 2.6 The proposed rules governing the mediation process will be set out by the Mediator in advance of the mediation day.
- 2.7 The scale for Mediator’s Fees is set at Section 3. The capped rates in Section 3 Bands 1 and 2, cover a 7 hour day for the mediation itself and a maximum of 3 hours “reading-in” time before the mediation. If at the end of the 7 hours the dispute has not been resolved and the Parties, with the mediator’s agreement, wish to continue to mediate then the special cost provisions of the Procedure will no longer apply. The mediator will have previously advised and agreed an hourly rate with the parties for such circumstances.
- 2.8 The mediation will take place at a venue to be arranged and agreed by the parties and at the cost of the parties. The parties are reminded that the Chartered Institute has accessible hearing rooms with modern facilities in Central London, should they wish to use these facilities.
- 2.9 If the dispute is resolved during mediation, the Mediator will record in writing the agreement reached by the Parties. The signed agreement will be a binding contract and, as such, capable of being enforced by the Court.
- 2.10 In the event of the original Mediator resigning, dying or otherwise becoming incapacitated or for any reason being unable to attend competently and / or expeditiously and / or without conflict of interest to his or her duties then the

Chartered Institute will, after consultation, appoint another mediator. There will be no additional charges for so doing.

3. COSTS OF MEDIATION

3.1 The Mediator's Fees and travel expenses (see section 3.3) are the joint responsibility of the Parties and shall be paid to the Mediator, as previously agreed with the Mediator.

3.2 The Chartered Institute's fees are covered by the Registration Fee(s) to be submitted with the Mediation Application Form as per sections 1.8 and 2.1 (b).

3.3 The Mediators Fees are in accordance with the table below.

Disputed Value	Mediator's Fee
Band 1 Up to £10,000	£100 plus VAT per hour, capped at £1,000 plus VAT (plus reasonable travel and out of pocket expenses)
Band 2 £10,001 to £100,000	£150 plus VAT per hour, capped at £1,500 plus VAT (plus reasonable travel and out of pocket expenses)
Band Three £100,001 to £500,000	£180 plus VAT per hour, capped at £1,800 plus VAT (plus reasonable travel and out of pocket expenses)
Band Four £500,001 to £1,000,000	£220 plus VAT per hour, capped at £2,200 plus VAT (plus reasonable travel and out of pocket expenses)
Band Five In excess of £1,000,000	£280 plus VAT per hour, £2,800 plus VAT (plus reasonable travel and out of pocket expenses)

Note: The capped rate includes an allowance for "reading-in" of the parties' submissions.

3.4 Each Party shall bear its own costs of preparing and submitting its case and of attending any hearing. Accordingly, the parties hereby agree that neither one of them shall institute legal action against the other to recover these costs. (See also 2.4 above.)

4. CONFIDENTIALITY

4.1 No Party involved in any dispute under this Procedure, or the Chartered Institute, or the Mediator, or any assistant mediator, or the Association of British Travel Agents ("ABTA") shall disclose explicit details of the proceedings to any stranger to the proceedings unless it is necessary to do so in order to enforce a binding settlement or as may be required by law. Notwithstanding the foregoing, the Chartered Institute and the Mediator and ABTA may collate and process data pertaining to the use of the Procedure, compile, analyse and publish statistics therefrom and monitor and review the operation of the Procedure, provided always that (save with the express consent of the Parties) no personal data or privileged or confidential information shall be published.

5. Immunity of the Chartered Institute of Arbitrators

5.1 Neither the Chartered Institute, nor any person designated by it or the parties to nominate a mediator, shall be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith. The parties shall likewise indemnify the Chartered Institute, or the designated nominating person, against any possible legal action brought by any third party, arising from the discharge of the aforesaid functions, unless the act or omission is shown to have been in bad faith.

5.2.1 Neither the Chartered Institute, nor the person designated by the parties to nominate a mediator, shall be liable, by reason of having nominated the mediator, for anything done or omitted by the mediator (or his employees or agents) in the discharge or purported discharge of his functions as mediator. The parties shall likewise indemnify the Chartered Institute, or the designated nominating person, against any possible legal action brought by any third party, arising from the discharge of the aforesaid functions, unless the act or omission is shown to have been in bad faith.

6. Immunity of the Mediator

6.1.1 Neither the mediator nor any of his or her employees or agents shall be liable for anything done or omitted in the discharge or the purported discharge of his or her function as mediator, unless the act or omission is shown to have been in bad faith. The parties shall, likewise, indemnify the mediator and any assistant mediator against any possible legal action brought by any third party, for any act or omission as a consequence.

7. Reservation of Service

7.1 The Chartered Institute reserves the right to decline an individual request to nominate a mediator.