

## Appendix C3:

### Arbitrators Code of Conduct

(updated with ICA Board of Directors approved amendments following Board Approval 9<sup>th</sup> October 2020).

**This Code of Conduct embodies principles and best practice and natural justice deems necessary by the Board of Directors to maintain existing standards and public confidence in the ICA as an arbitral authority. Not all of the points listed below will cover every aspect of an Arbitrator's ethical and professional conduct. Arbitrators are therefore expected to observe the spirit of the principles outlined below. Reference to the masculine are also intended to the feminine.**

#### Impartiality

	<ul style="list-style-type: none"><li>• The Arbitrator's duty to remain impartial is a continuing one throughout the arbitration process. Should they find themselves in a position whereby they are aware that they cannot remain impartial, they must immediately withdraw themselves from the arbitration process.</li></ul>
	<ul style="list-style-type: none"><li>• An Arbitrator is under a duty to disclose to the ICA Secretariat and to the parties any interest and / or relationship which may result in a conflict of interest as soon as possible.</li></ul>
	<ul style="list-style-type: none"><li>• An Arbitrator must not accept an appointment to act as Arbitrator if they are aware that by doing so they place themselves in a conflict of interest. No arbitrator or probationary arbitrator can accept an appointment whilst they or the company through which they are a member of the ICA is/are subject of a disciplinary committee investigation, until that Disciplinary Committee has reached a final decision. If the arbitrator or probationary arbitrator accepts such an appointment, the President can remove them from the arbitration concerned.</li></ul>
	<ul style="list-style-type: none"><li>• Arbitrators must not act as advisers to the parties to an arbitration whilst the proceedings are on-going or afterwards, concerning the analysis of a particular case. They must not act as advocates for the parties who have appointed them; they may not provide procedural advice.</li></ul>
	<ul style="list-style-type: none"><li>• Arbitrators must avoid private dialogue with a party to an arbitration, and must not discuss issues arising in an arbitration with a party prior to, during or at any time after the conclusion of the arbitration. Arbitrators must ensure that any communications with the parties are conducted (where possible) via the ICA Secretariat, and always copied in writing to the other party to the dispute for transparency's sake.</li></ul>
	<ul style="list-style-type: none"><li>• An Arbitrator must not allow external pressure, personal interests or relationships (past or present) with any third parties or fear of criticism to influence their conduct or judgement in dealing with the dispute.</li></ul>
	<ul style="list-style-type: none"><li>• A conflict of interest e-mail sent by the Secretariat must be answered by the arbitrator concerned, within 14 days of them being e-mailed. Arbitrators must consider if they have a conflict of interest by taking into account English law, the Arbitrators Code of Conduct and the content of the conflict of interest e-mail sent by the secretariat to arbitrators.</li></ul>
	<ul style="list-style-type: none"><li>• Arbitrators shall treat fellow arbitrators and others with respect.</li></ul>

### Cooperation

<p>In order to operate effectively, ensure that standards are met and maintain public confidence in the ICA and arbitrations carried out by arbitrators, it is necessary for the ICA to establish and follow procedures for the following purposes:</p>	
	<ul style="list-style-type: none"> <li>• The administration and management of ICA membership;</li> </ul>
	<ul style="list-style-type: none"> <li>• The administration and management of arbitrations;</li> </ul>
	<ul style="list-style-type: none"> <li>• The monitoring of compliance with the ICA’s Articles of Association, Rules and Bylaws, this Code and the law;</li> </ul>
	<ul style="list-style-type: none"> <li>• The maintenance of the ICA List of Unfulfilled Awards; and</li> </ul>
	<ul style="list-style-type: none"> <li>• The investigation and determination of any complaint or allegation made against an Arbitrator or any other Member of Member Firm by any person.</li> </ul>
<p>Arbitrators must co-operate fully with such processes (as established from time to time, whether under the Articles of Association, Rules and Bylaws or this Code or otherwise). In particular, Arbitrators must respond promptly, fully and honestly to any inquiries made by the Directors, the ICA Management Team, the Monitoring Team, the Disciplinary Committee for the purposes listed above.</p>	

### Confidentiality

	<ul style="list-style-type: none"> <li>• For the avoidance of doubt, an Arbitrator’s duty of confidence does not prevent an Arbitrator from providing information to and cooperating with Directors, the ICA Management Team, the Monitoring Team and the Preliminary Investigation Committee as necessary for the purposes set out under “Cooperation” above.</li> </ul>
	<ul style="list-style-type: none"> <li>• Arbitration is a private and confidential process, selected by the parties to dispute to resolve the issues between them.</li> </ul>
	<ul style="list-style-type: none"> <li>• An Arbitrator is under a duty to keep all facts, information, correspondence, and documents disclosed to them during the course of an arbitration confidential at all times.</li> </ul>
	<ul style="list-style-type: none"> <li>• An Arbitrator shall not use such confidential information outside of the arbitration process for their personal advantage or for purposes other than the performance of their duties as an Arbitrator.</li> </ul>
	<ul style="list-style-type: none"> <li>• The Arbitrator’s duty of confidentiality continues after the arbitration has concluded, until and unless both parties to the arbitration agree to waive the confidentiality; or the details of the case are lawfully placed in the public domain.</li> </ul>
	<ul style="list-style-type: none"> <li>• An unlawful or unauthorised leak of information regarding the case by another Arbitrator or third party will not be justification or licence for an Arbitrator also disclosing details of the case. Such conduct may result in personal liability for the Arbitrator concerned.</li> </ul>
	<ul style="list-style-type: none"> <li>• An arbitrator is under an obligation to relate to the Secretariat any concerns they have that the duty of confidentiality has been breached, at any time.</li> </ul>
	<ul style="list-style-type: none"> <li>• The ICA Management team reminds arbitrators that one month after the date of publication of an award they should have deleted information held on paper or on their computer etc on the case they have just handled. If they want to retain information, precedents etc, and have a valid reason under the GDPR for doing so, they can do so.</li> </ul>

Conduct of the Arbitration

	<ul style="list-style-type: none"> <li>• Arbitrators must ensure that they follow the procedures set out in the ICA Bylaws and Rules, and the relevant provisions of the Arbitration Act 1996 when conducting any arbitration and only use ICA approved time sheets, invoices and other forms, when designated for the use of arbitrators by the ICA.</li> </ul>
	<ul style="list-style-type: none"> <li>• Arbitrators shall maintain an up to date copy of the ICA Bylaws and Rules at all times.</li> </ul>
	<ul style="list-style-type: none"> <li>• Arbitrators must read and consider all of the evidence before them.</li> </ul>
	<ul style="list-style-type: none"> <li>• An arbitrator must only accept an appointment to act as Arbitrator if they have sufficient time to allow the arbitration to be conducted in a competent and timely manner. In order to avoid the perception of bias or justifiable doubts as to impartiality an arbitrator may only accept up to and including 3 appointments for a party or related party to act as arbitrator from a claimants /appellant or respondent, per calendar year. Those appointments from a party or related party, where the arbitration has been withdrawn/discontinued, without the publication of an Award, do not count against the '3 or 8 rule'. An arbitrator must have no more than 11 active cases at any one time. ASC members must have no more than 3 non-chair active cases at any one time and no more than 8 chair active cases at any one time, a total of 11 active cases. ASC members who have 3, or more, non-chair active cases will not accept any additional such appointments until the ASC member is back within the limit of 3. These limits (this criteria) will be reviewed regularly (at least every 3 calendar months) by the Arbitration Strategy Committee (ASC) taking into account the recent numbers of applications for arbitration. Any changes will be recommended to the Directors. Those appointments from a party or related party, where the arbitration has been withdrawn / discontinued, without the publication of an Award, do not count against the '3 or 11 rule'."</li> </ul>
	<ul style="list-style-type: none"> <li>• An Arbitrator must ensure that any fees charged in the course of an arbitration are reasonable, having regard to all of the circumstances of the case and the hours charged are or work done in the intellectual pursuit of the matter.</li> </ul>
	<ul style="list-style-type: none"> <li>• Once the fees have been agreed by the Tribunal/TAC time-sheets and invoices shall be submitted to the Chair prior to the signature sheets being signed. The Chair shall immediately review them and submit them to the ICA Secretariat prior to an award being published.</li> </ul>
	<ul style="list-style-type: none"> <li>• An arbitrator will (should external legal advice be required during an arbitration an arbitrator will) seek advice on English law from the ICA's English legal panel, when working on ICA arbitrations.</li> </ul>
	<ul style="list-style-type: none"> <li>• The Board of Directors will approve changes to this Code of Conduct.</li> </ul>
	<ul style="list-style-type: none"> <li>• At least one week prior to the publication of an Award the Tribunal must inform the Secretariat of the date of publication and time sheets, invoices plus Award to be submitted.</li> </ul>
	<ul style="list-style-type: none"> <li>• Arbitrators will adopt ASC recommended 'Best Practice' in their arbitration work.</li> </ul>