

THE HOUSEHOLDERS' ARBITRATION SCHEME

GUIDANCE NOTES

“The 1991 Act” means the Coal Mining Subsidence Act 1991 and **“the 1994 Act”** means the Coal Industry Act 1994;

“The Arbitration Body” means the body appointed by the Secretary of State namely the Chartered Institute of Arbitrators;

“Arbitrator” means the person appointed by the Arbitration Body to act as the Arbitrator or Arbiter;

“Respondent” means, in relation to a dispute, the responsible person involved in it, i.e. a mine operator or the Coal Authority;

“The Rules of the Scheme” means the Rules of the Householders' Arbitration Scheme set out in Schedule 1 to the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994.

If you, as a “householder”, have suffered damage as a result of coal mining subsidence you are entitled to have it remedied. A Damage Notice must first be submitted to the “responsible person” who will be either the Coal Authority or a Mine Operator. If your claim cannot be amicably resolved the dispute can be settled by arbitration. The 1991 Act states that where it is reasonable to believe that damage may be due to mining subsidence it is up to the “responsible person” to show that it isn't. The 1991 Act also imposes obligations on the “responsible person” as to the handling of claims. If these are breached you may be entitled to an inconvenience payment, and this question can be settled by arbitration. Arbitration may also be available where a Claimant cannot sell his house because of subsidence damage or an imminent probability of such damage, and wishes the person responsible for the damage to purchase the house in accordance with regulations relating to blight made under the 1991 Act. A Damage Notice is not required in blight cases.

Arbitration is a process by which an independent person, an Arbitrator, or in Scotland an Arbiter, resolves a dispute. It is a long established and effective method of resolving disputes and is the only certain alternative to court action.

Under statutory regulations there are two arbitration schemes for disputes about coal mining subsidence. The Householder's Scheme is a simpler and quicker scheme designed for use in more straightforward cases relating to dwelling houses. The General Scheme is designed to resolve more complex disputes. The Chartered Institute of Arbitrators (“the Institute”) has been appointed as the Arbitration Body to administer the Schemes.

The Arbitrator is selected by the Arbitration Body on the basis of reputation, expertise, training and experience. The Arbitrator will:

- consider the parties' arguments and evidence;
- act fairly and impartially;
- act according to the law.

The arbitration process is designed to be simple and easy to use but before starting you should read these notes and the Rules of the Scheme carefully. If you find the Rules of the Scheme hard to understand you can contact the Subsidence Adviser (Tel: 01522 820 215) who will explain their meaning. However the Subsidence Adviser will not investigate the dispute itself, or make your case for you.

It is in your interest to state your case clearly since the Arbitrator makes a decision on the strength of the evidence submitted; usually in conjunction with a site inspection and occasionally, if appropriate, a hearing. The time, place and procedure of the hearing will be determined by the Arbitrator. The Arbitrator's decision or Award, is final, binding and enforceable in the courts.

GUIDANCE NOTES FOR BOTH PARTIES

1. Please note that the application form is important because if the Institute accepts the application as one which is suitable for arbitration under this scheme, the responsible person is obliged to submit to the jurisdiction of the Arbitrator. While the claimant is entitled to withdraw his claim at any time, he will be bound by the award if he does not withdraw the claim. You should note that a party ignores the existence of arbitration at its peril because the Arbitrator may make an award on the basis of whatever documents have been submitted.
2. Remember that the Arbitrator decides the case purely on the arguments and evidence presented to him by the parties. The parties must prove their cases on the balance of probability to the satisfaction of the Arbitrator.
3. The Rules of this Scheme are intended to allow the parties to present their cases without the need for legal representation.
4. So far as presentation is concerned, please ensure:
 - (a) that all documents are produced in a simple and presentable form. It is not essential that case documents are typed but, if they are hand-written, they should be written clearly or printed. Photocopied documents must be legible;
 - (b) that case statements are supported by copies of all relevant documents such as invoices, statements, contracts, quotations, photographs, correspondence and witness statements;
 - (c) that all case statements and supporting documents are submitted in duplicate where applicable, arranged in a chronological sequence with all pages numbered;
 - (d) that jargon or abbreviations used in case statements are explained in plain English;
 - (e) that, where requested, you have submitted comments to the Arbitrator concerning the conduct of the arbitration.
5. All correspondence and case statements must quote the case reference number and the name of the case. Any correspondence to the Arbitrator must be copied to the other party.
6. Case statements and supporting documents must be submitted together and not piecemeal.

7. You should keep a copy of all documents submitted for possible future reference. You may need to refer to them if the Arbitrator asks questions.
8. Neither the Arbitrator nor the Arbitration Body are investigators. If you have witnesses to support your case, you must obtain their statements and submit them. It will not be acceptable for you to send a list of witnesses and tell the Arbitrator to contact them. It is not sufficient for you merely to say that you have evidence. You must produce it.
9. You should correspond directly with the other party for settlement purposes and not through the Institute. If the matter is settled the Arbitrator can issue a consent award incorporating the terms of settlement because this makes enforcement easier. Settlement of the dispute must be notified to the Arbitrator in writing by both parties.
10. The Arbitrator will normally undertake a site visit. The site visit is not a formal hearing or an opportunity to submit further evidence. Its purpose is to enable the Arbitrator to see the physical evidence, assess whether or not that evidence supports the written submissions, and if necessary ask questions.
11. It is essential that you deal fully with each and every allegation made in the other party's statement of case. If you do not challenge valid evidence put forward by the other party, the Arbitrator will usually treat any allegation supported by that evidence as proved.
12. If it proves necessary, advice can be sought from a solicitor, a Citizens Advice Bureau, a Law Centre or a Neighbourhood Advice Centre.
13. The mere fact that you may not like an award made against you (or even in your favour but not for the total amount claimed) does not mean that the award is wrong in law. The Institute has no power to alter an award or to order an Arbitrator to do so.
14. Although you are responsible for your own costs, the Arbitrator may order one party to reimburse the other party's registration fee and will generally order an unsuccessful party to do so.
15. All parties must comply with the time limits of the Scheme and the Arbitrator's directions. Failure to do so may result in a claim or defence being disallowed.
16. The Arbitrator is formally appointed after the Arbitration Body notifies the parties that the application has been accepted.
17. In exceptional circumstances and where appropriate, the Arbitrator may be assisted by one or more independent technical or legal adviser appointed by the Institute.
18. The parties should note that they may be prosecuted if they submit evidence which they know to be false.
19. This Arbitration Scheme does not apply to claims for physical injury, illness or nervous shock.

GUIDANCE NOTES FOR CLAIMANTS

1. Make sure that all information required by the application form is provided. Failure to do so will delay the arbitration getting underway.

2. The arbitration will normally only deal with the matters referred to and/or the amounts claimed in the application form. Make sure, therefore, that all claims have been covered by the application form.
3. On receipt of the application form the Institute will send you a claim form if the dispute appears suitable for arbitration.
4. Your statement of claim should set out in chronological order the events which have led to the claim and refer to each supporting document in respect of each allegation. The statement might need to include references to:
 - a) the relevant parts of any previous claim or Damage Notice;
 - b) any specific requirements;
 - c) what was promised and what was received;
 - d) relevant dates;
 - e) the names of persons concerned (e.g. respondents, employees or agents);
 - f) the damage claimed, clearly and precisely quantified;
 - g) the remedies sought, whether compensation, specific performance (i.e. completion of remedial works) or statement of liability.
5. Each allegation or element of the claim should be set out, perhaps in the form of a table, as it may help the Arbitrator to appreciate what the differences between the parties really are.
6. You should avoid merely sending a bundle of all documents in your possession and calling this bundle 'the claim'. The 'claim' is the written statement of claim and the bundle of documents is the supporting evidence.
7. You should avoid 'dressing up' or exaggerating claims to make weight. Allegations which are not supported by evidence will not assist your case and may damage it.
8. It is not enough for you to show that your dealings with the respondent led to disappointment. You must show exactly what damage you believe to be due to mining subsidence or precisely how the respondent failed to comply with his obligations.
9. When making comments on the respondent's defence, you should restrict them to the matters dealt with in the defence and not raise any new points. You must also deal, with any counter-allegations made in the defence.
10. If you are represented by a lawyer or other professional adviser, you should communicate with the Institute or the Arbitrator only through your adviser. Direct communication may cause unnecessary work and thus delay.
11. If your claim is to be withdrawn please refer to the Rules of the Scheme.

GUIDANCE NOTES FOR RESPONDENTS

1. The defence should answer each and every point raised by the other party (the 'claimant') clearly and precisely, giving details of any action taken to remedy defects or reduce losses. Remember, any points in the claim which remain unanswered will normally be treated as having been admitted.

2. If you believe that the claimant has gone beyond the limits of the Scheme, you must say so in your defence.
3. You do not have an automatic right to reply to the claimant's comments on your defence but the Arbitrator may permit further comments to be submitted. If the Arbitrator requests further information you must provide it.

CHECKLIST

Ask yourself the following questions before submitting the application.

1. Have I filled in all the information required by the form (name, address, telephone number, matters to be referred and amounts or other remedy claimed)?
2. Have I completed the form legibly?
(please type or write in black ink).
3. Have I signed and dated the form?
4. Have I included the registration fee with the application?

Failure to observe any of the above will cause delay in processing the application.

You should also ask yourself the following questions before submitting your statement of claim or defence.

5. Have I detailed exactly what am I claiming for or defending against?
6. Why do I believe that something is due to me or nothing is due to the other party?
7. Have I clearly answered all points in the other party's arguments with which I disagree?
8. Am I submitting all the documents that the Arbitrator will need to consider? If in doubt, include them.
9. Have I complied with the time limits?

It is essential that you follow the Rules of the Householder's Arbitration Scheme and these Guidance Notes. Failure to do so may lead to delay and unnecessary costs.

THE CHARTERED INSTITUTE OF ARBITRATORS
COAL MINING SUBSIDENCE (ARBITRATION SCHEMES)
REGULATIONS 1994

APPLICATION FOR ARBITRATION:

HOUSEHOLDERS' ARBITRATION SCHEME

To: The Chartered Institute of Arbitrators

1. Name **(Claimant)**

Address

..... **Tel**

hereby applies to the Chartered Institute of Arbitrators for the dispute described overleaf to be referred to arbitration in accordance with Schedule 1 to the Coal Mining Subsidence (Arbitration Schemes) Regulations 1994.

2. The dispute is with:

Name **(Respondent)**

Address

..... **Tel**

3. I/we agree that:

- (i) I/we will make available facilities for inspection of the defects by the Respondent and its professional advisers, if required;
- (ii) I/we will make available facilities for the Arbitrator/Arbiter to hold an inspection and hearing at the home if required;
- (ii) I/we understand that the Arbitrator's/Arbiter's Award is final and binding on both parties subject to the rights of appeal under the Arbitration Act 1996.

4. A cheque or Postal Order for the sum of £94.00 (£80.00 + VAT at a rate of 17.5%) in respect of the Claimant's registration fee is enclosed.

Please complete the additional information required overleaf to enable the Chartered Institute of Arbitrators to determine the suitability of the dispute for resolution under this Scheme and to appoint an appropriate Arbitrator or Arbiter.

P.T.O.

