A guide to arbitration

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In England and Wales, parties to a contract dispute can apply to the courts to have their dispute resolved. Not all contracting parties want their dispute decided by the courts, where there is a risk the outcome will be reported publicly. It is possible for the parties to agree to resolve their disputes by arbitration.

Arbitration is an alternative dispute resolution process where the parties appoint one or more people (arbitrators) to make a decision about their dispute. The decision of the arbitrator is called an 'award' and it is binding on both parties.

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An introduction to arbitration

For the parties to have the option to refer a dispute about their contract to arbitration, they need an arbitration agreement. The arbitration agreement must be in writing, and it can be included within the contract, or the contract can refer to another arbitration agreement in a different document. The parties can also agree to arbitration after their dispute has arisen. Parties to arbitration agreements usually select the procedural rules which they wish to apply (such as Construction Industry Model Arbitration Rules).

If there is a valid arbitration agreement but one party refers a dispute covered by the arbitration agreement to the court, the other party may apply to the court for a stay of those proceedings. The court will grant the stay unless it is satisfied that the arbitration agreement is void, inoperative or cannot be performed, or the party applying for the stay has taken steps in those court proceedings to answer the claim.

It is not possible for the parties to avoid court intervention entirely. If the governing law of the arbitration agreement is the law of England and Wales, then the courts have limited jurisdiction to supervise the arbitration agreement. That includes hearing challenges to points of law decided in the arbitral award, issues going to the jurisdiction of the arbitral tribunal and the enforcement of valid awards. The courts' decisions on these points may be reported in public.

Government control of arbitration: the Arbitration Act 1996

These powers derive from the Arbitration Act 1996[1]. That Act regulates arbitrations in England and Wales, and provides a framework for the conduct and control of the arbitration process by the courts. It sits alongside common law rules which have developed over time by court judgments.

The objective of the Arbitration Act 1996, set out in section 1, is to ensure arbitration provides a fair resolution of disputes by an impartial tribunal without unnecessary delay or expense. The parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest, and the court should not intervene except as provided for in that Act.

The Arbitration Act 2025, which came into force on 1 August 2025, makes a number of changes and additions to the Arbitration Act 1996 Act, which we explain below.

1. The Arbitration Act 1996 also applies in Northern Ireland, but this guide deals only with the law as it applies within England and Wales

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Changes made by the Arbitration Act 2025

There are a number of additional requirements affecting arbitration agreements including further safeguards to further the objective of section 1 of the Arbitration Act 1996.

A default provision has been introduced which makes the law of the place where the arbitration is heard (the 'seat of the arbitration') the governing law of the parties' arbitration agreement. This will apply unless the parties expressly agree that a different law is to apply to their arbitration agreement.

Another important new provision requires arbitrators to disclose, as soon as reasonably practical, any matters that might give rise to questions about their impartiality. This duty applies both to the appointment process and during the course of the arbitral proceedings.

The Arbitration Act 1996 imposes a duty of impartiality on arbitrators, who can be removed from that position by the court in the event of breach. The duty to disclose matters that do or might affect impartiality puts the onus on the arbitrator. In practice this is likely to mean arbitrators will check and report as an ongoing process.

The scope of arbitration has also been increased. First, the Arbitration Act 2025 increases the range of remedies available to the arbitral panel by allowing them to give summary judgment on an issue or claim when it considers that a party has no real prospect of succeeding on that issue or claim at a final hearing. This is an effective means of saving time and costs, and is a remedy frequently used by the courts. The parties to the arbitration agreement can agree that this provision is not to apply however.

Second, the Arbitration Act 2025 extends the power of the arbitral panel in relation to orders that support the arbitration (taking of witness evidence, preservation of evidence, orders relating to relevant property, sale of goods, interim injunctions, and the appointment of a receiver).

Under the Arbitration Act 1996, these orders could only be made against a party to the arbitration. Now they include the power to make such orders against non-parties.

These and other changes brought about by the Arbitration Act 2025 are aimed at clarifying the current law and bolstering the impartiality and effectiveness of the arbitration process.

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Getting started: the arbitration process

For a valid arbitration, there needs to be a dispute on an issue that arises under or in connection with the contract to which the arbitration agreement applies.

You should check the contract and the arbitration agreement to see whether there is a process that must be followed to invoke arbitration or any steps to follow in advance of arbitration in the contract or agreement and, in particular, whether there is any contractual time limit in which you must bring a claim in addition to the normal limitation periods.

Usually the claimant will start the arbitration by sending a 'notice to arbitrate' to the opponent which includes a description of the issues in dispute. If arbitration is to be conducted in accordance with the rules of a particular arbitration institution, the institution's rules will often prescribe what should be included in the notice.

The arbitral tribunal will consist of one or more arbitrators. Some arbitration rules will specify the requirement, with a sole arbitrator or a tribunal of three arbitrators being common.

The tribunal is formally constituted and will set out the process and timetable the parties must follow, known as a 'procedural order'. The order will usually include deadlines to prepare points of claim, defence and reply to defence, exchange of documents and witness/expert evidence and preparation for any hearings.

Usually one or more hearings will be listed and the tribunal will make an award following the hearing.
Unless the award is successfully challenged, the parties will be bound by the award.

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Advantages and disadvantages of arbitration

You should always consider the potential benefits and risks of arbitration, listed below, compared to litigation and other forms of alternative dispute resolution when deciding whether to enter into an arbitration agreement as your contract dispute resolution method:

Advantages	Disadvantages
If the parties agree that any dispute is to be decided by an arbitrator, rather than through the courts, they can appoint an arbitrator who has specific technical expertise i.e. an architect arbitrator.	An arbitrator has a 'lien' on their award, meaning they can refuse to release their decision until any outstanding fees have been paid. This means if one party does not pay, the other party may have to cover their share of the fees in order to receive the arbitrator's award, leaving the paying party with the issue of trying to recover the sums from the non-paying party.
The parties can agree which arbitration procedural rules apply so they can tailor the process to their particular dispute.	Some of the costs of arbitration may be more than the costs of court proceedings. For example you will be required to pay for the time spent by the arbitrator on an hourly rate basis rather than the flat court fees that apply for court judges.
Arbitration is final and confidential, unless there is an application to the court, for example on appeal, enforcement or jurisdiction. This is unlike court proceedings, which are usually open to the public with court documents often being publicly available.	Sometimes the desire to avoid public court proceedings can encourage the parties to settle a dispute. This is less likely to be the case in confidential arbitration proceedings.

Appealing an award and enforcement

You can only challenge or appeal an award in very limited circumstances. For example, a tribunal's findings of fact can rarely be challenged, however, if the tribunal has:

a. not conducted itself properly;
b. answered questions it should not have answered; or
c. made an error of law

a party can challenge the award and ask that it be set aside or sent back to the tribunal to make its decision properly.

Awards are enforced through the courts and can be enforced in most countries worldwide. Enforcement will often depend on a number of factors such as the jurisdiction in which enforcement is likely to be sought.

Fees

In the absence of an agreement between the parties, the tribunal can determine which costs are recoverable and make an award allocating those costs. If the tribunal does not determine what costs are recoverable either party may apply to the court for a costs determination.

The costs of arbitration generally include:

a. The arbitrator's fees and any administrative costs such as venue hire and travel expenses.
b. The fees and expenses of any arbitration institution concerned.
c. Legal and other costs of the parties.

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