

BFA Dispute Resolution: Arbitration Scheme Rules

What is an arbitration

The BFA's Arbitration Scheme is a formal procedure, feeling similar to litigation. The arbitrator (an individual like a judge) will consider the issues between the parties in accordance with the Arbitration Scheme's Rules and the Arbitration Act provisions.

The arbitrator will make an award (a decision or judgement) that is normally final and binding on the parties. An arbitration fee will be charged, and costs can be awarded against the parties as determined by the arbitrator. Arbitration is a lot more expensive than mediation, and quite often can be more expensive than a straightforward litigation case.

Should the British Franchise Association (BFA) be contacted by a party involved in a dispute between a BFA franchisor and one or more franchisees of its franchised network, and that party wishes to use the BFA Arbitration Scheme, the following procedure will be followed.

1. INTRODUCTION

- 1.1 These Rules provide a method of resolving disputes arising out of the franchise relationship between BFA franchisor subscribers and their franchisees where the parties have not been able to amicably resolve them between themselves.
- 1.2 The Rules apply in respect of disputes in relation to a breach of the European Franchise Federation's Code of Ethics and the Code of Ethics of the BFA. The Rules will only apply to applications for arbitration received by the BFA on or after 1 July 2001.
- 1.3 In these Rules:
'Arbitrator' shall mean a sole and independent arbitrator appointed by the BFA in an arbitration under this Scheme.
'Claimant' shall mean a company, partnership or person who is a BFA franchisor subscriber or a franchisee of a BFA franchisor subscriber who is party to a franchise agreement under which a dispute arises and who initiates the referral to arbitration under this Scheme.
'Respondent' shall mean a company, partnership or person who is a BFA franchisor subscriber or a franchisee of a BFA franchisor subscriber who is a party to a franchise agreement under which a dispute arises and who responds to the referral to arbitration under this Scheme.
- 1.4 The Scheme does not apply to disputes where one of the parties has already initiated legal action, unless that legal action is suspended by agreement, nor to claims concerning physical injury, illness, nervous shock or their consequences. It also does not apply to frivolous or vexatious claims.
- 1.5 If, after considering the documents or other representations submitted by the parties, the Arbitrator believes that the dispute is not capable of resolution under these Rules, the parties shall be so advised. In that event the Arbitrator's appointment will be revoked, the parties' application for arbitration treated as withdrawn and the fee will be refunded.
- 1.6 These Rules apply to disputes between two parties but, if they and the Arbitrator agree, the Rules may be adapted for the same dispute involving three or more parties.

2. COMMENCEMENT OF ARBITRATION PROCEEDINGS

- 2.1 Application for arbitration must be made on the application form prescribed by the BFA , which form may be obtained from the BFA.
- 2.2 A Fee of £ 500 is payable by the Claimant when an application for arbitration is submitted. The Fee will be refunded only in the circumstances set out below.
- 2.3 The application form should be completed by the Claimant and returned to the BFA together with the Claimant's Fee.
- 2.4 The BFA will then refer the application form to the Respondent to be completed and returned to the BFA.
- 2.5 The Respondent's agreement to arbitration is necessary for the application to proceed unless arbitration is required under the terms of a relevant franchise agreement. The BFA will encourage the Respondent to agree to arbitration, but is not obliged to do so. The Respondent is requested to inform the BFA in writing if he does not agree to arbitration. If the Respondent does not agree to arbitration the Claimant's fee will be returned and he may seek his remedy through the courts.
- 2.6 The application will be initially accepted by the BFA subject to the provisions of Rules 1.4 and 1.5 above provided that the application form has been signed by both parties and the fee is received by the BFA
- 2.7 The BFA will appoint an Arbitrator, taking into account the nature of the dispute and the location of the Claimant. The BFA will inform the parties in writing of his appointment.
- 2.8 If the Arbitrator resigns, dies or otherwise is unable or unwilling to fulfil his duties the BFA may appoint a substitute Arbitrator.
- 2.9 Once appointed the Arbitrator will communicate directly with or issue directions to all parties. Correspondence with the Arbitrator must be copied to all parties.

3. ARBITRATION PROCEDURE

- 3.1 The arbitration will be conducted under the provisions of the Arbitration Act 1996 ('Act') except as may be expressly varied by this Arbitration Scheme. The Arbitrator shall have the jurisdiction and power to direct the procedure of the arbitration in terms of Section 34 of the Act. The Arbitrator shall also have the power to:
- 3.1.1 Allow submission of further evidence and the amendment of a claim or defence;
 - 3.1.2 Order the parties to produce goods, documents or property for inspection;
 - 3.1.3 Conduct such enquiries as may appear to the Arbitrator to be desirable;
 - 3.1.4 Receive and take into account any oral or written evidence as the Arbitrator shall decide to be relevant;
 - 3.1.5 Award interest whether or not claimed;
 - 3.1.6 Require the parties to prepare a written statement of facts about which there is no dispute;
 - 3.1.7 Proceed with the arbitration if either party fails to attend any meeting or inspection ordered by the Arbitrator but only after giving that party written notice;
 - 3.1.8 The parties shall inform the Arbitrator if the dispute is settled prior to the issue of an award. The Arbitrator may record the details of the settlement in a consent order which may be enforced under the terms of the Act.
- 3.2 In addition to the powers conferred by these Rules, the Arbitrator shall have the widest discretion permitted by law to resolve the dispute in relation to a possible breach of the European Franchise Federation's Code of Ethics and the BFA's own Code of Ethics in a fair, just, speedy, economical and final manner.
- 3.3 The arbitration will normally proceed on the basis of written arguments only. However a meeting shall be held at the request of either party.
- 3.4 The Arbitrator will give directions to the parties relating to the conduct of the Arbitration.
- 3.5 The BFA shall appoint one franchisor representative and one franchisee representative who shall advise the Arbitrator in every arbitration. The Arbitrator shall invite these representatives to act as advisors in the conduct of the arbitration. If either of the representatives is unable to act for any reason the Arbitrator after discussion with the parties may invite the BFA to appoint a replacement representative. For the avoidance of doubt a representative shall advise the Arbitrator but the Arbitrator shall have the sole power and authority to make any award and to give any directions or exercise any powers or rights in accordance with the provisions of the Act. The resignation or absence for any reason of a representative shall not in any way delay or invalidate an Arbitrator's award.
- 3.6 The Arbitrator will make an award in writing and shall give reasons.
- 3.7 The Arbitrator will send a copy of the award to each party and to the BFA.

- 3.8 Any award made under this Scheme is final and legally binding on all parties, and therefore, once published, will not be open to review. If either party wishes to appeal against the award, it must seek leave to appeal in the High Court, and will have 21 days from the date of publication of the award in which to do so. It should be noted that the parties cannot appeal on a point of fact. Neither the BFA nor the Arbitrator can advise the parties on how to seek leave to appeal.
- 3.9 The Arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.

4. CONTENTS OF SUBMISSIONS FOR ARBITRATION

- 4.1 The statement of claim shall include;
- 4.1.1 Basis of the claim;
 - 4.1.2 The amount of compensation claimed or other remedy sought;
 - 4.1.3 All supporting documents including witnesses' statements relied on as evidence;
- 4.2 The statement of defence and any counterclaim shall include:
- 4.2.4 What matters in the opposing documents are accepted or agreed;
 - 4.2.5 What matters are disputed, with reasons;
 - 4.2.6 All supporting documents including witnesses' statements relied on as evidence.
- 4.3 The response by the Claimant to any defence and counterclaim shall include;
- 4.3.1 What matters in the opposing documents are accepted or agreed;
 - 4.3.2 What matters are disputed, with reasons;
 - 4.3.3 All supporting documents including witnesses' statements relied on as evidence.
- 4.4 Supplementary
- 4.4.1 Attended hearings shall be conducted in private at a place appointed by the Arbitrator who will take into account the convenience of the parties. The parties may attend a hearing in person or be represented by an employee (but not a person employed to give legal advice) unless the Arbitrator agrees that the parties may be legally represented.
 - 4.4.2 The Arbitrator may request the provision of any further documents and information which he considers would assist him in his decision. If the documents and information are not supplied to the Arbitrator within such time as the Arbitrator prescribes, the Arbitrator will proceed with the reference on the basis of documents and information already before him and may make any appropriate inferences.
 - 4.4.3 The Arbitrator may, at his discretion, make an examination of the subject matter of the dispute without holding an attended hearing. The Parties shall afford the Arbitrator all necessary assistance and facilities for the conduct of this examination.

- 4.4.4 If either party fails to attend or be represented at an attended hearing, the Arbitrator shall either make an award without that party being in attendance, or, if he so decides, adjourn the hearing for such time as he consider reasonable and serve notice on the party failing to attend that the matter will proceed to determination whether or not that party is present at the next hearing.

5. ARBITRATION COSTS

- 5.1 The Arbitrator shall have the power to make an order for the payment of costs (including the apportionment of the costs) in respect of the payment of his fees and other fees and expenses incurred in the arbitration and may also require a payment on account of estimated costs from the parties as he shall direct in his complete discretion.

6. MISCELLANEOUS

- 6.1 Nothing herein shall prevent the parties agreeing to settle their dispute prior to the determination of the arbitration.
- 6.2 Nothing herein shall prevent the parties from appealing the Award to the High Court in accordance with the provisions of the Act or any statutory modification or re-enactment thereof for the time being in force. This provision applies equally to the law of Scotland.
- 6.3 References to the masculine gender shall also include the feminine and neuter gender.