

# Guidance Notes for Arbitrators

This guidance note provides practical advice for arbitrators appointed to conduct arbitrations on pingDR's online platform. It should be read in conjunction with the [pingDR Rules](#). References to Articles are to Articles of the [Rules](#). Capitalised terms shall have the meanings given to them in the [Rules](#).

## 1. Key principles

- Speed** pingDR arbitration is subject to strict time limits. The entire process must be concluded within 8 weeks of Commencement (see Art. 1.3, 5, 7 and in particular 7.2).
- Proactivity** pingDR arbitrators will need to be far more proactive than is typical in traditional arbitration procedures. Immediately following appointment, the arbitrator will need to review the Claim and the Response and direct the parties to what additional information (evidence or submissions) the arbitrator needs to produce the Award.
- Efficiency** pingDR arbitrators are not expected to produce long Awards. They must comply with Art. 8. Arbitrators are expected to begin the preparation of the Award immediately upon receipt of the Claim (Art. 3) and Response (Art. 4) and focus on the issues to be determined (which are themselves identified by the arbitrator, not the parties - see Art. 7.1.1).

## 2. The Rules

pingDR arbitrators should familiarise themselves with the [Rules](#). Arbitrators should not assume the Rules will be known in detail by the parties, or their advisers. Arbitrators will need be aware of the specific timeframes set out, and the limitations for extensions of time. Whilst there are some aspects of the Rules that will be familiar to experienced arbitrators, there are others that depart significantly from traditional arbitration procedures.

## 3. Timetable

pingDR arbitration requires the arbitrator to produce the award within 8 weeks of Commencement (of the arbitration). It is critical to achieve this (and make it clear to the parties that is the case). The timetable can be broken down as follows:

- Working Day 0** Commencement (Art. 3) - commencement only starts following the filing of the Claim and when the requirements of Article 3 are met (Art. 3.1.1 and 3.1.2)
- Working Day 10** Response (Art. 4)
- Working Day 12** Arbitrator appointed (Art. 5)
- Working Day 17** Arbitrator issues Procedural Order (Art. 7)
- Working Day 17+** Parties provide additional information to the arbitrator (Art. 7.1.2 - 7.1.5)
- Working Day 37** Award provided to the parties (Art. 7.1.6 and 8)

It is critical for arbitrators to understand the limitation to amendments to the timetable. The arbitrator may provide short extensions to any time period of up to 48 hours (Art. 1.3). Whilst there may be exceptional circumstances requiring greater adjustment to the timetable, pinqDR's prior approval to any other extension is required. Arbitrators should not routinely ask pinqDR for extensions, and only extensions where there are exceptional circumstances will be permitted. Exceptional means just that - for example an event that could not reasonably be anticipated by the parties or the arbitrator - such as a severe IT outage, the death of, or bereavement for an individual central to the conduct of the arbitration by a party. Existing work or diary commitments are not a basis for any extension.

Arbitrators should ensure that they have sufficient capacity to deal with the arbitration within the timetable set out above. If a potential arbitrator has such commitments during that period that they cannot devote sufficient time to the arbitration, they should decline the appointment.

## 4. Appointment

A potential arbitrator will be contacted by pinqDR shortly following Commencement of an arbitration and pending receipt of the Response. The potential arbitrator will be provided (on a confidential basis) with the names of the parties and a summary of the claim, and a Statement of Acceptance for the potential arbitrator to complete. The potential arbitrator should immediately conduct conflict checks. If a potential arbitrator is not able to take on the arbitration (either due to availability or a conflict) they should inform pinqDR as soon as possible.

pinqDR will contact multiple potential arbitrators at the same time and will give priority of appointment to those who respond quickly. Following the time for the Response, any additional information relevant to the arbitrator will be provided, following which the arbitrator should finalise and return to pinqDR a completed Statement of Acceptance. In the event pinqDR receives more than one completed statement of acceptance, pinqDR will usually appoint the first potential arbitrator to return their complete statement.

## 5. Communication with the parties

All communication with the parties will be conducted on pinqDR's platform. Clear and concise communication is essential.

pinqDR arbitrators can initiate communications with the parties and the parties can reply to the arbitrator. The messaging function is disabled when the parties have complied with procedural orders and the arbitrator is working on the Award.

Following the arbitrator's appointment, the arbitrator has just 5 Working Days to review the Claim and Response, and produce a Procedural Order (Art. 7.1). Before issuing the Procedural Order it will be possible for the arbitration to consult, briefly, with the parties. This is not for the arbitrator to ask the parties to propose the terms of the Procedural Order, but that period can be used to ask questions of the parties the arbitrator considers would be beneficial in finalizing the Procedural Order. Examples of such communications could include:

1. Requesting clarification of specific issues in either the Claim or the Response;
2. If evidence is required, what format that evidence could be provided (contemporaneous documents or written or oral witness evidence) (Art. 7.1.2 - 7.1.5);
3. Whether either party wishes to claim costs (Art. 7.1.5).

Communications with the parties can continue after the Procedural Order has been provided. For example, the arbitrator may receive queries from the parties as to the information to provide in accordance with the Procedural Order or may ask for (limited) adjustments to the timetable.

## 6. Arbitrator's duties - procedural fairness

Concerns around procedural fairness have led to traditional arbitration becoming slow and inefficient. So called 'due process paranoia' is leading arbitrators to grant generous extensions of time, and not take decisions without an exhaustive exercise of consultation with the parties. This is not required and it should be borne in mind by pinqDR arbitrators that the parties will have expressly chosen pinqDR as the process to determine their dispute. That means they are choosing a quick and efficient process.

There are a number of ways in which the Rules and process support arbitrators. First, by removing the power to grant lengthy extensions, the parties and the arbitrator are all constrained by the timetable. Second, the Rules and pinqDR's platform encourages parties to provide much more concise submissions. Third, by taking a proactive approach in identifying the issues and directing the parties to the information the arbitrator requires to determine the dispute, lengthy submissions on irrelevant or tangential topics should be eliminated. The parties can therefore focus on the much narrower information required by the arbitrator.

Finally, parties who use pinqDR's recommended clauses will have expressly agreed at the time of entering into their contracts to an expedited process.

## 7. Hearings

The vast majority of pinqDR arbitrations will be conducted by documents only (Art. 6.2). However, there is a power for the arbitrator to call for oral evidence or submissions to be heard. Arbitrators should not assume hearings are standard. Indeed, Article 6.2 contains an express waiver by the parties of any rights to an oral hearing.

If an arbitrator considers such a hearing is required, they should limit the hearing only to those matters on which the hearing is necessary, and not default to a hearing where all issues in the arbitration may be presented. Examples of specific hearings could include:

1. Where an arbitrator considers it is necessary to hear from a specific witness. In such circumstances, the arbitrator is encouraged to control the process such that the arbitrator conducts questioning, but may invite the parties to indicate the areas on which they consider oral evidence would be necessary and material to the issues to be decided.
2. Where there is a specific issue of law where the arbitrator considers it is necessary to conduct a limited discussion with the parties as a more efficient way to receive those submissions than in written form (but the arbitrator should be mindful where parties are not represented by lawyers).
3. Where there is a technical issue to be decided and the arbitrator considers they would benefit from explanations from the parties on that technical issue.

Any hearing is to take place virtually and should be short. In most cases no more than 2 hours would be required. The arbitrator (and not the parties) should organise the hearing (using Teams or Zoom or similar service).

## 8. Counterclaims

A Respondent is entitled to bring a Counterclaim. However, any Counterclaim has to be brought as a separate new Claim (Art. 4.2). Where a Counterclaim is submitted on or before the day the Response is submitted (and the Claim number of the Claimant's claim is included in the Respondent's Counterclaim), pinqDR will appoint the same arbitrator for the Counterclaim as is appointed for the Claim. It is a matter for the arbitrator then to determine whether to allow the Claim and Counterclaim to proceed together or separately (Art. 5.7).

Counterclaims by the Claimant shall always proceed by way of a separate arbitration (Art. 5.7), although pinqDR may appoint the same arbitrator for that counterclaim, but is under no obligation to do so.

## 9. Decision making by the arbitrator

Arbitrators have a wide discretion in their decision making. The default position for pinqDR is that the seat of arbitration is London, England and that English law shall be the

governing law of the dispute, but parties are entitled to agree otherwise. An arbitrator should ensure they are familiar with the applicable arbitration laws of the seat of arbitration and conduct their decision making in a manner consistent with those laws, subject always to where the selection of pinqDR arbitration validly displaces the application of those laws.

## 10. Awards

Given the strict timescales in a pinqDR arbitration, arbitrators should begin their work on the award immediately upon their appointment. By then, both the Claim and Response will have been provided and those submissions should form the basis of the issues determined in the award, subject to any additional information called for by the arbitrator in the Procedural Order.

Article 8 sets out the requirements for the Award which should be strictly followed.

As pinqDR develops functionality, it anticipates producing template arbitral awards and AI assisted drafting (for example of a brief procedural history).

## 11. Arbitrator fees

Arbitrators' fees are calculated as a percentage of the Claim Fee. This forms part of the agreement that the arbitrator enters into with pinqDR upon their appointment in a pinqDR arbitration (forming part of the Statement of Acceptance). An arbitrator earns their fee in three stages as follows:

25% of the Claim Fee following appointment;

25% of the Claim Fee following the Procedural Order being issued in accordance with Article 7.1;

25% of the Claim fee following the award being issued and the elapse of time specified in Article 8.6 or, if engaged, Article 8.7.

The remaining 25% of the Claim Fee is retained by pinqDR as the fee for the use of the platform. This encourages arbitrators to progress the arbitration quickly.

## 12. VAT

Fees may be subject to Value Added Tax or similar taxes at the prevailing rate. It is the arbitrator's responsibility to declare the requirement to apply UK VAT to their fees.

## 13. Other matters

pinqDR intends to build additional functionality to the pinqDR platform as it develops. That may include:

using technology to identify potential arbitrators for appointment in pinqDR applications;

inviting parties to provide feedback on arbitrators before the Award is released to them;

introducing tools to encourage parties to settle their disputes early.

pinqDR will retain information in relation to the performance of arbitrators and general (non-confidential) information in relation to arbitrations conducted on the platform. Data retained by pinqDR in relation to arbitrators may be used in determining the suitability of arbitrators for future appointments.