



CCODR
CONSUMER CODE FOR
ONLINE DISPUTE RESOLUTION


CCODR Guidance for the Coronavirus Rent Arrears Arbitration Service

EVERYTHING YOU NEED TO KNOW TO GET STARTED



CCODR RA1 Form
April 2022

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The Coronavirus Rent Arrears Arbitration Service



An introduction from CCODR's Senior Arbitrator Michael Bready BL



In England and Wales, the Commercial Rent (Coronavirus) Act 2022 (the Act) came into effect on 25th March 2022. It provides a statutory arbitration process to resolve outstanding rent debts resulting from the Covid-19 pandemic which are caught by the Act.

A published Code of Practice ("the Code") offers guidance on how commercial landlords and tenants should resolve disputes over commercial rent arrears which have arisen as a result of the Coronavirus pandemic. The Code encourages landlords and tenants to negotiate in the first instance. For those parties that cannot come to an agreement, a new binding arbitration process can be used to help businesses resolve their rent disputes.

Either party can apply for arbitration, without the need to seek the consent of the other party.

Tenants and/or Landlords can apply for arbitration up to 6 months from 25th March 2022, **i.e. on or before 24th September 2022.**

CCODR have been approved by the Department for Business, Energy & Industrial Strategy (BEIS) to appoint arbitrators under the Act and have developed their Coronavirus Rent Arrears Arbitration service.

CCODR's fixed price scheme is designed with the parties at its centre, keeping costs to a minimum for all parties involved and providing certainty to the parties' on their exposure to costs.

What is Arbitration?

Arbitration is a cost effective, speedier and less formal alternative to resolving your dispute through the courts. It is conducted privately based on written documentation and evidence or publicly at an open hearing.

The Coronavirus Rent Arrears Arbitration Service is an independent arbitration service used to resolve disputes between tenants and landlords who use the service. Under the service an arbitrator is appointed to make a decision (known as an Award) based on the evidence provided to him or her by the parties in dispute. See further down for an explanation of what an arbitrator is.

The Award is binding on the parties. It takes less time and costs less money to take a dispute through arbitration than it does to go through the court system.

The service is provided so that tenants and landlords can have disputes resolved without having to go to court and without having to go to the expense of instructing solicitors (though you may choose to use a solicitor if you like, at your own expense).

What is an Arbitrator?

An arbitrator is a neutral person who makes a legal and binding decision (Award) after considering the evidence that both the parties submit. The role of an arbitrator is similar to that of a judge and the Award will be conducted fairly and neutrally. Arbitration is a legal process and the arbitrator must make their decision based on the law.

Our arbitrators are all independent professionals who are members of the Chartered Institute of Arbitrators and all have award writing experience. Each arbitrator has been invited to join the panel based on their expertise and gravitas, or has otherwise satisfied us of their ability to arbitrate on disputes of this nature. It is important to note that arbitrators are not employed by CCODR, they are contracted via Hunt ADR to provide arbitrations on a case by case basis. The current list includes arbitrators who have published awards in thousands of cases. Arbitrators are appointed according to a 'cab rank' system used widely in legal cases. This means that the arbitrator is selected on their availability and not specifically chosen for a particular case.

What is an Award?

The Award is the document with the decision that the arbitrator produces once he or she has considered all the evidence. All awards must stand up to scrutiny in the relevant court if they are appealed, which means they take matters of independence and impartiality very seriously. The parties are legally bound by the Award, which is enforceable in the courts, subject to any provisions in the rules. It contains legally binding orders for the parties and details of the case and the arbitrator's explanation as to why he or she decided the case as they did. When parties receive the Award it is our goal that it will be clearly written and understandable and not contain legal jargon. Many awards are proof read by professional arbitration award proof readers before they are issued to ensure that accidental slips and errors are kept to a minimum. We also spot check awards post-publication and will follow up with any comments including specifying areas for praise and for improvement.

Service Benefits

Summary

CCODR, in addition to this guide, has developed a suite of sample forms to assist parties referring their rental dispute to arbitration under the Act and to assist those parties responding to an arbitration referral. These forms are available on our website at www.ccodr.com.

The parties do not need to agree to refer the matter to arbitration under the Act. **One party can decide to refer the dispute to arbitration without the consent of the other party.** The tenant or the landlord can begin the process. The party that starts the process is called the 'applicant' and the other party, the 'respondent'.

The party that intends to refer the dispute to arbitration must give notice to the other party and thereafter a 28-day period runs from when that notice is received. This notice is called a Notice of Intention to Refer. CCODR has produced a sample Notice of Intention to Refer to help parties that want to start the arbitration process.

Benefits



CCODR has developed a fixed price scheme to keep the costs of arbitration to a minimum, providing certainty to the parties by providing a proportionate solution. Unlike some other schemes, CCODR's cost certainty is fixed in at the date the matter is referred to arbitration and therefore there is no requirement for parties to latterly attempt to agree to fixed fees with the arbitrator.



CCODR has also developed a technologically focused solution to assist the parties to refer and to respond to the arbitration at ease, adopting technology to reduce the cost, not only of arbitration but also, by streamlining the process, saving on parties' own time and expense.



CCODR has developed 6 possible arbitration options to accommodate the various types of parties (tenants and landlords) that may need to utilise the scheme.



The result is affordable, cost certain solutions that adopt the use of technology to help the parties reduce their cost and time when engaging in arbitration via our scheme.



	Service option	Cost
1	Decided on the Papers (up to £20K)	£750 plus vat
2	Decided on the Papers (over £20K)	£1,400 plus vat
3	Private Hearing - Online	£3,900 plus vat
4	Private Hearing - In Person	£4,300 plus vat
5	Public Hearing - Online	£4,500 plus vat
6	Public Hearing - In Person	£5,000 plus vat

Which is the right service for me?

The parties should think carefully about the most suitable procedure to choose.

Pursuant to section 20(1) of the Act, an oral hearing **must** be held where either or both the parties make a request to the arbitrator.

A party that insists on an oral hearing may face cost sanctions from the arbitrator when allocating costs in the award. An arbitrator that believes an oral hearing was requested only to increase costs, may choose to exercise their discretion pursuant to section 19(6) and apportion their costs in a way that punishes the party that unnecessarily increased the costs.

Definition Service Option 1

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£750.00 + VAT**.
- The fees are paid by the applicant when the reference to arbitration is made
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 5,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This process is “decided on the papers only”, i.e. **no oral hearing will be provided**.
- The arbitrator will aim to decide the matter within 21 days of receipt of all information required by the arbitrator.
- The arbitration will be presided over by one arbitrator only.



Definition Service Option 2

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£1,400 + VAT**.
- The fees are paid by the applicant when the reference to arbitration is made
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 10,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This process is “decided on the papers only”, i.e. **no oral hearing will be provided**.
- The arbitrator will aim to decide the matter within 28 days of receipt of all information required by the arbitrator.
- The arbitration will be presided over by one arbitrator only.



Definition Service Option 3

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£3,900 + VAT**.
- The fees are paid by the applicant when the reference to arbitration is made
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 10,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This process envisages the use of technology to conduct a **private hearing online**.
- The hearing will be conducted over a maximum total of 8 hours in 1 dedicated day.
- The purpose of the hearing is just to deliver each parties' submissions; no cross examination is allowed.
- The arbitrator will aim to decide the matter within 21 days of the hearing or of receipt of any relevant submissions from the parties whichever is the latter.
- The arbitration will be presided over by one arbitrator only.



Definition Service Option 4

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£4,300+ VAT**.
- The fees are paid by the applicant when the reference to arbitration is made
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 10,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This option envisages the use of third party facilities to conduct a **private hearing in person**.
- The hearing will be conducted over a maximum total of 8 hours in one dedicated day.
- The purpose of the hearing is just to deliver each parties' submissions; no cross examination is allowed.
- The arbitrator will aim to decide the matter within 21 days of the hearing or of receipt of any relevant submissions from the parties whichever is the latter.
- The arbitration will be presided over by one arbitrator only



Definition Service Option 5

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£4,500 + VAT**.
- The fees are paid by the applicant when the reference to arbitration is made
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 10,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This process envisages the use of technology to conduct a **public hearing online**.
- The hearing will be conducted over a maximum total of 8 hours in one dedicated day.
- The purpose of the hearing is just to deliver each parties' submissions; no cross examination is allowed.
- The arbitrator will aim to decide the matter within 21 days of the hearing or of receipt of any relevant submissions from the parties whichever is the latter.
- The arbitration will be presided over by one arbitrator only.



Definition Service Option 6

- Certainty – Proportionate Low fixed fee - there is a fixed overall fee of **£5,000 + VAT**.
- The fees are paid by the applicant when the reference to arbitration is made.
- By section 19 of the Act, it is intended that in most cases the arbitrator will direct that the respondent reimburse the applicant half of the fee once the arbitration has taken place, subject to the arbitrator's powers in making the award to penalise a party who has acted unreasonably.
- Written submissions - Both parties are required to submit formal proposals and supporting evidence, for this process they are limited a maximum 10,000 words. [Hourly rates will apply in addition to the fixed fee for any submissions longer than the prescribed maximum]
- Logistics – This process envisages the use of third party facilities to conduct a **public hearing in person**.
- The hearing will be conducted over a maximum total of 8 hours in one dedicated day.
- The purpose of the hearing is just to deliver each parties' submissions; no cross examination is allowed.
- The arbitrator will aim to decide the matter within 21 days of the hearing or of receipt of any relevant submissions from the parties whichever is the latter.
- The arbitration will be presided over by one arbitrator only.



Simple Overview of the 3 Stage Process*



Stage 1 – The Preliminary Phase

- The applicant serves a Notice of Intention to Refer the dispute to Arbitration (see CCODR form RA2 – Notice of Intention to Refer).
- The Respondent may provide a Response to the Notice of Intention (see CCODR form RA3 – Response to Notice of Intention to Refer).



Stage 2 – Formal Pre-Arbitration Phase

- Applicant fills in the online application form on CCODR's website.
- Applicant pays the fixed fee on CCODR's website.
- Applicant uploads its documents.
- CCODR appoints an arbitrator.



Stage 3 – Arbitration Phase

- The Responding party serves its Response (see CCODR form RA4 – Response to Referral to Arbitration)
- The Arbitration takes place.
- Oral hearing is held if requested (see CCODR form RA6 – Application for Oral Hearing)
- The Award is delivered and published.

*For a full breakdown of terms and conditions of Stage 1 - 3 please see our Terms of Service at p12.



WHY USE THE CCODR'S ARBITRATION SCHEME?

- **Competitive costs** – In comparison to Court proceedings or other methods of determinations, CCODR's fees are fixed, proportionate and cost effective.
- **Cost Certainty** – At the point of referral, the party referring the arbitration locks in the cost of the arbitration.
- **Ease of use** – CCODR has adopted a technological solution for ease of referral, payment and conduct of the arbitration.
- **Support** – CCODR has provided sample forms to help parties run their arbitration smoothly.
- **Expertise** – Our panel of experts are true experts in their field.
- **Time** – Our simple processes allow for a swift determination of the protected rent debt dispute.
- **High Standard** - ADR Competent Authority



Terms of Service

Stage 1 - Preliminary phase

The applicant's Notice of Intention to Refer the matter to arbitration

- The process begins when the applicant sends the respondent a Notice of Intention to refer the protected rent debt to arbitration. For ease, CCODR has produced a sample form that can be used.
- The Notice of Intention informs the respondent that failing any resolution, the matter will go to arbitration.
- The respondent must respond within 14 days of receiving the Notice of Intention.

The respondent's Response to the Notice of intention to refer

- Under the Act, the respondent cannot refuse to go to arbitration, but can in their Response state that they would prefer to negotiate first.
- They respondent should say whether they want to have an oral hearing.
- The respondent should also state in any response if they believe that the matter is not suitable for arbitration at all, and specify their grounds for saying so, if they intend to argue this point in respect to costs should the matter proceed.

Stage 2 - Formal pre-arbitration phase

If the matter does not settle within the maximum 28-day period, the formal pre-arbitration process will begin.

Reference to Arbitration

The first step is for the applicant to refer the matter to CCODR for arbitration by completing the online application for a referral to application form on CCODR's website.

The Reference to Arbitration must be accompanied by:

- The formal proposal - This is the applicant's chance to set out the grounds why the arbitrator should or should not grant the tenant relief from paying the protected rent debt. The success of the formal proposal will depend on how well it supports the principles set out in Section 15 of the Act – tenant business viability and landlord solvency. The applicant must include all the evidence it intends to rely on to support its formal proposal - which addresses the specific issues which the arbitrator must consider. This is listed in Section 16 of the Act and you should refer to it.
- The arbitration fee must be paid by the applicant to CCODR at the same time as completing the online application for referral to arbitration. This is done on the CCODR website by card or BACS transfer. In normal circumstances, the arbitrator will direct that the respondent should pay back the applicant half of the fees paid once the arbitration has taken place. This is subject to the arbitrator's discretion to allocate fees differently under section 19(6) where, for instance, the arbitrator finds that a party has acted unreasonably.

Please Note: The applicant will be required to make a formal declaration in the Reference to Arbitration confirming that the tenant that owes a protected rent debt is not subject to any of the circumstances listed section 10(3) of the Act. CCODR is entitled to rely on this declaration in the discharge of the obligations placed on it under the Act.

What should be in the formal proposal

The formal proposal should set out clearly what the applicant wants, for example: -

- What amount of the rent debt they say should be repaid; and/or
- The applicant require time to pay and/or what does the applicant say about any proposal previously made for time to pay; and
- Section 13 of the Act sets out the issues that the arbitrator must decide and the order in which they need to be decided. The formal proposal needs to address these issues.

The formal proposal is your opportunity to provide all the evidence that supports your case.

Parties do not need to appoint advisers to assist them in the arbitration and can choose to manage the process themselves. However, whilst the process can be straightforward, it may not be so in every case and given the critical importance attached in getting the proposals right parties should therefore consider the need to appoint a professional to assist with the process and provide expert advice and guidance.

Section 11(7) (C) requires that formal proposals together with all evidence attached to them, must be given to the arbitrator and other party. When you fill in your online application form you will be asked to upload your proposal.

Section 12(2) requires that all written statements included in these submissions must be verified by a statement of truth.

When CCODR appoints an arbitrator you will be added to a virtual arbitration room and asked to upload your documentation in that room. You, the arbitrator and the other party will then have ease of access to the documentation, kept in one secure and central location.

Appointment of an arbitrator by CCODR

CCODR will process your application, allocate it a case number and send a copy of the applicant's application for referral to Arbitration (the online form that is completed on our website) together with the applicant's formal proposal and annexures to the respondent using the contact details supplied by the applicant.

At this stage CCODR will also appoint an arbitrator.

CCODR will appoint the arbitrator within 7 days of receiving the applicant's Referral to Arbitration and will inform the parties of the appointment.

From that point on, the parties will be added to an online arbitration room and the arbitrator will assume responsibility for the conduct of the pre-arbitration process and will deal with such matters as applications for extensions of time.

Respondent's Response to Reference to Arbitration

The respondent has an opportunity to submit a formal proposal in response to the applicant's Formal Proposal within 14 days of having received it.

The respondent's Response to Reference to Arbitration is the respondent's best opportunity to set out the grounds for why the arbitrator should find in their favour. The success of the Formal Proposal in Response will depend on how well it supports the principles set out in Section 15 of the Act – tenant business viability and landlord solvency.

The respondent must include all the evidence they intend to rely on to support their Formal Proposal in Response - which addresses the specific issues which the arbitrator must consider as listed in Section 16 of the Act.

Revision of formal proposals

The parties are encouraged to take every opportunity to negotiate or mediate a settlement between them and CCODR is able to provide mediators if required.

Each party may change/revise their formal proposals within 28 days of first submitting them (Section 11(4) of the Act).

Extension of time for revisions

The periods for putting in the response and revised proposals can be extended by the parties by agreement or by the arbitrator, where they consider this reasonable.

CCODR have produced a sample extension of time request form to help the parties with this process.

Stage 3 - The arbitration phase

Only once all these time periods have expired, and the parties have decided not to settle, will the arbitration itself take place.

Documents only procedure

Unless the parties seek an oral hearing, the arbitrator will decide the matter by reference to the parties' proposals and supporting evidence only.

Principles to be applied

Section 13 of the Act sets out the issues that the arbitrator must decide and the order in which they need to be decided. The main questions are:

1. Is the tenancy a business tenancy and is there a protected rent debt as defined by the Act?
2. Is the tenant's business viable, or would it be viable if rent relief were given?
3. If so, should the tenant be given relief and, if so, what form should it take?

Under the Act, the arbitrator has to consider the applicant and the respondent's formal proposals individually and decide which of them is more consistent with the principles set out in section 15 of the Act.

It is only in the exceptional circumstance of neither proposal being consistent at all, that the arbitrator can formulate their own award.

The section 15 principles are straightforward:

- the proposal should preserve or restore the viability of the tenant's business whilst safeguarding the landlord's solvency; and
- the tenant should be required to pay as much of the rent debt with as little delay as these principles allow.

Threshold considerations

"Is the tenancy a business tenancy and is there a protected rent debt as defined by the Act", the applicant needs to establish that:

- The rent falls within the definition of 'rent' provided in section 2 of the Commercial Rent (coronavirus) Act 2022
- The rent debt is a 'protected rent debt' as defined by section 3 of the Act
- Part 2 of the Landlord and Tenant Act 1954 applies to the tenancy
- The tenancy was 'adversely affected by coronavirus' as defined by section 4 of the Act
- The rent is attributable to a period of occupation by the tenant for, or for a period within, the protected period applying to the tenancy as defined by section 5 of the Act
- The section 10(3), (5) and (6) circumstances do not exist.

Oral hearings

Under the Act, an oral hearing must be held within 14 days of a request being made to the arbitrator to do so by either party.

Parties should be aware that if an oral hearing is not considered necessary by the arbitrator, this could lead to the party that insisted on it being penalised in costs in the award.

Oral hearings will not allow cross examination. They will only provide an opportunity for both parties to state their case orally to the arbitrator.

Fees for an oral hearing

CCODR will charge an additional fee for the oral hearing if one is requested after the matter has been referred. These fees need to be paid by the party seeking the oral hearing before it takes place. Generally, the arbitrator will again direct that the other party reimburses the applicant half of the fee once the arbitration has taken place.

Privacy of oral hearing

Under the CCODR procedure, and in accordance with the Act, the parties can choose to request a private oral hearing or public oral hearing. The parties should think very carefully about the implications of requesting a public hearing. It is anticipated that very confidential material will require consideration. In particular: -

(1) In assessing the viability of the business of the tenant, the arbitrator must, so far as known, have regard to:

- (a) the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party,
- (b) the previous rental payments made under the business tenancy from the tenant to the landlord,
- (c) the impact of coronavirus on the business of the tenant, and
- (d) any other information relating to the financial position of the tenant that the arbitrator considers appropriate.

(2) In assessing the solvency of the landlord, the arbitrator must, so far as known, have regard to:

- (a) the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party, and
- (b) any other information relating to the financial position of the landlord that the arbitrator considers appropriate.

(3) In making an assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord (as the case may be):

- (a) borrowing money, or
- (a) restructuring its business.

These are very confidential matters that neither party may want aired in a public forum.

Substantive issues

Section 16 of the Act sets out the issues that the arbitrator needs to consider. The wording is clear and parties and their advisors should consider it very carefully.

Number of Arbitrators

The default CCODR procedure is that the arbitration will take place before a single arbitrator unless the parties agree otherwise, in which case additional fees will become payable to CCODR.

The Award

The Award, including reasons, will be given in full to both parties.

In accordance with Section 18 of the Act, the award will also be published on the CCODR website. The Act allows for all confidential information to be removed by the arbitrator, **the parties must therefore identify the information that they say is confidential and which they say should not appear in any Award.**

Request to CCODR to remove an Arbitrator

Section 8(1)(f) as read with 8(2) of the Act empowers CCODR to remove the appointed arbitrator upon application by a party. In providing for this, Parliament, has transferred to CCODR as an approved arbitration body a function until now exercised only by the courts under section 24 of the Arbitration Act 1996. This is a significant responsibility. The removal of an arbitrator can have a significant impact on the arbitration itself, and on the other party, as well as on the professional reputation of the arbitrator, and is not something that CCODR will entertain lightly. Just as is the case in court, an application will need to be supported with full reasons and evidence, including, where appropriate, expert evidence. The application may be opposed by the other party or the arbitrator or both.

Any request to remove an arbitrator, will be considered by a panel constituted by CCODR. Given the complexity and associated administration in with dealing with the application, and it is equivalent of an application to court under section 24 of the Arbitration Act, CCODR will charge an administrative fee of £3,000 + VAT for the provision of this service.

Section 8(2) of the Act lists the grounds upon which the removal of the arbitrator may be sought. It is an almost exact copy of section 24 of the Arbitration Act 1996, but with one important change regarding the qualifications of the arbitrator. The Arbitration Act empowers a court to remove an arbitrator if “he does not possess the qualifications required by the arbitration agreement”. By contrast, the present Act empowers CCODR as an approved arbitration body to remove an arbitrator who “does not possess the qualifications required for the arbitration.” This is a very important distinction, particularly for parties accustomed to rent review arbitrations, where the parties may have agreed to a rent review clause requiring the arbitrator to have certain qualifications. Arbitrations under the present Act are not rent review arbitrations, and CCODR’s authority to appoint an arbitrator arises from its being an approved arbitration body, not from what may have been agreed between the parties in the lease. It follows that its selection of an arbitrator is not circumscribed by the provisions of any rent review clause in the lease.

Rate for Additional Hours

The hourly rate for additional hours (or part thereof) will be charged at £250.00 plus vat per hour.

End.