

Family Arbitration service

Family Arbitration – more options for dispute resolution

As of 22 February 2012 family law disputes can now be resolved by way of arbitration. This is a method of dispute resolution that has long been used in commercial disputes. For the first time in family cases parties can now agree for any financial dispute relating to a family matter to be decided by an arbitrator. This is governed by the Institute of Family Law Arbitrators (IFLA) who have created a specific scheme for family arbitration which is now incorporated into the Family Law Arbitration Scheme Rules ("the Rules").

What does the Arbitration Scheme cover?

Arbitration covers any financial and property dispute arising from family relationships including (but not limited to):

- Matrimonial Causes Act 1973
- Civil Partnership Act 2004
- The Married Women's Property Act 1882
- Part III of the Matrimonial & Family Proceedings Act 1984
- The Trusts of Land & Trustees Act 1996
- Schedule 1 of the Children Act 1989
- Inheritance (Provision for Family & Dependents) Act 1975

Under the scheme arbitrators will apply English law and have powers to make final awards and interim orders. Arbitrators control case management issues where they cannot be agreed otherwise. All final awards that are made are made in writing and either follow a hearing or a paper application.

Is it legally binding?

Whilst there is no definitive judgment on this yet awards are expected to be legally binding and can only be challenged, in accordance with the legislation, by way of appeal to the court. The Scheme Rules follow the Arbitration Act 1996 which provides that:

"An arbitrated award is enforceable by leave of the court in the same manner as a judgment."

Article 13.4 of the Rules state that where an award makes it necessary the parties will apply for an order from the courts in similar terms as the award. In addition the parties, having signed up to arbitration, have agreed to compromise their litigation and as such the award holds a similar status to that of a consent order or an agreed heads of terms.

Advantages

There are many advantages of Arbitration to resolve family disputes:

- Arbitration is highly flexible. In particular:
 - It can be used at any point either before proceedings have started or during proceedings e.g. after a Financial Dispute Resolution (FDR) hearing.
 - It can be used to resolve an entire case or part of which is helpful particularly if one issue is holding up negotiations.
 - It can take place at any time and place by agreement between the parties and the arbitrator and it is therefore not restricted to a court timetable.
 - The parties can choose how they want their case presented.
 - The parties can have more control over the case management saving costs by only incurring what is necessary to enable the arbitrator to adjudicate.
- Confidential – no-one but the parties are present during a hearing on arbitration unless an agreement is reached otherwise thereby excluding the press and media.
- Speed – the parties can determine the pace at which they want their matter conducted and they are not bound by the court. They can have their matter expedited if it is necessary.
- Costs – the flexibility and speed issues will save the parties' costs.

How do I make a referral?

Both parties must agree to proceed with arbitration and must complete and sign an ARB1 form (available at www.ifla.org.uk). This is returned to the IFLA who organise the initial appointment. The parties can either choose an IFLA accredited arbitrator themselves or request that the IFLA appoint someone whose specific skills and expertise make them appropriate for the case. If you choose Fiona Read then contact will be made immediately after the referral has gone through the IFLA.

Charges for arbitration are undertaken on either a 'fixed fee' or 'hourly rate' basis depending on your case.



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