

Family Arbitration – An Overview

Arbitration is a type of private dispute resolution, in which the parties select an independent arbitrator to resolve their dispute and agree in advance that his or her decision ('Award') will be binding on them. Arbitration has had a long and successful history in commercial and other civil cases. However, it is only this year that it has become available for the resolution of financial and property disputes with a family background, under a new scheme established by the Institute of Family Law Arbitrators (IFLA), a body formed by the Chartered Institute of Arbitrators (CIArb), the Family Law Bar Association and Resolution (representing specialist family law barristers and solicitors respectively).

The family arbitration scheme is governed by the [Arbitration Act 1996](#) and [IFLA's Arbitration Rules](#) (2012 edition). A summary of family arbitration procedure may be viewed [here](#). The application form requesting appointment of an arbitrator is called ARB1 and may be printed [here](#).

Most people experiencing relationship breakdown wish their financial dispute to be dealt with as swiftly, cheaply, privately, and with as little acrimony, as possible. For those who wish their dispute to be resolved by an independent third party, yet seek to have as much 'ownership' of the process as possible, opting for family arbitration can have a number of distinct advantages compared with going to court:

- **Choice of arbitrator:** a key feature of arbitration is that the parties themselves, guided by their lawyers if they have them, select the person whom they wish to arbitrate their dispute. By contrast, in the court process judges are allocated to cases and it is not possible for the parties to request a particular judge. Also, while in the court system a number of different judges are likely to be involved at different stages of a case, in an arbitration the appointed arbitrator alone will deal with the dispute from start to finish. Pressures on the court system mean that judges often do not have time to prepare for hearings in advance, and that parties come to court not knowing whether their case will start or finish on time or will be reached at all. In an arbitration, however, the arbitrator's continuous involvement means that he or she will set aside time to read the papers and to prepare thoroughly for hearings, and will be available to deal promptly with applications for directions and other issues that may arise in the course of the process.
- **Selection of issues to be arbitrated:** arbitration is a very versatile process. The parties may decide to appoint an arbitrator to arbitrate one or more specific issues, such as, for example, which of them should keep the family home, or whether there should be a 'clean break'. At the other end of the scale, the arbitrator may be appointed to deal with a full financial remedy claim resulting from divorce or civil partnership dissolution.

- **Speed of the process:** from start to finish the arbitration process is likely to take less time than contested court proceedings, and the timetable can more easily be tailored to suit the parties' convenience.
- **Keeping the lawyers:** if (as is recommended) the parties have instructed lawyers, they retain them throughout the arbitration process for advice, preparatory work and representation at hearings,. There is nothing to stop parties representing themselves in an arbitration, but it is strongly recommended that in this case they take legal advice beforehand.
- **Control of the procedure:** the parties 'own' the procedure to a far greater extent than in court proceedings. For instance, they can agree that the arbitrator should make his or her award based on consideration of the paperwork alone (which may be suitable where the issues are narrow) or that there should be a court-style hearing. If they opt for a hearing, they can decide in advance whether the arbitrator is to hear oral evidence or just submissions. This ability to streamline the procedure may well lead to significant savings of time and costs.
- **Complete confidentiality:** the arbitration process is completely private. Hearings take place at a venue of the parties' choice, and there is no possibility of media access at any stage. Papers are held securely in the arbitrator's office.

The arbitrator's formal written decision is called an Award. How the Award is implemented will vary depending on the nature of the dispute. If it is one where the court has a supervisory role (as it does, for instance, in financial remedy cases on divorce and on claims for financial provision for children), the parties will generally apply to the court for an order confirming the terms of the Award. While neither party can be prevented from asking the court to make an order which differs from the terms of the Award, it is anticipated that it will only be in rare circumstances that the court will decline to uphold the Award, given the parties' agreement at the outset to be bound by it. Where on other hand the court does not have a supervisory role (as for instance where the dispute involves property claims between unmarried couples) the Award may be enforced, with leave of the court, as though it were a court judgment or order.

The scope of the new arbitration scheme is wide. It applies to financial and property disputes arising from: marriage and its breakdown (including financial provision on divorce, judicial separation or nullity); civil partnership and its breakdown; co-habitation and the ending of co-habitation; parenting or those sharing parental responsibility; and provision for dependants from the estate of the deceased. The scheme includes (but is not limited to) claims which would come within the following statutes: Married Women's Property Act 1882, section 17; Matrimonial Causes Act 1973, Part II; Inheritance (Provision for Family and Dependents) Act 1975; Matrimonial and Family Proceedings Act 1984, section 12 (financial relief after overseas divorce); Children Act



1989, Sched 1; Trusts of Land and Appointment of Trustees Act 1996; and Civil Partnership Act 2004 Sched 5,
or Sched 7, Part 1, para 2 (financial relief after overseas dissolution)

This overview is intended as a guide only and is general in nature. It is no substitute for professional advice. FamilyArbitrator accepts no responsibility for the consequences of any action taken or refrained from as a result of this overview.