

FROM ARBITRATOR'S AWARD TO CONSENT ORDER

By Gavin Smith, MCIARb

The arbitrator has delivered the Award in your financial remedy dispute. How then to obtain a consent order reflecting its terms?

In [S v S](#) [2014] EWHC 7 (Fam), in which I was the arbitrator, Sir James Munby, the President of the Family Division, gave helpful guidance on this topic.

Drafting the order

The parties may instruct the arbitrator to draft the consent order. In my view, this is sensible, as the arbitrator is in a unique position to ensure that the draft order truly reflects his or her own Award. Time and costs will often be saved in this way.

Whoever does the drafting, there are certain recitals that should be included (adapted as may be appropriate) in the draft order. These are set out at para 24 of the *S v S* judgment:

"The documents lodged in relation to this application include the parties' arbitration agreement (Form ARB1), their Form(s) D81, a copy of the arbitrator's award, and a draft of the order which the court is requested to make.

By their Form ARB1 the parties agreed to refer to arbitration the issues described in it which encompass some or all of the financial remedies for which applications are pending in this court; and the parties have invited the court to make an order in agreed terms which reflects the arbitrator's award."

The version of the second recital contained in the [Financial Remedies Final Orders Omnibus](#) goes slightly further, by stating the identity of the arbitrator and the date of the award, and it is suggested that this version be used:

"By their Form ARB1 the parties agreed to refer to arbitration the issues described in it which include some or all of the financial remedies for which applications are pending in this court. The issues were referred to [insert arbitrator] under the IFLA scheme, who made an arbitral award on [insert date]. The parties have invited the court to make an order in agreed terms, which reflects the arbitrator's award."

Documents to be lodged

In the same paragraph of *S v S* the President lists the documents to be lodged:

- The Form ARB1 (application for arbitration)

- The arbitrator's Award
- Form(s) D81
- The draft order.

Procedure for lodging the draft order

There are three options for the parties.

First, they can lodge the consent order at the Family Court in the usual way, for it to be dealt with by a District Judge on paper as 'boxwork'.

Secondly, the President stated at para 23 of *S v S* that parties may use the streamlined procedure available in collaborative law cases. That procedure was set out by Coleridge J in *S v P (Settlement by Collaborative Law Process)* [2008] 2 FLR 2040 at para 6:

" ... the court will usually be prepared to entertain applications of this kind in the ex parte applications list before the applications judge of the day on short notice. A full days notice must be given to the Clerk of the High Court judge in front of whom it is proposed to list the case (there is one such judge allocated per week). Such notice may be given by telephone. The Clerk of the Rules should be informed that this is taking place. It is important to emphasise that such a course is subject to the consent of the urgent application judge. It is only appropriate where every aspect of the documentation is agreed, the hearing is not expected to last more than 10 minutes and the documentation is lodged with the judge the night before the hearing."

However, parties may well wish to avoid the cost of attendance at court if at all possible. Hence the third option. Following a recent arbitration in which I was arbitrator, my clerks ascertained from the Clerk of the Rules office at the RCJ that the High Court will consider applications in arbitration cases under the *S v P* streamlined procedure on paper as well as at a hearing.

It appears that the turnaround time between lodging the draft consent order and the issuing of a sealed order is about a week under both the second and third options. That may well compare favourably with the turnaround time for an application for a consent order on paper to the local Family Court.