

IFLA FAMILY ARBITRATION

SOME QUESTIONS AND ANSWERS

What is family arbitration?

Arbitration is a form of dispute resolution. The parties enter into an agreement under which they appoint a suitably qualified person (an “arbitrator”) to adjudicate a dispute and make an award (see below).

What are IFLA and the IFLA Scheme?

IFLA and the IFLA Scheme is the result of collaboration between Resolution, the Family Law Bar Association (FLBA), The Chartered Institute of Arbitrators (CI Arb) and the Centre for Child and Family Law Reform (CCFLR). The Scheme will operate under a newly formed company, the Institute of Family Law Arbitrators (IFLA), a not for profit company, the members of which are CI Arb, Resolution and the FLBA. CCFLR will have a representative on the Board. IFLA will be chaired by Lord Falconer.

The Scheme has its own Rules (the Rules) that apply to a family arbitration; and a panel of trained and accredited arbitrators. For more information, please see the Rules on the website.

The administration of the Scheme is undertaken by Resolution on behalf of IFLA, and training and regulation of arbitrators by CI Arb.

What areas does the IFLA Scheme cover?

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

- Matrimonial Causes Act 1973
- Inheritance (Provision for Family and Dependents) Act 1975
- Part III Matrimonial Finance and Property Act 1984
- Sch. 1 Children Act 1989
- Trusts of Land and Appointment of Trustees Act 1996
- Civil Partnership Act 2004
- Married Women’s Property Act 1882

What areas are not covered?

- The liberty of individuals
- The status of individuals or of their relationship
- All arrangements regarding children except for financial arrangements
- Bankruptcy or insolvency
- Welfare benefits
- Jurisdiction or stay cases
- Issues over recognition of a foreign marriage or divorce
- Decisions from sharia councils and other similar bodies
- Any person or organisation which is not a party to the arbitration

What are the benefits of family arbitration?

In summary these are:

- **Speed**
 - It can be established in advance whether a possible arbitrator will be willing and able to deal with matters in an expedited way. Subject to the arbitrator's availability, the timetable is up to the parties to agree. This is in marked contrast to court procedures, and in nearly all cases is likely to be significantly faster.
- **Confidentiality**
 - The entire process is confidential by its nature and this is reflected in the Rules.
- **Costs**
 - In many cases, there may be a saving of overall costs over court proceedings. The parties have to pay the arbitrator's fees, the cost of any venue which is hired, and the cost of a transcription service, if required. However the ability to limit disclosure and the ambit of the dispute, if properly utilised by the parties, should in many cases lead to a net cost saving.
- **Flexibility**
 - Under the Rules of the Scheme the parties and the arbitrator will have considerable discretion about the procedure through which a fair result is achieved by applying English Law.
 - It will be for the parties to define the **scope of the arbitration**. In many cases they will want all their differences arbitrated. In others the arbitration could be

limited to discrete issues. It is also possible for an arbitration to be completed on paper, if the parties agree or the arbitrator so directs.

- There may be flexibility as to the **time and place** of hearings
- **Choice of arbitrator**
 - Parties to a dispute never have the right to choose which Judge will try their case in court, but they do have the right under the Scheme to choose their arbitrator. Knowing that a dispute will be resolved by a selected specialist with appropriate experience will be very attractive to many parties and their advisers. The same arbitrator deals with all stages of the case from start to finish.

What law applies to an arbitration under the Scheme?

The law of England and Wales applies to all arbitrations under the Scheme. The parties are not at liberty to apply a different law to the arbitration. If they seek to do so, the arbitration cannot be conducted under the Scheme.

How does arbitration fit in with mediation?

An arbitration is more akin to court proceedings as an arbitrator will produce a decision, an award, after hearing the evidence and each party's case. By contrast, a mediator helps a couple reach their own settlement through agreement. Mediation can be arranged in parallel with an ongoing arbitration: sometimes an arbitrator may consider mediation would benefit a couple in an arbitration and he may suggest this. Some arbitrators are also mediators and therefore fully understand the benefits of settling through mediation. Conversely, mediators may recommend arbitration as an out-of-court form of resolution if it seems clear that a case cannot settle in mediation.

How does the IFLA Scheme differ from arrangements made through religious bodies including Sharia councils?

The Scheme is developed and regulated by IFLA, a not for profit company set up by Resolution, FLBA and CI Arb. Arbitrators under the Scheme will be subject to the disciplinary code and procedures of CI Arb, the self-regulatory professional body for arbitrators. The IFLA panel of arbitrators consists of specialist and experienced family lawyers specially trained in family arbitration, many having judicial experience. The arbitration is conducted only in accordance

with English Family Law, thus facilitating enforcement by the courts if necessary. Decisions made under different criteria do not have the same advantage. Awards in arbitration will be similar in outcome to judgments which would have been made in court. The Scheme has the support of many senior judges and other practitioners of English family law.

How do I start an arbitration under the Scheme?

The first step is for the parties to complete and sign a Form ARB1 in which they agree to arbitrate and to adopt the Rules of the Scheme. Both parties must sign Form ARB1. They must sign in person; it is not sufficient for their lawyers to sign the Form on their behalf.

In Form ARB1, the parties summarise the issues to be arbitrated. The parties can either nominate an IFLA arbitrator or invite IFLA to nominate the arbitrator. They agree in Form ARB1 that the arbitrator's decision will be final and binding and that, if necessary, they will apply for a court order to give effect to it.

After the form is submitted to IFLA:

- The appointment is offered to the arbitrator
- The arbitrator seeks the parties' agreement to his or her terms
- The arbitrator accepts the appointment and the arbitration formally begins
- The arbitrator contacts the parties with a view to progressing the arbitration, by agreement or by the arbitrator's direction
- Often (though not necessarily) there will then be a preliminary meeting to deal with the further conduct of the arbitration

Is arbitration possible even if we are currently involved in court proceedings?

Yes. Most family court judges are very aware of the benefits of arbitration. They have power to adjourn court proceedings for the parties to resolve the dispute through arbitration (as well as mediation and other forms of alternative dispute resolution). It will not prejudice the court proceedings themselves. With the court's approval, the arbitration award can then be made into an order in those proceedings

How do I find an arbitrator?

IFLA maintains a panel of qualified arbitrators. Details of the IFLA arbitrators may be found on its website at www.ifla.org.uk or by calling the IFLA administrator c/o Resolution
T: +44 (0) 1689 820272

How are IFLA arbitrators trained and what qualifications do they have?

Training and qualification as a family law arbitrator is available only to those who satisfy the conditions established by IFLA. All IFLA arbitrators are experienced family lawyers, who have successfully completed a CI Arb run training course on family arbitration. On successful completion of the course it is also a condition that they become and remain Members of CI Arb, the self-regulatory professional body for arbitrators. CI Arb lays down ethical codes for its members and deals with complaints of misconduct through its Professional Conduct Committee.

What is the procedure in family arbitration?

There is no fixed procedure: the procedure for each case is developed according to its requirements. The arbitrator will invite the parties to put forward their proposals at the outset and the arbitrator will then make directions for the procedural steps in the arbitration. Articles 9 to 12 of the Rules provide more details about the likely procedures and the powers of the arbitrator to give directions.

Do I need a lawyer to represent me?

It is strongly recommended that each party takes legal advice before entering into the arbitration agreement (ARB1), in order to understand the implications and effect of the arbitration process and of the award. On signing the Form ARB1 parties are asked to confirm that they have been advised as the nature and effect of the arbitration agreement.

Arbitration has some similarities with court proceedings and being represented by a lawyer may be the most effective way to present a case and legal arguments.

What are the powers of the arbitrator?

Once an arbitrator has been appointed, he or she has wide-ranging powers to make decisions on any case management or substantive issues on which the parties cannot agree. In the absence of agreement, an arbitrator can, for example:

- Rule over what matters are included in the scope of the arbitration
- Determine all case management issues concerning, e.g., the evidence, the extent of disclosure, the need for written submissions and whether there is an oral hearing. Under the Scheme, both parties are entitled to present their case and deal with the other party's case; this may, or may not, involve a hearing with oral evidence
- Make interim orders including interim maintenance
- Give directions for e.g. the inspection or preservation of property in dispute
- Appoint an expert or assessor as an alternative to directing the parties to engage expert evidence

What are the costs of a family arbitration? Who is responsible for the costs?

In an arbitration there are two main types of costs:

- **The arbitrator's fees and expenses**
 - The arbitrator and the parties will set the level of the arbitrator's fees (usually on an hourly or daily basis) by agreement at the outset of the arbitration.
 - The usual arrangement will be for the parties to bear the arbitrator's fees and expenses (as well as IFLA's fees and expenses) in equal shares. However, the arbitrator has a discretion under the Rules to order a party to pay more than an equal share (even up to the full amount) if that is appropriate because of the conduct of that party in relation to the arbitration.
- **The legal or other costs of the parties**
 - These are the costs incurred by a party in engaging lawyers to prepare for and represent them in an arbitration, as well as such costs as the hire of a venue for a hearing. The usual arrangement will be for each party to bear their own legal costs, and not to make any payment towards the other party's legal costs. The costs of a venue (and similar costs) will usually be borne equally. However, the arbitrator has a discretion under the Rules to order a party to pay part or all of the legal or other costs of another party if that is appropriate because of the conduct of that party in relation to the arbitration.

What is an award?

At the conclusion of the process or whenever matters in issue are finally determined, arbitrators will issue an award (which is the arbitral equivalent to a final judgment). This is binding as between the parties.

Is an award final and binding?

Yes, it is agreed to be binding between the parties. Currently family law does not permit parties to make their own arrangements for financial and/or property issues on divorce or separation simply by agreement, without the possibility of court review. The Rules in relation to awards acknowledge this: if the subject matter of the award makes it necessary, the parties are bound to apply to the court for an order in the same or similar terms as the award (see paragraph 6.5 of ARB1). This will usually be necessary.

Following recent rulings by the courts on pre- and post-nuptial agreements, it is expected that the Courts will generally uphold awards made under the Scheme. An award will be the outcome of an impartial adjudication following a recognised process – supported by the Arbitration Act – whose object is to achieve a fair result. It is expected that Courts will enforce awards made under the Scheme.

For more information and further details of the Scheme, please see the Rules.