
FREETHS

Family Arbitration

What is Family Arbitration?

Arbitration is a form of private dispute resolution. The parties enter into an agreement to arbitrate and appoint an independent and impartial Arbitrator to adjudicate the dispute. After hearing all about the case the Arbitrator makes a formal written decision (known as an award) which determines the outcome of the dispute. The award is final and binding.

Why now?

- Arbitration has been discussed and promoted by prominent family law practitioners for some years. The family Courts are unable to cope with the ever increasing volume of disputes and arbitration offers an effective and practical alternative.
- In 2012, the Institute of Family Arbitrators (IFLA) launched a scheme to enable family disputes to be resolved by arbitration.
- The IFLA scheme is operated to enable parties to resolve financial disputes more quickly and in a more flexible and less formal manner than through the Court.
- The parties can choose how the matter is case managed.
- The parties decide on the matter or matters to be determined.

The key benefits of arbitration are:

- Informality - the arbitration process can be less formal than dealing with the matter through Court.
- Continuity - Court applications often end up being dealt with by several different judges, the same Arbitrator will deal with the case until its conclusion.
- Flexibility - the agreement to arbitrate defines whether all matters or just discrete issues are to be determined. The parties discuss with the Arbitrator how the case will be dealt with procedurally.
- Time - the arbitration process is likely to take less time than making an application to court. The timetable can be tailored to suit the parties' needs and other commitments.
- Confidentiality - the parties will not be able to report their dispute, their discussions or the outcome.
- Venue – the parties can decide on the most convenient location for any meetings.

Starting arbitration

The parties must agree that arbitration is the appropriate way forward for them. They appoint an Arbitrator and complete and sign an Agreement to Arbitrate. This binds the parties to arbitrate and also to accept the scheme rules and the award.

Types of cases:

The Family Arbitration scheme can deal with cases which relate to:

- Financial disputes arising on divorce.
- Financial claims made in England and Wales after a divorce abroad.
- Claims for financial provision for children between unmarried parents.
- Disputes about ownership of a property between cohabiting couples.
- Civil Partnership financial claims.

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The Solicitor's role in arbitration

Both parties will appoint their own solicitor to represent them in the arbitration and the solicitor will:

- Explain how the arbitration process works.
- Assist with the selection of an Arbitrator.
- Determine the issues in dispute and consider the most suitable procedure.
- Prepare the papers and documents needed.
- Act as the party's representative throughout the arbitration.

Points to remember

All disputes have to be resolved by applying the laws of England and Wales. The focus of arbitration is on financial and property issues and it cannot cover any dispute about the divorce, or third party interests.

For more advice on these issues contact Judith Speed. Judith has an established reputation as a family law solicitor with over 25 years' experience. Judith firmly believes in Alternative Dispute Resolution and trained as an Arbitrator in 2012. She is a member of the Institute of Family Law Arbitrators and Chartered Institute of Arbitrators.



Judith Speed

Partner

0845 274 6868

judith.speed@freeths.co.uk