

Arbitration

As Arbitrators we are appointed by a couple to make decisions that are to be final and binding on both participants. It can be used for financial and property disputes and for some child-related issues arising from family relationships.

This enables couples going through family breakdown to resolve differences more quickly, confidentially and in a more flexible and less formal setting than a courtroom. It is also usually much cheaper than a court application.

The same arbitrator can deal with everything, or the couple may wish for different arbitrators to consider the child or financial arrangements. Equally, arbitration can be used to settle specific disagreements; it doesn't have to be used to settle the whole case, making it a good option for couples who get 'stuck' on a particular issue.

Together with their arbitrator the couple can choose their venue, whether to meet face to face or through writing only, and the specific points they wish the Arbitrator to deal with.

In the UK, arbitration is run by the Institute of Family Law Arbitrators (IFLA), and regulated by the Chartered Institute of Arbitrators (CI Arb). If a couple cannot agree on the appointment of an Arbitrator, but wish to use the scheme, they can ask IFLA to choose on their behalf.

What areas does the IFLA Financial Scheme cover?

Any financial and property disputes arising from family relationships including (but not limited to) disputes under:

- 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 by the IFLA Financial Scheme?

- The liberty of individuals

- The status of individuals or of their relationship
- Any 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

What areas does the IFLA Children Arbitration Scheme cover?

- Generally, any issue between parents or other persons holding parental responsibility or a sufficient interest in a child's present or future welfare
- Where a child should live including shared living arrangements
- Visiting arrangements including holiday time to be spent with a non-residential parent
- Education
- Disputes concerning routine and non-life threatening medical treatment

What areas are not covered by the IFLA Children Arbitration Scheme cover?

- Applications to have a child returned to England and Wales from another country
- Applications to remove a child from England and Wales, whether permanently or for a temporary period (e.g. for a holiday) to another country
- Disputes which involve the powers of a court outside of England and Wales
- Disputes concerning the authorisation or management of life-changing or life-threatening medical treatment
- Any dispute where a person under 18 years of age has parental responsibility for the child
- Any case where a party to the proposed arbitration lacks capacity under the Mental Capacity Act 2005

How to appoint an Arbitrator

Step one – whether you choose an Arbitrator or ask IFLA to nominate one, the first step is to complete an application form ARB1. The Financial Scheme and Children Schemes each have their own forms.

Step two – it is recommended that you seek legal advice about the nature of the agreement you are entering into and the implications of an arbitral award being made upon you. It is crucial that you understand what effect the outcome will have on you and your family.

Step three – the application is sent to IFLA.

Step four – You will work with the Arbitrator to find a suitable date and time for a hearing, either in person or online. At the preliminary meeting you will decide with the Arbitrator what documents you will produce and when. You will agree the timescale and venue. You will confirm if you are being represented by solicitors or barristers.

Step five – if you have chosen to have a meeting/hearing, this will take place and you will each set out your cases, give evidence (whether it is your own or expert evidence) and the Arbitrator will decide whether any further evidence or hearings are needed.

Step six – You will receive a written determination and/or award.

What qualifications, memberships and experience to look for

Arbitrators are very experienced family law professionals who are usually:

- i. a practising barrister,
- ii. a practising solicitor,
- iii. a part time fee paid judge,
- iv. a practising Fellow of the Chartered Institute of Legal Executives
- v. a recently retired member of the above

They must have at least 10 years' experience in family law and be supported by two referees, many of whom are judges or current arbitrators. Often, arbitrators are also specialists in other non-court resolution models, such as mediation and collaborative family law.

Top Tips

- Speak to someone who can recommend an arbitrator,
- attend a Mediation Information Assessment Meeting, where an accredited mediator will be able to explain all non-court resolution processes to you, and will be able to point you in the right direction.
- Take legal advice and ask your solicitor for a recommendation.
- You should start to be able to paint a picture in your area as the same names may come up. Then have a look at the IFLA website <https://ifla.org.uk/search-for-an-arbitrator/>, where you can see the biographies of the Arbitrators.
- Arrange to have a short chat with a couple of arbitrators, and see who you feel comfortable with, so that you can move to the next stage of the process.