

FAMILY ARBITRATION

Family arbitration is a relatively new method of alternative dispute resolution to assist parties to resolve their family problems. It is quick, versatile and can be tailored to your particular circumstances. For example, it can be used to resolve financial and property disputes and issues concerning children.

WHAT IS IT?

Arbitration is private judging. It has been available for financial and property disputes since 2012 and for children issues since 2016.

Arbitration can be used in place of Financial Remedy Proceedings in Divorce or Civil Partnership dissolution, or otherwise in Trust of Land and Appointment of Trustee Act 1996 (ToLATA) proceedings.

Since 2016, the Family Law Arbitration Children Scheme gives parties the option to obtain a prompt decision through arbitration in private child disputes. Provided there are no serious safeguarding (welfare) issues.

Whilst Mediation can often assist parties to resolve their family problems, mediation requires the parties to reach an agreement. If parties are unable to reach an agreement, the only option was to go to court until relatively recently.

Arbitration is now an alternative to court action. Once parties agree to arbitrate, they both sign an agreement that the arbitrator's decision will be binding upon them. Then, they will submit an order reflecting the outcome of that decision to the court to have the decision made into a legally binding and enforceable court order.

Agreeing to arbitration also means parties agree there are minimal bases for appeal. They cannot then go to court to ask for a re-determination of the decision.

HOW DOES IT WORK?

Family law arbitrators are experienced family law practitioners and have to pass a specialist course to become accredited. In addition, they are registered with the Institute of Family Law Arbitrators (IFLA), a professional body with strict rules.

Parties can choose their arbitrator, usually with the assistance of their family lawyer, or have one selected for them by the IFLA. Once the arbitrator accepts the appointment, the following

steps will be discussed, directions may be given, or a meeting is arranged to discuss the nature and scope of the arbitration.

The way the process works means that sometimes the arbitration process will appear very similar to court proceedings. The hearing is held in private at an agreed venue. However, in other cases, it can be completed entirely on paper. Whatever process is considered to be appropriate the end result is a binding settlement.

If necessary, the arbitrator can decide which issues the arbitration is to deal with, determine the timetable of events, and what evidence is needed and how it will be presented (oral or paper). For example, there may be several hearings, one or none if the matter is to proceed on paper only.

Arbitrators have the powers to require the parties to instruct experts. They may hear evidence from parties and from experts to reach a decision. They can also make interim awards if necessary.

The parties pay their own legal costs, costs of any expert and the arbitrator's fees are usually shared equally. This will all be set out and agreed upon at the start.

WHAT ARE THE BENEFITS?

The benefits of arbitration are that decisions can be made swiftly and at reasonable expense, with timeframes for hearings that suit the parties rather than the courts.

Arbitration avoids the delays often associated with the court system. Both the process and the outcome are private and confidential (unless safeguarding child welfare issues arises). In addition, hearings can be held in an intimate venue suitable to the parties and the arbitrator, rather than a shared space with others.

You can use arbitration to decide all the issues between you on separation or just a single matter. Arbitration can also work well with mediation or collaborative law to determine any remaining problems you have not agreed to.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.

For more information, please see our website www.kjsmith.co.uk/our-services

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