

## Family arbitration

### What is family arbitration?

Family arbitration involves a third party making a decision about your finances when your relationship has ended. It is a method of dispute resolution.

The third party, the family arbitrator, ensures relevant facts and pieces of evidence are collected in order to make a decision. Both yours and your partner's views will also be considered by the arbitrator. The arbitrator's final decision is a binding ruling, known as an "award".

If collaborative law, mediation or negotiations between lawyers has not worked, you may wish to consider arbitration. Family arbitration is an alternative to court proceedings.

### Who can start this process?

Both of you must agree to go through the process of family arbitration for it to go ahead. Once you have appointed a family arbitrator, you can't back out of arbitration without your partner agreeing to it.

Family arbitration is very flexible, and the only stipulation is that your chosen arbitrator must apply the family law of England and Wales.

If you have chosen arbitration as a way of dealing with finances during divorce, other issues such as the process of ending the marriage will not be dealt with by the family arbitrator – these issues will be sorted out separately.

### What should I consider first?

As family arbitration involves a decision being made for you it is important to have first tried to sort out your finances by agreement. Mediation, collaborative law or having your solicitors negotiate may be more suitable options, and these are worth exploring before agreeing to family arbitration.

If you and your partner haven't been able to reach an agreement and you are choosing between family arbitration and court then the below may help you.

### What types of issues can be dealt with through family arbitration?

Arbitration can deal with the full range of family law financial issues including:

- Finances on divorce or civil partnership dissolution e.g. maintenance, property or pension sharing.
- Disputes between people who have been living together but are not married.
- Financial provision for **children**.
- Disputes between relatives about the distribution of someone's estate when they've died.

Arbitration can also deal with limited children issues including:

- Arrangements for children
- Relocation within England and Wales.

### **What are the advantages of family arbitration?**

- Unlike with court proceedings, you can choose a family arbitrator who you feel has the experience to deal with your particular case.
- The family arbitrator you choose will deal with every stage of the process so you get more consistency and don't have to explain everything again each time you go back.
- The family arbitrator can decide on just specific aspects of the agreement. For example, you might have agreed the amount of **maintenance** but not how long it should be paid for.
- It is a lot more flexible and so you can decide on how you disclose your financial position to each other. You can use the same form as in court proceedings, but you don't have to. If you prefer, you could do it on a spreadsheet or piece of A4. Every case is different.
- You can choose with the arbitrator where and when you meet.
- Court proceedings can now take a long time and so family arbitration is often a lot quicker.
- As it takes place privately there is no chance of your confidential paperwork being exposed unlike in a courtroom.

### **What are the disadvantages of family arbitration?**

There aren't many disadvantages to arbitration, but you need to bear the following in mind:

- You have to pay the family arbitrator's fees and often there will also be costs for recording each family arbitration hearing. If you were to go through court for the finances there are court fees to be paid but you don't actually have to pay directly for a judge's time.
- The arbitrator cannot make an order to freeze assets or to get assets back that have been wrongly removed.

### **What types of circumstances and issues is family arbitration not suitable for?**

If the dispute involves children and serious allegations/safeguarding issues or international relocation then arbitration is not suitable.

### **Can we choose to deal with only certain issues through arbitration?**

It is entirely up to you whether the arbitrator deals with the entire agreement or just certain specific issues.

### **Who needs to be involved in an arbitration?**

The only people who have to be included in an arbitration are you, your partner and the arbitrator. However, you or the arbitrator may choose to involve others.

As with court proceedings, mediation or negotiations, you can represent yourself in an arbitration or you can have a lawyer help and advise you.

The arbitrator can ask for expert evidence to be obtained from a qualified professional, i.e. if property or a company needs valuing.

### **What steps are involved in a typical arbitration process?**

The arbitration process is much more flexible than court as you and your partner can say how you'd like things to be done.

The first step is to choose the arbitrator. You can either choose from the list provided by the **Institute of Family Law Arbitrators** (IFLA) or you can ask IFLA to choose one for you. You will want to take into account the experience of the arbitrator, location and costs.

Firstly, there will be an introductory meeting with the arbitrator, either in person or by telephone, to ensure that everyone understands the process and the issues that need to be addressed. You will then probably have a preliminary hearing to deal with the fact-finding exercise and valuations etc. There will then be a final hearing before the arbitrator makes the decision. In more complex cases, other hearings may be needed as you go along.

After the arbitrator has made the decision (award), in almost every case you will ask the court to confirm that in a formal court order. This is important to make sure that the decision can be enforced if your partner does not comply with it. It is also an essential requirement if the decision includes a pension sharing order.

### **Is an arbitration award (decision) binding?**

Arbitration awards will be binding. You and your partner agree when choosing arbitration that you will accept the decision, whether you like it or not. The decision will only be overruled by the courts if there is an extremely good reason, such as dishonesty in financial disclosure.

### **Who chooses the arbitrator?**

You and your partner choose the arbitrator (in many cases this will be based on advice from your lawyer) or you can ask the Institute of Family Law Arbitrators (IFLA) to choose one for you.

### **Is arbitration expensive?**

The cost will vary considerably from case to case.

Ensure you ask the arbitrator how the costs are likely to pan out so you can budget properly. You and your partner can agree between you how to provide for costs. If you don't agree you will usually each pay your own costs, but the arbitrator can make an order for one of you to pay some or all of the costs of the other.

The following factors affect the cost:

- The charges of the arbitrator. These will vary depending on experience and where in the country you live. Most will charge an hourly rate because of the difficulty of estimating how long the case might take. However, it will be possible to agree a fixed fee in some more straightforward cases.
- Costs of providing the venue – many arbitrators will have their own business premises and will cover these costs as part of their hourly charging rate or fixed fee. Others will need to pay for somewhere and so the cost will depend on where that is and how many hearings there are.
- It may be necessary to pay for the hearings to be recorded/transcribed.

Legal aid (public funding) is not available for arbitration.

**What alternatives should I consider before deciding on arbitration?**

You should consider other options such as mediation, collaborative law and direct or lawyer-assisted negotiation before looking at arbitration or court.