

**FAMILY LAW ARBITRATION CHILDREN SCHEME****ARBITRATION RULES 2018****3<sup>RD</sup> EDITION (EFFECTIVE 1 JULY 2018)****Safety and welfare of children**

**The safety and welfare of children is of the utmost importance to the Family Law Arbitration Children Scheme. Measures providing for safeguarding appear at Article 17 (below) and in the Form ARB1CS and Safeguarding Questionnaire which has to be completed by the parties. These steps are intended to ensure that matters accepted for arbitration are suitable for that process, and that the child(ren) concerned will be safe from harm.**

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## **Article 1 – Introductory**

- 1.1 The Family Law Arbitration Children Scheme ('the Children Scheme') is a scheme under which disputes concerning the exercise of parental responsibility and other private law issues about the welfare of children may be resolved by the determination of an arbitrator.
- 1.2 The Children Scheme is administered and run by the Institute of Family Law Arbitrators Limited ('IFLA'), a company limited by guarantee whose members are the Chartered Institute of Arbitrators ('CIArb'), Resolution and the Family Law Bar Association ('FLBA').
- 1.3 Disputes referred to the Children Scheme will be determined by arbitration in accordance with:
- (a) the provisions of the Arbitration Act 1996 ('the Act') both mandatory and non-mandatory;
  - (b) these Rules, to the extent that they exclude, replace or modify the non-mandatory provisions of the Act; and
  - (c) the agreement of the parties, to the extent that that excludes, replaces or modifies the non-mandatory provisions of the Act or these Rules; except that the parties may not agree to exclude, replace or modify Art.3 (Applicable Law).
- 1.4 The parties may not amend or modify these Rules or any procedure under them after the commencement of the arbitration unless the arbitrator agrees to such amendment or modification; and may in any event neither amend nor modify Art.3 (Applicable Law) nor agree to exclude the right of any party to appeal to the court on a question of law (section 69).
- 1.5 Expressions used in these Rules which are also used in the Act have the same meaning as they do in the Act, except that in these Rules 'determine' and 'determination' have an equivalent meaning to 'award' in the Act; and any reference to a section number means the section of the Act so numbered, unless otherwise indicated.

## **Article 2 – Scope of the Children Scheme**

- 2.1 Save as provided by Art.2.2 below, the Children Scheme covers issues between parents (or other persons holding parental responsibility or with a sufficient interest in the child's welfare) which relate to the exercise of parental responsibility or the present or future welfare of the child concerned (including the child's upbringing, present or future living arrangements, contact and education) and extends but is not limited to matters which could be the subject of an application to the Family Court under section 8 of the Children Act 1989.
- 2.2 The following disputes and issues are not within the scope of the Children Scheme:-
- (a) any application under the inherent jurisdiction for the return of a child to England and Wales ('this jurisdiction') from a country which is not a signatory

to the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention');

- (b) any application for a child's summary return to this or another jurisdiction under the 1980 Hague Convention;
- (c) any application for permanent or temporary removal of a child from this jurisdiction;
- (d) any application for the court 'to examine the question of custody of the child' under Art.11(7) of Council Regulation (EC) No 2201/2003 after an order of a foreign court on non-return to this jurisdiction made pursuant to Art.13 of the 1980 Hague Convention;
- (e) any application for cross-border access within the scope of Art.41 of the said Council Regulation which, if a judgment, would require a court to issue an Annex III Certificate;
- (f) any dispute relating to the authorisation of life-changing or life-threatening medical treatment or the progress of such treatment;
- (g) any case where a party lacks capacity under the Mental Capacity Act 2005;
- (h) any case where any person with parental responsibility for the child or who seeks to be a party to an arbitration under the Children Scheme is a minor; and any case where any person with parental responsibility for the child is not a party to the arbitration;
- (i) any case where the child concerned has party status in existing proceedings relating to the same or similar issues, or should in the opinion of the arbitrator be separately represented in the arbitration.

### **Article 3 – Applicable law**

- 3.1 The arbitrator will determine the substance of the dispute only in accordance with the law of England and Wales. The arbitrator may have regard to, and admit evidence of, the law of another country insofar as, and in the same way as, a Judge exercising the jurisdiction of the High Court would do so.
- 3.2 When determining any question relating to the upbringing of a child, the welfare of the child shall be the arbitrator's paramount consideration and in considering welfare the arbitrator shall have regard in particular to the welfare checklist set out in section 1(3) of the Children Act 1989.

### **Article 4 – Starting the arbitration**

- 4.1.1 The parties may refer a dispute to arbitration under the Children Scheme by making an agreement to arbitrate in Form ARB1CS, signed by both parties or their legal representatives, and submitting it to IFLA.
- 4.1.2 Form ARB1CS and the Safeguarding Questionnaire shall be in the form of Annex 1 to these Rules.

- 4.2 IFLA has established the IFLA Children Panel of arbitrators ('the Children Panel') comprising Members of the Chartered Institute of Arbitrators who are experienced family law professionals with particular expertise in children matters and who have received specific training in the determination of family disputes relating to children by means of arbitration.
- 4.3.1 The parties may agree to nominate a particular arbitrator from the Children Panel; and may, if they are agreed, approach a particular arbitrator directly. Any arbitrator directly approached must refer the approach to IFLA before accepting appointment in order to facilitate the completion of Form ARB1CS and the Safeguarding Questionnaires before the arbitration commences. IFLA will offer the appointment to the agreed arbitrator. If the appointment is not accepted by their first choice of arbitrator the parties may, if they agree, make a second or subsequent choice. Otherwise, it will be offered to another member of the Children Panel chosen by IFLA in accordance with paragraph 4.3.3 below.
- 4.3.2 Alternatively, the parties may agree on a shortlist of arbitrators from the Children Panel any one of whom would be acceptable to them, and may ask IFLA to select one of the arbitrators on the shortlist without reference to any criteria. In this case, IFLA will offer the appointment to one of the shortlisted arbitrators chosen at random. If the appointment is not accepted by the first choice of arbitrator, IFLA will offer the appointment to a second or subsequent shortlisted arbitrator, similarly chosen at random. If none of the shortlisted arbitrators accepts the appointment, IFLA will inform the parties and invite them to submit further agreed names.
- 4.3.3 In all other cases (including if so requested by the parties) IFLA will offer the appointment to a sole arbitrator from the Children Panel whom it considers appropriate having regard to the nature of the dispute; any preferences expressed by the parties as to the qualifications, areas of experience, expertise or other attributes of the arbitrator; any preference expressed by the parties as to the geographical location of the arbitration; and any other relevant circumstances.
- 4.4 If, after considering Form ARB1CS, the Safeguarding Questionnaires and any representations from the parties, either IFLA or the arbitrator considers that the dispute is not suitable for arbitration under the Children Scheme, the parties will be so advised and their reference of the matter to the Children Scheme will be treated as withdrawn.
- 4.5 The arbitration will be regarded as commenced when the arbitrator communicates to the parties his or her acceptance of the appointment. The arbitrator may not accept the appointment or start the arbitration until he or she has received and considered all the relevant safeguarding information and documentation which the parties are required to provide (including, in all cases, Safeguarding Questionnaires together with Basic Disclosures and/or CAFCASS reports and/or Schedule 2 letters, as applicable: see Art.17.1.1).
- 4.6 Except as provided in Art. 4.7, a party to an arbitration under the Children Scheme may be represented in the proceedings by a lawyer or other person chosen by that party; or, if a party is acting in person, may receive the advice and assistance of a McKenzie Friend.
- 4.7 If at any time the arbitrator forms the view that the participation of a non-lawyer representative or the assistance given by a McKenzie Friend unreasonably impedes or is likely to impede the conduct of the arbitral proceedings or the administration of

justice, the arbitrator may direct that the relevant party should not continue to be so represented or assisted, as the case may be, and will state the reasons in writing.

#### **Article 5 – Arbitrator’s appointment**

- 5.1 Before accepting the appointment or as soon as the relevant facts are known, the arbitrator will disclose to the parties any actual or potential conflict of interest or any matter that might give rise to justifiable doubts as to his or her impartiality.
- 5.2 In the event of such disclosure, the parties or either of them (as appropriate) may waive any objection to the arbitrator continuing to act, in which case the arbitrator may commence or continue with the arbitration. If an objection is maintained, the arbitrator will decide whether to continue to act, subject to any agreement by the parties to revoke his or her authority or intervention by the court.
- 5.3 An arbitrator may not accept appointment in any dispute in relation to which he or she has acted in a different capacity; and after accepting appointment, the arbitrator may not concurrently or subsequently act in relation to the same dispute in a different capacity.
- 5.4 If the arbitrator ceases to hold office through revocation of his or her authority, removal by the court, resignation or death, or is otherwise unable, or refuses, to act, and either party or the existing arbitrator so requests, IFLA may appoint a replacement arbitrator from the Children Panel.
- 5.5 The replacement arbitrator may determine whether and if so to what extent previous proceedings shall stand.

#### **Article 6 – Communications between the parties, the arbitrator and IFLA**

- 6.1 Any communication between the arbitrator and either party will be copied to the other party.
- 6.2 Unless agreed by the parties, the arbitrator will designate one party as the lead party. For the purposes of the Act, the lead party will equate to a claimant, but will be formally referred to in the arbitration as the 'Applicant'. The other party will equate to a respondent, and will be formally referred to in the arbitration as the 'Respondent'.
- 6.3 The arbitrator will not discuss any aspect of the dispute or of the arbitration with either party or their legal representatives in the absence of the other party or their legal representatives, unless such communication is solely for the purpose of making administrative arrangements.
- 6.4 Neither IFLA, the CIArb, Resolution nor the FLBA will be required to enter into any correspondence concerning the arbitration or its outcome.

#### **Article 7 – Powers of the arbitrator**

- 7.1 The arbitrator will have all the powers given to an arbitrator by the Act including those contained in section 35 (consolidation of proceedings and concurrent hearings); and section 39 (provisional orders), but limited as provided by Art.7.2.
- 7.2 In relation to substantive relief of an interim or final character, the arbitrator will have the power to make orders or determinations to the same extent and in the same or similar form as would a Judge exercising the jurisdiction of the High Court. (For the avoidance of doubt, the arbitrator's power does not extend to interim injunctions; committal; or jurisdiction over non-parties without their agreement).
- 7.3 If the arbitrator at any stage prior to determination of the issues considers that the dispute is no longer suitable for arbitration under the Children Scheme on welfare or other grounds the arbitrator will have the power to terminate the proceedings (see Arts.15.2(b) and 17.2).
- 7.4 The parties may agree that a third party or parties be joined to the arbitration provided that the third party or parties agree in writing: (a) to be so joined; (b) to abide by the Children Scheme Rules; and (c) to be bound by any determination made by the arbitrator. In such a case, the arbitrator may join the third party or parties to the arbitration on such terms as may be agreed by all relevant parties, or as may be directed by the arbitrator.

#### **Article 8 – Powers of the arbitrator concerning procedure**

- 8.1 The arbitrator will decide all procedural and evidential matters (including, but not limited to, those referred to in section 34(2)), subject to the right of the parties to agree any matter (if necessary, with the concurrence of the arbitrator (see Art.1.4)).
- 8.2.1 In accordance with section 37 (power to appoint experts), the arbitrator may appoint experts to report on specific issues.
- 8.2.2 The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert is to be called on any issue or issues or that expert evidence may be called only with the permission of the arbitrator.
- 8.2.3 Where the parties propose the instruction as an expert of an independent social worker to ascertain the wishes and feelings of a child or otherwise to advise on welfare issues and to report, such instruction will be subject to the confirmation and approval of the arbitrator who will decide the identity of the independent social worker if the parties cannot agree.
- 8.2.4 The arbitrator may of his or her own motion appoint as an expert an independent social worker of appropriate expertise and standing to ascertain the wishes and feelings of a child or otherwise to advise on welfare issues and to report if the arbitrator considers that such evidence will assist in determining the issues. Such an appointment may be made irrespective of whether or not the parties agree.
- 8.3 The arbitrator may not meet with the child concerned at any stage of the proceedings including any meeting with the child to discuss or explain the determination or its implementation.
- 8.4 Further and/or in particular, the arbitrator will have the power to:

- (a) direct a party to produce information, documents or other materials in a specified manner and/or within a specified time;
- (b) give directions in relation to any documents or other materials as to which any question arises in the proceedings, and which are owned by or are in the possession or control of a party to the proceedings for their inspection, photographing, valuation, preservation, custody or detention by the tribunal, an expert or a party.

8.5 If, without showing sufficient cause, a party fails to comply with his or her obligations under section 40 (general duty of parties) or with these Rules, or is in default as set out in section 41(4) (failure to attend a hearing or make submissions), then, after giving that party due notice, the arbitrator may continue the proceedings in the absence of that party or without any written evidence or submissions on their behalf and may make a determination on the basis of the evidence before the arbitrator.

8.6 The parties agree that if one of them fails to comply with a peremptory order made by the arbitrator and another party wishes to apply to the court for an order requiring compliance under section 42 (enforcement of peremptory orders of tribunal), the powers of the court under that section are available.

#### **Article 9 - Form of procedure**

9.1 The parties are free to agree as to the form of procedure (if necessary, with the concurrence of the arbitrator (see Art.1.4)) and, in particular, to adopt a documents-only procedure or some other simplified or expedited procedure.

9.2 If there is no such agreement, the arbitrator will have the widest possible discretion to adopt procedures suitable to the circumstances of the particular case in accordance with section 33 (general duty of the tribunal).

#### **Article 10 – General procedure**

10.1 Generally, on commencement of the arbitration, the arbitrator will invite the parties to make submissions setting out briefly their respective views as to the nature of the dispute, the issues, the outcome they seek, what form of procedure should be adopted, the timetable and any other relevant matters.

10.2 If appropriate, the arbitrator may convene a preliminary meeting, telephone conference or other suitable forum for the exchange of a summary of each party's position on the matters set out in Art.10.1.

10.3 Within a reasonable time of ascertaining the parties' views but in any event not more than 14 days, the arbitrator will give such directions as appear appropriate and set a timetable for the procedural steps in the arbitration, including (but not limited to) the following:

- (a) written statements of case;
- (b) disclosure and production of documents as between the parties;

- (c) the exchange of witness statements;
  - (d) the number and type of expert witnesses, exchange of their reports and meetings between them;
  - (e) arrangements for any meeting or hearing and the procedures to be adopted at these events;
  - (f) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.
- 10.4 The arbitrator may at any time direct any of the following to be delivered in writing:
- (a) submissions on behalf of any party;
  - (b) questions to be put to any witness;
  - (c) answers by any witness to specific questions.

#### **Article 11 – Applications for directions as to procedural or evidential matters**

- 11.1 The arbitrator may direct a time limit for making or responding to applications for directions as to procedural or evidential matters.
- 11.2 Any application by a party for directions as to procedural or evidential matters will be accompanied by such evidence and/or submissions as the applicant may consider appropriate or as the arbitrator may direct.
- 11.3 A party responding to such an application will have a reasonable opportunity to consider and agree the order or directions proposed.
- 11.4 Any agreement shall be communicated to the arbitrator promptly and will be subject to the arbitrator's concurrence if necessary (see Art. 1.4).
- 11.5 Unless the arbitrator convenes a meeting, telephone conference or other forum for exchange of views, any response to the application will be followed by an opportunity for the party applying to comment on that response; and the arbitrator shall give directions within a reasonable time after receiving the applicant's comments.

#### **Article 12 – Alternative procedure**

- 12.1 In any case where it is appropriate, the parties may agree or the arbitrator may decide to adopt the procedure set out in this Article.
- 12.2 The parties may at any stage agree (with the concurrence of the arbitrator) or the arbitrator may direct any variation or addition to the following steps and/or timetable. In particular, the arbitrator may at any stage allow time for the parties to consider their positions and pursue negotiations with a view to arriving at an amicable settlement (see, also, Arts.18.1 and 18.2).
- 12.3 Within 14 days of the arbitrator communicating to the parties his or her acceptance of the appointment, each party will complete and send to the other party a sworn statement setting out their case, a brief outline of the facts upon which they rely and



the outcome that they seek, together with such further evidence or information as the arbitrator may direct.

- 12.4 Within 14 days of receipt of the other party's statement, each party may send to the arbitrator and to the other party a questionnaire raising questions and/or requesting information and/or documents.
- 12.5 Within 7 days of receipt of a questionnaire, a party may send to the arbitrator and to the other party reasoned objections to answering any of the questions together with a submission as to whether a preliminary meeting is required.
- 12.6 In the absence of any such objection, the party in receipt of the questionnaire shall within 14 days provide succinct answers and/or documents.
- 12.7 In the event of such objection, the arbitrator will consider and decide in writing whether and to what extent the request should be answered together with a time limit or, alternatively, convene a meeting between the parties face-to-face or in such other form as he or she may decide to be the most appropriate having regard to convenience and costs and may require short written submissions in support of each party's position.
- 12.8. 14 days after exchange of statements or, in the event that questionnaires have been served and allowed, within a reasonable time of receipt from both parties of the responses thereto, the arbitrator may convene a further meeting to review progress, address outstanding issues and consider what further directions are necessary, if he or she deems it appropriate having regard to costs and the avoidance of delay.
- 12.9 If he or she considers it appropriate having regard to the scope of the dispute between the parties, the arbitrator will give detailed directions for all further procedural steps in the arbitration including (but not limited to) the following:
  - (a) the drawing up of a list of issues and/or a schedule of points of agreement or disagreement;
  - (b) written submissions;
  - (c) arrangements for any meeting or hearing and the procedures to be adopted at these events;
  - (d) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

### **Article 13 – The arbitrator's determination**

- 13.1 The arbitrator will deliver a determination within a reasonable time after the conclusion of the proceedings or the relevant part of the proceedings.
- 13.2 Any determination will be in writing, will state the seat of the arbitration, will be dated and signed by the arbitrator, and will contain sufficient reasons to show why the arbitrator has reached the decisions it contains.
- 13.3 Once a determination has been made, it will be final and binding on the parties, subject only to the following:
  - (a) any challenge to the determination by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act;

- (b) insofar as the subject matter of the determination requires it to be embodied in a court order (see Art.13.4), any changes which the court making that order may require;
  - (c) any subsequent determination superseding the determination; or any changes to the determination or subsequent order superseding the determination which the Family Court considers ought to be made in the exercise of its statutory and/or inherent jurisdiction whether under the Children Act 1989 or otherwise.
- 13.4 If and so far as the subject matter of the determination makes it necessary, the parties will apply to an appropriate court for an order in the same or similar terms as the determination or the relevant part of the determination or to assist or enable its implementation and will take all reasonably necessary steps to see that such an order is made. In this context, 'an appropriate court' means the Family Court or such other court in England and Wales which has jurisdiction to make a substantive order in the same or similar terms as the determination.
- 13.5 Where the terms of the determination require any party to give an undertaking, the determination shall not take effect unless and until a suitable form of undertaking has been lodged with and accepted by an appropriate court.
- 13.6 The arbitrator may refuse to deliver the determination to the parties except upon full payment of his or her fees or expenses. Subject to this entitlement, the arbitrator will send a copy of the determination to each party or their legal representatives.

#### **Article 14 – Costs**

- 14.1 In this Article any reference to costs is a reference to the costs of the arbitration as defined in section 59 (costs of the arbitration) including the fees and expenses of IFLA and the fees of any expert, unless otherwise stated.
- 14.2 The arbitrator may require the parties to pay his or her fees and expenses accrued during the course of the arbitration at such interim stages as may be agreed with the parties or, in the absence of agreement, at reasonable intervals.
- 14.3 The arbitrator may order either party to provide security for the arbitrator's fees and expenses and the fees and expenses of IFLA.
- 14.4 Unless otherwise agreed by the parties, the arbitrator will make a determination allocating costs as between the parties in accordance with the following general principles:
- (a) the parties will bear the arbitrator's fees and expenses, the costs of any expert and the fees and expenses of IFLA in equal shares;
  - (b) there will be no order or determination requiring one party to pay the legal or other costs of another party.

These principles are subject to the arbitrator's overriding discretion set out in Arts.14.5 and 14.6.

- 14.5 Where it is appropriate to do so because of the conduct of a party in relation to the arbitration (whether before or during it), the arbitrator may at any stage order that party:

- (a) to bear a larger than equal share, and up to the full amount, of the arbitrator's fees and expenses and the fees and expenses of IFLA;
- (b) to pay the legal or other costs of another party;

and may make a determination accordingly.

14.6 In deciding whether, and if so, how to exercise the discretion set out in Art.14.5, the arbitrator will have regard to the following:

- (a) the principles applied by the courts in relation to cases concerning child welfare;
- (b) any failure by a party to comply with these Rules or any order or directions which the arbitrator considers relevant;
- (c) any open offer to settle made by a party;
- (d) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (e) the manner in which a party has pursued or responded to a claim or a particular allegation or issue;
- (f) any other aspect of a party's conduct in relation to the arbitration which the arbitrator considers relevant;
- (g) the financial effect on the parties of any costs order or determination.

14.7 Unless the parties agree otherwise, no offer to settle which is not an open offer to settle shall be admissible at any stage of the arbitration.

14.8 These rules as to costs will not apply to applications made to the court where costs fall to be determined by the court.

#### **Article 15 – Conclusion of the arbitration**

15.1 The agreement to arbitrate will be discharged (and any current arbitration will terminate) if:

- (a) a party to the arbitration agreement dies; or
- (b) a party to the arbitration agreement lacks, or loses, capacity (within the meaning of the Mental Capacity Act 2005).

15.2 The arbitration will be terminated:

- (a) if the arbitrator considers that the dispute is not suitable for arbitration under the Children Scheme and terminates the proceedings;
- (b) if the arbitrator at any time after the commencement of the arbitration considers that the dispute is no longer suitable for arbitration under the Children Scheme on welfare or other grounds (see Arts.7.3 and 17.2);

- (c) if and insofar as a court entertains concurrent legal proceedings and declines to stay them in favour of arbitration;
- (d) if the parties settle the dispute and, in accordance with section 51 (settlement), the arbitrator terminates the proceedings (however, the parties may not request the arbitrator to record the settlement in the form of an agreed determination);
- (e) if the parties agree in writing to discontinue the arbitration and notify the arbitrator accordingly;
- (f) on the arbitrator making a final determination dealing with all the issues, subject to any entitlement of the parties to challenge the determination by any available arbitral process of appeal or review or in accordance with the provisions of Part 1 of the Act.

## **Article 16 – Confidentiality**

- 16.1 The general principle is that the arbitration and its outcome are confidential, except insofar as disclosure may be necessary:
- (a) to challenge, implement, enforce or vary a determination, or in relation to applications to the court;
  - (b) in the performance under Art.17 of an arbitrator's duty to convey information relating to the welfare of the child to any appropriate local authority or government agency, or in the exercise of an arbitrator's obligation to inform IFLA of a decision to decline an appointment or to terminate an arbitration; or
  - (c) as may otherwise be compelled by law.
- 16.2.1 All documents, statements, information and other materials disclosed by a party to the arbitration will be held by any other party and their legal representatives in confidence and used solely for the purpose of the arbitration unless otherwise agreed by the disclosing party; or if required to be disclosed to any appropriate protection/safeguarding authority; or as may otherwise be compelled by law; or as may be provided for by a direction given by the arbitrator under Art.16.2.2 below.
- 16.2.2 Upon application by a party to the arbitration, the arbitrator may direct that any document, statement, information or other material disclosed in the arbitration by any party may be disclosed to any person mentioned in Art.16.2.3 below (the person and purpose of disclosure being identified in the direction), upon that person agreeing in writing to confine their use of the disclosure to the terms of the direction.
- 16.2.3 The arbitrator may permit disclosure under Art.16.2.2 above to a professional acting in furtherance of the protection of children; or to any other person to whom disclosure is necessary, for one or more of the following purposes:
- (a) to enable that person to provide expert or other evidence for the purposes of the arbitration or related legal proceedings;
  - (b) to enable a party to the arbitration, by confidential discussion, to obtain support, advice (whether legal or other professional) or assistance in the conduct of the arbitration or related legal proceedings;

- (c) to enable a party to the arbitration to make and pursue a complaint against a person or body concerned in the arbitration;
  - (d) to make and pursue a complaint regarding the law, policy or procedure relating to arbitration as it concerns children.
- 16.3 Any transcript of the proceedings will be provided to all parties and to the arbitrator. It will similarly be confidential and used solely for the purpose of the arbitration, implementation or enforcement of any determination or applications to the court unless otherwise agreed by the parties, or if it forms part of any necessary disclosure to any appropriate protection/safeguarding authority, or as may otherwise be compelled by law, or as directed by the arbitrator under Art.16.2.2 above.
- 16.4 The arbitrator will not be called as a witness by any party either to testify or to produce any documents or materials received or generated during the course of the proceedings in relation to any aspect of the arbitration unless with the agreement of the arbitrator, or in connection with any necessary disclosure to any appropriate protection/safeguarding authority, or as may otherwise be compelled by law.

### **Article 17 – Disclosure of issues relating to safeguarding and welfare**

- 17.1.1 Prior to the commencement of the arbitration (see Art.4.5) each party shall have a duty:
- (a) to provide accurate information regarding safeguarding and protection from harm in their Form ARB1CS and Safeguarding Questionnaire;
  - (b) to obtain a Basic Disclosure from Disclosure Scotland and promptly send it to the arbitrator and to every other party; or alternatively, to provide an up to date CAF/CASS report or Schedule 2 letter prepared in current proceedings concerning the safeguarding and welfare of the child(ren), if applicable;
  - (c) to send to the arbitrator and to every other party any other relevant letter or report prepared by CAF/CASS or any local authority children’s services department or similar agency in relation to the welfare or safeguarding of any child who is the subject of the proposed arbitration.
- 17.1.2 Prior to the commencement of the arbitration and at every stage of the process each party shall have a continuing duty to disclose fully and completely to the arbitrator and to every other party any fact, matter or document in their knowledge, possession or control which is or appears to be relevant to the physical or emotional safety of any other party or to the safeguarding or welfare of any child the subject of the proceedings, or to a decision by the arbitrator under Art.17.2.1. Such disclosure shall include (but not be limited to) any criminal conviction, caution or involvement (concerning any child) with children’s services in respect of any party or any person with whom the child is likely to have contact.
- 17.2.1 If at any time prior to or during the arbitration but prior to communication of the determination to the parties the arbitrator (whether as a result of information received or by reason of behaviour on the part of either party) forms the view that there are reasonable grounds to believe that there may be a risk to the physical or emotional safety of any party or to the safeguarding or welfare of any child, it is the arbitrator's duty to consider whether the arbitration may safely continue.

- 17.2.2 If in such a case the arbitrator concludes that the dispute is no longer suitable for arbitration under the Children Scheme then he or she must inform the parties in writing of that decision and of its grounds, and will terminate the proceedings (see Arts.7.3 and 15.2(b)). The arbitrator must also inform IFLA of a decision to decline an appointment or to terminate an arbitration on safeguarding or welfare grounds.
- 17.3.1 If at any time during the arbitration but prior to communication of the determination to the parties the arbitrator becomes aware of any matters which lead him or her reasonably to apprehend that a child or any party has suffered or is likely to suffer significant harm by reason of the actual or likely future behaviour of any party, it is the arbitrator's duty to communicate his or her concerns as soon as possible to the relevant local authority or appropriate government agency.
- 17.3.2 In such a case the arbitrator shall be entitled, if he or she considers it appropriate, to communicate such concerns to the relevant local authority or appropriate government agency without prior intimation to any party of an intention so to do.

## **Article 18 – General**

- 18.1 At relevant stages of the arbitration, the arbitrator may encourage the parties to consider using an alternative dispute resolution procedure other than arbitration, such as mediation, negotiation or early neutral evaluation, in relation to the dispute or a particular aspect of the dispute.
- 18.2 If the parties agree to use an alternative dispute resolution procedure such as mediation, negotiation or early neutral evaluation, then the arbitrator will facilitate its use and may, if appropriate, stay the arbitration or a particular aspect of the arbitration for an appropriate period of time for that purpose.
- 18.3 In the event that the dispute is settled (following a mediation or otherwise), the parties will inform the arbitrator promptly and section 51 (settlement) will apply (however, the parties may not request the arbitrator to record the settlement in the form of an agreed determination). Fees and expenses accrued due to the arbitrator by that stage will remain payable.
- 18.4 In the event that an arbitrator under the Children Scheme is at the same time conducting a parallel financial arbitration under the IFLA Financial Scheme which involves one or more of the same parties, then in the event of any conflict between the two Scheme Rules, the arbitrator shall have sole discretion to decide which will prevail. For the avoidance of doubt, subject to the discretion of the arbitrator, all evidence adduced and all reports and documents disclosed in each arbitration shall stand as evidence in the other.
- 18.5 The parties will inform the arbitrator promptly of any proposed application to the court and will provide him or her with copies of all documentation intended to be used in any such application.
- 18.6 IFLA, the CI Arb, Resolution and the FLBA, their employees and agents will not be liable:
- (a) for anything done or omitted in the actual or purported appointment or nomination of an arbitrator, unless the act or omission is shown to have been in bad faith;

- (b) by reason of having appointed or nominated an arbitrator, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as an arbitrator;
- (c) for any consequences if, for whatever reason, the arbitral process does not result in a determination or, where necessary, a court order embodying a determination by which the matters to be determined are resolved.