

IFLA

Institute of Family Law Arbitrators

Family Arbitration

An introductory guide

Fourth edition

What is family arbitration?

Family arbitration is a form of private dispute resolution in which you and your ex-partner appoint a fair and impartial family arbitrator to resolve your dispute.

Family arbitration is an ideal approach for people who want to resolve a family dispute without the delay and expense of the court process. It allows you and your ex-partner to engage in a flexible process, with complete confidentiality, and the knowledge that a decision will be made.

The family arbitrator will produce a decision after hearing from each of you. They will act fairly and impartially, giving each of you the opportunity to put forward your views.

Family arbitration applies the law of England and Wales. It is different to other forms of non-court dispute resolution such as mediation and collaborative law in that you are guaranteed a decision which will be made for you.

Family arbitration can be used to help separating couples (whether married or not) following the breakdown of a relationship to settle disputes relating to:

- Finances and Property
- Child maintenance
- Living arrangements for your children after separation
- The time your children will spend with their parents
- Other arrangements concerning the upbringing of the children (e.g. schooling)
- Moving the children with a parent to a different part of England Wales.
- Moving the children on a temporary or permanent basis to “Hague” countries.

Why choose family arbitration?

The court process can be long, complicated and expensive. It can increase conflict and confrontation during an already distressing period.

Family arbitration provides a real alternative.

Speed

Family arbitration is likely to be a lot quicker than going to court and the same person will deal with the dispute from start to finish.

Flexibility

You can choose the venue and arrange meetings for dates and times that suit you.

You can choose your family arbitrator. This means that if you have specific requirements, you can find a family arbitrator with the specialist knowledge that will help resolve your unique dispute.

Versatility

You can decide whether the process is document only, conducted via telephone, video or by face-to-face meetings. Issues may be dealt with all at once, or one after the other.

You can decide whether you want the family arbitrator to look at the whole of a dispute or one part of it. The rest can be dealt with by other out of court dispute resolution including, for example, mediation, collaborative law or by negotiation.

Confidentiality

Family arbitration is essentially private. The media are not entitled to attend hearings, which are at venues you and your ex-partner agree. Only both of you, your representatives, the arbitrator, and any others agreed will be permitted to be there.

Legal advice

You can retain your own lawyer to advise you throughout the process.

Safety

Your arbitrator will want to know that you and children will be safe from harm when deciding any arrangements for your children. You will be asked to provide some background information and information on any concerns you have and in some circumstances your arbitrator may be under a duty to contact external agencies. Should they arise, you should also discuss these types of concern with your lawyer.

Finality

At the end of the arbitration you will receive a decision which resolves your dispute. The arbitration will be respected by the Court and it will be made an Order of the Court upon request.

Right of Appeal

There is a right of appeal in the same way that there would be from a judge's decision, but in practice such appeals are rare.

Cost

Whilst the family arbitrator will charge a fee, the process is very likely to be less costly than the court process.

How much does it cost?

Family arbitrator's fees

You, your ex-partner, and the family arbitrator will agree the level of the family arbitrator's fees at the start of the process. Fees are usually based on an hourly or daily rate, but may also be arranged on a fixed-fee basis. These costs will normally be shared between you and your ex-partner.

Venue hire

There may be costs involved in hiring a venue for any meetings scheduled as part of the process. These costs will normally be shared.

Independent legal advice fees

It is usually a good idea for both you and your ex-partner to take independent legal advice to help you through the process. Normally you and your ex-partner will each pay your own legal fees.

Experts' fees

You and your ex-partner might require experts as part of the process. Again, these costs will normally be shared.

How does it work?

Stage one: preparation

Step 1

You and your ex-partner have a family financial or child dispute that you wish to resolve without going to court.

You can use family arbitration to resolve the whole dispute or one part of it. The rest can be dealt with by other out of court dispute resolution including, for example, mediation, collaborative law or by negotiation.

Step 2

You both, with the help of your lawyers and using the IFLA website 'Search for an Arbitrator' function, choose a family arbitrator and establish his or her terms and availability: www.ifla.org.uk

Step 3

Together with your ex-partner you complete, sign and send your completed form (an Application for Family Arbitration Form (ARB1FS) for a financial dispute and ARB1CS (including your information about safety for a dispute concerning a child or children), preferably by email, to info@ifla.org.uk, or it can be sent by post to IFLA, 91-95 Southwark Bridge Road, London, SE1 0AX.

This is where you outline details of the dispute you are seeking to resolve. By signing the ARB1FS or ARB1CS you both agree that you will be bound by the decision of the family arbitrator.

Step 4

The family arbitrator contacts both of you directly to confirm the appointment and then sends you both a formal letter of acceptance.

Stage two: family arbitration process

Step 5

The family arbitration process begins. How the process works is up to you and the family arbitrator. It may be a document-only process, or include face-to-face and video or telephone meetings.

If there is a final meeting, this will take place at a date and time agreed between both of you and the family arbitrator.

Stage three: conclusion

Step 6

Both of you must pay the family arbitrator's fee, as well as any other costs involved, such as venue hire for the family arbitration meetings.

Step 7

The family arbitrator makes a decision. The decision is put in writing and delivered to you both. The decision will include written reasons.

This is much like a decision made in court.

Step 8

Generally, both of you will take the family arbitrator's decision to court. By agreement, it will upon request become a court order. It is highly likely that you will need a court order where there has been a financial decision but less so where the decision involves the arrangements for a child or children.

Step 9

You have a right to appeal if you think there has been a legal error or serious irregularity. Your lawyers can advise you on this.

Where can I find out more?

Visit www.ifla.org.uk to:

- Learn more about family arbitration and read the FAQs;
- Find a family arbitrator that meets your requirements;
- Read the Rules of family arbitration;
- Download the Applications for Family Arbitration (Form ARB1FS and ARB1CS).

About IFLA

Arbitration for family law cases was launched in England and Wales in February 2012 by the Institute of Family Law Arbitrators (IFLA), a not-for-profit organisation, created by the Chartered Institute of Arbitrators (CI Arb), the Family Law Bar Association (FLBA), and the family lawyers' group Resolution, in association with the Centre for Child and Family Law Reform (CCFLR), sponsored by The City Law School, City University London.

For more information:

- www.resolution.org.uk
- www.flba.co.uk
- www.ciarb.org
- <http://www.city.ac.uk/law/research/research-centres-and-groups/centre-on-child-and-family-law-reform>