

## **INSTITUTE OF FAMILY LAW ARBITRATORS FAMILY LAW ARBITRATION SCHEMES PROSPECTUS FOR FAMILY LAW ARBITRATORS**

### **Introduction**

The Family Law Financial Arbitration Scheme ('the Financial Scheme') is a scheme under which disputes of a financial or property nature with a family background in England and Wales may be resolved by arbitration.

The Family Law Children Arbitration 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 in England and Wales may be resolved by arbitration.

In order to become an arbitrator under either Scheme, it is necessary that Scheme members qualify and maintain membership of the Chartered Institute of Arbitrators and concurrently are maintained as members of the relevant panel of arbitrators which shall be managed by Resolution on behalf of the Institute of Family Law Arbitrators Limited ("IFLA").

The Schemes are administered by Resolution on behalf of IFLA, a company limited by guarantee whose members are the Chartered Institute of Arbitrators ("CI Arb"), Resolution and the Family Law Bar Association ("FLBA").

IFLA is responsible for:

- the rules governing the family law arbitration schemes
- eligibility, training and qualification criteria
- application procedures
- criteria for remaining on the panels
- denying, suspending or revoking membership of the panels

- development of the schemes
- public perceptions and requirements of the Schemes
- pursuing legislative reform as and when appropriate

### **Benefits of family law arbitration**

Some of the primary advantages of family arbitration are:

- The selection of the decision maker
- The direct continuous involvement of the decision maker
- Flexibility and individual choice of adjudication process
- Privacy and confidentiality
- Use for discrete issues of a case
- Speed and flexibility
- Saving of court resources

### **Applications**

Applications to train and qualify as a family law arbitrator in either scheme must be made on a prescribed form and accompanied by an administration fee prescribed from time to time by IFLA.

### **Eligibility**

Training and qualification as a family law arbitrator is available only to those who satisfy the conditions established by IFLA. Eligibility is considered without discrimination.

An applicant for either the financial scheme or the children scheme must:

1. be either:
  - 1.1 i. a practising barrister,
  - ii. a practising solicitor,
  - iii. a part time fee paid judge or
  - iv. a practising Fellow of the Chartered Institute of Legal Executives

who has at least 10 years post qualification experience in England and Wales in the discipline in which he or she wishes to qualify. He or she must have spent a minimum of 600 hours per annum carrying out family law casework during each of the 10 years immediately preceding his or her application 400 hours of which must be in the discipline in which he or she wishes to qualify. If an applicant has completed 800 hours per annum family work comprising 400 hours financial work and 400 hours children work then he or she will be eligible to train as both a financial arbitrator and a children arbitrator.

1.2 A retired practitioner who would have met the eligibility requirements under paragraph 1.1 above at the time of their retirement, provided he or she applies to train within 12 months from the date of retirement.

1.3 A retired Judge of the Court of Appeal or Supreme Court Justice who before or during his or her appointment as such sat as a High Court Judge in the Family Division, provided he or she applies to train within 12 months from the date of retirement.

1.4 A retired judge who was authorised to sit in the Family Court at the date of his or her retirement and who sat in the Family Court for at least 100 days in each of the two years preceding retirement of which at least 40% were in the discipline in which he or she seeks to qualify, provided he or she applies to train within 12 months from the date of retirement.

## 2. support the Resolution Code of Practice

An applicant who is unable to satisfy the criteria set out at 1.1 or 1.3 above due to parental leave, illness or other extenuating circumstances may seek an exemption at the IFLA's discretion.

Applicants other than retired judges must provide the name of two referees who are either:

- judges,
- tribunal chairpersons,
- Queens Counsel or
- IFLA arbitrators qualified in the discipline the applicant wishes to qualify in.i.e. finance or children

Only one referee may be from the same firm or chambers as the applicant. Referees will be asked to certify that the applicant meets the following competencies:

1. Intellectual capacity

- High level of expertise in their chosen area or profession
- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

2. Personal qualities

- Integrity and independence of mind
- Sound judgment
- Decisiveness
- Objectivity
- Ability and willingness to learn and develop professionally

3. An ability to understand and deal fairly

- Ability to treat everyone with respect and sensitivity whatever their background
- Willingness to listen with patience and courtesy.

4. Authority and communication skills

- Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved
- Ability to inspire respect and confidence
- Ability to maintain authority when challenged.

5. Efficiency

- Ability to work at speed and under pressure
- Ability to organise time effectively and produce clear reasoned judgments/awards expeditiously
- Ability to work constructively with others (including leadership and managerial skills where appropriate).

## **Training and qualification**

Training is carried out by CI Arb. The training course is usually delivered with a combination of private study and face-to-face tutorials. Private study includes reading course materials. Face-to-face tutorials involve candidates attending classes in London over two days (or one day for arbitrators qualified in one discipline wishing to qualify in the other) during which time they will be subject to continuous assessment. *During Covid 19 restrictions the course will be delivered on line in two parts over 4 days.* Candidates will be fully trained in relevant aspects of the law of arbitration, practice and procedure, drafting and deciding, award writing and in family arbitration. They will be required to pass an award writing assignment which is undertaken the week after the course. Successful candidates will be eligible to become Members of CI Arb (MCI Arb).

As Members of CI Arb, family law arbitrators will be subject to the rules and regulations, code of ethics, complaints and disciplinary procedures of CI Arb (further details can be found at [www.ciarb.org](http://www.ciarb.org)). Complaints as to misconduct by an arbitrator are investigated by a Professional Conduct Committee with power to refer the matter to a Disciplinary Tribunal. The procedure is set out in CI Arb's Bye-laws.

After successful completion of the training and award writing exercise the CI Arb will admit candidates who apply for membership and meet CI Arb's membership requirements as Members of CI Arb and recommend to IFLA that those who have been admitted as MCI Arb join the IFLA panel of family arbitrators. That will serve as the accreditation IFLA can rely upon.

It will be possible for trained family arbitrators who have become Members of CI Arb to progress to Fellowship of CI Arb, after completion of further training.

## **Remaining on the panel of family law arbitrators**

In order to remain on the panel of family law arbitrators it is necessary to comply with all of the following:

- For barristers, solicitors and FCILEx to maintain their professional qualification
- To retain membership of CI Arb
- To continue to spend a minimum of 600 hours per annum carrying out family law casework or to continue as a member of CI Arb and to comply with the CI Arb requirements for continuing professional development and in particular will be required to keep up to date with family law.

- to pay an annual administration fee to Resolution as shall be prescribed by IFLA from time to time. This is to cover the costs of dealing with referrals and with administering IFLA.
- To send a return (in such form as shall be required by Resolution) of arbitrations which have been commenced under the scheme.

Retired practitioners and judges will have a period of 5 years from the date of their admission as arbitrator in which to practice as arbitrator, but shall be entitled to apply to the board of IFLA (who shall be advised by the IFLA advisory committee) for an extension beyond the 5 year period.

The five year period shall also apply to those practitioners whose professional life alters, either by virtue of a change in their areas of practice after qualification (i.e. such that it would no longer meet the requirements of Eligibility criterion 1.1 above) or by retirement from practice post qualification. The five years in such cases shall run from the date on which the practitioner retires or from the date on which his/her practice changed.

Arbitrators are required to disclose to IFLA anything which could bring it or its constituent organisations into disrepute.

An arbitrator may take a career break from the panel, for whatever reason, for up to two years on the following basis:

- he/she may not hold him/herself out to the public as an arbitrator for the duration of the career break;
- he/she maintains 8 hours per annum CPD in family law related topics for each year of the career break;
- at the end of the two years, he/she confirms in writing that he/she is immediately returning to at least 600 hours per annum family law practice.

An arbitrator who is unable to satisfy the criteria set out above due to parental leave, illness or other extenuating circumstances may seek an exemption at the Committee's discretion.

IFLA shall revoke or suspend membership of the panel of arbitrators if:

e.g. the arbitrator ceases for any reason to be a member of CIArb or fails to pay the annual Resolution administration fee.

## **Administration of the Schemes**

Resolution administers the Schemes on behalf of IFLA. A Resolution appointed administrator will be responsible for:

- administering the referrals to the Schemes
- maintaining the panels of accredited family law arbitrators
- collecting fees payable by applicants
- maintaining records of arbitrations undertaken
- acting as the interface for inquiries and questions

### **Appointment of arbitrator**

Application for family arbitration is on the prescribed form. If the parties know of and agree on the arbitrator they wish to appoint they may contact that person direct in order to make the necessary arrangements. If they do not know of a suitable arbitrator or are unable to agree on an arbitrator they will apply to the Administrator on the prescribed form. They may provide a shortlist from which the Administrator will appoint the arbitrator. The application is checked to confirm that it is signed and that all the required information is provided. Either the named arbitrator or an arbitrator from the shortlist provided or an arbitrator from the panel will be appointed taking into account the desired area/experience and/or on a rotational basis. The Administrator will make contact with the arbitrator to check that he or she can take the case and will then send them the details. Once the arbitrator has accepted the case and the parties have been informed the arbitrator will deal directly with the parties. The arbitrator's costs will be dealt with by the arbitrator.

IFLA does not guarantee that any arbitrator on the panel will be appointed.

### **Appraisal/feedback/monitoring**

A system for obtaining feedback from users of the scheme will be organised by the Administrator. This will be based on procedures currently being developed by CI Arb for use on their other panels of arbitrators.