

## A quick guide to arbitration

Arbitration is a key dispute resolution process to aid solicitors and clients resolve, quickly and cost effectively, a dispute in which the parties would otherwise need a final hearing. It is, effectively, a private law option that enables you to supply your client with excellent client service and client satisfaction.

### When.....

- ★ The parties have undergone mediation and have made real progress but there are some issues remaining between them that cannot be resolved. Alternatively, solicitor-led negotiation has had some success, but there remains a dispute that you are concerned will not be able to be bridged. Arbitration is an ideal way to resolve those final issues because you are able to set the boundaries on the arbitration. You can tell the arbitrator what is agreed and seek an award (finding) on the points in dispute using the documentation that has already been exchanged. It means your client's mediation/solicitors' negotiation was not a waste of time and money;
- ★ If your mediation/solicitor-led negotiation has progressed but no agreement has been reached (but disclosure has been exchanged and some of the issues have been explored) then again arbitration is ideal to seek a swift final determination;
- ★ You have engaged in the court process and have either reached the exchange of Form E's, First Appointment or have had a failed FDR. At that point moving to arbitration is ideal.

### Benefits.....

- ★ **Expertise** – given your arbitrator's qualifications and background, you, together with the other party, are able to select an arbitrator who is expert in the area in which the arbitration needs to be focussed. This is a real benefit to you because the court process does not guarantee expertise of tribunal. Your client's case is automatically helped by having an arbitrator with the level of expertise and specialist knowledge you need;
- ★ **Time** – arbitration is swift. Once the arbitrator has been selected the arbitrator will set a timetable. This means that most arbitrations are concluded in a matter of weeks. Your

client will avoid the long delays between court stages and, increasingly, the court cancelling hearings or moving them with little or no notice. This not only saves your client stress by having the issues resolved at an early juncture (whatever the outcome), it also means that any of the side issues that seem to occur while you are waiting for many months between court hearings, simply do not have time to happen.

- ★ **Preparation** – the arbitrator will be fully prepared. He or she will have read the agreed bundle well and truly prior to any hearing and will know the case; this rarely happens in the court process due to time pressures and the overloading of court lists. This cuts right down on hearing time and cuts out needless waffle – the process is direct and concise;
- ★ **Flexibility** – arbitration is less formal than the court and less ‘rule-bound’ to legal rules or formality which do not necessarily suit your circumstances. The arbitrator is a lot more flexible in their approach so that the arbitration can be effective for the parties. An example being an arbitrator taking evidence at the same time from both parties as to property particulars. The process generally is a lot more ‘user friendly’ which clients appreciate. The arbitration does not need to have a ‘hearing’ and can just as easily proceed on the papers.
- ★ **Costs** – whilst the parties usually share the cost of the arbitrator’s fees this additional cost is swiftly exceeded by the costs that would otherwise be incurred in dealing with the side issues that occur between court dates, an ineffective court date and/or the costs of having to go through the litigation process. As the arbitrator is an expert and will have read the papers – experience shows that what would be a two/three day hearing before the court is more likely to be a one day arbitration. The savings in terms of your legal team (barrister and solicitor) are significant and pay for the costs of the arbitration many times over;
- ★ **Empowerment** – the parties choose the arbitrator. You can nominate one, provide a shortlist of possible arbitrators for either the parties or IFLA to select one, or ask IFLA to select one randomly (using whatever criteria you want). This gives back control of the process to clients at a time where otherwise they have lost input and the court will select a random judge, who may or may not be sympathetic or have the skill set to deal with the case. Do not underestimate this factor in terms of client satisfaction and providing good service.
- ★ **Timetabling** - Dates will be set to suit you all – so you know your choice of arbitrator will always be available to help you.

\* **Award** - Like litigation, the award an arbitrator makes will be the decision. The arbitrator will make an award based on the law and that may or may not support your case (either all of it or part of it). But this is no different from litigation save that you have been able to deal with your matter quickly and very cost effectively and have chosen an expert to help you. There is extremely limited ability to appeal an arbitrator's decision but that is also reflective of the court process and the reality is that, having paid for a Final Hearing, the costs of an appeal mean that very few cases are actually litigated in a higher court.

## What is an arbitrator?....

An arbitrator is a highly qualified individual who has undergone a specific rigorous training course so as to be able to help you with your dispute (be it financial or children's issues). The arbitrator has all the powers of a High Court Judge and it is quite likely that the arbitrator has more power available to them than the Deputy District Judge or District Judge that you may otherwise be seeing through the court process.

The arbitrator is therefore able to make all the necessary directions to move your case so that it is in a good position for final arbitration.

This includes such directions as:

- a) Questionnaires;
- b) Specialist expert reports;
- c) Timetabling.

If the arbitrator does not have a specific power, he/she can refer the matter to the court and a Judge will, out of courtesy, make the Orders that the arbitrator believes are necessary. The arbitrator can also invite the court to use its coercive powers if, once the arbitration is ongoing, one party is recalcitrant in their approach.

## How To....

A joint approach is often the best way. Most Solicitors are now aware of Arbitration as a good process option if other methods have failed. If you are unaware of the process, most Senior Clerks of the leading chambers are happy to speak to you about their barrister arbitrators. There are also a range of good solicitor arbitrators who can discuss the process with you. Or contact IFLA: <http://ifla.org.uk/>

**Arbitrate – Don't litigate**