

# FAMILY ARBITRATION

## **What is family arbitration?**

It is a way for financial disputes to be decided outside the court system. Arbitration is quicker and cheaper than having a dispute decided by the courts. The Arbitrator makes a decision and records that in an Award. That Award is then turned into a court order and submitted to the court for approval, using a fast track process.

## **Is it binding? Can one party change their mind if they don't like the Award?**

Yes is it binding and no, one party cannot just change their mind if they don't like the decision. Arbitration starts with an agreement to arbitrate and to be bound by the Arbitrator's award. Arbitration Awards are recognised by the court and will not be interfered with, except in very limited circumstances. One example might be that the law was not properly applied, but those cases are very rare.

## **Why not just go to court?**

You could apply to the court and ask a judge to make a decision for you but there are many advantages with family arbitration. Arbitration gives you more control over the process and it is **faster** and **cheaper**.

## **With arbitration.....**

- *You can choose your own arbitrator.* IFLA administers the scheme and holds all the names of qualified, accredited arbitrators. You might want an arbitrator with a particular skill or interest or in a particular geographic area. You will certainly see the same arbitrator through the arbitration. If you go to court, you have no choice over the judge who hears your case and it is very common for you to have a different judge on each hearing.
- *You can have a say about the procedure to be used.* You, your partner and your legal teams (if you have them) can decide how you want the areas of dispute to be decided. You might decide you want it all done on paper, without having hearings. One of the great advantages of arbitration is the flexibility. You would usually discuss this with the arbitrator. If you go to court, there is a 'one size fits all' process with little flexibility.
- *You can tell the arbitrator what you need them to decide – and what you have agreed.* Unlike court proceedings, you can limit the areas that you want the arbitrator to make a decision about. You can tell the arbitrator what has been agreed and the arbitrator will accept that. Coupled with the flexibility, you could, for example, ask for a decision on paper for just one area if all other areas are agreed. There are many possibilities.
- *It's all confidential* – there will never be a court report about your case with your personal details disclosed. It's totally confidential.

## **How is arbitration different from mediation?**

Mediation provides a space and supports you both to work together to reach your own solution. The Mediator will not make a decision for you. They are trying to help you make your own decisions. If you can't reach an agreement, then you would need an arbitrator or a court to decide for you. An arbitrator will make a decision for you.

## **Can I keep my solicitor?**

Of course you can. Well placed legal advice from a solicitor specialising in family law matters, can be very helpful but you don't have to have a solicitor to engage an arbitrator. Most people do, however.