



# ARBITRATION

**ARBITRATION INVOLVES THE SEPARATING COUPLE APPOINTING A FAMILY ARBITRATOR – A PRACTISING BARRISTER, SOLICITOR OR RETIRED JUDGE – TO MAKE A DECISION ON THEIR FINANCIAL AND/OR SOME CHILDREN MATTERS**

## THE PROCESS

A family arbitrator will act fairly and impartially, giving each party an opportunity to put forward their views. The arbitrator's decision will almost always be binding in the event of challenge, although it is possible to appeal an arbitral award in court.

A key difference between arbitration and court is that the couple can choose their arbitrator whereas the allocation to a judge in court is usually random. Proceedings will also be private whereas sometimes court is not.

In most other respects an arbitration will be like a court hearing. The arbitrator can take evidence and make a reasoned decision in the same way that a judge can.

The arbitration process starts with the completion of an application form ARB1, this sets out the scope of what is agreed to be decided.

## SUITABLE CIRCUMSTANCES

Arbitration is suitable for almost all circumstances including determination of discrete issues such as ownership of art or other property to contact arrangements for children.

Arbitration is particularly suited to separating couples who:

- ▶ wish to avoid the court process but are unlikely to come to an agreement through negotiation or have tried and failed to do so
- ▶ Would benefit from a neutral third party making a final decision about some/all of their issues; sometimes having previously narrowed the issues in negotiation, mediation or collaborative practice
- ▶ need privacy and cannot run the risk of press being in court, or the proceedings being heard in open court
- ▶ wish to litigate in civilised surroundings in the hope that this might make the process less painful and stressful.

## BENEFITS



**Guaranteed decision** – unlike other alternatives to court, the two parties are not required to reach a mutual agreement; the arbitrator's decision is binding.



**Faster process** – you can fix a date for your arbitration as soon as both sides are able once disclosure and valuation evidence has been obtained, whereas court proceedings can take months.



**Choose the arbitrator** – with specialist expertise in the issues arising in your case.



**Attention** – unlike a busy judge, the arbitrator's sole focus will be the case before them. They will have the appropriate time to consider the case properly and therefore are more likely to be sensitive to both parties.



**Comfort** – many law firms and barristers chambers have arbitration suites. The setting is more comfortable than formal court proceedings, which can make the process less stressful.



**Privacy** – it offers far more privacy as the venue will be far more discreet than a busy court building.



**Cost saving** – parties pay the arbitrator a fixed cost, which is usually offset by savings on respective solicitors due to time savings.

## OUR INSIGHT

As the court system is increasingly over-populated and couples demand more time than resources permit, parties who are able to should consider arbitration as an option.

The critical issue is almost always the identity of the arbitrator, where both sides agree to arbitrate but disagree who it should be.

It can never be guaranteed which judge you get in court, let alone on whose side they might be on. By participating in choosing an arbitrator, a client is guaranteeing a professional with a large number of skills relevant to the case being determined, even if the outcome can never fully be predicted.

## CASE STUDY

The couple had reached an agreement in correspondence to settle their financial arrangements.

However, one party sought to pull out of the agreement, citing that they had made a mistake.

The parties agreed that the question could be determined on the papers by an arbitrator, with oral submissions if necessary (which there were).

That way, the parties would avoid the cost of new representation (as sometimes where there is a dispute about whether an agreement has been reached the solicitors have to step down as they are potential witnesses on the point).

The arbitrator, a QC, was able to resolve the issue and drafted the order to be submitted to the court.

The time from agreeing to arbitrate, to arbitration hearing and a decision, was about a week. If an application to court had been made, then this would have taken many, many months.

**At Forsters we can explain the process, help you choose your arbitrator, and guide you through the arbitration proceedings. Once the proceedings are concluded, we will turn the arbitrator's decision into a court order (this has to be done to make the decision binding). This can be done quickly as a "fast-track" procedure exists.**