The benefits of arbitration in family law

03 FEBRUARY 2016

CATEGORY:
ARTICLE

The Institute of Family Law Arbitration (IFLA) launched the Financial Arbitration Scheme in April 2012. This enables couples (whether married or unmarried) to have financial disputes which they are unable to resolve by agreement (whether, for example, through mediation or negotiation) determined by a certified arbitrator outside of contested court proceedings.

Since the introduction of the scheme, more than 220 arbitrators have been trained and over 80 financial arbitrations have been concluded. Undoubtedly the success of the scheme has been helped by the ringing endorsements given by the Judiciary. In *S v S* [2014] EWHC 7 (Fam) the President of the Family Division, Sir James Munby, made it clear that in the absence of any compelling countervailing factors, arbitral awards would be capable of being the 'single magnetic factor of determinative importance'. He indicated that it would only be in the rarest of cases that it would be appropriate for family judges to do anything other than to approve the arbitral award. Subsequently, on 24 November 2015, the President published the Guidance for Practitioners dealing with Arbitration – a sure sign that arbitration is here to stay and is seen by the judiciary as a pivotal way of resolving family disputes in many circumstances.

The benefits of arbitration are clear: it is bespoke – the couple, their lawyers and the arbitrator agree on how the case will be handled and the details of the procedure. The proceedings themselves are less formal, the parties can choose their arbitrator and indeed often have direct access to that person via emails and conference calls. Crucially, confidentiality is assured unlike the Court process. Currently, there are two 'schools of thought' in relation to privacy in financial proceedings. Justice Holman is a proponent of openness and transparency. Indeed, in the case of *Fields v Fields* [2015] EWHC 1670 (Fam) he determined that the Court proceedings should be open and there should be no restrictions on reporting. He knew that the parties were distressed by the considerable attention the case received in the press and online but he stated that did not override the importance of transparency. On the other side, the privacy flag is waved by Justice Mostyn. In the case of *SL v SL* [2015] EWHC 2621 he said 'sunshine is said to be one of the best disinfectants' but 'financial remedy proceedings are quintessentially private business' and should be protected by the anonymity principle (see detailed article on court transparency). The debate continues… It will be interesting to see how this judicial debate is resolved but one thing is for sure – arbitration is the best adjudication option if the parties wish to ensure confidentiality.

The introduction of Children Arbitration this year will be welcomed. The IFLA Children Scheme will be launched in April 2016 and will provide another way for parents to resolve disputes regarding their children outside of the court arena. They will be able to deal with: where their children should live, with whom, how much time they should spend with the other parent and relocation internally within England and Wales. The hope is that in opening up arbitration to children disputes, these difficult and often emotionally challenging cases will be dealt with more expeditiously and, together with financial arbitration, provide a much needed release valve for the congested family Courts so as to free up time for Judges in the family division to deal more quickly with cases that remain in the Court system.