

harcourt

Family Law

Family Arbitration: Covid-19 and beyond

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Family Law Arbitration Children Scheme

- Launched 18 July 2016
 - Aim: obtaining a prompt decision in a children dispute in a cost-effective manner.
- CHILDREN SCHEME ARBITRATION RULES 2018 (5th EDITION, EFFECTIVE 11 JANUARY 2021)

SCOPE

Covered by the scheme:

- Child arrangements including where the child lives, contact, division and allocation of holidays, education, religious upbringing, medical treatment for non-life threatening or life changing conditions and other issues as to the exercise or limitation of parental responsibility of either of the parties
- Relocation where country signatory to 1980 and 1996 Hague Convention

Not covered by the scheme:

- Child abduction
- Relocation cases where country not signatory to 1980 and 1996 Hague Convention
- Medical treatment for life threatening or life changing conditions.
- Mental Capacity Act cases
- Child litigant or child party
- Cases in which there are or may be safeguarding issues

Why arbitrate?

1. SPEED

- ❖ Resolution achievable within weeks (if not days)

2. CONVENIENCE

- ❖ Choice of venue
- ❖ Choice of timing
- ❖ Choice of arbitrator
- ❖ Little/no risk of adjournment
- ❖ Evening/weekend availability

3. AUTONOMY

- ❖ Section 1(b) of Arbitration Act 1996: “the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest”
- ❖ Conventional family litigation is judge-led
- ❖ Discrete issues are not often isolated for decision

4. PRIVACY

- ❖ Article 16 - Confidentiality
- ❖ Proceedings are entirely confidential (r16)

Why not arbitrate?

1. COST

- ❖ Judge is free, Arbitrator is not
- ❖ Blame for choice

2. NO APPEAL?

- ❖ Haley v Haley [2020] EWCA Civ 1369
- ❖ Practice Direction 12B, paragraph 14.13

IF YOU DECIDE TO GO AHEAD:

- Agreement
- Choose an arbitrator
- Conditions of Arbitration
- Safeguarding
- Arbitration commences upon Arbitrator communicating acceptance of appointment to the parties.