

London sees growth in Family Law Arbitration.

By Tessa-Jade Heise ¹ & Arran Dowling-Hussey²

Introduction

It doesn't roll off the tongue but the idea that not every type of dispute can be resolved by arbitration is dealt with under the umbrella term of arbitrability. Some disputes are amenable to arbitration and others are not. Arbitration is often, but not always, a private contractual agreement by parties who determine that there are advantages for them in stepping away from litigating in open court.³ In some situations, it is not possible to make that private contractual agreement. If you happened to be pulled over by the police for an alleged motoring offence on the way to work you can't say '*I don't accept what you say but not to worry we will get in before John Q. Arbitrator K.C quickly enough and they will resolve this in an arbitration.*' For matters of history, public policy and due to the terms, and limits, of statutes some disputes are, or were, not arbitrable. Disputes that are not arbitrable are then determined by a court.

What Can Be Arbitrated Changes Over Time.

But slowly over time legal landscapes, and borders, shift. It used to be thought, in some jurisdictions, that questions of fraud could not be put to an arbitrator but had to be reserved for a court. Competition law was something that until 50 years, or so ago, was not thought to be able to be heard by an arbitrator. Times change. Arbitrators in most jurisdictions can now deal with *inter alia* fraud and competition law. One of the last redoubts thought to fall outside the scope of arbitration was family law. A Family Law Arbitration ('FLA') Scheme introduced in 2012 has led to slow changes in this area of law. It now seems that the change, albeit from a low base, is picking up in pace.

Increase In Family Arbitrations

The original FLA scheme provided assistance for financial remedies and disputes, with a further scheme being added in 2016 for arrangements with children. Both schemes

¹ Tessa-Jade Heise is a barrister and arbitrator practising from 4-5 Gray's Inn Square. They can be contacted at theise@4-5.co.uk.

² Arran Dowling-Hussey is a barrister and arbitrator practising from 4-5 Gray's Inn Square. He can be contacted at adhussey@4-5.co.uk

³ In some jurisdictions certain arbitrations such as those dealing with compulsory purchase orders by governments/ local authorities may be held in public.

were introduced by the Institute of Family Law Arbitrators (IFLA), an umbrella organisation created, by interested groups active in this area such as, the Chartered Institute of Arbitrators (CI Arb).

Focusing upon the financial scheme, the Financial Times reported, on February 2, 2026-
,

‘The number of arbitrations for divorcing couples in England and Wales seeking to reach a financial settlement outside the overburdened court system has doubled in the past two years. In 2025 there were 178 arbitrations, which take place in a private location and are faster and more streamlined than in a court, according to the Institute of Family Law Arbitrators. This was up from 89 in 2023.’⁴

This is but a very small fraction of the around 100,000 divorces in England & Wales every year. But commentators expect the upward trajectory to continue increase. Many, but not all of the cases, involve high net worth couple. Some of the cases involve couples who live an international life travelling between two or more countries where one of the couple elects to file for divorce in London. The decision of *White v White*⁵ in 2000 led to London being described as a ‘divorce capital’ as the starting point in the division of marital assets is a 50-50 split. Many high value divorce cases include colourful comment that one or more of the former couples would be keen to see not canvassed in public. Aside from ‘colour’ about alleged habits, spending or other potential embarrassing details the literal details of net worth and assets held are something which many would obviously wish to have kept confidential. The privacy of the arbitration process is therefore attractive to parties involved in high value divorces.

Conclusion.

Alternative Dispute Resolution (‘ADR’) has come to the fore over the last 20 years. There has been an increase in the amount, and type of, disputes that are dealt with by ADR. This process to a degree has, and will continue, to become self perpetuating. A greater use, and understanding, of ADR means that parties are more comfortable using dispute resolution processes such as arbitration and mediation than they once were. Alongside

⁴ <https://www.ft.com/content/18ea1c87-cdc6-4294-8ce7-194c00b99345> (accessed March 1, 2026)

⁵ [2020] UKHL

these domestic drivers that have led to an increase in ADR there are also external international factors. As would be apparent, and has been touched on above, London is an international city: and therefore the use of family law arbitration in jurisdictions such as America⁶ and Canada supports the use of the process in England & Wales. FLA use has been modest over the last 15 years or so but is increasing and likely to increase further. Any use of arbitration takes pressure of the court system and will allow others to get in before judges that little but quicker. Whilst many who are counsel, or arbitrators, in FLA (or in other areas of law) will confine their use and practice of arbitration to there specialist field there will be others whose professional activities will cross over into two or more areas of law. As a result where there are going to be in a minor way more arbitrations in the years to come the process of arbitration itself will benefit from this development. All of this is to be welcome. The 4-5 Gray's Inn Information Hub will offer further comment on Family Law Arbitration as it develops.

4-5 Gray's Inn Arbitration Group includes counsel, and arbitrators including full time arbitrators, who can advise/ act in a wide range of disputes in a number of jurisdictions. For queries contact: clerks@4-5.co.uk

⁶ In America the term used is 'Divorce Arbitration.' Divorce Arbitration is not a creature of Federal law but rather allowed for in a number of states such as Massachusetts.