

How to split the family assets: judge or arbitrator?

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I am a family divorce lawyer and mediator at Hopkin Murray Beskine Solicitors and this is about the choice between using a judge or an arbitrator to decide a case, if you can't settle it any other way.

If you are splitting up with a partner and have a financial dispute there are a number of different methods available to resolve it. You might try to talk it over, perhaps with independently-minded friends, or use mediation, or try to settle through solicitors negotiating. If you are not able to reach an agreement in this way, your solicitor can talk to you about referring the matter to a Judge to make a decision, or consider using arbitration.

Until last year arbitration was very rarely used because it was unclear whether or not the Family Court would uphold a decision made in arbitration. In practice this meant that you might go all the way through the process of arbitration, reach an award, even act upon it, and then one party who might be dissatisfied with the award, could bring the whole thing back to court and try to have it overturned.

Last year however, the court gave a clear endorsement of arbitration. The court held that a Judge could interfere with an arbitrated award only in a very rare case. This means that although there is still a possibility that an arbitrated award could be overturned, it is only in very rare and very unusual situations.

The process of arbitration to some extent mirrors the Court proceedings. Even if you do not like the way that the proceedings are going, you cannot pull out unless you both agree, and the award is binding other than in exceptional circumstances. However, the great difference is that you can choose your arbitrator unlike your judge and have much more control over the timetable and the procedure than you ever can in court proceedings. This means that you can avoid delay that waiting for a court date



can bring, and also you can have the consistency of having the same arbitrator at every stage. Any hearing before the arbitrator would take place away from the Court arena and in more relaxed circumstances and is private and confidential.

Arbitrators however are not Judges and they do not have the power of the Court behind them. This means if you need the Court to ensure that your ex produces documentation, or does squander or hide assets, then you would certainly need the power of the Court. Arbitrators are unable to protect individuals from threats of aggressive behaviour; in this situation you would need the power of the Court. Arbitration is not binding in relation to matters concerning children. Agreements regarding children have to be put before a court to make them binding.

Whilst arbitration is not the answer to every situation, it is certainly worth considering in some cases where it might be quicker, more direct and offer more control to both parties, than the alternative of using the Court process.

If you have any questions or queries about this article or any of my other articles all of which are on our website www.hmbsolicitors.co.uk, please feel free to email me on sb@hmbsolicitors.co.uk.

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