



CODE OF PRACTICE FOR FAMILY LAW ARBITRATORS

Introduction

All FLAGS arbitrations are to be conducted in accordance with the Arbitration (Scotland) Act 2010 and the edition of the FLAGS Arbitration Rules in place at the commencement of the arbitration.

The 2010 Act provides 3 founding principles for arbitration in Scotland. In conducting any FLAGS arbitration arbitrators must have regard to these principles:

Section 1 Founding principles

The founding principles of this Act are—

- (a) that the object of arbitration is to resolve disputes fairly, impartially and without unnecessary delay or expense,
- (b) that parties should be free to agree how to resolve disputes subject only to such safeguards as are necessary in the public interest,
- (c) that the court should not intervene in an arbitration except as provided for in this Act.

This Code of Practice summarises the manner in which the founding principles in the Act are to be implemented in FLAGS arbitrations.

1. Duty to act fairly and impartially

The arbitrator must, throughout, treat the parties fairly, which includes giving each party a reasonable opportunity to put its case and deal with the other party's case.

The arbitrator must be impartial and independent.

Before accepting appointment as arbitrator, any individual who has been asked to act as arbitrator has a duty to disclose to the parties any matter that may reasonably be considered relevant when considering whether the individual is impartial and independent. In particular, the arbitrator must not have acted previously for either of the parties to the arbitration nor have any business, financial or personal connection with either of the parties.

The arbitrator has a duty to disclose any conflict of interest. The duty to disclose to the parties any matter that may reasonably be considered relevant when considering whether the individual is impartial and independent subsists throughout the arbitration.

2. Duty to act without unnecessary delay or expense

It is the duty of the arbitrator to conduct the arbitration without unnecessary delay and without incurring unnecessary expense.

If the arbitrator considers that the parties are, or may be, failing to meet their duty to ensure that the arbitration is conducted without unnecessary delay and without incurring unnecessary expense he or she must advise the parties of his or her concerns, the possible consequences of a breach of their duty and give them the opportunity to make representations.

The arbitrator shall give the parties the opportunity to make submissions on the procedure to be followed in the arbitration. Thereafter, the arbitrator will determine that procedure.

3. Duty to conduct the arbitration within the designated parameters

The arbitrator must ensure that the award deals comprehensively with the issues remitted to arbitration. It is the duty of the arbitrator to arbitrate only on those issues upon which the parties seek resolution in terms of the remit to arbitrate.

The arbitration shall be conducted in accordance with the Arbitration (Scotland) Act 2010 and applying Scots law. The arbitration shall be conducted by the arbitrator within the scope of the FLAGS Arbitration Rules in force at the time of the commencement of the arbitration.

4. Duty of Confidentiality

Parties to arbitration must be confident that the arbitration process is private as between the arbitrator, the advisers and the parties to the arbitration. Information relating to the dispute, the arbitral proceedings and the award shall not be disclosed by the arbitrator

or the parties, other than in the limited circumstances provided for in the FLAGS rules. The arbitrator shall inform the parties of the obligations of confidentiality placed upon them by the FLAGS rules at the outset of the arbitration. The arbitrator must take reasonable steps to prevent unauthorised disclosure of any information relating to the dispute, the arbitral proceedings and the award by any third party involved in the arbitration.–The duty of confidentiality on the part of the arbitrator extends without limit of time after conclusion of the arbitration.

5. Duty of professional responsibility

A FLAGS arbitrator has a duty to maintain membership of the professional body appropriate to their profession (if any). A FLAGS arbitrator has a duty to adhere to the rules of professional conduct appropriate to the organisation of which that arbitrator is a member. In the event that the FLAGS arbitrator is sanctioned for professional misconduct by any professional organisation of which he or she is a member during the course of an arbitration in which that person is the arbitrator, this must be disclosed to the parties, their representatives and FLAGS.

6. Duty to charge fair and reasonable fee

The arbitrator is only entitled to charge fair and reasonable fees and expenses for the arbitration in accordance with the FLAGS rules. It is the duty of the parties to meet promptly the fees of the arbitrator and the arbitrator may only withhold the award on non-payment of fees or expenses in accordance with the FLAGS rules.