



Decisions relating to children - guidance for arbitrators regarding taking the views of the child

- FLAGS arbitrators must decide disputes “in accordance with the principles of Scots law” (rule 47(1)).

This means that arbitrators should have at the forefront of their minds *Section 11(7)(b) of the Children (Scotland) Act 1995*:

taking account of the child’s age and maturity, shall so far as practicable -

- (i) give him an opportunity to indicate whether he wishes to express his views;*
 - (ii) if he does so wish, give him an opportunity to express them; and*
 - (iii) have regard to such views as he may express*
- When dealing with an arbitration in relation to any part I Children (Scotland) Act issue, the arbitrator should consider the issue of the child’s views at the case management hearing. The parties/agents should be asked for their views as to firstly, whether the subject child is of sufficient age and maturity to express a view and secondly, the parties’ thoughts on whether the child would want to express a view. Assuming that the answer to the former question is yes, the next issue which arises is to establish whether the child is aware of the dispute between the parents and of the arbitration process and whether they want to express a view.
- Once those hurdles are overcome, step 2 is to ascertain whether the child wishes to express a view. The arbitrator will need to consider how to ascertain this - perhaps by writing to the child with a bespoke form F9 type letter or asking for the parent’s suggestions such as a school guidance teacher or other trusted neutral adult enquiring at this stage simply whether the child wants to have a voice in the arbitration. If the child is not so inclined then that is the end of the matter.

- If the child has views which they want to express then at the case management stage a procedure should be agreed or decided upon by the arbitrator to ascertain the child's views - a letter written with the support of a neutral adult, a solicitor appointed to speak to the child and report back, a child psychologist on an agreed remit, for example. While we do not rule out the option of the arbitrator speaking with the child him/herself we do not recommend this option and if embarked upon the implications must be very carefully considered.
- It should be noted that if information is disclosed by a child during the course of an arbitration which would lead a concern on the part of the arbitrator from a child protection perspective, then this would fall within the confidentiality exceptions in rule 26.