



## **Options for Appointment of Arbitrator**

We are conscious that there will be occasions when parties cannot agree on the identity of the arbitrator to be appointed; where it is desired to have an arbitrator appointed by an independent third party or where parties wish to have appointment via a panel process, where they have a degree of input in relation to the potential arbitrators.

There are innumerable options, but some work particularly well. FLAGS can assist with a number of different options which have been specifically honed for the needs of individuals accessing family law arbitration in Scotland through the FLAGS model. If you would like to discuss the options further contact us in the first instance through the “contact” section of our website – [www.flagsarb.com](http://www.flagsarb.com).

### Involving a Third Party:

Again, there are a number of options that can be employed here and FLAGS are happy to assist. There are three main options that we would recommend:

- (i) If you know the geographic area and approximate timescale that you seek for the arbitration you can contact FLAGS and ask us to email all members inviting them to put themselves forward for appointment if they would be in a position to assist. We will then prepare a shortlist for you. For example, if you knew that you wanted an arbitrator who would be prepared to travel to the north east and that you are wanting an urgent determination within the next two months if you tell us that we can provide you with a short list of arbitrators who would be prepared to consider appointment. You can then use that list to seek to agree the identity of an individual and/or then supplement that process with further, ‘blind’ selection criteria being used, for example, we are aware that in some cases it has been agreed that the names of the shortlisted individuals are simply subject to the usual jury selection process with names being placed in a goldfish bowl.

- (ii) A formal request by both parties can be made to the Chair of FLAGS asking her to identify a suitable arbitrator. On receipt of such a request the Chair will seek input from FLAGS members to, again, identify availability and willingness to act and will then confirm the identity of the individual to be appointed to parties.
  
- (iii) An approach that has been used successfully in commercial arbitration (and our thanks to Klaus Reichert SC of Brick Court Chambers in London for passing this option on to us) is that each party submit to the FLAGS Chair a ranked list of three individuals that they would wish to appoint. The lists are not disclosed to the other party. On receipt of the two lists the FLAGS Chair will, for each list, remove the bottom two individuals. That will leave either one (if the same person was listed first on both lists) or two individuals. In the former case- ie. both parties agreed on their first choice, that person is appointed. In the latter case, where there are two individuals left, the FLAGS Chair will then supplement that list of two people with one other individual, of her choice, to create a list of three. That shortlist is returned to the parties. The parties are obviously unaware of which of the named individuals were selected by the arbitrator and which by the other party. If parties cannot agree which of the shortlisted individuals is to be appointed they again rank the shortlist and return those lists to the FLAGS Chair, who will then appoint the individual who received the highest ranking overall, which failing by drawing lots in respect of the two remaining individuals.

#### Appointment of Named Arbitrator:

The contact details for all FLAGS arbitrators are on our website if you know the identity of the individual that you want to approach to accept appointment as arbitrator.

#### “Blind” Appointment:

All FLAGS arbitrators are experienced family Solicitors, Counsel or former members of the Judiciary. If parties want to make a completely “blind” appointment one option is to create a shortlist of possible candidates from our website making use of the algorithm that we employ to randomly shuffle our members’ photographs on the home

page of the website. It can be agreed, for example, that a screenshot will be taken of the home page at a specific time and arbitrators approached in order to see whether they would accept appointment.

A development of this approach can be adopted using the search criteria on our website, for example, if an arbitrator in a particular geographic area, or with particular background eg. Counsel, is desired.

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