

Challenging and Enforcing Family Law Arbitration Awards

The Law, the Process – and why the Human Touch Matters

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Family law arbitration has come of age. Where it was once viewed with a degree of suspicion by practitioners, a curious alternative to the court, it is now a well-established, respected route to resolution for parties navigating financial and property disputes following relationship breakdown. The award of a trained, accredited arbitrator can resolve in weeks what a court list might take years to determine, in private, at a pace the parties help to set.

What happens when things go wrong? What if a party disputes the award, or simply refuses to accept it? Perhaps more fundamentally what does good arbitration practice look like in a way that makes challenge or non-compliance less likely in the first place?

This article addresses all three questions.

Enforcing the Award: The Route to a Court Order

An arbitral award in a financial remedy case does not, in itself, carry the automatic force of a court order. The parties have agreed to be bound by it, but that agreement needs to be converted into a consent order under section 33A of the Matrimonial Causes Act 1973 to be enforceable against a reluctant party.

In the ordinary course of events, both parties consent to the court making an order in the terms of the award. A Form D81 is filed alongside the draft consent order. The court does not simply rubber-stamp the award, it will satisfy itself that the order is one it is appropriate to make, but in practice, where both parties consent and the award reflects a properly conducted arbitration, the court will generally make the order.

Notice to Show Cause. Where a party receives a Notice to Show Cause, they should act promptly. Request a copy of the application, the order and the D81 without delay. Time is not on your side.

When One Party Won't Consent: Challenging the Award

The binding nature of an arbitral award is, of course, its strength. It is also the point at which disputes most commonly arise. A party who is unhappy with the outcome may seek to resist the making of a consent order or challenge the award directly.

The procedural framework is set out clearly in A v A (Arbitration: Guidance) [2021] EWHC 1889, which every practitioner in this field should know well. The key points are these:

The route is FPR Part 30 — not the Arbitration Act 1996. This is a point that catches practitioners out. Family arbitration awards are not challenged under sections 67, 68 or 69 of the Arbitration Act (lack of jurisdiction, serious irregularity, and appeal on a point of law respectively). In theory, those routes remain available, but the Court of Appeal in Haley v Haley [2020] EWCA Civ 1369 made it clear that the normal route in family cases is the usual appellate route, FPR Part 30. The award is treated as if it were a final financial remedies order, and the challenge is treated as if it were an appeal from one.

The test is the same as any financial remedy appeal. The appellant must show that the award was wrong in law or principle, or plainly wrong; outside the generous ambit of the arbitrator's discretion. This is a high bar. Haley emphasised the finality of arbitration awards and the expectation that parties who choose arbitration will be held to its outcome save in very rare cases. The court expressly rejected the notion that arbitral awards should be more easily challenged than judicial decisions.

The Procedure in Practice

The procedural steps, as set out in A v A, are as follows:

Act immediately. Time runs from the date the award is handed down and includes that date. You have 21 days. If you are out of time, you will need permission to appeal out of time as well as permission to appeal. Do not delay.

File Form A if this has not already been done. An arbitral award falls within FPR PD 3A para 13(2)(b) as 'any agreement made in or in contemplation of proceedings for a financial remedy.'

Lodge a Form D11 using the Part 18 procedure within 21 days of the award in its final form. Annex the grounds of challenge. These must be drafted with care, in the same manner as grounds of appeal, each ground must identify whether it raises a challenge on a point of law, a challenge to a finding of fact, or an allegation of procedural irregularity (PD 30A, para 3.2(b)).

File with the D11: a skeleton argument of no more than 20 pages; a copy of the arbitral award; and a draft of the gatekeeper's order, using the pro forma within the standard orders compendium.

The gatekeeper will immediately issue an order disapplying the requirement to file a Form E or attend a first appointment but will allow the respondent to file a short skeleton argument in response with their suggested draft order.

Court triage. The papers are placed before a circuit judge authorised to hear financial remedy appeals not sooner than 21 days after issue. That judge will determine whether the permission to appeal test has been passed. If it has not, an order will be made in the terms sought by the respondent and there will very likely be a costs consequence. If permission is granted, directions will be given for an inter partes hearing.

Allocation. If either party considers the application should be allocated to a High Court judge, a written request should be made at the outset for the gatekeeper's consideration.

Costs follow the event. The general 'no order as to costs' rule in financial remedy proceedings does not apply to challenges of this kind see BC v BG (Financial Remedies) [2019] EWFC 7. Costs will usually follow the event. This is a significant deterrent to unmeritorious challenge, and rightly so.

Set Aside: A Note on Haley v Haley

The Court of Appeal in Haley v Haley confirmed that the court retains its overriding discretion under section 25 of the Matrimonial Causes Act 1973, the court's jurisdiction is not displaced by the Arbitration Act 1996. This means that if an application is made to set aside a consent order made in the terms of an arbitral award, the court may open up the case and exercise its discretion afresh under FPR rule 9.9A. Where a ground for setting aside is established, the court may set aside the whole or part of the order and give directions for a full rehearing.

This is not a broad invitation to relitigate. The threshold remains high. It does confirm that family arbitration operates within, rather than alongside the family court's jurisdiction, and that the court is never simply a rubber stamp.

The Soft Skills Dimension: Why the Human Touch Matters for Compliance

Here is something that procedural guides cannot capture, but that any experienced arbitrator will tell you: a well-conducted arbitration is its own best defence against challenge.

If the parties feel that they have been heard that the arbitrator took time to truly listen, engaged with the evidence, and made real space for each party's voice they are far more likely to accept the outcome, even when it does not go their way. Challenge and non-compliance are not only legal questions. They are, in many cases, human ones.

This is why the soft skills of arbitration matter so profoundly. Being aloof, too academic, or pompous is not going to win the day. Those who come to arbitration are paying for the privilege. We owe it to them to bring our very best in terms of legal analysis, yes, but also in terms of humanity.

The award is not an academic treatise. It is not an impenetrable document designed to impress other lawyers. It must be written in a style that all parties can understand a balance of law, critical reasoning, and clear, careful prose that tells the parties you have thought deeply about their case and that you understand how difficult the process has been.

The best judges always acknowledge how hard it is for the parties; they are scrupulously fair in the exercise of their judgment. An award should do the same. A thread of empathy, woven through a reasoned and fair determination, makes a profound difference to how the outcome is received and whether it is accepted.

The Bangalore Principles: A Framework for How We Conduct Ourselves

The soft skills argument is not merely a matter of professional preference. It finds its formal expression in the Bangalore Principles of Judicial Conduct (2002), the internationally recognised framework for the standards expected of those who exercise a judicial or quasi-judicial function. Arbitrators sit squarely within that category.

The Principles identify six core values and each one speaks directly to the conduct of family law arbitration:

Independence. The arbitrator must be free of any extraneous influence, pressure or interference. This is not simply a structural requirement; it means that the decision is genuinely yours, made on the evidence and the law alone, without deference to seniority, the expectations of instructing solicitors, or any other factor that has no place in the room.

Impartiality. Impartiality applies not only to the outcome but to the entire process by which the decision is reached. Parties from different backgrounds, with different resources, different legal representation, and different cultural contexts, must feel that they stood on equal ground before you. The appearance of impartiality matters as much as its substance, if one party feels the arbitrator was closer to the other, the award will be resented regardless of its legal correctness.

Integrity. Integrity is the bedrock. It means saying what you genuinely believe the law and the facts require, even when the answer is uncomfortable, complex, or unpopular with one or both parties. It also means intellectual honesty in how the award is written, not concealing the difficulty of a decision behind impenetrable language, but engaging with it squarely.

Propriety. Propriety in conduct and in appearance matters throughout. The way hearings are managed, the way the arbitrator engages with the parties and their representatives, the language used in correspondence and in the award: all of it contributes to whether the process is experienced as proper and fair.

Equality. The Bangalore Principles require equal treatment of all who come before the tribunal. In practice, this means active awareness of the differences between parties in power, in confidence, in cultural background, in the emotional weight they carry into the room. Treating everyone equally does not mean treating everyone identically; it means ensuring that no party is disadvantaged by factors that have nothing to do with the merits. This is where the cultural calendar matters. This is where local knowledge matters. Equality is not a passive state it requires attention.

Competence and Diligence. The final value, and perhaps the most straightforward: we must know our subject and work hard. An award that is legally sound, carefully reasoned, and written with clarity is the product of both. Competence without diligence produces rushed decisions. Diligence without competence produces long ones that are still wrong. We need both.

Taken together, the Bangalore Principles describe not simply what a good arbitrator avoids, but what a good arbitrator actively embodies. They are the formal architecture of everything the soft skills argument is driving at. Empathy without integrity is performance. Integrity without equality is selective. Equality without diligence is hollow. The six values work together and when they do, the result is a process that parties can trust, and an award they are far more likely to accept. I must thank Stephen Wildblood KC MCI Arb for enlightening me on the importance of the Bangalore Principles.

Top Tips: Getting the Practical Details Right

Know your venue. Think carefully about where the arbitration is being held. If housing need is central to the case, local knowledge of the market, the pressures and the area can be genuinely valuable. The right venue also signals to the parties that you have considered them specifically, not simply processed them.

Check the cultural calendar. If parties come from diverse backgrounds, verify religious and cultural festivals before you fix a hearing date. A clash with a party's most sacred day is not a minor inconvenience; it tells them exactly where they stand in your priorities. I speak from experience. I still hang my head in shame about a case in which we had carefully avoided Christmas and Yom Kippur but had entirely missed the parties' most important religious observance. They were paying for the privilege. We should have done better. We must always do better.

In Summary

Challenging a family arbitration award is possible, but the bar is high and the costs consequences of failure are real. The route is FPR Part 30 — act within 21 days, file properly, and do not underestimate the court's commitment to finality. For solicitors advising clients who are unhappy with an award, the starting point must always be an honest assessment of whether the test for permission to appeal can realistically be met.

For arbitrators: the best protection against challenge is not procedure alone. It is the quality of what we produce: a fair hearing, a listening ear, and an award written with clarity, rigour, and a genuine understanding of the human beings at the centre of the case.

That is what we are there for.

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