

Legal Roundup - October 2021

Arbitration

Arbitration became available for family matters in February 2012. It is a form of dispute resolution undertaken outside of court proceedings. It can be used where the parties agree to a suitably qualified arbitrator and understand that the arbitrator's decision will be final and binding – however they may still need to apply for a consent order to give legal effect to the decision made as the arbitrator does not have powers of enforcement

Once appointed the arbitrator can make case management decisions for example, decide on the evidence to be admitted and the nature of any final meeting. This can include evidence from a Cafcass officer.

Cases involving safeguarding issues are excluded from determination via the arbitration process.

If an arbitration commences after proceedings are issued Cafcass may already be involved. The decision as to whether an FCA should attend an arbitration process is one for the individual practitioner and they cannot be compelled to attend. The FCA should bear in mind that their attendance may facilitate a decision being made sooner than the court process can accommodate but there remains a risk that the parties will reach a decision that is not sustained, and a judge is asked to review the outcome.

MacKenzie Friends

MacKenzie Friends are individually formally recognised by the Court to offer support to unrepresented parties. They are not lawyers and there are limits on their role within proceedings. Please see below a link to a helpful document setting out the limitations of what a MacKenzie friend may/may not do. Furthermore, the Court's permission should be sought for the involvement of a MacKenzie Friend. However, a MacKenzie friend cannot in any event act on behalf of an individual or conduct litigation.

[Guidance note on McKenzie Friends](#)