

1 CROWN OFFICE ROW


What are the practical and legal implications of arbitration in family financial cases?

“Know your Bouncer”

David Balcombe QC

2018

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THE LEGAL IMPLICATIONS 
S v S (Arbitral Award: Approval) (Practice Note)
[2014] 1 WLR 2299,

Practice Guidance
(Family Court: Interface with Arbitration)
Sir James Munby P - [2016] 1 W.L.R. 59

DB v DLJ
[2016] EWHC 324 (Fam) – Mostyn J

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COURT OR ARBITRATION? 
What are the issues you want resolved

Is your financial dispute suitable for arbitration

What type of procedure do you want

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STEPS BEFORE ENGAGING YOUR ARBITRATOR 
Arrange a pre-engagement discussion

Fix the remuneration

Address the issue of cancellation charges

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SOME PROS AND CONS 

The sole case in the list
Timely delivery of Award
Confidentiality

v

Case management – not of the Arbitrator’s own motion
Costs – a judge doesn’t charge
Provision of the infrastructure

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KNOW YOUR BOUNCER 



Baroness Shackleton of Belgravia spoke in support of the Divorce (Financial Provision) Bill being promoted by Baroness Deech, on 11 May 2018 in the House of Lords

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Baroness Shackleton of Belgravia, speaking in support of the Divorce (Financial Provision) Bill being promoted by Baroness Deech, said the following on 11 May 2018 in the House of Lords

I have recently been reading a little book by George Mikes called *Wisdom for Others*. I alighted on a vignette about divorce. It was written in 1950, but could be equally applicable today. I quote from it:

“Once when I was about 12 I read a story in a boy’s paper about a big dance to which people were invited by huge posters with the announcement, ‘No Entrance Fee’. Many went, danced and enjoyed themselves then, on leaving, they were stopped at the door and requested to pay. ‘What do you mean? We were told there was no entrance fee’. ‘That’s quite true’, was the answer, ‘there was no entrance fee, but there is an exit fee’. I considered that story at the time silly. Silly indeed it was, but impossible? Look at the marriage laws of modern

civilised countries, especially in the Anglo Saxon ones. There is no entrance fee but there is a terrific exit fee—financially as well as emotionally”.

To develop this line of thought, say it was worse than simply finding out that no entrance fee did not necessarily mean no exit fee, and that you knew that, in all likelihood, you would be charged, but what? Imagine if the level of the exit fee depended on the discretion of the person employed on the gate to levy it—let us call him the bouncer. On some nights leavers could be favourably treated, with perhaps a reduction for those over a certain age, or for couples who danced beautifully. On other nights, leavers could face far harsher treatment: perhaps a surcharge for failing to consume any refreshments. Such random increases or reductions in the exit levy are dependent on the identity and discretion of the bouncer, and nobody knows who the bouncer is until they get to the exit. Without meaning to sound at all disrespectful, substituting the bouncer on the gate for the judge in the divorce court brings us close to the sorry state of the operation of the law in the field in which I have practiced for so long.

SOURCES OF INFORMATION

The Institute of Family Law Arbitrators

<http://ifla.org.uk/>

A Guide to the Family Law Arbitration Scheme

An Introductory Guide for Family Arbitrators,

Judges and Professional Referrers

<http://ifla.org.uk/divi/wp-content/uploads/Arbitrators.pdf>

The Arbitration Rules 2018

<http://ifla.org.uk/divi/wp-content/uploads/Financial-Scheme-Rules.pdf>

DAVID BALCOMBE QC

Call: 1980

QC: 2002

David Balcombe QC combines clinical and professional negligence and professional discipline work with specialist matrimonial finance work (including pre-nuptial agreements). Aside from his advisory and advocacy work, David undertakes what might loosely be described as ‘a variety of judicial or quasi-judicial tasks’. He is an accredited arbitrator on the panel administered by the Institute of Family Law Arbitrators (IFLA) and conducts arbitrations of family financial disputes. To provide “early neutral evaluation” in such disputes he also conducts private Financial Dispute Resolution hearings.

“Recommended for pre-nuptial agreements.” (Legal 500 2018)

“He never loses sight of what someone actually needs from a case and gives really good advice early on. He’s the person you go to if you want sane, objective judgement.” (Chambers UK Bar 2017)

“A matrimonial finance expert.” (Legal 500 2017)