



# Falcon Chambers Arbitration

**Gary Cowen**



## Falcon Chambers Arbitration

### The Case for Arbitration

- The problems with litigation
  - Lack of expertise
  - Procedure
    - Subjugation
    - Complexity
    - Rigidity
  - Costs
  - Delay
  - Publicity



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Problems with Litigation

- Lack of expertise
  - High Court criteria
  - County Court judges
    - Pressure on lists
    - Lack of relevant subject expertise
    - Lack of experience sitting at all
  - Specialist Tribunals
    - Creatures of statute (eg LVT)
    - Lack of broader judicial experience
    - A world apart



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Problems with Litigation

- Procedure
  - Subjugation
    - Litigant's interests compete with
      - Ministry of Justice
      - Court administration
      - Other litigants
  - Complexity
    - Proliferation of rules
    - CCMCs
    - Jackson reforms
  - Rigidity
    - Sanctions
    - Little scope for departure
    - Few choices
      - Disclosure
      - Single vs joint experts



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Problems with Litigation

- Costs
  - Procedural compliance vs lawyers
  - Costs budgeting
  - Front loading of costs
  - Applications
  - Effect of high costs
    - Access to justice
    - Cutting corners
    - Inequality of arms



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Problems with Litigation

- Delay
  - Procedural complexity
  - Pressure on lists
  - Tactical use of rules



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Problems with Litigation

- Publicity
  - Commercial sensitivity
  - Personal sensitivity



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Advantages of Arbitration

- Expertise
  - Area of expertise
  - Experience of arbitrator
  - Identity of arbitrator
  - No limits on type/value of case





# Falcon Chambers Arbitration

## The Case for Arbitration

### The Advantages of Arbitration

- Procedure
  - Ownership
    - Parties' agreement binds arbitrator
  - Simplicity
    - Only those steps which are relevant/necessary
  - Flexibility
    - Few rules
    - Case specific
    - Applications made simply
    - Dealt with by arbitrator => consistency
    - Free to bring in legal assessor when necessary



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Advantages of Arbitration

- Costs
  - Conventionally not a distinguishing factor
  - Sed quaere
  - Costs capping power (section 65)
  - Effective power to choose
    - model of arbitration
    - procedural approachreflecting
    - value of claim
    - means of parties



# Falcon Chambers Arbitration

## The Case for Arbitration

### The Advantages of Arbitration

- Speed
  - Choose model appropriate to dispute
    - Paper only/hearing
    - Amount of disclosure
    - Witness evidence
  - Applications direct to arbitrator
    - Letter/email
    - Telephone hearings
  - Fewer sanctions
  - Hands on consistent case management decisions



# **Falcon Chambers Arbitration**

## **The Case for Arbitration**

### **The Advantages of Arbitration**

- Privacy



# Falcon Chambers Arbitration

## The Service

- Why use FCA?
- The process
- Arbitrators
- Documents
- Pricing
- Service and Facilities
- Arbitration clerk



# Falcon Chambers Arbitration

## Why use FCA?

1. Dispute decided by a specialist. No more hoping for the "right" judge. All members of the FCA are experts in property law.
2. Fast and efficient. No court lists or "bumped" hearings.
3. Simplicity. Anyone can use it. No court forms or Jackson-style cost budgeting. Simple documents and procedures to match.
4. In suitable cases, we will act on a fixed fee basis. There are no hidden Surprises.
5. An arbitration decision is binding.



# Falcon Chambers Arbitration

## The process

1. Consult with the other side and suggest arbitration.
2. Existing arbitration agreement, or agree to arbitrate after dispute has arisen.
3. Contact our Arbitration Clerk.



# Falcon Chambers Arbitration

## Arbitrators

- All members of Falcon Chambers accept instructions to act as arbitrators, legal assessors or independent experts.
- All FCA Arbitrators are members of Falcon Chambers.
- All FCA Arbitrators are property specialists.
- The FCA Arbitrators are all experienced in dispute resolution, as arbitrators, experts, or part-time judges.
- Many are Fellows of the Chartered Institute of Arbitrators.





# Falcon Chambers Arbitration

## Arbitrators

Derek Wood QC

Nicholas Dowding QC

Jonathan Karas QC

Joanne R. Moss

Gary Cowen

Anthony Tanney

Emily Windsor

Jonathan Gaunt QC

Guy Fetherstonhaugh QC

Jonathan Small QC

Edward Cole

Janet Bignell QC

Caroline Shea

Stephanie Tozer

Kirk Reynolds QC

Timothy Fancourt QC

Stephen Jourdan QC

Barry Denyer-Green

Martin Dray

Catherine Taskis

Edward Peters



# Falcon Chambers Arbitration Documents

Our standard documents:

Model Arbitration Agreement

The FCA Arbitration Rules

The FCA Model Arbitration Directions

The Protocol for Applications for Consent to Assign or Sublet:

Clerking Protocol

Falcon Chambers Arbitration Model Arbitration Clause



# Falcon Chambers Arbitration

## Pricing

The cost of resolving your dispute through FCA will depend upon its complexity and the seniority of the FCA member you wish to appoint.

Our Arbitration Clerk will be able to help you select the most appropriate FCA member for your dispute, and discuss fees with you.

In many cases, whether you wish to appoint a silk or senior junior, FCA will be able to resolve your dispute on a fixed fee basis.



# Falcon Chambers Arbitration

## Pricing examples

Two basic fixed fee models:

Category A: (senior junior, £3,000 + VAT)

- No more than 1 lever arch file of single sided paper, including submissions and authorities
- Paper only
- Reasoned written award within 20 working days

Category B: (senior junior, £6,000 + VAT)

- No more than 3 lever arch files of single sided paper, including submissions and authorities
- If required, one day's hearing
- Reasoned written award within 40 working days or 20 working days of hearing



## **Falcon Chambers Arbitration**

### **Services and Facilities**

We can accommodate some arbitration hearings at Falcon Chambers or at a nearby location in central London.

We can, if desired, make the necessary bookings on your behalf, passing the costs directly onto you.

Alternatively, if you have a preferred location (whether in central London or elsewhere), the Arbitrator will be happy to travel to your venue of choice.

Our Arbitration Clerk will be able to advise you as to the number of rooms required and discuss any other relevant considerations.



## **Falcon Chambers Arbitration**

### **Arbitration Clerk**

The FCA Arbitration Clerk is Martyn Nicholls. He is the first point of contact for anyone wishing to use FCA or wishing to know more about the service.

Martyn is a very experienced barristers' clerk with over 20 years experience in three sets of Chambers including Falcon. He is fully aware of the special responsibilities applicable to an arbitration clerk, and the importance in particular of carrying out stringent conflict checks, and maintaining strict Chinese walls and confidentiality.

For a summary of the principles to which Martyn will adhere, please see our Clerking Protocol.