

CHOOSING OUR ARBITRATION SCHEME

How the LRA can help



Labour Relations

A G E N C Y

Improving Employment Relations

The LRA Arbitration Scheme provides an alternative to going to a tribunal hearing for resolving a case of alleged unfair dismissal.

This leaflet gives a brief summary of the key features of the scheme, but before you choose between the Scheme and a tribunal, you should either talk to an LRA conciliator or take advice from an independent adviser.

Detailed information on the arbitration process, together with advice on preparing a case for arbitration, is contained in the booklet *The LRA Arbitration Scheme for the resolution of unfair dismissal disputes – a guide to the Scheme* (the LRA Guide to the Scheme). Copies of this Guide are available from both LRA offices.

Reference to “tribunal” throughout this document refers to the Industrial Tribunals and The Fair Employment Tribunal for Northern Ireland unless otherwise stated.



Introduction

Why should I read this leaflet?

If you are involved in a current claim for alleged unfair dismissal you may be interested in the LRA scheme for resolving these claims.

The Scheme is:

- speedy
- informal
- confidential
- non-legalistic.

Why has the LRA Arbitration Scheme been introduced?

The scheme has been introduced to give people a choice in cases of alleged unfair dismissal. Many people think that tribunals have become too legalistic, costly and time-consuming. Some people don't like the publicity that cases attract.

Arbitration is a tried and tested way of settling disputes often used by employers, trade unions or their representatives.

The number of claims to tribunals has been increasing rapidly over recent years and now annually, approximately 6,000 people make a complaint. However, four out of every five cases never reach a hearing as they are settled or withdrawn first, often with the LRA's help.



What is different with the LRA Arbitration Scheme?

Instead of having your case heard at a tribunal an independent arbitrator decides the case and makes a judgement.

The main differences between a tribunal and the new Arbitration Scheme are:

| Tribunal | Arbitration Scheme |
|--|---|
| Public hearing held at a tribunal office/local courthouse | Private hearing held at an LRA office |
| Hearing normally completed within a day | Hearing normally completed within half a day |
| Heard by a legally qualified Chair, usually along with a panel of two other members | Heard by a single LRA arbitrator who is experienced in employment relations |
| Witnesses cross-examined under oath as in a courtroom | You are asked questions informally by the arbitrator |
| Legal representatives act for the parties in large numbers of cases | Legal representatives may be present but are given no special status |
| If the dismissal is judged unfair the remedies may be reinstatement, re-engagement or compensation | Same as tribunal – the awards are based on same criteria and reflect the same levels of payment |
| Hearing and results are public | Hearing and results are private and confidential |

Is the Scheme for me?

You can choose it if:

- ✓ the claim is purely for alleged **unfair dismissal** and nothing else (any other issues in dispute must be settled, withdrawn or heard by a tribunal)
- ✓ **both parties** agree to opt for the scheme (have you talked to the LRA about settling the dispute before the need for arbitration?)
- ✓ you have considered carefully the **advantages and disadvantages** of the tribunal and arbitration options
- ✓ the employer lives or carries on business in **Northern Ireland**

You can't use the scheme if:

- ✗ there are questions about the alleged unfair dismissal claim itself – e.g. whether a dismissal actually took place, whether the employee has enough qualifying service to bring the claim, etc.
- ✗ there are complex legal issues – e.g. the employer has been taken over or changed for other reasons, etc.
- ✗ the case raises questions of European Law – e.g. sex discrimination or working time regulations



How the Arbitration Scheme works

How do I apply?

These are the steps you need to take:

- a complaint of unfair dismissal is made to a tribunal or the employee states that they could potentially make such a claim
- both parties sign an **Arbitration Agreement**. This is either done via the LRA (a Conciliated Agreement) or via an independent adviser (a Compromise Agreement)
- both parties sign a **waiver**. They agree to let go certain rights they would have at a tribunal, e.g. the right to a public hearing or to cross-examine witnesses
- all the paperwork is sent to the LRA **as soon as possible and within six weeks** of signing an agreement.

Once the Arbitration Agreement is signed the unfair dismissal claim can no longer be heard by a tribunal – you have made your choice at this point. The arbitrator's decision is final and binding.

Help with wording of an agreement and the full terms of reference for the arbitrator can be found in the detailed LRA Guide to the Scheme (see back of this leaflet).

How do I get ready for an arbitration hearing?

Once the LRA has been told about your choice through an agreement to go to arbitration we will appoint an experienced arbitrator. The LRA Arbitration Secretary will then fix a hearing date at one of its offices. You should let the LRA know if you have any particular needs to help you at the hearing such as a signer, interpreter, etc. The hearing will take place as soon as possible depending on the availability of the parties. Parties must apply in writing within 14 days if they wish to have the date changed.

In getting ready for the hearing we suggest the following is good practice:

- both parties should give the LRA Arbitration Secretary a **statement of their case** before the hearing. This will be copied to the other party (The LRA Guide to the Scheme gives advice on what this should contain);
- both parties should **help each other** in providing documentation for their cases;
- you can **call witnesses** to support your case (so make sure they know and are free to come);
- you can bring **anyone you wish** to help you represent your case – but legal representatives will be given no special status.



What happens at the hearing?

The hearing will be conducted by the arbitrator in the following way:

- **informal** – the parties will be given plenty of opportunity to outline their arguments although the format of the hearing is flexible and set by the arbitrator
- **no legal procedure** – no one will be asked to swear an oath and the arbitrator will not take account of strict law or case law except in cases involving European Law (the arbitrator may call on a legal advisor if European Law issues come up) or the Human Rights Act 1998
- **questioning** – the arbitrator will question the parties (and the witnesses) but there will be no cross-examination
- **helpful** – the arbitrator will help if you are having difficulty in fully explaining your case.

You should be aware that:

- **you cannot claim expenses** for attending an arbitration hearing – although these may be included in an award as a form of compensation if the dismissal is found to be unfair
- **no further evidence** will be taken after the hearing.

How is an award made?

The arbitrator's decision is called an **award**. In reaching a decision about whether the dismissal was fair or unfair he or she will take account of the following:

- the standard terms of reference of the scheme
- guidance given in the LRA Code of Practice *Disciplinary and Grievance Procedures*
- their own knowledge and experience of good employment relations
- the relevant evidence of the case.

If the arbitrator decides the dismissal was unfair they may award re-instatement, re-engagement or compensation. They will make this judgment in the same way as tribunals, taking into account the views of the parties and what is practicable and just. Compensation will be calculated in a similar way as tribunals.



Is the award legally binding?

The award is:

- **binding** – there is no right of appeal (except in very limited circumstances as explained in the LRA Guide to the Scheme)
- **enforceable** by courts in Northern Ireland
- **private** – the results are confidential to the parties and the LRA.

How do I find out more?

If you currently have a case of alleged unfair dismissal which has not been resolved either with the assistance of an LRA settlement or through your independent adviser via a compromise agreement, speak to the LRA conciliator dealing with the complaint or to your independent adviser.

Full details about the scheme are contained in *The LRA Arbitration Scheme for the Resolution of Unfair Dismissal Disputes – a Guide to the Scheme* (the LRA Guide to the Scheme). Copies of this Guide are available from the LRA offices listed below:

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Flowchart summarising the Arbitration Process under the Scheme



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