

# AN INTRODUCTION TO THE LRA ARBITRATION SCHEME



Labour Relations  
AGENCY  
*Improving Employment Relations*



## Introduction

### Why should I read this booklet?

This booklet is designed to answer the most frequently asked questions about the LRA Unfair Dismissal Arbitration Scheme. The Scheme provides an alternative to going to a tribunal for resolving a case of alleged unfair dismissal.

The information given provides a basic introduction, but before deciding whether to use either the Scheme or the tribunal route, the parties should consult an LRA conciliator or their independent adviser for a full explanation of the implications of using the Scheme.

Detailed information on the arbitration process and the duties that it places on those using it, 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." Copies of this Guide are available from the LRA offices (see details at the back of this booklet).

### What is the LRA Arbitration Scheme?

The LRA Arbitration Scheme is an alternative, other than going to a Tribunal, in which employers and their former employees can have a complaint of alleged unfair dismissal decided. The LRA was given powers to draw up the Scheme, which has been approved by the Department for Employment and Learning, in the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998.

### Why was the Scheme introduced?

The Scheme was introduced because it was felt that there was a need for a speedy, informal, private and generally less legalistic alternative to a tribunal. The Scheme is also designed to provide a final outcome to cases more quickly as there are very few grounds for challenging the arbitrator's award and appeals can only be made in limited circumstances.

### What is arbitration?

Arbitration is a method for deciding between two conflicting claims in which an independent person's decision is binding upon the parties.

### What happens in an LRA arbitration?

In an LRA arbitration the arguments put by both parties are heard by an arbitrator who, by using their knowledge, skills and experience, will come to a decision on whether the dismissal was fair or unfair. The arbitrator's decision is issued in the form of an award and is a binding judgement of the parties' dispute.

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



## **Who conducts the arbitration?**

The hearing will be conducted by arbitrators who were selected through a transparent, accountable and non-discriminatory process. They were chosen for their knowledge, skills and employment relations experience. The arbitrators are appointed on a case by case basis and are not directly employed by the LRA.

## **My tribunal application is for unfair dismissal but also for unpaid wages. Can I use the Scheme to decide them both?**

No. The arbitrator is only allowed to hear complaints of alleged unfair dismissal. If you want to have the unfair dismissal case heard by an arbitrator, the claim for unpaid wages will have to be settled separately by agreement, be withdrawn or be heard by an industrial tribunal. An LRA conciliator or your independent adviser can advise you on how this can be done.

## **Can I insist that my complaint is heard by arbitration under the Scheme?**

No. There has to be agreement by both parties, in writing, that they wish the complaint to be heard by an arbitrator.

## **When to consider using the Scheme**

### **Are there circumstances in which the Scheme might not be suitable?**

Yes. The Scheme should not be used where there is a dispute between the parties over whether or not the tribunal has jurisdiction to hear the unfair dismissal case, for example, whether the applicant was an employee of the employer; whether the employee had the necessary period of service to bring a claim; whether a dismissal actually took place; or whether the claim was made within the specified time limits. When agreeing to go to arbitration under the Scheme, both parties are agreeing as a condition of the Scheme that no such jurisdictional issue is in dispute between them. The arbitrator will not, therefore, deal with such issues, even if they are raised by the parties, during the arbitration process.

Additionally, if the parties are unclear about complex legal issues, for example, whether or not the employer is responsible for the employee's service with another employer because of the operation of the Transfer of Undertakings Regulations, the Scheme should not be used.

If any jurisdictional dispute exists, or if the parties are unclear over complex legal issues, the case, if it cannot be settled or withdrawn beforehand, should be heard by a tribunal, as the arbitrator will not rule on such disputes or issues.

The Scheme is not intended for cases which raise questions of European Community (EC) law, such as unfair dismissal claims which are based on an EC right, including Sex Discrimination and Working Time.

Parties in such cases are strongly recommended to consider pursuing such claims in a tribunal rather than at an arbitration hearing.

## Entry into the Scheme

### **Both parties would like the case heard by an arbitrator: how do we go about it?**

Once both parties have signed an agreement that they wish to go to arbitration under the Scheme, the unfair dismissal claim can no longer be heard by a tribunal. It is important, therefore, that all the parties involved are fully aware of the effect of referring their dispute to arbitration, and know how the arbitration process works. To ensure that parties are fully informed an agreement to go to arbitration can only be reached with the assistance of an LRA conciliator, or through a "Compromise Agreement" following advice to the employee from a relevant independent adviser. The Compromise Agreement must conform to the requirements contained in the Employment Rights (Northern Ireland) Order 1996.

### **What will the agreement to go to arbitration say?**

The agreement to go to arbitration must be in writing, and must state that the parties have agreed to submit the unfair dismissal dispute to arbitration in accordance with the LRA Scheme. In doing so the parties are accepting all the provisions of the Scheme, including the terms of reference, and that the arbitrator's decision is final and binding. They are also accepting the way in which the arbitration and the hearing itself, as explained in the Guide to the Scheme, will be conducted. Suggested wording for inclusion in Arbitration Agreements is included in the Guide to the Scheme. Parties cannot in their agreements ask the arbitrator to do anything, or make any award, which is not covered by the Scheme.

### **What other forms will need to be completed?**

Both parties must sign a waiver form to waive certain rights that they would otherwise have if they had referred their dispute to a tribunal, for example the right to have a public hearing and to cross examine witnesses. Signing the waiver confirms that the parties understand and accept the arbitration process.

### **We want to settle a claim for unpaid wages at the same time as making an agreement for the unfair dismissal claim to go to arbitration: can this be done?**

Yes, but the settlement of the unpaid wages claim must be recorded as a separate settlement from the agreement to go to arbitration. Both can be included in the same document or form. However, to avoid any confusion, it is recommended that the agreement to go to arbitration is recorded on a separate document.

### **Who is responsible for telling the LRA that we have agreed to have our case heard by an arbitrator?**

All concluded agreements to go to arbitration must be sent to the Arbitration Secretary at the LRA Head Office (see address at the back of this booklet) as soon as possible and certainly within the time limit set out below. To avoid delay, parties or their representatives should ensure that the agreement forms, the waivers, copies of the IT1/FET1 and IT3/FET3 forms (where these have been completed) and any supporting documentation are forwarded to that address. Where an agreement to go to arbitration has been reached with the assistance of an LRA conciliator he/she will forward the completed documents to the Arbitration Secretary at the LRA Head Office.



### **Is there any time limit for notifying the LRA?**

This must be done within six weeks from the date on which the agreement to go to arbitration was concluded (the date it was signed or if signed by different people on different dates, the date of the last signature), although to avoid delay parties should send their agreement as soon as possible. The LRA has no obligation to provide a hearing under the Scheme if it is notified after this period, and if the LRA declines to accept a request for arbitration because it has been notified too late, the former employee may not then be able to have the case heard by a tribunal.

### **Having agreed to go to arbitration, can the agreement be withdrawn?**

Yes, but only in some circumstances. The employee is free to withdraw from the arbitration process at any time by writing to the LRA Arbitration Secretary. In doing so, however, they must understand that they may not be able to re-open the original claim to a tribunal, since this has been disposed of by the agreement to go to arbitration.

Having agreed to go to arbitration, the employer cannot unilaterally withdraw their agreement to do so.

### **Can parties agree to settle the case before or during the arbitration hearing?**

Yes. Parties may agree to settle the case and ask the arbitrator to make an award based on the terms of their settlement, but the arbitrator will do this only if the settlement terms cover items that the arbitrator has the power to award under the Scheme. Alternatively, the parties can settle the dispute on any terms that they wish, and then the employee can write to the LRA Arbitration Secretary asking to have the case withdrawn.

## **Arranging an arbitration hearing**

### **What does the LRA do when it is notified of an agreement to go to arbitration?**

Once the LRA has been notified of an agreement to go to arbitration and the agreement has been accepted, an arbitrator will be appointed by the LRA from its panel and a hearing date will be arranged. The Scheme does not allow a decision to be made on written evidence alone.

### **Will the parties be allowed to choose the arbitrator appointed to hear the case?**

No. However, if a party feels that there are exceptional circumstances which may affect the named arbitrator's ability to be impartial, for example because they have a connection with one of the parties, the LRA Arbitration Secretary should be contacted immediately.

### **Where will the hearing be held?**

The hearing will be held in the LRA Head or Regional Office. In exceptional circumstances alternative venues may be considered. Any formal application for a venue other than the LRA offices must be made, in writing, with reasons, to the LRA within 14 days of the date of the letter notifying of the hearing arrangements. Such applications will be determined by the LRA after all parties have received a copy of the formal application and been given a reasonable opportunity to respond. The LRA will meet reasonable costs of hiring premises where this is necessary.

### **What if either party has any particular requirements/needs?**

If either party has any particular requirements, such as the need for wheelchair access or mobility concerns, they should inform the LRA as soon as possible so that these can be taken into account.

### **What happens if the proposed date for the hearing is unsuitable?**

Parties are expected to co-operate by agreeing a date with the arbitrator, through the LRA, for a hearing to take place within two months of the LRA being notified of the agreement. If a date cannot be agreed with the parties within that period, the arbitrator has the power to set the date for the hearing. Once the arbitrator has set a date parties cannot appeal against it, although if the date is unsuitable they can apply in writing within 14 days to the arbitrator via the LRA to ask them to review their decision to hold a hearing on that date. If the application for review is rejected, the original arrangements will stand.

### **What happens if one or both parties does not attend the hearing?**

If one or both of the parties does not attend the hearing the arbitrator has the power to adjourn the hearing or to proceed and take into account any written submissions or documents. Therefore, unless it has been agreed that a new date will be found, the hearing may still go ahead. If it is the employee who does not attend, the arbitrator may write to them requesting an explanation. However, if the arbitrator is not satisfied with the explanation he/she can then dismiss the case.

### **Can parties claim any expenses in connection with attending the hearing?**

No. It is a provision of the Scheme that both parties will meet their own travelling expenses, and those of anybody else whom they call to the hearing to help them in the presentation of their case. Also, no loss of earnings will be payable by the LRA to anyone involved in the arbitration process.

However, if the arbitrator finds that a dismissal was unfair, they have the power to include in the award of compensation, a sum to cover costs incurred by the employee personally in attending the hearing e.g. loss of earnings and travelling costs.



## Preparing for the arbitration hearing

### **Should parties give each other or the arbitrator details of their respective cases before the hearing?**

Yes. Arbitrators can reach their conclusions only after considering all the facts and arguments put to them by the parties. It is, therefore, in the interests of each party to do themselves justice by providing, if possible, a clearly set out brief written statement of their case (this is in addition to the IT1/FET1 and IT3/FET3 where they have been completed). Information on what this should contain, and when it should be sent to the LRA to copy to both the arbitrator and the other party, will be sent to each party once their application has been received by the LRA Arbitration Secretary and is also contained in the Guide to the Scheme. However, if a party is unable to produce a written statement, this will not count against them when the arbitrator is making their decision. Arbitration works most effectively where both parties have details of each other's arguments before the hearing, and, no advantage is gained by refusing to exchange statements and other supporting documents, or by trying to hold back information.

### **Can parties call 'witnesses' at the hearing?**

Each party should consider whether they wish to have present at the hearing anybody who could, for example, support from their personal experience, statements about events leading up to the dismissal, speak about their role in any disciplinary proceedings, or inform the arbitrator about the organisation's rules, practices or procedures, and if relevant, those of the industry or sector concerned. In some cases it may be sufficient to submit a signed statement from the person containing their account of events, rather than ask them to attend the hearing.

### **Does the employer have to allow anybody still working for them time off from work to be at the hearing?**

Employers should co-operate by allowing current employees whom their former employee wishes to call, and who can provide relevant information which will be of help to the arbitrator, time off from work to attend the hearing. Again the arbitrator has no power to order anybody to attend the hearing, but it may count against the employer if they have unreasonably refused time off in these circumstances.

### **Can parties be represented at the hearing?**

Yes. Parties can bring anyone they wish to help them to present their case, although no special status will be given to legal representatives. Parties or their representatives will not be allowed to cross-examine the other party or anybody that they have called to help them put their case. The arbitrator has the right to address questions directly to either party, and to anybody else who is attending the hearing to speak on their behalf.

## Procedure at the hearing

### What happens if particular assistance is required at the hearing?

If parties require any particular assistance at the hearing such as a signer, communicator, etc, they should inform the LRA Arbitration Secretary as soon as possible in order that, with the agreement of the arbitrator, the appropriate arrangements can be made. In these circumstances the LRA will pay reasonable costs for any such assistance.

### Who will be present at the hearing?

Each party, plus anybody either party wishes to call to speak on their behalf or help them to present their case, can attend the hearing. The hearing will be in private. In addition to the arbitrator the LRA's Arbitration Secretary or their deputy will be present. An arbitrator in training may, with the consent of the parties, sometimes be present. In cases where the arbitrator has requested the appointment of a legal adviser to advise on matters of EC law or the Human Rights Act 1998 (where these are relevant to the case), the adviser may attend the hearing.

### How long will the hearing last?

Hearings will normally last about half a day, although the arbitrator does have power to adjourn if they feel that this is required. In extreme cases, where the arbitrator feels that there are liable to be considerable differences between the parties, for example over the provision of documents or the availability of anybody whom they wish to call to speak at the hearing, the arbitrator has the power to call a preliminary hearing to attempt to resolve the matter.

### How will the arbitrator conduct the hearing?

Hearings are informal with the arbitrator deciding all procedural and evidential matters during the hearing. The rules of evidence which apply in the courts will not apply in the arbitration hearing. Both parties will be given a full opportunity to outline their arguments, to refer to any relevant documents submitted by themselves or the other party, and to call those they wish to speak on their behalf. The arbitrator will not ask such people to swear an oath or affirmation. Usually one person presents each party's case, but other members of each party's team may be asked to give supporting statements and be questioned by the arbitrator.

The arbitrator will adopt a questioning approach to the hearing and, although there will be no direct cross-examination, one party may suggest questions which the arbitrator might put to the other party. The arbitrator will also be able to assist any party who is having difficulties in fully explaining their case. Each party will be allowed to summarise the main points they wish to be considered by the arbitrator in coming to a decision. A fuller description of the way in which arbitration hearings are conducted is contained in Appendix 4 of the Guide to the Scheme.



## **Are parties able to put further evidence to the arbitrator once the hearing is over?**

No. No further evidence will be accepted after the hearing.

## **The arbitrator's award (decision)**

### **How will the arbitrator decide the outcome of the case?**

The arbitrator will decide each case in accordance with the standard terms of reference. These cannot be varied by either party. The arbitrator will carefully consider the arguments and information presented by both parties before and during the hearing. They will look at all the circumstances of the case in the light of the guidance contained in the LRA Code of Practice 'Disciplinary and Grievance Procedures' (copies of which are available for purchase from the LRA or free from the LRA website). The arbitrator will also make use of their own knowledge and experience of good employment practice. Having considered all these factors the arbitrator will come to a decision as to whether the dismissal was fair or unfair. This decision will not be based on legal tests or precedent, except in cases where EC law or matters under the Human Rights Act 1998 are relevant. The arbitrator will not decide what they would have done in the same circumstances and say that the employer should have done the same.

### **What will the arbitrator award if they decide that the dismissal was unfair?**

In the event that the arbitrator finds that the dismissal was unfair, they have the power to award reinstatement or re-engagement with or without compensation. If reinstatement or re-engagement are not sought as a remedy by the former employee, or are not considered appropriate by the arbitrator, they can award compensation.

### **What will the arbitrator take into account before deciding whether or not to award reinstatement or re-engagement?**

The arbitrator will take into account the employee's wishes; the practicability of the employee returning to work for the employer; and, in cases where the employee was partly to blame for the dismissal, whether or not it would be just to make such an award. Where an award of reinstatement or re-engagement is made the arbitrator will take into account items that tribunals specify when making such awards, and the employee's continuity of employment will be preserved in the same way that it is by tribunal awards.

### **How will awards of compensation be calculated by the arbitrator?**

The amount of any award of compensation will be on the basis of what the arbitrator considers to be just and equitable in all the circumstances of the case and will take into account any statutory limits on compensation imposed on tribunals. Compensation will consist of basic and compensatory amounts, based on the same general principles as those made by tribunals. Details of these principles are contained in the Guide to the Scheme.

### **What happens if the employer will not comply with the arbitrator's award?**

Awards of compensation are enforceable in the High Court or Belfast Recorders Court. Where an employer does not pay compensation awarded by the arbitrator the employer will be required to pay simple interest calculated in the same way as applies to tribunal awards.

Where an arbitration award for reinstatement or re-engagement of the former employee has been made and not complied with, they should refer the matter to a tribunal for appropriate compensation, in the form of an additional award, to be made as if the decision had been made by the tribunal itself.

### **How soon after the hearing will parties know the arbitrator's award?**

The arbitrator's award will be in writing and will include reference to the main considerations which were taken into account in reaching the decision that the dismissal was fair or unfair. The award will be issued simultaneously by the LRA to both parties or their nominated advisers within three weeks of it being signed and dated by the arbitrator.

### **Will the arbitrator's award be published?**

No. Awards will not be published by the LRA or lodged with the tribunal. However, the LRA maintains confidential records of cases, decisions and awards for monitoring and evaluation purposes, and may publish general summary information concerning the Scheme, but without identifying individual cases.

## **Appeals**

### **Can parties appeal against the arbitrator's award?**

There is no appeal on a point of law or fact in respect of the arbitrator's award, which is final and binding on the parties. The only exception to this is a narrow one with respect to points of EC law and matters under the Human Rights Act 1998.

### **Are there any other grounds on which parties can challenge the arbitrator's award?**

Challenges may only be made in very limited circumstances:

1. on the grounds of substantive jurisdiction, such as the validity of the Arbitration Agreement, and whether the dispute was within the scope of the Scheme
2. on the grounds of serious irregularity, which has caused or will cause substantial injustice to the party/ies making the challenge, for example, in respect of the conduct of the arbitrator, the hearing process or the way in which the dispute was determined.



The Scheme itself and Guide to the Scheme contain more detailed information about the grounds on which appeals and challenges may be made, time limits, which courts to apply to, etc.

## Further information

### **Where can further information about the Arbitration Scheme be obtained?**

If parties currently have a case of alleged unfair dismissal which has not been resolved by either an LRA settlement or a compromise agreement, they should first speak to the LRA conciliator dealing with the case, or in the case of a former employee who is considering a compromise agreement, their independent adviser.

If the case of alleged unfair dismissal has been resolved by an agreement between the parties to go to arbitration under the Scheme, they should contact the LRA Arbitration Secretary at the address below.

Labour Relations Agency  
2-8 Gordon Street  
BELFAST BT1 2LG

Tel: 028 9032 1442 Fax: 028 9033 0827  
TDD (Textphone): 028 9023 8411  
E-mail: [info@lra.org.uk](mailto:info@lra.org.uk)  
Website: [www.lra.org.uk](http://www.lra.org.uk)





**Labour Relations Agency**  
*An Introduction to the LRA Arbitration Scheme*

---



### **Labour Relations Agency**

**Head Office:** 2-8 Gordon Street, Belfast BT1 2LG

Tel: 028 9032 1442 Fax: 028 9033 0827 TDD: 028 9023 8411

E-mail: [info@lra.org.uk](mailto:info@lra.org.uk) Website: [www.lra.org.uk](http://www.lra.org.uk)

**Regional Office:** 1-3 Guildhall Street, Londonderry BT48 6BJ

Tel: 028 7126 9639 Fax: 028 7126 7729

E-mail: [info@lra.org.uk](mailto:info@lra.org.uk) Website: [www.lra.org.uk](http://www.lra.org.uk)

ISBN 1-904401-02-3