

How the LRA can help

Arbitration Explained



Labour Relations Agency

The Labour Relations Agency is an independent, publicly funded organisation.

Our job is to promote good employment relations in Northern Ireland.

If you have a disability, please let us know if we need to make any special arrangements for you to use our service.

If you need to use an interpreter, we can arrange for one to be available.

This booklet can also be made available in alternative formats.

Please contact the Arbitration Secretary:

- on 028 9033 7407
- or email arbitration@lra.org.uk
- or visit our website www.lra.org.uk

Arbitration

Arbitration involves an independent and impartial person called an arbitrator (acting alone or chairing a panel) being appointed by the Labour Relations Agency to make a decision on a dispute. This decision is based on the evidence presented by the parties to that dispute.

Arbitration is entirely voluntary. All parties to the dispute must agree to go to arbitration. The parties should also agree in advance that they will abide by the arbitrator's decision.

This booklet explains the range of arbitration services available from the Agency. Please contact the Arbitration Secretary for information on how to access these services – the contact details are set out on the back of this booklet.

What is arbitration?

Arbitration is an alternative to a court of law or tribunal. It is a non-legalistic process, with no swearing of oaths. Arbitrations are conducted in private rather than in public.

The arbitrator will consider the written and oral submissions of the parties at a hearing. Questions are asked by the arbitrator to clarify points. The parties may also ask questions of each other through the arbitrator (in other words, this is not a cross-examination as at a court or tribunal). The arbitrator then makes a decision and, where appropriate, an award that the parties agree to accept and implement.

Arbitration is often used in collective employment related disputes. For example, a trade union might be in dispute with an employer over a pay rise. The union could agree with the employer to ask the Agency to appoint an arbitrator to hear each side's case and then make an independent and impartial decision.

Arbitration can also be used to settle individual disputes. For example, an individual and an employer might decide to go to arbitration to avoid the stress and expense of an employment tribunal. However, as with any workplace dispute, it is important to make use of all internal procedures to resolve the issue in question, before proceeding to arbitration.

The Agency has a panel of arbitrators, selected on the basis of their knowledge of employment law, adjudication skills and employment relations experience. However, they are independent of the Agency and, therefore, not its employees. The arbitrators are appointed to arbitrate on disputes on a case by case basis. Checks are made to ensure that they have no conflicts of interest in respect of a particular dispute.

By committing to arbitration the parties give authority to the arbitrator to impose a settlement on them. Therefore, the process of arbitration will always result in a settlement.

As arbitration is entirely voluntary, the Agency has no power to compel an unwilling party to take part.

The range of arbitration services available

There is no charge for using the Agency's arbitration services.

The Agency offers the following range of arbitration services:

Industrial arbitrations – these are arranged by the Agency in accordance with its statutory powers under Article 84 of the *Industrial Relations (Northern Ireland) Order 1992*.

In accepting such arbitrations the Agency must be satisfied that any negotiating procedures have been exhausted or are unlikely to resolve the issue, and that the dispute cannot be settled by conciliation. This service is provided to employers and unions and, in exceptional circumstances, to individual employees.

Procedural arbitrations – these are where national or sectoral negotiating procedures provide for arbitration as the final stage in the procedures.

The Labour Relations Agency Arbitration Scheme

– this provides an alternative to having a case heard by a tribunal to resolve an employment related dispute (for example, claims of unfair dismissal, breach of contract or discrimination).

The Scheme is quicker, confidential, non-legalistic, less formal and more cost effective than a tribunal hearing.

Under the Scheme, an arbitrator's decision is binding as a matter of law and has the same effect as a tribunal.

Further details are set out in a separate booklet *The Labour Relations Agency Arbitration Scheme Explained*.

Independent appeals, grading or job evaluation appeals panels – these are established where the parties to an agreement seek the assistance of the Agency in facilitating independent appeals, or grading or job evaluation appeals, within the terms of the parties' own agreed procedures.

Arbitrations under Statutory Exemption Orders – these arise under Article 142 of the *Employment Rights (Northern Ireland) Order 1996*, whereby the Dismissal Procedures Agreement in any industry is designated as a substitution for the Industrial Tribunal provisions of that Order. The only industry that has applied for, and been granted, such an exemption is the Electrical Contracting Industry.

How do arbitration hearings operate?

Arbitration hearings are held in **private**, usually at the Agency's offices in Belfast or Derry/Londonderry.

Arbitration hearings are conducted in an **informal atmosphere** and do not follow the strict rules of evidence applied in courts of law or tribunals.

Each party is free to bring along such representatives, advisers or witnesses as are necessary for the presentation of its case provided this is within the scope of any procedures already agreed between the parties. Legal representation does however require the consent of the arbitrator.

The parties to an industrial dispute must reach agreement on the terms of reference prior to the arbitration hearing taking place. The essential requirement is that the terms of reference must disclose the dispute, or difference between the parties, and must leave the arbitrator in no doubt as to the question the parties seek to have determined.

The hearing is **confidential** and any notes taken by the arbitrator are only retained until a written decision is produced. Thereafter any notes are destroyed.

After the hearing the arbitrator will prepare a report, which will be distributed to the parties at the same time by the Agency. This report will contain the arbitrator's decision and any associated award if applicable.

Throughout the process the parties will benefit from the services of the Agency's Arbitration Secretary. The Arbitration Secretary will ensure that correct procedures are complied with and that proper and adequate facilities are provided for the hearing.

The Arbitration Secretary is also responsible for distributing the arbitrator's report.

Other issues arising

Industrial Action – when trade unions and employers agree to arbitration any industrial action related to the matter in dispute is expected to be called off.

The Agency is not in a position to insist on cessation of industrial action. However, bearing in mind the conditions of acceptance of arbitration, it should be stressed that no purpose can be served by continuing any industrial action.

Disputes between Workers and Workers – in disputes of this nature the Agency must consider whether all available procedures, including ICTU (Irish Congress of Trade Unions) procedures, have been fully exhausted. In addition, the Agency must ensure that **all** parties that could be affected by the award are willing to accept conditions of a reference to arbitration. In the case of a demarcation dispute this would mean implementation by the employer of any award.

Arbitrations arranged by the parties themselves – some procedural agreements provide for, or the parties may request, a form of arbitration that is not compatible with the service provided by the Agency. For example, one party may retain the right to reject the arbitration decision.

In such circumstances the Agency is prepared to assist the parties with the arrangements. However, these will be regarded as private arbitrations and the Agency does not accept any responsibility for the outcome. When a private arbitration is arranged the responsibility for payment of the arbitrator's fees and expenses rests entirely with the parties themselves.

The Industrial Court – as an alternative to using its own arbitrators the Agency may refer disputes to the Industrial Court for arbitration.

The status of this arbitration is no different from any other except that the decision may become a matter of public record. Decisions on such references are made by the Agency's Director of Conciliation and Arbitration in consultation with the Chief Executive.

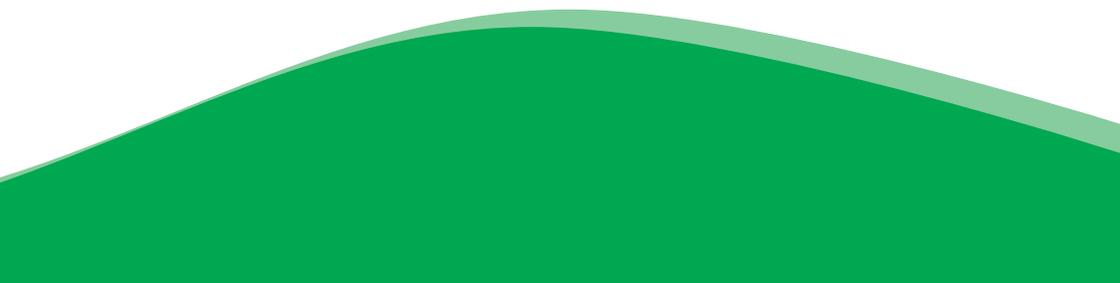
Data Protection Act 1998

The Labour Relations Agency holds some information to monitor progress and produce statistics.

And finally...

We do our best to provide a high standard of service at all times but if you are not satisfied with the service you have received, you should write to the Agency's Customer Complaints Officer. The addresses of the Agency offices are given on the back of this booklet.





Labour Relations Agency

Head Office

2-16 Gordon Street
Belfast
BT1 2LG

Regional Office

1-3 Guildhall Street
Londonderry
BT48 6BB

To contact the Agency's

Arbitration Secretary:

Telephone: 028 9033 7407

Textphone: 028 9023 8411

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