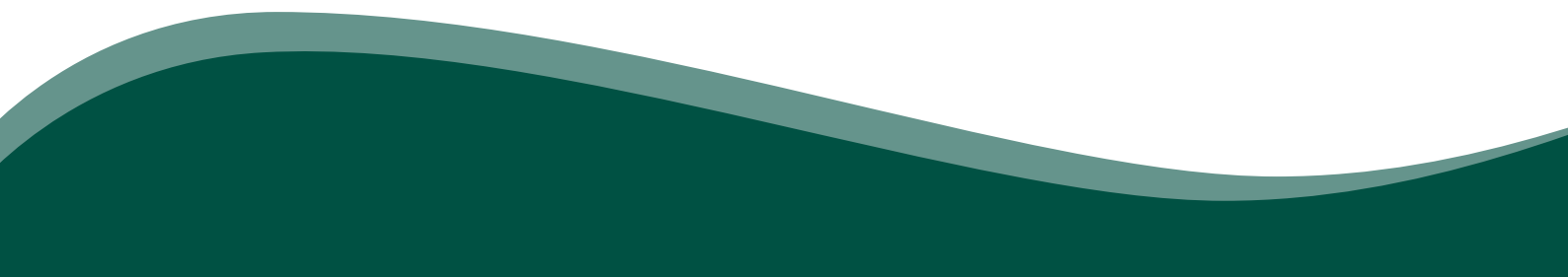


*The Labour
Relations Agency
Arbitration Scheme*

Guide to the Scheme



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 particular arrangements for you to use our services.

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

This guidance, and information about other services provided by the Labour Relations Agency, are available in alternative formats.

Please address any queries about the Labour Relations Agency Arbitration Scheme to the Arbitration Secretary, who can be contacted at the Agency's Head Office on 028 9033 7407 or by email to arbitration@lra.org.uk.

Information on all of our services and a wide range of employment-related issues is available at www.lra.org.uk.

This Guide is intended as an overview, rather than a complete account, of the Scheme. It should not be treated as a substitute for the wording of the Scheme itself or for taking your own advice with regard to the use of arbitration. If you find anything unclear in this Guide please refer to the Scheme itself, which can be obtained from the Agency or downloaded from www.lra.org.uk.

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1. Overview of the Scheme

The Labour Relations Agency Arbitration Scheme is an alternative to having a case heard by an Industrial Tribunal and/or Fair Employment Tribunal. An arbitrator's decision is binding as a matter of law and has the same effect as a tribunal.

- 1.1 The Labour Relations Agency (the “**Agency**”) is a public body with responsibility for promoting the improvement of employment relations in Northern Ireland. The Agency is funded by, but independent of, Government. The Agency has authority to resolve employment-related disputes through conciliation, mediation or arbitration.
- 1.2 The Labour Relations Agency Arbitration Scheme (the “**Scheme**”) deals with claims that could be the subject of proceedings before an Industrial Tribunal and/or Fair Employment Tribunal in Northern Ireland.

Note: The term “**claim**” is used, in the context of the Scheme, to refer to a dispute concerning an alleged breach of employment rights that could be the subject of proceedings before a tribunal in Northern Ireland, and which could be resolved under the Scheme.

A “**claimant**” is a person who has made an application to a tribunal, or claims that they have grounds to potentially lodge such an application (for example, a job applicant, employee or former employee), against an employer or others (the “**respondent**”).

“**Tribunal**” refers to an Industrial Tribunal and/or Fair Employment Tribunal.

1.3 The arbitration process is:

- ✓ **Confidential** – hearings are held in private. The outcomes of hearings are not published.
- ✓ **Quick** – a hearing to consider a claim will normally take place within two months from the date of submission of an Arbitration Agreement to the Agency. A hearing normally lasts for less than one day. The decision is then issued within 14 days after the hearing.
- ✓ **Non-legalistic and informal** – hearings take place without, for example, any swearing of oaths.
- ✓ **Non-adversarial** – there is no cross-examination of witnesses. This makes it particularly appropriate where the employment relationship between a claimant and a respondent is expected to continue after the hearing.
- ✓ **Cost efficient** – the speed and informality of the process mean that it is less costly to the parties than using a tribunal.
- ✓ **Flexible** – if all parties agree, proceedings can be suspended at any time to allow the claim to be resolved through conciliation. When conciliation is successful there will be no need for a decision by an arbitrator.
- ✓ Able to award **legally enforceable remedies** in the same way as a tribunal.

1.4 Entry to the Scheme is voluntary. All parties must agree to the claim going to arbitration. In doing so, all parties agree not to pursue the matter through a tribunal.

1.5 Entry to the Scheme is through an Arbitration Agreement, which is drawn up with the consent of the parties. This is normally done by a Conciliation Officer who is responsible for trying to help the parties to resolve the claim.

- 1.6 Once an Arbitration Agreement has been agreed, the Agency will appoint an arbitrator from its panel of arbitrators, who are independent experts in employment relations.
- 1.7 Where a claim involves complex legal issues (for example, issues arising under the *Human Rights Act 1998*), the Agency may appoint a legal adviser to provide guidance to the arbitrator. Where the case involves a claim in respect of Equal Pay, the Agency may request a report to be prepared by a member of a panel of independent Equal Pay experts.
- 1.8 Each party is required to submit a written statement of their case in advance of the hearing. This is in addition to the information on the claimant's application to a tribunal (form ET1) and the employer's response to this (form ET3), where an application to a tribunal has been made.
- 1.9 The parties to the claim must comply with any instruction given by the arbitrator and will be expected to co-operate in the production of relevant documents and the attendance of any witnesses called in support of their case.
- 1.10 Hearings will usually be held at the Agency's Head Office in Belfast or Regional Office in Derry/Londonderry.
- 1.11 Each party normally meets their own costs in preparing for and attending the hearing, although Legal Aid may be available for claimants in respect of initial advice and in preparing for arbitration.
- 1.12 The Agency will try to agree a date for a hearing that is suitable to all parties.
- 1.13 If a party does not attend a hearing without good cause the arbitrator has the power to continue the hearing and determine the claim in their absence. Where the claimant fails to attend without good cause, the claim can be dismissed.

- 1.14 During the hearing the arbitrator will use an ‘inquisitorial’ rather than ‘adversarial’ approach – in other words, the arbitrator will ask questions of each party and any witnesses to clarify key points. There is no cross-examination of witnesses by any party or their representative.
- 1.15 In reaching a decision on the claim, the arbitrator will:
- Apply general principles of fairness and good conduct in employment relations including, for example, principles referred to in relevant codes of practice.
 - Have regard to guidance covering relevant statutory provisions.
- 1.16 Following the hearing the arbitrator will issue a decision, which is called an “**award**”. This is in the form of a report. The award summarises each party’s case, the main considerations, the arbitrator’s decision and, if the claim is upheld, the remedy. The remedies available to the arbitrator are the same as those available to a tribunal. The award is confidential to, and legally binding on, the parties.
- 1.17 Given the Agency’s overall remit to promote good employment practices, the arbitrator may also make recommendations to improve employment relations within the respondent’s organisation.
- 1.18 As is the case in respect of tribunal decisions, the arbitrator’s award can be appealed or challenged in certain circumstances.

2. An introduction to the Scheme

- 2.1 The Agency was given the power to introduce the Scheme by the *Industrial Relations (Northern Ireland) Order 1992, as amended, and the Fair Employment and Treatment (Northern Ireland) Order 1998*. Subsequently, the Scheme has been established by means of the *Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012*.
- 2.2 The Scheme provides a voluntary alternative to a tribunal for the resolution of claims that could be the subject of proceedings before an Industrial Tribunal and/or the Fair Employment Tribunal.
- 2.3 This guide provides information on:
- The operation of the Scheme.
 - How to make a claim under the Scheme.
 - How to prepare for an arbitration hearing.
 - The procedure which will be adopted by an arbitrator at that hearing.

A flowchart showing the arbitration process under the Scheme is at **Appendix A**.

- 2.4 Claims made under the Scheme will be dealt with confidentially and, unlike tribunal proceedings, are not held in public. Furthermore, the outcomes will not be published.
- 2.5 Claims heard under the Scheme will be dealt with quickly. An arbitration hearing will typically last **less than one day**. It will normally take place **within two months** of the agreement to use the Scheme being received by the Agency. The outcome of the arbitration is then sent to all parties **no more than 14 days** after the hearing.

- 2.6 The procedures used under the Scheme are non-legalistic, and more informal and flexible than a tribunal. The process is inquisitorial rather than adversarial, with no formal pleadings or cross-examination by parties or representatives.
- 2.7 In reaching a decision on a claim, the arbitrator will apply general principles of fairness and good conduct in employment relations, taking account of relevant guidance produced by statutory authorities, such as the Agency itself.
- 2.8 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. It is a condition of their appointment that the arbitrators exercise their duties in accordance with the terms of the Scheme.
- 2.9 The Agency appoints an arbitrator to hear each claim. The parties do not have any choice as to which arbitrator is selected to hear the case. This ensures their independence.
- 2.10 The Agency's role in respect of the Scheme is to appoint arbitrators from the Agency's panel of arbitrators on a case by case basis, to provide administrative support to them and arrange arbitration hearings. The Agency has no role in any decision making in respect of awards – this is undertaken by arbitrators only.
- 2.11 Once the parties to a claim have concluded an Arbitration Agreement to have the matter resolved under the Scheme, the claim can no longer be heard by a tribunal.

What types of case does the Scheme cover?

- 2.12 The jurisdictions (the legal grounds under which claims can be made) covered by the Scheme are set out primarily in the *Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012* and cover nearly all of those that can be heard by a tribunal. These include claims in respect of:

- Unfair or constructive dismissal.
- Payments owed, including notice pay, holiday pay, arrears of pay, and breach of contract.
- Redundancy payments.
- Discrimination in recruitment or employment on the grounds of age, disability, equal pay, gender, part-time working, political opinion, race, religious belief or sexual orientation.
- Flexible working arrangements.
- Less favourable treatment of fixed term employees or agency workers.

This list is not exhaustive. An expanded list of the jurisdictions covered by the Scheme, and the guidance available on each of these, is set out at **Appendix B**. The full list of jurisdictions is in *the Labour Relations Agency Arbitration Scheme (Jurisdiction) Order (Northern Ireland) 2012*, Article 84A(1) of the *Industrial Relations (Northern Ireland) Order 1992* and Article 89(1) of the *Fair Employment and Treatment (Northern Ireland) Order 1998*. Advice on whether a particular claim can be heard under the Scheme is available from the Agency.

What types of case are not covered by the Scheme?

2.13 While the Scheme covers most jurisdictions, there are a small number that are not covered by it. These include claims relating to:

- Employment Agency prohibition.
- Health and Safety appeals.
- Redundancy Fund Payment.

- Right to receive particulars of contract.
- Training Levy appeals.
- Minimum Wage appeals.

Claims in respect of these jurisdictions can only be heard by a tribunal.

2.14 The Scheme cannot deal with jurisdictional issues about whether a claim can be pursued in the first place. These include, for example, where there is a doubt about whether:

- The claimant was employed by the respondent.
- The claimant has the necessary period of continuous service to lodge the claim.
- The claimant has a 'disability' within the definition of the Disability Discrimination Act 1995.
- Time limits have expired or should be extended.

A dispute about a jurisdictional issue must first be resolved by a tribunal, or the parties must agree to set aside this issue, before the claim can proceed to arbitration.

2.15 In light of the above, when agreeing to refer a claim to arbitration under the Scheme, all parties will be taken to have accepted that no jurisdictional issue is in dispute between them. The arbitrator will not, therefore, deal with such issues during the arbitration process – the parties will be taken to have waived any rights in this regard. Similarly, in respect of a claim of unfair dismissal, in agreeing to arbitration under the Scheme, the parties will be treated as having agreed that a 'dismissal' has taken place.

2.16 Where the parties decide not to use the Scheme, the services of a Conciliation Officer will remain available to them if they wish to try to reach a settlement to resolve the matter without the need for a tribunal hearing.

2.17 Where parties or their representatives are in any doubt as to whether to use the Scheme they should discuss the matter with a Conciliation Officer or contact the Arbitration Secretary at the Agency's Head Office (see the contact details at the front of this guide).

When to consider using the Scheme

2.18 Generally it is better if the parties, or their representatives, can resolve the claim between them through the employer's internal procedures (where these exist), by negotiating directly with each other, or with the help of a Conciliation Officer. When it is clear that none of these ways is likely to resolve the claim, the parties are strongly encouraged to consider using arbitration as an alternative to going to a tribunal.

2.19 There are considerable advantages in using arbitration as an alternative to a tribunal. A comparison of the main differences between the approach adopted in arbitration and the one used by tribunals is at **Appendix C**.

2.20 Each party should make themselves aware of the features of each approach, so that they can make an informed decision on which one they would prefer to use. As arbitration is voluntary, all parties have to agree to use the Scheme.

Getting help with, or responding to, a claim

2.21 There are a number of sources of advice available to the parties to a claim. The main ones are set out at **Appendix D**.

3. Entry into the Scheme

The Labour Relations Agency Arbitration Scheme is entirely voluntary and, therefore, its use must be agreed by all parties to a claim.

Arbitration Agreement

- 3.1 Entry to the Scheme is through an Arbitration Agreement, which will normally be drawn-up by a Conciliation Officer. In legal terms, this has the effect of a 'conciliated agreement', which is an agreement to resolve a claim without using a tribunal.
- 3.2 Alternatively, the Arbitration Agreement can be drawn-up by an independent adviser (such as a solicitor). In legal terms, this has the effect of a 'compromise agreement'. In order to be valid, a compromise agreement must conform to the statutory requirements under Article 245 of the *Employment Rights (Northern Ireland) Order 1996*.
- 3.3 The Arbitration Agreement includes an acknowledgement that the parties understand the implications of referring their claim to arbitration. These are the waiving of certain rights that they would otherwise have if the matter had been heard by a tribunal, including: the right to a public hearing; the cross-examination of witnesses; and compelling the attendance of witnesses.
- 3.4 The standard wording for an Arbitration Agreement is at **Appendix E**.
- 3.5 In order to confirm acceptance and understanding of the implications, the Arbitration Agreement must be signed by all parties. Claimants must personally sign their form, although a representative may sign on the respondent's behalf. The signatures must be witnessed. A witness can be anyone selected by the party. A Conciliation Officer cannot act in this capacity.

Note: In many cases, an Arbitration Agreement will be put in place once a claimant has made an application to a tribunal (using form ET1). Where an application to a tribunal has not been

made, parties should be aware that time limits apply to such applications. While a tribunal has discretion to extend time limits in certain circumstances, it is not possible to guarantee that it will do so in any particular case.

Submission of the Arbitration Agreement

- 3.6 Once the Arbitration Agreement has been signed by the parties, it should be sent to the Arbitration Secretary at the Agency's Head Office in Belfast. This should be done as soon as possible, and no later than six weeks after it has been signed. A Conciliation Officer may assist in submission of the Arbitration Agreement.
- 3.7 On receipt of the Arbitration Agreement the Arbitration Secretary will check that all requirements of the Scheme have been met and will then notify the parties accordingly. The Arbitration Secretary will seek to resolve any problems regarding an Arbitration Agreement with the parties.
- 3.8 Where an application had been made to have the claim heard by a tribunal, the Agency will contact the Office of the Industrial Tribunals and the Fair Employment Tribunal to inform the tribunal of the Arbitration Agreement. This will be done once the claim has been accepted into the Scheme by the Agency.

Claims involving more than one claimant or respondent

- 3.9 Where more than one claimant wishes to make a claim against the same employer on the same grounds, with similar facts, these claims may be brought together into one hearing. As arbitration is voluntary, this must be with the agreement of all the parties to the claim.
- 3.10 This may also be done where one claimant wishes to make a claim against more than one respondent. Again, all the parties must agree to the claims being brought together into one hearing.

Withdrawal or settlement of claims before or during arbitration hearings

- 3.11 Only a claimant may withdraw their claim. S/he may do this at any time before the end of the hearing. However, once the Arbitration Agreement has been signed, the claimant has no right to refer the dispute covered by the claim to a tribunal.
- 3.12 A claim is withdrawn as follows:
- **Before the day of the hearing** – the claimant must notify the Arbitration Secretary in writing that they wish to withdraw the claim.
 - **On the day of the hearing** – the claimant makes a request to withdraw the claim to the arbitrator in person.
- 3.13 The arbitrator has the power to adjourn a hearing, if the parties wish it, to allow for a settlement to take place.
- 3.14 The services of a Conciliation Officer are available to the parties, both before and during the hearing. The Conciliation Officer is available to draw-up an agreement to record the terms of a settlement. The use of a Conciliation Officer ensures that the settlement is legally binding and enforceable.
- 3.15 If the parties reach a private settlement without using a Conciliation Officer they can, if they wish, request that the arbitrator records this as their agreed award. This would then be legally enforceable. It is for the parties to agree the wording of the settlement. This is because the arbitrator only has the power to record settlements and cannot approve, vary, transcribe, interpret or ratify them.
- 3.16 The arbitrator does not have the power to record a settlement that is outside the scope of the Scheme. This includes, for example, a settlement in respect of a personal injury claim, or a remedy beyond the power of the arbitrator (and a tribunal), such as the retention of a company car. However, these matters may be included in a settlement to be endorsed by an arbitrator provided it is clear which parts relate to the issue that was the subject of the arbitration.

4. Arrangements for the hearing

- 4.1 This section provides guidance on the arrangements and procedures normally followed in respect of arbitration hearings. However, within the provisions of the Scheme, the arbitrator has discretion to vary the procedures, including matters concerning evidence as s/he feels are appropriate to the case.

Appointment of an arbitrator

- 4.2 Once the Agency has accepted an Arbitration Agreement under the Scheme, the Arbitration Secretary will appoint an arbitrator. The arbitrator will be appointed from the Agency's panel of arbitrators (background information on the arbitrators is published on the Agency's website, www.lra.org.uk). To ensure impartiality, none of the parties will have a choice over which arbitrator hears the claim. Once appointed, the parties will be notified of the arbitrator's name.
- 4.3 The appointed arbitrator has a duty to disclose to the Agency in writing any circumstances in a particular case that are likely to give rise to any conflict of interest. This information, where provided, will be disclosed to the parties.

Replacement of an arbitrator

- 4.4 An arbitrator, once assigned to a particular claim, can only be removed from the case in exceptional circumstances.
- 4.5 Where a party believes that an arbitrator should be replaced, they should write to the Arbitration Secretary in the first instance, setting out the reasons for this. The Agency will do all it can to resolve the matter to the satisfaction of all parties. If the Agency decides not to replace the appointed arbitrator, the party can apply for a Court Order if they continue to have concerns.

- 4.6 If the appointed arbitrator is unable for any reason to complete an arbitration (ie before an award has been signed by the arbitrator), a new arbitrator will be appointed by the Agency. The replacement arbitrator will decide whether, and to what extent, any previous proceedings should stand.

Duty of the arbitrator

- 4.7 The arbitrator has a general duty to act fairly and impartially between the parties. This includes:
- Giving each party a reasonable opportunity to put their case.
 - Adopting procedures suitable to the circumstances of the particular claim, so as to provide a fair means for the resolution of the matters to be determined. In doing so, the arbitrator should avoid any unnecessary delay or expense.

General duty of the parties

- 4.8 The parties to arbitration have a duty to do everything necessary to ensure that the proceedings progress smoothly and are not delayed. This includes co-operating in the arrangement of the hearing and complying with any order or direction of the arbitrator.
- 4.9 If any party fails to comply with any aspect of the procedure set out in the Scheme, or any direction by the arbitrator, the arbitrator may adjourn a hearing if, in her/his view, it would be unfair to one party to proceed. The hearing will be reconvened when the matter is resolved.
- 4.10 The arbitrator may draw a negative inference from the act of non-compliance – in other words, that a party has failed to comply in an attempt to conceal a weakness in the merits of their case.

Agreeing the date of the hearing

- 4.11 A decision cannot be made on written evidence alone, even if the parties wish it. A hearing must be held in all cases.

- 4.12 Hearings normally last **less than one day**.
- 4.13 The Arbitration Secretary will arrange a hearing as soon as possible on receipt of the Arbitration Agreement. The hearing will normally be held **within two months** of receipt of the Arbitration Agreement by the Agency, on a date agreed with all parties.
- 4.14 Parties will be expected to co-operate in the agreement of the date for the hearing by making themselves as available on as many dates as possible within the two-month period after the agreement to refer the claim to arbitration.
- 4.15 The Agency, in conjunction with the arbitrator, has the power to decide the date for the hearing where this cannot be agreed with the parties.
- 4.16 A claim can be prioritised for an early hearing on request by any party and if the arbitrator considers that there are relevant circumstances for this. An application for an early hearing must be made in writing to the Arbitration Secretary, stating the reasons for the request. In seeking an early hearing date, the party should bear in mind the time needed to prepare their written submission and gather the evidence they wish to submit in support of this (see Section 5 below).
- 4.17 Hearings will normally be held at the Agency's Head Office in Belfast or Regional Office in Derry/Londonderry, whichever is closest to the home address of the claimant.

Applications for postponements of, or different venues for, the hearing

- 4.18 Once a date and venue for the hearing have been set, the arbitrator has the power to decide on the merits of any applications by any party for a postponement or a change in venue. Such an application should be made in writing, with reasons, to the

Arbitration Secretary **within 14 days** of the date of the letter notifying them of the hearing arrangements. Applications will be decided by the arbitrator after all parties have received a copy of the application and have been given a reasonable opportunity to respond. A review of the application will normally be carried out by considering written submissions, rather than by an oral hearing. If the application is rejected the original arrangements will stand.

Non-attendance at the hearing

- 4.19 If a party fails to attend the hearing without providing an acceptable explanation, the arbitrator may continue the hearing in that party's absence, taking account of any written submissions and documents that have been submitted by that party. Where it is the claimant who fails to attend the hearing without providing an acceptable explanation, the arbitrator has the option of writing to her/him asking for an explanation for her/his non-attendance. If the claimant does not demonstrate reasonable cause as to why s/he did not attend, the arbitrator may rule that the claim is deemed to have been dismissed.

Reasonable adjustments

- 4.20 Where a party needs additional support to enable them to take part in the hearing, they should let the Arbitration Secretary know at the earliest opportunity, so that appropriate arrangements can be made. Additional support includes, for example, reasonable adjustments under the Disability Discrimination Act, such as the services of a sign language interpreter or communicator, or interpretation if English is not their first language. The Agency will meet the reasonable cost of providing such additional support.
- 4.21 Parties should also let the Arbitration Secretary know if they have any other requirements that might affect arrangements for the hearing.

Expenses and loss of earnings

- 4.22 With the exception of the costs of providing reasonable adjustments, the Agency cannot cover the expenses of any party in preparing for, or attending, the hearing (see Appendix D, however, in respect of Legal Aid).
- 4.23 It is expected that each party will meet, for example, their own travelling expenses and those of others assisting them, whether representatives or witnesses.
- 4.24 No losses of earnings are payable by the Agency to anyone involved in arbitration.
- 4.25 However, where a claim is upheld, the arbitrator may include in the calculation of any compensation a sum to cover reasonable travelling expenses and loss of earnings incurred by the claimant personally in attending the hearing.

5. Preparation for the hearing

- 5.1 Arbitration is most effective as a method of resolving claims when each party, and the arbitrator, has the fullest possible opportunity to consider the arguments of the parties before the hearing takes place. Therefore, each party should prepare a written statement of their case before the hearing takes place.
- 5.2 The written statements are **in addition** to the ET1 and ET3 forms, where these were submitted to a tribunal – these forms will be sent by the Agency to the arbitrator, when s/he is appointed, to provide background information to the claim, ahead of the receipt of the written submissions.
- 5.3 When agreeing a date for the hearing, parties should allow enough time for the preparation of their case, including the gathering of evidence and statements from others who they wish to speak at the hearing.
- 5.4 **Three copies** of the written statement, and any supporting documents or other material that a party wishes to rely on at the hearing, should be sent to the Arbitration Secretary **at least 14 days** prior to the date of the hearing.
- 5.5 The written submissions, once received, will be sent by the Agency to the arbitrator and all other parties.
- 5.6 It is not consistent with the spirit of arbitration for one side to seek advantage through the late submission of papers. However, in exceptional circumstances, the arbitrator may at their discretion permit written statements or additional papers to be introduced at the hearing itself. Where this is allowed, the documents will need to be made available to each other party as well as to the arbitrator. An adjournment may be necessary to give the arbitrator and each other party time to read the papers.

Written statements

- 5.7 Written statements should briefly set out the main particulars of the case as the party sees it. This can then be expanded upon, if

necessary, at the hearing through oral statements. It is helpful for statements to be word processed, and printed on one side of the paper, so that they can be more easily read. It is also helpful if pages and paragraphs are numbered, so that they can be referred to quickly during the hearing.

- 5.8 The statement should include an explanation of the events that led to the claim, including an account of the sequence and outcome of any relevant meetings, interviews or discussions in respect of the matter.

Supporting documentation

- 5.9 Depending on the nature of the claim, relevant documents/ supporting documentation may include:

- Recruitment documentation (eg job advertisements, job descriptions/person specifications, application forms, short listing assessments, and interview notes and assessments).
- Letters of appointment.
- Contracts of employment.
- Written statements of particulars of employment.
- Employers handbooks, rules and procedures.
- Time sheets and attendance records.
- Notes of meetings held, and correspondence, between the parties to consider the matter in dispute.
- Signed statements of any witnesses or outlines of evidence to be given by witnesses at the hearing.

5.10 Information that will help the arbitrator to assess compensation, if it is awarded, should also be included in the claimant's submission (see Section 7). Where appropriate, this should include:

- Pay slips, P60s or wage records.
- Details of non-pay benefits paid to the claimant.
- Pension entitlements.
- Welfare benefits received.
- Evidence of attempts to find other work, or otherwise mitigate loss.

5.11 **The above lists are not exhaustive.** Further information on relevant documents/supporting documentation is contained in Paragraph 65 of the Scheme itself.

Requests for documents

5.12 When preparing their written submissions, any party may request from each other party access to, and/or copies of, documents that are not in their possession, but which they feel could be important to their case. In responding to reasonable requests for copies of documents, parties should normally bear the costs of reproducing and sending them to the requesting party.

5.13 Once the written submissions have been made, parties may request from, and exchange further documents with, each other to support their case. These might, for example, be documents that one party reasonably expected each other party to include within their written submission, or documents referred to within each other party's submission and supporting documents, which may appear to be relevant to the case.

5.14 Any such additional documents, which any party wishes to refer to in the hearing, should be sent to the Arbitration Secretary. The Arbitration Secretary will forward them to the arbitrator before the hearing.

- 5.15 Although arbitrators have no power to compel any party to exchange information, they can take failure to do so into account in reaching their decision. An arbitrator may draw a negative inference from this. This means that it could count against a party if they have refused to exchange documents and other information before the hearing.
- 5.16 With the exception of tribunal forms ET1 and ET3, any information and documents supplied by the parties to the Conciliation Officer before an agreement to go to arbitration was reached will not be made available to the arbitrator or any of the parties by the Agency. Furthermore, the Conciliation Officer will not provide the arbitrator with details of any conciliation discussions in respect of the claim. These discussions remain confidential and separate from the arbitration process.

Calling others to speak at the hearing

- 5.17 **At least 14 days** prior to the hearing the parties should provide the Arbitration Secretary with a list of names and job title or role of all those people who will accompany them to the hearing or be called as a witness.
- 5.18 In deciding this, each party should consider whether they wish to have present at the hearing others who, for example, can:
- Support from their personal experience statements made about events leading up to the dispute.
 - Speak about their role in any meetings.
 - Inform the arbitrator about the operation of the respondent's rules, practices and procedures, and where relevant, those operating in the industry or sector concerned.

- 5.19 Parties should bear in mind that, unlike a tribunal hearing, the arbitrator will not ask anyone attending the hearing to swear an oath or an affirmation, nor allow a process of cross-examination. However, it is likely that witnesses will be questioned directly by the arbitrator.
- 5.20 Parties may consider it sufficient to submit a signed statement from a witness containing their account of events, instead of calling the witness to attend the hearing. However, this would mean that the witness could not add to their statement during the hearing or be questioned on it. It is therefore possible that the evidence will not carry as much weight.
- 5.21 Any such statements should be included in the party's written submission, even where a witness is to appear in person.
- 5.22 All those who are on the list of those accompanying each party should be present at the start of the hearing. Any witnesses whose details have not been provided in advance of the hearing may only attend with the arbitrator's permission.

Requests for attendance of witnesses

- 5.23 The arbitrator has no power to compel anyone's attendance at the hearing. However, employers who are parties to arbitration hearings should co-operate by allowing employees time off from work should the claimant wish to call them to attend the hearing. Such employees should only be those who are in a position to provide relevant information to the arbitrator.
- 5.24 If an employer has unreasonably refused time-off to attend the hearing to an employee who has relevant evidence to give, the arbitrator may draw a negative inference. This may therefore count against the employer when the arbitrator is reaching a decision.

Preliminary hearings and directions

- 5.25 Where there are likely to be considerable differences between the parties in respect of procedural points, the arbitrator may intervene to resolve these. These differences might include, for example, the availability or exchange of documents, or whether or not certain employees will be allowed time-off to attend the hearing.
- 5.26 Any such differences should be raised in writing with the Arbitration Secretary who will contact the arbitrator about the matter.
- 5.27 The arbitrator has the power to call the parties to a preliminary hearing to attempt to resolve their differences. Alternatively, the arbitrator may give procedural directions in correspondence.
- 5.28 In such cases, the arbitrator may express views on the desirability of information and/or evidence being available at the hearing, and remind the parties of their duty to act co-operatively in order to progress the arbitration.

6. The hearing

Terms of reference

- 6.1 In deciding whether a claim should be upheld or not, and also in determining, as appropriate, a remedy, the arbitrator will:
- Apply general principles of fairness and good conduct in employment relations including, for example, principles referred to in any relevant codes of practice.
 - Deal with matters as quickly and as efficiently as possible.
 - Take account of the provisions of relevant guidance, such as that published by the Agency.
 - Make, where appropriate, recommendations to improve employment relations within the respondent's organisation.
- 6.2 The arbitrator will not substitute what s/he would have done for the actions taken by the respondent.

The conduct of the hearing

- 6.3 As described in Section 4, the arbitrator has a duty to act fairly and impartially between the parties at all times and to provide a fair means for the resolution of the claim.
- 6.4 The arbitrator is responsible, within the general principles contained in the Scheme, for the conduct of the hearing and all matters relating to procedures and evidence. The arbitrator will conduct the hearing in accordance with her/his discretion using, as a broad guide, the standard arbitration hearing procedure (see **Appendix F**). However, within the provisions of the Scheme, the arbitrator is free to change the approach depending on the circumstances of the case and the wishes of the parties.
- 6.5 If requested the arbitrator has the power to adjourn a hearing at anytime. This may be to:

- Allow the parties to confer with their representative.
 - Enable the parties to resolve the dispute through other means, such as conciliation.
- 6.6 The purpose of the hearing is to allow all parties to explain their case to the arbitrator, and also to comment on the case being put by each other party. It also allows the arbitrator to ask questions directly of the parties, their representatives and any witnesses attending. The purpose of this questioning is to establish the facts, clarify any points made in support of each party's case, and to attempt to resolve any inconsistencies in the accounts being presented by the parties.
- 6.7 The arbitrator will encourage all parties, and anyone they have called to be present at the hearing, to speak freely, so that as full a picture as possible about the background to the claim can emerge. The arbitrator will also consider documents submitted by the parties, and may question them about these.
- 6.8 If they wish, parties may bring someone to help them present their case – for example, a colleague, legal adviser, or trade union representative. The parties are liable for any fees or expenses incurred by any representative they appoint.
- 6.9 The arbitrator will have the right to address questions directly to the parties and to anyone who is attending the hearing to speak on behalf of the parties. However, no one will be required to swear oaths or affirmations. As arbitration is a non-adversarial process, no party or witness will be cross-examined by any other party or their representative.
- 6.10 Hearings will be informal and normally completed in less than a day. Given that arbitration is non-legalistic, the rules that apply in tribunals in respect of the admissibility, relevance or weight of evidence do not apply.

6.11 Hearings are held in private. Only the following may attend a hearing:

- The arbitrator.
- The parties to the claim and their representatives.
- The Arbitration Secretary (a member of the Agency's staff).
- People called as witnesses by any party.
- An interpreter, and/or anyone attending to provide support as a reasonable adjustment under the Disability Discrimination Act.
- A legal adviser to the arbitration, if appointed (see below).
- An arbitrator and/or a member of the Agency's staff in training. S/he may only attend as an observer and with the parties' agreement.

Unlike a tribunal hearing, no member of the general public or the media may attend a hearing.

6.12 No formal recording of the hearing will take place. Any notes taken by the arbitrator and the Arbitration Secretary during the course of the hearing are confidential.

Oral presentations

6.13 The arbitrator will normally open the hearing by explaining her/his role. S/he will also outline the range of remedies that are available to the arbitrator to make as an award if the claim is upheld.

6.14 Each party will then be invited to make an oral presentation to the arbitrator. This oral presentation gives the parties an opportunity to:

- Emphasise the key arguments in support of their case.
- Suggest lines of enquiry that the arbitrator may wish to follow.

- Highlight key documents in their written submissions.
 - Explain matters that are not easy to set out in writing, such as the emotions felt at particular times during the events that led to the claim.
- 6.15 A well-argued and structured presentation is helpful to ensure that a case is made clear to the arbitrator. There is no need for the parties to read through their written submissions as part of their presentation, as the arbitrator will have read these in advance.
- 6.16 The parties should not interrupt each other when they are giving their oral presentation. The parties will be given an opportunity to comment and raise questions through the arbitrator after each other party has completed its oral presentation. It is recommended that an adjournment is taken at the end of the oral presentations to allow each party to consider responses to and questions for each other party.
- 6.17 The arbitrator will be able to assist any party having difficulties in fully explaining their case by asking questions to clarify points.
- 6.18 Before the hearing is closed the arbitrator will obtain an assurance from each party that everything that they wish to say has been said, and that they have had sufficient opportunity to comment on what has been said by each other party.
- 6.19 At the end of the hearing, and before the arbitrator has decided whether to uphold the claim, the arbitrator will ask the claimant what remedy s/he is seeking (for example, financial compensation).
- 6.20 Where relevant, the parties will be asked to agree the claimant's income, or potential loss of income. This will be used to calculate any award of compensation, should the arbitrator decide to uphold the claim. Information relevant to the calculation of compensation, if appropriate, should be included in the parties' written submissions (see Section 5).

- 6.21 Where unfair dismissal is claimed, the parties should be prepared to address the practicality, if sought, of reinstatement or re-engagement.
- 6.22 No further submissions or evidence will be accepted after the end of the hearing without the arbitrator's permission. The arbitrator may occasionally request that a party sends further documentation. Where this happens, the documentation should be sent to the Arbitration Secretary for copying to the arbitrator and to each other party, who will be able to comment on it before the arbitrator reaches a decision.

Appointment of specialist advisers to the arbitration

- 6.23 Where claims involve complex matters of EC law or the *Human Rights Act 1998*, the arbitrator has the power to require the appointment of a legal adviser, either at her/his own discretion or at the request of any party (with the arbitrator's agreement).
- 6.24 At the request of the arbitrator the Agency will appoint a legal adviser to report to the arbitrator and the parties. The legal adviser is under the same duty of disclosure as the arbitrator. This means that they must disclose in writing to the Agency any potential conflict of interest in a particular claim.
- 6.25 Where issues of EC law or the *Human Rights Act 1998* arise once a hearing is under way, the arbitrator may adjourn the hearing to allow for the appointment of a legal adviser.
- 6.26 The legal adviser may attend the hearing to provide advice or be consulted via correspondence. The parties will be given a reasonable opportunity to comment on any information, opinion or advice offered by the legal adviser. The arbitrator will take the legal adviser's information, opinion or advice – and any comments made on this by the parties – into account when deciding on the claim.

6.27 Where the case involves a claim in respect of Equal Pay, the arbitrator may request that a report is prepared by a member of the Agency's panel of independent Equal Pay experts. The members of the panel of experts are designated by the Agency, but are otherwise independent of the Agency. The request for such a report is made by the arbitrator to the Arbitration Secretary, who will then commission it from one of the independent experts. This will normally be carried out before the hearing takes place. The report will be shared with the arbitrator and the parties.

Court determination of preliminary points

6.28 In claims where EC law and/or the *Human Rights Act 1998* are relevant, a party may apply to the High Court or the County Court for the determination of a preliminary point of law. An application may only be made with either:

- the agreement of all parties to the arbitration, in which case the arbitrator should be informed by the parties, through the Arbitration Secretary; or (if agreement cannot be reached),
- the permission of the arbitrator. The Arbitration Secretary will inform the parties of the arbitrator's decision in respect of this.

Any such application must identify the question of law to be determined. It must state the grounds on which the question is to be decided by the Court. The Court will need to be satisfied that the determination of this point substantially affects the rights of one or more of the parties to the arbitration.

How the arbitrator reaches a decision

6.29 Each claim will be decided in accordance with the overall terms of reference for the Scheme. Having listened to the arguments put forward by the parties and any others whom they have asked to

speak, and taken into account any supporting documentation, the arbitrator will come to a decision. In doing so, the arbitrator will take account of the provisions of relevant guidance, such as that published by the Agency.

- 6.30 The arbitrator will not decide or announce the outcome of the case at the hearing (see Section 8 below). The decision will be sent to all parties at the same time, normally within **14 days** after the hearing has taken place.

7. Remedies available under the Scheme

Awards of compensation

- 7.1 The arbitrator will apply the remedies, including the making of any awards of compensation, which s/he considers appropriate.
- 7.2 The financial remedies available are the same as those that could have been granted by a tribunal. Therefore, in deciding the appropriate remedy, the arbitrator will have regard to the same factors in the same manner as a tribunal.

Limits on the compensatory amount

- 7.3 The arbitrator is required to have regard to the statutory maximum limits on a “week’s pay” used for the calculation of the compensatory amount (see Chapter IV of Part I of the *Employment Rights (Northern Ireland) Order 1996*). This statutory limit, which also applies to tribunal decisions, is reviewed each year.

Double recovery

- 7.4 The parties must supply details of any relevant awards of compensation that may already have been made by a tribunal in connection with the matters that are the subject of the claim before the arbitrator. Where a claimant relies on the same act by the respondent in a claim as s/he relies on in another claim before a tribunal, the arbitrator cannot award compensation in respect of any loss that has already been taken into account by a tribunal.

8. The award (decision)

Issuing the award

- 8.1 The arbitrator's decision is called an "award". This is final and legally binding on the parties. The arbitrator will send the award to the parties, or their nominated representatives, through the Agency. The arbitrator's award will be issued to the parties at the same time. This will normally be done **within 14 days** after the hearing has taken place.

The content of the award

- 8.2 The arbitrator's award will be in writing and will be signed and dated by the arbitrator. It will refer to the main considerations that were taken into account in reaching the decision regarding the claim. If the arbitrator has decided to uphold the claim, the award will also contain details of the remedy.
- 8.3 In exceptional circumstances, the arbitrator may make more than one award at different times on different aspects of the matters to be determined in the case. For example, the arbitrator may make an award relating to whether or not the claim is upheld but may have to issue a separate award on compensation if information on the claimant's income has not been provided.
- 8.4 Given that the Scheme is operated under the Agency's overall remit to promote good employment practices, the arbitrator may also make recommendations regarding employment relations within a respondent's organisation, where this is appropriate.

Corrections

Correction of an award in this context refers only to the removal of any clerical or computational mistake, or error arising from an unintended slip or omission, or to clarify or remove any ambiguity in the award.

- 8.5 Before the award is sent to the parties, every effort will be made by the arbitrator and the Agency to ensure that it does not contain errors. The Agency does not interfere with the decision itself. However, the Arbitration Secretary has a role in proof reading the arbitrator's award and may refer any errors identified back to the arbitrator to rectify them before the award is issued to the parties.
- 8.6 Once the award has been issued to the parties, the arbitrator may, either on her/his own initiative or on the application of a party or the Agency, correct the award or clarify any ambiguity. Any correction of the award shall be made **within 28 days** of the date the application was received by the arbitrator, or where the correction is made at the arbitrator's initiative, **within 28 days** of the date of the award. Any correction will form part of the award.
- 8.7 If the arbitrator decides that it is necessary, s/he may make an additional award in respect of any claim that was argued during the hearing, but not dealt with in the original award. If a new issue has arisen the arbitrator will afford the parties the opportunity to comment before issuing an additional award. It should be noted, however, that an additional award cannot revisit any issue that has already been dealt with in a previous award. Any additional award will be made **within 56 days** of the date of the original award. Any application for an additional award must be made to the Arbitration Secretary **within 28 days** of the date that the award was sent to the applying party by the Agency.

Confidentiality of awards

- 8.8 The award is confidential to the arbitrator, the Agency, the parties and their representatives. It will not be published by the Agency.
- 8.9 The Agency maintains confidential records of cases, decisions and awards for monitoring and evaluation purposes. It may publish general summary information concerning cases heard under the Scheme as it sees fit, without identifying individual cases or parties.

Enforcing awards

- 8.10 An award is enforceable in the same way as if it had been made by a tribunal.
- 8.11 The Agency can advise a claimant on the procedure to be followed to enforce an award if a party does not comply with it.

Interest

- 8.12 Where a respondent does not pay the compensation awarded by the arbitrator **within 42 days** of the date of dispatch of the award by the Agency, interest will be payable on the same basis as for tribunal awards.

9. Appealing/challenging the award

- 9.1 While an arbitrator's award is final and legally binding on the parties, it can be appealed or challenged in certain circumstances.
- 9.2 Appeals or challenges should be made to the High Court or the County Court **within 28 days** of the date that the award was sent to the party by the Agency. Notice of the appeal or challenge should be sent to the Agency, who will forward it to the arbitrator and each other party.
- 9.3 Parties may lose their right to make an appeal or challenge the award if they did not:
- raise the matter at the time with the arbitrator; or,
 - otherwise raise the issue within the provisions of the Scheme; and,
 - continued to take part in the proceedings without objection.
- 9.4 If the Court upholds an appeal or challenge, it may confirm, vary or set the award aside, either in whole or part.
- 9.5 The main grounds on which the arbitration award can be appealed or challenged are set out below (please refer to the Scheme itself (Part XXI) for the full list of grounds).

Challenges on grounds of substantive jurisdiction

- 9.6 A party to arbitration may challenge an award on the grounds of substantive jurisdiction. Such a challenge could be on:
- The validity of the Arbitration Agreement and whether the dispute was within the scope of the Scheme.

- The way in which the arbitrator was appointed and/or matters were submitted to arbitration in accordance with the Arbitration Agreement.

Challenges on grounds of serious irregularity

- 9.7 Challenges in respect of the conduct of the arbitrator, the proceedings or the award may only be made on the grounds of serious irregularity that has caused, or will cause, substantial injustice to the party making the challenge. Such challenges concern the way in which the claim was determined rather than the end result.
- 9.8 The categories of serious irregularity on which a challenge may be brought are set out in the Scheme. The test of “Substantial Injustice” has been very narrowly defined in the *Report of the Departmental Advisory Committee (DAC) on Arbitration Law* – the official guide to the Arbitration Act 1996.

- 9.9 It states that:

“The test of a substantial injustice is intended to be applied by way of support for the arbitral process, not by way of interference with that process. Thus it is only in those cases where it can be said that what has happened is so far removed from what could reasonably be expected of the arbitral process that we would expect the court to take action.”

It continues:

“Having chosen arbitration the parties cannot validly complain of substantial injustice unless what has happened simply cannot on any view be defended as an acceptable consequence of that choice.”

Appeals on questions of EC law and the *Human Rights Act 1998*

- 9.10 A party may appeal to the High Court or the County Court on a question of EC law or if a matter arises under the *Human Rights Act 1998*.
- 9.11 The Court will only consider the appeal with either the agreement of each party or if it grants permission itself to hear it. It will only grant permission on the basis that:
- The determination of the question will substantially affect the rights of one or more of the parties.
 - If the appeal raises a point of EC or human rights law.
 - The point is capable of serious argument.
 - The decision of the arbitrator is obviously wrong, or the question is one of public importance and the arbitrator's decision is open to serious doubt and that, despite the agreement of the parties to have the matter determined by arbitration, it is just in the circumstances for the Court to determine the question.

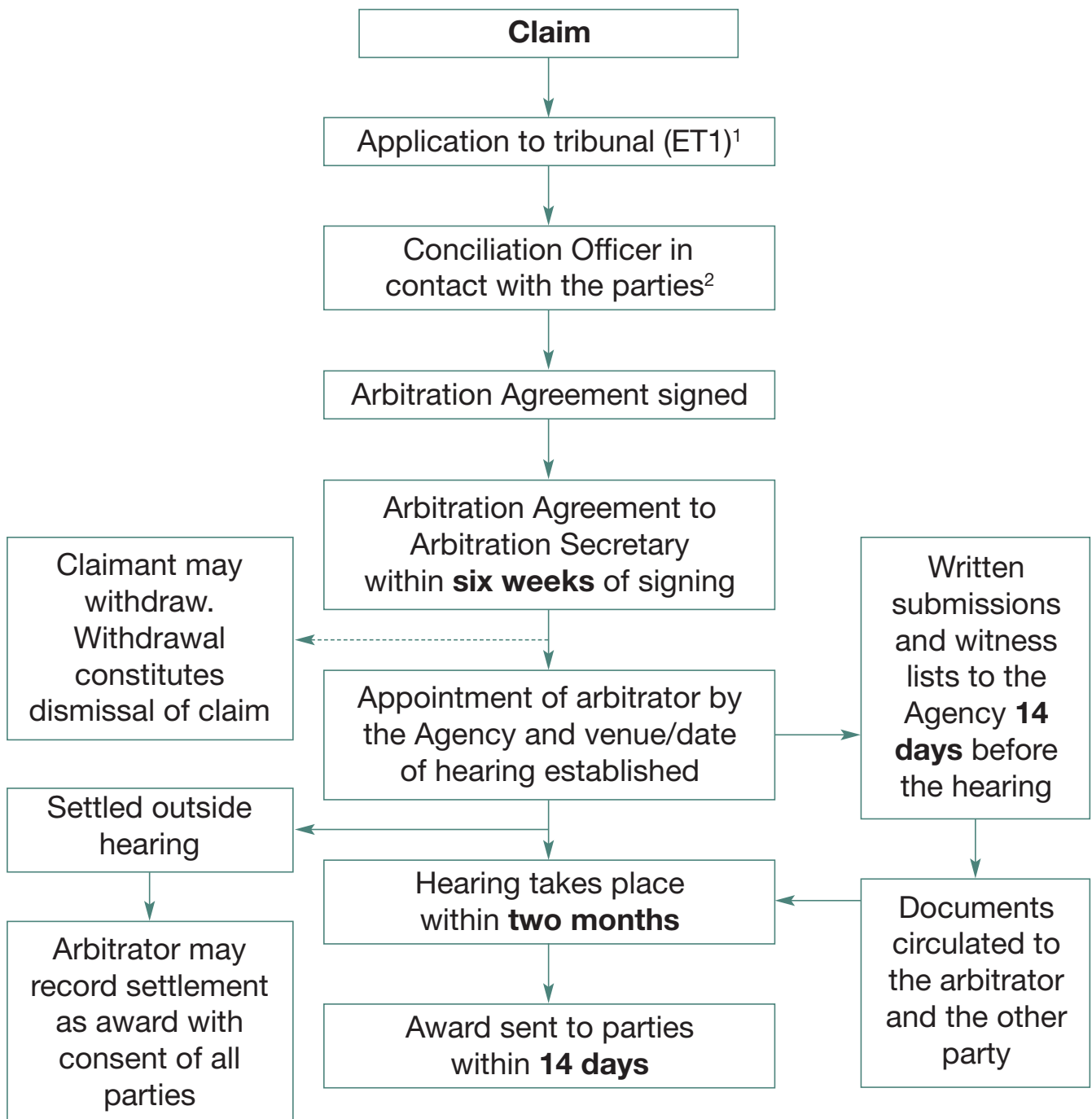
Immunity

- 9.12 The arbitrator will not be liable for anything done or omitted in the discharge of her/his functions as an arbitrator, unless the act or omission is shown to have been in bad faith. This also applies to a legal adviser or independent expert appointed by the Agency.
- 9.13 The Agency, by reason of having appointed an arbitrator, a legal adviser or an independent expert, will not be liable for anything done or omitted by them in the discharge of their functions.

APPENDICES

Appendix A

FLOWCHART SHOWING THE ARBITRATION PROCESS UNDER THE SCHEME



Notes:

- 1 It is not necessary to have made an application to a tribunal in order to use the Scheme – parties should contact the Arbitration Secretary where this is the case.
- 2 The parties may instead choose to use an independent adviser to draw up an Arbitration Agreement using a compromise agreement.

Appendix B

JURISDICTIONS COVERED BY THE ARBITRATION SCHEME AND RELEVANT GUIDANCE

Set out below are most of the jurisdictions (in other words, the grounds on which claims can be made) covered by the Arbitration Scheme, the main legislation providing the legal basis for these jurisdictions, and the main sources of guidance for each of these.

The list is not exhaustive. Advice on specific grounds, and the relevant guidance covering each ground, can be obtained from the Labour Relations Agency, a legal adviser or a trade union representative as appropriate.

Please note that the legislation and guidance, in particular, are subject to change – the Labour Relations Agency, a legal adviser or a trade union representative as appropriate can provide advice on any recent changes in respect of any of the jurisdictions.

Matters which an arbitrator may be asked to decide	Relevant legislation	Guidance
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Agency Workers		
Rights for temporary agency workers in relation to basic working and employment conditions.	The Agency Workers Regulations (Northern Ireland) 2011	<i>Agency workers and employment agencies</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')

Breach of Contract		
<p>Right to minimum notice and to minimum pay during the notice period.</p> <p><u>Note:</u> other aspects of breaches of contract are dealt with under specific headings below.</p>	<p>Industrial Tribunals (Northern Ireland) Order 1996 (Article 5) and Industrial Tribunal Extension of Jurisdiction Order (Northern Ireland) 1994</p>	<p><i>Employment terms and conditions</i> in the ‘Employment’ section at www.nidirect.gov.uk (under ‘Information & Services’)</p>
Deductions from Wages		
<p>Right of all workers not to have deductions made from their wages or to be required to make payments to their employers, unless allowed by statute, by the contract of employment or with the worker’s prior written agreement.</p> <p>Additional rights for workers in shops, etc who suffer deductions from wages (or are required to make payments) because of cash shortages or stock losses.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Employment terms and conditions</i> in the ‘Employment’ section at www.nidirect.gov.uk (under ‘Information & Services’)</p>

Discrimination

<p>Age – direct or indirect discrimination by an employer on the grounds of age in employment and training (includes victimisation).</p>	<p>The Employment Equality (Age) Regulations (Northern Ireland) 2006</p>	<p><i>Age Discrimination in Northern Ireland – A Guide for Employers</i></p> <p><i>Age Discrimination in Northern Ireland – A Guide for Workers and Employees</i></p> <p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p>Also see <i>Discrimination at work</i> in the ‘Employment’ section at www.nidirect.gov.uk (under ‘Information & Services’)</p>
<p>Disability – direct or indirect discrimination by an employer on grounds of disability in employment and training (includes victimisation).</p>	<p>Disability Discrimination Act 1995</p>	<p><i>Employment and Occupation – Disability Code of Practice</i></p> <p><i>Definition of Disability – Disability Discrimination Act 1995</i></p> <p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p style="text-align: right;">continued...</p>

as above	as above	Also see <i>Discrimination at work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')
Race – direct or indirect discrimination by an employer on grounds of race or nationality in employment and training (includes victimisation).	Race Relations (Northern Ireland) Order 1997	<i>Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment</i> and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org) Also see <i>Discrimination at work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')
Religious belief and political opinion – direct or indirect discrimination by an employer on grounds of religious belief and	The Fair Employment and Treatment (Northern Ireland) Order 1998	<i>Fair Employment in Northern Ireland – Code of Practice</i> continued...

<p>political opinion in employment and training (includes victimisation).</p>	<p>as above</p>	<p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p>Also see <i>Discrimination at work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
<p>Sex – direct or indirect discrimination by an employer on grounds of gender or marriage in employment and training (includes victimisation).</p>	<p>Sex Discrimination (Northern Ireland) Order 1976</p> <p>Sex Discrimination (Northern Ireland) Order 1988</p>	<p><i>Removing Sex Bias from Recruitment and Selection – Code of Practice</i></p> <p><i>Sex discrimination – a guide to the Sex Discrimination (Northern Ireland) Order 1976</i></p> <p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p>Also see <i>Discrimination at work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>

<p>Sexual Orientation – direct or indirect discrimination by an employer on grounds of sexual orientation in employment and training (includes victimisation).</p>	<p>Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003</p>	<p><i>Sexual Orientation Discrimination in Northern Ireland – The Law and Good Practice</i></p> <p><i>Sexual Orientation in the Workplace – Your Rights</i></p> <p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p>Also see <i>Discrimination at work</i> in the ‘Employment’ section at www.nidirect.gov.uk (under ‘Information & Services’)</p>
<p>Equal Pay</p>		
<p>Right to receive the same pay and other terms of employment as an employee of the opposite sex working for the same, or an associated employer, if engaged on like-work, work rated as equivalent under job evaluation or work of equal value.</p>	<p>Equal Pay Act (Northern Ireland) 1970</p>	<p><i>Code of Practice on Equal Pay</i></p> <p>and a range of other guidance, all published by the Equality Commission for Northern Ireland (www.equalityni.org)</p> <p style="text-align: right;">continued...</p>

as above	as above	Also see <i>Discrimination at work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')
Fair Employment		
See Discrimination – religious belief and political opinion (above)		
Fixed Term Workers		
Less favourable treatment of fixed term employees compared to permanent employees.	Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002	<i>Fixed term workers</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')
Flexible Working		
Right for parents of young children and carers of certain adults to request flexible working arrangements, and the related duty of employers to consider such requests.	The Employment Rights (Northern Ireland) Order 1996 Flexible Working (Eligibility, Complaints and Remedies) Regulations (Northern Ireland) 2003	<i>Flexible working</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')
Guarantee Payments		
Right to receive guarantee pay from employers during lay-offs.	Employment Rights (Northern Ireland) Order 1996	<i>Guarantee pay</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')

Health and Safety Activities		
<p>Unfair dismissal on health and safety grounds.</p> <p>Detrimental treatment for health and safety reasons.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Code of Practice on Disciplinary and Grievance Procedures</i></p> <p>Published by the Labour Relations Agency (www.lra.org.uk)</p>
Itemised Pay Statement		
<p>Right to receive an itemised pay statement.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Pay in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</i></p>
Maternity/Paternity Rights		
<p>Right not to suffer detrimental treatment nor to be dismissed for reasons connected with pregnancy, childbirth or taking maternity leave.</p> <p>Right to be paid time off work for ante-natal care.</p> <p>Right to return to work after maternity leave.</p> <p>Parental leave.</p> <p>Adoption/paternity leave and pay.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p> <p>Employment and Parental Leave Regulations (Northern Ireland) 1999</p> <p>Employment (Northern Ireland) Order 2002</p>	<p><i>Work and families and Suspension from work on medical/health and safety grounds in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</i></p> <p>Also see guidance on sex discrimination, unfair dismissal and flexible working.</p>

Medical Suspension		
<p>Right not to be unfairly dismissed on suspension on medical grounds relating to health and safety regulations.</p> <p>Right to receive pay on suspension on medical grounds.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Suspension from work on medical/health and safety grounds</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
National Minimum Wage		
<p>Dismissal because of qualification for the National Minimum Wage or because a person has sought to enforce their right to it (or because their employer was prosecuted on account of enforcement action taken by them).</p> <p>Workers can complain of suffering a detriment if their contracts are terminated for any of these reasons.</p> <p>Additionally, both employees and workers are protected from detrimental inaction by their employer falling short of termination of employment.</p>	<p>National Minimum Wage Act 1998</p>	<p><i>Employment terms and conditions</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>

Part-Time Working		
<p>Right of part-time workers not to be treated less favourably in their working conditions than comparable full time workers.</p> <p>Workers have the right not to be unfairly dismissed, selected for redundancy or subjected to any other detriment if the reason for such action is that the workers exercised or sought to exercise rights under the regulations, gave evidence or information relating to proceedings brought by a worker under the regulations or that the employer believed that a worker had done or intended to do any of those things.</p>	<p>The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000</p>	<p><i>Part-time work</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
Pension Schemes		
<p>Right not to suffer detriment in respect of decisions to opt in or out of occupational pension schemes.</p>	<p>Pensions (No. 2) Act (Northern Ireland) 2008</p>	<p><i>Information and consultation of employees</i> in the</p> <p style="text-align: right;">continued...</p>

<p>Right of recognised independent trade unions to be consulted about an employer's notice of claim for a contracting out certificate relating to an occupational pension scheme, including any question about whether a union is independent or recognised to any extent for collective bargaining purposes.</p>	<p>Pension Schemes (Northern Ireland) Act 1993</p> <p>Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006</p>	<p>'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
Public Interest Disclosure		
<p>Right not to be dismissed, selected for redundancy or subjected to a detriment for making a public interest disclosure ('whistleblowing') within the meaning of the legislation.</p>	<p>The Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Code of Practice on Disciplinary and Grievance Procedures</i></p> <p>Published by the Labour Relations Agency (www.lra.org.uk)</p> <p>See also guidance published by Public Concern at Work (www.pcaaw.co.uk)</p>
Trade Union Membership/Non-Membership Rights		
<p>Right to paid time off for trade union duties; right to time off for trade union activities.</p> <p>Right not to suffer action short of</p>	<p>Employment Rights (Northern Ireland) Order 1996</p> <p>The Trade Union and Labour Relations (Northern Ireland) Order 1995</p>	<p><i>Code of Practice – Time off for trade union duties and activities</i></p> <p>Published by the Labour Relations Agency (www.lra.org.uk)</p> <p style="text-align: right;">continued...</p>

<p>dismissal for trade union membership or activities.</p> <p>Right not to suffer action short of dismissal to compel union membership whether in or outside a closed shop.</p> <p>Right not to be unfairly dismissed for trade union membership or activities.</p> <p>Right not to be unfairly dismissed for non-membership of a union whether in or outside a closed shop.</p> <p>Right not to be chosen for redundancy because of trade union membership or activities or non-membership of a trade union whether inside or outside a closed shop.</p> <p>Right not to be unreasonably expelled from a trade union.</p>	<p>as above</p>	<p><i>Trade unions</i> in the ‘Employment’ section at www.nidirect.gov.uk (under ‘Information & Services’)</p> <p>Also see guidance on redundancy and unfair dismissal.</p> <p style="text-align: right;">continued...</p>
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<p>Right not to be unjustifiably disciplined by a trade union.</p> <p>Right not to be refused the service of an employment agency on grounds related to trade union membership.</p> <p>Right not to suffer unauthorised or excessive deductions of union subscriptions.</p>	as above	as above
Transfer of Undertakings		
<p>Right not to be dismissed on the transfer of an undertaking to a new employer except for certain reason.</p>	<p>Transfer of Undertakings (Protection of Employment) Regulations 1981</p>	<p><i>Employment terms and conditions</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
Unfair Dismissal (see also Maternity Rights, Medical Suspension, Transfer of Undertakings, Trade Union Membership/Non-Membership Rights)		
<p>Right not to be unfairly dismissed.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Code of Practice on Disciplinary and Grievance Procedures</i></p> <p>Published by the Labour Relations Agency (www.lra.org.uk)</p>

Written Reasons for Dismissal

<p>Right to receive a written statement of reasons for dismissal.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Redundancy and leaving your job</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p> <p><i>Code of Practice on Disciplinary and Grievance Procedures</i></p> <p>Published by the Labour Relations Agency (www.lra.org.uk)</p>
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Written Statement of Employment Particulars

<p>Right to receive a written statement of the particulars of any alteration to them with sufficient details to meet requirements of the Employment Rights (Northern Ireland) Order 1996.</p>	<p>Employment Rights (Northern Ireland) Order 1996</p>	<p><i>Employment terms and conditions</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
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Working Time

<p>Rights to rest periods, breaks or paid annual leave.</p> <p>Protection from unfair dismissal if workers are dismissed for exercising these rights.</p>	<p>Working Time Regulations (Northern Ireland) 1998</p>	<p><i>Employment terms and conditions</i> in the 'Employment' section at www.nidirect.gov.uk (under 'Information & Services')</p>
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Appendix C

TRIBUNALS AND ARBITRATION: A COMPARISON

KEY PROCESS AREAS	TRIBUNAL	ARBITRATION
Claims that can be heard	Most matters relating to employment law.	The same as a tribunal, with the exception of a small number of specialised areas.
Decision based on	Statute and case law.	<ul style="list-style-type: none"> • General principles of fairness and good conduct in employment relations including, for example, principles referred to in any relevant codes of practice. • Regard to guidance covering relevant statutory provisions.
Those hearing the case	Legally qualified Chairperson (with or without side members depending on the jurisdiction).	An arbitrator, sitting alone, appointed by the Labour Relations Agency with knowledge of employment law, adjudication skills and employment relations experience.

Location of hearing	The Office of the Industrial Tribunals and the Fair Employment Tribunal, in Belfast, or courthouse.	At the Labour Relations Agency's offices in Belfast or Derry/ Londonderry.
Date of hearing	Set by a tribunal.	Agreed with the parties – normally takes place within two months of completion of the Arbitration Agreement, or earlier if all parties wish it.
Length of hearing	Normally more than one day.	Normally less than one day.
Presentation of evidence	Cross-examination of witnesses on oath.	Informal presentation, no oaths or cross-examination by parties, with questioning by arbitrator.
Availability of witnesses and documents	Witness orders, orders for discovery/ inspection or production by witnesses of documents.	No powers in Scheme to make orders, but failure of parties to co-operate can count against them when the decision is made.
Expenses to attend hearing/loss of earnings	Tribunal can reimburse expenses and losses for parties, witnesses and some representatives.	No expenses, but compensation may include a sum for the cost of the claimant attending hearing.

Remedies/Awards	A range of remedies, including financial compensation and, in the case of unfair dismissal, reinstatement/ re-engagement.	The same as a tribunal.
Appeal/Challenge	Appeal can be made to the Court of Appeal on a point of law only.	Appeals or challenges can be made to the High Court/County Court on points of law concerning EC law or the Human Rights Act, or grounds of substantive jurisdiction or serious irregularity.
Publicity	Public hearing and award.	Private hearing and confidential award.

Appendix D

GETTING HELP WITH A CLAIM

Labour Relations Agency

The Agency's Helpline (028 9032 1442 (select option 1) or email info@lra.org.uk) is available to everyone – claimants, respondents, and representatives. It provides clear, confidential, independent and impartial advice on a wide range of employment matters.

While the Agency's advisers cannot provide a legal opinion, they can help callers gain a better understanding of their rights and responsibilities and sources of guidance. The Agency's advisory services are separate from its arbitration service.

The Agency's website (www.lra.org.uk) is a comprehensive source of guidance on legislation and guidance covering employment matters.

Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland provides advice in respect of claims involving alleged discrimination and/or Equal Pay to claimants, respondents, and representatives. The Commission can be contacted on 028 90 500 600 or email information@equalityni.org. The Commission's website (www.equalityni.org) is a comprehensive source of guidance on the law and rights in respect of discrimination.

Trade unions

Claimants who are members of a trade union can seek help and advice from their union.

Law Centre (NI) – for claimants only

Law Centre (NI)'s employment legal advice unit provides advice and representation in respect of claims. Priority is given to cases where there is no other representation available (including legal advice through a trade union). It does not normally take on cases which primarily involve discrimination law as the Equality Commission is funded to provide advice in this area.

Its advice line is open Monday to Friday, 9.30am to 1pm. The number is 028 9024 4401. Due to a large caseload, it is not always possible for an adviser to ring back on the same day.

Other sources

Other sources of help and advice include:

- www.nidirect.gov.uk – provides guidance on various matters concerning the terms and conditions of employment.
- www.nibusinessinfo.co.uk – supported by Invest Northern Ireland, provides practical advice for employers on a range of matters, including employment issues.
- Citizens Advice Bureau – www.citizensadvice.co.uk.
- Advice NI – www.adviceni.net or telephone 028 9064 5919.

Legal Aid

Legal Aid might be available for initial advice to a claimant on their claim and for preparation for the arbitration hearing (as they would if the claim is to be heard by a tribunal).

Legal Aid is not available for representation at either arbitration or tribunal hearings.

Further information on Legal Aid is available from a solicitor.

Appendix E



ARBITRATION AGREEMENT

Claimant	Respondent

[Claimant's name] and [respondent's name] hereby agree to submit the following dispute:

[include issue(s) and relevant dates(s)]

to arbitration in accordance with the Labour Relations Agency Arbitration Scheme having effect by virtue of the *Labour Relations Agency Arbitration Scheme Order (Northern Ireland) 2012*.

In agreeing to refer the dispute to arbitration under the Scheme, the parties:

1. Agree to waive rights that they would otherwise have if the dispute had been the subject of proceedings at an Industrial Tribunal and/or Fair Employment Tribunal.
2. Agree that there is no jurisdictional argument, i.e. no reason why the claim cannot be heard and determined by the arbitrator.
3. Agree to any claim in respect of this dispute, which is the subject of this Agreement, being withdrawn from the Industrial Tribunal and/or Fair Employment Tribunal once it has been accepted under the Labour Relations Agency Arbitration Scheme, and understand that the dispute

Appendix F

STANDARD ARBITRATION HEARING PROCEDURE

The following is a guide only – procedures are flexible and the arbitrator may structure a hearing in any way that is appropriate in accordance with her/his general duty to:

- Act fairly and impartially between the parties, giving each party a reasonable opportunity to present their respective cases.
- Adopt procedures suitable to the circumstances of the particular claim.
- Avoid unnecessary delay or expense in order to provide a fair means for resolving the dispute.

The arbitrator is responsible for the conduct of the hearing, for ensuring that s/he obtains all the information needed to make her/his award (decision) and that the parties are given every opportunity to present their evidence and arguments. Although the arbitrator will decide the way in which the hearing is to be conducted, s/he will normally adopt the procedure set out below.

Stage 1: Introduction

The arbitrator will introduce her/himself and ask the parties (or their representatives) to introduce themselves and all those present at the hearing on their behalf. The arbitrator will explain the way in which the hearing is to be conducted.

The Arbitration Secretary (a member of the Labour Relations Agency's staff) will explain the domestic arrangements applicable to the location, for example, emergency evacuation instructions.

The arbitrator will outline the nature of the claim or dispute, the terms of reference for the hearing, and the remedies available to the arbitrator if s/he finds in favour of the claimant.

Stage 2: Oral presentations

Each party will be asked to make an opening statement that draws attention to the main points of their respective cases, and which may include comments on each other party's written submission. The claimant will normally make the first opening statement. Opening statements will usually be made without interruption unless the arbitrator or any other party, through the arbitrator, wishes to clarify any factual information.

Stage 3: Discussion of the issues

The arbitrator will then discuss the issues with the parties. This normally starts with the arbitrator asking questions of the parties. One party may also suggest questions that the arbitrator might put to each other party.

The party to whom the question is directed may respond themselves or call upon anyone accompanying them to respond. The person answering the question may call upon another member of the team to make a supporting statement. If one party responds to a question, each other party will be given an opportunity to comment on the response. Again, the party may comment themselves or invite someone accompanying them to do so instead or as well.

Finally, the arbitrator will ask the parties if they feel they have had an opportunity to say everything that they wish to and sufficient opportunity to respond to what each other party had to say. The arbitrator may then suggest a short adjournment to allow the parties to prepare for their final submissions.

Stage 4: Closing statements

The parties will be offered the opportunity to make a final statement to the arbitrator.

The final statements should be a summary of the main points the parties wish the arbitrator to take into account in reaching her/his decision and should contain no new material.

The arbitrator will seek views from the claimant on the remedy being sought if the arbitrator finds in their favour (for example, financial compensation). The arbitrator will also seek information that will help to inform the calculation of compensation should it be awarded. In cases of alleged unfair dismissal the parties' views on reinstatement or re-engagement will be sought.

In closing the hearing the arbitrator will seek a final confirmation from each party that they have nothing further to add.

The arbitrator will not announce her/his decision at the hearing. This will be issued at the same time to each party no more than 14 days after the hearing.

GLOSSARY

Appeal/challenge	the basis on which an arbitrator's award (decision) can be reviewed by the High Court or County Court.
Arbitration	a way of resolving a dispute in which an independent person decides between different views on the matter, based on the information presented to them.
Arbitration Agreement	a legal document signed by all parties to a dispute in which they agree to resolve that dispute through arbitration.
Arbitration Scheme	the overall system, set out in law, by which the Labour Relations Agency provides arbitration as an alternative to a tribunal.
Arbitrator	an impartial and independent person, with knowledge of employment law, adjudication skills and employment relations experience, appointed by the Labour Relations Agency to resolve disputes through arbitration.
Award	the decision made by an arbitrator in respect of a dispute.
Binding	a decision or commitment that is enforceable in law.
Claim	a dispute relating to a matter concerning an alleged breach of employment rights that could be the subject of proceedings before an Industrial Tribunal and/or Fair Employment Tribunal in Northern Ireland, and which could be resolved under the Arbitration Scheme.

Claimant	a person who seeks to enforce employment rights, either through a tribunal or the Arbitration Scheme.
Compensation	a financial award made by an arbitrator to a claimant whose claim is upheld. The sum involved may include loss of earnings resulting from being away from work, and in cases of discrimination a sum for injury to feelings. Financial awards are payable by the respondent.
Compromise agreement	<p>a contract drawn up by a legal adviser between an employer and an employee (or ex-employee or other person) under which the employee receives a negotiated settlement (for example, a financial sum) in exchange for agreeing that s/he will have no further claim against the employer as a result of any alleged breach of their rights by the employer.</p> <p>Compromise agreements must conform to the statutory requirements under Article 245 of the <i>Employment Rights (Northern Ireland) Order 1996</i>.</p>
Conciliated agreement	a contract drawn up by the Labour Relations Agency between an employer and an employee (or ex-employee or other person) under which the employee receives a negotiated settlement (for example, a financial sum) in exchange for agreeing that s/he will have no further claim against the employer as a result of any alleged breach of their rights by the employer. Such agreements are legally binding.
Conciliation	a process using an independent person (a Conciliation Officer) to find a solution to a dispute that all parties find acceptable, instead of going to arbitration or a tribunal.

Conciliation Officer	a member of the Labour Relations Agency's staff who holds discussions between the parties to a dispute to seek to resolve that dispute through an agreement that is acceptable to the parties.
Confidentiality	respect for privacy – an agreement not to disclose a matter (for example, a dispute and the resolution of it) to others who are outside of the dispute.
Discrimination	the less favourable treatment of someone because of certain personal characteristics that are protected by law (for example, their age, disability, gender, nationality, political opinion, race, religious belief, sexual orientation or trade union membership).
EC law	a provision in Northern Ireland legislation resulting from rights, powers, liabilities, obligations and restrictions from European Community Treaties.
Enforcement	the use of law to ensure a decision is acted upon.
Hearing	a meeting, which is chaired by an arbitrator, to allow the parties to a dispute to present arguments and information in support of their side of a dispute or claim.
Immunity	protection from civil law suits given to the arbitrator, expert advisers and the Labour Relations Agency in respect of an arbitration, unless an act (or failure to act) was committed in bad faith.
Interest	the rate of additional money payable where a respondent does not pay the compensation awarded by the arbitrator within 42 days of the date of despatch of the award.

Jurisdiction	the legal grounds under which a claim can be made to a tribunal or heard under the Arbitration Scheme.
Mediation	a process using an independent person (a mediator) to find a solution to a dispute that all parties find acceptable – mediation is aimed at resolving interpersonal disputes between people rather than alleged breaches of rights (which are normally dealt with by conciliation – see above).
Remedy	the solution to a claim that is decided by an arbitrator if s/he finds in favour of the claimant – this could be financial compensation or, in the case of unfair dismissal, reinstatement or re-engagement.
Respondent	the party against whom a claim has been made – this is usually an employer, but could be an individual within the employer’s organisation.
Terms of reference	the framework that guides the arbitrator in making a decision to resolve a dispute.
Tribunal	an Industrial Tribunal and/or Fair Employment Tribunal for Northern Ireland, which is similar to a court of law, set up to judge certain alleged breaches of employment law.
Witness	a person who can provide information or evidence to an arbitrator in support of a party to a claim.





Labour Relations Agency

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Regional Office

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Textphone: 028 9023 8411

Fax: 028 9033 0827

Email: arbitration@lra.org.uk

www.lra.org.uk

