



# Collective Arbitration

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

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## Overview

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### What is Arbitration?

Voluntary Arbitration is a long standing method for settling disputes and is often regarded as the last means whereby the parties can voluntarily agree to resolve a dispute. It is most suitable where the issue is clear cut, for example pay disputes or job grading, or where it concerns issues such as the interpretation of agreements.

Collective Arbitration provides a voluntary, impartial and confidential process for dealing with disputes between employers and groups of employees, the latter often represented by a trade union. The Arbitration process can be facilitated by the Employment Relations Service (ERS) at Commerce and Employment, as part of its function to provide a dispute resolution service for the Island. In most cases Arbitration is facilitated under the standard procedures outlined in this booklet and will be provided free of charge.

Arbitration is different from conciliation as the parties (jointly) ask a third party to make a decision on a dispute which the parties have been unable to resolve themselves. This often follows a period of conciliation, which has also been unable to resolve the dispute. However, Arbitration can be facilitated without first using conciliation, if the parties so choose.

### How does Arbitration Work?

Parties can approach the Employment Relations Service to facilitate Arbitration. The Service has no power to force parties to agree to Arbitration. Arbitration can also be offered as part of the mechanism to resolve disputes notified under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993.

The decision of the Arbitrator is not legally binding. However, to ensure the effectiveness and credibility of the process both parties must undertake, beforehand, to accept the decision of the Arbitrator. Confirmation that this commitment is clearly established will be obtained from the parties, who will be asked to sign a form ARB1 before any formal steps will be taken to facilitate the Arbitration process – (see appendix one at the end of this booklet).

So that everyone involved understands what the Arbitrator is being asked to decide, the parties must sign agreed "Terms of Reference". The terms of reference may be drafted by the parties themselves, or with the aid of an ERS conciliator who may be helpful in assisting the parties to reach agreement on the issues upon which they wish the Arbitrator to make a decision. Form ARB1 contains a section for the terms of reference to be set out. The request for Arbitration may arise from the parties' agreed negotiating procedures, framework agreements, or on an ad hoc basis, perhaps as a result of a collective conciliation where the parties were unable to reach an agreed settlement. The decision in an Arbitration facilitated by the ERS will usually be made by an Arbitrator, drawn from a panel of experienced employment Arbitrators maintained by ACAS (the UK's Advisory, Conciliation and Arbitration Service) who will be brought in from the UK specifically for the hearing.

A Secretary will be appointed who will be responsible for facilitating the process, co-ordinating dates for the hearing, exchanging the cases and for the general administration of the hearing.

**Note: All communication between the parties and the Arbitrator should be made through the appointed Secretary.**

An Arbitration hearing is arranged by the Secretary, on a date and at a venue that is convenient to the parties. Usually, the venue is a location that is neutral to the parties i.e. a hotel or conference facility. Each party is required to prepare a statement of its case. The cases are normally exchanged no less than seven days before the date of the hearing (see "Preparing for Arbitration" later in this booklet). A copy of each side's case will be forwarded to the Arbitrator, via the Secretary, who will then be familiar with the issues prior to the hearing.

The hearing itself is private. The Arbitrator will conduct proceedings in an informal manner. The parties are free to choose who they wish to represent them, but in most cases they normally choose to be represented by those responsible for, or involved in, negotiations.

The outcome of the hearing will be issued in writing by the Arbitrator, normally within three weeks of the hearing, and will be distributed to the parties simultaneously, by the Secretary, to ensure fairness. The ERS undertakes to keep this decision confidential and will not release it to anyone unconnected with the dispute.

## Preparing for Arbitration

### Why Prepare a Written Submission?

An Arbitrator will approach each case with a completely fresh mind. Therefore, while the parties may have lived with a problem for weeks or even months, the Arbitrator, at the outset, will need to be given full background information and to be made aware of all the relevant arguments and counter-arguments, directly related to the issues identified in the terms of reference.

By providing as clear and complete a written case as possible, with the resources available, the parties will be able to assist the Arbitrator to form a clear picture of the situation and the problem in advance of the actual hearing.

It has been known for the exercise of writing a case down to focus the parties' minds, causing them to re-appraise their positions or even agree a settlement of the dispute prior to the Arbitration hearing.

## **What should be included in the Written Submission?**

**The written submission should be as brief as possible but it should still include a full presentation of the case. This is not a legal document and should present the case in plain and understandable language.**

1. Included in the written submission should be:-
2. Brief background information about the organisation and its activities, union representatives etc.;
3. A brief history and background to the dispute, including an account of the sequence and outcome of any relevant meetings or discussions; (a timeline is often helpful to the Arbitrator)
4. A section setting out the arguments supporting or opposing the offer or claim;
5. A brief summary of the key points which brings together the essential points that the Arbitrator is being asked to consider;
6. Copies of any relevant agreements, procedures or rules should be attached as appendices. If there is agreement between the employer and the staff representatives or trade union on 1 and 2 above, it may be convenient for the parties to present a joint paper on those items. This will not only save work but will reduce the volume of paper which the Arbitrator is required to read.

Joint statements may also be issued when one or more trade union is involved. In these circumstances, if no joint statement is issued, submission of statements should be co-ordinated whenever possible.

## **How Should the Submission be set out?**

For clarity and ease of reading, submissions should be typed in double-spacing and only on one side of the paper.

All pages should be numbered. In addition, numbering paragraphs and any additional papers is also very helpful and proves convenient if, during the presentation of the case, attention needs to be drawn to a specific section.

If extracts from documents, tabulations or other evidence is to be included then they can be attached to the main statement as appendices.

## Exchanging the Written Submissions & Timing

It is essential that all information given to the Arbitrator is known to the other party. The parties will be required to exchange written submissions, on an agreed date before the hearing, through the Secretary, who will ensure that the Arbitrator receives them in sufficient time to study them before the hearing.

## The Number of Submissions Required

The Secretary will usually require three hard copies plus one electronic copy of each party's written submission. These will be distributed as follows:-

- a. Arbitrator
- b. The other party
- c. The ERS (they will also hold the electronic copy)

## Can Additional Papers be submitted later?

The parties should ensure that as far as possible all the relevant papers are submitted to the Secretary to the Arbitrator and the other party before the hearing.

In exceptional circumstances, the Arbitrator may permit additional papers to be introduced at the hearing, providing their number or the amount of information they contain is not excessive. Such additional papers should not seek to introduce completely new points or arguments, and will need to be available to all parties involved, as well as to the Arbitrator.

However, it should be noted that the introduction of additional papers at the last minute is not considered to be consistent with the spirit of Arbitration, where there should be no surprises on the day.

## Who will represent the Parties at the Hearing?

It is normal for the parties to represent themselves at the hearing. Usually, the employer's party will be represented by those who have taken part in any negotiations or, if no negotiations have taken place, by Senior Managers, or some other official of the company.

The employees' party will normally be represented by the full-time Union Officer and the Company's Union representatives, who have been involved with discussions and negotiations concerning the dispute.

However, this is a matter for the parties to decide.

## Can Witnesses Attend?

Yes. If either party wishes to introduce witnesses, it is helpful for a list of witnesses to be sent to the Arbitrator and to the other party, via the Secretary. This should be done on submission of the written statement or as soon as possible before the hearing.

Further advice on the preparation of written cases, Arbitration procedures and related matters can be obtained by contacting the offices of the Employment Relations Service (see "Contact Information for details.")

**Should this communication contain any discussion of legal matters, this is not to be taken as an authoritative interpretation of the law.**

## Advice and Conciliation

The Employment Relations Service provides a free and confidential advisory service to both employers and employees on any employment-related matter.

Where appropriate a confidential conciliation service may also be provided, free of charge, and is a positive means of resolving disputes between employers and employees. The service is provided by trained staff that are impartial and able to assist in resolving disputes at all levels.

## Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

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## Contact Information

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### For further advice

- Check [www.gov.gg/employmentrelations](http://www.gov.gg/employmentrelations)
- Email [employmentrelations@gov.gg](mailto:employmentrelations@gov.gg)
- Contact the Employment Relations Service, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- Call us on 01481 732583