

## **The Acas Arbitration Scheme: An evaluation of parties' views**

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## **Executive Summary**

### **Background**

In May 2001 Acas launched a new scheme in England and Wales, designed to serve as an alternative to employment tribunal hearings. The new Arbitration Scheme (the Scheme) had a remit to deal with cases of unfair dismissal only. In April 2003 the Scheme was extended to handle cases concerning applications for flexible working. Unlike tribunals, the hearing is chaired by one Arbitrator, whose decision is binding. The hearing is not held in public and there is a very limited right of appeal. An Arbitrator has the power to award the same remedies as a tribunal. The parties each have to agree in writing to participate in the Scheme.

A total of 43 cases have been put through the Scheme since its instigation. At the time of this study this number was 14. The low take up was predominantly explained by the Scheme's jurisdictional limitations. However, research conducted by Acas amongst conciliators suggested that other factors, such as employees', employers' and their representatives' attitudes and perceptions of the Scheme, could also be at play. Therefore, a decision was taken by Acas to conduct a wider programme of research to understand the experiences and perceptions of parties and their representatives who had used or considered using the Scheme.

This report is based on a qualitative study carried out by DVL Smith Ltd. on behalf of Acas. The study included interviews with twelve (12) users (those who participated in the Scheme) and four (4) non-users (those who considered using the Scheme but did not). In total, four (4) employees, three (3) employee representatives, seven (7) employers and two (2) employer representatives were interviewed. The research comprised interviews with participants of ten out of fourteen arbitration cases. All interviews were conducted between April and July 2003.

The overall aim of the research was to provide detailed evidence to Acas on the operation and value of the Scheme, from the perspective of the parties and their representatives (where used), who have considered using the Scheme or participated in it.

### **Awareness of the Scheme**

The research established that the initial awareness of the Scheme (prior to involvement in the employment dispute) amongst users and non-users was particularly low. However, awareness was higher amongst representatives than employers and employees.

Therefore, in all cases, the Acas conciliators were instrumental in raising interviewees' awareness of the Scheme, thus prompting them to actively consider it as an alternative to a tribunal hearing.

### **Understanding of the Scheme**

Interviewees' initial understanding of the Scheme tended to centre around its cost effectiveness, speed and simplicity relative to tribunals. Some of those interviewed suggested that the Scheme was somewhat akin to the way tribunals used to operate.

Detailed briefings and information provided by the Acas conciliators allowed interviewees to understand the Scheme's benefits and drawbacks in greater detail. The informal nature of the Scheme, the reduced time and effort required for preparation before the hearing, costs and speed of dispute resolution were identified as the key advantages (in comparison with the tribunals) by employees, employers and their representatives. The Scheme's drawbacks, which were typically identified by the employers and representatives, included the limitations on both its jurisdiction and right of appeal. The non-user perspective seemed to mirror that of the users. However, in one of the non-user interviews, an employer representative identified the Scheme's lack of transparency, in terms of rules used by the arbitrators in their decision making, as a further drawback.

Nevertheless, the Scheme was seen to provide an environment ideally suited for cases dealing with relatively straightforward issues (for example redundancy) and where involved parties lacked confidence and / or were un-represented (for example by a solicitor or trade union representative).

### **Scheme experience**

Although, most of those interviewed had a relatively detailed understanding of the differences between the Scheme and tribunals, they appeared to have a quite sketchy idea of the actual proceedings of the case, e.g. documentation required, length and style of the hearing, delivery of the outcome. This was explained by some interviewees (in particular by the representatives) as "teething problems".

Nevertheless, Acas' involvement throughout the process was highly praised by all users, and the Scheme was seen to have worked well. The interviewees were generally impressed by the informal and non-adversarial nature of the hearing. The Arbitrators were seen as being thorough and even-handed. Most interviewees felt that the hearing gave all parties a reasonable opportunity to adequately present their case. Employees in particular felt that they had been given an appropriate and supportive environment in which to make their case.

### **Conclusions**

To conclude, it would seem that there were two main factors which contributed to the low take up of the Scheme: first, the Scheme being restricted to unfair dismissal cases, and second, the continuing low awareness of the Scheme amongst employers, employees and representatives.

In terms of taking the Scheme forward, both users and non-users agreed that better promotion and advertising by Acas would be a necessity. Moreover, in light of a certain amount of confusion, it was suggested that making available detailed case studies would provide potential participants with a clearer view of what to expect from the proceedings.

## **1. INTRODUCTION**

### **1.1 Background**

The Acas Arbitration Scheme (the Scheme) was launched in May 2001. It was intended to provide parties in cases of unfair dismissal with access to a speedier, more informal, confidential and non-legalistic alternative to an Employment Tribunal hearing.

Some important features of the Scheme are that:

- The parties, i.e. the employee and the employer, need to jointly decide to opt for the Scheme.
- The Scheme only includes Unfair Dismissal and Flexible Working cases. Therefore, if a claim issued by an employee covers any issues other than Unfair Dismissal or Flexible Working it must be either settled or withdrawn by the employee or, alternatively, heard by an Employment Tribunal. Only the elements relating to Unfair Dismissal or Flexible Working can be dealt with at an Arbitration hearing.
- The Scheme currently only applies to cases arising in England and Wales. From April 2004 the Scheme will be extended to Scotland.
- Jurisdictional questions - such as whether a dismissal took place or whether the applicant is actually an employee - are outside the scope of the Scheme.
- The Scheme does not deal with "complex" legal issues (for example where the employer has been taken over).
- The case should not raise questions regarding European Law (for example relating to sex discrimination or working time regulations).
- An independent Arbitrator, appointed and trained by Acas, considers the case through a Hearing, and then makes a legally binding judgement that involves the same remedies as a tribunal would award.
- The right of appeal is very limited.

There have been forty three (43) cases completed under the Scheme to date 2004. At the time this study was conducted there had been fourteen (14) cases and the Scheme was confined to Unfair Dismissal.

Since the Scheme's inception, Acas' Research & Evaluation section has monitored its progress via qualitative and quantitative studies amongst Acas conciliators. This has provided evidence on conciliators' experience of the Scheme's operation, their views on the interest shown by parties in the Scheme, and reasons for its take up / non-take up.

A decision was taken by Acas to conduct a wider programme of consultation to understand the experiences and perceptions of parties and representatives who had used or considered the Scheme. In early 2003 DVL Smith Ltd was commissioned to undertake a programme of qualitative research designed to generate a detailed understanding of the operational strengths and weaknesses of the Scheme. Additionally, research was required to assess its key perceived benefits and any drawbacks for those involved in an unfair dismissal case.

## 1.2 Research objectives

As indicated, the overall aim of the research was to provide detailed evidence to Acas on the operation and the value of the Scheme from the perspective of the parties and their representatives (where used), who have considered using the Scheme or participated in it.

The following specific objectives were addressed:

- **to understand parties' perspectives of the Scheme** in the context of other dispute resolution approaches available to both parties and their representatives, specifically in relation to:
- **awareness of the Scheme:** When and how did those involved in a case become aware of the Scheme as an alternative to Employment Tribunal? What role did Acas play in creating awareness?
- **initial understanding of the Scheme** by both parties and their representatives and reasons and motivations for opting for / not using (in the case of non-users) the Scheme: Which aspects of the Scheme were seen as more or less attractive? What were the significant issues influencing take up?
- **to explore perceived benefits and drawbacks of the Scheme** for parties and their representatives
- **to gain detailed understanding**, from users' feedback, of their actual experience of the Scheme.

## 1.3 Methodology

The initial plan was to conduct 30 face-to-face in-depth interviews: 20 with users of the Scheme and 10 with non-users. However, due primarily to the lack of available sample (reflecting the relatively small number of cases completed under the Scheme), only 16 interviews were conducted. Details of these interviews are shown in Table 1.1

**Table 1.1 Structure of the interviews**

	Users*	Non-users	Total
Employees	3	1	4
Employee representatives	3	0	3
Employers	5	2	7
Employer representatives	1	1	2
Total	12	4	16

\* Four of the user interviews were conducted with participants of the same two cases.

All employer interviews were conducted with private sector companies: two (2) of which had fewer than 50 employees, one (1) company had between 51-200 employees and four (4) remaining companies had over 200 employees.

All employer representatives were working as solicitors.

One (1) of the employee representatives was representing a Trade Union, another one (1) was working in a Citizens Advice Bureau, and one (1) was an independent solicitor.

Interviews included seven (7) cases involving conduct related dismissals, and six (6) redundancy related dismissals. In one (1) of the non-user interviews the interviewee (employer representative) could not recollect the exact details of the case due to the time passed and volume of other employment related disputes he was involved in.

In seven (7) of the user interviews the dismissal was found to be fair, in the further two (2) cases the dismissal was found to be unfair and in the remaining case an applicant decided to withdraw on the night before the arbitration hearing.

Both user and non-user samples were provided by Acas. In case of the non-users, the assumption was that they had considered using the Scheme but for whatever reason decided not to. However, in one (1) of the non-user interviews the interviewee did not have any knowledge of the Scheme prior to the interview.

All users had their Arbitration Scheme hearings between March and October 2002.

- All interviews were conducted in England and Wales.
- Copies of the topic guides used in the interviews are in Appendix A-C.

#### **1.4 Report structure**

In the next section of the report we examine users' and non-users' awareness of the Scheme.

In Section Three, we examine interviewees' understanding of the differences between the Scheme and other dispute resolution approaches. The perceived advantages and disadvantages of the scheme are also examined.

In Section Four we review the users' experiences of the Scheme in terms of processes involved before and in preparing for the hearing, the hearing itself and also its outcomes.

Conclusions are provided in Section Five.

## **2. AWARENESS OF THE ARBITRATION SCHEME**

In this section we review interviewees' initial awareness and perceptions of the Scheme.

### **2.1 Initial awareness of the Scheme**

Here, the interviewees were asked to describe how they first became aware of the Scheme, and Acas' role in raising their awareness.

Both users and non-users said they had little awareness of the Scheme prior to the case in question arising. As might be expected, awareness was higher amongst representatives than employers and, in particular, employees.

Representatives' and employers' prior awareness typically came from two main sources:

- Via articles in the professional, legal or human resources related press.

*"I read about it somewhere, that it was a possible option if you wanted to jointly agree." (Employer, over 200 employees, user)*

- Training or educational courses on human resources management or employment legislation. This included some seminars provided through Acas.



*"When I did my employment law degree, one of the questions was to argue a case for tribunal or arbitration, and I argued for arbitration. So of course, when it came into being I was more interested than most, because I'd heard about it." (Employee representative, Trade Union representative, user)*

*"I have heard a lot of it (in an academic context) as I finished my degree just a year ago." (Employer representative, solicitor, non-user)*

Employers' awareness of the Scheme varied depending on their degree of involvement in the HR function and their previous experience of unfair dismissal cases. In cases where employers did not have prior awareness of the Scheme, it was introduced to them by Acas or their representatives.

*"I believe it was actually introduced through the Union. They'd been involved on the applicant side and suggested that it might be a way we'd like to go." (Employer, over 200 employees, user)*

Employees, as might be expected, had no prior awareness of the Scheme, which was also introduced to them by either their representative or Acas.

*"The conciliator told me it's going to be formal but casual, there is no cross examination. You can bring in whoever you want to. They can bring whoever they want to. It will be confidential, there will be no publicity. And I decided just to go for this." (Employee, user)*

## **2.2 Acas' involvement in raising awareness of the Scheme**

In all the cases where the Scheme was used, the Acas conciliator was instrumental in raising awareness of the Scheme. That is, while there was some general awareness of the Scheme, no interviewees reported that they were actively considering this route prior to the possibility being raised by Acas.

*"Actually, the impetus came from Acas itself. He (the Acas Conciliator) said 'well, look, it might help if we try the Arbitration Scheme', which we did of course in the end." (Employee Representative, CAB Advisor, user)*

Awareness of the Scheme, prior to Acas' involvement, was typically limited to a vague understanding that it offered a somewhat less legalistic alternative to an Employment Tribunal. However, there was little appreciation of the detailed features of the Scheme in terms of, for example, procedural rules. It was therefore typically reported that Acas conciliators had proactively raised the Scheme as a possibility at the early stages of contact. (If not at the first contact then certainly relatively early on in the process, once details of the case had been established.)

*"It was fairly early on in the tribunal paperwork that they (Acas) suggested the Scheme..." (Employee, user)*

*"He (the Acas Conciliator) came to see me and one of the things he mentioned at the time was that, rather than going to a tribunal, there was this other option." (Employer, over 200 employees, user)*

Acas conciliators were similarly instrumental in raising awareness of the Scheme in two (2) of the non-user interviews. However, one (1) non-user (an employee) reported that the Scheme had never been suggested as an alternative. The other non-user (a representative) reported being aware of the Scheme prior to coming to the case under discussion.

*"I got some paperwork through in the post and I got a phone call from this lady (the Acas Conciliator) explaining, in general terms, how it worked." (Employer, under 50 employees, non-user)*

*"It was fully explained, both in a pack and also speaking to the Acas lady (the Acas Conciliator) on the phone." (Employer, under 50 employees, non-user)*

### **3. UNDERSTANDING OF THE ARBITRATION SCHEME**

In this section we review interviewees' understanding of the Scheme and its perceived benefits and drawbacks.

#### **3.1 Initial impressions and expectations**

Here, the interviewees were asked to outline their initial reactions to the Scheme after being introduced to the idea by an Acas Conciliator or representative, and reading through the information pack provided by Acas.

After having spoken to an Acas Conciliator and reading through the information pack, interviewees' initial impressions of the Scheme tended to focus around three themes: relative cost effectiveness; speed; and simplicity in comparison with employment tribunals.

*"I had the choice of going to Acas or going to the Tribunal and I chose Acas because in the Tribunal you are going to get cross examined, you have to cross examine people and all that. With Acas you don't. It looked more manageable to me because I had been speaking to the Acas people, they made me more confident." (Employee, user)*

*"My perception was that the arbitration would be simpler [than a tribunal], and it would be a defined period of time, as opposed to perhaps being one or two or whatever number of days. Obviously it was based on the information provided beforehand. I think our*

*perception was that it should be slicker [than a tribunal]."*  
(Employer, over 200 employees, user)

Certain representatives and respondents with past experience of tribunals suggested that these kinds of features of the Scheme perhaps represented a return to what they perceived as the original ethos of the tribunal system. However, interviewees typically found it difficult to describe exactly what they were expecting of the process. As such, individuals' past experience, (or in the case of employees, their expectations since none had been through the process of an Employment Tribunal before), of tribunals were often the main point of reference.

*"In a way I viewed it as ..... it would be like going to a tribunal and I would have the opportunity to make my opening speech at the beginning and build from there. So it would be more like a discussion."* (Employer, over 200 employees, user)

*"In some ways it's trying to reinvent perhaps where the tribunals originally were in terms of being informal and quick and simple."*  
(Employer representative, solicitor, user)

*"To me it smacked rather of the old original tribunal idea that both parties turned up in front of three people, without too much option of legal trickery, without looking at the technicalities: on balance, was there termination, or whatever the action was, was it fair? Did it breach the rules in any major way? And from that, is any compensation due or not? It is a straightforward process."*  
(Employer, over 200 employees, user)

A further observation was made by some representatives, who expressed a certain amount of uncertainty with regard to the rules that would be employed by the arbitrators in their decision-making. In particular, the absence of case law and a lack of appeals were raised by representatives as main reasons for this uncertainty about the Scheme.

*"I think the thing that is unsatisfactory is the uncertainty around the extent to which the arbitrator can be relied upon to apply "the law" because of the limited grounds on which you can appeal. If the tribunals don't apply the law as you think it should be, you can appeal."* (Employer representative, solicitor, user, case found to be unfair dismissal)

*"There is a lack of transparency of what you are going to get. Whereas if you go to a tribunal, obviously the tribunals have been established for years, you have a good idea of where the case is going to lie because of the case law."* (Employer representative, solicitor, non-user)

### 3.2 Understanding of the differences in detail

Furthermore, the interviewees were also asked to describe what they understood to be the main differences between the Scheme and other ways of resolving a dispute (employment tribunal in particular).

The evidence suggests that the features of the Scheme were clearly communicated to the user interviewees. All those interviewed were able to offer a coherent description of the key features of the Scheme. Interviewees typically reported that they had expected the Scheme to be:

- Informal
- Private
- Without a right of appeal
- Requiring the agreement of both parties.

*"I think he (the Acas Conciliator) highlighted that it was a no appeal system. So, that you go into it, plead your case, as it were, and a decision is made and there is no appeal - end of story. And that sounded fine to me. It certainly sounded as though it was worth progressing." (Employer, over 200 employees, user)*

*"He (the Acas Conciliator) told me that if I went to tribunal I would have a right to appeal. And if I went to the Acas Scheme, there wouldn't be any right to appeal. It would be the arbitrator's final decision and there wouldn't be any opportunity of appealing beyond that. And so both options were explained very clearly." (Employee, user)*

Those more experienced in employment law (employers and representatives), also reported understanding, from the outset, the limits of the Scheme in terms of its jurisdiction.

However, all interviewees (including those well versed in employment law) typically reported having limited understanding of the specific procedural requirements of the Scheme, even after being briefed by an Acas conciliator or receiving literature from them. This was particularly the case for those who had experienced the Scheme in its early launch phase, and there were some reports of confusion about exactly what was needed to be done by when, for example, in terms of providing the statement of case.

*"That's the only criticism I had with it, and I think it was because I was on a learning curve and it seemed that the clerk at Acas who was handling the case was as well. For example, I didn't know a case statement had to be done. It would be useful next time if we decide for a case to go to arbitration, if a schedule was put together and sent to us as soon as the dates are agreed, you know, 'you've got to do this, you've got to do that, and you've got to do the other.' Because as I said, I was caught on the hop and the clerk from Acas came to us the day before the hearing about*

*the case statement and I lost a day's holiday doing it." (Employee representative, Trade Union representative, user)*

Similarly to the users, non-users identified speed, informality, confidentiality and no right of appeal as the main differences between the Scheme and tribunals.

*"It sounded like quite a good idea because it would speed things up and it's not going to be as costly." (Employer, under 50 employees, non-user)*

*"The perception is of a more friendlier [than tribunals] approach whereby you are coming to sit down and actually come to some workable solution for both parties." (Employer representative, solicitor, non-user)*

### **3.3 Scheme benefits and drawbacks**

#### **3.3.1 Benefits**

Overall, views based on actual experience of the Scheme were broadly very positive, with the perceived benefits of the Scheme being as follows:

- **Informality:** all categories of respondent, (employers, employees and representatives), identified the informal, quasi-legal status of the Scheme as a significant benefit. There were a number of aspects to this. Employees and their representatives tended to argue that the Scheme would offer a less intimidating environment. Interestingly, employers also had sympathy with this view. There was a broad consensus that the Scheme would provide a less antagonistic forum for the settling of disputes. Several employers also felt that what they described as the "common sense" approach of the Scheme would be more likely to lead to a "reasonable" ruling, than might be the case with a tribunal.

*"When I did take the last case to arbitration the member lost, but that was a weakness of the case that I was aware of. But he felt as if he'd been heard better. Sometimes with the tribunal system they don't understand what's going on, they don't understand a lot of the legal arguments or the reasons. I found the Arbitration Scheme is more what the tribunal scheme should be like for Joe Soap coming off the street." (Employee representative, Trade Union representative, user)*

*"I got the impression that the arbitration system was less of technical law because it is something that goes on between two people, between a company and an individual, at the level of, say common sense law, if you know what I mean." (Employer, over 200 employees, user)*

- **Reduced burden:** tied into the above was the idea that the Scheme offered a less time and labour intensive route than a tribunal. It was felt

that the legalistic approach of a tribunal placed heavy burdens on all those involved in terms of the procedural and administrative aspects of the case.

*"I think it's fourteen weeks or three months [to reach a hearing], or something like that. Whereas with a tribunal you can wait for years." (Employee representative, Trade Union representative, user)*

*"One thing about tribunals ... they've become so unduly formal now that you've got to produce statements for all the witnesses, you've got to produce supplementary statements if you want to challenge something in the other side's statement. And then you've got to produce chronologies, got to produce losses schedules. The whole thing is really so regimented. [Arbitration requires less paperwork and preparation]." (Employee representative, CAB Advisor, user)*

- **Costs:** there was also broad agreement, particularly from employees, but also from employers, that the Scheme was a lower cost option. This could be a particularly important consideration for employees who were keen to pursue what they felt was a just cause. They felt the Scheme offered them a way to do this without bearing the potentially heavy costs of representation.

*"The gentleman at Acas [the Conciliator] who was involved, he was a great help to me. And everything went through. I couldn't afford the legal fees so I represented myself, but Acas made it all very comfortable for me, very helpful. So not much stress and they were accommodating. They allowed me to choose the venue, they allowed me to choose whomever I wanted to bring as witnesses and so on." (Employee, user)*

- **Speed:** Employers and representatives (all of whom had had experience of tribunal cases) also saw the quicker resolution of a case via the Scheme as a distinct advantage, both in terms of the required time needed to prepare the case and having hearing procedures shorter than in tribunals.
- **Publicity:** This was only an issue for one individual, an employee of a non-profit organisation. To this person the fact that the outcome of the hearing was confidential seemed a very distinct benefit of the Scheme.

*"I didn't want my case to be publicised, which it could have been if we went through the tribunal. I didn't want to bring any of my colleagues and customers to any disrepute through newspaper reporters' tendency to distort things quite a bit." (Employee, user)*

### 3.3.2 Perceived drawbacks

The main perceived drawbacks (typically identified more by representatives and employers than employees), were:

- **Jurisdiction:** Several interviewees suggested that the Scheme should be extended to cover other fairly simple disputes or issues in addition to unfair dismissal, for example wages or holiday pays.

*"I think the wages cases should be brought in. I think it's Section 10 about asking a tribunal to determine contracts of employment; I think that would be useful to bring it in. Discrimination cases ... I'm not so sure to be honest because I think there's a lot of work that goes on in a discrimination case. I reserve my judgement for discrimination cases, but I don't see why all the rest can't be brought in." (Employee representative, Trade Union representative, user)*

*"So, I had to persuade this chap [client] to drop some elements of his claim about whether he'd received the right payment for holiday pay, because the arbitration scheme couldn't consider those. I've never been terribly clear why the jurisdiction doesn't cover those, which on the face of it are relatively straightforward matters." (Employee representative, CAB Advisor, user)*

- **Limited right of appeal:** as indicated, a number of representatives had reservations about the limited right of appeal. In addition, respondents suggested that – although not a consideration in their own case – this might inhibit others.
- **Publicity:** one respondent argued that the privacy of Scheme hearings might be a potential drawback. In certain cases it might be felt important by one of the parties to make their case publicly.

*"Initially, he wanted for his case to attract a bit more publicity, which he would have gotten if he'd gone to tribunal. But I said, I think you'd have a fairer hearing at an arbitration thing." (Employee representative, Trade Union representative, user)*

### 3.3.3 The non-user perspective

Both non-user employers highlighted speed and cost informality as the main benefits of the Scheme that attracted them. However, as the applicants in both cases refused to go down the Arbitration Scheme route, the employers had to proceed with the tribunal.

*"I think speed was the main thing. Speed, the amount of people that would be involved, because having to go through the full process of tribunal, man hour wise, was quite costly as well as having to make sure we had a solicitor." (Employer, under 50 employees, non-user)*

*"It [the Scheme] would have been cheaper and quicker."  
(Employer, under 50 employees, non-user)*

Like the users, the non-user representative stressed that the Scheme's lack of transparency and no right of appeal deterred him from using it.

*"Obviously if you don't know what you are going to get and the decision you are going to get is binding then the two put together creates a lot of uncertainty." (Employer representative, solicitor, non-user)*

### **3.4 Decision making**

Here, the interviewees were asked to go through their decision making process at the time of their choosing between the Scheme and other ways of dispute resolution (in particular employment tribunal): who else was involved in the process; what dispute resolution options were actively considered; factors taken into account when considering other options; and so on.

The final decision as to whether to use the Scheme or not was ultimately with the end-users.

While none of those who were introduced to the Scheme felt that they were pressurised into using it, some of the employers and employees felt that Acas could and should have played a more active role in directing cases towards the Scheme and advising participants on the relevance of their claims. Moreover, it was suggested that the Scheme should be positioned as an obligatory option before the tribunal process in order to cut down on the number of cases.

*"I was sort of hoping they would look at both sides and maybe tell my ex-employer that they didn't really have a case and recommend they try and settle. But nothing like that happened."  
(Employee, non-user)*

*"So before the employer gets IT1, Acas could say, 'would you consider arbitration? If there is no settlement would you be prepared to go for arbitration?' You know, ask that question rather than go straight to a full tribunal hearing. And I think, I would almost go as far as to say that what we should be saying to people is that they must have a damned good reason for going to the tribunal, not that the tribunal is their first option and they then take arbitration or something else as an alternative. What we should be saying to people is 'have you exhausted all these bits and pieces along the route before you go to a tribunal?' And that is what we should be saying to people because a lot of applications really are without any real foundation." (Employer, over 200 employees, user)*

*"We spent a lot of man hours. It's not a criticism of Acas, but somewhere along the line, there should be a system where, if*



*somebody wants to take action, maybe there is a pre-hearing or something, just to see whether this case is worth spending more time on. I don't know whether there is anything that Acas can do."*  
(Employer, 50 – 200 employees, case withdrawn by an applicant)

### 3.4.1 Consideration of alternatives

In all cases settlement was the first option to be taken into account by all parties involved, as the least expensive and resource intensive approach. Next was the tribunal, which was largely seen as the default and final way of conflict resolution. Acas' suggestion to use the Scheme was the main reason it was taken into consideration by employers, employees and their representatives.

The evidence thus far suggests that there are a number of scenarios where the Scheme appeared to be seen as a particularly appropriate route for the resolution of an employment dispute.

- **Points of principle or need to be heard:** some employees and employers suggested that the Scheme was better suited for resolving a key issue point of principle rather than aiming to obtain a significant financial or other type of reward. The argument here was that either or both parties' main interest was primarily in being able to make their case through a neutral arbiter in a Scheme rather than an adversarial legal forum. Therefore, the Scheme was seen as providing an environment where it was easier to deliver a message / point to another party (particularly for employees) where financial reward was not necessarily a main objective.

*"... employees are usually rather aggravated by their employers. So they want to fleece them as much as they possibly can. But I wasn't into that. All I wanted to do was to clear my name. I wasn't in for compensation or reinstatement even. Really, I just wanted to clear my name of the charges that had been levelled against me."*  
(Employee, user)

- **Low risk:** Some interviewees, (particularly employers), also felt that the Scheme was the best alternative where there was relatively little, in financial terms, at stake. The argument was that it was far better for relatively straightforward disputes to be resolved in a simpler and quicker way than being overburdened with a heavily legalistic process.

*"So in this particular thing what attracted me was thinking 'well, hey that's fine – that is them and me.' Any witnesses or whomever you could bring along if you want, but basically it is just setting your stall out, telling your tale in front of whoever they are, the chairman, arbitrator I suppose. And he is going to make a decision, that's fine. Quite happy to do that."* (Employer, over 200 employees, user)

- **Simple cases:** similar to the point above, it was felt that the more straightforward the case, the less argument there was for a complex process of a tribunal.
- **Individuals lacking confidence:** representatives and employees felt that the Scheme approach was a much better choice for individuals lacking the confidence and skills to deal with a tribunal.

*“Well, I thought this chap would sort of jam up if we were not careful in a formal atmosphere. But what did happen was that he didn’t jam up at all, he said far too much.” (Employee representative, CAB Advisor, user)*

- **Less publicity:** as indicated earlier, where privacy was an important consideration the Scheme was obviously a better alternative.
- **Assurance in the outcome:** it also appeared that those employers and employees who felt confident in the success or ‘validity’ of their claim, were more likely to perceive the Scheme as a means of final and irreversible conflict resolution.

*“So I just thought, ‘well, I feel I’m in the right so I’m going to go ahead and pursue it.’” (Employer, under 50 employees, non-user)*

*“So, when Acas contacted us, I said ‘Fine, I can’t see what the case is about. But you say it’s an arbitration, we’ll go for that, because I don’t want to go getting solicitors and wasting money, when we think the case is quite clear-cut.’ The case looked straightforward enough for us to be able to do it ourselves. But I suppose the bottom line is that if you feel the case is shaky or technical, then I wouldn’t use Acas, because once you’ve finished, it is finished.” (Employer, 50–200 employees, case withdrawn by an applicant)*

Both of the non-user employers considered the Scheme as their main alternative for conflict resolution. However, as the applicants declined to participate, they eventually had no choice but to take the tribunal route.

The non-user representative did not consider the Scheme as an alternative to tribunal because of the lack of right of appeal.

*“To be honest, we don’t really look into it that much. It is not really a consideration. I think some of it may have to be related to the indemnity scheme that we offer to our clients. I think it only really comes to decisions made in industrial tribunals. I don’t know if we would cover the decision of arbitration. Especially if that decision cannot be appealed, we certainly wouldn’t cover it. So that is possibly a reason why we don’t go down that route.” (Employer representative, solicitor, non-user).*

## 4. EXPERIENCE OF THE ARBITRATION SCHEME

In this section we review users' experience of the Scheme and possible reasons for its low take up.

### 4.1 Process of the Scheme

Here, the interviewees were asked to describe their actual experience of the Scheme, including preparation for the hearing, actual hearing and receipt of the outcome.

Most aspects of the process were seen as working well and to be relatively straightforward. As indicated, there were some complaints that in the early stages of the Scheme there was confusion about a variety of procedural issues. Nevertheless, for the most part, the Scheme appears to have worked well. Indeed, there was often considerable praise for Acas in terms of the way in which it helped to facilitate the process.

Interviewees also typically felt that the information provided in the Acas' literature was straightforward and written in an easily understandable language.

*"The information was clear, because there were lots of examples in the booklet as I recall, and the lady [the Acas Conciliator] was quite good with help." (Employer, 51-200 employees, case withdrawn by an applicant)*

Moreover, a few interviewees commented on the helpfulness and quality of information provided on the Acas website.

*"I did look at the Acas website and there was some good stuff on there, like the redundancy handling document." (Employee, non-user)*

However, there were one or two comments that it could perhaps be further simplified and that perhaps the information provided was too much for busy people to easily digest.

*"I think, like anything else you get from governments, the language is relatively plain but the documents are never simple. They are never straightforward one, two, three, four. It was [Acas literature] okay but there was far too much of it. I think it was, if I remember rightly, an A4 booklet, which had an awful lot of stuff in there - much more than we needed to know. I think for most people, unless you are a lawyer you just want to know how do you do it, what are the risks and what is the process, end of story. And that could really be condensed onto one page." (Employer, over 200 employees, user)*

## 4.2 The hearing

All interviewees reported being a little unsure, prior to the hearing taking place, as to what its actual format would be. However, there was universally positive endorsement for the way in which hearings had been carried out. This view was backed by employers, employees and representatives. Some interviewees were impressed by the informal conversational and non-adversarial nature of the hearing, which was seen as a major advantage over a full tribunal.

*"There were three people from the other side, there was my client and myself, and there was the arbitrator, and a learner arbitrator. And the whole thing was handled on a very friendly, informal basis." (Employee representative, CAB Advisor, user)*

Certain aspects of the hearing procedure, in particular the presentation of evidence and questioning, were highly praised. The arbitrators were seen as being thorough and even-handed. Most interviewees felt that the hearing gave all parties a reasonable opportunity to adequately present their case. Employees in particular felt that they had been given an appropriate and supportive environment in which to make their case. (Indeed, in certain cases the hearing was seen as quite an empowering experience.)

*"From my experience it was done in a very humanitarian way. There wasn't the sense of authority, it was thorough but everyone who dealt with me dealt in a very personal way and for that I was grateful really. So, I thought the thoroughness was second to none really. There was nothing at all that I could see about the Scheme itself that I could see any faults with really." (Employee, user)*

Only one interviewee had reservations about the hearing. This was an employee who felt that perhaps insufficient time had been allowed for a completely detailed examination of what he felt were very complex issues.

*"I do think that in my instance the case was perhaps a bit too intricate to be dealt with over two hours and a cup of coffee. We weren't aware that was going to be the set up, the Chairman informed us when we sat down that he fully expected to be gone by lunch." (Employee, user)*

## 4.3 The decision

Although some interviewees were initially surprised that the decision was not delivered immediately, they later acknowledged the need for the Arbitrator to weigh up the evidence before giving his/her decision. On balance, most interviewees felt that this had been delivered in a reasonable timeframe, although two individuals did report that they had to chase Acas in order to get a decision delivered.

*"I thought the decision would have been made there and then, on the day. I wasn't expecting to wait a further 14 days, which I felt*

*was totally unnecessary. We [applicant and his representative] were not told that it would be 14 days. We expected that we would leave the room, he [Arbitrator] would have however long it took him - an hour, half an hour - to decide, and then return a decision there and then. We weren't expecting 14 days."*  
(Employee, user)

*"I knew already that the Arbitrator would not give the verdict there and then. I think they need to go back and check every single piece of paper and what they hear ... I think it's fully justified, that they go away, work it out and then return the verdict."*  
(Employee, user)

There was considerable support for the way in which decisions addressed all of the individual issues which were raised in the case. This was seen as doing full justice to the whole range of points that might be involved in the case and as such, even when individuals had lost, they often felt reassured by the fact that they had been able to win some of their points.

*"If we went to tribunal they would have just given a cut and dried 'yes' or 'no'. What I didn't expect was a point by point response, which was very, very good. I just gave it to the member and he saw that every single one of his arguments was covered. Whereas if this was in the tribunal that would not have been the case."*  
(Employee representative, Trade Union representative, user)

Overall, most of the interviewed users felt that the delivered outcome was fair and that the Arbitrator's decisions were logical and made sense. This had still proved to be the case even if the outcome was unfavourable to the party involved.

*"I sensed that the arbitrator was in a very difficult situation really and could see where I was coming from but also where the employer was coming from. At the end of the day he had to wear his legal hat and say 'yes, they were entitled to make the decision they made'. There were some issues where they hadn't followed the policies. But on the final issue, he had to say 'yes' this was a possibility and they were entitled to make the decision that they did and that was his final judgement really."* (Employee, user)

Nevertheless, one of the interviewees (an employee) felt that the outcome of his case was not exactly fair and that it could have been different if there had been more than one person involved in the decision making. This, however, needs to be seen in the context of the extremely sensitive and personal nature of the situation to the applicant. The interview conducted with this employee's representative highlighted the fact that they were both aware of the weakness of their case and could have envisaged the outcome.

*"I think it's a really good scheme. I'm not so happy about leaving it in the hands of one man to chair it. I don't think that did my case any good. I left the arbitration feeling that we had done a bloody good job and in fact the decision came out I'd won 6 of the*

*7 points and yet still got upheld dismissal. And I couldn't understand why." (Employer, user)*

*"In the last case that I took to arbitration the member lost, but that was a weakness of the case that I was aware of. But he felt as if he'd been heard better." (Employee representative, Trade Union representative, user)*

#### **4.4 Reasons for non take-up**

A number of representatives and employers suggested a variety of reasons why take up of the Scheme had not been higher (both based on their personal experience of the Scheme and their assumptions as a result of it).

It was suggested by some, (non-lawyers), that the tendency for solicitors to get involved in unfair dismissal cases at an early stage was a contributory factor to low take up. It was thought that parties that go through the Scheme have less need for legal advice and so solicitors were unlikely to recommend it on the grounds of self-interest.

*"I don't think solicitors are interested. In fact I read somewhere that some solicitors were actively encouraging people not to go for it [Arbitration Scheme]." (Employer, 50 – 200 employees, user)*

Some employers suggested that unions were unlikely to recommend the Scheme to their members on the grounds of there being a very limited right of appeal. However, this view was not expressed by the union and CAB representatives interviewed. They had been amongst the most positive about the Scheme.

Moreover, the fact that the Scheme did not require extensive involvement from solicitors and lawyers led some of the interviewees to suggest that the cases were more likely to be settled or withdrawn before the Arbitration hearings than before the tribunals because the parties would not be faced with as hefty a legal bill when settling or withdrawing before a hearing.

Another suggestion was that the parties might have found it easier to settle when using the Scheme because of a friendlier style of contact (direct and/or indirect) that it promoted between the parties and their representatives. This, however, could also be the result of the type of people who decided to use the Scheme. In other words, those interviewed were mainly driven by the desire to clarify and resolve the dispute once and for all rather than to go through expensive and potentially lengthy tribunal procedures. Therefore, it could also be said that the Scheme users chose that route because they were already pre-disposed to settle or resolve the dispute in a less confrontational manner than the one associated with tribunals.

*"We didn't fall out. I mean I was on speaking terms with him, and he was with me, and even up to a couple of days before the hearing, I told him: "Are you hell bent on going this route?" and he said he was. We talked through, the 'what ifs' in terms of settling*

*before going the arbitration route. He was adamant on certain figures, and the company couldn't recognise that." (Employer, over 200 employees, user)*

One minor point also mentioned was the perception that the delay between hearing and final decision may result in the Scheme being viewed as taking longer than it does in reality. This was a minor point and not resonant with the views of most interviewees.

Finally, many interviewees cited the lack of publicity as a reason for low take up. This was in terms of the Scheme itself not being promoted enough by Acas, (although this was tempered by the belief that Acas did well with limited resources).

*"Somebody needs to sell it. And I think it needs to be sold to both applicant and respondent in a positive manner because there is a lot to sell if they win through it." (Employer, over 200 employees, user)*

*"We don't see any decisions. It is not ever in reports or anything. You never see it written up about what arbitration has done, so it is difficult for us to advise the clients. And, obviously, if we are not sure then we are not going to put the clients into something we can't advise. And that is generally why I think we try to avoid it really." (Employer representative, solicitor, non-user)*

One (1) user and one (1) non-user (employers) had confirmed that they would have used the Scheme if the applicants agreed to participate. In the case of the user, the applicant decided to withdraw his claim a day before the hearing.

*"The date was fixed and the day before the hearing we were told that the other party pulled out. They didn't want to proceed with the case anymore". (Employer, 51-200 employees, case withdrawn by an applicant)*

## **5. CONCLUSIONS**

To conclude, it would seem that there are two main factors which are contributing to the low take up of the Scheme: first, the Scheme's restriction to unfair dismissal cases, and second, the continuing low awareness of the Scheme amongst employers, employees and representatives.

Nevertheless, amongst those who have been through the Scheme, there was unanimously positive feedback. This was particularly apparent when the Scheme was compared to the tribunal process as a main point of reference. Furthermore, Acas' involvement in the facilitation of the Scheme was also widely and positively acknowledged. Moreover, there was a strong indication that while Acas did not push parties into the Scheme by advising on the strengths or weaknesses of a claim or overtly directing them towards arbitration – there was an expressed need for possibly explaining the benefits of using the Scheme more persuasively.

In terms of taking the Scheme forward, both users and non-users agreed that better promotion and advertising by Acas would be a necessity. Moreover, in light of a certain amount of confusion on the precise procedural nature of the Scheme, it was suggested that introducing detailed case studies would provide potential participants with a clearer view of what to expect from the proceedings.

Finally, the majority expressed a view that, with tribunals increasingly overloaded with unfair dismissal cases, there was a growing need for a scheme such as this. It was therefore stressed that the potential for the Scheme's development in the future was considerable.



## APPENDIX A: DEPTH INTERVIEW GUIDELINE FOR APPLICANTS (EMPLOYEES)

### 1. Introduction

- Introduce DVL Smith Ltd: an independent market research agency.
- EXPLAIN OBJECTIVE: We are currently conducting research on behalf of Acas to evaluate the attitudes and experiences of those who have used or considered using the Acas Arbitration Scheme.
- Explain the Market Research Society Code of Conduct: all information is confidential and no reference will be made to individuals and organisations.
- Explain role of tape recorder.

### 2. Employee /organisation profile

- **Please tell me about yourself and your role in the organisation where the dispute took place?**

*Probe:*

- *Job title / responsibilities*
- *Length of time working with organisation*
- *Union membership*

- **And can you tell me a bit about the organisation where the dispute took place?**

*Probe:*

- *Company activity*
- *Size (annual turnover/number of employees)*
- *Company structure: is there a specialist HR function?*
- *Company legal status (partnership, ltd.co, plc, public body etc.)*
- *Union membership: unionised or non-unionised; extent of union membership*
- *Company culture: fear culture, employee friendly, open to disputes, etc.*

- **Before we talk about the specific recent case, can you tell me if you have had any involvement with other employment disputes/ cases?**

*Probe:*

- *When was this?*
- *What happened?*
- *How were these resolved?*

### 3. The case

I would first of all like to understand a little about the circumstances surrounding the case in which you were involved.

- **Can you tell me briefly what was the main problem / issue?**

*Probe:*

- *Who was involved?*
- *How did it start / begin?*
- *What was/ were the issue(s) that lead to the dismissal/ dispute?*
- **What, if any, steps were taken internally to resolve the issue?**
- *Any formal/ informal resolution procedures in place?*
- *If yes: how easy was it to make use of these internal formal / informal resolution procedures?*
- *Why these procedures were not affective in this case?*
- *(if applicable) What role did your HR department / Union play in attempting to resolve the issue internally?*
- *(as appropriate) Would the issue had been resolved differently if the HR department was / was not involved?*

- **When and why did you decide to take formal action against your company?**

*Probe:*

- *What prompted you*
- *Was there anybody else involved in this decision? Who? What impact did they have on your decision to take formal action?*
- *What advice, if any, did you sought before deciding to take formal action? Who from?*
- *Did you notify your employer that you would be taking an action?*

#### 4. Proceeding with the case

- **After deciding to take formal action against your employer, did you know what to do to proceed with the case?**
- **What, if any, advice, help or information did you seek at this point?**

Probe:

From whom?

- Trade Union Officer: which one?
- Citizens Advice Bureau
- Solicitor or other legal advisor
- Friends/ family
- Acas: Acas Helpline, visit to the office, other
- Other

- **How useful was this advice/ information?**

Probe specifically on services received from Acas:

- How easy / quickly was it to obtain relevant information?
- How your enquiry was dealt with: promptly, courteously, and sympathetically?
- Was it what you have expected?
- **(As appropriate) Why did you decide to appoint a representative to help you with your case, rather than taking the case forward yourself?**
- **(As appropriate) Why did you decide to take the case forward yourself, rather than using a representative?**
- **Were you aware of various options available to you to resolve the dispute? Which of these did you actively consider and which ones did you dismiss outright and why?**

Probe extensively on how, when and from whom found out re:

- Private settlement
- Conciliation
- Tribunal
- Acas Arbitration scheme
- Withdrawing the case
- **(If not already established ask) How and when did you first become aware of the Acas Arbitration Scheme?**  
**Through Acas conciliator (if unrepresented)**
  - At what point in the case was the Arbitration Scheme raised? (by the Conciliator)
  - right at the beginning – during the 1<sup>st</sup> call?
  - in the middle, when it became clear that conciliation was not working?
  - how detailed was the information provided? did you feel that you were given sufficient amount of information? why?
  - did you feel that the Scheme was introduced at the right time? why?
  - Documents provided by Acas about the scheme (INTRODUCE DOCUMENTS)
  - do you remember receiving this documentation? when?
  - how readable/understandable/digestible was this?
  - how useful at that particular stage?

#### **Through representative (if represented)**

- At what point in the case was the Arbitration Scheme raised? (by the Representative)
- how detailed was the information provided? did you feel that you were given sufficient amount of information? why?
- did you feel that the Scheme was introduced at the right time? why?
- Documents provided by Acas about the scheme (INTRODUCE DOCUMENTS)
- do you remember receiving this documentation? when? how: post / given by representative / other?
- how readable/understandable/digestible was this?
- how useful at that particular stage?

IF INTRODUCED BY REPRESENTATIVE OR Acas CONCILIATOR

- **How was the Scheme introduced?**

- As a stand alone option
- In comparison with other options
- Clearly explained
- Worth considering or non-starter: why?

- **Did you receive any information from any other sources?**

Probe on:

- Who was this?
- How useful did you find it?
- Was it easy to understand?

- **After finding out about the Scheme, what was your initial reaction?**
  - *What did you perceive to be its immediate advantages / disadvantages?*
  - *Did you find it easy to understand the principles behind? (PROBE CAREFULLY)*
  - *Did you have any questions that were left unanswered?*
- **Can you tell me what you understood to be the main differences between other ways of resolving the dispute (employment tribunal in particular) and the Acas Arbitration Scheme?**

Probe on:

- *Time taken to complete hearing*
- *Informal vs formal setting*
- *Private vs public*
- *Heard by a legally qualified Chair supported by 2 members vs a single Acas arbitrator experienced in employment relations*
- *Witness cross-examination vs informal questioning*
- *Special status of legal representatives vs no special status*
- *Right of appeal / no right*

## 5. Deciding on ways of going forward

I would now like to talk about various options that you did consider in your case. This is to see your views on relative benefits or disadvantages of going to tribunal / arbitration hearing / private settlement / conciliation etc. at this stage in the dispute.

- **Who and at what point in the dispute was involved in the decision making process? Who had the greatest influence on your final decision to go for tribunal / arbitration hearing / private settlement / conciliation?**
  - *Colleagues*
  - *Family*
  - *Representative / advisor*
  - *Acas conciliator*
  - *Other*

- **What were the options that you considered using to resolve the dispute? Why? Why not considered others?**

Probe extensively; prompt on options that not mentioned:

- *Private settlement*
- *Conciliation*
- *Tribunal*
- *Acas Arbitration scheme*
- *Withdrawing the case*
- **What did you see as main advantages and disadvantages of the options that you considered? What were your key considerations when deciding which option to go for?**
  - *Time taken to complete hearing*
  - *Informal vs formal setting*
  - *Qualifications of a Chair / arbitrator*
  - *Power of representatives*
  - *Cost e.g. advisor's fees*
  - *Privacy or publicity concerns: why?*
  - *Formality or informality of settings*
  - *Matter of principle, e.g. make an example or have 'my part' of the story heard*
  - *Expected outcome, e.g. award*
  - *Perceptions of own and other party's strength of position*
  - *Other*
- **What were your expectations of the other party's intentions? How did this affect your decision making process?**
- **Any other issue that affected your decision-making?**
- **At the end why did you decide to go with the Scheme / tribunal / private settlement / conciliation?**
  - *At what point in the process?*
  - *What was a key driving factor for choosing this option?*
  - *Time taken to complete hearing*
  - *Informal vs formal setting*
  - *Private vs public*
  - *Qualifications of a Chair / arbitrator*
  - *Power of representatives*
  - *Cost, e.g. consultant's/ representative's fees*
  - *Privacy or publicity concerns*

- *Formality or informality of settings*
- *Matter of principle, e.g. make an example or have 'my part' of the story heard*
- *Expected outcome, e.g. award*
- *Perceptions of own and other party's strength of position*
- *Acas reputation*
- *Other*

#### **6. Experience of the Scheme**

I would now like to focus specifically on your experience of participating in the scheme / tribunal.

#### **ASK IF USED ARBITRATION SCHEME**

- **After choosing the arbitration scheme, what did you expect to happen in terms of:**

#### **THE PROCESS BEFORE THE HEARING**

- *Preparation for the hearing and your involvement*
- *Time taken*
- *Completing forms / preparing documents including signing the waiver form?*
- *Contact with Acas?*
- *Contact with the other party*
- *Witness selection*
- *Involvement of your representative (if used)*
- *Involvement of Acas*
- *Ease of reaching an agreement to use arbitration scheme with the other party*

#### **THE HEARING**

- *Actual proceedings (atmosphere, privacy, venue, arbitrator etc)*
- *Outcome*
- *Award (size and form)*
- *Cost*
- **Did you have any reservations BEFORE the hearing?**
- *Arbitrator's skills/ qualifications*
- *Depth of witness questioning*
- *Inability to appeal*
- *Informality of the settings*
- *Other*
- **How accurately do you feel your subsequent experience reflected your original expectations? Have you experienced any difficulties? If yes: what were they?**

*Probe*

#### **THE PROCESS BEFORE THE HEARING**

- *Preparation for the hearing and your involvement*
- *Time taken*
- *Completing forms / preparing documents?*
- *Contact with Acas?*
- *Contact with the other party*
- *Witness selection*
- *Involvement of your representative (if used)*
- *Involvement of Acas*
- *Ease of reaching an agreement to use arbitration scheme with the other party*

#### **THE HEARING**

- *Actual proceedings (atmosphere, privacy, venue, arbitrator etc)*
- *Outcome*
- *Award (size and form)*
- *Cost*
- **What was your overall impression of the arbitration process?**

*Probe:*

- *Any difficulties experienced?*
- *Confusing / straightforward?*
- *Did it allow you 'to get to the bottom' of the issue?*
- *Did you feel that the arbitrator's decision was well informed and fair?*
- *How did the fact that the arbitrator did not give the decision at the end of the hearing affect your overall impression of the Scheme?*
- **How did you feel at the end of the hearing?**

*Probe extensively:*

- *Did the hearing/proceedings affect in any way your perception of the problem / situation? why?*

- *Did you agree with arbitrator's decision? why?*
- **Was there anything that pleasantly surprised you or left you feeling disappointed and frustrated?**
- **What was the final outcome of the hearing? Was it what you expected?**
- **Overall, how satisfied were you with the way the proceedings went and their outcome?**
- **Is there anything that Acas needs to change in the operation of the Arbitration Scheme currently?**

*Probe:*

- *marketing / promoting benefits of the scheme*
- *scope: involve other than Unfair Dismissal cases as well*
- *other*
- IN THE FUTURE, if you know someone in the situation similar to yours where an employee claims to have been unfairly dismissed, would you recommend the Scheme to them or would you advise them to do something else? Why?

IF CASE RESOLVED WITHOUT THE SCHEME

- What was your experience of settling the dispute?
- If it were possible to turn back time, would you still choose to go via this route? Why? Why not?
- What would have made it more likely that you would have used the Scheme?

## **7. Conclusions**

- **Is there anything else you would like to add?**

**Thank you for your co-operation**

## APPENDIX B: DEPTH INTERVIEW GUIDELINE FOR RESPONDENTS (EMPLOYERS)

### 1. Introduction

- Introduce DVL Smith Ltd: an independent market research agency.
- EXPLAIN OBJECTIVE: We are currently conducting research on behalf of Acas to evaluate the attitudes and experiences of those who have used or considered using the Acas Arbitration Scheme.
- Explain the Market Research Society Code of Conduct: all information is confidential and no reference will be made to individuals and organisations.
- Explain role of tape recorder.

### 2. Respondent/organisation profile

- **Please tell me about yourself and your role in the organisation?**

*Probe:*

- *Job title/responsibilities*
- *Length of time working with organisation*

- **And can you tell me a bit about your organisation?**

*Probe:*

- *Company activity*
- *Size (annual turnover/number of employees)*
- *Company structure: is there a specialist HR function?*
- *Company legal status (partnership, ltd.co, plc, public body etc.)*
- *Union membership: unionised or non-unionised; extent of union membership*

- **Before we talk about the specific recent case, can you tell me if you have had any involvement with other employment disputes/ cases?**

*Probe:*

- *When was this?*
- *What happened?*
- *How were these resolved?*

### 3. The case

I would first of all like to understand a little about the circumstances surrounding the case in which you were involved

- **Can you tell me briefly what was the main problem / issue?**

*Probe:*

- *Who was involved?*
- *How did it start / begin?*
- *What was/ were the issue(s) that led to the dismissal/ dispute?*
- *What, if any, steps did you take internally to resolve the issue?*
- *Any formal/ informal resolution procedures in place?*
- *What sort of internal expertise/ resources can you call upon?*

- **When and how did you become aware that your company was having a claim of unfair dismissal brought against it?**

*Probe:*

- *How long after the dismissal did this happen?*
- *How were you contacted?*
- *notified formally / informally*
- *applicant, applicant's representative, other*
- *receipt of form (IT1)*

- **And was this what you were expecting?**

*Probe:*

- *Had you made any preparations? (e.g. contacted any internal/ external advisor)*

### 4. Proceeding with the case

- **After becoming aware that your company was having a claim of unfair dismissal brought against it, what was your understanding of what was going to happen next?**

*Probe:*

- *Did you know what you were formally required to do?*

- **What types of information did you source at this point? To what extent and why? How useful was this information?**

*Probe:*

- *Internal knowledge and internal procedures or advice*

- *Previous personal experience: organisational history of problems in this area / employment disputes*
- *External advice: Acas, independent representatives etc*
- *nature of advice*
- *its usefulness*
- *ease of obtaining etc.*
- **Were you aware of various options available to you to resolve the dispute? Which of these did you actively consider and which ones did you dismiss outright and why?**

Probe extensively:

- *Private settlement*
- *Conciliation*
- *Tribunal*
- *Acas Arbitration scheme*
- *Case withdrawn*
- **What was your knowledge of various dispute resolution options based on?**

Probe:

- *Internal knowledge and internal procedures*
- *Previous personal experience: organisational history of problems in this area / employment disputes*
- *External advice: Acas, independent representatives etc*
- *Other*

- **(If not already established ask) How and when did you first become aware of the Acas Arbitration Scheme?**

**Through Acas conciliator (if unrepresented)**

- *At what point in the case was the Arbitration Scheme raised? (by the Conciliator)*
- *right at the beginning – during the 1<sup>st</sup> call?*
- *in the middle, when it became clear that conciliation was not working?*
- *how detailed was the information provided? did you feel that you were given sufficient amount of information? why?*
- *did you feel that the Scheme was introduced at the right time? why?*
- *Documents provided by Acas about the scheme (INTRODUCE DOCUMENTS)*
- *do you remember receiving this documentation? when?*
- *how readable/understandable/digestible was this?*
- *how useful at that particular stage?*

**Through representative (if represented)**

- *At what point in the case was the Arbitration Scheme raised? (by the Representative)*
- *how detailed was the information provided? did you feel that you were given sufficient amount of information? why?*
- *did you feel that the Scheme was introduced at the right time? why?*
- *Documents provided by Acas about the scheme (INTRODUCE DOCUMENTS)*
- *do you remember receiving this documentation? when? how: post / given by representative / other?*
- *how readable/understandable/digestible was this?*
- *how useful at that particular stage?*

IF INTRODUCED BY REPRESENTATIVE OR Acas CONCILIATOR

- **How was the Scheme introduced?**
- *As a stand alone option*
- *In comparison with other options*
- *Clearly explained*
- **Would you say you were given enough information to make a fair assessment of the Scheme?**
- **Did you receive any information from any other sources?**

Probe on:

- *Who was this?*
- *How useful did you find it?*
- *Was it easy to understand?*
- **After finding out about the Scheme, what was your initial reaction?**
- *What did you perceive to be its immediate advantages / disadvantages?*
- *Did you find it easy to understand the principles behind?*
- *Did you have any questions that were left unanswered? Was it clear whom you needed to contact to get the answers?*

- **Can you tell me what you understood to be the main differences between other ways of resolving the dispute and the Acas Arbitration Scheme?**

*Probe on:*

- *Time taken to complete hearing*
- *Informal vs formal setting*
- *Private vs public*
- *Heard by a legally qualified Chair supported by 2 members vs a single Acas arbitrator experienced in employment relations*
- *Witness cross-examination vs informal questioning*
- *Special status of legal representatives vs no special status*
- *Right of appeal / no right*

## **5. Deciding on ways of going forward**

I would now like to talk about various options that you did consider in your case. This is to see your views on relative benefits or disadvantages of going to tribunal / arbitration hearing / private settlement / conciliation etc. at this stage in the dispute.

- **What did you actually do after realising that there was a claim of unfair dismissal being brought against your organisation?**

*Probe:*

- *Appointment of a representative – why / why not?*
- *Contact with applicant*
- *Contact Acas: which part of Acas?*
- *Sought professional advice*

- **Who and at what point in the dispute was involved in the decision-making? Who had the greatest influence on your final decision to proceed down the tribunal route/ arbitration hearing / private settlement / conciliation?**

- *Colleagues*
- *Representatives / advisors*
- *Acas conciliator*
- *Other*

- **What were the options that you considered to use to resolve the dispute? Why? Why not considered others?**

*Probe extensively; prompt on options that not mentioned:*

- *Private settlement*
- *Conciliation*
- *Tribunal*
- *Acas Arbitration scheme*

- **What did you see as main advantages and disadvantages of the options that you considered? What were your key considerations when deciding which option to go for?**

- *Time taken to complete hearing*
- *Informal vs formal setting*
- *Qualifications of a Chair / arbitrator*
- *Power of representatives*
- *Cost, e.g. advisor's fees*
- *Privacy or publicity concerns*
- *Formality or informality of settings*
- *Matter of principle, e.g. make an example or have 'my part' of the story heard*
- *Expected outcome, e.g. award*
- *Perceptions of own and other party's strength of position*
- *Other*

- **What were your expectations of the other party's intentions? How did this affect you decision making process?**

- **Any other issue that affected your decision-making?**

- **At the end why did you decide to go with the Scheme / tribunal / private settlement / conciliation?**

- *At what point in the process?*
- *What was a key driving factor for choosing this option?*
- *Time taken to complete hearing*
- *Informal vs formal setting*
- *Private vs public*
- *Qualifications of a Chair / arbitrator*
- *Power of representatives*
- *Cost, e.g. consultant's/ representative's fees*
- *Privacy or publicity concerns*



- *Formality or informality of settings*
- *Matter of principle, e.g. make an example or have 'my part' of the story heard*
- *Expected outcome, e.g. award*
- *Perceptions of own and other party's strength of position*
- *Other*

## **6. Experience of the Scheme**

I would now like to focus specifically on your experience of participating in the scheme / tribunal.

### **ASK IF USED ARBITRATION SCHEME**

- **After choosing the arbitration scheme, what did you expect to happen in terms of:**

#### **THE PROCESS BEFORE THE HEARING**

- *Preparation for the hearing and your involvement*
- *Time taken*
- *Completing forms / preparing documents including the waiver form?*
- *Contact with Acas?*
- *Contact with the other party*
- *Witness selection*
- *Involvement of your representative (if used)*
- *Involvement of Acas*
- *Ease of reaching an agreement to use arbitration scheme with the other party*

#### **THE HEARING**

- *Actual proceedings (atmosphere, privacy, venue, arbitrator etc)*
- *Outcome*
- *Award (size and form)*
- *Cost*

- **Did you have any reservations BEFORE the hearing?**

- *Arbitrator's skills/ qualifications*
- *Depth of witness questioning*
- *Inability to appeal*
- *Informality of the settings*
- *Other*

- **How accurately do you feel your subsequent experience reflected your original expectations? Have you experienced any difficulties? If yes: what were they?**

*Probe*

#### **THE PROCESS BEFORE THE HEARING**

- *Preparation for the hearing and your involvement*
- *Time taken*
- *Completing forms / preparing documents?*
- *Contact with Acas?*
- *Contact with another party*
- *Witness selection*
- *Involvement of your representative (if used)*
- *Involvement of Acas*
- *Ease of reaching an agreement to use arbitration scheme with the other party*

#### **THE HEARING**

- *Actual proceedings (atmosphere, privacy, venue, arbitrator etc)*
- *Outcome*
- *Award (size and form)*
- *Cost*

- **What was your overall impression of the arbitration process?**

*Probe*

- *Any difficulties experienced?*
- *Confusing / straightforward?*
- *Did it allow you 'to get to the bottom' of the issue?*
- *Did you feel that the arbitrator's decision was well informed and fair?*

- **How did you feel at the end of the hearing?**

*Probe extensively*

- *did the hearing/proceedings affect in any way your perception of the problem / situation? why?*
- *did you agree with arbitrator's decision? why?*

- **Was there anything that pleasantly surprised you or left you feeling disappointed and frustrated?**
- **What was the final outcome of the hearing? Was it what you expected?**
- **Overall, how satisfied were you with the way the proceedings went and their outcome?**
- **Is there anything that Acas needs to change in the operation of the Arbitration Scheme currently?**

*Probe*

- *marketing / promoting benefits of the scheme*
- *scope: involve other than Unfair Dismissal cases as well*
- *other*
- **IN THE FUTURE**, if you know someone in the situation similar to yours where an employee claims to have been unfairly dismissed, would you recommend the Scheme to them or would you advise them to do something else? Why?
- IF CASE RESOLVED WITHOUT THE SCHEME**
- What was your experience of settling the dispute?
- If it were possible to turn back time, would you still choose to go via this route? Why? Why not?
- What would have made it more likely that you would have used the Scheme?
- 

#### **7. Conclusions**

- **Is there anything else you would like to add?**

**Thank you for your co-operation**

## APPENDIX C: DEPTH INTERVIEW GUIDELINE FOR REPRESENTATIVES

### 1. Introduction

- Introduce DVL Smith Ltd: an independent market research agency.
- EXPLAIN OBJECTIVE: We are currently conducting research on behalf of Acas to evaluate the attitudes and experiences of parties and representatives who have used or considered using the Acas Arbitration Scheme.
- Explain the Market Research Society Code of Conduct: all information is confidential and no reference will be made to individuals and organisations.
- Explain role of tape recorder.

### 2. Individual & organisation profile

- **Please tell me about yourself and your role in the organisation you work in?**

*Probe:*

- *Job title/responsibilities*
- *Length of time in this position*
- *Your relation to the person you represented (if not a formal representative)*
- *Profile of the organisation:*
- *Trades Union*
- *Legal Practice: probe on size, number of employees*
- *CAB*
- *Other*

- **And can you tell me about your role and experience in relation to employment disputes/ cases?**

*Probe to establish level of expertise/ specialism*

- *Types and range of cases involved in*
- *Experience of different remedies:*
- *Tribunal*
- *Conciliation*
- *Private settlement/ compromise agreement*
- *Arbitration Scheme*
- *Informal dispute resolution (like mediating between parties to the dispute within workplaces – before a claim of unfair dismissal is made to Employment Tribunal)*
- *(if Trade Union official) Collective trade dispute conciliation*
- *Any others*

### 3. Awareness and understanding of the Scheme

- **Before this recent case, were you aware of the Acas Arbitration Scheme?**

*Ask following to end of section if had prior awareness of the Scheme, otherwise move to Section 4.*

- **How had you heard about the Scheme?**

*Probe:*

- *Coverage in press/ journals*
- *Colleagues/ peer group: informal discussion or formal presentation on the subject*
- *Literature from Acas*
- *From an Acas conciliator during another case: where and when?*
- *Seminar / conference:*
- *what was the seminar?*
- *who organised it?*
- *how effectively was the idea of the Scheme put across?*
- *Other*

- **Prior to this recent case, how well informed did you feel about the Arbitration Scheme?**

*Probe:*

- *What did you see as its distinguishing features in comparison to other approaches to resolving disputes?*
- *Time taken to complete hearing*
- *Informal vs formal setting*
- *Private vs public*
- *Heard by a legally qualified Chair supported by 2 members vs a single Acas arbitrator experienced in employment relations*
- *Witness cross-examination vs informal questioning*
- *Special status of legal representatives vs no special status*

- *Right of appeal / no right*
- **Had you considered using the Arbitration Scheme in any other cases that you have been involved in?**

*Probe for details of case and reasons why not taken up*

- *For what, if any, scenarios did you see the Scheme as being an appropriate remedy?*
- *type of employee / employer: size, represented/ unrepresented etc.*
- *the circumstances: jurisdictions*

#### **4. Specific case**

- **Focussing now on the recent case in which you were involved, can you tell me briefly what this was about?**

*Probe:*

- *Who was involved?*
- *What was the background to the dismissal/ dispute?*
- *What unfair dismissal issue(s) was/ were involved? – EXPLAIN IF NECESSARY*
- *Conduct*
- *Capability*
- *Redundancy*
- *Statutory ban*
- *Other substantial reason*
- *Contributory fault*

- **And at what point in the process did you become involved?**

*Probe:*

- *How far had the parties progressed?*
- *What, if anything, had occurred before you were consulted?*
- **And once you had become involved, what options did you consider with your client for taking the case forward initially?**

*Probe extensively:*

- *Private settlement/ compromise agreement*
- *Conciliation*
- *Tribunal*
- *Withdraw case*
- *Acas Arbitration Scheme*
- **(If not established ask) Did you discuss the Arbitration Scheme with your client prior to it being raised by Acas?**

*Probe:*

- *If yes: to what extent?*
- *If no: why not?*
- *Was your client aware of the Scheme before the discussion?*
- **(As appropriate) How and when did you first become aware of the Acas Arbitration Scheme?**

*Probe in the context of the case discussed*

#### **Through Acas**

- *(As appropriate) So at what point in the case did Acas discuss the Arbitration Scheme with you?*
- *Prior to/ post employee's application to ET*
- *Prior to/ post employer's response*
- *At other points*
- *Did you discuss the Scheme only once/ several times*
- *How detailed was the information provided? Did you feel that you were given sufficient amount of information? Why?*
- *Did you feel that the Scheme was introduced at the right time? Why?*
- *Documents provided by Acas about the scheme (INTRODUCE DOCUMENTS)*
- *do you remember receiving this documentation? when?*
- *how readable/understandable/digestible was this?*
- *how useful at that particular stage?*
- *Other*
- **Did you receive any information from any other sources?**

*Probe on:*

- *Who was this?*
- *What sort of information?*

- **After finding out about the Scheme, what did you understand the Scheme's objectives to be?**

*Probe on:*

- *Quicker, informal, cheaper, confidential, non-legalistic, single arbitrator etc.*
- **What did you see as the main differences between other ways of resolving the dispute and the Acas Arbitration Scheme?**  
*Probe on:*
  - *Process issues (i.e. those involved in preparing for and participating in the Scheme)*
  - *Limits on jurisdiction*
  - *Need for agreement from both parties*
  - *Speed*
  - *Informality*
  - *Privacy/ confidentiality*
  - *Composition of the panel*
  - *Quasi-legal approach. (e.g. no special status for representatives, no cross-examination, no right of appeal)*
  - *Remedies available*
  - *Single arbitrator vs a panel*
  - *Others*
- **Once you had considered the Scheme, for what sort of cases did you see it as suitable/ appropriate?**  
*Probe to establish key characteristics of cases perceived to be suited to Scheme*
- **All in all, what did you see as the strengths of the Scheme?**  
*Probe as above:*
- **And what did you think were the Scheme's limitations or weaknesses?**  
*Probe as above*
- **What were the particular features or circumstances of this case that made you think that it might be appropriate for the Arbitration Scheme?**
- **(As appropriate) And at what point did you raise the Acas Arbitration Scheme with your client?**  
*Probe on:*
  - *Prior to/ post employee's application to ET*
  - *Prior to/ post employer's response*
  - *At other points*
  - *Did you discuss the Scheme only once/ several times?*
  - *How easy was it for your client to understand the Scheme?*
  - *What information / booklets, if any, have you used when introducing the scheme to the client?*

## 5. Deciding on ways of going forward

I would now like to talk about various options that you considered before going to tribunal / arbitration hearing / private settlement / conciliation etc.

- **Can you now tell me a little about how the case progressed after you became involved?**  
*Probe:*
  - *What approaches to resolution were tried or considered?*
  - *Private settlement/ compromise agreement*
  - *Conciliation*
  - *Tribunal*
  - *Acas Arbitration scheme*
  - *Withdrawing the case*
- **What did you see as main advantages and disadvantages of the options that you considered? What were your key considerations when deciding which option to recommend/ proceed with?**  
*Probe on:*
  - *Timing*
  - *Cost issues*
  - *Client preferences/ decisions*
  - *Demeanour/ personality of client*
  - *Perceived willingness of parties to reach agreement*
  - *Sensitive issues/ confidentiality/ publicity*
  - *Contributory fault issues*
  - *Matters of principle for client*
  - *Anticipated outcome*
  - *Perceptions of own and other party's strength of position*
  - *Other*

- **At the end why did you decide to go with the Scheme / tribunal / private settlement / conciliation?**
  - *At what point in the process?*
  - *What was a key driving factor for choosing this option? (Probe as above)*
  - *How much involvement in /impact on the final decision did you have?*

## 6. Experience of the Scheme

I would now like to focus specifically on your experience of participating in the Scheme.

### **ASK AS APPROPRIATE ACCORDING THE DEGREE OF INVOLVEMENT WITH THE SCHEME**

- **Could you now talk me through the process of preparing for, and participating in, the Arbitration Scheme**

*Probe throughout for:*

- *Extent to which process matched representative's/ client's expectations*
- *What worked well/was effective*
- *What worked less well/ any disappointments*

### **THE PROCESS BEFORE THE HEARING**

- *Preparation to the proceedings and your involvement*
- *Obtaining and signing the waiver form by parties*
- *Notification to/ from Acas*
- *Appointment of Arbitrator*
- *Arranging the hearing*
- *Preparing documents/ evidence*
- *Witness selection*
- *What was required of you/ your client*
- *Time taken*

### **THE HEARING**

- *Actual proceedings (venue, atmosphere etc)*
- *Format (i.e. inquisitorial not adversarial)*
- *Role of representative*
- *Calling witnesses*
- *Outcome*
- *Award (size and form)*

- **What was your overall impression of the arbitration process?**

*Probe*

- *Any difficulties experienced?*
- *Confusing / straightforward?*
- *Did it appropriately and fully address the issue?*
- *Did you feel that the arbitrator's decision was well informed and reasonable*
- *Do you feel that your client's interests and concerns were appropriately addressed*

- **Overall, how satisfied were you with the way the proceedings went and their outcome?**

- **Could you summarise for me what you see as the key strengths and weaknesses of the process?**

- **IN THE FUTURE, how likely do you think it is that you would recommend the Scheme to a client?**

*Probe*

- *Reasons why/ Why not?*
- *In what circumstances/ for what type of case does the Scheme represent the best option?*
- *What would you say about the Scheme to a colleague/ your professional peer group?*
- *Where do you see the Scheme fitting into the range of alternatives available for resolving employment disputes?*

- **And what, if anything, should Acas consider to improve the way that the Arbitration Scheme operates?**

## 7. Conclusions

- **Is there anything else you would like to add?**

Thank you for your co-operation