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Employment Law MADE EASY

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To find out more about the employment law regulations and how they should be applied in the workplace, **click here**.

Employment Law Made Easy
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For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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CHAPTER 5

Termination of employment

What you'll find in this chapter

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All employers must at some time deal with the termination of contracts of employment. Many employers associate termination of employment with the anxiety and expense of proceedings being brought against them by a disgruntled employee. This does not have to be the case if the employer is aware of the contractual and statutory duties in relation to termination so that termination can be effected in a legally acceptable way.

This chapter describes the various ways contracts of employment can be brought to an end, the potential problems that can arise and the recommended procedure for avoiding such problems.

Dismissal

In the context of termination of employment, 'dismissal' is defined as occurring in the following situations, each of which is discussed in subsequent sections:

1. The employee's contract of employment is terminated by the employer with or without notice.

2. The employee works under a fixed-term contract and the term expires without renewal under the same contract.
3. The employee terminates his own contract, with or without notice, in circumstances such that he is entitled to by reason of the employer's conduct. This is known as 'constructive dismissal' (see page 128).

'Unfair dismissal' arises from statutory rights (see page 133 for details) whereas 'wrongful dismissal' arises from contractual rights (see page 140 for details).

1. Termination by employer with or without notice

Termination with notice

The proper notice to be given is often specified in the contract of employment; the written statement given to the employee must include the length of notice which the employee is obliged to give and entitled to receive (see page 23). However, if a notice period has not been expressly agreed, there is an implied term that it may be terminated upon reasonable notice. Just what is reasonable notice will depend on the case in question, taking into account the seniority, age, length of service, remuneration of the employee and what is usual in the industry.

Whatever the contractual provisions for termination of the contract, the notice actually given must not be less than the statutory minimum period of notice (see page 23). If proper notice is given, there can be no claim for wrongful dismissal. However, there may still be a valid claim for unfair dismissal if proper notice is given. Conversely, a dismissal may be fair even though proper notice is not given.

Pay in lieu of notice

It is common for an employer terminating an employment contract to want the employee to cease working immediately. This is because very often an employee who knows he is leaving will not carry out his work effectively and can be disruptive in the workplace. In these circumstances, it is usual for the employer to pay the employee a sum in lieu of notice or compensation for failure to give notice.

Sometimes the contract will provide that it may be terminated either by notice or without notice on payment of a sum in lieu. In these circumstances the employee is entitled to the pay in lieu under a contractual obligation on the employer to make the payment, and tax and National Insurance deductions should be made in the usual way.

Usually, however, there is nothing in a contract relating to making payments in lieu. In these circumstances payment may be considered as compensation for the employer's breach of contract in not giving notice and, in some circumstances, may be paid tax-free up to a limit of £30,000. But it is not always entirely clear whether payment should be seen as compensation or as payment in lieu of notice so it is worth seeking advice on this point.

When compensation is being paid free of tax, the fact that it is compensation should be stated to the employee in writing, with a condition that the employee agrees to reimburse the employer in the event that it becomes liable to pay tax in relation to the payment. See the Example Letter 13 from an employer dismissing with payment in lieu of notice. If there is any doubt about whether or not the sum should be paid tax-free, clearance can be sought from the Inland Revenue in advance.

Compensation must be assessed to put the employee in the same position, with respect to damages for the employer's breach of contract of employment, as if the contract had been performed during the notice period. Therefore, it is not only the employee's salary but also all benefits, such as company car, that must be included in the calculation.

Termination without notice

Dismissal without notice is a breach of contract by the employer rendering it liable in damages for wrongful dismissal (see page 140). The exception is when the employee has acted in gross misconduct, in which case the employer is justified in dismissing him with immediate effect. A contract often expresses the right of the employer to dismiss the employee without notice; but, in any event, the employer should give its employees a clear indication of what type of conduct it regards as gross misconduct. This will depend upon the type of employment in question, as conduct which constitutes gross misconduct in one

area of employment might not be considered to be so serious in another. Examples may be included in the disciplinary procedure, although it should be made clear that the examples given are not exhaustive. Examples of gross misconduct are: theft, damage to the employer's property, incapacity for work due to being under the influence of alcohol or illegal drugs, physical assault and gross insubordination.

2. Expiry of a fixed-term contract

A fixed-term contract will automatically terminate at the end of the term, without the need for any notice to be given. However, if a fixed-term contract is not renewed, the employee may have a valid claim for redundancy pay or in respect of unfair dismissal.

A fixed-term contract can be extended where an employee remains in the employment after the expiry of the term. In these circumstances, the contract of employment will continue with an implied term that it may be terminated by either party giving reasonable notice.

3. Constructive dismissal

If the employer's conduct is such that it is in fundamental breach of the contract of employment, the employee may resign with immediate effect. In such circumstances, the employee may have a valid claim for unfair dismissal and for wrongful dismissal.

Resigned or constructively dismissed?

Where an employee complains of unfair and constructive dismissal, it is common for the employer to argue that the employee resigned and dismissal did not occur. The employee would have to prove that the employer's conduct clearly breached and repudiated the contract entitling him to leave without notice (whether he gave notice or not).

The employee must have considered that the contract was at an end because of the employer's conduct. The employer's conduct is sufficient to justify the employee leaving and complaining of constructive dismissal if it:

- was a significant breach going to the root of the contract of employment; or

- showed that the employer no longer intended to be bound by one or more of the essential terms of the contract.

Very often constructive dismissal occurs as a result of a breach of the implied terms of trust and confidence in the contract (i.e. a breakdown in the employment relationship). This can be caused by a single action by the employer (such as verbal abuse) or by a series of less serious actions which together amount to a breach of the terms.

If an employer makes a statement of clear intention to breach an essential term of the contract, the employee can leave and claim constructive dismissal based on an anticipatory breach of the contract.

The employee must leave quickly because of the breach of contract. If he does not leave soon after the incident or incidents complained of, the employer can argue that the employee accepted the alleged breach and therefore no constructive dismissal will have occurred.

Other terminations

Resignation

Resignation by an employee should be with notice. The period of notice to be given by an employee is subject to a statutory minimum of one week, although the contractual notice period will in many cases be longer. The contractual notice period may be either expressly agreed upon or implied. If implied, the notice period must be considered a reasonable period under all the circumstances.

An employee is entitled to continue to receive all benefits for the notice period provided he is ready and willing to work for that period. However, the parties may agree that the employee may stop working before the end of the full notice period.

An employer is advised to ensure that clear words of resignation are used. Words spoken in the heat of the moment should not be relied upon as terminating the employment, as they may not amount to a resignation. The employment would then be deemed to be terminated by dismissal by the employer and the employee would have a right to make a claim of unfair dismissal.

The employer should accept the resignation and communicate this acceptance to the employee. Once accepted, the employee may not withdraw the resignation without the employer's consent.

It is a good idea to ask the employee why he is leaving. Answers may alert the employer to potential problems with other employees. A written note of the employee's reasons for leaving should be kept.

If an employee resigns without giving notice, he will be in breach of contract unless it is in response to a fundamental breach of contract by the employer (i.e. constructive dismissal). If the employee does resign without giving notice, the employer can contractually require the employee to serve out the period of notice which he should have given, but in practice this would be very difficult to enforce because a court may not compel an employee to work. However, the employer should not pay the employee for any time after the date of resignation. The employee is not entitled to pay in lieu of notice.

An employer may want an employee to serve out the correct period of notice to prevent the employee from immediately joining a competitor. A better way to do this may be to include a clause in the employee's contract restraining him (after leaving the employment) from working for a competitor. However, such restriction must be for a reasonable period of time only and within a reasonable geographical distance from the former employer. Such clauses have to be carefully worded as the employee must be able to continue to earn a living. Such clauses shall only be enforceable if they are reasonably required for the protection of the employer's legitimate business interests. Alternatively, or in addition, an employer may include what is known as a 'garden leave' clause in the contract of employment. Garden leave describes the situation where an employee serving his notice of termination is required to remain at home, although he continues to be paid. The aim behind this practice is to prevent the employee from leaving to work for a competitor while not having that employee around at work where he may obtain confidential information. Employers wishing to include restrictive clauses or garden leave clauses in their contracts of employment should consult a solicitor.

Redundancy

See page 140 for details.

Mutual agreement

The parties may mutually agree to terminate the contract of employment at any time. But if it is clear that the employee was forced to agree to the termination with the threat of dismissal, he will be held to have been unfairly dismissed. Financial inducements to agree to terminate the employment are, however, fully acceptable.

If the parties mutually agree to end the contract, there is no need for the employer to give a notice of termination. There will be no entitlement to pay in lieu of notice or redundancy pay. However, it is fairly usual for the employer to make a payment described as an 'ex gratia payment' to avoid any implication of dismissal.

Retirement

Employers who wish to retire their employees are obliged to notify them of the date of intended retirement and of their right to request to work beyond retirement. The notification must be given six to 12 months before the intended retirement.

If the employee exercises this right to request to work beyond retirement less than six months and more than three months before the intended retirement, the employer must hold a meeting with the employee to consider the request. As soon as it is reasonably practical following the meeting, the employer must inform the employee of its decision. If the employer does not agree to the request, the employee may appeal the decision and the employer must consider the appeal at a meeting and notify the employee of its appeal decision as soon as is reasonable practical.

Although a tribunal has no power to force an employer to agree to a request, failure to follow the procedure above does entitle a tribunal to:

- award up to eight weeks' pay (subject to a cap of £380 per week);

- deem the dismissal to be automatically unfair; and
- if the tribunal does not accept that the reason for dismissal was retirement, the dismissal may be challenged as age discrimination (opening up the possibility of uncapped damages).

Traditionally, some employers have had a normal retirement age (of say 60, 62 or 65) which has been included in their contracts of employment. A retirement age below 65 has been age discrimination unless objectively justified (which is expected to be very difficult).

Therefore, whilst there is benefit in having a normal retirement age written into contracts of employment, it is now subject to the duties to notify and consider requests to work beyond retirement (as described above) and should not be less than 65 unless there are compelling reasons for this. However, even if the employer does not have a normal retirement age, it is still possible to retire employees at or over 65.

Death

Unless a contract of employment provides otherwise, the death of either party terminates the contract.

Frustration

'Frustration' of a contract of employment occurs when some outside event happens that is not the fault of either party to the contract. The outside event must have been unforeseen by the parties when they entered into the contract and it must make it impossible for the contract to be performed at all, or it must make its performance radically different from its original purpose. If frustration occurs, the contract is terminated automatically without any need for either party to give notice.

Examples of frustration occurring are when an employee suffers an illness and, as a result, can never work again. Frustration may also occur if the employee is sentenced to prison.

In unfair dismissal cases, employers have argued that there has been no dismissal but termination by frustration instead. It is not advisable to rely

on frustration to avoid an unfair dismissal complaint, as employment tribunals do not readily accept that a contract has been terminated by frustration.

Insolvency of the employer

An employer's insolvency has the effect of terminating the contract of employment.

The employees may apply to the employer's representative for payment and if payment is not forthcoming, they may make an application to the Secretary of State for payment.

Claims and settlements for termination

In the preceding sections of this chapter, reference has been made to claims of unfair dismissal, wrongful dismissal and redundancy payments. These are explored in further detail below to give employers an idea of potential liabilities and recommendations on how they might resolve these disputes.

Claims

1. Unfair dismissal

Dismissal of an employee without good reason, or without following a fair procedure, is likely to be unfair and liable to an unfair dismissal claim in an employment tribunal. The right not to be unfairly dismissed is a statutory right effective when the employment contract is entered into. It is subject to certain qualifying conditions.

Qualifying conditions

To bring a claim for unfair dismissal, an employee must currently have been employed under a contract for a minimum continuous period of two

years from the commencement of the contract until the effective date of termination, and he must have been dismissed. There is no age limit on the right to bring an unfair dismissal claim.

Continuity of employment remains unbroken even if there has been a transfer of business ownership or employee absence from work because of sickness, injury, pregnancy or confinement (rules for assessing what is continuous employment are set out in sections 210–219 of the Employment Rights Act 1996).

The effective date of termination is either the date the notice to terminate expires, the date of the termination of employment or, if it is a fixed-term contract, the date on which it expires unrenewed. If the employer has not given the statutory minimum period of notice (except when entitled to dismiss without notice), the effective date of termination is the date when the statutory minimum period of notice to which the employee is entitled expires.

The time limit for bringing a claim for unfair dismissal is three months from the effective date of termination of the contract. An employment tribunal will extend the time limit when it is not practicable to bring the claim within this limit.

No qualifying period of service is required if the dismissal is for:

- membership or non-membership of an independent trade union or taking part in activities of an independent trade union;
- a maternity-related reason;
- an adoption-related reason;
- a paternity-related reason;
- a health and safety reason;
- asserting statutory rights;
- the performance of an employee representative (or a candidate due to become an employee representative);
- the performance of an employee who is a pension scheme trustee;

- a shop or betting worker for refusing to work on a Sunday;
- a reason connected with the Working Time Regulations;
- a reason related to making protected disclosure (i.e. 'whistleblowing');
- a reason related to securing the benefit of the national minimum wage;
- enforcing a right to working family tax credits; or
- taking part in 'protected' industrial action.

An employee who is dismissed on medical grounds specified in any health and safety at work law, regulation or code of practice can make a claim for unfair dismissal provided he has one month's continuous employment.

No contracting-out

Employers cannot exclude or waive an employee's right not to be unfairly dismissed. The inclusion of such a term in a contract of employment would have no legal effect, leaving the employee at liberty to bring a complaint of unfair dismissal in the employment tribunal.

There are exceptions to this principle, and an agreement that limits the right not to be unfairly dismissed is effective:

- if the agreement is reached through a conciliation officer from ACAS (see page 142);
- if it is a valid compromise agreement (see page 143).

Reasons for dismissal

If an employee can prove that he has all the qualifying conditions to bring a claim for unfair dismissal, the employer then has to establish the reason, or principal reason (if there was more than one), for the dismissal and prove it is either:

- connected to the capability or qualifications of the employee for performing work of the kind which he was employed to do; capability is assessed by reference to skill, aptitude, health or any other physical or mental quality (Example Letters 11 and 12 are examples of

dismissal letters for capability and sickness – where dismissal is for one of the other reasons, these letters can be adapted accordingly); or

- connected to the conduct of the employee; or
- redundancy; or
- the employee could not continue to work in the position which he held without violating (either on his part or on that of his employer) a duty or restriction imposed by or under law; or
- connected with some other substantial reason of a kind sufficient to justify the dismissal of an employee; or
- retirement.

If the employer can satisfy the employment tribunal that the reason or principal reason for dismissal is one of the above, the tribunal will consider whether dismissal was fair or unfair. Where the reason or principal reason falls within the first five reasons listed above, the tribunal will look at the reason given by the employer, and all the circumstances surrounding the dismissal including the size and administrative resources of the employer, in order to decide the reasonableness of the dismissal. If the employment tribunal is not satisfied that dismissal was for an acceptable reason, dismissal shall be ruled unfair. For retirement dismissals, see the following page.

Test of reasonableness

The decisive factor at this stage is whether or not the employer followed a fair procedure, appropriate in the circumstances, leading up to the dismissal. This is why the practice of using standard, fair procedures for the various circumstances that arise during the employment relationship can be crucial to avoid liability for unfair dismissal. Different procedures are appropriate for the different circumstances. This *Made Easy Guide* includes various procedure flowcharts at the end of this chapter for reference (see page 145).

Retirement dismissals

If an employer complies with the correct procedures, as set out on page

131 (which replace the statutory dispute resolution procedure for this purpose), a tribunal must accept retirement as the reason for dismissal. Where the tribunal is required to find that the reason for dismissal is retirement, the employee has no right to bring an age discrimination claim based solely on the fact of dismissal. The tribunal will take into account the following factors in deciding the fairness of 'retirement' dismissals:

- Whether the employer has a normal retirement age and if so, whether it is 65 or above.
- Whether the intended retirement was before the normal retirement age.
- When the contract actually terminated.
- Whether the employer complied fully with the duty to notify and, if not, to what extent the employer did comply.

The rules on retirement dismissal are complex, so separate advice should be sought if employers are unsure. Generally, however, employers should not retire employees before 65 (or the company's normal retirement age if that is higher) and should set up a standard retirement procedure which complies with the new duties to notify and consider.

Automatically unfair dismissals

Dismissal is automatically unfair for:

- membership or non-membership of an independent trade union or taking part in activities of an independent trade union;
- a maternity-related reason (see pages 83);
- an adoption-related reason;
- a paternity-related reason;
- a health and safety reason;
- asserting statutory rights;
- the performance of an employee representative (or candidate to be an employee representative);

- the performance of an employee who is a pension scheme trustee;
- the transfer of an undertaking, i.e. where the ownership of the employer is transferred from one person/entity to another;
- a spent conviction or failure to disclose a spent conviction;
- unfair selection for redundancy, i.e. selection will be unfair if it is for any of the above reasons;
- taking parental leave or taking time off for dependants, and performing functions as an employee representative (or as a candidate to be an employee representative) for the purposes of establishing a workforce agreement in relation to parental leave;
- making a protected disclosure (i.e. whistleblowing);
- a national minimum wage reason;
- enforcing a right to working family tax credit; or
- taking part in protected industrial action.

Remedies

If a tribunal finds that dismissal has been unfair, it may make an order for reinstatement (for the employee to return to his original job), re-engagement (for the employee to be placed in employment comparable to that from which he was dismissed or other suitable employment) or compensation (up to a statutory maximum limit).

Compensation is the most common remedy and usually comprises a basic award and a compensatory award. Further details of these are set out below. In addition, there are further awards made in certain circumstances, such as an 'additional award' if the employer fails to comply with an order for reinstatement or re-engagement, and a 'special award' if the employer fails to comply with an order for reinstatement or re-engagement where dismissal was on the grounds of trade union membership or activities, or health and safety duties.

1. Basic award

The basic award is calculated by considering the employee's age,

length of continuous service and gross average weekly wage. Each completed year of service up to a maximum of 20 counts for payment on the following scale (with a maximum of £430):

- up to 22 years of age – 1/2 week's pay;
- between 22 and up to 41 years of age – 1 week's pay;
- between 41 and up to 65 years of age – 1 1/2 week's pay.

The current maximum basic award is £11,400 (i.e. 1 1/2 x 20 x 430).

A tribunal will reduce the basic award if it considers it to be just and equitable to do so.

2. Compensatory award

The compensatory award is an amount the employment tribunal considers just and equitable in all the circumstances relating to the loss sustained by the employee, as a result of the dismissal. The award is calculated on the net value of wages, other benefits and expenses reasonably incurred by the employee as a result of the dismissal.

Factors an employment tribunal will take into account to reduce the award are:

- contributory fault;
- whether dismissal would have resulted even if the employer had acted reasonably;
- the employee's duty to minimise his loss by attempting to seek other employment;
- payments made by the employer;
- what is just and equitable.

Once the assessment of the compensatory award has been made, the statutory limit, which is currently £72,300 (except in cases of refusal to comply with a reinstatement or re-engagement order), must be applied. This statutory limit does not apply where the dismissal is as a result of making a protected disclosure (i.e. whistleblowing).

2. Wrongful dismissal

Wrongful dismissal is a common law remedy distinct from unfair dismissal. It occurs when an employer terminates an employee's contract of employment in a way that breaches it or the employer's conduct is such that it entitles the employee to resign (i.e. constructive dismissal). In these circumstances, the employee may take proceedings against the employer in an employment tribunal or in the civil courts (County court or the High Court in England & Wales and the Sheriff Court or Court of Session in Scotland) for wrongful dismissal, claiming damages for breach of contract. There is no requirement for the employee to have a qualifying period of continuous employment in order to make such a claim.

Damages are assessed on the basis that they should put the employee in the position he would have been in had the contract been performed in accordance with its terms. They are usually assessed in accordance with the notice period by which the employer could lawfully have terminated the contract. Generally, this is subject to a duty of the employee to minimise his loss by seeking other employment. However, the employee will have no such duty if he has a contractual right (as opposed to the employer having a discretion) to pay in lieu of notice. It is recommended that advice is sought on the wording of the contract to assess whether a duty to minimise loss exists. In addition, if the employee has been dismissed in breach of a contractual disciplinary procedure, the damages may be assessed with reference to the time that it would have taken to go through the disciplinary procedure.

Employees are not entitled to damages for loss, injury to feelings or distress arising from the manner of dismissal, and generally nor are they entitled to damages for injury to reputation.

3. Redundancy

Employees in a redundancy situation are entitled to a statutory redundancy payment. Also, if dismissal by reason of redundancy is not effected in a reasonable way, it may amount to unfair dismissal.

Definition of a redundancy situation

A redundancy situation exists where an employee's dismissal was attributable wholly or mainly to the fact that:

- the employer has ceased, or intends to cease, to carry on the business for which the employee was employed or has ceased, or intends to cease, to carry it on at a place where the employee was employed (i.e. relocation); or
- the business's need for work for which the employee was taken on has ceased or diminished, or is expected to (i.e. a reduction in the number of employees is required).

Statutory redundancy payment

Employees in a redundancy situation are entitled to a statutory redundancy payment if they have at least two years' service. The entitlement is calculated in the same way as the basic award for unfair dismissal claims. The calculation is made by considering the employee's age, length of continuous service and gross average weekly wage. Each completed year of service, up to a maximum of 20, counts for payment on the following scale (with a maximum of £430 for a week's pay):

- between 18 and up to 22 years of age – 1/2 week's pay;
- between 22 and up to 41 years of age – 1 week's pay;
- between 41 and up to 65 years of age – 1 1/2 weeks' pay.

The current maximum redundancy payment is £12,900 (i.e. 1 1/2 x 20 x 430).

An employee may raise a complaint with an employment tribunal if he has not received the correct redundancy payment. The time limit for such a claim is six months from the relevant date as defined by section 145 of the Employment Rights Act 1996 (usually the effective date of termination). The time limit may be extended for a further six months if approved by the employment tribunal.

An employee is not entitled to statutory redundancy payment if, before the existing employment ends, the employer offers him (orally or in writing)

employment on the same terms or suitable alternative employment, to commence within four weeks of the ending of the original employment. If the employee unreasonably refuses such an offer, or during a trial period for the new job unreasonably terminates such employment, he loses the right to statutory redundancy payment.

If the employee leaves employment before the dismissal takes effect and the employer objects in writing, the employment tribunal may determine the extent of the employee's entitlement.

Unfair dismissal

Dismissal for redundancy may be unfair due to a failure by the employer to comply with the obligation to consult with appropriate representatives of the employees concerned. These are either representatives of an independent trade union or other elected representatives. Failure to adhere to an agreed redundancy procedure does not render a dismissal automatically unfair, but it may be relevant to the tribunal's view of the procedure actually adopted by the employer (see Flowchart 6).

The amount of a basic award will be reduced by the amount of any redundancy payment awarded by a tribunal or paid by the employer in respect of the same dismissal.

Settlements and arbitration

Where there is a dispute, the parties will often prefer to settle the matter rather than proceed to a hearing. A settlement agreement is only binding if either of the following courses are taken:

1. ACAS conciliation

One way to contract validly out of an employee's right to pursue a case to a tribunal is by means of a settlement promoted by an ACAS conciliation officer. A conciliation officer has a duty to promote a settlement once a complaint has been put to a tribunal if requested to do so by the complainant, the employee concerned, or if in the absence of such a

request, the conciliation officer considers there is a reasonable prospect of achieving a settlement.

Settlements are recorded on ACAS Form COT 3, signed by the parties, containing a clause under which the complainant agrees that no further proceedings arising out of the matter will be pursued by him.

2. Compromise agreements

The only other way to settle a matter validly is by making a compromise agreement between the parties in a full and final settlement.

For a compromise agreement to be effective, it must be in writing and must fulfil the following conditions:

- It must relate to the particular complaint.
- The employee must have received independent legal advice from a qualified lawyer, an officer of an independent trade union or a worker at an advice centre as to the terms and effect of the proposed agreement, and in particular its effects on his ability to pursue the appropriate rights before an employment tribunal. The adviser who gives the advice must have an insurance policy covering the risk of a claim by the employee for an alleged loss arising out of the advice.
- The agreement must identify the adviser.
- The agreement must declare that the above conditions are satisfied.

If none of these courses are taken, the employee shall still be at liberty to commence proceedings despite the fact that he has received a compensation payment to settle. If he does proceed to make a claim, however, the payment can be taken into account when assessing compensation.

However, if the dispute is only in relation to wrongful dismissal (i.e. it is only a contractual claim), the parties may settle validly by agreement without the need for any special requirements to be satisfied. You will find basic example compromise agreements for unfair dismissal and redundancy at the end of this chapter.

3. ACAS Arbitration Scheme

This scheme gives parties to straightforward claims of unfair dismissal the option of having an independent arbitrator rule on the case, whose decision is final and binding and there is no right of appeal (except in very limited circumstances).

Example Letter 11: Notice of dismissal (capability)

Ace Fabrics Limited

Unit 2 Boxwood Trading Estate, Kings Langley, HO3 2HT
Tel: (01234) 456 789 Fax: (01234) 987 654

Dear *Miss Porter*

I refer to our meeting on *9 October 2012*.

As I explained at the meeting, you have been unable to carry out your duties to the standards required by the Company. Therefore, we have no alternative but to terminate your employment with the Company with effect from *9 November 2012*.

As you are aware, we have provided you with training and assistance to enable you to improve your performance but without success. In addition, we have attempted to find suitable alternative employment within the Company but regret that nothing is available.

You are entitled to be paid in full, including any accrued holiday pay, during your notice period.

I take this opportunity of reminding you that you are entitled to appeal against this decision through the Company's Disciplinary and Dismissal Procedure. If you wish to exercise this right, you must let me know within two working days of receipt of this letter.

It is with regret that we have had to take this action. We should like to thank you for your past efforts for the Company and wish you every success for the future.

Yours sincerely

John Smith

John Smith
Personnel Manager

Example Letter 12: Notice of dismissal (sickness)[1]

Ace Fabrics Limited

Unit 2 Boxwood Trading Estate, Kings Langley, HO3 2HT
Tel: (01234) 456 789 Fax: (01234) 987 654

Dear *Miss Porter*

I refer to our meeting at your home on *12 October 2012*.

I was very sorry to hear that your condition has not improved and that it is unlikely that you will be able to resume working.

As we discussed, there is little we can do to assist your return to work and our medical adviser has reported that you are not likely to be well enough to return to your current job for some time, if at all. We have tried to find some alternative suitable work for you, but, as you know, all of the work in this Company is fairly heavy work and there is nothing we can offer you.

I regret that I have no alternative other than to give you notice to terminate your employment with the Company with effect from *16 November 2012*.

You are entitled to full pay for the period of your notice plus accrued holiday pay. I shall arrange for these sums to be paid to you, and for your P45 to be sent to you as soon as possible.

I take this opportunity of reminding you that you are entitled to appeal against this decision through the Company's Dismissal Procedure. If you wish to exercise this right, you must let me know within ten working days of receipt of this letter.

If your health does improve in the future to enable you to resume working, I would be pleased to discuss re-employing you.

Yours sincerely

John Smith

John Smith
Personnel Manager

1 This letter is an example of dismissal due to terminal illness. Such a letter would have to be reworded if the employee was likely to be able to resume work at some future date.

Example Letter 13: Notice of redundancy

Ace Fabrics Limited

Unit 2 Boxwood Trading Estate, Kings Langley, HO3 2HT
Tel: (01234) 456 789 Fax: (01234) 987 654

Dear *Miss Porter*

It is with regret that I write to inform you that the Company has decided to make you redundant with effect from today. You are aware that the Company is being restructured and the volume of work has substantially diminished.

We have tried to find you a suitable position commensurate with your abilities elsewhere within the Company, but there is nothing available.

You are entitled to *one month's* notice of termination, but we believe it is better for you and all others concerned if you leave immediately. The Company will pay you a gross sum of *£1,223.39* as compensation for the termination of your employment subject to such deductions as the Company is required to make from the sum in respect of any tax charges or levies. This sum is calculated as follows:

1. *4 weeks' gross salary at £13,500 per annum* *£1,038.46*

2. *5 days' accrued holiday* *£184.93*

In addition, the Company will make you a statutory redundancy payment of *£1,935*. This is calculated in accordance with your age, salary (subject to a statutory maximum of £430 per week) and the number of years' service with the Company, i.e.

1½ x £430 x 3

1. The Company will therefore pay you a total sum of *£3,158.39*

/continued

Example Letter 13: Notice of redundancy (continued)

immediately on your signature and return of the enclosed copy of this letter.

2. You accept that this payment made by the Company is in full and a final settlement of your claim for compensation and/or damages for the termination of your employment with effect from today.[1]

3. You will return all property in your possession belonging to the Company.

Please acknowledge receipt of this letter by signing and returning the acknowledgement on the enclosed copy of this letter.

Yours sincerely

John Smith

John Smith
Personnel Manager

I acknowledge receipt of the letter of which the above is a copy and of the compensation payment referred to in it.

Signed _____

Date of Signature _____

[1] A compromise agreement is needed to prevent the employee from bringing proceedings in an employment tribunal.