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Born in the West Midlands, Nigel spent several years in industry working as a Mechanical Engineer before qualifying with Hatchers as a solicitor in 1998 specialising in employment law and personnel related matters.

In his spare time, Nigel's interests include tennis, fly-fishing, the great outdoors, and spending time with his young family.

Bill Lamplugh, Solicitor (right)

Since qualifying as a solicitor in 1973 Bill has worked in Shrewsbury dealing with a variety of legal work, including employment law, personal injury claims and civil litigation. After retiring as Managing Partner of another local firm of solicitors, Bill then joined Hatchers as a consultant solicitor working with the employment team, consolidating our expertise.

Bill is a keen scuba diver and enjoys walking in the countryside.

Employment Team Member

Nichola Gallen-Friend
Having grown up in Nottinghamshire and studied law at Aberystwyth, Nichola has now settled in Shropshire. Nichola started as a trainee at Hatchers in October 2008 and qualified as a solicitor with the firm in July 2010 working in the



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Welcome to the latest issue of our free employment law update. In this month's issue we look at:

TIME OFF FOR EMPLOYEES We look at the main obligations on employers to give employees time off for reasons including carrying out public duties and attending court. [[more...](#)]

SCORING SYSTEM Employers have to consult with employees before making them redundant. We look at a case in which the appeal tribunal said that consultation must include adequate information which the employee can use to respond to and argue their case against dismissal, as well as challenge any points under a scoring system. [[more...](#)]

LETTER BY LETTER The law says that the effective date of termination when a contract is terminated without notice is the "date on which the termination takes effect". The Supreme Court has said that this was when the employee actually read the letter of dismissal and not the date when it arrived at her home. [[more...](#)]

IN BRIEF The Government recently set out a series of principles that it intends to use when introducing European measures into UK law. [[more...](#)]

Meet our Employment Team
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Our specialist employment team can provide you with practical advice upon how this complex and rapidly changing area of law affects you.

- Recruiting staff
- Disciplinary and grievance procedures
- Employment tribunals
- Unfair dismissal
- Redundancy
- Compromise agreements
- Equal pay
- Employment policies and handbooks
- Drafting and reviewing contracts of employment
- Family friendly rights
- Handling disciplinary matters fairly
- Discrimination
- Harassment and bullying
- Company takeovers and their effect on the employment relationship

TIME OFF FOR EMPLOYEES

Apart from the right to certain types of leave, employees have a right to time off for other reasons such as carrying out public duties and attending court. The following is an overview of the main obligations facing employers.

Public duties

Employees are entitled to a reasonable amount of unpaid time off (unless their contract states they are entitled to be paid) during their working hours to carry out the following public duties:

- justices of the peace (JPs)
- members of a local authority
- members of a police authority
- members of a statutory tribunal
- members of an NHS Trust or Health Authority
- prison visitors
- school governors of local authority schools

The law states that employees are entitled to have time off to attend meetings of the relevant body or to carry out any functions of the body. As far as magistrates are concerned, court sessions are covered, as well as any other essential duties such as visiting penal institutions or training sessions. JPs can also take on extra commitments which will be covered by the time off provisions, such as membership of a Probation Committee or a Juvenile Court panel.

What is deemed a reasonable amount of time off will depend on the duties involved in the job, and the seniority of the employee within the public body. Basically, the more senior the public role, the more reasonable the request for time off will be. Tribunals will also take account of the fact that some public bodies lay down minimum attendance requirements, such as court sessions for magistrates, which cannot be avoided if the individual is to carry out the essential duties of the job. Employers are not expected to provide all the time off for the job, so employees need to be prepared to do some of it in their own time.

If the employer refuses to let someone have what they think is a reasonable amount of time off, the employee can complain to a tribunal within three months of the date of refusal. However, the tribunal can only make a declaration that they are entitled to the time off and award them compensation. They cannot force the employer to give the time off.

The dominant factor is the effect that the request has on the employer's business. For instance, if the employee is a key worker in a small manufacturing organisation, any absences could have a serious impact on production. The greater the need for that person's presence at work, the more reasonable it will be for the employer to refuse the time off. Tribunals also take into account the size of the business and the ease with which the individual can be replaced. The larger the organisation, the more that will be expected of it in terms of provision of time off.

Court service

Employees may be called up for jury service or to attend court as a witness. Although employers are not legally required to provide time off for jury service, they could be found in contempt of court if they refuse. Effectively, therefore, employers must allow employees time off to attend. Employers do not have to pay employees doing jury service as they are entitled to claim for travel and subsistence and for loss of earnings, up to a maximum daily rate. Acting as a Companion An employee has the right to take paid time off to accompany a work colleague at a disciplinary or grievance hearing or a flexible working hearing.

Redundancy

An employee under notice of dismissal for redundancy has a right to take paid time off to seek new employment or to make arrangements for retraining. [[Back to contents](#)]

SCORING SYSTEM

When considering someone for redundancy, employers should consult with the employee. In **Pinewood Repro Ltd t/a County Print v Page, (September 2010)** the Employment Appeal Tribunal (EAT) said that consultation must involve providing adequate information which the employee can use to respond to and argue their case against dismissal, as well as challenge any points allotted under a scoring system. The general principle is that a redundancy dismissal will normally be unfair where the affected employee has not been given prior warning or consulted.

What happened?

Following the loss of a major contract, the company sent out a letter to employees on 9 February 2009 telling them there would be compulsory redundancies. It explained that staff would be chosen using a point scoring matrix system which included attendance, quality, productivity, abilities, skills, experience, disciplinary record and flexibility.

Mr Page, who was in a pool of three, was informed that it was most likely that he would be selected and invited to attend a meeting on 20 February at which he was given a copy of his personal scores. This showed he had been given slightly lower scores than the other two employees for ability, skill and experience and flexibility. He was not given an explanation as to how the assessors had arrived at those scores - he was just told that they were "reasonable and appropriate". Although each sheet contained a column for "justification/comment/example of performance", none had been filled in.

Mr Page claimed unfair dismissal as a result of unfair selection for redundancy. And the tribunal agreed, saying that the company had failed to provide an explanation as to how it had arrived at the individual scores. It was clear how it had arrived at some "mechanical" markers such as attendance but in terms of other, more subjective, areas such as flexibility, it had been impossible for Mr Page to challenge the scores because the company had refused to explain how it had reached them.

The tribunal said that as some of the matters relied on by the assessors to mark down Mr Page were "patently challengeable", they should have been aired in the consultation process. The dismissal was therefore procedurally and substantively unfair. And the EAT agreed, saying that "fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted and to express his views on those subjects and the consultor thereafter considering those views properly and genuinely."

It added that although tribunals should not carry out a "microscopic analysis" of scoring systems, they should decide whether the employer had provided enough information for the employee to challenge their scores, particularly in relation to subjective criteria such as flexibility. As for the employer's argument that Mr Page's compensation should be reduced because he would have been dismissed anyway (known as a Polkey deduction), the EAT said that employers must rely on "cogent evidence" which is evidence-based.

In this case it was "completely fallacious" for the employer to rely on the argument that as Mr Page was in a pool of three, there was a one in three chance that he would be dismissed and therefore his compensation should be reduced by at least one third.

NOTE also that in the case of collective redundancies (where 20 or more redundancies are proposed at one establishment within 90 days or in the case of a business transfer) an employer is required to consult with union or elected employee representatives. Failure to do so could result in a tribunal awarding a protective award of up to 90 days pay for each affected employee [\[Back to contents \]](#)

LETTER BY LETTER

The effective date of termination (EDT) in relation to a contract terminated without notice is the "date on which the termination takes effect" (section 97(1) of the 1996 Employment Rights Act). In **Gisda Cyf v Barratt**, (October 2010) the Supreme Court said that this was when the employee actually read the letter of dismissal and not the date when it arrived at her home.

What happened?

After attending a disciplinary hearing held on 28 November 2006, Ms Barratt was told she could expect to receive a letter by 30 November telling her the outcome of the hearing. A letter of summary dismissal was sent by recorded delivery on 29th and delivered the next day, by which time Ms Barratt was in London visiting her sister who had just had a baby.

The letter was signed for by someone else at her home. She did not inquire about the letter while she was away and did not read it until 4 December. She then lodged a claim for unfair dismissal and sex discrimination on 2 March 2007. The company argued that her claim was out of time because the termination of her contract took effect on 29 November when it wrote and posted the dismissal letter.

The employment tribunal followed the approach laid down in **Brown v Southall & Knight** (1980 case). That is, when an employer tells an employee by letter that they have been summarily dismissed, the EDT is the date when they actually read the letter and knew of the decision or, at any rate, had a reasonable opportunity of reading it.

And the EAT and Court of Appeal agreed, emphasising a need for fairness in the dismissal process: "The proposition that an employee may be summarily dismissed and that time may begin to run against the employee before the employee actually knows of the dismissal sits uncomfortably with a personal contract and with the scheme of the legislation that an employee is entitled not to be dismissed unfairly and to have 3 months, and no less, in which to present a complaint of unfair dismissal."

And the Supreme Court agreed that when an employee is told in a letter that they have been dismissed, their contract should not be terminated until they have read the letter or had a "reasonable opportunity" of reading it. In this case, the question was whether Ms Barratt could have found out what the letter said while she was away. The Supreme Court said that the tribunal was right not to concentrate on what was "practically feasible" as that might "compromise the concept of what can realistically be expected".

Instead, it said that it was reasonable for her not to want the letter to be opened and read out to her over the phone but to prefer to read it alone when she got back. The fact that she could have found out what was in the letter while she was away was a factor to be considered when deciding if she had had a "reasonable opportunity" to discover what was in it, but the tribunal was not wrong to also take her other circumstances into account.

It added that it would be unfair for time to begin to run against an employee until they had had a reasonable chance to find out they had been dismissed. As a matter of policy, it said that it was preferable to interpret the time limit legislation in a way that favoured the employee, rather than follow strict contractual laws concerning termination of employment.

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IN BRIEF

1. The Government recently set out a series of principles that it intends to use when introducing European measures into UK law.

The most important includes directly copying the text of European directives directly into UK law to end the practice of so-called "gold-plating". This is when national bodies exceed the terms of a directive when implementing it into national law.

According to the Government, this principle will mean that British interpretations of European law do not unfairly restrict British companies.

The new measures are part of a wider Government policy to tackle EU regulations at the source. They will also place an express duty on ministers to conduct a review of European legislation every five years.

Government will also start work early on how to implement EU directives to ensure that there is certainty and early warning about how legislation will be introduced, but will not implement the regulations early unless there is a compelling case to do so. Businesses will be invited to take part in this process and work with Government to make sure that European laws place the least possible burden on companies.

The key elements of the principles are:

- Work on the implementation of an EU directive should start immediately after agreement is reached in Brussels. By starting implementation work early, businesses will have more chance to influence the approach, ensuring greater certainty and early warning about its impact.
- Early transposition of EU regulations will be avoided except where there are compelling reasons for early implementation. This will ensure that British businesses are not put at a disadvantage compared with their European competitors.
- European directives will normally be directly copied into UK legislation, except where it would adversely affect UK interests, for instance by putting UK businesses at a competitive disadvantage.
- A statutory duty will be placed on ministers to conduct a review of domestic legislation implementing a European directive every five years. This will allow businesses to influence any necessary improvements based on their own practical experience of applying the rules.

2. The Council of the European Union has rejected a plan for 20 weeks maternity pay on full pay.

At a meeting of the EU Employment Council, a large majority of ministers rejected the European Parliament's proposal to legislate for 20 weeks of maternity leave at full pay. They expressed concerns regarding the cost implications of extending paid maternity leave. They also rejected plans to include paternity leave in a draft Directive on maternity leave, since the main purpose of the Directive would be to improve the health and safety at work of pregnant women, not to reconcile work, family and private life.

The Belgian Presidency concluded that the Commission's original proposal to extend the minimum length of maternity leave from 14 to 18 weeks could be a more acceptable basis

for a compromise than the European Parliament's amendments. The Presidency will now consider how best to continue with the Directive in coordination with the two forthcoming presidencies, Hungary and Poland.

3. The Employment Rights (Increase of Limits) Order 2010 SI 2010/2926 has now been published. The Order increases the limits on certain employment tribunal awards and other amounts payable under employment legislation from 1 February 2011.

The notable changes are:

- the limit on the amount of a week's pay for the purposes of calculating, among other things, statutory redundancy payments and the basic award for unfair dismissal will increase from GBP 380 to GBP 400;
- the maximum compensatory award for unfair dismissal rises from GBP 65,300 to GBP 68,400;
- guarantee pay increases from the rate of GBP 21.20 a day to GBP 22.20 a day; and
- the minimum basic award in cases where the dismissal was unfair by virtue of health and safety, employee representative, trade union, or occupational pension trustee reasons will increase from GBP 4,700 to GBP 5,000.

The new rates apply where the event giving rise to compensation or payment occurs on or after 1 February 2011. For example, in the case of unfair dismissal the rates apply to all dismissals where the effective date of termination falls on or after this date. Where the dismissal or relevant event falls before 1 February, the old limits will still apply, irrespective of the date on which compensation is awarded.

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