

SCHEDULE

ACAS ARBITRATION SCHEME

XXI. AWARDS OF COMPENSATION

137. When an arbitrator makes an award of compensation, instead of an award for reinstatement or re-engagement, such compensation shall consist of a basic amount and a compensatory amount.

138. Where paragraph 163 below applies, an award of compensation shall also include a *supplementary amount*.

The basic amount

139. Subject to the following provisions, the basic amount shall be calculated by:

- (i) determining the period, ending with the effective date of termination (see paragraph 140 below), during which the Employee has been continuously employed (see paragraph 141 below),
- (ii) reckoning backwards from the end of that period the number of years of employment falling within that period, and
- (iii) allowing the appropriate amount (see paragraph 142 below) for each of those years of employment.

140. As to the “effective date of termination”:

(i) the “effective date of termination” means:

- (a) in relation to an Employee whose contract of employment is terminated by notice, whether given by his or her Employer or by the Employee, the date on which the notice expires;
- (b) in relation to an Employee whose contract of employment is terminated without notice, the date on which the termination takes effect; and
- (c) in relation to an Employee who is employed under a contract for a fixed term which expires without being renewed under the same contract, the date on which the term expires.

(ii) Where:

- (a) the contract of employment is terminated by the Employer, and
- (b) the notice required by section 86 of the Employment Rights Act 1996 (as amended from time to time) to be given by an Employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined in paragraph 140(i) above),

the later date is the effective date of termination.

(iii) In paragraph 140(ii)(b) above, “the material date” means:

- (a) the date when notice of termination was given by the Employer, or
- (b) where no notice was given, the date when the contract of employment was terminated by the Employer.

(iv) Where:

- (a) the contract of employment is terminated by the Employee, and
- (b) the material date does not fall during a period of notice given by the Employer to terminate that contract, and
- (c) had the contract been terminated not by the Employee but by notice given on the material date by the Employer, that notice would have been required by section 86 of the

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Employment Rights Act 1996 (as amended from time to time) to expire on a date later than the effective date of termination (as defined in paragraph 140(i) above), the later date is the effective date of termination.

(v) In paragraph 140(iv) above, “the material date” means:

- (a) the date when notice of termination was given by the Employee, or
- (b) where no notice was given, the date when the contract of employment was terminated by the Employee.

141. In determining “continuous employment”, the arbitrator shall have regard to Chapter I of Part XIV of the Employment Rights Act 1996 (as amended from time to time).

142. The “appropriate amount” means:

- (i) one and a half weeks' pay for a year of employment in which the Employee was not below the age of forty-one,
- (ii) one week's pay for a year of employment (not within sub-paragraph (i) above) in which he or she was not below the age of twenty-two, and
- (iii) half a week's pay for a year of employment not within sub-paragraphs (i) or (ii) above.

143. In calculating the amount of a week's pay of an Employee, the arbitrator shall have regard to Chapter II of Part XIV of the Employment Rights Act 1996, as amended from time to time, or any other relevant statutory provision applicable to the calculation of a week's pay.

144. Where twenty years of employment have been reckoned under paragraph 139 above, no account shall be taken under that paragraph of any year of employment earlier than those twenty years.

145. Where the effective date of termination is after the sixty-fourth anniversary of the day of the Employee's birth, the amount arrived at under paragraphs 139, 142 and 144 above shall be reduced by the “appropriate fraction” (see paragraph 146 below).

146. The “appropriate fraction” means the fraction of which:

- (i) the numerator is the number of whole months reckoned from the sixty-fourth anniversary of the day of the Employee's birth in the period beginning with that anniversary and ending with the effective date of termination (see paragraph 140 above), and
- (ii) the denominator is twelve.

Minimum basic amounts in certain cases

147. A “minimum basic amount” shall apply where the arbitrator has found that the dismissal was unfair, and where the reason (or, if more than one, the principal reason):

- in a redundancy case (see paragraph 150(i) below), for selecting the Employee for dismissal, or
- otherwise, for the dismissal

was one of the following:

Health and safety cases

- (i) having been designated by the Employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the Employee carried out (or proposed to carry out) any such activities;

- (ii) being a representative of workers on matters of health and safety at work or a member of a safety committee:
 - (a) in accordance with arrangements established under or by virtue of any enactment, or
 - (b) by reason of being acknowledged as such by the Employer,the Employee performed (or proposed to perform) any functions as such a representative or a member of such a committee;

Working time cases

- (iii) being:
 - (a) a representative of members of the workforce for the purposes of Schedule 1 to the Working Time Regulations 1998 (as amended from time to time), or
 - (b) a candidate in an election in which any person elected will, on being elected, be such a representative,performed (or proposed to perform) any functions or activities as such a representative or candidate;

Trustees of occupational pension schemes

- (iv) being a trustee of a relevant occupational pension scheme which relates to his or her employment, the Employee performed (or proposed to perform) any functions as such a trustee;

Employee representatives

- (v) being:
 - (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time), or
 - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,performed (or proposed to perform) any functions or activities as such an employee representative or candidate;
- (vi) the Employee took part in an election of employee representatives for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended from time to time);

Union membership or activities

- (vii) the Employee:
 - (a) was, or proposed to become, a member of an independent trade union, or
 - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, or
 - (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member.

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(viii) for the purposes of paragraphs (vii) above to (xi) below, in defining the terms “trade union” and “independent trade union”, the arbitrator shall have regard to sections 1 and 5 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

(ix) for the purposes of paragraph (vii)(b) above, an “appropriate time” means:

- (a) a time outside the Employee’s working hours, or
- (b) a time within his or her working hours at which, in accordance with arrangements agreed with or consent given by his or her employer, it is permissible for him or her to take part in the activities of a trade union;

and for this purpose “working hours”, in relation to an Employee, means any time when, in accordance with his or her contract of employment, he or she is required to be at work.

(x) where the reason, or one of the reasons, for the dismissal was:

- (a) the Employee’s refusal, or proposed refusal, to comply with a requirement (whether or not imposed by his or her contract of employment or in writing) that, in the event of his or her not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, he or she must make one or more payments, or
- (b) his or her objection, or proposed objection, (however expressed) to the operation of a provision (whether or not forming part of his or her contract of employment or in writing) under which, in the event mentioned in paragraph (x)(a) above, his or her Employer is entitled to deduct one or more sums from the remuneration payable to him or her in respect of his or her employment,

the reason shall be treated as falling within paragraph (vii)(c) above.

(xi) references in paragraphs (vii) to (x) above to being, becoming or ceasing to remain a member of a trade union include references to being, becoming or ceasing to remain a member of a particular branch or section of that union or of one of a number of particular branches or sections of that trade union; and references to taking part in the activities of a trade union shall be similarly construed.

Other categories

(xii) where the reason or principal reason for the dismissal of the Employee qualifies under any other applicable legislative provision for a minimum basic award.

148. Before any reductions are taken into account under paragraphs 151 to 155 below (“Reductions to the basic amount”), the “minimum basic amount” shall not be less than:

- (i) in cases within paragraph 147(i), (ii), (iii), (iv), (v) and (vi) above, the amount provided for in section 120(1) of the Employment Rights Act 1996, as amended from time to time;
- (ii) in cases within paragraph 147(vii) above, the amount provided for in section 156 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time;
- (iii) in cases within paragraph 147(xii) above, the amount provided for in the relevant legislation.

Basic amount of two weeks' pay in certain cases

149. Where:

- (i) the arbitrator finds that the reason (or, where there is more than one, the principal reason) for the dismissal of the Employee is that he or she was redundant and
- (ii) the Employee:
 - (a) by virtue of section 138 of the Employment Rights Act 1996, as amended from time to time, is not regarded as dismissed for the purposes of Part XI of that Act, or
 - (b) by virtue of section 141 of that Act, as amended from time to time, is not, or (if he or she were otherwise entitled) would not be, entitled to a redundancy payment,

the basic amount shall be two weeks' pay (for the definition of "week's pay", see paragraph 143 above).

150. For the purposes of this Scheme:

- (i) for the definition of "redundancy", the arbitrator shall have regard to section 139 of the Employment Rights Act 1996, as amended from time to time;
- (ii) for the definition of "redundancy payment", the arbitrator shall have regard to Part XI of the Employment Rights Act 1996, as amended from time to time.

Reductions to the basic amount

151. Where the arbitrator finds that the Employee has unreasonably refused an offer by the Employer which (if accepted) would have the effect of reinstating the Employee in his or her employment in all respects as if he or she had not been dismissed, the arbitrator shall reduce or further reduce the basic amount to such extent as he or she considers just and equitable having regard to that finding.

152. Where the arbitrator considers that any conduct of the Employee before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the basic amount to any extent, the arbitrator shall reduce or further reduce that amount accordingly. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

153. The preceding paragraph does not apply in a redundancy case (see paragraph 150(i) above) unless the reason for selecting the Employee for dismissal was one of those specified in paragraph 147 above ("Minimum basic amounts in certain cases"), and in such a case, the preceding paragraph applies only to so much of the basic amount as is payable because of paragraph 147 above.

154. Where the Employee has been awarded any amount in respect of the dismissal under a dismissal procedures agreement designated under section 110 of the Employment Rights Act 1996 (as amended from time to time), the arbitrator shall reduce or further reduce the amount of the basic award to such extent as he or she considers just and equitable having regard to that award.

155. The basic amount shall be reduced or further reduced by the amount of any payment made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise).

The compensatory amount

156. Subject to the following provisions, the compensatory amount shall be such as the arbitrator considers just and equitable in all the circumstances having regard to the loss sustained by the Employee in consequence of the dismissal, in so far as that loss is attributable to action taken by the Employer.

157. The loss referred to in paragraph 156 above shall be taken to include:

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- (i) any expenses reasonably incurred by the Employee in consequence of the dismissal; and
- (ii) subject to sub-paragraph (iii) below, loss of any benefit which he or she might reasonably be expected to have had but for the dismissal;
- (iii) in respect of any loss of:
 - (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise); or
 - (b) any expectation of such a payment

only the loss referable to the amount (if any) by which such a payment would have exceeded the basic amount in respect of the same dismissal (as calculated under the provisions set out above—but excluding any reductions under paragraphs 151 to 155 above (“Reductions to the basic amount”)).

158. In ascertaining the loss referred to in paragraph 152 above, the arbitrator shall apply the principle that a person has a duty to mitigate his or her loss.

159. In determining, for the purposes of paragraph 152 above, how far any loss sustained by the Employee was attributable to action taken by the Employer, no account shall be taken of any pressure which by:

- (i) calling, organising, procuring or financing a strike or other industrial action, or
- (ii) threatening to do so,

was exercised on the Employer to dismiss the Employee; and that question shall be determined as if no such pressure had been exercised.

Reductions to the compensatory amount

160. Where the arbitrator finds that the dismissal was to any extent caused or contributed to by any conduct of the Employee, he or she shall reduce the compensatory amount by such proportion as he or she considers just and equitable having regard to that finding. In assessing such conduct, the arbitrator shall disregard (if relevant) those matters set out in section 155 of the Trade Union and Labour Relations (Consolidation) Act 1992, as amended from time to time.

161. If:

- (i) any payment was made by the Employer to the Employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI of the Employment Rights Act 1996, as amended from time to time, or otherwise); and
- (ii) the amount of such a payment exceeds the basic amount that would have been payable under the provisions set out above (excluding for this purpose reductions on account of redundancy payments (see paragraph 150 above)),

that excess goes to reduce the compensatory amount.

Internal appeal procedures

162. Where an award of compensation is to be made, and the arbitrator finds that:

- (i) the Employer provided a procedure for appealing against dismissal; and
- (ii) the Employee was, at the time of the dismissal or within a reasonable period afterwards, given written notice stating that the Employer provided the procedure and including details of it; but

- (iii) the Employee did not appeal against the dismissal under the procedure (otherwise than because the Employer prevented him or her from doing so),

the arbitrator shall reduce the compensatory amount included in an award of compensation by such amount (if any) as he or she considers just and equitable.

163. Where an award of compensation is to be made, and the arbitrator finds that:

- (i) the Employer provided a procedure for appealing against dismissal; but
- (ii) the Employer prevented the Employee from appealing against the dismissal under the procedure,

the award of compensation shall include a supplementary amount, being such amount (if any) as the arbitrator considers just and equitable.

164. In determining the amount of a reduction under paragraph 162 above or a supplementary amount under paragraph 163 above, the arbitrator shall have regard to all the circumstances of the case, including in particular the chances that an appeal under the procedure provided by the Employer would have been successful.

165. The amount of such a reduction or supplementary amount shall not exceed the amount of two weeks' pay (for the definition of "week's pay", see paragraph 143 above).

Limits on the compensatory amount

166. With the exception of:

- (i) cases falling within sections 100 or 105(3) (Health and Safety Cases) of the Employment Rights Act 1996, as amended from time to time; and
- (ii) cases where the reason (or, if more than one, the principal reason):
 - (a) in a redundancy case, for selecting the Employee for dismissal; or
 - (b) otherwise for the dismissal,

was that the Employee made a protected disclosure (within the meaning of Part IVA of the Employment Rights Act 1996, as amended from time to time); and

- (iii) cases falling within any other exception to the statutory limit,

no compensatory amount awarded by an arbitrator shall exceed the statutory limit provided for in section 124(1) of the Employment Rights Act 1996, as amended from time to time.

167. The limit referred to above applies to the amount which the arbitrator would award (apart from paragraph 166 above) in respect of the subject matter of the complaint, after taking into account:

- (i) any payment made by the Employer to the Employee in respect of that matter, and
- (ii) any reduction in the amount of the award required by any enactment or rule of law.

Double recovery

168. Where the same acts of the Employer are relied upon by the Employee:

- (i) to ground a claim for unfair dismissal in arbitration as well as
- (ii) to ground a claim in the employment tribunal for discrimination (under the Sex Discrimination Act 1975 and/or the Race Relations Act 1976 and/or the Disability Discrimination Act 1995, and/or any other relevant Act or subordinate legislation),

the arbitrator shall not award compensation in respect of any loss or other matter which is to be or has been taken into account by the employment tribunal in awarding compensation with respect to the discrimination claim.

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In this regard, the arbitrator shall have regard to any information supplied by the parties under paragraph 86 above.