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The Compensatory Award: General Principles

A. Introduction	6.01
B. Compensation, not Punishment	6.03
1. Exceptions	6.04
C. Compensation for Economic Loss	6.10
D. Date of Dismissal	6.12
E. Remoteness	6.17
1. Permanent New Employment	6.18
2. Period of Training	6.25
3. Consequential Loss	6.30
4. Attributable to the Employer's Action	6.31
F. Heads of Compensation	6.36
1. Proof of Loss	6.37
2. Industrial Pressure Disregarded	6.41
G. Statutory Maximum	6.42

A. INTRODUCTION

- 6.01** The third element in unfair dismissal compensation is the compensatory award. Unlike the basic award, this is not based on a fixed statutory formula but rests on the simple principle that employees should be compensated for the loss caused to them as a result of their dismissal. Thus in most cases the compensatory award will be the largest element in the total award. This chapter looks at the general principles which govern the compensatory award. Chapters 7, 8, and 9 consider the types of payment and the benefits for which compensation may be awarded in detail.
- 6.02** The overriding aim of the compensatory award is to compensate employees for the financial loss caused by their dismissal to the extent that a tribunal considers 'just and equitable', subject to the statutory maximum. To this effect s. 123(1) of the Employment Rights Act 1996 provides that:

Subject to the provisions of this section and sections 124 and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

This provision gives tribunals a wide discretion over the assessment of the compensatory award and they generally approach this task with the minimum amount of technicality. This approach has been encouraged by the EAT and the Court of Appeal. In *Fougère v Phoenix Motor Co Ltd* [1976] IRLR 259, for example, the EAT stressed that tribunals are 'bound of necessity to operate in a rough and ready manner and to paint the picture with a broad brush' rather than as skilled cost accountants or actuaries. However, it would be wrong to conclude that the assessment of the compensatory award is an arbitrary exercise since it has been said that a tribunal must exercise its discretion 'judiciously and upon the basis of principle' (per Sir John Donaldson in *Norton Tool Co Ltd v Tewson* [1973] 1 All ER 183). Moreover, a tribunal must set out its reasons in sufficient detail to show the principles used in the assessment.

B. COMPENSATION, NOT PUNISHMENT

The object of the compensatory award is to compensate employees for financial loss caused by their dismissal, and not to punish employers for their wrongdoing. The EAT has therefore said that an award should not be increased either out of sympathy for the employee or as a means of expressing disapproval of the employer's industrial relations policy (*Lifeguard Assurance Ltd v Zadrozny* [1977] IRLR 56). **6.03**

1. EXCEPTIONS

There is one well-established exception to the principle that the compensatory award is strictly limited to economic loss attributable to the dismissal, namely the right to receive compensation for the loss of statutory rights (Chapter 11). **6.04**

There is currently a conflict of authority on the issue of whether, as a matter of justice and equity, a claimant should also be compensated for loss of notice pay. Prior to the EAT's ruling in *Hardy v Polk* [2004] IRLR 420, there was a body of case law which appeared to establish a further exception in relation to awards of compensation for the loss of notice pay. Both the NIRC and the EAT had previously ruled that as a matter of justice and equity, as well as good industrial relations, employees should **6.05**

normally recover their lost notice pay either by way of a payment in lieu of notice from their employer or as a minimum award of compensation for unfair dismissal (see *Norton Tool Co Ltd v Tewson* [1973] 1All ER 183; *TBA Products Ltd v Locke* [1984] IRLR 48). These decisions appeared to have been approved by the Court of Appeal in *Babcock FATA Ltd v Addison* [1987] IRLR 173, although Lord Donaldson recognised that the concept of good industrial relations is not a static one and, in the view of Ralph Gibson LJ, there may be exceptional circumstances where an employer might not offend good industrial relations by tendering a lesser sum than the full contractual notice.

- 6.06** However, in *Hardy v Polk*, the EAT departed from these earlier authorities and ruled that there was no 'right' under ERA, s. 123(1) to receive a minimum payment equivalent to contractual or statutory notice, as the compensatory award was based strictly on compensating the victim of an unfair dismissal for his or her economic loss rather than penalising the employer for their conduct and that the duty to mitigate arose from the moment of dismissal.
- 6.07** The EAT in *Hardy v Polk* reached this conclusion, even though technically the Court of Appeal's ruling in *Addison* was binding on it. The EAT gave two reasons for departing from the earlier authorities: the first was that the earlier authorities appeared to have ignored the statutory duty to mitigate. Had they not done so 'it would have been difficult for either of the courts to reach the conclusions they did, not only by reference to the statutory definition of loss, but also by reference to the obligation to mitigate: because of course where an employee has mitigated, it would appear irrational for the consequences of that mitigation to be ignored, if there was a duty to mitigate to start with'. Despite the EAT's observations, it is hard to believe that the NIRC, EAT, and Court of Appeal were not mindful of the duty to mitigate in reaching their conclusion. The second reason given by the EAT was that the earlier authorities had to be read in the light of the Court of Appeal's ruling in *Cerebus Software Ltd v Rowley* [2001] IRLR 160, where the Court of Appeal (according to the reasoning of the EAT in *Polk*) classified the right to notice pay as a claim for damages to which the ordinary rules on mitigation would apply. However, in *Rowley* (1.129) the issue related to the nature of the contractual claim where an employer elected not to exercise its right to terminate by making a payment in lieu of notice (i.e., whether it was a claim for damages or a debt) and the Court of Appeal's ruling must be read in that context.
- 6.08** Nonetheless, this exception is anomalous (given the underlying purpose of the statutory provisions) and has been held not to apply to fixed-term contracts (*Isleworth Studios Ltd v Rickard* [1988] IRLR 173).

The ruling in *Hardy v Polk* was followed by the EAT in *Morgans v Alpha Plus Security Ltd* [2005] IRLR 235, but was not followed by the EAT in *Voith Turbo Ltd v Stowe* [2005] IRLR 228, where it was stated that there was nothing to suggest that the House of Lords in *Dunnachie* (below) departed from what had previously been accepted as a well-established principle which was justified on the basis of good employment practice. At the time of writing therefore the precise status of this further exception is unclear. **6.09**

C. COMPENSATION FOR ECONOMIC LOSS

It has now been firmly established by the House of Lords, in *Dunnachie v Kingston Upon Hull City Council* [2004] IRLR 727, that the power to award compensation under s. 123 of the Employment Rights Act 1996 is limited to financial loss attributable to the dismissal, rather than non-economic loss such as injury to health and injury to feelings. This confirms the earlier case law referred to in Chapter 10. Nothing in the House of Lords' reasoning prevents employee from claiming compensation for additional economic loss which is attributable to the dismissal, for example where ill health results in the employee being unable to find alternative work. **6.10**

Furthermore, it has been suggested that non-economic factors, such as injury to feelings may play a part in determining the amount by which an award is increased where dismissal is rendered automatically unfair as a result of the employer's failure to follow the statutory dispute resolution procedure prior to dismissal. This is considered in Chapter 10. **6.11**

D. DATE OF DISMISSAL

The normal rule is that, for the purpose of calculating the compensatory award, the employee's loss is determined at the date of the hearing on quantum. This may not be at the same time as the hearing on liability as it is not uncommon for there to be a split hearing, e.g., *Iggesund Converters Ltd v Lewis* [1984] IRLR 431. **6.12**

The normal rule applies even where the assessment of compensation is delayed because of an appeal to the EAT on the question of liability. For example, in *Ging v Ellward Lancs Ltd* (1978) 13 ITR 265, following a successful appeal by the employee, the case was remitted to the industrial tribunal. At the rehearing, which took place some 18 months after the date of dismissal, the tribunal found the dismissal to be unfair and proceeded to assess Mr Ging's loss as at the time of the second hearing. The EAT upheld the tribunal's decision. Mr Justice Arnold said: **6.13**

It seems to us that for better or for worse, whether it has an effect one way or whether it has an effect another way, the date to be taken must always be the date at which the assessment actually takes place, all matters which are uncertain then being assessed by the ordinary operation of forming an estimate as to what will happen in the future.

Similarly, in *Gilham v Kent County Council* [1986] IRLR 56, following the employer's unsuccessful appeal on liability, the Court of Appeal remitted the case to the industrial tribunal to assess compensation. The hearing on quantum took place two years and nine months after the date of dismissal. The industrial tribunal accepted the employer's argument that its liability to compensate the employees was limited to a period of one year following the date of dismissal. However, the EAT, allowing the appeal, ruled that the tribunal was entitled to take into account the employees' loss of earnings for the entire period up to the date of the hearing on quantum. However, these decisions should be contrasted with *Qualcast (Wolverhampton) Ltd v Ross* [1979] IRLR 98.

Implications

- 6.14** In *Gilham* the rule that the loss is determined at the time of the hearing on quantum worked to the employees' advantage, since Mrs Gilham and her colleagues were still out of work at the time of the second hearing. Sometimes, however, it will be to the employee's disadvantage for the hearing on quantum to be postponed—for example, if the employee receives earnings from a temporary job between the date of the first hearing and the hearing on quantum, those earnings will be set off against his loss of earnings claim. For instance, in *Ging*, Mr Ging's earnings from a temporary job on an oil rig were set off against the loss of earnings he suffered during two periods of unemployment. In such circumstances it may be prudent for the employee to invite the tribunal to assess compensation as soon as liability is established. (This may also be desirable for the purpose of ensuring that interest starts to run from the earliest opportunity.)
- 6.15** From the employer's point of view, it is generally better to seek to get the issue of compensation determined as soon as possible, since, as the decision in *Gilham* illustrates, tribunals are likely to be more sympathetic to the employee in assessing past loss than future loss. Thus awards are likely to be higher if the hearing on quantum is delayed. In such circumstances employers should ask the tribunal to assess compensation as soon as the decision on liability is known or before the 42-day time limit for an appeal has expired.

Exception

However, the EAT has recently held that, where the employee has found a permanent better paid job by the date of the hearing on quantum, the award will be based on the employee's loss up to the date the employee commenced the new job (*Lytlarch Ltd t/a The Viceroy Restaurant v Reid* [1991] ICR 216 and *Fentiman v Fluid Engineering Products Ltd* [1991] IRLR 150). **6.16**

E. REMOTENESS

Compensation cannot be recovered if the loss suffered by the employee is too remote, i.e., if it does not arise as a 'consequence of dismissal'. For this reason it has been argued that an employer's liability to pay compensation should cease once the employee has started a 'permanent' new job at an equivalent or better rate of pay, even if the employee is later dismissed from the new job or voluntarily leaves the new job, because any subsequent loss is not a 'consequence of dismissal' attributable to the employer's action. The same argument has been relied on to oppose the payment of compensation where, after dismissal, the employee goes on a training course instead of looking for work. The approach of the EAT and industrial tribunals to this question is considered below. **6.17**

1. PERMANENT NEW EMPLOYMENT

It is accepted, as a matter of principle, that an employer's liability to compensate an employee for loss should cease once the employee obtains a permanent new job at an equivalent or better rate of pay. The problem is whether liability continues where what was thought to be a permanent job turns out to be a temporary one. **6.18**

A strict approach to the issue of causation was adopted by the EAT in *Courtaulds Northern Spinning Ltd v Moosa* [1984] IRLR 43. There the EAT held that the employers were not required to compensate an employee beyond the time when he started his new job, even though he had been dismissed from the new job by the time the hearing on compensation took place. The EAT ruled that, where an employee obtained permanent new employment but was later dismissed from his new job, any loss flowing from the dismissal from the new job was not attributable to the original dismissal and therefore was not the responsibility of the original employer. The EAT's decision in *Moosa* was followed by the Scottish EAT in *Simrad Ltd v Scott* [1977] IRLR 147, where the applicant voluntarily gave **6.19**

up her new job to retrain as a nurse, and was also followed by the EAT in *Whelan v Richardson* [1998] IRLR 114.

- 6.20** However, the EAT's reasoning may be open to criticism on the ground that it introduces the common law concept of causation into the rules on unfair dismissal compensation. If followed, this could lead to complex legal argument as to when a new job can be regarded as sufficiently permanent to break the chain of causation, thereby bringing the old employer's liability to an end. It is not unusual for a job to turn out to be less 'permanent' than was hoped at the time the employee was engaged and the employee may not be to blame for his or her subsequent dismissal. For example, the employee may be selected for redundancy on a 'last in, first out' basis. Another potential difficulty with the approach in *Moosa* is at what stage should a job be regarded as 'permanent'. The EAT suggested that a new job should be regarded as permanent if the employment lasts long enough for the employee to re-qualify for protection against unfair dismissal. This may be fair enough if the qualifying period is one year but is more questionable if the qualifying period is two years or more, or less than one year.
- 6.21** In *Dench v Flynn & Partners* [1998] IRLR 63, the Court of Appeal rejected the 'causation' approach in favour of one based on 'justice and equity'. Ms Dench was found to have been unfairly dismissed on grounds of redundancy. During her notice period, she found a job with another firm of solicitors, subject to a probationary period. She was not kept on after completing her probationary period. Nonetheless, the tribunal found that her losses were no longer 'attributable to the actions' of her former employers and therefore limited its award to the period between the end of her employment with her old employers and the start of her employment with her new employers. Allowing the appeal, the Court of Appeal ruled that the loss consequent on an unfair dismissal does not necessarily cease when the employee finds a new job of a permanent nature at an equivalent or higher salary as this would not be 'just and equitable'. What the tribunal has to determine, in the words of Staughton LJ, is whether the loss in question was caused by the unfair dismissal or by some other cause. In the *Dench* case, the tribunal should have asked itself whether the original dismissal could be seen as a continuing cause of the Claimant's loss following her subsequent dismissal from her new job and whether it was just and equitable for her to recover that loss. The court's approach is consistent with the more pragmatic approach adopted by the EAT in the earlier cases of *Morgan Edwards Wholesale Ltd/Gee Bee Discount Ltd v Hough* EAT 398/78, *Dundee Plant Co Ltd v Riddler* EAT 377/88, and *Fentiman v Fluid Engineering Products Ltd* [1991] IRLR 150.

Any lingering doubts as to which of these two approaches should be followed by tribunals were set aside by the EAT's ruling in *Salvensen Logistics Ltd v Tate* EAT /689/98, where the Court of Appeal's ruling in *Dench* was described as 'the most authoritative judgment on this whole topic'. The EAT stated that the 'current position essentially establishes that what is important is that the tribunal should look . . . at all the facts in deciding the effect that intervening employment should have where it has come to an end before the calculation date . . . even where the remuneration is as great or greater than that enjoyed in the employment under consideration'. **6.22**

The effect of the *Dench* decision is, therefore, to focus on whether it is just and equitable for the complaint to be compensated if the claimant is still out of work at the time of the remedies hearing having lost the new job. Relevant factors which a tribunal is likely to consider include the nature of the new job, whether it was intended to be temporary or permanent, how long the new employment lasted, the claimant's reasons for leaving, and whether the claimant is able to bring an unfair dismissal claim against the new employer. (In *Tate* the tribunal held that the fact that the new job lasted for nine months did not bar a claim for compensation for losses after the new job came to an end). **6.23**

Finally, it should be noted that this issue will only arise where the employee obtains a permanent new job. The chain of causation will not be broken where it is clear from the outset that the employment is to be on a temporary basis. For example, in *Ging v Ellward Lancs Ltd* (1978) 13 ITR 265 (see 16.13), the industrial tribunal accepted that Mr Ging was entitled to recover compensation for his second period of unemployment because the job on the oil rig turned out to be a temporary one. **6.24**

2. PERIOD OF TRAINING

A similar problem arises where the employee decides to undergo a period of retraining rather than looking for a new job. In such circumstances, a tribunal must consider the question of mitigation (see Chapter 13) as well as whether the employer's liability to pay compensation ceases under s. 123(1). This has also led to a conflict of authority. **6.25**

In *Pagano v HGS* [1976] IRLR 9, an Employment Tribunal ruled that an employer's liability ceases when the employee starts the training course because any loss suffered by the employee during that time is caused by the employee's own actions and not those of his or her former employer. Thus the tribunal limited its award of compensation to the period of 12 weeks before Mr Pagano commenced his course of study. The Employment **6.26**

Tribunal's ruling is consistent with the approach taken by the EAT in *Courtaulds Northern Spinning v Moosa* [1984] IRLR 43. Similarly, in *Simrad v Scott* [1997] IRLR 147, it was successfully argued that the employer's liability ceases where an individual chooses to undergo a period of training prior to embarking on a new career, as any continuing loss was too remote to be attributable to the conduct of the employer.

- 6.27** However, in *Khanum v IBC Vehicles Ltd* EAT 785/98, the EAT held that, in the particular circumstances of the case, the Employment Tribunal should not have refused to award compensation for the losses suffered by the claimant after she had embarked on a full-time university course, as those losses were a direct result of her dismissal and therefore not too remote. In the EAT's opinion, the ruling in *Simrad* did not establish any rule of law or binding principle that the pursuit of education subsequent to dismissal necessarily broke the chain of causation. A similar approach was applied by the EAT in *Larkin v Korean Airlines Ltd* EAT/1241/98, where the claimant's decision to embark on a training course for a new career did not preclude her from recovering compensation from her old employers. These cases are consistent with a number of earlier authorities where a pragmatic approach has been applied. For example, in *Sealey v Avon Aluminium* [1978] IRLR 285, an industrial tribunal rejected the argument that an employer's liability under what is now s. 123(1) came to an end in such circumstances pointing out that 'these are hard times even for a young man to find other work and we do not propose to cut short his recoverable loss because meanwhile he has decided to use the time to some purpose'. Similarly, in *Glen Henderson Ltd v Nisbet* EAT 34/90, the EAT upheld an industrial tribunal's decision to award compensation to an employee for the time when she attended a five-week business enterprise course.
- 6.28** Tribunals seem to prefer this more pragmatic approach to the one based on causation as it accords more with justice and equity. But this does not mean that compensation will be awarded in every case. For example, in *Holroyd v Gravure Cylinders Ltd* [1984] IRLR 259, an industrial tribunal refused to award compensation for the period during which the applicant attended a one-year postgraduate course. Upholding the tribunal's ruling, the EAT took the view that it was the applicant's decision to take himself out of the labour market for 12 months and therefore it was correct not to award him compensation during that period. The EAT considered that as for any loss in the period after the course finished, that was 'so remote as to be . . . incapable of calculation'. Compensation therefore may not be awarded where a course is long, is not of a vocational nature, or the employee's decision to retrain is taken after having found a new job (*Simrad v Scott* [1997] IRLR 147) since the 'loss' is no longer attributable to the dismissal or any action of the dismissing employer.

The reasoning in *Pagano v HGS* and *Simrad v Scott* is also open to the more fundamental objection that it is inconsistent with the more pragmatic approach taken by the Court of Appeal in *Dench v Flynn & Partners* that, subject to the issue of mitigation, the tribunal should approach the issue of whether the loss is attributable to the conduct of the employers on the basis of what is just and equitable in the circumstances. **6.29**

3. CONSEQUENTIAL LOSS

The extent of liability imposed by s. 123(1) of the Employment Rights Act 1996 for consequential loss flowing from the dismissal would seem to be substantial. For example, in *Royal Court Hotel Ltd v Cowan* EAT 48/84, an Employment Tribunal held that compensation could be claimed for the loss to the family's budget arising out of the dismissal of the applicant's spouse who was employed by a 'sister' company. On appeal, the employers argued that the claim should have been disallowed because the loss was too remote. However, the EAT refused to interfere with the Employment Tribunal's ruling on the point, although the appeal was allowed on other grounds (see 6.32 below). This decision suggests that the employer is liable for any financial loss which flows directly from the dismissal provided it is 'attributable to the employer's action'. **6.30**

4. ATTRIBUTABLE TO THE EMPLOYER'S ACTION

The proviso that the loss must be caused by the employer's action, i.e., the dismissal, is an important limitation on the employer's liability under s. 123(1) of the Employment Rights Act 1996. **6.31**

It was relied on by the EAT when it overturned the Employment Tribunal's decision in *Royal Court Hotel v Cowan* EAT 48/84 (see 6.30 above). The EAT said that the employer could not be held responsible for the actions of its 'sister' company, with the result that the dismissal of Mrs Cowan's spouse was not attributable to action taken by it. (The EAT does not seem to have considered the possibility that the employers could have been liable if the sister company was an 'associated employer'.) **6.32**

It also means that loss caused by the employee's impecuniosity is unlikely to be recoverable, since it arises from the employee's own action rather than that of the employer. For example, if, as a result of dismissal, an employee defaults on a loan, the employer is unlikely to be liable for the costs suffered by the employee in defending any consequential legal proceedings. (The position may be different if the employer knew about the loan or gave the employee financial assistance to pay it off.) **6.33**

- 6.34** In *McDonald v Capitol Coaches Ltd* EAT 140/94 the EAT appears to have extended this reasoning when it upheld an Employment Tribunal's decision not to award any compensation to an employee who declined to take up the employer's invitation to discuss the situation surrounding his dismissal with his employer. The EAT held that the industrial tribunal was entitled to conclude that, had he taken up the offer, he would have been reinstated and therefore the loss was attributable to his and not his employer's actions. The decision, however, would appear to be inconsistent with the reasoning of the EAT in *Soros and Soros v Davison and Davison* [1994] IRLR 264 and *Lock v Connell Estate Agents* [1994] IRLR 444, where the EAT stresses that employers cannot rely on the employee's actions after dismissal to reduce the award of compensation.
- 6.35** In considering the question of remoteness, tribunals should concern themselves only with the actual consequences of dismissal and not hypothetical ones (*Gilham v Kent County Council* [1986] IRLR 56). This rule means that, if a business is subsequently closed, employees who are unfairly dismissed at an earlier date cannot recover compensation for any loss they suffer beyond the date of closure unless they are able to persuade the tribunal that the closure is not genuine (see *James W Cook & Co (Wivenhoe) Ltd v Tipper and others* [1990] IRLR 386).

F. HEADS OF COMPENSATION

- 6.36** In *Norton Tool Co Ltd v Tewson* [1973] 1 All ER 183, the NIRC said that compensation should be assessed under four main headings:
- (a) immediate loss of earnings, i.e., the loss of earnings between the date of dismissal and the date of the hearing;
 - (b) future loss of earnings, i.e., anticipated loss of earnings in the period following the hearing;
 - (c) loss arising from the manner of dismissal;
 - (d) loss of statutory rights, i.e., compensation for being unable to claim unfair dismissal for a period of at least one year.

In *Tidman v Aveling Marshall Ltd* [1977] IRLR 218, the EAT said that it was the duty of the Employment Tribunal to raise and inquire into each of the four heads of compensation established by *Norton Tool* plus a fifth head, loss of pension rights. The assessment of claims under this last head has proved to be rather complex (see Chapter 9).

1. PROOF OF LOSS

Whilst it is the duty of the tribunal to raise each of the heads mentioned at 6.37 above, it is up to the employee to particularize his claim under each of them. This point was stressed by the EAT in *Adda International Ltd v Curcio* [1976] IRLR 425. In the context of a claim for loss of future earnings, Bristow J said:

The industrial tribunal must have something to bite on, and if an applicant produces nothing for it to bite on he will only have himself to thank if he gets no compensation for loss of future earnings.

This means that applicants should come to the tribunal well prepared with evidence which shows what their loss is under each head of compensation.

Employers should be requested to disclose any information relevant to the assessment of the employee's compensation claim. This will be particularly important in relation to a claim for loss of pension rights where much, if not all, of the relevant information is likely to be in the employer's possession or control. (See also *Benson v Dairy Crest Ltd* EAT 192/89.) If employers refuse to disclose this information voluntarily, an application should be made to the industrial tribunal for an order of discovery. Employers may also be penalised if they fail to disclose the details of the new employers' pension scheme (*Bingham v Hobourn Engineering Ltd* [1992] IRLR 298).

Failure to make a claim under one of the heads or to quantify a particular type of loss properly cannot normally be rectified on appeal. For example, in *UBAF Bank Ltd v Davis* [1978] IRLR 442, the industrial tribunal awarded Mr Davis one year's loss of future earnings. On appeal, Mr Davis complained that the tribunal had ignored the fact that his dismissal meant that he would never be able to work in banking again. He argued that consequently the award should be increased. However, the EAT ruled that if Mr Davis had wanted the tribunal to take the point into account he should have raised evidence before it to prove this. See also *Adda International Ltd v Curcio*.

Once an employee has produced evidence of loss suffered under one of the relevant heads of compensation, the evidential burden of proof will usually shift to the employers (*Barley v Amey Roadstone Corporation Ltd* [1977] IRLR 299).

2. INDUSTRIAL PRESSURE DISREGARDED

- 6.41** In assessing the compensatory award, industrial tribunals must take no account of 'any pressure which, by . . . calling, organising, procuring or financing a strike or other industrial action, or . . . threatening to do so, was exercised on the employer to dismiss the employee . . .'. The question of compensation must be determined 'as if no such pressure had been exercised' (ERA 1996, s. 123(5)).

G. STATUTORY MAXIMUM

- 6.42** The compensatory award is subject to a statutory maximum of £56,800 which applies to all dismissals after 1 February 2005. The statutory maximum is reviewed by the Secretary of State in September each year and varied in line with the increase (or decrease) in the retail price index (Employment Relations Act 1999, s. 34(1)–(2)). The new rate, subject to the approval of Parliament, takes effect from 1 February.