

Quick dismissals

Priorities

Balance of priorities for the business: **Legality vs cost vs speed**

Think carefully about the most important priority for the business: is it to follow the letter of the law or to take an approach which involves some risk, but minimises disruption to the business?

Do you want to do a deal?

You can ensure that the employee is unable to bring a claim by reaching a deal with them. You can also agree terms which might otherwise lead to commercial risk for your business. However, the business is only protected using certain types of agreement, most commonly a Settlement Agreement. Remember the individual will need to take legal advice on the terms before the deal is binding.

Recent changes make these sorts of deals easier than ever before, but you must avoid “improper behaviour”. Also, timing is important – both for tactical and legal reasons.

What’s not included? Claims for personal injury and accrued pension rights are commonly excluded. Claims for protective awards for failure to consult in collective redundancy or TUPE scenarios also require special consideration and so separate advice should be sought if these claims may be relevant.

Getting your ducks in a row

Issues to think about before dismissing:

- **Reason (or excuse?!)** for dismissal – Choose one (e.g. conduct, capability or redundancy) and stick to it.
- **Contract** – Is there one? What does it say? Are there any obvious gaps or problems?
- **Business risk** – Are there any restrictive covenants in place? Are they enforceable? Is confidentiality protected? What about intellectual property? Can we PILON or put on garden leave? Do we want to include new covenants to provide better protection?
- **Company property** – What does the employee have which you want back?
- **Benefits** – What are they entitled to under their contract?
- **Directorship** – Is the employee a Director? If so, resignation is far easier than removal.
- **Shares** – Is the employee a shareholder or entitled to options? What rules apply?
- **Skeletons in the cupboard** – Is the dismissal likely to bring anything else out of the woodwork?
- **Axe man** – Who gets the job of dismissing and/or negotiating?
- **Paperwork** – Get it all drafted in advance.
- **Offer** – What are you going to put on the table?
- **Tax** – Can we structure a deal in a tax efficient way?
- **Word on the street** – How are you going to explain what’s going on? Will you provide a reference? Is an internal or external announcement important?
- **Legal fees** – how much will the company contribute towards the employee’s legal fees?

