9 HUMAN RESOURCES ISSUES

The purpose of this chapter is to explain some of the most important human resources issues that affect companies in the IT sector. After studying it, you should:

- *appreciate the complexity of the law in this area;*
- *understand the constraints under which management and human resources staff act;*
- *understand why and to what extent managers need to be aware of general human resources issue.*

9.1 WHAT ARE HUMAN RESOURCES?

The term 'human resources' (HR) emphasises the fact that the people who work for an organisation are an indispensable part of the organisation's resources and, very often, the most important part. For this reason, the organisation will try to ensure that it always has available the appropriately skilled, qualified and experienced staff that it needs in order to exploit its other assets. This must be done without wasteful over-staffing and within the constraints of what is lawful. The cost of recruiting new staff is high and the loss of continuity when staff leave can also be very expensive. Accordingly the organisation will want to keep staff turnover low. Many organisations (though by no means all) want to behave as a 'good' employer and will therefore try to follow the best of current employment practice.

Any organisation that employs staff will be faced with the need to handle administrative issues relating to their employment. When the number of employees grows to, say, a dozen, one person will have to devote a significant proportion of their time to this. By the time the number of employees reaches around 30, a full-time personnel officer or HR manager will be required. However, managers cannot hand over all responsibility for personnel matters to specialists. This is especially the case in the information systems industry, where staff have high expectations and staff turnover is particularly high.

9.2 THE LEGAL CONTEXT

HR management is practised in an environment beset by legislation. Furthermore, since it is an area in which it is often difficult to legislate clearly, the practical effect of much of the legislation can only be assessed in the context of subsequent decisions by the courts and by tribunals. To make the situation worse, it is a political battleground so that

changes in the legislation occur frequently – four Employment Acts and three Trade Union Acts between 1980 and 1993. There was a consolidating act – the Employment Act 1996 – that was intended to bring all the employment legislation together but there have since been further substantial changes, most recently in the Enterprise and Regulatory Reform Bill 2013. Anything one reads on the subject is thus in danger of being out of date, which makes it very much a field for experts.

Throughout the 20th century, up to the end of the 1970s, industrial relations in Britain were based on collective bargaining and were conceived very much in terms of relations between trades unions and employers. In particular, the rights of trade unions received much more prominence than the rights of individual employees. The situation could be characterised by the following features:

- Industrial disputes leading to damaging strikes were common.

- Such strikes were often fomented by politically motivated left-wing members of the trade unions, against the wishes of the majority of members.

- Strikes were supported by aggressive picketing, that is, by large numbers of strikers gathering outside workplaces to 'persuade' other employees to join the strike.

- Secondary action was common, so that companies that had nothing to do with a dispute could find themselves subject to strike action or intimidatory picketing.

- The closed-shop (the system by which, through agreement between the employer and a trade union, all employees had to be members of that trade union) meant that expulsion from the trade union would cause the employee to lose his job. This meant that trade unions could discipline their members very effectively and made workers very reluctant to disobey their union's instructions, whatever their feelings.

- Nearly all trade unions imposed a 'political levy' on all their members, which was passed on to the Labour party, whatever the political views of the individual member.

- Elections for trade union officials were often rigged.

- Over-manning was preventing British industry from taking advantage of modern equipment, because trade unions insisted that the same number of people continue to be employed to carry out a task, whether or not they were required.

- Trade unions were effectively immune from legal action.

There had been attempts at reform through the 1960s and 1970s, most notably the plans put forward in the white paper *In Place of Strife* by Barbara Castle under the Labour government elected in 1966, but they had all failed because of the strength of the opposition from the trade unions.

The trade unions were to pay dearly for their opposition to the moderate reforms proposed by Mrs Castle. In 1979, a Conservative government under Margaret Thatcher was elected with a mandate for root and branch reform of the law relating to industrial relations and trade unions. The popularity of this policy was an important factor in the

victory of the Conservative party at the next three general elections. The legislation passed under these four successive Conservative governments completely broke the power of the trade unions, aided, it must be said, by economic conditions that led to the decline of the heavy industries that were the stronghold of trade union power. None of the nine bulleted statements above would any longer be regarded as true, although the trade unions continue to hold significant power in the Civil Service, the National Health Service, education and local government.

The erosion of the collective power of employees through the limitations on the rights of trade unions has been balanced by a significant increase in the rights of individual employees. This started in the 1960s with legislation to ensure equal pay for women. This is an example of anti-discrimination legislation; this topic is so important we shall deal with it in a chapter of its own (Chapter 10). Industrial or employment tribunals were introduced in 1964. These are special courts designed to handle cases concerning employment rights and related matters. They provide a cheap and comparatively speedy way for employees to take action if they consider that their rights have been breached. The concept of unfair dismissal was introduced in the Industrial Relations Act 1971. There has been a steady stream of legislation outlawing discrimination of various kinds, which was brought together in the Equality Act 2010.

RESPONSIBILITIES OF THE HR DEPARTMENT

The greater attention paid to the rights of individual employees and the need to comply with anti-discrimination legislation have very considerably increased the work load of HR departments in the UK. The following list is a summary of the responsibilities they are expected to take on within the overall aim of ensuring that the organisation has the workforce that it needs:

- ensuring that recruitment, selection and promotion procedures comply with anti-discrimination legislation;
- staff training and development;
- setting up and monitoring remuneration policy;
- setting up and monitoring appraisal procedures;
- administering dismissal and redundancy procedures;
- contracts of employment;
- workforce planning;
- designing and administering grievance procedures;
- being aware of new legislation affecting employment rights and advising management of what the organisation must do to comply with it;
- health and safety;
- administering consultative committees.

The need to comply with so much new legislation has forced HR departments to adopt formal, bureaucratic procedures that are often felt to be irrelevant and unwelcome by those staff that see themselves as carrying out an organisation's core functions. At the same time, comparatively junior staff in HR may find themselves having authority over some decisions that more senior staff elsewhere in the organisation regard as their prerogative. Tact, wisdom and administrative efficiency are needed to handle such situations and these are qualities that are not easy to find together, whether in HR departments or elsewhere.

9.3 RECRUITMENT AND SELECTION

HR managers often make a distinction between the two terms recruitment and selection, using recruitment to mean soliciting applications and selection to mean selecting the applicants to whom offers will be made. Increasingly, the two are seen as separate activities and recruitment, particularly at professional level, is being outsourced to specialised agencies. Such agencies handle the advertising and, often, carry out initial screening of applicants, before presenting their clients with a short list of suitable applicants. They charge a fee that is normally based on the salary of the person appointed, typically something like 25 per cent of the first year's salary.

The best of these agencies are thoroughly professional and offer an excellent service but the world of recruitment agencies is murky and some of them indulge in very questionable practices.

Before you employ a recruitment agency you need a description of the job to be filled and the type of qualifications or experience you expect in the successful applicant; a good agency can help draw this up. Note that there are two clearly different situations: it may be that you need to fill a specific post, such as Manager of Feline Rodent Elimination Agents, or it may be that you are looking for as many good staff with experience of programming in Python as you can find. In the latter case, the job description is likely to be much less precise, specifying simply a range of activities that people appointed may be expected to carry out.

Selection is kept in the hands of the employer, although a member of the recruitment agency staff may sometimes be invited to advise. A wide range of selection techniques is available and is used in making professional appointments:

- A series of one-to-one interviews with senior management and senior technical staff. This can be a very reliable method of selection, particularly if records are kept so that you can look back and see how effective each individual's judgement has been. Unfortunately, this approach does not make it easy to demonstrate that equal opportunities legislation has been complied with.

- Interview by a panel. Despite extensive research evidence demonstrating its unreliability, this technique is widely used, particularly in the public sector. It tends to favour applicants who are smooth talkers. The panel may well contain a majority of people who are neither professionally competent nor operationally involved in the appointment. Such 'independent' members are commonly used, for example, in appointing school teachers and university staff; they are thought to help prevent nepotism and other forms of corruption but the evidence suggests that they are often responsible for bad appointments.

- Assessment of references. In appointments in the public service, great importance is usually attached to references, especially for academic posts. In contrast, commercial employers usually pay little heed to them and use them only as a final check that candidates are who they say they are. Legislation in many countries is making it possible for job applicants to demand to see references written about them and even to sue for damages if they consider the reference unfair. Employers, or others, who feel that they have been misled by a reference could also sue if they can show that the reference was written without proper care. Because of these legal dangers, references are being used less and less.

- Psychometric tests. These are of three types. **Ability tests** measure an individual's ability in a general area, such as verbal or numerical skills. **Aptitude tests** measure a person's potential to learn the skills needed for a job. Such tests can be fairly effective, provided that the ability they are assessing is well correlated with the ability you are looking for. In the past, these were widely used for recruiting trainee programmers. However, results can be spoiled if the candidates have had the opportunity to practise, and this is usually the case nowadays. It is difficult to design satisfactory tests for higher level skills. **Personality tests** attempt to assess the characteristics of a person that significantly affect how they behave in their relationships with other people. Unfortunately, there are several competing theories of personality and, although the tests are widely used, their value is far from clear.

- Situational assessment. This is much used in selecting military officers and by prestigious multinational companies when recruiting new graduates. The short-listed applicants are brought together and put into a variety of situations where their performance is observed and assessed by the other participants in the situations. It is expensive and is only suitable for use when a number of candidates for jobs can be brought together. However, the use of situational questions in interviews is valuable. The interviewer describes a scenario to the candidate and asks him or her what they would do in such circumstances.

- Task assessment. Candidates are asked to carry out some of the tasks that they will be required to do in the job, for example ask them to write a program. This works very well, provided that the tasks the successful candidate will be expected to undertake lend themselves to being assessed in this way. The trouble is that, where a job involves some skills that can be assessed in this way and some that can't, the former will tend to be overemphasised. Thus the ability to write a short program can be easily assessed in this way but the ability to write a 2,000 statement program cannot – it would take too long. Unfortunately, there are many people who can write short programs but not long ones.

The comments above apply to professional appointments; selection of, say, bar staff or cleaners is likely to be done just using a single interview, backed up by references.

To these formally recognised methods of staff selection we should add **nepotism** (choosing cousins, children or other family members) and **cronyism** (choosing friends or former colleagues). The latter, in particular, should not be rejected as unfair or ineffective. If one has worked with a person in the past and seen that they are effective in the role that one is now looking to fill, then to offer them the job is a low risk way of filling it.

As described in the next chapter, the need to comply with anti-discrimination legislation and with codes of good practice associated with it is of great importance and, in a large organisation, the HR department is likely to spend a good deal of effort in ensuring this compliance.

9.4 STAFF TRAINING AND DEVELOPMENT

UK management is frequently criticised for its lack of interest in staff training. By and large, these criticisms seem fair and they reflect also the comparative lack of concern for qualifications. In the USA, employers commonly encourage staff to undertake part-time masters degrees by paying the fees and buying the books needed for the course – and, most importantly, by not promoting people who don't have masters degrees. Such behaviour is rare in Britain.

Successive British governments have been well aware of this problem and there are a number of initiatives that provide positive encouragement and support to firms to invest in staff training. Some of these, such as the Modern Apprenticeships programme, are intended to give young employees the opportunity to acquire skills and obtain qualifications.

It is important, however, to ensure that employees are able to keep their skills up to date throughout their working lives and this falls under the Investors in People programme. This is a programme run by the UK Commission for Employment and Skills, a public body that provides advice on skills and employment policy to the UK government and the devolved administrations in Northern Ireland, Scotland and Wales. It usually falls to the human resources department to establish and administer a policy for staff training and development, particularly if government support is to be received through one of the programmes mentioned.

In general, these programmes are not aimed primarily at professional staff although there is no reason in principle why continuing professional development (CPD) should not be supported. Furthermore, unless the company is a specialist IT company, it is unlikely that internally organised courses will contribute very much to the CPD of the information systems engineer. For this reason, it may be up to individuals themselves, and their managers, to identify specific needs and seek out conferences or external courses through which these needs can be addressed. In this context, it is worth noting that the BCS Code of Conduct not only requires members to maintain their own professional knowledge but also to encourage their subordinates to do so. This means that managers are expected to take some responsibility for the CPD of their staff.

Staff training and development are of particular importance in hi-tech companies, where failure in this respect can threaten the company's raison d'être. It is unfortunate that, when money is tight, it is often the first thing to be cut.

9.5 REMUNERATION POLICIES AND JOB EVALUATION

One of the major sources of discord and staff dissatisfaction in organisations both large and small is perceived disparities in remuneration. (We use the term 'remuneration'

rather than salary to indicate that other things, such as private health insurance or a company car, may be included.) It is the difficult task of HR management to provide a framework for fixing remuneration that will avoid giving rise to such disparities.

In the public services, this is achieved by using fixed scales which employees move up by annual increments. The financial effect of a promotion is that you are moved to another, higher scale. Regular negotiation with trade unions leads to the scales as a whole being increased from time to time, possibly to reflect inflation and possibly to reflect increases in the aspirations of the employees involved or changes in the esteem in which the public or the government hold them. Some systems also include provision for allowances for specific responsibilities, for example being dean or being in charge of keeping school premises tidy. By and large, as might be expected, any discord that arises under such systems arises from the allocation of jobs to grades. This is now often done by bureaucratic job evaluation schemes; these require the preparation of elaborate job descriptions that are then painfully compared against sets of criteria for each grade.

The trouble with such systems is that they have difficulty in coping with market conditions. Thus, the Civil Service has always had difficulty in recruiting and retaining good software staff because the grading system always lands up by paying them much less than they could get in private industry.

Formal bureaucratic systems of this type are also employed in some of the larger companies, albeit with, in most cases, much more flexibility to cope with market conditions. However, automatic annual progression up a fixed scale is uncommon. In professional environments it is more usual to fix salaries individually, within broad guidelines. Ensuring that these guidelines are adhered to is always difficult. The author knows of a case where someone threatened to leave, whereupon his annual salary was increased from £25,000 to £40,000. Either he was underpaid before or he was overpaid afterwards; in any case it is very likely that this increase breached whatever guidelines the HR department was trying to maintain.

Job evaluation is a technique that is often used for comparing the relative worth of jobs and allocating jobs to specific grades. Job evaluation must always involve an element of individual judgement but the aim is to be as objective as possible.

Anti-discrimination legislation has led to the need for organisations to be able to demonstrate that they comply with the doctrine of 'equal pay for work of equal value'. Job evaluation has a valuable role to play here. In the private sector, mergers and acquisitions of one company by another also lead to a need to harmonise remuneration policy and job evaluation is a valuable tool in these circumstances. It also has a place in younger, rapidly growing companies, where it is used to underpin the reward system to provide clarity and consistency, while flexibility is maintained.

Many organisations are now using job evaluation as the basis for flatter, broad-banded pay structures. Having extended pay ranges means that the emphasis moves away from promotion as the only way of progressing, with an expectation that lateral movement between functions may be more common. It has often been the case in the IT industry that the only way in which highly competent designers could be rewarded adequately was by promoting them to managerial positions for which they were unsuitable – turning

good designers into bad managers. Broad-banded pay structures allow the salaries of such staff to be increased without changing their roles.

To further facilitate career management, some companies are establishing generic role profiles, which follow the factors measured during the job evaluation exercise. This allows roles to be compared across the organisation. Some companies seek to strengthen the links between job evaluation and other HR activities by using competency frameworks as a unifying factor.

JOB EVALUATION SCHEMES

Job evaluation schemes may be **analytical** or non-analytical. **Non-analytical** schemes involve comparing whole jobs without considering the individual elements and skills that go to make up the job. There are a number of fairly simple non-analytical techniques in use. One technique that has been widely used in the public sector is known as job classification. Using this technique, the number of grades is decided first and descriptions of the characteristics of jobs in each grade are then produced.

Analytical job evaluation schemes assess each job on the basis of the different elements that are involved. Such elements might include financial responsibility, supervisory responsibility, degree of autonomy, decision making powers, IT skills, linguistic skills, and so on. Each of these elements is given a weight to reflect its importance relative to the others. Each job is then assessed for each of the elements on a scale, typically of 0 to 4, with the criteria for each level specified as objectively as possible. Thus, for linguistic skills, one might ask which of the following statements most accurately describes the job, and award the score shown

There is no requirement or opportunity to speak a language other than English	0
Situations occasionally occur when it is helpful that the holder can speak a second language.	1
The holder of the post regularly has to use a second language in informal situations and the ability to do this is a requirement of the job.	2
The holder of the post is required to speak and read a second language fluently.	3
The holder of the post is required to be completely fluent in a second language, including being able to write it correctly and to act as an interpreter when required.	4

A score for the job is then calculated by adding the scores for each element, multiplied by the weight assigned to that element.

Analytical job evaluation is usually preferred because its (spurious) objectivity is considered to make it more likely to be successful against a claim for 'equal pay for work of equal value'.

It is always stated that job evaluation schemes are intended to evaluate the job and not the person currently doing the job. This is reasonable when there are a large number of people doing a more or less identical job. It does not make sense in an organisation where every individual is doing a different job and where individuals are valued for their own individual contribution.

When job evaluation schemes are first introduced, it is usual to ask each employee covered by the scheme to complete a fairly lengthy form describing their job. The questions on the form are often worded in ways that are open to more than one interpretation. Thus, a person whose job includes looking after petty cash may reply 'No' to the question 'Does your job carry any financial responsibility?', on the grounds that they make no decisions about what the money is spent on, or 'Yes' because it's their job to make sure that all petty cash is correctly accounted for. The cumulative effect of such misinterpretations can be very great and lead to significant differences in remuneration between people doing identical jobs in different parts of the organisation.

9.6 APPRAISAL SCHEMES

It is astonishing and contrary to all common sense that people should be able to spend 30 years in a professional job without anyone, colleague or superior, giving them any indication of how well they are doing the job or how they might improve. Yet, until recently, this was commonly the case for school teachers, university lecturers, many civil servants, and not a few managers in commercial and industrial organisations. It is still true of many doctors, solicitors, architects and others. To be more precise, there are or were no procedures or regulations that ensured that there was any such feedback. In practice, many senior practitioners in these fields would try to keep an eye on new entrants to the profession and help and advise them; equally, the newcomers would commonly seek such help from their more senior colleagues. Nevertheless, there was no requirement that this should happen and very often it did not. Even when it did happen, it would probably cease to happen by the time the practitioners reached the age of, say, 35, and they would continue to practise for the next 30 years, with no feedback, unless they were disastrously incompetent.

It falls to HR management to design procedures to avoid this undesirable situation. Appraisal schemes are the usual formal way of doing this. They derive from the idea of Management by Objectives (MBO). This idea was developed by Peter Drucker, one of the most distinguished of management theorists, in the 1970s, and it rapidly became popular in industry. It was seized on by government in the 1980s as a way of dealing with what they saw as poor performance and indolence in many state-funded jobs.

The essence of MBO is that managers and their subordinates agree on a set of objectives for the subordinate to achieve over the next period, typically six months. These objectives should be precise, objectively verifiable and, ideally, quantifiable. In other words, objectives like 'increase the turnover of your division by 10 per cent while maintaining its present level of profitability' are preferable to objectives like 'improve the public image of your products'. At the end of the period, they meet and discuss the extent to which these objectives have been achieved. If the objectives have not been achieved, they will discuss the obstacles that have prevented them from being

achieved and how these might be overcome. They then agree a revised set of objectives for the next period. The process filters down from the highest level of management, where the overall objectives of the organisation are set. At each level, managers take their objectives and break these down into more specific goals. From these goals, they delegate tasks by negotiating goals for their subordinates.

The strength of MBO is that it makes managers and others aware of what the organisation's objectives are and how they are expected to contribute towards achieving them. Its main weaknesses are as follows:

- Not all legitimate objectives can be easily specified in precise and quantifiable terms. Such objectives are often therefore ignored when using MBO. This is particularly a problem in the public sector.

- The insistence on quantifiable objectives can distort behaviour. For example, setting specific targets for cutting the length of waiting lists in the British National Health Service can lead to doctors choosing patients for treatment on the basis of the effect on the waiting list rather than on their clinical needs.

- MBO tends to emphasise short-term objectives at the expense of long-term strategic objectives.

Modern management practice has moved away from the idea of setting rigid, formal objectives, while maintaining the general principles of MBO. The emphasis is now on **empowerment**, that is, telling employees at all levels what is expected of them but then leaving it to them to decide how to achieve this.

Appraisal schemes usually involve an appraiser and an appraisee meeting regularly (every six months, every year, even every two years) to discuss the employee's performance and career development under a number of headings. The result is a report signed by both parties; if they cannot agree on certain points this will be recorded in the report. There is an obvious similarity to MBO, all the more so because many schemes seek to identify objectives to be achieved by the time of the next appraisal interview.

There is no doubt that such schemes are useful. Professional staff (in the widest sense) are usually willing to listen to ways in which they can improve their performance and will usually accept that someone else can throw new light on the way they do their job; they also provide a good opportunity to review career plans and ambitions and to assess training needs. A good appraiser will do all these things. (From an employee's point of view, it is worth noting that appraisal reports, assuming they are favourable, can provide valuable ammunition in unfair dismissal cases.)

However, the process has many weaknesses. It often seems artificial and appraisal interviews can be rather uncomfortable affairs. Appraisals are supposed to be non-judgemental but this may be difficult to achieve when the appraisee is not felt to be pulling their weight. The training typically given to appraisers is derisory and many of them prove unable to perform satisfactorily in the role. There is the difficult question about whether appraisals should have any link with promotion or salary increase. Too close a link may mean that they are not conducted with the openness and frankness that is essential if the participants are to get the best out of them; if there is no

link – and perhaps the appraiser has no influence on the promotion procedure – then appraisees may regard the process as a farce: if your appraisals for the last five years have said that you are ready to become a project manager but you have never been given that opportunity, you can be forgiven for doubting the usefulness of the appraisal system.

9.7 REDUNDANCY, DISMISSAL AND GRIEVANCE PROCEDURES

It normally falls to the HR department to ensure that, when staff are made redundant or are dismissed, the proper procedures are followed. Failure to follow the proper procedures can lead to the organisation facing the embarrassment of actions for unfair dismissal in an industrial tribunal. This is expensive in terms of staff time as well as money and is bad for an organisation's image. Unless the dismissal or redundancies are seen to be fair as well as lawful, the effect on the morale of the remaining staff will be bad.

9.7.1 Unfair dismissal

In order for a dismissal to be fair, the reason for the dismissal must be a fair one and the dismissal procedure itself must have been carried out fairly. If either of these conditions is not satisfied, an employee can take action in an industrial tribunal alleging unfair dismissal. If the tribunal finds in favour of the employee, it will usually order the employer to pay compensation to the employee who has been unfairly dismissed. The amount of compensation awarded depends very much on the circumstances of the particular case; the Enterprise and Regulatory Reform Act 2013 imposes a limit of 12 months' salary or £74,200, whichever is lower. A tribunal can also order reinstatement of the employee, that is, order the employer to take the employee back. In practice, tribunals are reluctant to do this. Employees can only claim unfair dismissal if they have been working for the employer for two years or more. (This restriction does not apply if the dismissal is for reasons of political belief or affiliation.)

The law accepts a wide variety of reasons as justifying dismissal. Specifically, it accepts:

- lack of capability;
- misconduct;
- breach of the law – not by the employee (that would be covered by misconduct) but that the employer would be in breach of the law if he continued to employ the employee, e.g. because the employee is a foreign worker whose work permit has expired;
- redundancy (see next section).

Furthermore, it allows for 'any other reason'! However, there are many reasons that cannot be used to justify a dismissal. These include anything excluded by anti-discrimination legislation (see next chapter), taking legal action against an employer to enforce your employment rights, taking part in trade union activities, and so on.

Dismissals are **automatically** considered to be unfair unless the statutory dismissal procedure has been followed. In other words, no matter what the employee has done or has not done, if the employer has not followed the statutory procedure in dismissing them, an industrial tribunal will judge to have been unfairly dismissed and will award them compensation.

The statutory dismissal procedure is not, on the face of it, unreasonable. It requires the employer to give the employee a written statement of why dismissal is being considered; the employer must then arrange a meeting at which both sides can state their case. Following that meeting, the employer must inform the employee of the decision. If it is decided to go ahead and dismiss the employee, then the employee must be given the opportunity to appeal, with the appeal being considered by a more senior manager where this is practicable.

Until the regulations have been in operation for some time, it is difficult to know how tribunals will react to claims from employees such as:

- The statement of why dismissal was being considered did not provide enough detail or was not provided far enough in advance of the meeting for the employee properly to consider his or her response.

- The employer was too slow in following the procedures.The meeting was conducted in such a way that the employee did not have a reasonable opportunity to state his or her case.

For this reason, it is very important for HR departments to lay down detailed procedures to ensure that such claims are not successful.

Of course, the fact that the statutory procedures have been followed does not automatically mean that a tribunal will consider a dismissal to be fair. Most of the reasons for which an employer might reasonably consider dismissing an employee – inability to do the job, misconduct, persistent absenteeism, and so on – are, in principle, acceptable but the employer has to show that appropriate training was offered or warnings given, and so on.

9.7.2 Redundancy

Essentially, dismissal because of redundancy (retrenchment in the USA) occurs when employees are dismissed because the employer no longer needs people to do their jobs. In these circumstances, most employees will be entitled to compensation based on their age, salary and years of service. The law lays down a minimum level of compensation that must be paid. In practice, many employers pay more than this.

If the employer is intending to make 20 or more employees redundant over a period of 90 days or less, the employees or their representatives have a right to be consulted.

Rather confusingly, however, there are two definitions of redundancy used in British law and they are not equivalent. For the purposes of entitlement to compensation,

redundancy occurs when an employee is dismissed because the employer no longer needs employees to do that job in that place. In determining the right to consultation, however, redundancy is defined as occurring when the dismissal is for a reason or reasons not related to the individual concerned.

In most cases of redundancy, the employer will be seeking to reduce the number of workers in a particular job category rather than dismiss all such workers. The question of how to select the employees to be made redundant therefore arises. It is common practice to use the 'last in, first out' principle, that is, the most recently recruited employees are the first to be made redundant. Although there are many reasons for feeling that this is not a desirable policy, it is acceptable to the trade unions and to the courts. Dismissal for redundancy can easily become unfair dismissal if individuals are selected for redundancy in some other way. There is a long list of criteria that are not acceptable in this context, ranging from participation in trade union activities to sex, racial or ethnic origin, sexual orientation, religion, and so on.

9.7.3 Constructive dismissal

It sometimes happens that an employer behaves towards an employee in such a way that the employee feels that he or she has no option but to resign. If the employer's behaviour amounts to a substantial breach of the contract of employment, the law may regard the employer's behaviour as tantamount to dismissal. This situation is known as constructive dismissal and can be the subject of unfair dismissal proceedings, although the fact that it is constructive dismissal does not automatically make it unfair dismissal.

The following are a few examples of circumstances that might lead to employees resigning in circumstances that would probably amount to constructive dismissal:

- The employer moves an employee's place of work to somewhere 400 km away, at short notice and without consultation.
- The employer requires someone who was employed as an accountant to spend their time acting as a receptionist.
- A senior manager repeatedly countermands instructions issued by a more junior manager.

The regulations regarding dismissal procedures also lay down statutory grievance procedures to be used if an employee has a grievance against the employer. Employees are required to make use of these procedures before they can claim constructive dismissal.

9.7.4 Takeovers and outsourcing

It frequently happens in modern commerce and industry that one company takes over another; this is particularly frequent in the IT industry. It also happens when an organisation outsources its IT activities (or any other activities). In these circumstances, staff involved are usually transferred to the new employer. This could mean a major change in their employment conditions. In particular, if IT activities are being outsourced from a government department to a private company, there are likely to be major changes affecting security of employment and pension rights.

There are specific regulations in the UK and other countries of the European Union governing what happens to employees when an undertaking or part of an undertaking is transferred from one employer to another. These are known as the Transfer of Undertakings (Protection of Employment) (TUPE) regulations. The original TUPE regulations dated back to 1981 but they were replaced by a new set of regulations in 2006, reflecting a change to the underlying EU directive. The purpose of the regulations is to maintain the employees' conditions of employment in these circumstances. The government leaflet *Transfer of Undertakings: a guide to the regulations* (PL699 rev 6) states:

> Employees employed by the previous employer when the undertaking changes hands **automatically** become employees of the new employer on the same terms and conditions. It is as if their contracts of employment had originally been made with the new employer. Thus employees' continuity of employment is preserved, as are their terms and conditions of employment under their contracts of employment (except for certain occupational pension rights).

> Representatives of employees affected have a right to be informed about the transfer. They must also be consulted about any measures which the old or new employer envisages taking concerning affected employees.

9.7.5 Public interest disclosures

Until comparatively recently, an employer could dismiss an employee for revealing publicly that, for example, the employer was consistently and wilfully breaking the law. There were a number of well-known cases in which senior employees revealed that their employers were breaking the law in areas such as price fixing or the disposal of toxic wastes. The employees (so-called **whistle blowers**) were dismissed and, furthermore, because of the high profiles of the cases, they found it impossible to get other jobs in the industry.

The Public Interest Disclosure Act 1998 (PIDA) is intended to protect employees who raise concerns about criminal behaviour, certain types of civil offences, miscarriages of justice, activities that endanger health and safety or the environment, and attempts to cover up such malpractice. Since it is closely tied to the law relating to confidential information, we shall postpone a fuller discussion to Chapter 11.

9.7.6 Wrongful dismissal

For the sake of completeness, we should mention wrongful dismissal. This is significantly different from unfair dismissal. An action for wrongful dismissal is an action for damages brought by an employee against an employer for breach of the contract of employment. It is an action under the common law and for this reason is not subject to the maxima laid down by statute for unfair dismissal. It is typically brought by very senior or highly-paid employees who can make a reasonable case for very substantial compensation resulting from their employer's breaking of the contract.

9.8 CONTRACTS OF EMPLOYMENT

Under British Law, every employee has a contract of employment, whether or not it is written down. What this means is that the agreement between an employee and his or her employer can be enforced in a court of law. The law requires that, if the contract

is not written down, the employer must provide the employee with a statement of the major conditions of the employment, including grievance procedures.

A good contract of employment should be written in terms that are easily understood and should avoid legal jargon. Prospective employees should not need to consult a lawyer in order to understand it. They should, however, read it carefully before signing it. It is an important function of HR staff to ensure that contracts of employment are issued to all employees and that signed copies are retained.

An example of a contract of employment, with some explanatory comments, is included as an appendix.

9.9 HUMAN RESOURCE PLANNING

If the HR department is to ensure that the organisation always has available the staff it needs, it must be able to forecast the needs some time ahead. This is extremely difficult, particularly in software companies. As we move through the spectrum of organisations, from software houses through banking, manufacturing and retailing to policing, health care and the operation of lighthouses, the uncertainty, although always present, is reduced and it becomes possible to predict staff needs much more precisely.

In a software house, there are three inputs to the HR planning process:

- HR plans from existing projects, showing how many staff of each grade and with which specialised skills will be required in each of the following months.

- Sales forecasts. These are subject both to the whims of potential clients and the judgement, good or otherwise, of the sales staff. Sales staff are asked to identify all active sales situations, i.e. situations in which they are talking to potential clients about their actual needs, not just trying to establish the company's credentials. They then estimate the staff needs for doing this work, in terms of numbers of staff in the various grades and any special skills required, and assign a probability to winning a contract to carry out the work. The probabilities are carefully defined in something like the following manner:

0.9	negotiations concluded successfully but no signed contract yet received;
0.7	the company has been offered the business, subject to negotiation on price, contractual conditions, etc;
0.5	the company has submitted a proposal for the business and has been short-listed, or for other reasons, are in competition with no more than two other companies;
0.3	the company has been asked to submit a formal proposal;
0.1	the client has an identified requirement that is expected to be met by commissioning a software house.

- Forecasts of the likely staff losses in the coming months. In the software business this depends very much on the buoyancy of the market for software developers. This, in turn, seems to depend on the economic cycle, being, like other capital goods industries, sensitive to growth rates rather than to the overall production of the economy. However, it is also very strongly affected by events such as decimalisation in 1972 and the problems associated with the year 2000. Such events generate an enormous demand for staff in the year or two leading up to them, and are followed by an equally large fall, leading to much temporary unemployment, particularly among contractors.

From these inputs, we can try to predict how many staff will be required each month, with their grades, qualifications and experience, and how many will be available. We can then proceed to produce a plan for recruiting staff if necessary.

In practice, HR prediction in project-based companies never works very well and there are good statistical reasons why it never will. If we are summing 1,000 weighted predictions, the uncertainty in the sum will be quite small, even though the uncertainty in each prediction may be quite large; this follows from what is called the Law of Large Numbers. But if we are summing over only 20 predictions, the uncertainty will still be very large. This suggest that human resource planning should be easier in larger companies and to some extent this is so. However, few project-based companies, even large ones, ever have as many as 100 live sales situations referring to the same pool of staff at any one time. Furthermore, most such companies depend for their success on specialised skills; this means that you cannot treat every employee in a given grade as the same – the fact that you have a grade 5 expert on communications available does not help the project that needs a grade 5 expert on data modelling. And you cannot turn one into the other by sending them on a two week training course. As a result of all these difficulties, most project-based organisations find themselves see-sawing between being desperate to get new staff for the projects they've won and being desperate to get new projects for the staff they've got.

FURTHER READING

The ACAS advisory handbook *Discipline and grievances at work* and its advisory booklet *Redundancy handling* are the best sources of information on the material covered in the section on redundancy. Information about contracts of employment is also available from ACAS:

    www.acas.org.uk

The Department of Business, Innovation and Skills publishes a comprehensive document covering the TUPE regulations, entitled *Employment rights on the transfer of an undertaking*, see:

    www.gov.uk/government/organisations/department-for-business-innovation-skills

The website of the UK Commission for Employment and Skills:

    www.ukces.org.uk