



REFRESHING LAW

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**Some other substantial reason (SOSR)**

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# Overlap with other reasons for dismissal

- Often pleaded 'in the alternative'
- The tribunal will decide what the real reason for dismissal is
- Might be the only category open to you



# Substantial

- Burden of proof on employer – SOSR is the reason for dismissal
- Neutral burden – reasonable to dismiss in the circumstances (including size and administrative resources)



# Common examples

- Reputational risk
- Conflicts of interest
- Reorganisations that aren't redundancies/changes to terms and conditions
- Personality clashes
- Breakdown in trust and confidence
- Requirements of third parties
- ETO pathway through TUPE
- Expiry of Fixed Term Contract
- Where it was always envisaged role would end on return to work of postholder
- Secondment coming to an end and the original substantive post has disappeared



# Procedural Fairness

- Element of consultation with the employee
  - Invitation to meeting (warning of possible outcome)
  - Meeting to discuss it
- Consideration of alternatives
- Right of appeal



# Takeaways

- Don't forget it
- Process you follow is critical



# Tescos v USDAW

- Benefit stated to be “permanent”
- Supreme Court injuncts Tesco from using fire and rehire to withdraw a collectively agreed benefit
- Contracts cannot be changed without agreement



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# Interaction with Employment Rights Bill

- Clause 22
- Creates new automatic unfair dismissal right for an employee who disagrees about a variation to their contract
- Very narrow exception for dire straits
- Effect – carve a chunk out of SOSR fair dismissal?





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