



Anderson
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The White Paper Conference Company Employment Law Conference Some Other Substantial Reason Dismissals

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Using **real-life examples**, when is an SOSR dismissal the option to go for?

Overview

1. Overview of SOSR
2. Common Examples of SOSR Dismissals
3. Other Examples of SOSR Dismissals
4. Practical Tips for SOSR Dismissals
5. Questions

1. Overview of SOSR

- “Catch all” potentially fair reason for dismissal
- No statutory definition or statutory guidance
- Two-stage test for unfair dismissal
- Procedural fairness
- Overlap with the other potentially fair reasons
- Application of the Acas Code

2. Common Examples of SOSR: Change to Terms and Conditions

- Business Reorganisation
- Refusal to accept changes to terms and conditions
 - Changes must be in pursuit of a “sound business reason” (*Hollister v NFU* [1979] IRLR 238)
 - Change does not have to be crucial to the survival of the business
 - The employer must provide evidence as to the business reasons for the change
 - The tribunal will consider whether the employee acted reasonably
 - There are a range of factors commonly taken into account where an employee does not agree to a change in terms

2. Common Examples of SOSR: Protection from Competition

Cases involving conflicts of interest

- *Simmons v SD Graphics Ltd* UKEAT/548/79
 - Depends on the closeness of the employee relationship and the sensitivity of the material they had access to
- *Skyrail Oceanic Ltd t/a Goodmos Tours v Coleman* [1980] IRLR 226
 - A travel agent dismissed a booking clerk after she married a man at a competitor travel company.
 - Risk of “industrial espionage”
- *Chandlers (Farm Equipment) Ltd v Rainthorpe* UKEAT/0753/04
 - Fear of confidential information being passed on could be SOSR

2. Common Examples of SOSR: Protection from Competition

Cases involving restrictive covenants

- *RS Components Ltd v Irwin* [1973] ICR 535
 - Refusal to accept the retrospective imposition of a restrictive covenant could amount to SOSR
- *Willow Oak Developments Ltd v Silverwood* [2006] IRLR 607
 - Refusal to enter into new restrictive covenants was found to be for SOSR and potentially fair, even though the covenants were unreasonable and potentially unenforceable

2. Common Examples of SOSR: Personality Clashes

- *Treganowan v Robert Knee and Co Ltd* [1975] ICR 405 QBD
 - Employee dismissed for having frank discussions about her sex life in the workplace
 - Small business and therefore no real alternative but to dismiss her
- *Ladele v London Borough of Islington* [2009] EWCA Civ 1357; [2010] IRLR 211
 - Religious belief did not exempt a registrar from civil partnership duties
- *Perkin v St Georges Healthcare NHS Trust* [2005] EWCA Civ 1174
 - Dismissing an employee because of his difficult personality cannot of itself amount to SOSR

2. Common Examples of SOSR: Breakdown in trust and confidence

- *Leach v OFCOM* [2012] EWCA Civ 959
 - Employee dismissed on the basis that he posed a risk to children, even though he did not work with children
 - EAT said that you must show something more than just that trust and confidence had broken down
- *Governing Body of Tubbenden Primary School v Sylvester* UKEAT/0527/11
 - Open to the tribunal to look beyond the breakdown and consider the surrounding circumstances when assessing reasonableness
- *Hutchinson v Calvert* UKEAT/0205/06
 - A severely disabled man dismissed his carer following some minor disagreements
 - Carers close personal contact with employer meant the reasons were not trivial

3. Other Examples of SOSR

- Pressure from third parties
- Reputational Risk
- Expiry of fixed-term contract
- Replacement employees: S.106 of ERA 1996
- Dismissal for an ETO in the context of a TUPE transfer
- Compulsory retirement

4. Practical Tips for SOSR Dismissals

- Be very clear what the reason for dismissal would be and do not proceed on the basis that SOSR is an “easy option” for dismissal.
- Make sure any changes to employee terms are justified for sound business reasons.
- Consult with employees before making any changes to their contracts.
- Keep evidence of discussions with employees - reasonableness
- Ensure a fair procedure is followed as a basic requirement for any dismissal – reasonableness

Questions?



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