

# **Redundancy & Dismissal: Hints, Tips and Solution-Focused Answers for Employers**

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## SOSR

**\*Is it possible to dismiss an employee because of persistently poor behaviour, e.g. bad manners, undermining, not speaking to people?**

**\*\*What evidence is going to persuade a tribunal?**

**\* Is it possible to dismiss an employee because of persistently poor behaviour, e.g. bad manners, undermining, not speaking to people?**

- Section 98(2) ERA 1996: a dismissal may be fair if *“the reason is shown to have been some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held”*.
- Reason may not be *“whimsical or capricious”*



## Mutual Trust and Confidence – red flags

### McFarlane v Relate Avon Ltd [2010] IRLR 196 (EAT)

Underhill stated that it was “unhelpful” when the employer referred to “trust and confidence”.

### Leach v OFCOM [2012] IRLR 839 (CA)

*“Growing trend to regard the invocation of a loss of trust and confidence as an automatic solvent of obligations: it is not”.*



**But can you use Mutual T and C to dismiss for SOSR?**

**Adams v Pick Everard [2003] UKEAT 0074\_03\_0107**

*“I am sick and tired to death of you [to pregnant boss] doing this, you know I cannot stand this talk and I know it’s deliberate. If you don’t think I am taking a mental note of it all, then you have another bloody think coming”*

Unfounded victimisation claims made by her in the dismissal meeting.

Fair dismissal for irretrievable breakdown.



**But can you use Mutual T and C to dismiss for SOSR?**

**Hutchison v Calvert UKEAT/0205/6**

Personal carer dismissed after serious of relatively minor disagreements.

Fair dismissal – intimate nature of the work.

Reminder of second part of statutory test:- “*the reason is shown to have been some other substantial reason of a kind such as to **justify the dismissal of an employee holding the position which the employee held.**”*”



## What about personality clashes?

### Treganowan v Robert Knee and Co Ltd [1975] ICR 405 QBD

- Frank disclosures about sex life.
- Atmosphere had become so tense and unbearable
- Fair dismissal for SOSR



**\*\*What evidence is going to persuade a tribunal?**

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**Check yourself before you wreck yourself!**

- **Dismissal must be a last resort**
- **Consider redeployment to separate the staff**
- **Can you alter shift patterns to keep them apart?**
- **What about a mediation process?**
- **Is there a genuine breakdown?**
- **Substantial disruption to the business.**



# Phoenix House Ltd v Stockman & another UKEAT/0264/15/DM

- Keep an open mind
- Employer got it wrong here starting with a presumption in favour of breakdown
- Employee offered to have a go at mending the relationship – employer did not allow this
- Employee would not even have much contact with those who alleged the breakdown



# Perkin v St Georges Healthcare NHS Trust [2005] EWCA Civ 1174

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- **Personality alone cannot be sackable, but how this manifests itself may be;**
- **Size of the team/nature of employee's role;**
- **Ill-judged personal attacks against CEO;**
- **Fair dismissal for personality – but special case.**



# Take away tips

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- **Beware of overusing SOSR;**
- **Be aware of the need to focus on the breakdown and not the conduct which caused it;**
- **Be fair – follow a fair procedure, offer a right of appeal and remember to pay notice.**



# Questions?

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