

## White Paper Conference on Redundancy and Dismissal

When is a SOSR dismissal the option to go for?

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Paul Fontes

*Partner*

# Key Principles

# Some other substantial reason

## Key Principles

### s98(1) Employment Rights Act 1996

In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- the reason (or, if more than one, the principal reason) for the dismissal, and
- that is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held

# Some other substantial reason

## Key Principles

- Reason must:
  - be substantial (ie more than frivolous or insignificant)
  - justify dismissal (not some lesser sanction)
  - justify dismissal of job holder in question
- Two stage test for fair dismissal
  - burden on employer to show that SOSR is sole or principal reason for dismissal
  - decision to dismiss for SOSR was reasonable in all the circumstances
- Reasonableness and fair procedure
  - does dismissal fall within the range of reasonable responses?
  - does the Acas Code apply?
- Overlap with other potentially fair reasons
  - can plead in the alternative
  - may affect which procedure to follow

# Case Study

## Case Study

You are the HR Director of Clinton Services, an IT company specialising in email security.

Clinton has recently been experiencing some serious faults with its products. It is also coming under pressure from a new competitor in the market, Trump Trading, which has just launched some revolutionary new firewall products.

As a result, Clinton is losing market share and you have been asked to consider how costs can be cut.

## Finance Team

You conduct a review and identify that there are four highly paid accountants in the finance team who all work part-time. When you suggest to the Finance Director that one of them could be made redundant, he protests and is adamant that there is no reduction in the work that his team needs to carry out. He says that he could, however, save costs by replacing the four part-time roles with two full-time roles.

1. Would this be a redundancy situation?
2. Would it qualify as SOSR?
3. Does the proposal give rise to any other risks?

# IT Team

You identify that the IT staff are currently paid double the usual hourly rate for any overtime outside normal working hours. They also receive 30 days' paid holiday each year (in addition to public holidays). This is costing the company significant amounts.

You have heard that Trump Trading does not pay enhanced rates for overtime and only gives its staff statutory minimum holiday.

You therefore propose (a) changing the overtime rate from double time to single time and (b) reducing holiday entitlements. You propose to dismiss any employees who do not agree to the changes.

1. Would there be a fair reason for the dismissals?
2. Do you foresee any other risks with this approach?
3. How would you implement these changes in practice?

## Financial Business Inc

The Commercial Director approaches you about a separate issue. He has recently been contacted in confidence by the CEO of Clinton's largest client, Financial Business Inc. The FBI account is currently serviced by a senior account executive, Nick Rixon. The CEO of FBI has said that he has reason to believe that Rixon is not trustworthy and insists that FBI will move its business elsewhere if he is not dismissed. However, he refuses to divulge further details. You are aware that the FBI account makes up 10 per cent of Clinton's revenue.

1. What do you do?
2. Would you have a fair reason for dismissing Rixon?
3. What procedure would you follow?

## Confidential Information

Your CEO, Jeffrey Williams, tells you that he is concerned that confidential information is being leaked to Trump Trading. He asks you to investigate. Your investigation reveals nothing concrete, but you do find out that (a) Melanie, one of your senior sales staff is engaged to a director of Trump Trading, and (b) Tiffany, one of your junior marketing employees, has a sister who works in the sales team at Trump Trading.

1. What would you do?
2. Would you have a fair reason for dismissing (a) Melanie, and (b) Tiffany?
3. What procedure would you follow?

## Marketing team

You discuss matters with Tiffany but decide to take no action after she assures you that she has done nothing wrong. However, shortly afterwards, the other members of the marketing team come to you to complain that Tiffany is being rude and unco-operative. They also complain that she constantly talks loudly on the phone with her friends. They are threatening to resign en masse. When you raise this with Tiffany she says that the other members of the team are bullying her and want to get her sacked.

1. How would you deal with this?
2. Would you have a fair reason for dismissing Tiffany?
3. What procedure would you follow?

## Jeffrey Williams

It has been a busy day and you are about to go home when you receive a panicked call from Clinton's Chairman. He says that he has just been contacted by the police who say that they are investigating allegations of sexual assault against Clinton's CEO, Jeffrey Williams. The alleged assault took place when Williams was on holiday in Cornwall. The Chairman is concerned that if this becomes public knowledge, then it will cause irreparable damage to Clinton's reputation.

1. How would you deal with this?
2. Would you have a fair reason for dismissing Williams?
3. What procedure would you follow?

## Key points

- SOSR is a “catch all” category
- Most common examples
  - business reorganisations
  - refusal to accept changes to terms and conditions
  - protection from competition
  - personality clashes
  - pressure from third parties
  - reputational risk
  - breakdown in trust and confidence
- Fair procedure will depend on all circumstances of the case

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**Paul Fontes**

Partner

☎: 020 7919 4655

@: paulfontes@eversheds.com

One Wood Street  
London  
EC2V 7WS