

Some other substantial reason for dismissal

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Consider the following scenario

You have an employee who:

- Is perceived as difficult and dogmatic, resistant to change;
- Is disliked by most colleagues - often considered bad mannered (speaking over colleagues at meetings and not speaking to those who have disagreed);
- You have heard the employee is putting off new candidates from applying to join;
- Has sub-optimal work performance (albeit not particularly bad) and who doesn't make any discretionary additional effort;
- Is blocking promising junior employees from obtaining promotion.

You have been asked to exit the employee as quickly as possible.

What “fair” reason for dismissal would you use?

Conduct ☐

Capability ☐

Redundancy ☐

Breach of statutory restriction ☐

Some other substantial reason ☐

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SOSR is not a panacea

- Not following applicable procedure may strengthen discrimination or whistleblowing claims or create unfair dismissal
- Courts are wary of employers using SOSR to conceal the real reason for dismissal and avoid following proper procedures (Ezsias v North Glamorgan NHS Trust [2011]).
- Misleading an employee as to the “true” reason for dismissal may allow a constructive (unfair) dismissal claim (Rawlinson v Brightside Group Ltd [2017])
- Breach of applicable procedure may allow employee to seek injunction

Examples of potential SOSR reasons

- Breakdown in trust and confidence
- Reputational risk
- Expiry of a limited-term contract
- Business reorganisation (outside of statutory definition of redundancy)
- Refusal to accept changes to terms and conditions
- Personality clashes
- Third party pressures

What procedure should you follow for a SOSR dismissal?

- The nature of SOSR as a catch-all provision inevitably means that these dismissals are varied in nature.
- This variety means that there is no established single “fair” way of dealing with them.
- A reasonable procedure will always depend on what’s fair in the particular circumstances. NB relevance of size of organisation and resources.
- ETs will apply range of reasonable responses test in looking at the procedure and look at knowledge at time of dismissal.

Managing SOSR dismissals

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Managing SOSR dismissals

Breakdown in trust and confidence

- Employer must have genuinely held belief.
- What has caused this and is it reparable/ should there be any warnings?
- Pattern of conduct you can point to?
- Often a catch all following another reason arising (virtually every case of dismissal involves breakdown in T&C!) so address underlying reason.

Reputational Risk

- The employer must still follow a fair procedure (giving the employee an opportunity to respond); and
- The employer must show that the risk to reputation is sufficiently serious (not imagined), providing sound business reasons.

Managing SOSR dismissals

Expiry of a limited-term contract

- The expiry of the limited-term contract must be the genuine reason for termination;
- The employee must be informed as early as possible that their contract is only for a particular period (e.g. on appointment); and
- SOSR cannot be used to mask a redundancy situation.

Business reorganisation (outside of statutory definition of redundancy)

- There must be a good business reason;
- A quasi-redundancy process including consultation may be appropriate; and
- Has employee been offered an alternative role and would that be appropriate?

Refusal to accept new terms

- Are the changes necessary for sound business reasons?
- Have new terms been offered as alternative employment?
- Conduct a period of consultation with the relevant employees.

Managing SOSR dismissals

Personality Clashes

- Significance and impact/consequences of personality clash?
- What can be done to remedy e.g. mediation/ warnings?
- Are there alternatives to dismissal, such as redeployment or changing reporting lines?

Third Party Pressure

- How clear is third party pressure?
- What is impact/significance of third party pressure?
- While an employer does not need to establish truth of any 3rd party allegations, what steps would be reasonable to verify?
- What can be done to avoid dismissal/ mitigate consequences (e.g. redeployment)?

A few precautionary steps worth thinking about

- What is fundamental reason and what objective evidence is there for it?
- Generally either a consultation or inquiry of some description will be necessary. Records should be kept of procedure undertaken and evidence gathered.
- What steps can be taken to repair the situation and is it reasonable not to try those (even if doomed to failure)?
- Consider alternatives to dismissal - can the employee be redeployed? Is there a potential redundancy situation?
- Consider true reason for dismissal and whether another process should be adopted.

Back to our scenario

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Thank you

For more information, contact:



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