

White Paper Conference

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"How do you safely use SOSR as the reason for dismissal when a working relationship has broken down, even if the employee may not recognise this?"



What is “SOSR”?



- "*... some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*" (s.98(1)(b) Employment Rights Act 1996)
- No statutory definition of SOSR
- Reason for dismissal must be substantial and of a kind which could justify the dismissal (rather than a lesser sanction) of an employee holding the position which the employee held
- Case law has established it can cover the breakdown in a working relationship

Some case law examples

Where the relationship between a senior employee and her manager irretrievably broke down

(Gallacher v Abellio Scotrail Ltd)

An employee's difficult personality manifested itself in such a way that it impacted negatively on other staff and the functioning of the organisation

(Perkin v St George's Healthcare NHS Trust)

A senior employee's behaviour was "destructive" and a "drag-factor" for the company

(Moore v Phoenix Product Development Ltd)

Where there was a conflict between a security guard and a senior council employee at the client

(Dobie v Burns International Services (UK) Ltd)

What does an employer need to demonstrate to be able to rely on SOSR in this situation?

- An actual breakdown in the working relationship – relationship must be beyond repair
- Following factors will be relevant:
 - Employee's role - easier to satisfy a tribunal that dismissal is a reasonable response if employee is senior or a key player in a small team
 - Whether it is having a negative impact on performance/others, etc.
 - What efforts the company has taken to repair the working relationship, e.g. mediation
 - Alternatives to dismissal, e.g. redeployment, different working patterns



What procedure should an employer follow?

- Acas Code does not apply to SOSR dismissals for a breakdown in the working relationship (*Phoenix House Ltd v Stockman* [2016])
- **BUT** still important to follow a fair procedure - usually something akin to a disciplinary procedure
- In a limited number of cases there may be exceptions to this
 - *Moore v Phoenix Product Development Ltd* [2020] - employee was not given the opportunity to appeal but dismissal upheld as fair
 - *Gallacher v Abellio Scotrail Ltd* [2019] - no procedure was followed but dismissal was held to be fair
- Importance of a paper trail



Things to watch out for

- Ensure breakdown in working relationship is real reason for dismissal - not a cover for something else
- Be particularly careful if the employee has previously raised allegations of discrimination or whistleblowing



Key takeaways

- A breakdown in the working relationship is a potentially fair reason for dismissal for SOSR
- Ensure you follow a fair process
- Be particularly careful if the employee has previously raised whistleblowing/discrimination allegations - creates additional risk
- If in doubt, seek legal advice



Questions



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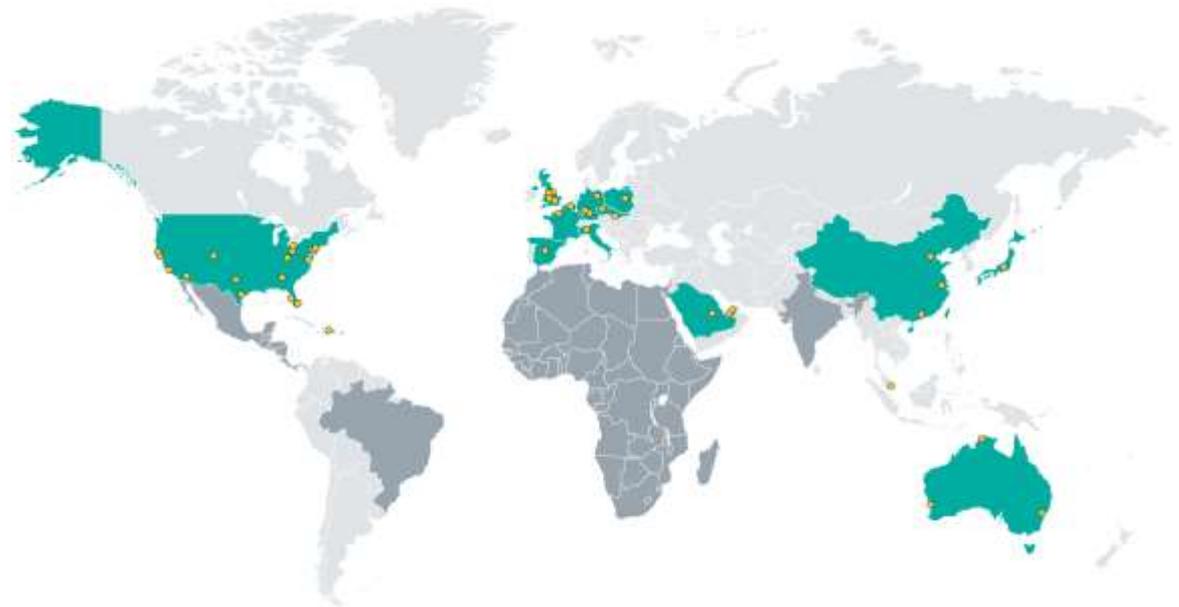
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■ Office locations
■ Regional desks and strategic alliances



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