

# In the firing line

7 April 2017

## Helen Crossland offers advice on dealing with difficulties when dismissing employees

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The law is replete with weird and wonderful scenarios in which a person's employment is plainly untenable but cannot be categorised as misconduct, poor performance or redundancy. In such situations it is tempting for the employer to defer taking action ? a temptation heightened by the perception held by many that the law has become increasingly favourable to employees.

A dismissal is potentially fair if it is for one of the following reasons:

- misconduct
- poor performance or capability
- redundancy
- illegality or breach of a statutory restriction i.e. if an employee does not have the right to work in the UK
- some other substantial reason (SOSR).

### Where can SOSR apply?

Other substantial reasons can include the following.

- **Breakdown in trust and confidence:** the working relationship has reached a point of no return. For instance, an employee may declare their distrust of management, harbour conspiracy theories, refuse to attend meetings, make unreasonable demands ? such as wanting external witnesses to be present at informal meetings or to have no contact with colleagues ? absorb a disproportionate amount of HR or management time, or repeat complaints that have already been addressed.
- **Difficult personality:** an employee's style or manner conflicts with the organisation and substantially disrupts business; there is considerable HR or management involvement, or other employees are making complaints or threatening to leave.
- **Personality clashes:** an individual affects other workers or causes major disruption to the business such as increased staff turnover or absences.
- **Pressure from third parties to let the employee go:** the employer would need to weigh up the importance of that third party's continued interest as well as the seriousness of any threat they make to withdraw business or funding if their demand is not met.
- **Withdrawal of certain permissions:** this applies if the employee's role or the natural continuation of business is affected by the removal of clearances or accreditations that are integral to their role or a condition of their contract.
- **Reputational risk:** an internal incident or something outside the workplace may induce an employer to question their retention of an employee, such as criminal proceedings, radical political or religious beliefs, press interest, bad associations or employee behaviour that is incompatible with the company's principles or brand.
- **Stress/ill health:** if an employee suffers from work-related stress, the employer may need to consider whether termination is the best option if the alleged source of stress cannot be removed or there is no evidence to substantiate its effect.
- **Conflicts of interest:** an employee has access to confidential information or close

personal or professional connections that could be detrimental to the business, so the employer must determine whether continuing to employ them would constitute a commercial risk.

## **Procedure**

Where the employee has 2 or more years' service, there is a considerable risk that they will bring a claim for unfair dismissal. Prospects of successfully defending claims will be much improved if a fair procedure is followed, in accordance with the Code of Practice from the [Advisory, Conciliation and Arbitration Service \(ACAS\)](#) before any decision is taken to dismiss.

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Unlike disciplinary and capability dismissals, there is no statutory procedure that governs SOSR terminations. Applying a procedure akin to a disciplinary process is best practice, although it is vital not to label it as such to avoid confusion, and instead refer to it simply as a "formal procedure".

## **Alternatives**

It is essential to consider any viable alternatives to dismissal. Practical measures such as redeployment, a change of management or work patterns, workplace mediation or management coaching are worthwhile considerations before settling on termination.

The formal SOSR process gives employees the opportunity to promote any viable resolutions the employer may not have contemplated, or veto proposed conciliatory measures, such as those given above, on the basis they do not accept that the problem lies with them.

## **Gathering evidence**

Employers should be satisfied they have all the necessary evidence to support their decision to dismiss an employee. Where the issue involves third-party pressure, a conflict of interest, the withdrawal of relevant permissions or a breakdown in relations, a balance will need to be achieved between maintaining fairness towards the individual concerned and gathering evidence from others in a sensitive manner.

## **Implementation and the law**

SOSR is a seldom used but valuable way for employers to dismiss an employee in more unusual situations. However, employees may be more suspicious and inclined to challenge a dismissal in such instances. In the event of a claim, a judge may need further convincing of the seriousness of the situation and that termination was the only option. Employers should not shy away from addressing any of the scenarios detailed above and be confident that they have the backing of the law if they articulate and implement them properly. The potential for improving the working environment for the rest of your employees should not be overlooked but dealt with sensitively.

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## **Further information**

Related competencies include: [Managing people](#)

This feature was taken from the RICS *Construction journal* (February/March 2017)