



# BREAKFAST BRIEFING

## “SOSR” DISMISSALS

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# AGENDA



- Unfair Dismissal - recap
- What is SOSR?
- Examples

# RECAP - UNFAIR DISMISSAL



- Three categories of dismissal:
  - Expiry of a limited term contract
  - Termination by the employer
  - Constructive dismissal
- [Section 95 of the Employment Rights Act 1996](#)

# RECAP - REASONS FOR DISMISSAL



- Law provides for five 'potentially fair reasons':
  - Capability
  - Conduct
  - Redundancy
  - Statutory Ban
  - Some other substantial reason (SOSR)
- [Section 98\(2\) of the Employment Rights Act 1996](#)

# RECAP - FAIR vs UNFAIR

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- Reasonableness:
  - *“...the question whether the dismissal is fair or unfair:*
    - *Depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
    - *Shall be determined in accordance with equity and the substantial merits of the case”.*
  - Section 98(4) of the Employment Rights Act 1996

# SOME OTHER SUBSTANTIAL REASON



- What is SOSR?
  - A residual "catch-all" potentially fair reason for dismissal
  - No statutory definition of the term, or statutory guidance
  - Courts clearly state the reason must be **substantial**

# SOME OTHER SUBSTANTIAL REASON



- Two-stage test for a fair dismissal
  - **First:** the employer carries the burden of proof in showing that SOSR is the sole or principal reason for the dismissal.
  - **Second:** the decision to dismiss for SOSR was reasonable in all the circumstances

# SOSR – EXAMPLES



- Third party pressure
  - In [\*Henderson v Connect \(South Tyneside\) Ltd \[2010\] IRLR 466\*](#)
  - The employer was a contractor providing transport services to the local council.
  - Employee was a bus driver who drove disabled children to school
  - Historical accusations of child abuse came to light and council requested he was removed
  - He was dismissed at the request of the council and claimed unfair dismissal
  - The Court of Appeal held that the dismissal was fair by reason of SOSR
  - Took regards of the fact the employer tried to persuade the council to change its mind and looked at alternative work before dismissing



# SOSR – EXAMPLES



- Personality clashes
  - [Perkin v St Georges Healthcare NHS Trust](#) 2005
  - Mr Perkin employed as Director of Finance
  - Concerns arose about his intimidating behaviour and poor relationships with senior colleagues and external advisors
  - Disciplinary proceedings commenced due to management style and interpersonal relationship breakdown
  - Dismissed for conduct and incompatibility with colleagues

# SOSR – EXAMPLES



- Personality clashes
  - [\*Perkin v St Georges Healthcare NHS Trust\*](#) 2005
  - ET held dismissal was for SOSR due to breakdown of relationships, not purely conduct
  - Can't dismiss for personality itself, have to demonstrate a material breakdown of relationships
  - Noted his behaviour caused a lack of cohesion in team and difficulties operationally – enough to constitute a substantial and sound business reason

# SOSR – EXAMPLES



- Personality clashes
  - ET will expect employers to investigate actions short of dismissal
    - Redeployment
    - Mediation
    - Changing work patterns
- Don't confuse with misconduct

# SOSR – EXAMPLES



- Reputational risk
  - *Bosher v EUI Limited*
  - Employee dismissed for being charged for possessing indecent images involving children
  - Dismissed following a disciplinary process on the basis of risk of reputational damage to the employer
  - Dismissal was held to be unfair
  - Case was still developing and at time of dismissal no knowledge if hearing would be public; role didn't involve children

# ANY QUESTIONS?

