



EMPLOYMENT LAW

# Square peg in a round hole? Dismissing employees who have difficult working relationships

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# Speakers



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# What are we going to cover today?

1. A recap on what it means to dismiss for “some other substantial reason”
2. When might a difficult working relationship qualify as a substantial reason?
3. What are the ‘red flag’ issues to consider before dismissal?
4. When will a dismissal be reasonable in all the circumstances?
5. Conclusion: practical tips for achieving a fair SOSR dismissal for relationship breakdown

**A recap on what it means to  
dismiss for “some other  
substantial reason”**

# What exactly is “SOSR”?

- In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show:
  - a. the reason (or, if more than one, the principal reason) for the dismissal;  
**and**
  - b. that it 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**

# Is the breakdown of a working relationship a potentially fair “substantial reason”?

- Yes, provided it is:
  - Serious enough to mean that a lesser sanction is not appropriate, and dismissal is justified
  - Not rooted in an unlawful reason (i.e. discriminatory or automatically unfair)
  - The sole or principal reason for the dismissal
- To be a fair dismissal, it must still be reasonable in all the circumstances

**When might the existence of a difficult working relationship qualify as a “substantial reason”?**

## Broadly, three ways it will arise...

- **Type 1** - the employee's difficult personality causes a serious breakdown of working relationships with colleagues
- **Type 2** – the employer loses trust and confidence in the employee due to their behaviour
- **Type 3** – a third party pressures the employer to dismiss an employee following the breakdown of a relationship between that third party and the employee



# Type 1 – An employee's difficult personality causes breakdown of working relationships

**Insensitive** approach causing a bad atmosphere

**Determined and forceful** personality causing dissention and provoking complaints

**Brusque manner** causing problems with colleagues, stakeholders and third parties

**Blunt and antagonising** manner and unrelenting complaints

**Lack of respect** and intransigent approach

**Unwillingness to accept change** destabilising the business

## Type 2 – Loss of trust and confidence in the employee due to problems in working relationships

- Some examples where employer said trust and confidence was lost:
  - ✓ *Minor disagreements with employee responsible for personal care*
  - ✓ *A serious personal attack on the integrity of the CEO*
  - ✗ *Power struggle over share entitlement*
- **Note of caution** - Tribunals generally do not like the use of loss and trust and confidence as the “substantial reason” for dismissal – safer to focus on the underlying issue

# Type 3 – A third party pressures for dismissal of employee following breakdown of relationship

“Substantial reason” will be the third-party pressure to dismiss (applied by the third party following a relationship breakdown)

Focus will be on the importance of the relationship with the third party and the consequences of not complying with their request, rather than the breakdown itself

Employers must consider potential injustice to the employee and what steps, if any, can be taken to avoid dismissal

# Key points to remember

Dismissal for problems caused by a difficult personality may be potentially fair for SOSR (or potentially misconduct)

Safer to avoid relying on loss of trust and confidence in the employee

Must have caused serious disruption to the business in some way – being merely awkward or a “bad fit” will not be enough

Breakdown in relations must be at the point of no return

Be prepared for greater scrutiny where a junior colleague is dismissed for breakdown of relations with a senior colleague

**What are the 'red flag' issues to consider before moving to dismiss?**

# Red flag 1 - If the relationship breakdown is not the **real reason** for the dismissal?

- Is it really a **cover up** for a discriminatory or automatically unfair reason? Examples:
  - Has a particular protected characteristic (e.g. a particular race or religion/belief)
  - Rejected a colleague's sexual advances
  - Committed a "protected act" e.g. complaining about discrimination
  - Blown the whistle on wrongdoing

## Red flag 2 - If the relationship breakdown is the real reason, but it is **closely related** to an unlawful reason

- If the relationship breakdown is closely related to an unlawful reason the dismissal may still be automatically unfair or discriminatory
- Examples:
  - A colleague refusing to work with an employee where the refusal was because the colleague held a grudge against the employee after they had blown the whistle
  - Friction with colleagues resulting from an employee's meticulous approach to their health and safety duties
  - Disruption and upset caused by an employee's antagonistic behaviour where such behaviour arose from their disability

## Red flag 3 – The relationship breakdown arose out of **bullying** of the employee by colleagues?

- Needs to be considered at the investigation stage
- Risk of unfair dismissal if you fail to spot the issue, or spot it but sanction the victim not the perpetrators
- Risk of other claims depending on circumstances e.g. automatically unfair dismissal, discrimination and personal injury



**When will a dismissal for relationship breakdown be reasonable in all the circumstances?**

# Does the Acas Code of Practice apply to SOSR dismissals?



Does **not** apply to SOSR - [Phoenix House Ltd v Stockman](#)

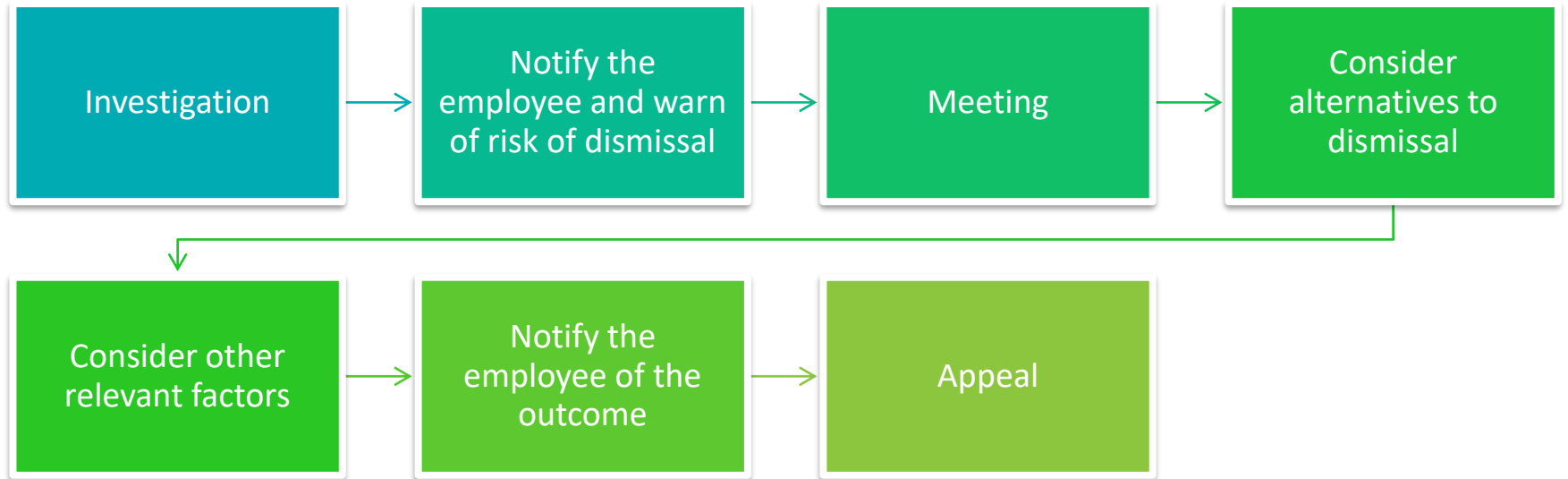


BUT other cases have said the Code applies where the employee is **culpable** for what has happened – a risk in relationship breakdown cases where SOSR and conduct may overlap



If it applies and is not followed, could lead to a 25% uplift to compensation - safest course would be to apply the Code principles

# What does a fair SOSR dismissal process look like (if the Acas Code does not apply)?



**Conclusion: practical tips for achieving  
a fair SOSR dismissal for relationship  
breakdown**

# Practical tips for achieving a fair SOSR dismissal for relationship breakdown

Train	Investigate	Red flags	Reason	3 <sup>rd</sup> parties	Process	Acas Code
Train investigating and dismissing officers on what they need to do	Investigate the nature of the relationship breakdown – is it really serious enough to justify dismissal?	Pause to consider whether there are any 'red flag' issues and take legal advice if necessary	Consider whether there are overlapping reasons for dismissal and adapt the dismissal process accordingly	In third party pressure cases, be clear about what the third party has asked, and try to persuade them to change their mind	Follow a fair dismissal process and consider alternatives to dismissal (e.g. mediation; coaching; redeployment)	Benchmark your process against the Acas Code to insure against uplift to compensation

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