



SOSR DISMISSAL BREAKDOWN IN RELATIONSHIP - PA

Guidance Notes

BACKGROUND

SOSR ('some other substantial reason') is a 'catch all' category (and one which is often overlooked) designed to cover dismissals which do not fall into any of the other four potentially fair reasons to dismiss (conduct, capability, redundancy, statutory ban/illegalities) but which are nevertheless potentially fair.

The law gives very little guidance on what a 'substantial' reason is; only that it should not be 'whimsical or capricious.' Common SOSR reasons that have been held to be fair are a compelling change in terms and conditions which the employee refuses to accept; pressure from a third party, such as a client objecting to having one of a contractor's employees on their site (third party pressure) or an irretrievable breakdown in the employment relationship.

SOSR AND PERSONAL CARE ASSISTANTS

There are two possible scenarios where it may be appropriate to terminate the employment of a personal assistant for SOSR. The first is where care needs change and the employer feels the carer is no longer the right person – for example, they need more intimate care and would prefer an assistant of the same sex.

The employee may be willing and able to change the type of work they do and may remain on perfectly amiable terms with the employer. Their original role still exists so they are not redundant. They are simply no longer suitable for the role because of the reasonable wishes of the employer.

The second is where the relationship with the PA has deteriorated to the point where the employer does not want them to assist with their needs. Sometimes there may be scope for disciplinary action, but more often it will be a gradual change, difficult to identify until it has become unbearable. Sometimes even where disciplinary action may be indicated, the employer feels quite unable to manage this or to continue with the relationship afterwards.

Given the nature of the interaction between them, it may be quite reasonable to accept that the breakdown in the relationship is irretrievable.

FOLLOWING A FAIR PROCEDURE

It is important to show that you have followed a fair procedure in dismissing the employee. For this reason, a formal meeting should be convened and held with the employee being given notice of the meeting in writing and offered the right to be accompanied. If dismissal is being contemplated this must be stated in the letter requesting the Personal Assistant to attend the meeting. In many cases, the employer may not feel they can conduct the meeting. In these instances, a properly authorised substitute should conduct the meeting and a statement should be taken from the employer to form a basis for the discussion.

If the decision is taken to dismiss for SOSR, then the employee must be given a statement of the dismissal and the reasons for it in writing. He or she must also be given the right to appeal against it.

PROVING A 'SUBSTANTIAL' REASON

It can be a bit of a fine distinction, but a tribunal is not allowed to decide whether the reason given for the dismissal is a substantial one in their view. They can only look at whether the reason is true (as far as can be objectively assessed) and that the employer believed the dismissal to be a reasonable course of action at the time.

Therefore in compiling a statement and conducting a formal discussion with the employee, the employer should bear in mind the following points:

- What factual evidence is there? For example, frequently missed shifts, refusal by the employee to carry out certain tasks clearly in line with his or her job description, evidence of changed care needs.



- Have there been any discussions, formal or informal about the employee's performance or behaviour or attitude so that they might be expected to know that the relationship had deteriorated? In other words, can you demonstrate that he or she has had an opportunity to improve and has not done so?
- In the case of revised care needs, has the employee been involved in any discussion about this?
- What has been the response of the employee to any such discussions?
- In the case of a breakdown in the relationship, what has been the impact on the employer? This is where a statement will be useful.
- In the case of changing care needs, in what way would the employer be uncomfortable to continue with the same PA? The obvious example here is a reasonable wish to have an assistant of the same sex to provide more personal care services.

It is important to explain in the meeting that if a mutually agreeable solution cannot be found then the contract of employment may be terminated. The employee must have every opportunity to put forward alternative suggestions and/or give his or her perspective on the situation.

HOLDING THE MEETING

Invite the employee in writing, ensuring they have adequate (48 hours') notice; they are given a clear idea of the matters for discussion and the possible outcome and they are offered the right to be accompanied.

If the employer is unable to hold the meeting personally, ensure that whoever does is a suitable and proper substitute who can play an active part in agreeing the outcome with the employer.

Ensure that careful minutes – verbatim where possible – are taken.

Go through the issues one at a time, using the employer's statement where available. Give the employee the chance to respond to each point. Before adjourning, explain that no decision will be made at this point but that the employee will receive the outcome in writing as soon as all further

investigations and/or deliberations have been completed. Give the employee a chance to add anything further.

AFTER THE MEETING

Send the minutes to the Advice Service and discuss these with a consultant.

Take notes of any further discussions, for example with the employer if he/she was not involved directly in the meeting, or relevant support agencies.

Consider whether there is any alternative to dismissal. For example, could it be more appropriate at this stage to issue a warning for conduct or capability? If care needs have changed, what duties would another carer have? Could this, even at this stage actually be a redundancy situation?

Beware of any discriminatory issues. For example, if a PA speaks poor English and this has caused problems, this is really something that should have been evaluated at the time of recruitment. Any attempt to rely on this now for a dismissal could result in a claim for race discrimination. Has the employee objected to carrying out certain tasks on religious grounds? It is unlawful to discriminate against someone on religious grounds and also on grounds of their sexual orientation or age, or because they are pregnant (or for other gender-based reasons) or disabled or because of their membership of a trade union. Speak to the Advice Service for guidance if necessary.

It would not be considered fair to dismiss an employee because of their personality. However, there is some case law to support the idea that the *manifestations* of that personality may provide a fair reason. Examples would be a disrespectful attitude towards the employer (backed up with the evidence of the employer's statement where possible), persistent refusal to follow reasonable instructions or to take account of the employer's preferences such as not consulting them over what food to buy or cook, toiletries to use etc. Be clear in your own mind how you might respond if asked why these matters were not dealt with via a disciplinary procedure and series of warnings.

Write with the outcome to the employee. The Advice Service will supply a template. In the letter, reiterate the matters of concern and show that you have taken note of any suggestions made by the employee and, where relevant, that any alternative duties have been considered.



PENINSULA

If the decision is to terminate the employment, make sure that the employee is given the right to appeal. If possible, any appeal should be heard by someone other than the person who conducted the original meeting. Where this is not possible, it is better for the

original person to hold an appeal than not to have one at all.

Need Further Advice?

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