

What does dismissal for “Some other substantial reason” mean?

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There are five potentially fair reasons for dismissal of any employee under the [Employment Rights Act 1996](#) (ERA 1996):

1. **Conduct**
2. **Capability**
3. **Redundancy**
4. **Breach of a statutory restriction**
5. **Some other substantial reason of a kind as to justify the dismissal (SOSR)**

SOSR is a residual "catch-all" potentially fair reason for dismissal. Whilst there is no statutory definition of the term, or any statutory guidance, case law has made it clear that the reason must be substantial.

Interpretation of what is substantial is subjective and will depend on the facts and the type of case. The reason must also be of a kind which will justify the dismissal (rather than any lesser sanction) of an employee holding the job the employee actually held.

Common examples of scenarios that may constitute an SOSR dismissal are:

Protection from competition

Where an employee acts in a way which falls short of a breach of duty or is in a situation which creates a potential conflict with the employer's interests, the employer may be able to dismiss the employee by relying on SOSR.

The most common types of cases in this category relate to conflict of interest or restrictive covenants.

Cases involving conflicts of interest

To be able to succeed in relying on the risk of competition as being SOSR, the employer must be able to provide evidence to substantiate its perception that the employee

poses a risk to its business interests. The evidence will be as to the nature of the information to which the employee has access.

If an employee has limited access to commercial information, an employer will struggle to show that it was concerned about a risk at all. It is also usually necessary to show that the employee has close connections to a competitor (or an employee of a competitor) and that the employer fears the employee may leak confidential information.

To establish SOSR for dismissal in these circumstances, the employer must show that continuing to employ the employee would give rise to a real commercial risk.

Cases involving restrictive covenants

The scope of any restrictive covenant will have a bearing on whether an employer can rely on it for an SOSR dismissal. Case law has established dismissal following a refusal to enter new restrictive covenants was found to be for SOSR and potentially fair.

Personality clashes

Personality clashes or irreconcilable differences between colleagues can amount to SOSR. However, the conflict would have to cause a substantial disruption to the business.

Other examples

- The non-renewal of the fixed-term contract of an employee recruited as maternity leave cover.
- The dismissal of an employee for a theft conviction unconnected with his employment.
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- The dismissal and re-engagement of an employee to impose new contractual terms and conditions that the employee has refused to agree.

The two stage test for any dismissal will apply notwithstanding the potentially fair reason for the dismissal.

Having identified circumstances giving rise to an SOSR dismissal, the employer must ensure that it follows a fair procedure and acts reasonably in dismissing the employee for that reason taking into account all the circumstances.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

