

6 Aug 2021

Dismissal procedures

Introductory guidance on dismissal in the UK, focusing on unfair dismissal and with advice on following a fair dismissal procedure

Introduction

To be a 'fair' dismissal, a UK employer must show that it was due to one of five specific reasons. The employer must also have acted fairly and reasonably in carrying out the dismissal. More positive approaches, such as coaching and counselling, may help in some cases relating to conduct or performance, and should be considered before resorting to dismissal.

This factsheet explains the difference between wrongful, unfair and constructive dismissal. Concentrating on unfair dismissal, it sets out the five reasons, the importance of following a fair procedure and what this could entail. It looks at which employees qualify to claim unfair dismissal and considers the possible compensation employers could face.

What is dismissal?

Dismissal of an employee occurs when:

- The employer terminates the contract, either with or without giving notice, or
- A fixed term contract ends and is not renewed, or
- The employee leaves, with or without giving notice, in circumstances in which they are entitled to do so because of the employer's conduct.

Some of the most common reasons for dismissal are misconduct, inability to do the job and redundancy.

In the UK, a dismissal will normally be 'fair' provided the employer has given one of the five specified reasons for the dismissal (see below) and has acted 'reasonably' in carrying it out. When somebody is dismissed, they sometimes say they will claim 'unfair' or 'wrongful' dismissal. The terms are often used interchangeably, particularly in media

reports, but in fact they are entirely different and arise from very different concepts.

Employers should have clear individual dispute resolution procedures that are communicated to all staff. Line managers and any staff members involved in managing disciplinary and grievance matters must be properly trained in the organisation's policies and procedures and know how to implement them. All disputes should be handled in a fair and consistent way across the organisation.

Dismissing employees is sometimes necessary; however, it can be costly and can also affect wider employee morale and potentially damage the business. It should be considered only when other, more positive options to improve performance have failed.

Where dismissals can't be avoided, it's essential to comply with the employer's own procedures as well as the relevant law and codes of practice.

Suspension and/or dismissal can have a significant detrimental impact on any individual. Immediate and ongoing support should be available to safeguard their health and wellbeing.

Wrongful dismissal

Wrongful dismissal involves contract law and occurs when the employer terminates the employment and, in doing so, breaches the contract. The most common example is terminating a contract without notice or not giving the contractual notice period. The period of notice is a matter for agreement between the parties, but is subject to minimum periods prescribed by law. Wrongful dismissal claims will generally be for the payment and benefits due for the notice period. There's no minimum length of service requirement for an individual to claim wrongful dismissal. CIPD members can find out more detail in our [Wrongful dismissal law Q&As](#).

Unfair dismissal

Employees (but not 'workers' – learn about the difference in our [employment status factsheet](#)) have a statutory right not to be unfairly dismissed. The law in Great Britain on unfair dismissal is mainly contained in the Employment Rights Act 1996, as amended by numerous statutes. The law in Northern Ireland is covered in our factsheet for CIPD members on the [legal differences from Great Britain](#).

The basis of unfair dismissal law is that employees have the right to be treated fairly. In making a claim, the employee needs to demonstrate that they were dismissed; to

successfully defend the claim, the employer needs to show that this dismissal was fair because it was for a specific reason and was handled properly.

To be potentially 'fair', a dismissal must be for one of five reasons:

- **Capability or qualifications.**
- **Conduct.**
- **Illegality or contravention of a statutory duty.**
- **Some other substantial reason**
- **Redundancy** - see our [Redundancy factsheet](#) for more. CIPD members can see more detail in our [Redundancy law Q&As](#).

Retirement is no longer a potentially fair reason for dismissal.

There are special statutory rules relating to discussions before a potential dismissal which lead to a settlement agreement (formerly known as compromise agreements) between the employer and employee. For more detail, CIPD members can see our [Tribunal claims, settlement and compromise law Q&As](#).

Fairness

As well as falling within one of the five potentially fair reasons for dismissal, an employer must also have acted fairly and reasonably in taking that reason as sufficient for dismissing the employee. This involves following a fair procedure and is more complex than it sounds, and an employment tribunal still has wide discretion on what it considers to be 'fair'.

Even if an employee is found guilty of an act of very serious misconduct (often called 'gross misconduct'), this will not necessarily be enough to make any dismissal fair. The employer still must also carry out a thorough investigation and consider all the circumstances.

Investigation

Dismissal is a serious matter that needs careful handling. Before taking any action, managers should first establish the facts. And before considering dismissal, managers should also consider if a more positive approach that does not involve dismissal is likely to be effective.

- **Matters relating to conduct** - where the employee's conduct is an issue, the level of 'proof' that the employee committed an alleged offence is not as high as that required in the criminal courts. However, the employer must be able to demonstrate

that it carried out a thorough investigation into the alleged offence. The employer must then be able to show that the investigation led to a reasonable belief that the employee committed the offence, and that the decision to dismiss was reasonable. [Acas has published guidance](#) for carrying out investigations and recommends that anyone appointed as an investigator should be trained in this area.

- **Matters relating to poor performance** - where the employee's capability is an issue, matters may be beyond the employee's control. The problems may be a result of inadequate leadership, poor management or defective work systems; if so, the employer should put in place appropriate remedies (often involving learning and development) to help improve the employee's performance.

Employers should take account of any other circumstances, such as an underlying health condition, in addressing poor performance, facilitate a supportive conversation, and signpost to any expert sources of help if needed. Many cases of both misconduct and poor performance can be dealt with by informal advice, coaching and counselling. Improvements can often be achieved through ongoing constructive feedback and joint discussion between individuals and their manager to identify the problem, establish the reasons for under-performance and agree the remedial action to be taken. See our [factsheet on performance management](#).

If these positive approaches aren't effective, the employer may need to take [disciplinary action](#), which could include dismissal.

Following a fair procedure

Acas provides guidance on dealing with disciplinary and dismissal and grievance matters in its [Code of Practice](#). Employment tribunals will always take the Acas Code into account and employers must follow the Code, as otherwise:

- They will have difficulty convincing an employment tribunal that they acted fairly, and
- Failure to follow the Code may result in an order to pay compensation being increased or decreased by up to 25% depending on whether or not the employer or employee failed to comply with it.

Employers must also follow their own contractual or customary disciplinary process or dismissal procedure for a dismissal to be 'fair'. Before making a decision to dismiss, employers must take many factors into account, for example the employee's length of service and previous disciplinary record, the seriousness of the offence and the consistency of approach taken in previous similar cases.

Employers should usually follow at least three stages (although an appropriate procedure

will often be more complex than this). For example:

- The employee should be informed in writing of the alleged offence.
- There should be a meeting between the employee and employer to discuss the alleged offence. Legally, the employee can be represented at this meeting by a trade union representative or colleague.
- The employee should have the opportunity to appeal against any sanction.

All decisions throughout the process on suspension and disciplinary sanctions should be taken by more than one person to help ensure impartiality.

The employer should ensure that all communications, in whatever format, should be timely, comprehensive, unambiguous, sensitive and compassionate.

Maintaining people's dignity and safeguarding their health and wellbeing

Concern for the health and welfare of people involved in a disciplinary procedure should be a priority at every stage. This should include access to occupational health assessment where requested or needed.

Suspension should be a matter of last resort, when working relationships have broken down irreparably and after all other reasonable options have been considered. It should be reviewed on an ongoing basis and be time-bound.

If an employer does fairly dismiss an employee, they should still have regard to the individual's health and wellbeing and the potential impact that the action could have on them. Even where the organisation has carefully followed a thorough process and the dismissal is justifiable and proportionate, it is likely to be a devastating outcome for the individual. The organisation should act with compassion as part of a person-centred approach, whatever the circumstances, and ensure that support is available where needed. The individual's dignity should be respected at all times.

Qualification to make a claim

To balance the interests of employers and employees, there is a period at the start of employment when employees do not enjoy protection from unfair dismissal, known as the 'qualifying period'. There are two qualifying periods for claiming unfair dismissal:

- Employees employed before 6 April 2012 require **one** year's continuous service in order to be able to claim unfair dismissal.
- Employees employed on or after 6 April 2012 require continuous service for at least

two years in order to be able to claim unfair dismissal.

All employees must contact the Acas early conciliation service before making an employment tribunal claim following a grievance. CIPD members can see more in our [law Q&As covering early conciliation](#).

There are numerous exceptions to the requirement for a qualifying period in order to bring a claim. These include dismissals for:

- Trade union membership or activities.
- Pregnancy or childbirth.
- Taking maternity, adoption, paternity or parental leave.
- Asserting a statutory right.
- Claiming the National Minimum Wage or National Living Wage.
- Asserting rights under the Working Time Regulations.

These are also examples of automatically unfair reasons for dismissal.

Is the dismissal automatically unfair?

The next step is to check whether or not the employee's dismissal could be automatically unfair under the law. Examples of automatically unfair reasons for dismissal include those listed above, although there are further examples. CIPD members can see more detail in our [Unfair dismissal law Q&As](#).

Constructive dismissal

Constructive dismissal occurs when the employee resigns as a result of the actions of the employer. The employer's actions must amount to a fundamental breach of the employment contract. The employee must resign in a timely manner and the resignation must be because of the breach.

The most common breach is that of the implied term of 'mutual trust and confidence' between the employer and employee.

Compensation for dismissal

In **wrongful dismissal** claims, damages are calculated as for any other breach of contract so an employee will be entitled to their full net salary for the contractual notice period, and compensation for loss of other benefits for that period.

Awards made by a tribunal in cases of **unfair dismissal** consist of a basic award to compensate for loss of job security and a compensatory award to reflect immediate and future loss of earnings. In rare cases an additional award may be made where an order for reinstatement or re-engagement is made but not complied with by the employer.

The amount of a statutory payment depends on an employee's age, length of service and the rate of a week's pay (up to a maximum). There is also a salary-based cap on the unfair dismissal compensatory award.

For more on how these awards are currently calculated and the changes to the maximum limits, CIPD members can see our law Q&As on [Unfair dismissal](#), [Wrongful dismissal](#) and [Redundancy](#) and our [Statutory rates and compensation limits](#) page.

Useful contacts and further reading

Contacts

[Acas - Dismissals](#)

[GOV.UK - Dismissing staff](#)

Books and reports

BARNETT, D. (2020) *Constructive dismissal*. (Employment Law Library 7). London: Nielsen.

INCOMES DATA SERVICES. (2020) *Unfair dismissal*. Employment law handbooks. London: Thomson Reuters (Professional UK) Ltd.

LEWIS, D. and SARGEANT, M. (2019) *Employment law: the essentials*. 15th ed. London: CIPD and Kogan Page.

WAY, D. (2019) *Unfair dismissal: a guide to relevant case law*. 37th ed. London: LexisNexis Butterworths.

Journal articles

COLLINS, P. (2018) The inadequate protection of human rights in unfair dismissal law. *Industrial Relations Journal*. Vol 47, No 4, December. pp504-530.

KNOWLES, C. (2017) [What's the difference between unfair and wrongful dismissal?](#) *People Management* (online). 4 September.

LANDY, M. (2017) Constructive dismissal: a guide for employers. *People Management* (online). 18 September.

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