

DOCUMENT NAME:	Unfair Dismissal Factsheet
LINKED DOCUMENTS:	This factsheet is part of a suite of factsheets. including a separate factsheet on constructive unfair dismissal.
HEALTH WARNING/USAGE RESTRICTIONS:	This factsheet sets out the basics/law on unfair dismissal.

Disclaimer

This document has been prepared on the basis of what is required by law at December 2025 what is good practice, and our understanding of common issues. This document is not intended to be a comprehensive guide, may not be suitable for your circumstances and should not be considered a substitute for the advice of a lawyer. You agree you use this document at your own risk in these respects.

Unfair Dismissal

Factsheet

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1 Legal terms explained

“**ACAS Code of Practice**” is the written code reflecting good practice for dealing with disciplinary and grievance processes which employers should follow;

“**Constructive dismissal**” occurs when an employee resigns and can show that they were entitled to do so because of their employer’s conduct. A constructive dismissal may be both an unfair and wrongful dismissal as the employer may also have breached the employee’s contract of employment;

“**Effective date of termination**” is the last day of continuous employment or the dismissal date for the purposes of unfair dismissal;

“**Employment Rights Act 1996 (ERA 1996)**” is an Act of Parliament which sets out the law on unfair dismissal and additional rights of employees;

“**Grievance and disciplinary procedures**” are formal methods for dealing with the grievances of employees or disciplining employees;

“**Role and job description**” is the job title and the detailed description of the duties, responsibilities and skills required to fulfil those duties.

2 What is unfair dismissal?

To dismiss an employee fairly, employer must be able to evidence one of the potentially fair reasons for dismissal contained in the ERA 1996 (more on this below). Employer must also follow a fair dismissal procedure and the decision to dismiss must be within the range of reasonable responses open to an employer (again, more on this below).

3 Employment Tribunal

Any claims for unfair dismissal will be brought before an Employment Tribunal. Part of the Ministry of Justice, Employment Tribunals determine the validity of cases and award compensation to people who are found to have been unfairly dismissed.

4 Eligibility to claim

To be eligible to bring a claim for unfair dismissal, an individual must:

- Be an employee (this will exclude independent contractors and most agency staff)
- Not be within an excluded category of employee (for example the police, army or certain other public employments)
- Usually have at least two years’ continuous service.

Please note: Continuous service can be extended if an employee is dismissed without receiving one week’s statutory minimum notice. Also, there is no service requirement where the dismissal is for certain automatically unfair reasons.

4.1 Circumstances in which an employee is dismissed

To bring an unfair dismissal claim an employee must show they have been dismissed. That means:

- The employee’s contract is terminated by their employer with or without notice - this includes if an employee is made redundant
- The employee is on a fixed-term contract, or a contract which expires on the happening of a particular event (e.g. completion of a project), and the contract is not renewed
- The employee resigns but claims constructive dismissal. For more information refer separately to our Constructive Dismissal Factsheet.

4.2 Circumstances in which a dismissal is unfair

A dismissal will be unfair if:

- The dismissal was for an automatically unfair reason (see below)
- The employer has no fair reason for the dismissal
- The procedure for implementing the dismissal was unfair
- No reasonable employer would have dismissed the employee under the circumstances which the employer did.

4.3 Examples of automatically unfair reasons

The following reasons for dismissal automatically count as unfair (this list is not exhaustive):

- Pregnancy-related dismissals
- Because an employee has attempted to assert a statutory right or made a protected disclosure (i.e. whistleblowing)
- Because the employee belongs to a Trade Union or has refused to belong to one.

Unlike 'ordinary' unfair dismissal claims, employees do not necessarily require at least two years' continuous service in order to bring an automatically unfair dismissal claim.

5 Fair reasons for dismissal

There is a list of potentially fair reasons for dismissal set out in the ERA and employer must show that one of these reasons apply for the dismissal to be fair:

5.1 Conduct

This covers any type of misconduct by the employee, including a one-off but serious incident or a series of minor incidents. This may include conduct during working hours or outside work.

Employer's disciplinary policy and employment contracts should set out examples of unacceptable misconduct.

5.2 Capability

In practice, capability dismissals fall into two main groups:

- Dismissal because of an employee's poor performance or attitude
- Dismissal because of an employee's ill health - this may be a result of a single long-term absence or frequent short-term absences.

5.3 Redundancy

This applies where the business ceases, the place of work closes, or there is a reduced need for employees to carry out work of a particular kind.

5.4 Statutory restriction

This applies where continued employment is only possible if a law is broken. Examples might include a lorry driver who has been disqualified from driving or a worker whose work permit has expired.

Employers must be able to show that the law would be contravened by continuing to employ this person.

5.5 Some other substantial reason

This is a “catch-all” covering other reasons employer can dismiss an employee. For example:

- A business re-organisation
- Employer need to make changes to the employee’s duties or work pattern which the employee cannot or will not accept.

5.6 Beliefs and proof

It is sufficient that the employer, honestly and reasonably believed at the time employer made the decision that one of the above reasons applied.

6 Procedural requirements for dismissal

Employers must observe a fair procedure appropriate to the reason for dismissal. If they do not, the dismissal may be unfair. The procedure adopted will depend on the reason for the dismissal.

6.1 Fair procedure in misconduct or poor performance cases

Employers must follow the ACAS Code of Practice and their own written dismissal procedure, which is usually found in the disciplinary policy or handbook. Failure to follow the ACAS Code can be evidence that the procedure is unfair.

The ACAS Code of Practice states that:

- Employers must properly investigate the circumstances of the case. In the case of misconduct, the investigation should be by a different manager than that conducting the disciplinary hearing wherever possible
- The employee must be invited to a meeting and given a proper opportunity to present his or her case, and sufficient information to enable them to do so
- The hearing must be conducted fairly
- The appeal must be conducted fairly - a properly conducted appeal may remedy procedural unfairness in the original hearing, but an unfair appeal may render the whole dismissal procedure unfair
- The employee is entitled to be accompanied at a disciplinary hearing by a companion of their choice, either a trade union representative or a fellow employee. Employees are not normally entitled to be accompanied by a lawyer or family member.

Please see our separate factsheet on handling disciplinaries for more information.

6.2 Fair procedure in redundancy or re-organisation / re-structuring cases

For a dismissal to be fair, the following procedure must usually be adopted:

- Employers should give as much warning as possible of impending redundancies
- Employers must consult employees or their representatives about ways in which redundancies can be avoided or minimised or any alternatives that might be found
- If there is no alternative to redundancies, employer must consult with employees or their representatives as to how the employees to be made redundant should be selected. Unless all the employees are to be made redundant, or all the employees in a particular area, employer should try to agree the selection criteria to be applied
- The criteria must, as far as possible, be objective and verifiable, utilising such things as attendance record, efficiency at the job, experience, rather than the subjective opinion of managers
- Employers must tell employees how they have been scored and give them an opportunity to challenge their own scores
- Employers must make proper efforts to find alternative work for those selected for redundancy
- Employees should usually be given the opportunity to appeal their dismissals.

If employer is proposing to make 20 or more employees redundant within a 90-day period, they are under a duty to enter into a period of collective consultation. We recommend to take bespoke legal advice in this scenario.

For further information please refer to our separate factsheet on redundancy.

6.3 Fair procedure in cases of ill-health, permanent incapacity or other reasons for considering dismissal

Where there is some other reason for considering terminating an employee's employment, for a dismissal to be fair employer usually has to:

- Investigate all the circumstances of the case
- Warn the employee that you are contemplating dismissing them
- Set out in full all the evidence and reasons why they are contemplating terminating the employee's employment
- Invite the employee to a meeting to discuss the matter
- If the decision is to dismiss, give the employee a fair opportunity to appeal.

Please see our separate factsheet on absence management for more information.

6.4 Reasonableness of the decision

Even if employers have a potentially fair reason for dismissal, they must also show that their decision to dismiss fell within the range of responses open to a reasonable employer. The question is whether it is possible that another reasonable employer, faced with the same facts, would have dismissed the employee.

Relevant factors:

- Whether employer had sufficient evidence to conclude that there was a valid reason for dismissing the employee (although employer are not required to have absolute proof)
- Whether employer's actions were consistent with past practice (demonstrating a consistent approach to the treatment of employees)
- Whether employer considered the individual circumstances of the individual employee before making any decision
- In poor performance cases, whether the employee was given further training or assistance, or time to improve
- In disciplinary cases, whether the employer looked at other options to dismissal, including giving them a warning or final warning, or in cases where there is a contractual right to do so, demoting them to a less responsible position instead.

7 The burden of proof

The burden of showing what the reason for the dismissal is rests with the employer. Once employer have done so, it is for an Employment Tribunal to decide whether the dismissal was fair.

8 Time limits for bringing a claim

An unfair dismissal claim must be submitted within three months less one day of the termination of employment. For example, if the last day of employment was 3 October the claim must be submitted to the Tribunal by 2 January. This is known as the "primary limitation date".

However, if the employee is less than one week from their two year anniversary and employer do not give the statutory minimum notice before dismissing, the employee is entitled to add that one week to their termination date to allow them to have the right to bring a claim.

However, before a claim can be issued, the employee must engage in a process known as ACAS Early Conciliation. Employees are required to contact ACAS **on or before the primary limitation date** to start Early Conciliation. If they fail to do so, the Employment Tribunal will not be able to consider their claim.

ACAS Early Conciliation enables employer and the employee to try and resolve the dispute without the need to bring a claim in the Employment Tribunal. If the parties agree, an ACAS conciliator will act as a “*go between*” and try and reach agreement. There is no need for the employee to communicate directly with employer unless they wish to do so.

This process can last up to twelve weeks. If Early Conciliation fails, the employee will be issued with an Early Conciliation Certificate which the employee needs before they can issue a claim in the Employment Tribunal.

The time limit for bringing the claim is paused from the day after the employee submits the Early Conciliation Form until the date the employee receives a Certificate. Generally the employee will have a minimum of one calendar month from the date of the Certificate to issue a claim in the Employment Tribunal.

Details about Early Conciliation are available from ACAS: www.acas.org.uk

9 Remedies for unfair dismissal

If the employee succeeds with their claim for unfair dismissal, the Employment Tribunal will determine whether to award a remedy. There are three remedies available in unfair dismissal claims and the employee has the choice over which remedy to ask for.

9.1 Re-instatement

This puts the employee back into the same job they had prior to their dismissal. This is available but it is rare that employees want to be reinstated at a place where they perceive to have been treated badly.

9.2 Re-engagement

This is where the employee is re-engaged within a different sector/ job within the same company. As with reinstatement, such orders are rare.

A reinstatement or re-engagement order will generally require employer to make up all the employee’s lost salary and benefits for the period between dismissal and the date of reinstatement, taking appropriate account of sums already received including pay in lieu of notice, ex gratia payments and earnings from any other employment.

9.3 Compensation

If reinstatement or reengagement is not ordered, the Tribunal will usually award compensation instead.

10 Assessment of compensation

Compensation is made up of one or more of the following:

- Basic Award
- Compensatory Award
- Additional Award (awarded if the Employment Tribunal orders either re-instatement or re-engagement and the employer does not comply).

10.1 Basic Award

The employee will get either 0.5, 1 or 1.5 weeks’ pay for each complete year of service, calculated as follows:

Working backwards from the last date of employment (**NOT** forwards from the date of starting work):

- for each complete year of service where employee was 41 or over at the start of the year, 1.5 weeks’ pay
- for each complete year of service where the employee was between the ages of 22 and 40 at the start of the year, one week’s pay
- for each complete year of service where employee was 22 or less at the start of the year, 0.5 of a week’s pay.

Length of service is subject to a maximum of 20 years and a week's pay is subject to a statutory maximum, which is increased every year (currently £719 from 6 April 2025).

10.2 Variations

In some cases where a dismissal is for an automatically unfair reason, a higher basic award is payable. However, the basic award may be reduced due to contributory fault or other conduct by the employee.

10.3 Compensatory award

The compensatory award is that amount which is "just and equitable" to compensate the employee for their losses. This is decided by the Employment Tribunal and is subject to statutory caps.

The maximum that an employee can be awarded as a compensatory award is the lower of 52 times a week's gross pay for the Claimant, and £118,223 for dismissals since 6 April 2025. This upper rate is usually adjusted in April each year) but in reality awards are usually much lower than this.

The compensatory award will usually reflect the following losses:

10.4 Immediate loss of wages

This is the immediate loss of earnings from dismissal until the date of hearing. If the employee has a new job on a lower rate, the new earnings will be taken into account so that the employee is not better off than they would have been if they had not been dismissed.

10.5 Future loss of wages

It is often difficult to assess how long the employee will be out of work or how long it will take them to reach their previous level of earnings if their new employment pays less, as it will depend on the job market, the employee's age and qualifications etc.

An employee is required to mitigate their losses i.e. to look for alternative employment and to evidence that they have done so.

10.6 Loss of statutory employment protection rights

An employee needs two years' continuous service to bring most claims for unfair dismissal and many statutory rights such as notice and redundancy pay are dependent on length of service, so even if the employee finds new work at a similar rate of pay, the employee may still be worse off. A sum of a few hundred pounds is normally awarded to compensate for this.

10.7 Deductions

There may be certain deductions made from the compensatory award:

- If the employee has received enhanced redundancy terms, these will be deducted from the compensatory award
- The calculated loss may be reduced by any other amounts the employee has received by way of termination payments received (including notice)
- The employee's compensation may be reduced if the employee could have found alternative work but did not make proper efforts to do so
- Compensation may be reduced if the Tribunal finds the employee contributed in some way to their dismissal
- A deduction may be made where a dismissal is procedurally unfair but the tribunal decides the employee would, or might have been, dismissed even if a fair procedure had been followed.

10.8 Additional award

If the Tribunal orders reinstatement or re-engagement and employer refuses to do so, an additional award of between 26 and 52 week's pay may be made.

11 Non-payment of awards

If employer fail to pay an award, it can be enforced through the County Court. Employees will usually be entitled to "judgment in default" or "summary judgment".

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