



Higher National Unit specification: general information

Unit title: Unfair Dismissal

Unit code: FT2A 35

Superclass: EC

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Unit purpose

This Unit is designed to provide candidates with the knowledge and skills to state and explain the potentially fair reasons for dismissal; explain the procedural requirements for a dismissal to be fair; explain the circumstances in which an employee may be constructively dismissed; and explain the circumstances in which a claim for unfair dismissal may be brought without the requisite 12 months qualifying service. This Unit will also allow the candidate to consider the impact of dismissal on the individual employee and to provide candidates with knowledge of the principles of unfair dismissal. By the end of the Unit candidates will be able to advise, under the direction of a supervising solicitor, on the remedies available to those who have been unfairly dismissed. This Unit is intended for those who work as employment law paralegals. This Unit is also intended to be relevant to those already employed in the legal sector who may wish to broaden their expertise and students or others who aspire to work in a relevant role in the legal sector.

On completion of the Unit the candidate should be able to:

- 1 Explain the potentially fair reasons why an employee may be dismissed.
- 2 Advise on the procedures an employer must follow in order for a dismissal to be fair.
- 3 Apply the concept of constructive dismissal.
- 4 Explain the circumstances in which a complaint of unfair dismissal may be presented to an Employment Tribunal without the requisite 12 months qualifying service.
- 5 Advise on the remedies available to those who have been unfairly dismissed.

Recommended prior knowledge and skills

Access to this Unit is at the discretion of the Centre. However, candidates would normally be expected to have competence in Communication Skills at SCQF level 6 or equivalent and should normally have completed Unit F1A7 34 *Scottish Legal System* or have similar qualifications or experience.

General information (cont)

Credit points and level

1 Higher National Unit credit at SCQF level 8: (8 SCQF credit points at SCQF level 8*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes of this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment

Candidates will produce written and/or oral evidence to show they can apply the law to a given case study/studies and give relevant legal advice. Assessment may also take the form of either a set of restricted response questions or multiple choice questions which will be sufficient to sample the knowledge required in all five Outcomes.

Centres will have discretion in designing assessments so that they can assess Outcomes individually or combine Outcomes where they consider it appropriate.

Higher National Unit specification: statement of standards

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Explain the potentially fair reasons why an employee may be dismissed.

Knowledge and/or Skills

- ◆ Conduct that can lead to dismissal
- ◆ How capability can lead to dismissal
- ◆ How redundancy can lead to dismissal
- ◆ The Imposition of a statutory restriction
- ◆ Some Other Substantial Reason (SOSR) for fair dismissal.
- ◆ Relevant Statutes and Case Law

Outcome 2

Advise on the procedures an employer must follow in order for a dismissal to be fair.

Knowledge and/or Skills

- ◆ ACAS Code of Practice
- ◆ General Principles of Fairness
- ◆ Collective Redundancy Procedures (Trade Union and Labour Relations (Consolidation) Act 1992 ss 188–192)
- ◆ Relevant Statutes and Case Law

Higher National Unit specification: statement of standards (cont)

Unit title: Unfair Dismissal

Evidence Requirements for Outcomes 1 and 2

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply the substantive and procedural requirements for a fair dismissal to a given case study/ies.

The case study/ies should cover at least two of the five potentially fair reasons for dismissal as set out in the Act, giving sufficient detail so that candidates should be able to identify the potential reason(s) for the dismissal, to identify whether the dismissal is fair or not, and whether on substantive or procedural grounds, or both. The case study/ies should also require the candidate to comment on whether the procedure followed by the employer is fair or not.

Candidates should provide evidence that they have researched the main principles covered in each of the case studies. They should consider the relevant case law and make an assessment, based on that research, as to whether or not the dismissal would be fair or unfair.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this. The candidate should show that s/he has engaged in research on the relevant law and quote relevant, current Statutes and case names.

Written/oral evidence of knowledge from Outcomes 1 and 2 which cannot be inferred from the practical exercise should be sampled.

Assessment Guidelines for Outcomes 1 and 2

To ensure that candidates will not be able to foresee on which items they will be assessed, different case studies should be used each time the Outcome is assessed.

In the teaching and learning associated with this Unit every opportunity should be taken to enhance research skills which are important to the study of law. Candidates will be able to demonstrate their research skills by quoting relevant, current case law in the course of assessments.

Higher National Unit specification: statement of standards (cont)

Unit title: Unfair Dismissal

Outcome 3

Apply the concept of constructive dismissal.

Knowledge and/or Skills

- ◆ Breaches of express contractual terms
- ◆ Breaches of implied contractual terms
- ◆ Repudiatory breaches
- ◆ Affirmation of breaches
- ◆ Fairness
- ◆ Burdon of Proof
- ◆ Relevant Statutes and Case Law

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Apply the concept of constructive dismissal to a set of circumstances in a given case study scenario.

The case study scenario should cover the breach of at least one or more express or implied term(s) of the contract of employment and should give information on when the employee resigned as a result of the breach.

The candidate should correctly identify the potential breach(es) of contract, and make an assessment of whether the breach is sufficiently serious to warrant constructive dismissal. Candidates should provide evidence that they have researched the main principles covered in the case study. They should consider the relevant case law and make an assessment, based on that research, as to whether or not there was a constructive dismissal.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this. The candidate should show that s/he has engaged in research on the relevant law and quote relevant, current Statutes and case names.

Written/oral evidence of knowledge which cannot be inferred from the practical exercise should be sampled.

Assessment Guidelines

To ensure that candidates will not be able to foresee which items they will be assessed, different case studies should be used each time the Outcome is assessed.

In the teaching and learning associated with this Unit every opportunity should be taken to enhance research skills which are important to the study of law. Candidates will be able to demonstrate their research skills by quoting relevant, current case law in the course of assessments.

Higher National Unit specification: statement of standards (cont)

Unit title: Unfair Dismissal

Outcome 4

Explain the circumstances in which a complaint of unfair dismissal may be presented to an Employment Tribunal without the requisite 12 months qualifying service

Knowledge and/or Skills

- ◆ Discriminatory Reasons eg on grounds of sex; race; age; sexual orientation; religion and/or belief; disability.
- ◆ Whistleblowing
- ◆ Health & Safety Reason
- ◆ Working Time
- ◆ Assertion of a statutory right
- ◆ Trade Union reasons
- ◆ Relevant Statutes and Case Law

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Explain and apply the grounds upon which a claim for unfair dismissal may be brought by someone without 12 months qualifying service.

Candidates will be provided with a case study which covers the potentially unfair dismissal of an employee who has less than 12 months service and which falls in to one of the categories in Knowledge and/or Skills of Outcome 4.

Candidates should provide evidence that they have researched the main principles covered in the case study. They should consider the relevant case law and make an assessment, based on that research, as to whether or not the employee has grounds for a complaint of unfair dismissal, notwithstanding their lack of qualifying service.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this. The candidate should show that s/he has engaged in research on the relevant law and quote relevant, current Statutes and case names.

Written/oral evidence of knowledge which cannot be inferred from the practical exercise should be sampled.

Assessment Guidelines

To ensure that candidates will not be able to foresee on which items they will be assessed, different case studies should be used each time the Outcome is assessed.

In the teaching and learning associated with this Unit every opportunity should be taken to enhance research skills which are important to the study of law. Candidates will be able to demonstrate their research skills by quoting relevant, current case law in the course of assessments.

Higher National Unit specification: statement of standards (cont)

Unit title: Unfair Dismissal

Outcome 5

Advise on the remedies available to those who have been unfairly dismissed.

Knowledge and/or Skills

- ◆ Claims to the Employment Tribunal
- ◆ The Right to Claim
- ◆ Reinstatement
- ◆ Reengagement
- ◆ Compensation
- ◆ Conciliated Settlement and the Role of ACAS.
- ◆ Mediation

Evidence Requirements

Candidates will need to provide written and/or oral evidence to demonstrate their Knowledge and/or Skills by showing that they can:

Understand what remedies are potentially available to employees who believe they have been unfairly dismissed; how the aggrieved employee can access said remedies; and that they can apply the law to a set of facts based on this.

In terms of financial compensation, assessments should be sufficiently detailed to allow the candidates to make an assessment of financial loss and should deal with at least four of the relevant elements, those being:

- ◆ Basic Award
- ◆ Compensatory Award
- ◆ Interim Relief
- ◆ Loss to date of hearing
- ◆ Future Loss
- ◆ Loss of Statutory Rights
- ◆ Mitigation of Loss
- ◆ Contributory Fault Reductions
- ◆ Polkey Reductions
- ◆ Uplift
- ◆ Treatment of other payments from the Employer (eg ex gratia payments on termination)

Candidates should provide evidence that they have researched the main principles covered in the case study. They should consider the relevant case law and make an assessment, based on that research, of the remedy potentially available.

Candidates will be required to complete the assessment in their own time and should be given two weeks in which to do this. The candidate should show that s/he has engaged in research on the relevant law and quote relevant, current Statutes and case names.

Higher National Unit specification: statement of standards (cont)

Unit title: Unfair Dismissal

Written/oral evidence of knowledge which cannot be inferred from the practical exercise should be sampled.

Assessment Guidelines

The assessment for this Outcome may take the form of one assessment consisting of written and/or oral responses to either a set of extended response questions, or restricted response questions, or multiple choice questions, or case study/studies, or a mixture of any of these which will sample the Knowledge and/or Skills required.

The sampling of knowledge could be achieved by including sampling questions covering three of the items in Knowledge and/or Skills.

Higher National Unit specification: support notes

Unit title: Unfair Dismissal

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

Guidance on the content and context for this Unit

This Unit is intended to give candidates a broad, general understanding of the law of unfair dismissal.

It would be beneficial if the candidate had knowledge of legal concepts such as an understanding of the difference between common law and statute law. However, if the candidate, has completed the Unit F1A7 34 *Scottish Legal System*, or has worked in a legal environment, then they should already possess this understanding.

On completion of this Unit, candidates should be able to identify situations where specific principles apply, explain how they apply and suggest solutions to a given situation.

Outcome 1

The Employment Rights Act 1996 s98 sets out five potentially fair reasons for dismissal. These make up the Knowledge and Skills for this Outcome.

Each of these should be covered in sufficient detail for the candidates to understand the basic principles of each, how to identify the potential reason for a dismissal, how to distinguish one from another.

For example, there are different reasons for a Capability dismissal such as ill health, performance, lack of qualifications etc

Also, when teaching SOSR as a potentially fair reason, centres should be at pains to stress that this is not a reason in itself but a label applied to the reason. The actual reason may be loss of confidence and trust, end of a fixed term contract, third party pressure, etc

Outcome 2

There are two elements to a fair dismissal — substantive fairness (ie a fair reason, see above) and procedural fairness.

As far as Capability and Conduct dismissals are concerned, the ACAS code of practice is the principal reference point for procedural fairness. Candidates should be very familiar with the Code and should be aware of the extensive guidance document which accompanies it.

Centres should not teach the 'old' statutory dismissal procedures. It is highly unlikely that in practice candidates will come in to contact with these.

Higher National Unit specification: support notes (cont)

Unit title: Unfair Dismissal

General principles of fairness should cover the main cases in operation in this area dealing with matters, such as the band of reasonable responses, reasonable belief of guilt, etc as well as the principles of natural justice.

Whilst collective redundancy could potentially warrant a whole Unit, it is included in this Unit to give candidates a basic introduction in to the concepts of redundancy. It is not envisaged that this will be taught in minute detail. Candidates should however be taught the basic concepts such as identifying a 'pool', consultation requirements, representatives, etc

Outcome 3

Constructive dismissal occurs where the employee resigns in response to some conduct on the part of the employer which is a material breach of the contract of employment, sufficiently serious as to allow the employee to treat the contract as repudiated.

The terms of the contract which may be breached include express terms such as failure to pay; unilateral changes to terms and conditions; change of place of work; change in duties and/or status.

There are also certain implied terms, the most well known of which is the implied term of trust and confidence.

Candidates should be taught how to identify potential breaches of contract and to consider whether they may be sufficient to warrant constructive dismissal.

The further elements which a Tribunal will consider when deciding whether or not constructive dismissal has taken place include whether the breach was sufficiently serious — it is possible for an employer to be in breach of contract but without giving rise to a complaint of constructive dismissal.

Finally, the employee must not delay in resigning as a result of the perceived breach. Should they so delay, then they may be held to have affirmed the breach in which case they will be denied the right to claim as a result of it.

Although constructive dismissal may be proven, there remains the question of whether that dismissal was fair or unfair. This is a separate matter which must be considered. Whilst it is not commonplace for constructive dismissals to be held to be fair, due to the circumstances under which most occur, there will be occasions, particularly in cases involving re-organisation/changes to terms & conditions, in which the dismissal will be fair.

Finally, given the nature of the claim being made, the onus rests with the employee to establish the breach of contract on the part of the employer. This is, to a certain degree, a reversal of the normal burden of proof for unfair dismissal claims in which the employer normally has to establish the fair reason for the dismissal.

Reference should be made to relevant, current case law to provide candidates with guidance on the most up-to-date thinking in this complex and ambiguous area of the law.

Higher National Unit specification: support notes (cont)

Unit title: Unfair Dismissal

Outcome 4

In 'normal' circumstances, an employee must have at least 12 months service in order to qualify for protection from unfair dismissal.

There are certain circumstances in which this prerequisite does not apply.

This Outcome explores the main exceptions to the qualifying service rule.

When teaching these points, centres should be sure to focus on the point that a dismissal will be held to be unfair if the reason or principle reason for dismissal falls in to one of these categories.

- ◆ Discriminatory reasons — whilst discrimination is taught in another Unit, the main principles should be understood. Consideration in this respect must be paid to the Equality Act and each of the protected characteristics contained within it. Dismissal for a discriminatory reason may occur as the result of direct discrimination, indirect discrimination, victimisation and/or failure to make reasonable adjustments (in the case of disability). NB Other matters to do with discrimination such as harassment may also form the basis for a complaint of constructive dismissal.
- ◆ Whistleblowing — matters which fall under the Public Interest Disclosure Act 1998. This should explore the main principles of whistleblowing such as the definition of a qualifying protected disclosure.
- ◆ Health & Safety reasons — ERA 1996 s100
- ◆ Working Time — ERA 1996 s101A
- ◆ Assertion of a statutory right — including Working Time Regs (ERA s101A), right to be accompanied, flexible working, ERA s98B, s99, s104, s104A
- ◆ Trade Union reasons — TULRCA s152 and s238A

Higher National Unit specification: support notes (cont)

Unit title: Unfair Dismissal

Outcome 5

Employment Tribunal Procedure and Practice is covered in another Unit, however, for the purposes of this Unit, Candidates should be aware that aggrieved individuals do have access to a potential remedy through the Tribunal.

Firstly, candidates need to understand who has the right to claim. This seems straightforward enough but in fact can cast up a number of complicated legal arguments which often require consideration at a preliminary hearing.

Only employees have the right to claim unfair dismissal and so a consideration of employment status is necessary. Also, qualifying length of service (notwithstanding the matters considered within Outcome 4), continuous employment — this may touch on areas such as Transfer of Undertakings (Protection of Employment) (TUPE) and Associated Employers although clearly a detailed analysis of these areas is beyond the scope of this Unit.

Candidates should be taught the time limit for bringing a claim of unfair dismissal, three months from the Effective Date of Termination, and the scope for extension of that time limit.

Candidates should learn what reinstatement and reengagement are and the difference between the two.

In terms of compensation, the following will be relevant:

- ◆ Basic Award
- ◆ Compensatory Award
- ◆ Interim Relief
- ◆ Loss to date of hearing
- ◆ Future Loss
- ◆ Loss of Statutory Rights
- ◆ Mitigation of Loss
- ◆ Contributory Fault Reductions
- ◆ Polkey Reductions
- ◆ Uplift
- ◆ Treatment of other payments from the Employer (eg ex gratia payments on termination)

Candidates would also benefit from a broad overview of ACAS and the role they play in the process. It would be relevant to advise candidates that the majority of actions are settled by employers for a variety of reasons. It is also worth noting that Claimant's can obtain a far broader range of 'remedies' as part of conciliated settlement, which they could not obtain from the Tribunal, such as an agreed reference or an apology.

Higher National Unit specification: support notes (cont)

Unit title: Unfair Dismissal

Guidance on the delivery and assessment of this Unit

Outcomes 1 and 2 can be combined to a certain degree as it is probable that centres will find it easier to teach the principles and the procedures relating to each reason in tandem, rather than teach all of the reasons followed by the procedures.

When setting case studies for the assessment of the Unit centres should consider how best to incorporate various different elements of the course in order to test the candidates' overall understanding of the law in practice.

Candidates should be encouraged to consider alternative Outcomes from the scenarios they are presented with such as, for example, where conduct and capability may intertwine to form more than one potential reason for dismissal or where dismissal following a period of absence may constitute an act of disability discrimination.

Assessment should consider the candidates' understanding of the claims which may be brought, identify potential strengths and weaknesses in the case, flaws in the procedure applied, etc as well as the potential remedy available to the employee.

As far as possible centres are encouraged to use current case law to illustrate the points and bring the topic to life.

Candidates should be encouraged to use web-sites such as ACAS, the Equality and Human Rights Commission, Daniel Barnett, Personnel Today (Employment Law Section) in order to further broaden their knowledge and interest in the topic.

The Employment Appeal Tribunal (EAT) publishes statistics each year showing the number of claims brought, the Outcomes, general levels of compensation etc

Open learning

This Unit is suitable for open and distance learning delivery. The assessment strategy and guidelines described in this specification must still be applied if this method of delivery is chosen.

For further information and advice, please refer to the SQA document *Assessment and Quality Assurance for Open and Distance Learning* which is available on SQA's website www.sqa.org.uk

Opportunities for the use of e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or e-checklists. Centres which wish to use e-assessment must ensure that the national standard is applied to all candidate evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. Further advice is available in *SQA Guidelines on Online Assessment for Further Education (AA1641, March 2003)*, *SQA Guidelines on e-assessment for Schools (BD2625, June 2005)*.

Higher National Unit specification: support notes (cont)

Unit title: Unfair Dismissal

Opportunities for developing Core Skills

All elements of the Core Skill of Problem Solving — critical thinking, planning, organising, reviewing and evaluating — are naturally developed as candidates analyse fictitious case studies, identify possible remedies available and, under the supervision of a solicitor, complete tasks relating to the application of Employment Law. Cases may be complex; an overview of current legal/statutory requirements will be needed as candidates identify potential strengths and weaknesses in a case, note any flaws in procedure applied and advise on remedies that may be available to concerned parties. Discussion of current real life situations as reported in the media will be a useful way to evaluate possible alternative solutions.

Paralegals have to build and maintain effective written and oral communication with a range of others, including the Supervising Solicitor, clients and colleagues. As the Unit is undertaken there should be a focus on enhancing the additional or specific communication skills needed in the production of documents that are legally compliant, accurate and comprehensive. Recognition of factors affecting and maximising success in communicating with people, including methods for negotiating positive Outcomes and overcoming potential barriers will be an element of competence. Opportunities for enhancing oral skills may also be provided by in depth discussion or the option of oral explanation.

Flexible skills in Numeracy should be developed to accurately assess information on timescales, any anticipated financial losses and potential compensation awards. Critical analysis of current events that illustrate the results of case law can provide formative opportunities to calculate and present financial data in an appropriate format with the required attention to detail.

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements

History of changes to Unit

Version	Description of change	Date

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General information for candidates

Unit title: Unfair Dismissal

What this Unit is about

This Unit is designed to provide you with knowledge of the sources of employment law and how to research employment law in the office environment. You will gain a basic knowledge of key employment rights.

By the end of this Unit you will be able to explain what the potentially fair reasons are for dismissal; explain the procedural requirements for a dismissal to be fair; explain the circumstances in which an employee may be constructively dismissed; and explain the circumstances in which a claim for unfair dismissal may be brought without the requisite 12 months qualifying service. You will also be able to advise on the remedies available to employees who have been unfairly dismissed.

This Unit is largely assessed through case studies together with a set of restricted response questions or multiple choice questions and you will be expected to apply your knowledge of the law to the facts of the case in order to give advice to your client. You will be expected to show clear reasoning in your case studies with reference to the applicable legal principles.

You will learn how to:

- ◆ Explain how conduct can lead to dismissal
- ◆ Explain how capability can lead to dismissal
- ◆ Explain how redundancy can lead to dismissal
- ◆ Explain the imposition of a statutory restriction
- ◆ Explain some Other Substantial Reason (SOSR) for fair dismissal
- ◆ Advise on the ACAS Code of Practice*
- ◆ Advise on the General Principles of Fairness*
- ◆ Advise on Collective Redundancy Procedures (Trade Union and Labour Relations (Consolidation) Act 1992 ss 188–192)*
- ◆ Advise on situations which may amount to constructive dismissal (ie where an employee resigns because of the conduct of their employer)*
- ◆ Advise on situations where the normal 12 months qualifying service requirements do not apply for bringing a claim of unfair dismissal*
- ◆ Advise on claims to the Employment Tribunal*
- ◆ Advise on Reinstatement*
- ◆ Advise on Reengagement*
- ◆ Advise on Compensation*
- ◆ Advise on Conciliated Settlement and the Role of ACAS*

* Paralegals should provide advice to clients under the guidance of their supervising solicitor.