

CONSTRUCTIVE DISMISSAL

1. Introduction

Constructive dismissal is a claim that can be made into an employment tribunal (ET) but is fraught with legal difficulties. This bulletin provides advice to representatives if they are dealing with a member who believes they should make such a claim.

2. Legal requirements

In order to bring a claim for constructive dismissal our member would first have to resign from their employment. That is **never** advice we should give **without** taking our own **advice** from a full time officer. This is because there are three things the member will have to prove to win a claim for constructive dismissal:

- that the employer has fundamentally breached their contract of employment
- that they resigned for that reason and no other
- that they have not unduly delayed in resigning – in other words, they have not accepted the breach and then resigned later, typically having discussed the matter with colleagues and/or friends and family.

3. Fundamental breach of contract

The breach of contract causing the resignation must be so serious as to go to the heart of the contract. Remuneration is at the heart of the contract of employment, as would be a serious breach of the duty to investigate and deal with a grievance

about an act or acts of discrimination. There is little else that will amount to a fundamental breach of an employee's contract. This is because the breach must be sufficient to demonstrate that the employer does not wish the contract to continue to operate and is analogous to gross misconduct by an employee.

4. ET prospects

Ordinary unfair dismissal claims are not easy to win at an ET. Constructive dismissal claims are even more difficult, precisely because the burden of proof is reversed and now lies with the claimant. As a result, very few resignations will leave the member in a position where TSSA will offer legal support to bring such a claim. Our policy is generally to provide legal support to members for ET claims that have more than a 50% chance of success. Generally speaking constructive dismissal claims rarely meet that test.

5. Negligence

Any representative that suggests to a member that they should resign and make a claim for constructive dismissal runs the very real risk of attracting a claim of negligence should the member take their advice, give up their employment and then lose the claim in the ET. The member is very likely to feel very aggrieved that they have lost their source of income by following advice – especially so if the

union then declines to provide legal support for an unwinnable claim.

6. Legal advice to representatives

Any representative that is unsure about a situation facing their member should seek the advice of their full time official, the members' helpdesk or the union's employment rights adviser. General advice about all legal matters is available from a variety of sources. ACAS is available Monday to Friday between 8 am and 6 pm to offer help and assistance to employers, employees and trade unions, and can be contacted on 0300 123 1100. Branches can affiliate to the Labour Research Department which provides booklets on a substantial range of employment law matters from a trade union perspective, in hard copy or through an online subscription. Details are available from www.lrd.org.uk or call them on 0207 928 3649.

Further Information

More information on this and other legal matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046
- ❑ the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law.