

If changes cannot be agreed

It can sometimes feel difficult and time consuming to reach an agreement on a contract change.

It can be particularly difficult if proposed changes are complex. Negotiations can take time, there might be disagreements and times when it seems like there's no way forward. It can be helpful to remember that:

- disagreements often generate new ideas and lead to solutions
- there will be benefits for everyone involved if you do reach agreement
- there are significant risks for you if you try to change a contract without agreement

Risks of trying to change a contract without agreement can include:

- legal claims, for example claims of breach of contract or [constructive dismissal](#)
- damaging morale and good working relations in an organisation, potentially for a long time
- strikes or other industrial action, if there's a trade union
- reputational damage to an organisation or brand

How you can keep trying to reach agreement

Sometimes even if you have consulted with employees and employee representatives you might not have been able to reach agreement. You should continue to explore all options for as long as is reasonably possible.

It can help to consider:

- how to keep discussions constructive
- if anything might make the proposed changes easier for people to agree
- how Acas can work with you and employee representatives to help reach an agreement

Keeping discussions constructive

To stay focused on keeping discussions constructive, it can help to:

- share any more relevant information – being transparent about your reasons can help others understand them better and make discussions more effective
- continue to ask questions and listen to answers – taking time to understand other people's views can help you find common ground
- be prepared to consider changes to your original proposal – encourage alternative solutions and be open-minded to them
- try to agree one change at a time – it can help to break down complex problems into smaller ones, for example start with 'what' might need to change, then move on to 'how' and 'when'
- recognise that differences of opinion are normal and to be expected – considering different views can lead to new possibilities to explore
- try to find a solution that includes something for everyone – do not assume that someone must win and someone must lose

Making proposed changes easier for people to agree

If employees or representatives are reluctant to agree to a proposed change, you should consider if there's anything you could offer that could make the proposal more attractive.

In some cases, it might be possible to offer some new, more beneficial terms to compensate for a less attractive change to other terms. This is sometimes called 'buying out' a term in the contract.

For example, an employer might offer extra paid or unpaid leave to compensate for an unpopular proposal to change agreed shift patterns.

It can also be helpful to consider if:

- a change could be introduced gradually rather than all at once
- a change could be introduced on a temporary basis only
- you could achieve the aims of a proposed change in a way that might seem fairer and more acceptable, for example by changing senior managers' contracts in a similar way to those of other employees
- all parts of a proposed change are needed, or if you could achieve some aims in other ways
- there are solutions that may not need a contract change

If there's a 'collective agreement' with a trade union, it should set out a 'collective bargaining' procedure for negotiations with the union.

You must not make direct offers to employees or workers as an incentive to give up any of their terms that are covered by the agreement. The only time you could consider this is if you've followed and genuinely believe you've exhausted the agreed collective bargaining procedure.

If you make direct offers without first exhausting the agreed procedure, you're likely to be legally challenged about this at an employment tribunal.

How Acas can help

We offer a range of services that can help you reach agreement with employees and employee representatives. This includes:

- Acas services to help resolve disagreements
- training and tailored support for your organisation

[Find out more about Acas support for employers](#)

If you decide to go ahead and make a contract change

If you still cannot reach agreement after extensive attempts, it may sometimes be possible to introduce a contractual change by either:

- giving notice to the employee that you intend to make a change ('imposing' a change) to their employment contract with effect from a certain date
- giving notice to terminate the employee's existing contract and offering to rehire the employee on the new terms ('dismissing and rehiring' – some people call this 'fire and rehire')

You should thoroughly explore all other options before deciding to take either of these steps. They both carry significant legal risks and can damage working relations, morale and levels of performance in your organisation.

Imposing a change

If you impose a change to a contract before getting agreement you will be breaking the agreed contract ('in breach of contract').

In some circumstances, an employee's actions might count as agreeing to ('affirming') the change if:

- they continue to work under the changed terms and conditions
- they do not inform you that they do not agree to the change

However, if an employee does not agree with an imposed change, they might decide to:

- temporarily work to the new terms and conditions, but make it clear they are challenging the change ('working under protest')
- resign and make a claim of [constructive dismissal](#) at an employment tribunal, if they feel the change significantly breaks their agreed contract (a 'fundamental breach of contract')

If an employee works under protest

If an employee works under protest, they continue to work under the changed terms, but make it clear that they do not agree to the change and take steps to challenge it.

An employee should make it clear to you that they're working under protest. They should usually do this in writing on a regular basis, for example every time they get paid.

They should normally only work under protest for a short time so they can formally raise their concerns with you or take legal action if you do not resolve their concerns.

For example, depending on the circumstances, an employee could decide to make legal claims against the organisation for:

- damages for breach of contract at a civil court
- 'unlawful deduction of wages' at an employment tribunal, if the change affects their pay
- [discrimination](#), if the change means they are treated unfairly in relation to certain 'protected characteristics' under the law

If you impose a change that makes an employee's terms and conditions significantly worse than before, they might be able to claim unfair dismissal while continuing to work under the changed terms. This is a very complex claim. You should get legal advice if you're in this situation.

If there's a trade union

If you impose a change after not being able to reach agreement with a recognised trade union, the trade union might consider:

- taking industrial action – for example a strike, refusing to take part in certain activities, or a 'work to rule' where employees do no more than what they're contractually required to do
- supporting individual employees to make claims to a court or employment tribunal

Dismissing and rehiring

You should only consider dismissing and offering to rehire someone on new terms ('dismissal and re-engagement') as a last resort. This is sometimes known as 'fire and rehire'.

Before dismissing, you must have made all reasonable attempts to reach agreement through a full and thorough consultation.

If you're proposing to dismiss and rehire 20 or more employees, by law you must collectively consult on the proposed dismissals.

It's important to consider that by ending the employee's original contract of employment you will be dismissing them, even if they accept a new contract and continue to work for you. So you must:

- have a fair reason for dismissal
- follow a fair dismissal process
- provide the correct amount of notice
- offer the employee the right of appeal against their dismissal

It is important to follow a fair procedure as set out in the [Code of Practice on dismissal and re-engagement on GOV.UK](#). This is the minimum procedure that you must follow.

The Code says you should [contact the Acas helpline](#) for advice before raising the possibility of dismissal and re-engagement with employees or representatives.

[Find out more about dismissals](#)

Risks of dismissing and rehiring

Proposing to dismiss and rehire an employee or worker is an extreme step that has significant risks.

You should always carefully consider the risks, even if you feel there's an urgent need to make contract changes and expect it may be difficult to reach agreement.

It's likely that employees or their representatives will view a proposal to dismiss and rehire as a threat. This might:

- cause immediate and long-lasting damage to trust and working relations in an organisation
- make it harder for both sides to reach a negotiated solution

Other risks include:

- losing valued people from an organisation – either because they do not accept the offer of a new contract, or they leave afterwards because they're not happy with the change or the way it was made
- legal claims, such as potentially costly claims of [constructive dismissal](#) and [unfair dismissal](#)
- reputational damage to an organisation or brand, making it difficult to attract new employees
- likely [industrial action](#) if there's a trade union, as well as longer-term damage to relations with the union
- the issue you're looking to deal with still not being resolved satisfactorily

Consider the reason for dismissal

It's important to consider the reason for the proposed dismissal. This will affect the process you need to follow and any payments you may need to make to employees.

If the reason for dismissal is redundancy

The reason for dismissal could be redundancy even if you are offering the employee a new contract. For example, it could be a redundancy situation if:

- you're proposing contract changes because the number or types of roles needed to do certain work have changed
- the changes you're proposing will significantly change the roles of affected employees

If it is a redundancy situation you must:

- [follow a fair redundancy process](#)
- [pay the correct redundancy pay](#)

The Code of Practice on dismissal and re-engagement does not apply to redundancy dismissals.

Other reasons for dismissal

If you dismiss and offer to rehire someone and it is not a redundancy situation, you will need to show you had 'some other substantial reason' to dismiss if it's challenged at an employment tribunal.

For example, it might be considered 'some other substantial reason' if:

- your business is in severe financial distress
- you've made exhaustive attempts to reach agreement on contract changes
- there was genuinely no other option but to dismiss and offer to rehire

An employment tribunal will consider factors such as:

- if you had a good business reason for introducing the change
- if you reasonably and genuinely consulted with employees, including making any compromises where appropriate
- if it was reasonable for you to decide that the benefits of the change for the organisation outweighed the disadvantages for affected employees
- if the changes you made were reasonable, for example if changes did not unfairly affect the financial wellbeing of employees
- the extent to which you considered alternatives to dismissal
- if any recognised trade union recommended or objected to the proposed terms
- how many employees accepted the change and how many rejected it
- if it was reasonable for an employee to refuse the change in the circumstances

If you're proposing to dismiss and rehire 20 or more employees

By law, you must 'collectively consult' if you're proposing to dismiss and rehire 20 or more employees:

- at one establishment
- within a period of 90 days or less

Collective consultation is when you consult with a recognised trade union or other elected employee representatives. An 'establishment' might be wider than a single workplace, but not necessarily as wide as your whole organisation.

You must collectively consult to explore how to:

- avoid the dismissals
- reduce the number of dismissals
- limit the consequences of the dismissals within the organisation

The law says you must start this consultation 'in good time'. What counts as 'in good time' will depend on the circumstances. However, you must start consultation for:

- 20 to 99 employees – at least 30 days before the first proposed dismissal
- 100 or more employees – at least 45 days before the first proposed dismissal

You must follow the same process as for [collective consultation in redundancy situations](#). This applies even if the reason you're proposing to dismiss and rehire is not redundancy but 'some other substantial reason'.

If you fail to collectively consult

If you fail to collectively consult, it could lead to a claim for compensation known as a 'protective award'. This can be up to 90 days' full pay for each affected employee.

Important: For redundancy dismissals on or after 6 April 2026 the maximum protective award for failing to consult in collective redundancy will increase. It will double from 90 days' pay to 180 days' pay for each affected employee.

If you do not follow the [Code of Practice on dismissal and re-engagement on GOV.UK](#), this could be taken into account by an employment tribunal making a protective award. If it is found you unreasonably failed to comply, from 20 January 2025 they could increase the award by up to 25%.

Where it is the employee who has unreasonably failed to comply with the Code, their award may be reduced by up to 25%.