



EMPLOYMENT LAW

UNFAIR DISMISSAL: ARE YOU READY FOR 2027?

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Speakers



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What are we going to cover today?



Recap of the changes affecting unfair dismissal claims

How will the changes affect dismissals taking place in 2026?

How will the changes affect employer practices and dismissals from 1 January 2027?

Can you reduce your exposure to the new rules?

RECAP OF THE CHANGES AFFECTING UNFAIR DISMISSAL CLAIMS

What's changing?

EXTENSION OF THE TIME LIMIT TO BRING A CLAIM – 1 OCTOBER 2026

- Limitation period for unfair dismissal (and all ET claims) to increase from three to six months.
- New time limit will apply to causes of action occurring on or after 1 October 2026 (i.e. it will not have retrospective effect).
- A six-month time limit plus up to 12 weeks Acas Early Conciliation means claims may be brought up to nine months after dismissal.

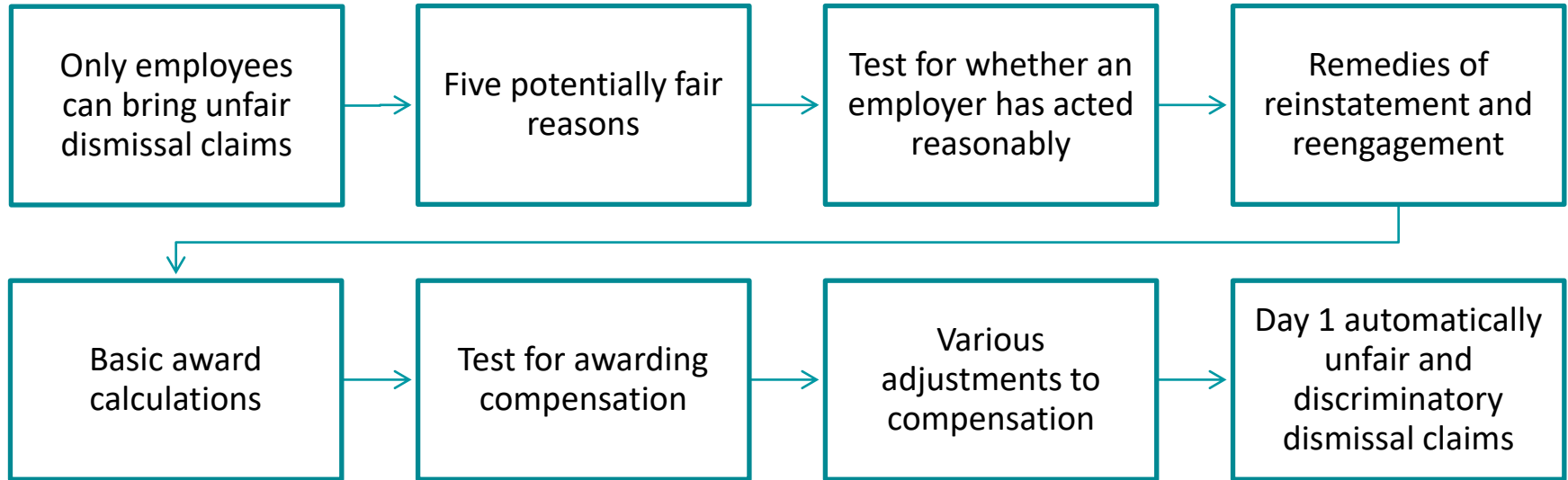
REDUCTION OF THE QUALIFYING PERIOD TO BRING A CLAIM – 1 JANUARY 2027

- Original “Day 1” right proposal abandoned (together with light touch dismissals during an “initial period of employment”).
- From 1 January 2027, the qualifying period will be reduced from two years to six months.
- Will apply to all employees including those engaged on fixed term contracts.

ABOLITION OF THE CAP ON THE COMPENSATORY AWARD – 1 JANUARY 2027

- New (and unexpected) proposal – not included in Labour’s Election Manifesto or *Make Work Pay* and no public consultation.
- From 1 January 2027, the statutory cap (i.e. the lower of 52 weeks’ pay or £123,543) will be abolished.
- Claims will be higher risk – especially from those with valuable remuneration packages, those who may struggle to mitigate their losses and regulated professionals in “career-ending” cases.

What's staying the same?



HOW WILL THE CHANGES AFFECT DISMISSALS TAKING PLACE IN 2026?

Employees who **do not** have 2 years' service

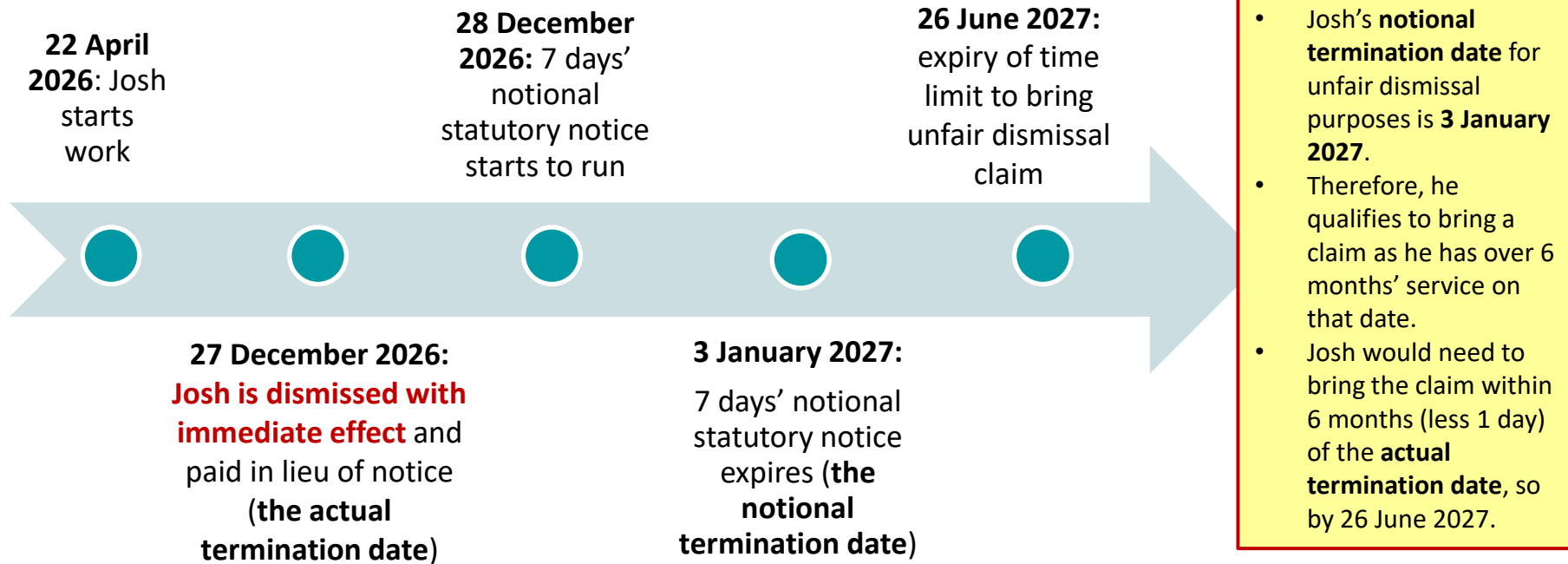
These employees do not qualify to bring unfair dismissal claims so lower risk
BUT three issues to consider

Still have day 1 rights to bring claims if dismissal is automatically unfair or discriminatory

Proactive management of new joiners needed to avoid them inadvertently accruing six months' service in 2027

For dismissals very close to the end of the 2026 – be aware of the rules extending the termination date

An example of how the termination date may be extended by the statutory notice period



Employees who **already** have 2 years' service

These employees already qualify to bring an unfair dismissal claim
BUT if you wait until 2027 to dismiss, the claim will be **uncapped**



Execute any necessary dismissals by the end of 2026
BUT the challenge is that some fair dismissal processes take significant time



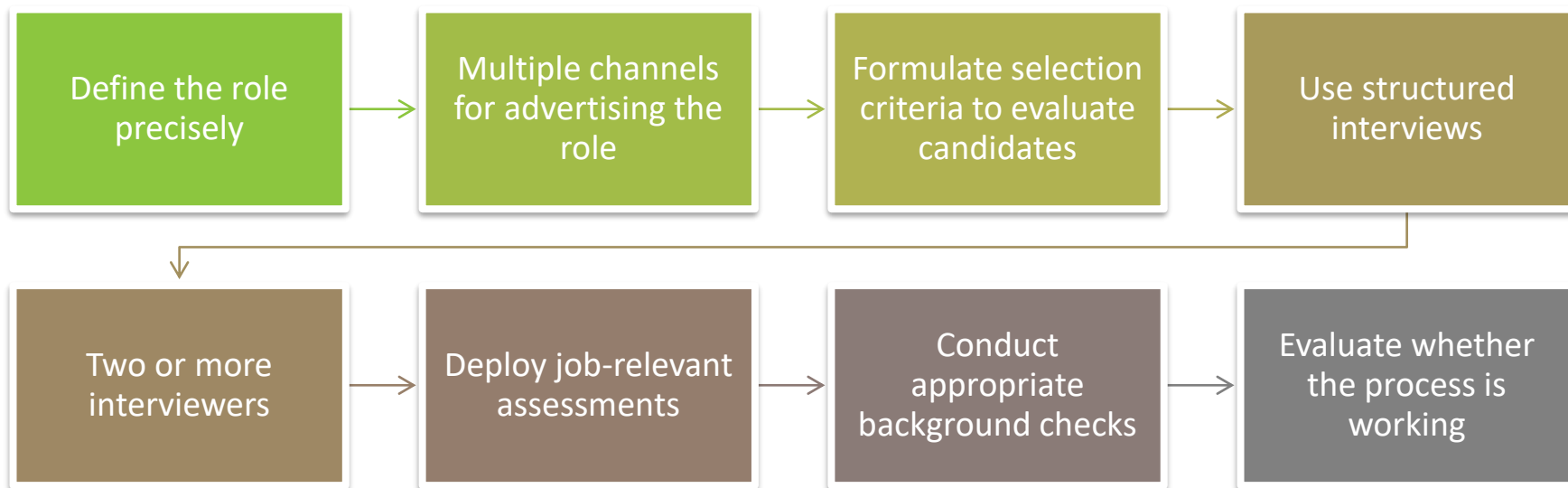
If you do not have enough time or issues arise late in the year, you can either:

Truncate the process, dismiss in 2026 and risk a procedurally unfair but capped dismissal claim (and can argue *Polkey*)

Complete a full process, dismiss in 2027 and put yourself in the best position to defend an uncapped claim

HOW WILL THE CHANGES AFFECT EMPLOYER PRACTICES AND DISMISSALS FROM 1 JANUARY 2027?

Tightening up recruitment processes



Optimising employment contracts

Clause	Issues to consider
Probationary periods	• Introduce probationary periods for most employees. • A period of 3 - 4 months is advisable in most cases.
Job descriptions	• Ensure all requirements of the role are covered (including readiness for promotion if you have an “up or out” model).
Notice periods	• Consider shortening notice periods for more junior staff and lengthening for very senior staff.
PILONs	• Consider staggering PILON payments on a monthly basis, with sums earned in mitigation to be deducted.
Compensation and benefits	• Consider making certain benefits service-related. • Revisit bonus and share scheme rules and be clear about when awards will not be made.
Summary dismissals	• Expand summary dismissal clause for senior employees to cover loss of confidence. • Review and tailor the list of gross misconduct offences in your Disciplinary Rules.

Making the most of probationary periods

What do your managers need to do?

Ensure job descriptions
are thorough

Objectives clearly
communicated

Monitoring of
performance and
conduct

Providing timely
feedback

Escalate if employee not
meeting required
standards

Decide whether to
extend probation or
dismiss in good time

Consider training managers and creating written guidance / supporting documentation

Once probation passed, managers must continue to monitor performance and provide feedback, set objectives and conduct honest appraisals

Getting dismissals process right – general considerations

Fair reason

- Be careful when selecting the reason for dismissal.
- If uncertain, consider whether dismissal for some other substantial reason is appropriate.

Fair process

- Ensure dismissal processes are robust to avoid procedural unfairness.
- But build in some flexibility to avoid tripping up on your own policy.
- Comply in full with the Acas Code of Practice where it applies.
- Always consider alternatives to dismissal, mitigating factors and consistency.
- Provide training to those who run dismissal processes.
- Maintain a clear paper trail.

Impacts on particular types of dismissal

Conduct

- Shift away from boilerplate lists of gross misconduct offences.
- HR and legal to have an ever more important role in scrutinising dismissal rationales.
- Reasonable investigations will be critical.
- Err on the side of providing more rather than less information to the employee.
- Scrupulous consideration needed of alternatives to dismissal and how similar cases have been dealt with.

Poor performance

- Increased pressure on managers to create a robust paper trail of feedback on performance.
- Shift to increasing the life of warnings to aid possibility of fair dismissal later down the line.
- Err on the side of giving more time to improve and more support / training before sanctioning the employee.
- For senior employees, unclear whether a full process is required but wise to follow some process.

Redundancy

- Great care needed as there are many different “pressure points” open to employees to complain about (e.g. pools incorrectly drawn, selection criteria not objective or not applied objectively, scoring unfair, individual and/or collective consultation inadequate, searches for alternative vacancies inadequate and/or consideration to alternatives to redundancy inadequate).

Dealing with more claims and more risk



More unfair dismissal claims - an estimated 3000 additional claims per year generated by change to **qualifying period**; no estimate of claims generated by **abolition of the compensation cap** but expected to be substantial.



Could there be a corresponding decrease in discrimination and whistleblowing dismissal claims?



Unfair dismissal claims also likely to become more complicated, requiring complex Schedules of Loss, expert evidence and longer remedy hearings.

Managing negotiated exits

Challenges you may face

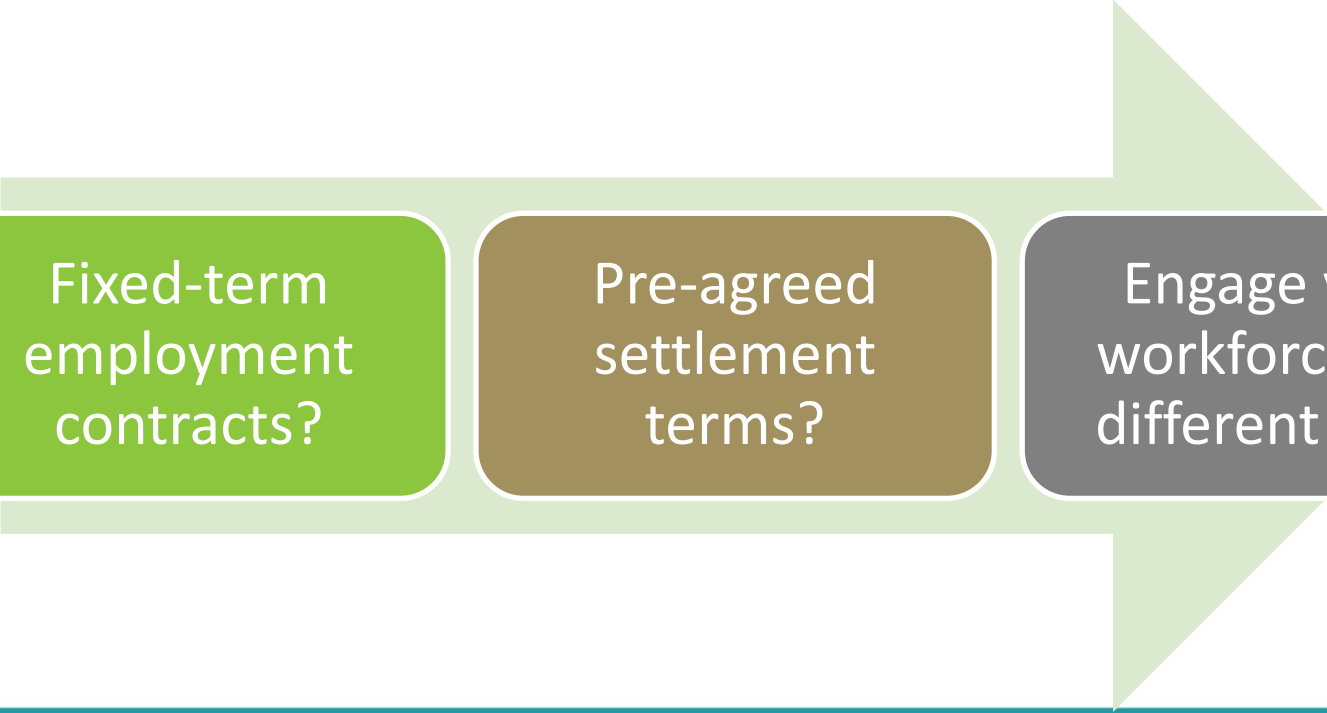
- Difficult to judge where to pitch offers without the cap.
- Employees may feel they have a stronger hand (not helped by AI).
- Negotiations may become more acrimonious following formal processes.

Strategy

- Emphasise and press the individual's duty to mitigate.
- Underline *Polkey* deductions if the claim hinges on a procedural error.
- Make a reasonable offer and leverage non-financial aspects.
- The significant delays in Tribunal system may work in your favour.

CAN YOU REDUCE YOUR EXPOSURE TO THE NEW RULES?

Options to consider



Fixed-term
employment
contracts?

Pre-agreed
settlement
terms?

Engage your
workforce in a
different way?

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