



# *Unfair dismissal:*

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HIRING WITH THE FUTURE IN MIND

Executive Search & Recruitment Specialists

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# Foreword

**UK laws surrounding unfair dismissal are set to change to offer more protections to workers.**

Whereas previously, an employee could only take their employer to tribunal for unfair dismissal after two years of employment, in the future, this will become a day-one right.

This means that companies will no longer be able to dismiss new employees for poor performance without taking reasonable steps to help them improve in their roles.

As employment law specialist Helen Crossland explains, “*carefully considered, fit for purpose recruitment policies and new starter programmes will be vital. [The new law] could make bad hiring decisions all the more costly and unforgiving.*” (People Management)

At Eden Scott, we believe that a fair workplace is a productive one, and that good hiring decisions benefit both employers and employees. By introducing better, more rigorous recruitment practices, employers can be confident in their new hires and ensure healthy working relationships for the long-term.

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Eden Scott is a team of recruitment professionals. While the information provided here is accurate to the best of our knowledge, it is intended for general guidance only.

To ensure compliance with current and upcoming legislation, employers can consult with an HR or employment law specialist.



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# Changes to unfair dismissal regulations

## What is unfair dismissal?

Unfair dismissal happens when an employee's contract is terminated and the employer:

- Acts unreasonably (for example, failing to provide enough notice)
- Doesn't follow the correct procedures (like failing to provide the right support)
- Misrepresents the real reason for the dismissal

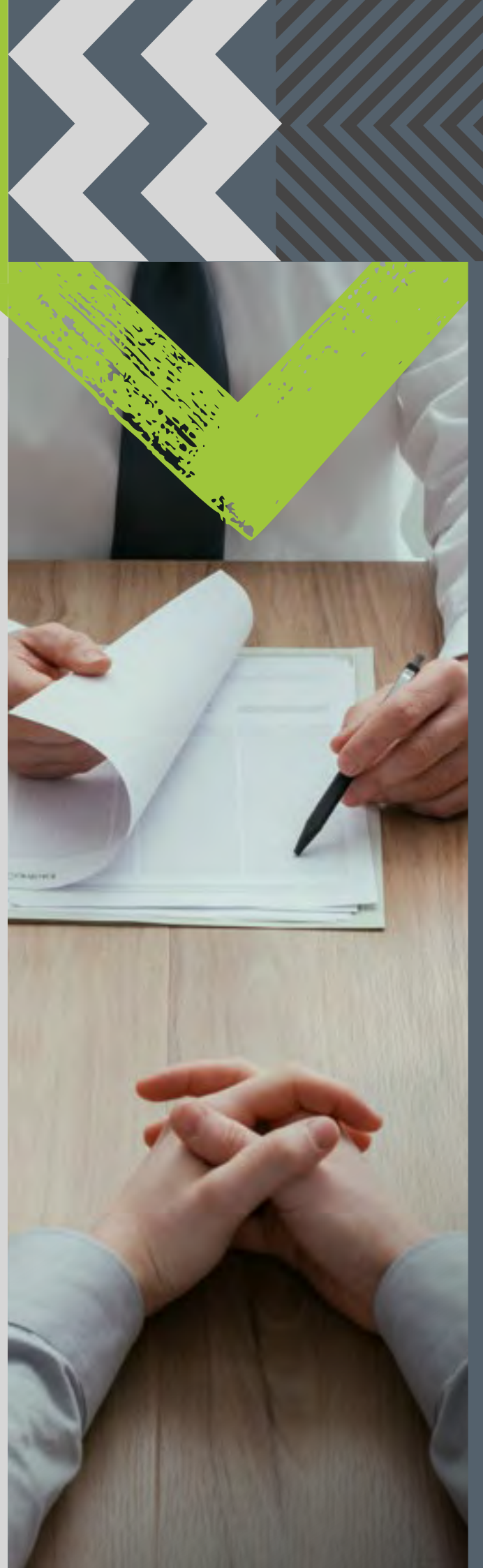
Additionally, some reasons for firing someone are automatically unfair. This includes dismissal for:

- Pregnancy, maternity, parental leave, adoption leave and time off for dependants
- Acting as a pension scheme trustee, employee representative, trade union representative or joining/not joining a trade union
- Being a part-time or fixed-term employee
- Asking for an employer to comply with Working Time Regulations, giving the proper annual leave or paying the National Minimum Wage
- Whistleblowing (in some circumstances)
- Compulsory retirement due to age (unless you can demonstrate it was justified. You could still be required to defend your decision at an employment tribunal)
- Certain types of lawful industrial action

## What is fair dismissal?

An employee can be fairly dismissed for poor performance, misconduct, due to redundancy (with some exceptions) and for reasons that legally prevent them from doing their job. Although few employers wish to dismiss an employee, at times, it is sadly unavoidable. However, when dismissing an employee, employers must act reasonably during the dismissal process. While there's no fixed definition of 'reasonable' in this context, you should:

- Genuinely believe the reason for dismissal is fair
- Carry out relevant investigations and follow the right procedures
- Tell the employee you're considering them for dismissal (and listen to what they have to say)



- Let the employee be accompanied at a disciplinary or dismissal hearing
- Give the employee the chance to appeal

### What are the consequences for unfairly dismissing an employee?

If an employee believes you have acted unfairly, they can take your business to an employment tribunal. Your company will have to pay for the costs of legal representation.

In addition, if the tribunal finds in the employee's favour, you may be required to give their job back or give them a different job. You might also need to pay them compensation. Employment tribunals can be costly and risk a negative company reputation.

### What's changing, and how does this relate to recruitment?

The definition of 'unfair dismissal' will stay the same, but the new law will get rid of the current two-year qualifying period. When the new law comes into effect, an employee whose contract is unfairly terminated will have the right to take their case to tribunal, no matter at what point in their employment the termination happened.

Contract termination for early-stage poor performance will be deemed unfair, unless reasonable performance management processes are followed. That makes better recruitment practices all the more important.

As yet, it's not clear when the new law comes into effect, but it's likely to be in autumn 2026 or later.



*The definition of "unfair dismissal" will stay the same, but the new law will get rid of the current two-year qualifying period.*





## Does this mean probationary periods are over?

No. Companies can still offer probationary periods to make sure employees are a perfect fit. Failing to meet the required standards during the probationary period will remain a valid reason to part ways (provided fair procedures are followed).

However, it's anticipated that the government will introduce a maximum probationary period, which is likely to be around nine months.

### Key takeaways

- Terminating employment without a fair reason or following the right procedures is unfair dismissal.
- Protection from unfair dismissal will become a day-one right, removing the two-year qualifying period.
- Probationary periods are likely to be capped at around nine months to prevent loopholes.
- To avoid the risk of poor hiring decisions and costly unfair dismissal claims, better recruitment processes are needed.



## Protecting your business

No business wants to dismiss a new employee. While sometimes it is unavoidable, there are steps that you can take to reduce the risk of needing to dismiss someone on the grounds of poor performance.

### Setting clear expectations

Setting clear expectations is important. Your employee's work agreement should clearly outline your expectations for their performance. Employees should never be in any doubt about what 'success' looks like in their role.

During the onboarding experience, you should emphasise your expectations, so you can be sure the employee understands your requirements.

Outlining your expectations helps to protect your business from unfair dismissal claims, as it would be unreasonable to expect an employee to achieve targets they weren't aware of.

### Providing regular feedback

If an employee's performance is dissatisfactory, you should tell them as soon as possible. This allows the employee to quickly course-correct.

If you wait to provide feedback, an under-performing employee might assume that they are doing a good job.

It's unreasonable to expect an employee to improve their performance without letting them know they're underperforming.

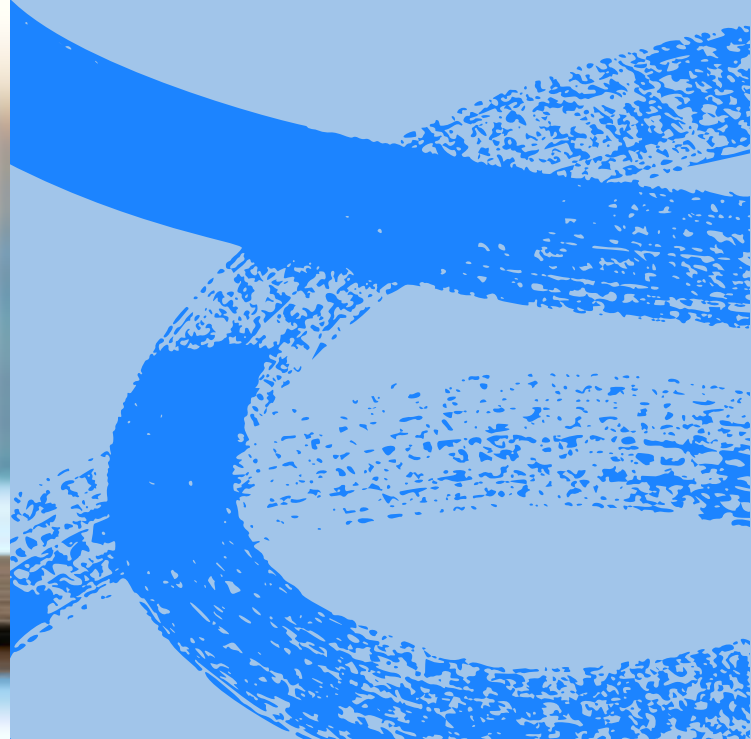
## Managing poor performance

If you notice poor performance, you should take immediate steps to manage the situation, for the benefit of both your business and your employee. This includes:

- Identifying and explaining the problem
- Referring to the expectations outlined in your employee's work agreement
- Having an informal discussion
- If necessary, holding a formal performance review
  - Creating a plan to improve
  - Setting clear, measurable goals
  - Agreeing on a timeline
- Monitoring performance
- Holding a follow-up performance review
- If necessary, providing a final warning
- Dismissing the employee only as a last resort
- Allowing the employee to appeal the decision if they feel it was unfair

## Key takeaways

- Clearly communicate performance expectations from the outset to make sure employees understand their responsibilities.
- Provide timely and regular feedback to help employees address issues quickly.
- Follow a structured performance management process, including setting measurable goals and offering support, with dismissal as a last resort.







# Designing robust recruitment practices

## Why good recruitment matters

Good recruitment isn't just about finding candidates with the right skills. It's about understanding your business's goals, values, and culture, and hiring employees who will integrate well with your team. This leads to stronger hires and a more productive workforce.

Rigorous vetting practices are especially important when it comes to ensuring a good fit. While a candidate may look great on paper, recruitment professionals go beyond the CV for long-term alignment.

## Three approaches to recruitment

When hiring, you have three main options:

### 1. Work with a recruitment agency

For organisations without the expertise or resources to find and vet top candidates, outsourcing to a recruitment agency can be an effective solution.

- Choose an agency with experience in your target industry for access to a stronger talent pool and insights into current hiring trends.
- A good agency will guide you on candidate expectations including salary ranges and typical motivators.

### 2. Internal recruitment team

Larger organisations sometimes employ in-house recruitment teams that operate similarly to an agency.

- This can be a valuable resource, but may not be cost-effective if hiring infrequently.
- A cost-benefit analysis is recommended to determine if this option makes sense for your business.

### 3. Self-published job ads

If you prefer a DIY route, you can post roles on job boards like Indeed or Monster.

This is the lowest-cost option upfront but comes with significant limitations:

- No pre-vetting of candidates.
- No third-party guidance to assess alignment with your goals, values, or culture.

While this approach may work for small local businesses, it is less effective for finding highly suitable candidates and increases the risk of making an unsuitable hire.

## Effective recruitment in eight steps

**Here's what a strong recruitment process looks like.** A good recruitment company like **Eden Scott** will work with you, and take most of these steps on your behalf.

### 1. Define your role

The first step in making the right hire is to clearly define your company's requirements. This involves not only addressing immediate needs but also anticipating how these needs will evolve.

For example, **Ian Macleod Distillers** approached us while expanding their visitor destination offering. They needed a self-starter, but also someone who could proactively support growth opportunities as the business matured.

In other cases, you might require a highly specialised skillset while also needing to meet broader commercial objectives. This raises an important question: should you hire two separate individuals or merge these responsibilities into a single role? Weighing up the pros and cons of each approach at this stage will help you avoid issues later on in the hiring process.

### 2. Get sign off

Make sure that the relevant stakeholders sign off on the role requirements and the associated benefits package before starting your candidate search. This will help you avoid unnecessary delays and reduce the risk of missing out on strong candidates.

At this stage, you should also agree on the required probationary period (if it's non-standard) to ensure it is included in the contract.

### 3. Create your job description

When writing your job description, start by compiling a clear and structured list of requirements:

#### Eligibility requirements

Create a list of or non-negotiable prerequisites a candidate must satisfy to be considered for the role. For example, this could include:

- Valid UK passport
- Relevant working visa
- Clean driving licence
- DBS check
- Employer references

#### Essential skills, qualifications and experience\*

Consider what competencies are required to perform the role effectively. For example:

- Specific qualifications or degrees
- Professional certifications (e.g., chartered)
- Relevant industry experience
- Specific technical or soft skills

#### Nice-to-have attributes

Consider what attributes would be beneficial to the role, but aren't essential to a strong performance. For example:

- Experience in a specific industry
- Additional or niche skills

Next, include a brief overview of your company. Remember, the job advert does more than just describe the role – it represents your organisation.

Highlight what your company does, your values and your culture. Explain additional benefits (beyond statutory requirements). By promoting all the positive things your business has to offer employees, you'll help attract great candidates who align with your goals.

#### \*A note on qualifications and experience

*While relevant qualifications and experience are good indicators of a candidate's abilities, it's better to prioritise ability over what's written on paper. If you feel a candidate may have strong relevant skills but they lack experience, it may still be worth inviting them to interview. See 'Hold an assessment centre' for more info on testing ability.*



**4. Promote your role**

The most effective way to find top talent is with a proactive approach. That's because the ideal candidate for your role isn't necessarily actively searching for a new job.

While job boards can help connect companies with job seekers, they only reach people currently looking for a role. Recruitment professionals – whether in-house or agency – can seek out potential candidates and tell them about the opportunity. This approach taps into a much wider talent pool, increasing your chances of making the best hire.

**5. Pre-vet candidates**

After receiving a candidate's application, confirm any mandatory eligibility requirements upfront. This avoids a drawn-out interview process for people who don't meet the essential criteria for the role. Then, conduct a short interview to understand the candidate's motivations.

**6. Compile a shortlist for interview**

Identify and compile a list of the most promising candidates from your applicant pool. These are the people who closely match the role's essential qualifications, skills, and experience, as well as meeting the mandatory eligibility requirements.

Review CVs, cover letters and any supporting materials to gauge how well the candidates' abilities align with the job description and your company's needs. At this stage, also consider less obvious factors, like cultural fit and potential for growth within your organisation. A well-crafted shortlist will help your assessments and interviews run smoother.

**7. Hold an assessment centre**

An assessment centre lets you evaluate the most promising applicants in a more practical, hands-on way. It's an opportunity to see if a candidate can deliver on what their CV and interview promise.

This process can include evaluations like psychometric tests, skills-based assessments, or role-specific tasks. For example, if you're hiring an events manager, you could create a scenario that tests their ability to perform under pressure. Tailoring the assessment to the role helps you identify the candidates with the right skills for your business.

**8. Conduct an in-depth interview**

Before making your final selection, invite the top-performing candidates for an interview with the relevant stakeholders. This should serve as the final stage to assess their demeanor, cultural fit, and specific work experience.

Competency-based questions are particularly effective at this stage, such as:

- "Can you describe a time when you...?"
- "How would you handle a situation where...?"

These types of questions further test a candidate's skills and decision-making abilities.

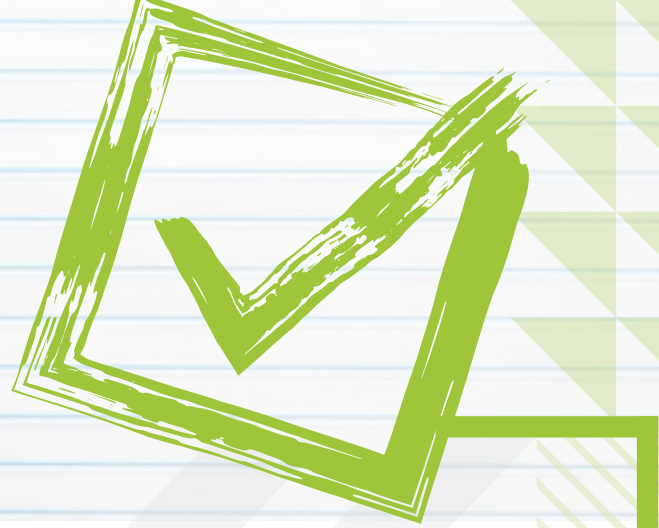
For more insights on effective interviewing techniques and recommended timelines, check out our guide, *The Art of the Interview*.

**Key takeaways**

- Successful recruitment goes beyond matching skills – it involves aligning candidates with your business's goals, values, and culture.
- You can work with a recruitment agency for expertise, rely on an internal recruitment team for in-house support, or post job ads yourself, each with varying costs and effectiveness.
- Follow the eight-step process for effective recruitment – or appoint a good recruitment company like *Eden Scott* to do it for you.
- Prioritise practical skills and cultural alignment over paper qualifications, using methods like assessment centres and competency-based interviews to secure the best long-term hires.


*Good recruitment...  
...It's about understanding  
your business's goals, values,  
and culture, and hiring  
employees who will integrate  
well with your team.*

# Recruitment checklist



- 1. Define your role**  
Understand your company's requirements and how they might evolve.
- 2. Get sign-off**  
Make sure the relevant stakeholders agree to the new role and associated T&Cs.
- 3. Create your job description**  
Include eligibility criteria, essential skills, qualifications and experience, and nice-to-have attributes. Don't forget to describe your business's goals, values and culture, and include non-statutory benefits like enhanced annual leave.
- 4. Promote your role**  
Promote your role directly, or work with recruitment specialists for a more proactive approach.
- 5. Pre-vet candidates**  
Confirm mandatory eligibility requirements and conduct a brief introductory interview. This should be less formal than the final interview.
- 6. Compile a shortlist for interview**  
Refine your candidate list by assessing applicants' qualifications, skills and experience against the requirements listed in your job description.
- 7. Hold an assessment centre**  
Test practical skills and ability to perform role-specific tasks. Consider psychometric testing if relevant.
- 8. Conduct an in-depth interview**  
Hold final interviews with the top performers. Prioritise competency-based interview questions.





# The Eden Scott difference: Your trusted hiring partner

When it comes to finding employees that can hit the ground running, Eden Scott is here to help. With several specialist teams within our organisation, we bring to-the-minute market insight to the table.

## Here's what sets us apart

- **In-depth sector understanding**  
With experts in 19 sectors across Scotland and the wider UK, we have the network and industry expertise to help you appoint the right talent.
- **Bespoke recruitment models**  
We develop custom recruitment strategies to meet and exceed our clients' requirements.
- **Relationship-driven approach**  
Our relationships are everything - we build meaningful working relationships with our clients and candidates to create the perfect match.
- **Seamless hiring process**  
With a truly transparent approach to talent acquisition, you can trust us to deliver exceptional service and an outstanding candidate experience.  
  
With Eden Scott, you gain a reliable partner dedicated to finding the best fit for your organisation. We'll handle all the complexities of hiring, so you can focus on what you do best - growing your business.

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For specialist recruitment support, get in touch.

[Contact us](#) to get started.

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