



DEBATE PACK

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Fire and re-hire tactics

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Summary

A Westminster Hall debate on 'Fire and rehire tactics' has been scheduled for Tuesday 27 April 2021 from 2.30-4pm.

The debate has been initiated by [Kate Osborne MP](#).

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The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. Background

The practice of fire and rehire (also called dismissal and re-engagement) occurs when an employer dismisses an employee and offers to rehire them on new terms. The new terms are usually more favourable toward the employer. The tactic is typically used when it has not been possible for the employer to vary the terms of the contract by agreement.

The practice is not unlawful in and of itself. However, as it does involve dismissal, the employer might face claims for unfair dismissal. If there are sufficient numbers of employees involved, the employer will also have a legal duty to undertake collective redundancy consultations first.

1.1 Varying the contract of employment

The relationship between an employer and an employee is principally governed by the contract of employment.

There are a number of different ways in which an employer can seek to vary the terms and conditions of the employment contract. Some contracts will contain a clause that allows an employer to unilaterally vary certain terms. If there is no such clause, an employer could vary the contract with the consent of the employee or the consent of a union for collective agreements.

The Advisory, Conciliation and Arbitration Service (Acas) guidance, [Changing an employment contract](#), provides a detailed overview of the different ways in which a contract of employment can be changed.

1.2 Dismissal and re-engagement

If an employer is unable to reach an agreement with an employee on changes to the contract, they may decide to dismiss the employee by notice and then offer to re-employ them on new terms.

As noted above, this practice is not unlawful in and of itself. However, there are various statutory protections that may be relevant. The Acas guidance summarises:

If you're an employer considering this option, first think about:

1. whether you've done everything you can to reach agreement
2. whether the changes are absolutely necessary
3. the risk to employee engagement and morale
4. the risk of legal action

If deciding to dismiss and rehire, the employer should:

1. follow a fair dismissal procedure
2. give the employee enough notice (statutory notice or what's in the contract – whichever is longest)
3. offer the employee a right of appeal against their dismissal

Changes should not take place until the employee has been fairly dismissed and then rehired under the new contract.

There are three main legal protections that are relevant in such cases:

- 1 Protection against wrongful dismissal;
- 2 Protection against unfair dismissal; and
- 3 Duty to consult in cases of collective redundancy.

A brief summary of these three protections is set out below.

Wrongful dismissal

Wrongful dismissal occurs where an employer dismisses an employee in breach of contract. This could occur, for example, where an employer does not give an employee the sufficient amount of notice set out in their employment contract.

Wrongful dismissal claims are brought in the civil courts. The court will not be concerned with the fairness of the dismissal. Rather, it will look at whether the employer complied with its contractual obligations.

Unfair dismissal

Employees who have worked for their employer for two or more years are protected from unfair dismissal. The protection is set out in the [Employment Rights Act 1996](#).

A dismissal will be unfair unless it is for a potentially fair reason listed in the legislation and the employer's decision to dismiss was reasonable in the circumstances.

One of the potentially fair reasons for dismissal is "some other substantial reason" (SOSR). In *Hollister v National Farmers Union* the Court of Appeal held that if an employer had 'good business reasons' for reorganising a business and dismissed an employee who would not accept new terms, they could rely on SOSR as the reason for dismissal.¹

Whether a dismissal is reasonable in the circumstances will vary from case to case. An Employment Tribunal will consider a range of different factors. The reasonableness of the new terms that are offered by the employer will be relevant but not decisive. Other factors, such as the number of employees who did accept the new terms might also need to be considered.²

In *Catamaran Cruisers Ltd v Williams*, the Employment Appeal Tribunal held that when deciding whether a dismissal was reasonable, tribunals must take a balanced approach. It should not focus solely on whether the new contract disadvantages the employee but must also consider

¹ *Hollister v National Farmers' Union* [1979] ICR 542

² [St John of God \(Care Services\) Ltd. v Brooks \[1992\] ICR 715](#)

the benefits to the employer in reorganising. It does not need to be shown that reorganisation is vital for the survival of the business.³ However, there is case law which suggests that an employer will need to show that it was under some pressure to put its employees on new contracts. It may not be not enough for the employer to show that reorganisation is just convenient.⁴

Collective redundancy consultation

Under the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#) (TULRCA), an employer who is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days must consult employee representatives. Consultations must begin 30 days before the first dismissal takes effect (or 45 days if the employer is proposing to dismiss more than 100 employees).⁵ The definition of redundancy, which in this context gives effect to EU law, is broad and it is generally accepted that the duty to collectively consult applies in cases of dismissal and re-engagement.⁶

If an employee is dismissed during the consultation period they can apply for a 'protective award' (a financial penalty against the employer).

Further detail can be found in the Library Insight, [Coronavirus: Protections from redundancy](#).

1.3 COVID-19 pandemic

The COVID-19 pandemic and the associated lockdowns have had a significant impact on the labour market. A detailed overview can be found in the Library Briefing, [Coronavirus: Impact on the labour market](#).

During the pandemic there have been a number of high-profile disputes about the use of fire and rehire tactics. The exact number of workers affected by fire and rehire is unknown. A report published by the Trades Union Congress in January 2021 [estimated that 9% of workers had been told to re-apply for jobs on worse terms](#) since March 2020, with higher rates among young and BME workers.

In June 2020, the Transport Committee published a [report](#) criticising the use of fire and rehire tactics by British Airways.⁷ On 16 September 2020, Alex Cruz, then CEO of British Airways, told the Committee that an agreement had been reached with workers.⁸ Unite the Union welcomed the agreement but [noted that it did not cover all workers](#). In December, [British Airways cargo workers voted to strike](#) over a dispute about fire and rehire. However, [an agreement was reached](#) on 27 January 2021.

The GMB Union is also involved in a dispute over fire and rehire with Centrica (British Gas). In February 2021, Chris O'Shea, CEO of Centrica,

³ [Catamaran Cruisers Ltd v Williams \[1994\] IRLR 386](#); [Garside and Laycock Ltd v Booth \[2011\] IRLR 735](#)

⁴ [McGibbon v OIL Ltd \[1994\] EAT 537/94](#)

⁵ Section 188, *Trade Union and Labour Relations (Consolidation) Act 1992*

⁶ Section 195, *Trade Union and Labour Relations (Consolidation) Act 1992*

⁷ Transport Committee, [The impact of the coronavirus pandemic on the aviation sector](#), HC 268, 13 June 2020

⁸ Transport Committee, [Oral evidence: Coronavirus: implications for transport](#), HC 268, 16 September 2020, Q624

gave evidence to the Business, Energy and Industrial Strategy (BEIS) Committee, arguing that reorganisation was necessary to protect jobs:

We have been going for over 200 years and we have terms and conditions that have been built up over a number of years. The market has changed. Customer needs and wants have changed. We have to change as well. Companies should not have the right to do this under any circumstance at all—employment rights are important—but it is inescapable that our use of contractors and the gig economy has increased substantially over the past several years.

What I am trying to do is to stop that and to protect the direct-labour employed model that we have. We have the biggest unionised workforce of our kind in the UK and I am proud of that; I want to keep that, but we need to be able to change. That is why I have told your colleague, Gavin Newlands, that we should not lose the ability for companies to make changes, but we should change when the Section 188 notice has to be served. I would argue that it would not be in line with British values to watch strong legacy companies like British Gas and others simply die over time, because, ultimately, that is what we will face.⁹

However, Justin Bowden, an officer at the GMB Union, told the Committee that fire and rehire tactics were not necessary and harmed meaningful negotiations with the union and workers. Workers at British Gas [have gone on strike](#) to protest the use of fire and rehire.

1.4 Calls for reform

The use of fire and rehire tactics during the course of the COVID-19 pandemic has led to a number of calls to reform the legislation.

Professor Alan Bogg, a Professor of Law at the University of Bristol, argued that under the current law the balance of power lies too much with the employer:

In short, a determined employer with the right legal advice can achieve its goal of reducing terms and conditions with relative ease. English law provides the signposts to navigate the way, abetted by a wide scope for legally compliant business reorganization dismissals. In other words, the contractual bargain is sacrosanct in English law except when it runs up against the employer's powers of dismissal, the totemic managerial prerogative of the English common law.¹⁰

Professor Bogg argued for a number of reforms that could provide greater protection to employees in these cases. His proposals include:

- Amend the *Employment Rights Act 1996* to make protection from dismissal a 'day 1' right in cases of dismissal and re-engagement;

⁹ BEIS Committee, [Oral evidence: The impact of coronavirus on businesses and workers](#), HC 219, 2 February 2021, Q354

¹⁰ Alan Bogg, [Firing and Rehiring: An agenda for reform](#), Institute for Employment Rights, 9 October 2020.

- Amend the *Employment Rights Act 1996* to provide that dismissal and re-engagement will be unfair if the employer had reasonable economic alternatives;
- Amend the *Employment Rights Act 1996* to provide that when assessing the reasonableness of the dismissal it is relevant to consider whether the employer had consulted with unions and obtained their agreement;
- Amend the *Trade Union and Labour Relations (Consolidation) Act 1992* so that workers as well as employees count towards the threshold of 20 dismissals.

In Parliament, Gavin Newlands MP has introduced two identical Private Members Bills to reform the law on dismissal and re-engagement: the [Employment \(Dismissal and Re-employment\) Bill](#) and the [Employment \(Dismissal and Re-employment\) \(No.2\) Bill](#). The Bills would add a new provision to the *Employment Rights Act 1996* to make a dismissal automatically unfair if the purpose of the dismissal was to re-employ the employee on less favourable terms. This approach would effectively make dismissal and re-engagement unlawful in any circumstance.

Introducing the second of the two Bill in the House of Commons in November 2020, Mr Newlands argued that it would provide protection to employees:

My Bill would make a simple amendment to the Employment Rights Act 1996 to add the re-employment of a worker on less favourable terms and conditions to the definition of unfair dismissal. That would allow employees to use the existing employment tribunal system to enforce their rights if required, and would mean that employers could no longer act with impunity. Amending the Act in that way would allow employees targeted for fire and rehire to take cases against unscrupulous employers and, where appropriate, secure reinstatement and compensation. In short, the Bill creates no extra bureaucracy, no extra administration and no extra complexity, but creates a necessary protection for workers that employers will be forced to respect or face judicial proceedings.¹¹

Neither Bill has been given a Second Reading and it is unlikely that they will pass through all of their Parliamentary stages.

During an Opposition Day debate on 25 January 2021, the Business Secretary Kwasi Kwarteng told the House of Commons that the Government had asked Acas to conduct a review of fire and rehire:

As I was saying, we have been very clear that this practice is unacceptable and the Under-Secretary of State for Business, Energy and Industrial Strategy, my hon. Friend the Member for Sutton and Cheam (Paul Scully), who is the Minister responsible for labour markets, has condemned the practice in the strongest terms on many occasions in this House. We have engaged ACAS

¹¹ [HC Deb 4 November 2020 c329](#)

to investigate the issue and it is already talking to business and employee representatives to gather evidence of how fire and rehire has been used. ACAS officials are expected to share their findings with my Department next month and we will fully consider the evidence that they supply.¹²

In response to Parliamentary Questions the Government has confirmed that it received the report from Acas in February 2021 and that it will be publishing its response in due course.¹³

On 13 April 2021, an [Early Day Motion](#) was published which calls on the Government to publish the Acas report. It also calls on the Government to legislate to limit the use of fire and rehire and to announce proposals in the forthcoming Queen's Speech. To date, 47 MPs have signed the motion.

¹² [HC Deb 25 January 2021 c88](#)

¹³ [PQ183120 \[on Re-employment\]](#), 22 April 2021

2. Press/Blog Articles

[Day of strikes to end 'bully boy' fire-and-rehire tactic used by British Gas](#)

Mirror.co.uk
25 April 2021

[Fire and rehire' tactics rife at firms that are in profit and claiming Covid cash](#)

The Observer
18 April 2021

[Hundreds of British Gas engineers to lose jobs in 'fire and rehire' scheme](#)

The Guardian
14 April 2021

[Labour MPs renew calls to outlaw 'fire and rehire' as British Gas workers sacked](#)

Labour List
14 April 2021

[Fire and rehire: is it even legal?](#)

People Management
9 April 2021

[Bill launched to ban exploitative fire and rehire practices](#)

Institute of Employment Rights
16 November 2020

[BA to drop controversial 'fire and rehire' plan for thousands of staff](#)

Financial Times
16 September 2020

[Replace furlough and stop firms 'firing and rehiring', Starmer to tell PM](#)

The Guardian
14 September 2020

[SNP MP Gavin Newlands demands action on labour exploitation](#)

The National Scot
26 July 2020

3. Press notices

[43rd day of British Gas strike action to coincide with mass sackings](#)

GMB

12 April 2021

The fact British Gas doesn't care for either customers or staff is shown by mass sacking of engineers it badly needs to service these customers

On Wednesday, (14 April 2021) British Gas will go ahead with a mass sacking of striking gas engineers who have refused to be bullied into "accepting" a 15% cut in pay rates and other imposed changes in terms and conditions.

This mass sacking will take place as gas engineers take part in their 43rd day of strike action on Wednesday, 14 April in this long-running and deadlocked dispute.

British Gas announced in July last year that staff in the Field staff bargaining group - who refused to accept imposed 15% cuts in pay rates and other detrimental changes - would be sacked. The letters confirming the sackings were sent out last week.

The date for the sackings with pay in lieu of notice was changed from Thursday, 1 April to Wednesday, 14 April with no explanation.

GMB members at British Gas have already taken 42 days of strike action against the imposition of the 15% cuts in pay rates and other changes via "fire and rehire" notices. In addition, an official national lockout dispute between British Gas and GMB will become effective from 14 April and will include further strike action and action short of a strike.

The strikes have led to a backlog to date of millions of customers waiting for planned service visits and hundreds of thousands having to wait for emergency repairs. British Gas has suspended sale of the standard boiler service insurance.

Justin Bowden, GMB regional secretary said:

"That British Gas doesn't give a toss for either its customers or staff is evidenced by the mass sacking of the engineers that it badly needs to service these customers.

"Whilst there is sadly nothing to stop a company bullying its own staff to sign terms they don't accept, and sacking those who won't submit to bullying, GMB members will not accept the outcome of this 9 month campaign of British Gas bullying. That is why they are staging their 43rd day of strike action on Wednesday, 14 April.

"We have news for Mr O'Shea and Centrica: this dispute will continue and become an official national lockout dispute. There will be more strikes and action short of strikes.

"The British Gas leadership disaster reaches its low point on April 14th with mass sackings of British Gas Engineers - in the only consistently profitable part of the company - by a management team too stupid to see the true value of a uniquely skilled and loyal workforce.

"With hundreds of thousands waiting in the backlog for service, customers have been treated as collateral and so it seems too will staff - as Mr O'Shea prepares to go down in history as the first major FT listed CEO to carry out mass sackings of his highly skilled and qualified engineers whilst his customers are waiting for visits. The workforce are Mr O'Shea's most valuable asset and he will be universally condemned by politicians and the public alike for doing so.

"The arrogant gamble has been lost. Any fool can start a war and, it seems, ruin a good business. History will not be kind to Mr O'Shea or the Centrica Board who failed to rein in him and his out of control leadership team."

Fire and rehire tactics are levelling down pay

TUC

25 January 2021

Employers have taken advantage of lockdown and cut-throat "fire-and-rehire" tactics to slash the pay and conditions of one in four workers, according to TUC polling.

In stark contrast to the government's apparent ambitions to "level up" much of the country, many people are experiencing a levelling down at the hands of opportunistic bosses.

The threat of fire-and-rehire, when workers are dismissed and told to reapply for their roles on inferior terms, has been used in sectors from [aviation](#) to [hospitality](#) in recent months.

And workers at [British Gas](#) are currently taking industrial action against an attempt by bosses to unilaterally cut their pay and conditions. Yet, at the very time the government should be looking at ways of protecting workers from these illegitimate tactics, it is instead [considering](#) how to water down their rights even further.

Fire-and-rehire is widespread

A poll published by the TUC today reveals that nearly one in 10 (9%) workers have been told to re-apply for their jobs on worse terms and conditions since the first lockdown in March.

Nearly a fifth of 18-24 year-olds say their employer has tried to re-hire them on inferior terms during the pandemic.

And twice as many black and minority ethnic (BME) workers (15%) have been faced with "fire and rehire" as white workers (8%)

The tactic is not new

In recent years it has commonly been used to take a knife to terms and conditions at retailers such as [Asda](#), where workers who didn't accept a new contract were told they would be dismissed and given seven days to re-apply for their jobs.

But what we are now seeing is a step-up in employer's use of hardball tactics as they seek to use the lockdown and worker concerns about job security to slash costs for the long-term.

In [hospitality](#), for example, unions report a concerted effort to level down pay and conditions across the sector, including moving longstanding workers onto insecure contracts offering zero or minimal guaranteed hours.

Levelling down

The use of fire-and-rehire – or at least its threat - is the most blatant use of strong-arm tactics by employers emboldened by a lockdown that has seen many workers lose their jobs and leave others in fear of unemployment.

The TUC polling reveals that nearly a quarter of workers in Britain have experienced a downgrading of their terms during the crisis – including through reduced pay or changes to their hours.

One in three young workers aged between 18 and 24 say their terms at work have deteriorated since March.

And a nearly a third of low-paid workers (those earning up to £15,000) report the same.

Around two-fifths of workers say they are worried about job security in the year ahead.

What can be done?

The TUC wants the government to take urgent steps that force employers to negotiate contract changes with workers and their unions rather than unilaterally imposing them.

Currently, there are a host of weaknesses in labour law that allow well-advised employers to get away with fire-and-rehire.

Employers only need to undertake [collective consultation](#) with workers and unions where large-scale dismissals are being considered.

Many interpret the law as allowing them to put the proposed changes directly to workers [over the heads of their unions](#), giving them less opportunity to formulate a strong collective response.

The law concerning unfair dismissal allows bosses to seek to justify dismissals under the extremely broad category of "some other substantial reasons" citing business concerns.

In several other countries, employers could not get away with fire-and-rehire.

In Spain the government took [action](#) to prevent fire-and-rehire during the pandemic.

The [constitution](#) and laws in Ireland make the tactics hard to deploy there.

Ministers should start work on providing protection against these vicious practices to workers in the UK too.

British gas must take 'fire and rehire' threat off the table

GMB

8 October 2020

British Gas owner Centrica in retreat over much-criticised plan to dismiss entire workforce is postponed until January 2021 after pressure

British Gas should take its threat to fire and rehire its entire workforce off the table for good after the company confirmed its plan would be pushed back, energy workers' union GMB said today.

In the face of sustained pressure, the company has retreated on its original plan which could have seen thousands being told before Christmas they would lose their jobs after it served advance notices of redundancy on its entire workforce in July, before negotiations with Unions had even started.

The company confirmed today that it would delay the plan to instigate mass redundancies - but only until January 2021.

GMB warned Centrica bosses "continued to hold a box of matches, threatening to set fire to the terms and conditions of this loyal workforce once the Christmas decorations have come down".

Centrica, the owner of British Gas and PH Jones, had previously revealed their intention in August to fire and rehire the entire 20,000 workforce, if they didn't 'agree' to detrimental changes to terms and conditions, with a British Airways style threat.

Business, Energy and Industrial Strategy (BEIS) Select Committee Chairman Darren Jones MP yesterday wrote to the company with concerns about the "extreme measure".

Outlining a series of questions, his letter requires answers from Centrica CEO Chris O'Shea by Wednesday 14 October. Jones raised the prospect of further committee investigation into the much-criticised tactics of Centrica management, with the possibility of executives being called to answer questions by MP's.

Shadow Business Secretary Ed Miliband, Shadow Employment Rights Secretary Andy McDonald and Shadow Energy Minister Alan Whitehead piled the pressure on the beleaguered company, branding the proposals

'immoral, unethical and counter-productive' in a letter to Centrica boss Chris O'Shea.

It is expected that the House of Commons will next week debate calls to legislate against 'fire and rehire' tactics being used by companies against their own workers.

Justin Bowden, GMB National Secretary, said:

"It is welcome that Centrica management have woken up, smelled the gas and put a pause on their despicable plan.

"Working with, not against, the workforce and focusing now on serious negotiations that talk about growth not just cuts, is how to address the crisis created by past Centrica leaderships.

"This temporary retreat comes after sustained pressure, condemnation and public and political outcry over the proposal to sack the entire British Gas workforce.

"Make no mistake however, Centrica bosses are continuing to hold a box of matches and threatening to set fire to the terms and conditions of this loyal workforce once the Christmas decorations have come down.

"Centrica should now do the decent thing and take this fire and rehire threat off the table for good.

"Centrica's problems were not caused by the loyal engineers, call centre workers and back office staff who have done everything asked of them over years of boardroom mismanagement but have found their jobs in the firing line."

It's time to end the scandal of 'fire and rehire' and enhance workers' rights

By Gavin Newlands MP
Scottish National Party
3 October 2020

As well as my role as the SNP's Westminster Transport Spokesperson I sit on the Commons Transport Select Committee, and we decided to look into the impact of coronavirus on the transport industry.

As part of our investigation, we looked into British Airways and their plans to make a third of their workforce redundant, while threatening the other two-thirds with the sack if they didn't sign up for huge pay cuts and slashed conditions amounting to a reduction in take home pay of up to 70%!

We were inundated with emails and messages from BA staff around the country, outlining their experiences of being told to choose between the dole or their dignity.

Staff with decades of service were being given weeks to make decisions that would impact the rest of their lives, while BA management seemed to relish the prospect of bringing the staff to heel.

This seemed to be unfinished business for former BA CEO, Willie Walsh, who was now IAG – BA's parent group – CEO who had tried a similar attack on pay and conditions some years ago.

Moreover, it should be noted that the practice is illegal in much of Europe, including in Spain and Ireland where BA's IAG partner airlines are based.

We've subsequently seen other companies such as Centrica (British/Scottish) Gas use these 'fire and rehire' tactics to attack workers' pay and conditions, affecting tens of thousands of their staff.

Despite the fact that employment law is reserved to Westminster I was, frankly, astounded that these tactics weren't illegal.

Perhaps they were acceptable in a 19th century Dickens novel – but surely not in the country that has, "some of the best and most productive companies in the world", according to the Prime Minister. Yet here was a company continually held up by the UK Government as a world-leader, a literal flag-carrier, telling tens of thousands of its staff to sign up for huge pay cuts or face the sack, right in the middle of the biggest economic crisis the world has seen in 80 years.

That struck me as not just morally wrong, but economically disastrous. Workers need security not only for its own sake, but also to support the participation in our economy we need to rebuild for the post-covid future.

With that in mind, I spoke to trades unions and the parliamentary draftsmen – who, by the way, are the unsung heroes of our parliamentary process, at Westminster and Holyrood – and with their help put together a simple piece of legislation that would prohibit employers from deploying such reprehensible tactics.

I submitted my Employment (Dismissal and Re-employment) Bill in June of this year. I know it has zero chance of being debated and voted upon, far less passed, without the support of the UK Government. An 80 seat majority and absolute control of Westminster's antiquated procedures makes sure of that.

But I also know the strength of feeling, here and elsewhere, about what unaccountable and unscrupulous employers are doing to staff who have shown nothing but dedication and loyalty during their careers.

If coronavirus has shown anything, it's that our society and our economy function at their best as a collective endeavour, not as a dog eat dog race to the bottom. Workers deserve the protection of their government against the worst excess of big business and be able to know that same government has their back.

Throughout I've tried to work with other parties at Westminster to achieve change. This is an issue that has so far affected hundreds of thousands across these isles and potentially affects millions more. It cannot be reduced to party political point scoring for the sake of it.

I am grateful to the MPs of all parties who backed my call for change and co-signed our letter to the Business Secretary and have supported me over recent months – including a few sotto voce Tories. And just three months after my Bill was lodged, the UK Labour leader joined the calls for beefed up protections for our workforce.

But with no movement so far from the UK Government, it's clear that only by having the real powers of independence can we in Scotland decisively change workers' rights for the better and protect our citizens from bullying bosses.

If the Westminster Government won't take responsibility for supporting our workers, they should get out the way and allow the Scottish Government to do the job.

Too often the reality of being an MP is trying to help constituents beat a system that has let them down. My Bill gives the opportunity to change that system altogether.

Joint Statement by ACAS/CBI/TUC on handling redundancies

24 September 2020

Coronavirus (COVID-19) is having a devastating impact on many businesses and workers. Challenges to working practices, disrupted supply chains and weakening demand, are leading many employers to consider redundancy as the only survival option.

Faced with making quick decisions in a fragile economic environment, it can feel as if there are no good answers. No one wants to deliver bad news; and losing people or being made redundant is traumatic, especially for workers and their families.

We know that times are tough, and that as a last resort, employers may make redundancies. But our message is that employers should exhaust all possible alternatives before making redundancies. These often emerge from effective consultation with workers and trade unions.

Across our networks and members, we have seen joint decisions to save jobs based, for example, upon more part-time working, cuts to overtime, alternative roles, and retraining. When employers, unions and employee representatives work together, solutions can often result in retaining loyal skilled staff, and help avoid the costs of redundancy, employment tribunals and recruitment when the economy recovers.

We call on all employers considering redundancies to work with your trade unions and employees and get the process right by following these 5 principles:

1. Do it openly

There are rules for collective redundancies (those involving 20 or more staff), but whatever the scale, the sooner people understand the situation, the better for everyone.

2. Do it thoroughly

To understand what's happening, people need information and guidance. Have you trained your staff representatives in how it all works?

3. Do it genuinely

Consultation means hearing people's views before you make a decision; so be open to alternatives from individuals and/or unions; and always feed back.

4. Do it fairly

All aspects of your redundancy procedure should be conducted fairly and without any form of discrimination.

5. Do it with dignity

Losing your job has a human as well as a business cost. The way you let people go says a lot about your organisation's values. Think about how you will handle the conversation – whether its face-to-face or remote. And remember, you may want to rehire the same person in the future.

We are asking all employers to work closely with their staff, employee representatives and unions to do all they can to look after their people as well as their business.

Help is out there. Whether or not it's the first time a business has considered redundancy or faced the challenge of restructuring, accessing Acas support and advice can be invaluable. See our advice on redundancy.

Signatories

Susan Clews

Chief Executive, Acas

Dame Carolyn Fairbairn

Director General, CBI

Frances O'Grady

General-Secretary, TUC

[Unite welcomes British Airways partial u-turn on fire and rehire - but warns issues not yet settled](#)

Unite the Union

16 September 2020

Following the appearance of Alex Cruz, the chief executive of British Airways at the transport select committee today (Wednesday 16 September), Unite assistant general secretary Howard Beckett said:

"It is thanks to the immense work of Unite reps that British Airways has been forced to accept that it cannot indulge in the comprehensive fire and rehire policy that the airline intended.

"But Alex Cruz has misled the transport select committee by indicating that fire and rehire is completely off the table. This needs to be corrected.

"There are still too many BA workers facing threats to their wages and working life. These threats should be withdrawn today.

"MPs and the select committee need to be aware that Alex Cruz's comments to the committee earlier are not entirely correct. This is a very important matter and we would not wish MPs and the select committee to get the wrong impression.

"To be clear, the fire and rehire threat still hangs over some BA workers. If Alex Cruz wishes to take this opportunity to say that he is removing this threat from our members then Unite is more than ready to talk.

"Draft agreements with British Airways will not be finalised by Unite until members have voted on them and agreed to changes in their contracts.

"Even if agreements are reached and finalised in all of British Airways sectors, this does not herald industrial peace.

"Any changes in contracts should have been of a temporary nature and once British Airways returns to profit, the cuts in pay and conditions should be immediately restored."

"This is the very least that British Airways should do for its loyal staff who were instrumental in delivering profits of £1.9 billion last year."

4. Petitions

Ban fire and rehire employment tactics [Parliamentary petition]

For far too long, the UK has turned a blind eye to the use of fire and rehire in the workplace. This is when an employer fires a current employee, only to bring them back on worse terms and conditions, all in the name of cost cutting.

More details

It is time to end such a vile practice. Working rights should not be expendable. I call upon everyone who sees this petition to please sign and share, to tell UK parliament "we've had enough" of our nation's workers being used and abused by corrupt employers.

[12,211 signatures by 25 April 2021. Government has yet to respond]

ii) Make hire and rehire illegal¹⁴ [Organise platform petition]

Companies are deliberately firing people to rehire them on worse contracts. British Airways and British Gas are the latest companies to do it. For some reason it's legal in this country, but it's leaving thousands of us in the lurch. Companies shouldn't be able to force staff into choosing between worse contracts and redundancy. It's illegal in Spain and Ireland. It should be illegal here too.

This petition is to urge the UK government to introduce a law that protects all of us from any unscrupulous companies trying to tear up our contracts, effectively firing us and rehiring us on inferior pay, with worse terms and conditions.

It is illegal in Spain and Ireland, with most of Europe having restrictions on the power of bosses. The UK needs to get up to date and protect all workers in all sectors.

[over 129,000 signatures by 25 April 2021]

¹⁴ [Platform organise](#) [accessed, 26 April 2021]

5. Parliamentary Proceedings

5.1 Bills

[i\) Employment \(Dismissal and Re-employment\) \(No. 2\) Bill 2019-21](#)

Private Members' Bill (under the Ten Minute Rule)

Sponsor: Gavin Newlands MP

[ii\) Employment \(Dismissal and Re-employment\) Bill 2019-21](#)

Private Members' Bill (Presentation Bill)

Sponsor: Gavin Newlands MP

[Bill withdrawn on 9 November 2020]

5.2 Early Day Motions

[Fire and rehire tactics](#)

EDM (Early Day Motion)1732: tabled on 13 April 2021

That this House notes with alarm the growing number of employers who are dismissing and re-engaging staff on worse pay and terms and conditions, a practice commonly known as fire and rehire; agrees with Government Ministers that such tactics represent an unacceptable abuse of power by rogue bosses, many of whom are exploiting the covid-19 crisis to increase profits at the expense of loyal staff who have risked their lives during the pandemic to keep businesses going; welcomes the Government's stated commitment to tackle those shameful abuses; calls on the Government to publish the Advisory, Conciliation and Arbitration Service report into the practice received by Ministers on 17 February 2021; and further calls on the Government to commit to including proposals in the forthcoming Queen's Speech to outlaw this form of industrial blackmail, as is the case in other European countries, and to bring forward this new legislation as a matter of urgency to protect UK workers from exploitation by unscrupulous employers.

[Support for British Gas workers](#)

EDM (Early Day Motion)1389: tabled on 25 January 2021

That this House condemns the actions of British Gas in pursuing fire and re-hire tactics with loyal and hard-working staff; expresses support and solidarity with British Gas workers who have been forced to strike following British Gas pushing ahead with plans that have been rejected by 86 per cent of GMB members working as engineers; notes that the proposed changes will mean that a number of workers will be expected to work approximately 150 hours extra per year for no guarantee of extra pay; expresses regret that a once respected and trusted brand is doing damage to its reputation by pursuing fire and re-hire tactics; urges British Gas to recognise that the only way to end the disruption is

to take fire and rehire pay cuts off the table; notes with alarm the growing number of employers who are making employees redundant before re-employing them on less-favourable terms and conditions; believes that these employers should instead be focused on supporting their employees through the covid-19 outbreak; and calls on the Government to take urgent action to stop the growing number of firms taking part in this unethical and unjust practice, for example by amending the Employment Rights Act 1996 to automatically categorise such redundancies as unfair dismissals.

Employment practices on redundancy and rehiring

EDM (Early Day Motion)860: tabled on 08 September 2020

That this House notes with alarm the growing number of employers, especially in the retail, hospitality and aviation sectors, who are making employees redundant before re-employing them on less-favourable terms and conditions; believes that these employers are cynically using the covid-19 crisis as cover to reduce staff costs at a time when they should instead be focused on supporting their employees through this pandemic; agrees with Unite the union and others that this fire-and-rehire practice makes a mockery of workers' rights and goes against the spirit, if not the letter, of UK employment legislation; and calls on the Government to close this legal loophole as a matter of urgency, for example by amending the Employment Rights Act 1996 to specify that such redundancies should automatically be regarded as unfair dismissals.

5.3 Parliamentary Questions

Re-employment

Asked by: Grahame Morris | 22 April 2021

To ask the Secretary of State for Business, Energy and Industrial Strategy, pursuant to the Answer of 11 March 2021 to Question 164417, when the Government plans to respond to the Acas findings on fire and rehire shared with his Department's officials on 17 February 2021; and if he will place in the Library a copy of those findings.

Answering member: Paul Scully | Department for Business, Energy and Industrial Strategy

The Department engaged ACAS to gather evidence of how fire and rehire is being used and they have concluded their work.

ACAS engaged with a range of groups, including employer bodies and trade unions, as well as professional bodies with advisory contact with employers, such as employment lawyers, accountants, and payroll services.

Officials are now giving this evidence due consideration, and the Government will communicate our response in due course.

Business of the House**Asked by Charlotte Nichols|15 April 2021**

This week, many loyal British Gas staff were sacked for refusing to accept a new contract that made them work longer hours for less pay, in the latest iteration of the growing national scourge of fire and rehire. Companies such as British Gas trade off our country's name but do not have our country's interests at heart. The Government have repeatedly stated that they consider these practices to be unacceptable, but those words will mean little to those ex-British Gas workers today. So will the Leader of the House please outline when the Government will be bringing forward legislation to ban fire and rehire, once and for all?

Answering Member| Jacob Rees-Mogg | Leader of the House

The Government do take this issue extremely seriously, and the Under-Secretary of State for Business, Energy and Industrial Strategy, my hon. Friend the Member for Sutton and Cheam (Paul Scully) has condemned the practice in the strongest terms on many occasions. The situation at the moment is that BEIS officials engaged ACAS in November 2020 to gather evidence on the prevalence and use of fire and rehire in workplaces. ACAS spoke to business and employee representatives in confidence, and has now concluded its work and shared its findings with BEIS. Officials are considering that evidence and the Government will communicate their next steps in due course, but it is right that a proper process is undertaken to see how prevalent this practice is. We would reiterate to businesses—I would say to my capitalist friends—that capitalism works when capitalists behave well and treat their employees well, and get the best motivation and success from their company and from those who work for them.

Dismiss and Re-engage Tactics in Negotiations**25 March 2021****Kate Osborne**

What recent discussions he has had with (a) employers and (b) trade unions on the use of dismiss and re-engage tactics in negotiations with employees. (913796)

Afzal Khan

What recent discussions he has had with (a) employers and (b) trade unions on the use of dismiss and re-engage tactics in negotiations with employees. (913807)

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy
(Amanda Solloway)**

We have been very clear that employers threatening to *fire* and *rehire* as a negotiating tactic is completely unacceptable. As we have been concerned by such reports, we engaged ACAS to conduct a fact-finding exercise as to how *fire* and *rehire* has been used. It spoke to a wide range of stakeholders, including businesses and employee representatives. We are now considering these findings.

Kate Osborne

The Government have been sitting on the ACAS *fire* and *rehire* report now for over a month, raising fears that they are trying to bury it because they do not agree with the recommendations. Will the Minister tell me when we will get a chance to see what ACAS has to say, and, in the meantime, will she tell us whether ACAS agrees that the shameful practice of *fire* and *rehire* is quite simply unacceptable?

Amanda Solloway

As I previously stated, we find that *fire* and *rehire* is just not acceptable. In fact, the Department engaged ACAS to hold discussions in order to generate the evidence that we need. We therefore need to make sure that we consider all this. There is, of course, a degree of confidentiality that we need to bear in mind as well. ACAS officials shared their findings with BEIS officials in February, as the hon. Lady rightly said. We are giving this full consideration and will communicate our next steps in due course.

Afzal Khan [V]

Fire and *rehire* is utterly immoral. Members across the House have received many emails from desperate constituents who are being subjected to the disgraceful tactic. From British Airways and British Gas to Go North West, workers across the country have been treated with contempt. One of my constituents who was served with a section 188 notice said to me, "We want changes to be made with us, not to us." Seeing as this Government promised to protect and enhance workers' rights when we left the EU, will the Minister confirm how many employers in receipt of coronavirus job retention scheme payments have adopted *fire* and *rehire* tactics, and will she now commit to outlawing this practice once and for all?

Amanda Solloway

Just to reiterate, we have been holding clear consultations with a group of stakeholders and ACAS has been conducting this for us. We will be republishing the report in due course.

6. Further reading

[Fire and Rehire - Key considerations and risks](#) [8 minute video]

3 Hare Court
21 March 2021

[Post-Brexit review of workers' rights dropped](#)

Brodies
February 2021

[Firing and Rehiring: An agenda for reform](#)

Professor Alan Bogg
Institute of Employment Rights
9 October 2020

[Manage the risks of a fire and rehire strategy: Although making changes to employees' terms and conditions can avoid the need for redundancies, there are numerous pitfalls that employers need to watch out for](#)

Claire Wilson
Employment Law Journal
September 2020

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