The Independent Voice for Fire and Rescue
Service Managers
• The structure of employment law in the UK is by statute law and not common law.

• Contrary to public perception power lies with the Employer.

• Historically most of the statute law has evolved from the Victorian principal of Master / Servant relationship.

• This has evolved over the past 120 years to give employees more statutory rights.

• The main areas where these have evolved are:
• Health and Safety at Work

• Equality Act 2010: (merged the following)
  • Equal Pay Act 1970
  • Sex Discrimination Act 1975
  • Race Relations Act 1976
  • Disability discrimination Act 1995
  • Employment Equality (Religion & Belief) Regulations 2003
  • Employment Equality (Sexual Orientation) Regulations 2003
  • Employment Equality (Age) Regulations 2006
  • Equality Act 2006 Part 2
  • Equality Act (Sexual Orientation) Regulations 2007

• Employment Protection
Your Employment and the Law

- Employment Rights Act 1996 (covers statutory rights on the following):
  - Employment Particulars e.g. contracts of employment / itemised pay statement
  - Protection of wages
  - Guarantee Payments
  - Sunday Working (Shop and Betting workers)
  - Protected Disclosures (whistle blowing)
  - Protection from suffering detriment (H&S / TU)
  - Time off work (public duties etc)
  - Dependents
  - Study & training
  - Suspension from work (medical / maternity)
  - Maternity / Adoption / Parental / Paternity leave provisions
  - Flexible working
  - Termination of employment
Employment Rights Act 1996 (covers statutory rights on the following):

Unfair Dismissal

- There is a statutory right not to be unfairly dismissed
- Right to apply to an ET (3 months from dismissal)
- Employer has a requirement to show a fair reason for dismissal (onus on employer when dismissal admitted)

- Health Warning – Do not rely on the law to give you satisfaction!!!!
- Utilise all internal mechanisms (appeal/grievance/etc. more chance of a favourable result)
• Employment Rights Act 1996 (covers statutory rights on the following):

**Potentially fair reasons for dismissal:**

• **Conduct**: covers such areas as absence/ poor discipline/ drug & alcohol abuse/ theft and dishonesty

• **Capability**: inability to maintain standards / unable to get on with colleagues / long term persistent illness / redundancy / retirement

• **Statutory restriction**: loss of driving licence / licence to practice

• **Some other substantial reason (SOSR)**: imprisonment / unreasonable personality clash / ETO economic technical organisational / unreasonable refusal to accept contractual changes
Employment Tribunals:

- Creatures of statute
- Employment Tribunals (constitution and rules of practice) Regulations 2002
- Cannot substitute their view for that of management
- Required to interpret employment law and its application to the individual claim
- Take cognisance of law (statute and case law from higher courts i.e. EAT, Courts of Appeal / Supreme Court and European Courts of Justice)
Important case law decisions that influence ET’s:

- **Polkey v AE Dayton Services (House of Lords Judgement)** the judgement ended what was known as the ‘no difference rule’ where employers could say that if a fair procedure was applied the individual would have been dismissed. However the rule was allowed to live on in so far as how it applied to compensation e.g. unfairly dismisses but applied 100% contribution to compensation.

- **BHS V Burchell (EAT Judgement)** the case set the standards for dismissal, in what was a case of suspected dishonesty, in that the employer had to show genuine belief in the employees guilt, held on reasonable grounds, following a reasonable investigation.
Important case law decisions that influence ET’s:

- **Iceland Frozen Foods v Jones (EAT Judgement)**
  
  This case lays out what is the ‘standard of reasonableness’

- ‘The ET must consider the reasonableness of the employers conduct, not simply whether they themselves consider the dismissal fair. Moreover in judging the reasonableness of the employers conduct they must not substitute their own decision for that of the employer. Continued…"
Important case law decisions that influence ET’s:

- Iceland Frozen Foods v Jones (EAT Judgement)
- Continued……

- ‘In many cases, though not all, there is a band of reasonable responses to the employees conduct within which one employer may take a view and another might take quite reasonably another. The Et ‘s function as an industrial jury is to determine on the facts that the employers conduct falls outside that band.

- And finally – Costs warning – it is becoming more frequent for tribunals to award costs and that may be against the applicant!