



## Settlement agreement FAQs

This note is to explain to you how settlement agreements work and the legal impact of them on you.

### Why is the agreement so one-sided?

On first seeing a draft agreement clients will often say "*this is so one-sided*". That is correct. Your soon to be ex-employer is paying you to sign an agreement, the principal objective of which is to protect the company from any legal liability. By its very nature it is one-sided. Most companies use a standard document that they are not going to change, sometimes not at all, and other times only minimally. This is the reality of the situation. We will review the document to ensure that it does not contain any unfair contract terms or anything unusual. Beyond that our job is to advise you on the *terms and effects* i.e. the meaning of the agreement and the legal promises you are making when you sign it.

If you know up front that the document is one-sided and will only be changed minimally this will hopefully avoid any anxiety about the document. Remember: we see these documents in various but similar forms all the time. We would not let you sign anything that was unfair or improper. We will always explain to you what exactly you are agreeing to.

### What is the *purpose* of a settlement agreement?

The purpose of the settlement agreement is for you to agree that you will not pursue any legal claims in any court or tribunal for any reason (other than the exceptions of suing to enforce the agreement should the employer breach it, suing on an unknown work-related injury you later discover or suing in relation to pension rights\*).

To all intents and purposes your settlement agreement is you agreeing that this is the end of the road for any litigation against your ex-employer. This is what the clause that says Waiver of Claims is all about. The clause will list all conceivable claims you might have against the company. You do not need to concern yourself with this and must only understand you are saying that you will not sue them for any reason in the future (with the few exceptions above\*).

### Why is the agreement marked *Without Prejudice and Subject to Contract*?

This is legal terminology to reflect the fact that until both parties have agreed the wording and have both signed the agreement it is "without prejudice" (cannot be used in evidence in court). Subject to contract simply means that it is not agreed until the contract is agreed. Once both parties agree the document and sign the agreement becomes "open", a legal term for the fact that it now exists and can be relied upon i.e. both parties are legally bound by it.

### Why is there no date on the front page?

The date on the front page gets completed once your employer has signed the agreement. This will happen after you have signed the agreement and we have signed the adviser's certificate. This is the completion date.

### When does the agreement become legally enforceable?

When both parties have signed and an adviser's certificate has been signed and sent to your

employer. This is when the agreement is legally binding i.e. both you and your employer are bound by the terms. The employer must also insert the completion date. This is often on the front cover of the agreement but is sometimes also on the top of the first page of the agreement.

### **What is the adviser's certificate for?**

You cannot waive (renounce/give up) your legal rights to bring an Employment Tribunal or other court claim against your employer unless you prove that you have taken independent legal advice. The adviser's certificate is proof that you have taken this advice and shows the employer that the relevant legal provisions around settlement agreements have been complied with. We will sign this once we have advised you on the agreement.

### **What do I need to check in the agreement?**

Our job is to check that the agreement is not unfair and does not contain anything unusual. Your job is to read the agreement, ensure you understand it and raise with us any questions you may have before you sign it, and to check that the financial and other information in it is correct. For example, you must check that the figures for notice pay and compensation are correct. Likewise for any payment in lieu of untaken holiday, or any bonus. It is important that you tell us about all the benefits that you have with your employment: bonus, pension, private health, car allowance. We can then ensure you are being paid what is due. It is your responsibility to ensure we have all of this information. It is not our responsibility to check that the figures in the agreement are correct: this is your responsibility.

### **What about shares I have in the company?**

Shares will be governed by your company share scheme rules. Most companies have little scope to do anything other than what the scheme rules allow. This is because most if not all schemes will have obtained HMRC approval so the employer cannot deviate from the rules. The most important thing is for you to understand the impact your termination of employment has on your share holdings and how any shares will be dealt with on termination. Unvested shares will often be forfeited on termination for any reason. Some may be kept and allowed to vest according to the vesting schedule already notified to you. Some employers will provide you with online portal access post-termination.

If you hold shares, options, Long Term Incentive Plan shares (LTIPs) or similar you must ensure this is dealt with in the settlement agreement. If this is not in the settlement agreement it is not agreed!

### **What does *without admission of liability* mean?**

This means that despite paying you compensation the employer does not accept they have any legal liability for anything they have done or failed to do. This is entirely usual. You will never see an employer admitting liability. It is futile to ask and will never happen in the context of a settlement agreement. Similarly an employer is never going to offer any form of apology so asking for one is completely futile.

Looking at it slightly differently why would your employer be paying you any compensation unless they thought they had a legal liability or a risk of one? The very fact that they want you to sign a settlement agreement is a tacit acknowledgement but it is all you are ever going to get.

## **What is a tax indemnity?**

This is a standard feature of every settlement agreement. It is a non-negotiable term that will not be excluded. If in our view it is unduly onerous/burdensome on you we may ask for it to be revised but an employer will never permit its removal.

The purpose of the tax indemnity is to ensure that you pay any tax that you are legally liable for on the payments in the agreement. We will check that the tax treatment looks correct. We will also provide you with our client guide to taxation of termination payments to ensure that you understand how the tax treatment works.

## **What is a warranty?**

A warranty is a legal promise that you will do or not do something. You must carefully read any warranties in the agreement to ensure that you can truthfully agree to them. You must not sign an agreement containing anything which is untrue so if you have concerns about any of the warranties you are making you must raise this with your lawyer.

Typical warranties are: that you have not got another job already; that you have not done anything which would have entitled your employer to terminate your employment for another reason already; that you have not commenced any litigation or if you have that you will agree to terminate it; that you have disclosed to your lawyer all relevant information.

If you sign an agreement in breach of any warranty your employer can sue you for recovery of the money paid under the agreement so it is important to understand what you are promising.

## **'Boilerplate' clauses**

All settlement agreements will contain standard clauses at the end including Entire Agreement, General, Rights of Third Parties, Governing Law. You need not concern yourself with these clauses.

We will review them to ensure that they are fair and when we advise you will ensure that you understand and that we will deal with any questions you may have.

## **How do I sign the agreement?**

If you have access at home to a scanner we ask that you sign and print the signature page only and send that back to your lawyer by email. If you do not have a scanner we suggest that you sign the signature page and take a photo of it and send it to your lawyer. You will need to be able to print the document even if that means popping to a local print shop or newsagent. Most employers will accept a signature in these formats. Some use DocuSign. Others insist on hard copy signed agreements. Your lawyer will advise you according to your situation.

## **What if I have questions?**

We hope that this note can deal with most commonly asked questions about what to expect when dealing with a settlement agreement. This is done so that you feel comfortable with what you are agreeing to and to ensure that you understand the legal meaning and intention of the document.

You must raise with your lawyer any questions you have before you sign the agreement. Your lawyer will call you before you sign to take you through the agreement and discharge their duty to advise you. They must do this before they can sign their adviser's certificate.