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NATIONWIDE EMPLOYMENT SOLICITORS

Settlement Agreement Clauses

Your Complete Clause-by-Clause Review Guide

UNDERSTANDING YOUR OPTIONS

A comprehensive checklist to help you review every clause, spot red flags, and negotiate better terms.

January 2026

Introduction: Why Every Clause Matters

When your employer puts a settlement agreement in front of you, it's tempting to skip straight to the compensation figure. That number matters, but it's only part of the picture.

Important

Important Update - January 2026: The Employment Rights Act 2025 (which received Royal Assent in December 2025) will reduce the unfair dismissal qualifying period from 2 years to 6 months from January 2027, and remove the compensatory award cap. If you're reviewing a settlement agreement in late 2026 or beyond, these changes may significantly strengthen your negotiating position.

I've seen employees accept seemingly generous offers, only to discover months later that they've signed away far more than they realised. The restrictive covenant that stops them working in their industry. The confidentiality clause that prevents them discussing legitimate concerns. The tax indemnity that leaves them liable for thousands in unexpected tax bills.

This guide walks you through the 12 standard clauses you'll find in most settlement agreements. For each clause, I explain what it means in plain English, what red flags to watch for, and how to negotiate better terms.

How to Use This Guide

Sit down with your settlement agreement and this checklist. Go through each clause systematically. Tick off the checks as you work through them. Make notes about anything that concerns you.

Don't feel you need to understand everything immediately. That's what your legal adviser is for. But having worked through this checklist first, you'll ask better questions and spot issues they might otherwise miss.

Tip from Tom

Use this guide alongside professional legal advice, not instead of it. Your employer must pay for you to get independent advice from a qualified solicitor. Take advantage of that.

1. Termination Date Clause

What This Clause Does

The termination date clause specifies when your employment ends. This might be immediate, a few days away, or several weeks or months in the future.

This date is crucial because it determines when your salary stops, when benefits end, when restrictive covenants start running, and when you can start new employment if there's a garden leave period.

What to Check

- Is the termination date clear and specific (an actual date, not 'on signing' or vague terms)?
- Does the termination date give you enough time to find new employment?
- If there's garden leave, are you being paid your full salary and benefits during this period?
- Does the agreement specify whether you're expected to work during the notice period?

Red Flags

Important
Your employment has already ended but the agreement treats it as a future date. This can create tax complications and affect your entitlements.

Immediate termination when you haven't been paid your contractual notice. Unless there's a proper payment in lieu of notice (PILON), the employer might be breaching your contract.

Garden leave that pays less than your full salary. During garden leave, you should receive everything you'd normally receive while working.

Negotiation Strategy

If you need more time to find a new role, negotiate a later termination date or a longer garden leave period. Many employers will agree to this if it doesn't cost them significantly more.

If immediate termination works better for you (perhaps you already have a new job lined up), you can propose bringing the termination date forward in exchange for keeping the full settlement payment.

What to Say
"The proposed termination date of [date] gives me only [X] weeks to find alternative employment. Given my [seniority/specialisation/circumstances], I'd like to propose extending this to [later date] to give me a reasonable period to secure a new position. This doesn't increase the cash cost to the company as I'll be on garden leave."

2. Payment Terms Clause

What This Clause Does

This clause sets out exactly what you'll be paid and when. It should break down the settlement payment into its component parts and specify payment deadlines.

The breakdown typically includes payment in lieu of notice (PILON), statutory redundancy pay if applicable, compensation for loss of office (the 'ex-gratia' amount), accrued but untaken holiday pay, and any contractual bonuses or commission owed.

What to Check

- Is the total amount clear and matches what was discussed?
- Is each component of the payment itemised separately?
- Is it clear which parts are taxable and which are tax-free?
- What is the payment deadline? (Usually 14-28 days after signing)
- Are there any conditions that could delay or prevent payment?

- Does it include all money you're contractually owed (salary, holiday, bonus)?

Red Flags

Important

The settlement payment is conditional on you completing certain tasks or not breaching vague obligations. Payments should be unconditional once you've signed.

Holiday pay isn't mentioned. You're entitled to be paid for accrued but untaken holiday regardless of any settlement agreement.

The agreement is silent on payment timing. Always insist on a specific deadline.

Statutory redundancy pay is missing when you're being made redundant. This is a legal entitlement that should be paid in addition to any ex-gratia amount.

Calculating Fair Compensation

Is the offer fair? Here's a rough guide based on length of service and circumstances:

- Standard redundancy: Statutory redundancy pay (capped at £719 per week as of 2025/26) plus 1-3 months' salary
- Performance or conduct issues: 3-6 months' salary (depending on strength of your position)
- Discrimination or whistleblowing claims: Often 6-12+ months' salary (these claims have no cap, and awards can be significantly higher for serious cases involving injury to feelings, financial loss, or multiple acts)
- Senior roles or long service: 6-18 months' salary is common

Tip from Tom

Use your potential tribunal compensation as a benchmark. Could you win more at tribunal? If so, the settlement should reflect that risk to your employer. Don't just accept the first offer.

Negotiation Strategy

If the offer seems low, prepare a counter-proposal with clear justification. Reference your length of service, salary level, potential tribunal claims, and comparable settlements.

Break down what you could claim at tribunal. Even if you wouldn't pursue every claim, showing the potential exposure helps justify a higher settlement.

What to Say
"I've reviewed the proposed settlement of £[amount] against potential tribunal awards. Based on my [X] years' service and [circumstances], I have potential claims for [unfair dismissal/discrimination/etc] worth approximately £[X] to £[Y]. Taking into account the tribunal risks for both parties, I believe a settlement of £[higher amount] represents a fair compromise that gives you certainty and compensates me appropriately."

3. Claims Waiver Clause

What This Clause Does

This is the heart of the settlement agreement. You're agreeing to waive (give up) your right to bring employment tribunal claims against your employer. In return, you receive the settlement payment.

The clause typically lists all the claims you're waiving. This usually includes unfair dismissal, discrimination, whistleblowing, breach of contract, unlawful deduction of wages, redundancy pay claims, and various other statutory claims.

What to Check

- Does the waiver cover only claims relating to your employment and its termination?

- Are personal injury claims specifically excluded (unless there's a known injury you're settling)?
- Does it preserve your pension rights?
- Does it include a warranty that you're not aware of any other claims?
- If you have specific claims in mind, does the list explicitly cover them?

Red Flags

> **Important**
>
> The waiver includes personal injury claims without specifically identifying a known injury. You cannot waive personal injury claims you don't know about when signing. You can only settle known, identified personal injuries with appropriate medical evidence and valuation.

You're asked to warrant that you have no other claims when you do have legitimate concerns. Don't sign a false warranty.

The waiver extends to claims against directors, shareholders, group companies, and employees personally. This is very broad. Consider whether it's reasonable in your circumstances.

The waiver covers future events or claims arising after the termination date. You can only waive claims relating to matters that occurred during your employment.

Understanding What You're Giving Up

Before signing, you need to understand the value of the claims you're waiving. Your solicitor should assess whether you have potential tribunal claims and estimate their value.

If you have strong discrimination or whistleblowing claims, these are valuable. There's no compensation cap on these claims. Awards can exceed £50,000, sometimes reaching six figures.

If you've been employed for less than two years, you probably don't have an unfair dismissal claim (unless it's discrimination, whistleblowing, or another automatically unfair reason). This significantly affects the settlement value. (Note: From January 2027, the ERA 2025 reduces this to 6 months.)

> **Tip from Tom**
>
> Don't sign away claims worth £30,000+ at tribunal for a £10,000 settlement. Make sure the settlement payment realistically reflects what you're giving up.

Negotiation Strategy

If you have strong potential claims, this is your main negotiating leverage. Explain to your employer (or their solicitor) why your claims are strong and what you could realistically recover at tribunal.

If personal injury claims are included but you're not settling a specific injury, insist they're excluded from the waiver.

What to Say
"I've taken advice on potential claims arising from my employment. I have strong grounds for [discrimination/whistleblowing/unfair dismissal] claims. The compensation for such claims is uncapped. Given the strength of my position and the potential tribunal awards, I need the settlement payment to increase to £[amount] to make waiving these claims worthwhile."

4. Tax Treatment and Indemnity Clause

What This Clause Does

This clause addresses how the settlement payment will be taxed and who's responsible if HMRC later determines additional tax is due.

The clause typically states that the employer believes the first £30,000 of the ex-gratia payment is tax-free under section 403 ITEPA 2003. It then includes a tax indemnity stating you'll reimburse the employer if HMRC decides more tax should have been paid.

What to Check

- Is the payment breakdown clear about what's taxable and what's tax-free?
- Is payment in lieu of notice (PILON) correctly identified as taxable?
- Is accrued holiday pay shown as taxable?
- If the settlement exceeds £30,000, is it clear that amounts above this threshold are taxable?
- Is there a tax indemnity clause making you liable for additional tax?
- If there's a tax indemnity, does it require the employer to notify you before paying HMRC?

Understanding the £30,000 Tax-Free Rule

The first £30,000 of genuine compensation for loss of employment is tax-free. But this only applies to the ex-gratia element. It doesn't include payments you're already contractually entitled to.

Always taxable as normal earnings (since April 2018): Payment in lieu of notice (PILON) – always taxable regardless of whether there's a PILON clause in your contract. Also taxable: accrued holiday pay, contractual bonuses, and salary up to termination date.

Tax-free up to £30,000: Compensation for loss of office (the ex-gratia payment).

Taxable above £30,000: Any ex-gratia payment above the £30,000 threshold is subject to income tax AND employer's Class 1A National Insurance contributions (which may reduce the settlement amount your employer is willing to offer).

Red Flags

> **Important**
> The employer is treating payment in lieu of notice as tax-free. PILON is always taxable as earnings. This is a red flag suggesting poor drafting.

The agreement states the entire settlement payment is tax-free when it exceeds £30,000. Anything above £30,000 should be taxed.

There's an unrestricted tax indemnity with no requirement for the employer to notify you before paying HMRC. You should be given opportunity to take advice.

The tax indemnity makes you liable for the employer's tax and National Insurance, not just your own. This is unreasonable.

Why tax indemnities matter: If HMRC challenges the tax treatment years later, you could face a substantial unexpected bill. For example, if HMRC reclassifies £20,000 of your settlement as taxable earnings, you could owe £8,000+ in tax and NI. An unrestricted tax indemnity means your employer can recover this from you—even years later.

Negotiation Strategy

If the tax treatment seems incorrect, ask for the payment breakdown to be revised. Incorrectly structured payments can cost you thousands.

If there's genuine uncertainty about tax treatment (for example, on restrictive covenant payments), negotiate for the employer to indemnify you instead of the other way around, or for the employer to gross up the payment to cover any tax.

Insist that any tax indemnity requires the employer to notify you in writing before paying HMRC, giving you time to take advice and potentially dispute HMRC's position.

What to Say
"The payment breakdown shows [£X] as tax-free compensation for loss of office, but this figure includes the payment in lieu of notice which is taxable as earnings. Can this be corrected to show the PILON amount of £[X] as taxable and the ex-gratia payment of £[Y] as tax-free? The current structure could result in underpaid tax and an unexpected bill later."

5. Confidentiality Clause

What This Clause Does

Confidentiality clauses (sometimes called non-disclosure agreements or NDAs) prevent you from discussing the terms of the settlement agreement and often the circumstances surrounding your departure.

Standard confidentiality clauses typically prevent you from disclosing the existence of the agreement, the terms and amount of the settlement, the circumstances leading to your departure, and any allegations or concerns you raised.

What to Check

- What exactly are you prevented from disclosing?
- Are there exceptions allowing disclosure to immediate family, professional advisers, tax authorities, and for legal or regulatory obligations?
- Can you discuss the settlement with prospective employers if asked why you left?
- Does the confidentiality clause prevent whistleblowing or reporting crime?
- Is the clause mutual (does it bind the employer too)?
- What are the consequences of breach?

Red Flags

Important

The clause prevents you from making protected disclosures (whistleblowing). This is unenforceable and unlawful. Such clauses cannot prevent you reporting wrongdoing in the public interest.

The clause prevents you from reporting criminal conduct to the police. No confidentiality clause can stop you reporting crime.

There's no exception allowing disclosure to prospective employers. You should be able to explain your departure in general terms.

The confidentiality is one-sided. Your employer can say what they like while you're silenced. Insist on mutual obligations.

Breach of confidentiality requires you to repay the entire settlement. This may be an unenforceable penalty clause, but better to negotiate it out.

What Confidentiality Can't Stop You Doing

Regardless of what the confidentiality clause says, you can always report criminal offences to police, make protected disclosures (whistleblowing) about wrongdoing in the public interest, cooperate with regulatory or enforcement agencies, seek advice from ACAS, lawyers, accountants, or doctors, and disclose information to immediate family.

If a confidentiality clause tries to prevent any of these, that part of the clause is unenforceable.

Tip from Tom

Confidentiality doesn't mean you can never explain why you left. You can usually discuss your departure in general terms with prospective employers. The agreement should include an exception for this.

Negotiation Strategy

If the confidentiality clause is overly restrictive, propose specific amendments. Add exceptions for disclosure to prospective employers, ensure the clause is mutual, and confirm it doesn't prevent whistleblowing or reporting crime.

If there are legitimate concerns about wrongdoing at your employer, consider excluding these matters from confidentiality or making clear you retain the right to report to appropriate authorities.

What to Say
"The confidentiality clause is drafted very broadly and could prevent me from explaining my departure to prospective employers. I'd like to add an exception allowing me to disclose general information about the circumstances of my departure when asked by potential employers, without disclosing the settlement amount. I also need confirmation the clause doesn't restrict my ability to make protected disclosures about [specific concerns] to appropriate authorities."

6. Non-Disparagement Clause

What This Clause Does

Non-disparagement clauses prevent you from making negative or derogatory comments about your employer, its directors, or employees. It goes beyond confidentiality by restricting what you can say even about matters that are already public.

These clauses typically prohibit you from saying or writing anything that could damage the employer's reputation, business relationships, or employee morale. This includes social media posts, online reviews, and comments to journalists.

What to Check

- Does the clause prevent all negative comments or only false/defamatory ones?
- Is it mutual (does the employer agree not to disparage you)?
- Can you still give honest references or testimonials if asked?
- Does it prevent you from providing factual information if required in legal proceedings?
- What are the consequences of alleged breach?

Red Flags

Important
The clause prevents any negative comment, even if true and justified. This is very broad and may prevent legitimate criticism.

The non-disparagement is one-sided. Your employer should be bound by the same restrictions if you are.

The clause extends to all group companies, directors, and employees. This can be extremely broad if your employer is part of a large group.

Breach results in repayment of the entire settlement or uncapped damages. These penalties may be unenforceable but are designed to intimidate.

The Problem with Non-Disparagement Clauses

Non-disparagement clauses can silence legitimate concerns. If you've witnessed harassment, discrimination, or other serious misconduct, these clauses can make you think twice about speaking up, even when you have every right to do so.

Like confidentiality clauses, non-disparagement clauses cannot prevent you from whistleblowing, reporting crime, or complying with legal obligations. But many people don't realise this and self-censor when they shouldn't.

Tip from Tom

A non-disparagement clause doesn't mean you can't tell the truth. If required to give evidence in legal proceedings or to make a protected disclosure, the truth is always a defence.

Negotiation Strategy

Push for mutual non-disparagement. If you can't criticise them, they shouldn't criticise you.

Limit the scope to false or defamatory statements. You should be able to make truthful statements if necessary.

Add exceptions for legal proceedings, regulatory investigations, and protected disclosures.

What to Say

"The non-disparagement clause needs to be mutual. If I'm agreeing not to make negative comments about the company, the company should agree not to make negative comments about me. I'd also like to add exceptions confirming this doesn't prevent me from providing truthful information in legal proceedings or making protected disclosures to appropriate authorities."

7. Restrictive Covenants

What This Clause Does

Restrictive covenants limit what you can do after leaving the company. They might prevent you from working for competitors, soliciting clients or employees, dealing with customers, or using confidential information.

These restrictions typically last 6-12 months after your departure and can significantly affect your ability to earn a living in your field.

What to Check

- How long do the restrictions last? (6 months? 12 months?)
- What geographical area do they cover?
- How is 'competitor' or 'restricted business' defined?
- Which clients or employees are you restricted from approaching?
- Are these restrictions already in your employment contract, or are they new?
- If new restrictions, is there additional payment for accepting them?
- Can you work in your industry at all, or just not for direct competitors?

Types of Restrictive Covenants

- Non-compete: You can't work for competing businesses
- Non-solicitation of clients: You can't approach the company's clients for business
- Non-dealing with clients: You can't accept business from clients who approach you
- Non-solicitation of employees: You can't recruit the company's staff
- Non-use of confidential information: You can't use trade secrets or confidential data

Red Flags

Important

The restrictions would prevent you working in your industry entirely. A 12-month non-compete covering 'any business similar to the employer' could make you unemployable in your field.

The restrictions are new (not in your employment contract) but there's no additional payment for accepting them. New restrictions should be separately compensated.

The definition of 'competitor' or 'restricted business' is incredibly broad. Some agreements define competitors so widely they'd include half the UK economy.

The geographical scope is unreasonably wide. If you worked in London, why would restrictions covering the entire UK (or worldwide) be justified?

The client non-solicitation covers all clients, including those you've never worked with and don't even know.

> **Tip from Tom**
> Restrictive covenants in settlement agreements can be more enforceable than those in employment contracts because you're receiving payment in exchange for accepting them. Take them seriously.

Negotiation Strategy

If the restrictions would seriously limit your employability, this is critical to negotiate. The settlement payment should reflect the fact you're accepting restrictions on your future earning capacity.

Push to reduce the duration from 12 months to 6 months or 3 months. Narrow the geographical scope to where you actually worked. Limit 'competitors' to direct competitors in your specific sector. Restrict the client non-solicitation to clients you personally worked with.

If you already have a job offer that might breach the restrictions, this is urgent. You need either to exclude that specific employer from the restrictions or remove them altogether.

What to Say
"The proposed 12-month non-compete covering [broad definition] would effectively prevent me from working in my profession during that period. This represents a significant restriction on my future earning capacity. I propose reducing this to a 6-month restriction limited to [specific competing businesses in specific geography],

which adequately protects the company's legitimate interests without making me unemployable. Alternatively, if the company insists on the broader restrictions, the settlement payment should increase to £[amount] to compensate me for this limitation."

8. Reference Clause

What This Clause Does

The reference clause determines what your employer will say about you to prospective employers. This can be one of the most valuable parts of the settlement agreement.

Reference clauses come in different types. An agreed reference provides specific wording your employer must use. A basic reference confirms only dates, job title, and salary. A positive/neutral reference commits the employer to saying nothing negative without specifying exact wording.

What to Check

- Does the agreement include an agreed reference wording?
- If so, is it attached as a schedule to the agreement?
- Does the reference confirm your job title accurately?
- Does it include positive statements about your performance and contributions?
- How is your reason for leaving described?
- Who can request the reference (just formal reference requests, or anyone)?
- Who is authorised to provide the reference (HR, your manager, anyone)?
- What happens if someone provides a different reference in breach?

Red Flags

Important

There's no reference clause at all. If your departure involved performance concerns or difficult circumstances, not having an agreed reference leaves you vulnerable.

The reference is 'basic facts only' when you need something more positive. Dates and job title alone won't help you get a new role.

The reason for leaving is described negatively or vaguely. 'Left by mutual agreement following performance concerns' is damaging. Better: 'Left by mutual agreement as part of restructuring.'

The agreed reference can be provided to formal requests only, but informal inquiries get a different answer. Some employers give the agreed reference to HR requests but tell a different story in off-the-record calls.

There's no remedy if the employer breaches the reference clause. Without consequences, some employers ignore agreed reference obligations.

Negotiation Strategy

Draft your ideal reference and propose this as the agreed wording. Include your job title and dates, positive statements about your skills and performance, a neutral explanation of why you're leaving, and confirmation you're eligible for rehire if true.

Ensure the reference clause states the agreed reference will be provided to anyone who requests it, not just formal HR requests. This prevents informal negative references.

Consider adding that if the employer breaches the reference clause, they'll pay your legal costs in pursuing a breach of contract claim. This gives the clause teeth.

Example Agreed Reference

[Employee name] was employed by [Company] as [job title] from [start date] to [end date]. During this time, [he/she/they] demonstrated strong [relevant skills] and made valuable contributions to [specific area]. [Employee] decided to pursue opportunities outside the company and left by mutual agreement as part of organisational changes. [He/She/They] would be eligible for re-employment. This reference is given in good faith and without liability.

Alternative wordings for reason for leaving:

- Voluntary: '[Employee] decided to pursue opportunities outside the company'
- Redundancy: 'The role was made redundant as part of organisational restructuring'
- Mutual agreement: '[Employee] left by mutual agreement as part of organisational changes'

What to Say
"I'd like to agree the wording of the reference as part of the settlement. I've drafted a proposed reference [attach draft] which accurately reflects my role and contributions during my employment. Having this agreed gives both parties certainty about what will be said to prospective employers. Can we include this as a schedule to the agreement?"

9. Return of Property Clause

What This Clause Does

This clause requires you to return all company property in your possession. This typically includes laptop, mobile phone, company car, keys and access cards, documents and files, and any other equipment or materials.

Some agreements make payment of the settlement conditional on return of property. Others include this as a standalone obligation.

What to Check

- Is the list of property to be returned specific and accurate?
- Are you being asked to return things you don't actually have?
- What's the deadline for returning property?
- Is settlement payment conditional on return of property?
- What happens if you can't return something (lost, damaged, already returned)?
- Are you permitted to keep anything (phone number, personal data on devices)?

Red Flags

> **Important**
>
> Settlement payment is conditional on return of property but you don't have some of the listed items. This could delay payment indefinitely.

The return deadline is immediate or unreasonably short. If you're being dismissed without notice, you need reasonable time to return items, especially if you're on sick leave or live far from the office.

You're required to return your mobile phone but it contains personal data and contacts. You should be given opportunity to back up your data first.

You're required to return or pay for damage to your company car, but you rely on this vehicle and haven't yet secured alternative transport.

Negotiation Strategy

If payment is conditional on return of property, remove this condition. Instead, make it a standalone obligation with return required within reasonable time.

If you don't have certain listed items (already returned, lost, never issued), document this now and amend the agreement accordingly.

If you need more time to return items (particularly company car or phone), negotiate an extended deadline.

For devices containing personal data, negotiate the right to back up your data before return or have it professionally wiped.

What to Say
"The agreement requires return of [item] but I [returned this on date / never received this / lost this]. Can we amend the list to reflect this? Also, the laptop and phone contain personal data including family photos and personal contacts. Before returning these, I need to back up my personal data. Can we agree a deadline of [date, giving

reasonable time] for return of items, with the settlement payment not conditional on this?"

10. Warranties and Declarations

What This Clause Does

Warranties and declarations require you to confirm certain facts are true. You're essentially promising the employer that specific things are true as of the date you sign.

Common warranties include confirming you've returned all property, you haven't committed any misconduct, you don't have any other claims, you haven't already accepted another job offer, and you haven't discussed the agreement with anyone except family and advisers.

What to Check

- Are you being asked to confirm things that aren't true?
- If you can't truthfully give a warranty, have you disclosed this to your adviser?
- Are the warranties qualified ('to the best of your knowledge')?
- What are the consequences if a warranty turns out to be false?
- Do any warranties conflict with reality?

Red Flags

Important

You're required to warrant you've committed no misconduct when you're being dismissed for alleged misconduct. Don't sign a false warranty. If the employer believes there's been misconduct, they shouldn't rely on your warranty to the contrary.

You're asked to confirm you have no other claims when you do have legitimate concerns. If you have concerns about discrimination, harassment, or other matters, don't warrant they don't exist.

You must confirm you haven't accepted another job when you have. This is problematic because breach could allow the employer to claw back the settlement payment.

The warranty requires you to confirm you haven't discussed the agreement with anyone. In reality, you might have mentioned it to close family before getting advice. Some discussion with immediate family is normal and expected.

Breach of warranty allows the employer to terminate the agreement and reclaim all payments. This is a harsh consequence that may be unenforceable, but it's better to address warranties before signing.

Tip from Tom

Never sign a warranty you know to be false. If you can't truthfully give a warranty, tell your legal adviser immediately. The agreement needs to be amended.

Negotiation Strategy

If warranties don't reflect reality, they must be amended or removed before you sign. Don't rely on the employer not finding out. False warranties can void the entire agreement.

If you have concerns or potential claims beyond those being settled, either exclude these from the claims waiver or don't give a warranty that no other claims exist.

If you've accepted another job, either disclose this or have the relevant warranty removed.

What to Say
"The agreement asks me to warrant that [false statement]. I can't truthfully give this warranty because [factual situation]. Can we either remove this warranty or amend it to [accurate statement]? I want to be completely honest rather than sign something I know isn't true."

11. Without Prejudice Status

What This Clause Does

This clause confirms that settlement negotiations were conducted 'without prejudice' or under 'protected conversation' rules. This means what was said during negotiations cannot be referred to in future legal proceedings (with limited exceptions).

The purpose is to allow open settlement discussions without either party worrying that their offers or concessions can be used against them later.

What to Check

- Does the clause accurately reflect how negotiations were conducted?
- If meetings or conversations were marked 'without prejudice', is this confirmed?
- Are there any exceptions (for enforcement of the agreement itself)?
- Does the without prejudice status protect both parties equally?

When Without Prejudice Doesn't Apply

Without prejudice protection doesn't apply if there's been no dispute. The protection only works when there's an actual or anticipated claim or disagreement.

It also doesn't prevent you from referring to the negotiations if you need to enforce the settlement agreement itself (for example, if your employer doesn't pay).

And it can't protect 'unambiguous impropriety' - if something illegal or grossly improper happened during negotiations, the without prejudice protection might not apply.

Tip from Tom

This clause rarely causes problems. It's largely technical and protects both parties. You don't usually need to negotiate it.

Red Flags

Important

The clause extends the without prejudice protection to cover employer conduct that would otherwise be improper or unlawful. Without prejudice doesn't excuse improper behaviour.

The clause is one-sided, preventing you from referring to negotiations but allowing the employer to do so. This isn't how without prejudice should work.

12. Legal Advice Certificate

What This Clause Does

This clause requires you to obtain independent legal advice on the terms and effect of the settlement agreement. Your solicitor must then provide a certificate confirming they've advised you.

Without this certificate, the settlement agreement isn't binding. This is a statutory requirement designed to ensure you understand what you're signing.

What to Check

- Does the agreement specify who must provide the advice (usually a qualified solicitor)?
- Is there a contribution towards your legal fees?
- How much is the contribution? (Usually £300-£750 plus VAT)
- When must the certificate be provided?
- Is the certificate template attached to the agreement?
- Does the agreement specify that the adviser must have professional indemnity insurance?

What Your Legal Adviser Should Cover

Your solicitor's advice should explain every clause in the settlement agreement, assess whether the financial offer is fair, identify potential tribunal claims you're waiving, explain the tax treatment and how much you'll receive, review restrictive covenants and their impact, and advise on negotiation if appropriate.

The certificate your solicitor signs confirms they've explained the terms and effect of the agreement and how it affects your ability to bring tribunal claims. It doesn't mean they think the agreement is fair or that you should sign it.

Tip from Tom

Choose your own solicitor. You're not obliged to use solicitors your employer recommends. Independence matters.

Red Flags

Important

Your employer's contribution towards legal fees is very low (£200-£250 plus VAT). This might not cover full advice. Standard contributions are £350-£750 plus VAT.

The employer's solicitor offers to advise you. Never accept advice from your employer's solicitor. There's an obvious conflict of interest.

You're being pressured to sign quickly without time to get proper advice. You're legally entitled to independent advice. Don't sign without it.

The certificate is pre-signed or your adviser is willing to sign without actually advising you. This defeats the purpose of the requirement and could make the agreement unenforceable.

Common Employer Tactics and How to Respond

During settlement agreement negotiations, employers may use certain approaches that create pressure to accept quickly. Understanding these helps you respond appropriately and protect your interests.

Tactic 1: The Time Pressure

"You have 48 hours to sign or the offer is withdrawn."

This creates artificial urgency. In reality, most employers will extend deadlines if asked reasonably. They want the certainty of settlement too.

How to respond: "I appreciate you'd like this resolved quickly. However, I need adequate time to obtain proper legal advice as required by law. I'm instructing a solicitor today and expect to respond by [reasonable date, usually 7-10 days]. I trust you'll agree this is reasonable."

Tactic 2: 'This Is Our Final Offer'

Employers often present the first offer as final and non-negotiable. In reality, most offers have headroom for negotiation.

How to respond: "I've reviewed the offer with my legal adviser. Based on [length of service/potential claims/circumstances], we believe a settlement of £[higher amount] more accurately reflects the claims I'm waiving. I'm happy to discuss this with you."

Tactic 3: Suggesting Their Recommended Solicitor

"We've arranged for [specific solicitor] to provide your independent advice. They've agreed to work within our £350 contribution."

While these solicitors might be competent, you should choose your own adviser. True independence matters.

How to respond: "Thank you, but I've already identified my own legal adviser. I prefer to use a solicitor I've selected independently."

Tactic 4: Dismissing Your Concerns as 'Standard'

"Those restrictive covenants are standard. Everyone signs them. They're not enforceable anyway."

Just because something is common doesn't make it reasonable. And restrictive covenants in settlement agreements can be enforceable.

How to respond: "While these restrictions might be standard, they would prevent me from working in my field for 12 months. I need either to narrow these restrictions to [reasonable scope] or for the settlement to increase to reflect this significant limitation on my earning capacity."

Tactic 5: The Veiled Threat

"If you don't accept this offer, we'll have to proceed with [disciplinary process/dismissal without payment]."

This is designed to make you accept from fear. But if you have strong claims, this threat may be empty.

How to respond: "I understand the company's position. However, I've taken advice on the strength of my potential claims. Given [circumstances], I believe I have strong grounds for [discrimination/whistleblowing/unfair dismissal] claims. I'd prefer to reach a negotiated settlement that fairly reflects these claims rather than proceeding to tribunal, but the current offer doesn't achieve this."

Tip from Tom

Don't let employer tactics pressure you into a bad decision. You're entitled to time, proper advice, and fair compensation. Stand firm.

Questions to Ask Your Legal Adviser

Your legal adviser's job is to help you make an informed decision. Don't be afraid to ask questions until you fully understand the agreement and your options.

About the Offer Amount

- Is this settlement offer fair based on my circumstances?
- What could I potentially win at an employment tribunal?
- What are the realistic chances of winning at tribunal?
- How long would a tribunal claim take and what would it cost?
- Should I try to negotiate a higher settlement?
- If I negotiate, what amount should I ask for?

About Tax

- How much will I actually receive after tax?
- Is the payment structure tax-efficient?
- Should any elements be restructured to reduce tax?

- Am I liable under the tax indemnity clause?
- What's the risk of HMRC challenging the tax treatment?

About Claims You're Waiving

- What tribunal claims am I giving up by signing this?
- Do I have strong claims that I should pursue instead?
- Am I waiving claims I didn't realise I had?
- What's the approximate value of the claims I'm waiving?
- Should I exclude any claims from the waiver?

About Restrictive Covenants

- Will these restrictions prevent me working in my field?
- Are these restrictions enforceable?
- Can I work for [specific employer] without breaching?
- Should these restrictions be narrowed?
- Is there additional payment for these restrictions?

About the Reference

- Is the agreed reference wording positive enough?
- Should any part of the reference be changed?
- What will happen if my employer gives a different reference?
- Should we add any specific wording about my performance or contributions?

About Next Steps

- Should I accept this offer as is?
- Should I try to negotiate? If so, what should I focus on?
- What happens if I reject the offer?
- How long do I have to make a decision?
- Can I ask for more time?

- What should my response to the employer say?

Tip from Tom

A good legal adviser should answer all these questions clearly and honestly. If you don't understand something, ask again. This is your future at stake.

Is This Settlement Fair? Your Decision Framework

After reviewing every clause and discussing with your legal adviser, you need to make a decision. Should you accept, reject, or negotiate?

Here's a framework to help you decide.

Factors Favouring Acceptance

- The settlement amount is at or above what you could realistically win at tribunal
- You don't have strong tribunal claims (less than 2 years' service, no discrimination or whistleblowing)
- The settlement gives you immediate certainty and avoids tribunal stress
- Restrictive covenants are reasonable and won't prevent you working
- You've negotiated improvements to the original offer
- The reference is agreed and positive
- You want to move on quickly with your life and career

Factors Favouring Negotiation

- The offer is significantly below potential tribunal awards
- You have strong discrimination, whistleblowing, or other uncapped claims
- Restrictive covenants are unreasonably broad
- There's no agreed reference or it's inadequate
- The tax treatment is incorrect
- Your adviser believes there's clear room for improvement

- This is clearly a first offer with negotiation expected

Factors Favouring Rejection

- The offer is insulting low compared to your claims
- You have very strong tribunal claims worth significantly more
- The employer's conduct has been so poor you want your day in tribunal
- Restrictive covenants would destroy your career prospects
- You're prepared for the time, stress, and uncertainty of tribunal
- You have alternative income and can afford the tribunal timeline

Important

Remember: tribunal claims take 9-18 months, involve significant stress, and have no guaranteed outcome. Even strong claims can lose. Settlement provides certainty.

Making Your Decision

Consider both the financial and non-financial factors. A slightly lower settlement that gives you immediate payment, a good reference, and freedom to work might be worth more than a higher amount with restrictions.

Think about your personal circumstances. Do you have another job lined up? Do you have savings to live on during a tribunal claim? How would tribunal stress affect you?

Trust your legal adviser's assessment, but ultimately the decision is yours. Your adviser can tell you whether the offer is fair, but only you can decide whether you want to accept it.

If your settlement is being negotiated in late 2026 and your employment will terminate in 2027, consider whether waiting until the ERA 2025 changes take effect (January 2027) might strengthen your position, particularly if you have between 6 months and 2 years of service.

Tip from Tom

There's no perfect decision. Accept that you're making the best choice you can with the information available. Then move forward without second-guessing.

Final Checklist Before Signing

Before you sign the settlement agreement and your solicitor provides the advice certificate, work through this final checklist.

Have You...

- Read the entire agreement carefully, not just the payment clause?
- Had every clause explained by your legal adviser?
- Asked questions about anything you don't understand?
- Confirmed the settlement amount and understood the tax treatment?
- Calculated exactly how much you'll receive after tax?
- Checked the payment deadline and confirmed it's acceptable?
- Reviewed all restrictive covenants and confirmed they're acceptable?
- Confirmed you can work for your next employer without breaching?
- Reviewed the agreed reference if there is one?
- Checked you can truthfully give all warranties and declarations?
- Confirmed you're not signing away claims worth significantly more?
- Discussed whether negotiation would be appropriate?
- Had adequate time to consider the offer without pressure?
- Discussed the decision with your family if appropriate?

Have You Discussed...

- What happens if you reject the offer?
- Whether you have strong tribunal claims you should pursue?
- The realistic value of any tribunal claims?
- How long a tribunal claim would take?

- Whether this settlement is fair in your circumstances?
- What you should do if the employer breaches the agreement?

Before You Sign

Take a moment. This is a significant decision. Once you sign with your solicitor's certificate, you cannot usually change your mind. The agreement becomes binding and you've waived your right to bring tribunal claims.

Are you comfortable with every clause? Do you understand what you're signing? Is the settlement fair? Are you ready to move forward?

If the answer to any of these questions is no, don't sign yet. Go back to your legal adviser with your concerns. It's better to delay than to sign something you'll regret.

> **Tip from Tom**
> You're allowed to take your time. This is your future, not just paperwork. Make sure you're completely comfortable before signing.

After You Sign: What Happens Next

Once you've signed the settlement agreement and your solicitor has provided the advice certificate, the agreement becomes legally binding. Here's what should happen next.

Immediate Steps

Your solicitor sends the signed agreement and certificate to your employer. Your employer signs and returns a countersigned copy to you. The payment clock starts running from when your employer receives your signed agreement.

Payment Timeline

Most agreements require payment within 14-28 days of the employer receiving your signed agreement. Mark this deadline in your calendar. If payment hasn't arrived by the deadline, contact your employer's HR department immediately.

If the employer misses the payment deadline, they're in breach of contract. Your solicitor can send a formal letter demanding payment. If this doesn't work, you can bring a breach of contract claim in the civil courts (County Court or High Court).

Returning Property

If you haven't already returned company property, do this by the deadline specified in the agreement. Get proof of return (recorded delivery for posted items, receipt if returning in person).

Starting New Employment

Check your restrictive covenants carefully before accepting a new role. If you're unsure whether a prospective employer is covered by the restrictions, ask your legal adviser before accepting the offer.

If you breach restrictive covenants, your former employer could seek an injunction preventing you from working there and claim damages for any loss they suffer.

References

If the agreement includes an agreed reference, provide a copy to prospective employers when they request references. This ensures they contact the right person and use the agreed wording.

If your employer provides a different reference that breaches the agreement, this is a breach of contract. Keep evidence of any different reference and contact your solicitor.

If Problems Arise

If your employer breaches the settlement agreement (doesn't pay, provides a different reference, discloses information in breach of confidentiality), you can bring a breach of contract claim in the County Court or High Court.

Keep all documentation relating to the settlement agreement. If there's a dispute about its terms or whether it's been breached, you'll need this evidence.

Tip from Tom

Most settlement agreements are honoured without problems. But if issues do arise, act quickly. Don't let breaches slide, as this can make them harder to challenge later.

When You Need More Than This Guide

This guide gives you the knowledge to review a settlement agreement clause by clause, spot red flags, and understand what you're being asked to sign. But it's not a substitute for professional legal advice.

You Need a Solicitor If...

- You're facing a complex discrimination or whistleblowing claim
- The potential tribunal awards are substantial (£30,000+)
- The settlement offer seems unfairly low
- Restrictive covenants would prevent you working in your field
- You're being pressured to sign quickly
- The tax treatment is unclear or seems incorrect
- You need help negotiating better terms
- You want to understand the strength of your tribunal claims

Remember, getting legal advice isn't optional. The law requires you to receive independent advice from a qualified solicitor before the settlement agreement becomes binding. Your employer must contribute towards the cost of this advice.

How We Can Help

At Tom Street & Co. Solicitors, we specialise in settlement agreement advice. We review every clause, assess whether the offer is fair, identify negotiation opportunities, and help you reach the best outcome.

Our service includes a thorough review of the entire agreement, clear advice on tax treatment and take-home amounts, assessment of the claims you're waiving, negotiation with your employer where appropriate, and a certificate of independent legal advice.

Your employer must contribute towards your legal fees (typically £350-£750 plus VAT). For straightforward settlement agreement reviews, this usually covers the full cost of our advice.

For more complex cases requiring negotiation, additional fees may apply, which we'll discuss with you upfront.

Get in Touch

To instruct us for settlement agreement advice, email your settlement agreement to info@tomstreet.co.uk or call us on 020 3835 3940.

We respond within 24 hours and can usually provide full advice within 24-48 hours of instruction.

Tip from Tom

Don't sign without advice. Use this guide to understand what you're being offered, then get professional help to ensure you're making the right decision.

20. Need Further Help?

If you would like to discuss your situation with an employment law solicitor, we offer free initial consultations to assess your case.

Telephone: 020 3835 3940
Website: tribunalclaimsolicitors.co.uk

Where we feel you have a viable case, we may be able to represent you on a no win no fee basis. Even if we cannot take on your case, we can often point you in the right direction.

Disclaimer: This guide provides general information and is not intended to be legal advice. Every situation is different, and the law may have changed since this guide was written. If you need advice about your specific circumstances, please consult a qualified solicitor.