

SETTLEMENT AGREEMENTS

A practical guide for employers



When an employment relationship breaks down, matters can escalate quickly, disrupting teams, draining management time and increasing legal and reputational risk. A well-handled settlement agreement can provide a clean, enforceable exit, protect your commercial interests, and allow everyone to move on with dignity and certainty.

This guide is for employers in England Wales, and especially in the South West. It explains when a settlement agreement might be appropriate, how the process should be run and what kinds of terms you should consider. It also outlines common mistakes and areas of risk, and provides a practical checklist you can follow.

This is general guidance, not legal advice. Settlement agreements are technical documents and should be tailored to the facts, the employee's seniority and the risks in play.





WHAT IS A SETTLEMENT AGREEMENT?

A settlement agreement is a legally binding agreement where an exiting employee typically agrees to waive certain employment claims, often in return for a payment and some agreed terms. For it to be valid, the employee must receive independent legal advice and the agreement must meet specific legal requirements.

WHY USE A SETTLEMENT AGREEMENT?

The main reason for using a settlement agreement is the certainty and control it brings to an exit situation, whether that is for an individual or a number of employees, for example in the case of a redundancy programme. A settlement agreement, once in place, avoids or ends a tribunal claim and reduces any ongoing exposure. There can be other benefits too, including:

- Speed and focus: a settlement agreement prevents a drawn-out disciplinary or grievance process.
- Confidentiality and reputation: the terms of an agreement can help to protect business relationships and internal morale by preventing disclosure.
- Commercial protections: agreements can help to reinforce any contractual confidentiality, return of property, including IP and data, and restrictive covenants leading to an orderly handover and exit.
- Cost management: a settlement agreement resolves matters on known terms rather than relying on uncertain and expensive litigation.

If you are considering an exit – whether performance-related, redundancy-adjacent, conflict-driven or if it is a senior departure – our employment team can help you choose the safest and most proportionate route.



WHEN IS A SETTLEMENT AGREEMENT APPROPRIATE?

Settlement agreements can be useful in a wide range of exit scenarios, including:

- Senior exits or board-level departures
- Performance concerns where relationships have broken down
- Workplace conflict or relationship breakdowns
- Grievances and disputes, including discrimination and whistleblowing allegations
- Redundancy programmes, especially where enhanced terms are offered
- Restructures where you want a clear, documented agreement
- Discreet parting of ways where both parties want a dignified exit

However, a settlement agreement is not always the right answer. Where you need a clear finding, an urgent safeguarding response, or where there is no genuine prospect of agreement, the settlement route may be unsuitable, unachievable or may need careful handling alongside formal processes.

We can help you assess whether settlement is the right route or whether you should proceed via a capability, disciplinary, grievance or redundancy process instead.

STARTING THE PROCESS – WITHOUT PREJUDICE AND PROTECTED CONVERSATIONS

How you raise the idea of a settlement agreement can be as important as the document itself so it needs a considered approach – it is not something that can be just thrown into the conversation. Failing to reach a settlement or casually suggesting terms that are unachievable or offensive to the exiting party can even make the situation worse.

The key points to managing risk in this area include:

- Plan your approach: decide in advance who will speak, what will be said, and what the proposed terms are.
- Choose the right framework: conversations will generally be "without prejudice" and/or "protected conversations" – the scope differs and needs careful handling.
- Keep the tone professional: avoid threats or language that could later be relied upon in claims, for example discrimination, whistleblowing, automatic unfair dismissal.
- Avoid "pressure tactics": undue pressure can undermine the process and inflame disputes.
- Follow up in writing carefully: any letter/email should be consistent with both your discussion and your intended legal approach.

We can provide advice on the safest way to open negotiations, including drafting invitations and scripts that minimise risk



THE TERMS OF THE AGREEMENT

It is easy to become focused on the headline payment in a settlement agreement and it is, of course, an important element. But a robust settlement is about much more than this payment and you need to be careful to ensure that all aspects of your exposure are adequately covered within terms, including:

- Scope of claims waiver – ensuring the agreement achieves the intended "clean break" as far as legally possible.
- Payment provisions – what is paid, when, and subject to what conditions, for example the return of any company property, IP or data in the employee's possession.
- Tax treatment – structuring all payments appropriately, including notice, holiday pay, compensation and benefits, and documenting the intended treatment.
- Confidentiality and non-disparagement – protecting your business's reputation and any sensitive information the employee may have access to.
- Restrictive covenants – re-confirming or strengthening any non-compete, non-solicit, non-deal protections where appropriate and enforceable.
- Return of property and data safeguards – devices, documents, keys, systems access, client lists, and deletion or return of confidential material.
- References and announcements – agreeing any employment reference wording and what can and cannot be said in any internal or external communications about the exit.
- Handover and exit logistics – garden leave, termination date, handover obligations, and post-termination contact arrangements.
- Warranties and undertakings – any other conditions, for example, no copies of documents or files retained, no confidential information disclosed or cooperation with future queries.

Given the breadth and complexity of potential terms it is important to approach each settlement agreement as a unique episode. Naturally, it can be efficient to start from a template, but a one-size-fits-all approach can leave gaps and vulnerabilities, particularly when dealing with senior employees, regulated roles, or where allegations include discrimination or whistleblowing.

Our specialist employment team can help you draft and negotiate settlement agreements with a practical, employer-focused approach, protecting your position while helping to minimise cost and disruption.





KEY STEPS FOR EMPLOYERS

1: RISK AND STRATEGY ASSESSMENT

- What are the underlying issues and legal risks, for example unfair dismissal, discrimination, whistleblowing?
- What is your best alternative if settlement fails?
- What terms do you need to protect the business – confidentiality, covenants, references?

2: PREPARE THE OFFER

- Decide the offer structure and timing.
- Prepare the written agreement and any side documents, for example, reference/announcement text.
- Decide who has authority to negotiate and sign.

3: CONDUCT NEGOTIATIONS PROFESSIONALLY

- Keep communications consistent and measured.
- Allow reasonable time for consideration and legal advice.
- Be careful with deadlines and messaging – avoid giving grounds for allegations of undue pressure.

4: FINALISE AND IMPLEMENT

- Confirm termination logistics and payments.
- Ensure return of property and system access steps are executed.
- Keep internal comms aligned to what has been agreed.



COMMON MISTAKES AND RISK AREAS

MISHANDLING THE "SETTLEMENT CONVERSATION"

Unless properly handled, communications can become evidence and the dispute escalates. To avoid this, plan your approach; get advice on the correct framework; keep the tone neutral and professional.

RUSHING THE PROCESS IN HIGH-RISK SITUATIONS

Settlement agreements always require a degree of sensitivity but some more than others. In cases of discrimination or whistleblowing claims a clumsy or rushed process can jeopardise the 'containment' of the solution. Take early advice and consider parallel steps such as a brief fact-find to stabilise risk and ensure that you are taking the right option.

POOR PAYMENT STRUCTURING AND TAX ASSUMPTIONS

The financial side of the settlement agreement should be approached carefully and with a view beyond the headline settlement figure. Failure to do so risks unexpected cost, HMRC challenge, and further dispute. Separate the heads of loss clearly – notice, holiday, compensation etc., document the timing of payments, and take specific advice on structuring.

WEAK CONFIDENTIALITY AND DATA-RETURN PROVISIONS ASSUMPTIONS

It is vital that you include strong confidentiality, non-disparagement, IP and data-return clauses, and build in clear and practical exit steps regarding devices, access, and deletion. Without these, you risk reputational harm or misuse of information – undermining the whole point of the settlement agreement.

FORGETTING ABOUT POST-TERMINATION PROTECTIONS

Failing to focus on protections after an employee's exit can leave you open to client poaching, staff solicitation, and competitive harm. Review what restrictive covenants are already in place and what can be added as a term within the agreement, and consider practical enforcement readiness; what are you going to do if the employee breaches the terms?

UNCLEAR REFERENCE AND ANNOUNCEMENTS

Clear communication can help to solve or head off a lot of problems including future disputes and internal confusion. Agree reference wording and a short internal announcement as part of the deal – that way everyone knows where they stand.

LACK OF INTERNAL COORDINATION

Errors with payroll, benefits and IT can undermine the agreement. Create an implementation checklist to ensure that relevant departments are positioned to support the agreement with prompt and accurate actions.



SETTLEMENT AGREEMENT CHECKLIST

BEFORE YOU OPEN THE CONVERSATION

- Identify the underlying issue(s) and legal risk profile
- Check the employee's contract – notice, covenants, bonus/commission, benefits etc.
- Decide the desired outcome – clean break, handover, garden leave, immediate exit
- Decide your negotiation authority and communication plan
- Prepare draft agreement, reference wording, and announcement text
- Consider whether any process steps are needed in parallel such as a brief investigation or grievance handling

DURING NEGOTIATIONS

- Use appropriate wording and framework for discussions
- Keep communications professional, consistent, and limited to need-to-know
- Avoid pressure tactics; allow time for independent advice
- Track agreed points and version control of documents
- Confirm any confidentiality expectations during negotiations

FINALISING AND IMPLEMENTATION

- Ensure signed agreement meets legal formalities, including independent advice and adviser certification
- Confirm termination date, payments, and timing
- Issue payroll instructions and document tax treatment assumptions
- Collect property; remove system access; confirm deletion/return of data
- Put the agreed reference and announcement in place
- Follow up on any document handover arrangements
- Store the agreement securely and record post-termination restrictions for monitoring

HOW COODES CAN SUPPORT YOU

We regularly advise employers across the region and across a wide range of sectors including hospitality, manufacturing, services and rural industries on the strategy, drafting and negotiation of settlement agreements. We can support you and your business with:

- Drafting and reviewing settlement agreements with clear, enforceable terms
- Advice on the safest way to hold settlement discussions
- Structuring payments – notice, holiday pay, compensation and benefits
- Negotiating key protections – confidentiality, non-disparagement, restrictive covenants, return of property and data safeguards
- Managing exit logistics – references, announcements, handover and timing
- Reducing future exposure and aiming for a clean break wherever possible

COODES' EMPLOYMENT TEAM

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