



Resource Centre · Employment

Settlement agreements: the guide

What makes a settlement agreement binding, the advice you must take, who pays for it, and how the money is taxed.

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Settlement agreements: what makes one legally binding, and who pays for your advice

When is a settlement agreement binding? The advice you must take, who can give it, who pays for it, how the money is taxed, and the 2026–27 changes.

A settlement agreement is one of only two ways to give up an employment tribunal claim by agreement — the other is an Acas-conciliated COT3. It binds you only if a set of statutory conditions is met, and one of them is that you take advice from a named, insured, independent adviser before you sign. That is why an employer has a reason to fund the advice: without it, the waiver does not work.

Below is what the statutes require, who can give the advice, how the money is taxed, what the deadlines actually are once Acas conciliation is counted — most of them doubled on 1 October 2026 — and what changes on 1 January 2027.

Why the formalities exist

Section 203(1) of the [Employment Rights Act 1996](#) makes an agreement void so far as it "purports to exclude or limit the operation of any provision of this Act, or to preclude a person from bringing any proceedings under this Act before an employment tribunal".

So you cannot sign away an Employment Rights Act claim — unfair dismissal, unlawful deductions, redundancy pay — in an ordinary contract or an exit letter. Parliament carved out two routes: an agreement reached through an Acas conciliation officer (a COT3), and a settlement agreement meeting the conditions in section 203(3).

Two things to hold on to. First, section 203 governs rights *under that Act*. A discrimination complaint is dealt with separately, by [sections 144 and 147 of the Equality Act 2010](#), which impose their own near-identical conditions for a "qualifying settlement agreement". Since most agreements waive both kinds of claim, both sets of conditions have to be satisfied. Second, if a waiver fails the conditions, it is that waiver that is ineffective — the rest of the contract, including the employer's promise to pay, is a separate question.

The six conditions

Section 203(3) requires that:

1. **the agreement is in writing;**

2. **it relates to the particular proceedings;**
3. **you received advice from a relevant independent adviser** "as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal";
4. **the adviser was insured** — a contract of insurance or professional indemnity was in force when the advice was given, covering the risk of a claim by you for loss arising from that advice;
5. **the agreement identifies the adviser;**
6. **the agreement states that the conditions regulating settlement agreements under the Act are satisfied.**

Equality Act section 147(3) sets closely similar conditions for discrimination complaints — writing, particularity, independent advice, insurance and identification of the adviser — with one difference of detail: the statement the agreement must contain is that the advice and insurance conditions, paragraphs (c) and (d), are met, rather than a statement that all the regulating conditions are satisfied.

Condition three is the one people misread. The adviser's statutory job is to explain the terms and their effect on your ability to bring a claim. It is not to tell you the deal is good. A solicitor can properly sign the certificate on an agreement they think is worth less than the claim, provided you have been told so and decided to accept it anyway.

Who counts as an independent adviser — and who does not

Section 203(3A) lists them:

- **a qualified lawyer;**
- **an officer, official, employee or member of an independent trade union** certified in writing by the union as competent and authorised to advise on its behalf;
- **a worker at an advice centre**, employee or volunteer, certified in writing by the centre as competent and authorised;
- a person of a description specified by order.

Section 203(3B) then disqualifies them in four situations. The adviser is **not** independent if they are, are employed by, or are acting in the matter for the employer or an associated employer; if the union or advice centre *is* the employer or an associated employer; if the adviser is an advice-centre worker **and you pay for the advice**; or if a condition attached to a specified description is not met.

That third one catches people out. Advice from an advice centre is only valid for these purposes if you did not pay for it.

Equality Act section 147(4) sets out the same list of advisers for discrimination complaints. Its exclusions in section 147(5) are drawn more widely than the employer-based ones above: a person who is a party to the contract or to the complaint, or who is connected to such a party, is not an independent adviser either.

Protected conversations cover less than most people think

Section 111A of the 1996 Act makes evidence of "pre-termination negotiations" inadmissible — meaning an offer made or discussions held, before the employment ends, with a view to it ending on agreed terms. That is the protected conversation, and it is why an employer can raise the subject without a dispute already existing.

Read the first line: the evidence is inadmissible "in any proceedings on **a complaint under section 111**". Section 111 is ordinary unfair dismissal. That is the whole of its reach.

So a protected conversation does **not** keep the discussion out of:

- a discrimination claim under the Equality Act 2010;
- a whistleblowing detriment or dismissal claim;
- an automatically unfair dismissal claim — section 111A(3) takes these out where, on the complainant's case, a statutory provision requires them to be regarded as unfairly dismissed;
- a breach of contract or unlawful deduction claim.

For those, the fallback is the ordinary without prejudice rule, and it has two requirements, not one: there must be an existing dispute between the parties, **and** the communication must be a genuine attempt to settle it. Neither is automatic. A grievance can itself be the existing dispute — so raising one does not necessarily strip a later conversation of protection, and it does not confer it either. Whether a particular exchange is protected turns on what was happening at the time.

Two further limits sit in the section. Under section 111A(4), where anything said or done "was improper, or was connected with improper behaviour", the protection applies only to the extent the tribunal considers just. And under section 111A(5), an offer made on a reserved basis can still be referred to on costs.

What counts as improper behaviour

The [Acas Code of Practice on settlement agreements](#) gives the working examples: harassment, bullying and intimidation, including through offensive words or aggressive behaviour; physical assault or the threat of it; other criminal behaviour; discrimination; and putting undue pressure on a party.

Undue pressure is defined by example, and the examples are specific:

- not allowing the reasonable time for consideration the Code sets out;
- an employer saying, **before any disciplinary process has begun**, that if the proposal is rejected the employee will be dismissed;
- an employee threatening to damage the organisation's public reputation unless it signs, unless the Public Interest Disclosure Act 1998 applies.

On time, the Code recommends that as a general rule a minimum of **10 calendar days** be allowed to consider the proposed written terms and take advice, unless the parties agree otherwise. That is a recommendation, not a right you can enforce: the parties can agree a shorter period, and where a party says there was undue pressure the tribunal decides on the circumstances. A demand for an answer within two days, made the moment terms were handed over, is a much better argument under section 111A(4) than a short deadline at the end of a negotiation that has already run for weeks.

Separately, the protection never covers fraud, undue influence or some other unambiguous impropriety such as perjury or blackmail.

How particular does "the particular proceedings" have to be?

Particular enough to be named. In *Hinton v University of East London* [2005] IRLR 552 the Court of Appeal held that the claims covered must be identified **either by a generic description, such as "unfair dismissal", or by reference to the section of the statute** giving rise to the claim. A rolled-up "all statutory rights" will not do — and neither, the court said, will naming only the Act, since many different rights arise under the Employment Rights Act alone.

So a schedule listing "unfair dismissal, unlawful deduction from wages, direct discrimination because of disability under section 13 of the Equality Act 2010" is doing the statutory work. A clause waiving "any and all claims of whatever nature" is not.

Can you waive claims you do not yet know about?

Yes, but only on plain wording.

The point was contested until recently. The EAT in *Bathgate v Technip UK Ltd* [2023] ICR 191 held that a qualifying settlement agreement could not compromise a claim that had not yet arisen. The Court of Session overturned that in *Bathgate v Technip Singapore Pte Ltd* [2023] CSIH 48, holding that future claims **can** be validly compromised where the statutory preconditions are met, and the EAT in *Clifford v IBM UK Ltd* [2024] EAT 90 declined to depart from it.

The qualification carries the weight. Where an agreement is to cover future claims the employee does not and could not know about, its terms must be, in the EAT's phrase, "absolutely plain and unequivocal". Generalised wording will not reach them.

Which means the list of waived claims is not boilerplate to skim past. It is the operative part of the agreement, and it should be read against what you actually know about your own position — and against anything you have already raised, since a matter already in a grievance is much more likely to be held to have been settled than one nobody had mentioned.

The tax, which is where offers are misread

The headline figure in an offer is rarely what reaches your account.

The first £30,000 of a qualifying termination payment is free of income tax under sections 401 and 403 of ITEPA 2003. Statutory redundancy pay counts towards that £30,000.

Post-employment notice pay sits outside it. PENP — broadly, the part of the payment corresponding to notice you did not work — is, in HMRC's words at [EIM13876](#), "chargeable to income tax as general earnings and does not benefit from the £30,000 threshold in section 403 ITEPA 2003".

Payments in lieu of notice are taxable and subject to Class 1 NICs, whether or not the contract contains a PILON clause. Since 6 April 2018 the employer must run the PENP calculation either way, so the old contractual/non-contractual distinction no longer changes the answer.

Ordinary earnings are taxed as earnings. Salary to the termination date, accrued holiday pay, bonus and any payment for a restrictive covenant are not part of the £30,000 exemption; they are taxed and carry NICs in the normal way.

Employer Class 1A NICs are due on the excess over £30,000. That charge came from the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 and took effect on **6 April 2020**, by [SI 2020/285](#) — later than the date still quoted in a good deal of commentary. The cost falls on the employer, not on you, but it shapes what they will offer.

So whether an offer is "tax free" depends entirely on what it is made up of. A genuine £30,000 compensation payment, with notice and earnings paid separately and taxed, can be free of income tax. The same £30,000 described loosely, with notice rolled into it, will not be. Ask for the PENP figure and a gross-to-net breakdown in writing before you accept.

The deadline is shorter than it sounds

Two points, because people lose claims on both.

Most claims now run for six months less one day from the relevant date — for unfair dismissal, the effective date of termination — where that date is on or after 1 October 2026. Where it fell before 1 October 2026, the old limit of **three months less one day** still applies. Not six months, or three: less one day. [Acas's own guidance](#) works the example: paid wrongly on 1 October 2026, add six calendar months, take off a day, and the limit ends at 11:59pm on 31 March 2027.

A few were six months less one day even before the change — statutory redundancy pay, equal pay, certain claims against a trade union, and certain armed forces claims.

Acas early conciliation changes the arithmetic. Before most claims can be presented you must comply with section 18A of the Employment Tribunals Act 1996 by notifying Acas of the intended claim — an early conciliation notification, not a call to the helpline. **Section 207B of the 1996 Act** then adjusts the clock for Employment Rights Act claims, and **section 140B of the Equality Act 2010** does the same, in the same terms, for discrimination. Day A is the day you comply with that requirement; Day B is the day you receive the early conciliation certificate "or, if earlier, [are] treated as receiving" it under the deemed-receipt rules. The period from the day after Day A to Day B does not count, and if the limit would otherwise expire between Day A and one month after Day B, it expires one month after Day B instead. Use the certificate for Day A and for how and when it was sent; Day B is then the date you received it, or are deemed to have, which is not the same as the issue date printed on it.

Nothing else stops the clock. Acas puts it flatly: going through grievance, disciplinary or appeal procedures does not change your time limit. Nor does a negotiation — an offer under discussion, a deadline extended between the parties, an employer promising to revert. If the internal process is running long, notify Acas anyway.

And one application is far shorter. Interim relief — an order keeping the contract alive until the hearing — is available only for a narrow list of dismissals: under section 128 of the 1996 Act, those where the reason is whistleblowing, blacklisting, the employee's activities as a designated health and safety person or safety representative, or certain working-time, pension-trustee, employee-representative and union-recognition functions; and under section 161 of the Trade Union and Labour Relations (Consolidation) Act 1992, dismissal for trade union reasons. In each case the application must be presented "before the end of the period of seven days immediately following the effective date of termination". Seven days, and Acas notification may not be required first.

What changed on 1 October 2026, and what changes on 1 January 2027

Since 1 October 2026, the time limit for most tribunal claims has been six months, not three.

That is section 152 of and Schedule 12 to the **Employment Rights Act 2025**, commenced by **SI 2026/954**. Schedule 12 substitutes "six" for "three" across the statute book, including section 111(2) of the 1996 Act for unfair dismissal and section 123(1)(a) of the Equality Act 2010 for discrimination.

Regulation 4 is the part to hold on to: the new limit **does not apply in any case where the relevant date occurs before 1 October 2026**, and the Schedule to those Regulations sets that date jurisdiction by jurisdiction. For unfair dismissal it is the **effective date of termination**. For a discrimination complaint it is the date of the act — or, for conduct extending over a period, the end of that period, or, for a failure to do something, the date the person decided on it. The

Schedule lists a good many other jurisdictions with their own dates; where neither it nor regulation 4(2)(b) supplies one, the default is the date of the act or failure, or the last in a series of similar ones.

One warning on that. A separate instrument, SI 2026/758, also extended time limits from 1 October 2026, but only for a short list of secondary regulations — part-time workers, fixed-term employees, information and consultation, blacklists, zero-hours exclusivity and NHS protected disclosure. It is not the one that moves unfair dismissal or discrimination: regulation 3 of SI 2026/954 is what brings Schedule 12 in.

From 1 January 2027, the qualifying period for ordinary unfair dismissal falls from two years to six months, and the cap on the compensatory award goes. That is [section 25](#) of the same Act, commenced by [SI 2026/559](#). Section 25(2) substitutes "six months" for "two years" in section 108 of the 1996 Act; section 25(3) omits section 124, the limit on the compensatory award. Note what it is and is not: six months' service, not the day-one right widely trailed while the Bill was in Parliament.

The transitional rule there is worth reading twice. The change applies where the employee is dismissed before 1 January 2027 but the **effective date of termination** falls on or after it, and does not apply where the effective date of termination falls before.

Put the two together and the effective date of termination decides a great deal in an exit negotiated now. Any termination from 1 October 2026 carries the six-month time limit; whether it falls before or after 1 January 2027 fixes whether the two-year or the six-month qualifying period applies, and whether the compensatory award is capped. The termination date is not an administrative detail for HR to settle after the commercial terms are agreed. It is one of the commercial terms.

Who pays for the advice?

There is no legal obligation on an employer to fund it. What there is instead is a strong practical incentive: the waiver is not binding unless you have taken advice from a qualifying independent adviser, so an employer who wants a clean break has a reason to make that easy.

In practice a contribution towards the employee's legal fees is a standard term, expressed as a fixed sum plus VAT and usually paid directly to the solicitor on completion. The amount is negotiated, not set by law. Where the work is confined to advising on terms that are already agreed, a modest contribution often covers it. Where the agreement is complex, or the terms are being negotiated rather than explained, the work can exceed the contribution — so ask at the outset what the contribution is, what it covers, and who pays any shortfall. Get the answer before the work starts, not with the invoice.

Before you sign

- Ask which specific complaints the agreement settles, and check the list against what you know about your own position.
 - Check any warranty that you have no other claims, and whether you can honestly give it.
 - Ask for the PENP figure and the gross-to-net calculation, and check which parts are being treated as earnings.
 - Check what happens to accrued holiday, notice, bonus, shares, pension and outstanding expenses.
 - Read the confidentiality and non-derogatory clauses. Mutuality is a negotiating point rather than a validity requirement, but it is a reasonable one to ask for.
 - Check the carve-outs from confidentiality. Nothing should prevent you making a protected disclosure — a clause that did would be void under section 43J of the 1996 Act — and the [SRA's warning notice on NDAs](#) makes clear that an agreement must also leave you free to report a criminal offence, to co-operate with a criminal investigation, to make a report to a regulator, and to speak to your own legal, medical and tax advisers.
 - Check the reference. An agreed wording annexed to the agreement is worth more than a promise to be reasonable.
 - Check the termination date, for the reasons set out above.
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We advise on settlement agreements from both sides: for employees asked to sign one, and for employers who need one that will hold. Our [settlement agreement service](#) sets out how we work and what we charge.

If a deadline is close, speak to a solicitor rather than working through it yourself — you can [contact us](#) directly. If you are earlier than that and want to get oriented first, [Ai Guy](#) will give you general background on how these agreements work; it is information rather than advice, and it is not the route for anything urgent.

Time limits in employment cases are short and strictly applied, and Acas conciliation has to be factored in. Take advice before any of them expire.



Speak to one of our solicitors

This pack is general information about the law of England and Wales as at October 2026. It is not advice on your situation, and reading it does not make you a client. For advice on your own matter, contact us — or ask Ai Guy® at ai-law.co.uk/ask.

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