

**ENDING THE EMPLOYMENT  
RELATIONSHIP:**

Consultation

SEPTEMBER 2012

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# Ending the Employment Relationship

In May 2010, the Government committed to review employment laws for “employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for enterprise to thrive”. Since then we have been carrying out a Parliament-long review of employment-related legislation under the umbrella of the Employment Law Review.

In this part of the review, we are considering employment relationships that are not working out and what Government can do to support the parties to make informed decisions and give more certainty about outcomes when the parties separate.

In particular, the Government wants to facilitate open discussions between employers and employees without the concern that this could be used against either party in the event of an unfair dismissal claim. To take this forward, the Government is making a change through the Enterprise and Regulatory Reform Bill which would facilitate the use of settlement agreements. This consultation document considers the nature of guidance needed to support that legislative change. It also asks whether a guideline tariff for settlement agreements would be helpful in deciding on the level of offer. The consultation also poses questions around the level of appropriate compensatory award in unfair dismissal cases decided by tribunals.

The measures set out in this consultation document are intended to help both businesses and individuals, by giving employers and employees confidence in negotiating settlement offers. Businesses will be able to manage difficult workplace issues, such as ending the employment relationship more efficiently and effectively, without having to incur substantial sums on legal advice, while individuals will be able to leave with their head held high and the certainty of a pay-off, and avoid the uncertainty and stress of taking a case to tribunal.

Issued: Friday 14 September 2012

Respond by: Friday 23 November 2012

Enquiries to: [employmentrelationship@bis.gsi.gov.uk](mailto:employmentrelationship@bis.gsi.gov.uk)

Or by telephone to:

Debra MacLeod - 020 7215 0973 or Simon Rowley - 020 7215 2261

You can respond to the consultation online at <https://www.surveymonkey.com/s/TZNXGV>

This consultation is proposing changes to employment legislation and is therefore relevant to both employers and employees and their representatives.

## Foreword from the Minister for Employment Relations and Consumer Affairs



This Government is committed to encouraging growth, to create wealth and jobs. A key facet of this is ensuring that the way we regulate the labour market gives businesses and the UK economy their best chance of the quickest possible path to economic stability and growth, while boosting sustainable employment and providing appropriate protection to vulnerable workers.

Through the Employment Law Review and associated Red Tape Challenge, we want to improve every stage of the employment process, from making the decision to take on a very first member of staff, to ending the employment relationship in a fair and reasonable way.

Wherever possible, Government should keep out of individual employment relationships which are developed and managed by the two parties directly involved. The Government's role should be about setting minimum protections and providing the information and tools to help parties reach agreement themselves. It is important to ensure that employees are protected from arbitrary, unfair behaviour by the employer. And it is also important to give employers the confidence to hire new staff, knowing they will be able to deal effectively with those who under-perform or who commit serious acts of misconduct.

We have developed the policy on settlement agreements in response to ideas raised through submissions to the Resolving Workplace Disputes consultation and the Employment Law Review, including to the idea of a system of protected conversations.

I am very grateful to my colleague, Norman Lamb, for the work he has done in this area to encourage and promote the use of settlement agreements which will, subject to Parliamentary approval, be introduced through the Enterprise and Regulatory Reform Bill.

In developing the proposal he was able to draw from personal experience as a former employment lawyer where he saw countless examples of settlement agreements being used to good effect and to the benefit of both parties. I, too, am convinced this approach can work. Using settlement agreements as a means of resolving a problem without resorting to an Employment Tribunal can, in many instances, provide the most positive outcome for employers and employees but the current legislative framework doesn't give employers or employees confidence to bring up the subject.

I am very clear that for settlement agreements to work effectively, employers need the right kind of support. Employers will need clear guidance so they do it right, and providing them with templates and model agreements will save employers time and money. Guidance aimed at employees is also needed – so everyone is clear what is involved in making a settlement agreement and can make informed decisions. This approach has the potential to give employers complete peace of mind once a settlement is reached. And it gives the employee the chance to leave with their dignity respected and without disadvantaging them in the labour market. The responses to this consultation will help inform the detailed guidance that will underpin the use of settlement agreements in practice.

In the context of encouraging employers to take on staff, I believe it is important to give them greater certainty about their potential liabilities in the event that there is a dispute that cannot be resolved outside of a tribunal. I believe it is important that employees also have greater

understanding about potential tribunal awards. The cap on compensation for unfair dismissal was subject to a large one off increase in 1999 and has risen by more than inflation since. It is greatly in excess of the average award. I therefore want to look again at whether the current cap is set at an appropriate level and consider the potential impacts of the introduction of an individual limit of 12 months' pay.

We look forward to hearing your views on these subjects and I would like to thank you for taking the time to participate.

A handwritten signature in blue ink, reading "Jo Swinson". The signature is written in a cursive, flowing style.

Jo Swinson MP, Minister for Employment Relations and Consumer Affairs

## 1. Executive Summary

1. Through the Employment Law Review, the Government is considering the legislative framework underpinning the labour market, looking for ways to remove unnecessary business burdens and obstacles to growth, and support a fair, flexible and effective labour market. This has involved looking at all aspects of the employment lifecycle and the effective operation of the Employment Tribunal system.
2. In this consultation, we are considering two aspects of ending the employment relationship – settlement agreements and the compensation element of unfair dismissal awards – both of which are currently undergoing legislative change through the Enterprise and Regulatory Reform Bill.
3. Section 7 looks at ways in which to facilitate the use of settlement agreements. Settlement agreements are consensual, legally binding documents which can be used to end an employment relationship. Typically, an employee will receive a severance payment, and perhaps a reference, in return for waiving their right to take a case to an employment tribunal on any grounds covered by the settlement agreement. The Government believes that settlement agreements can be a valuable way of resolving disputes without having to resort to an employment tribunal. They can be of benefit to employers (who gain certainty they won't face a tribunal case on any of the grounds covered by the agreement) and the individual (who gets a payment and avoids a dismissal in their employment history).
4. We are making changes through legislation to make offers of settlement inadmissible in unfair dismissal claims, and we are proposing a statutory code to underpin its use. Acas will be producing the Code in due course, but we are keen to seek views on the principles which should underpin it. The consultation includes examples of the types of improper behaviour we believe should not be protected by legislation e.g. discriminatory behaviour, undue pressure to accept an offer etc.
5. We also believe that template letters and model agreements will help reduce business uncertainty about how to go about offering settlement in the right way. They can reduce the amount of time and legal resource required to achieve a consensual end to the employment relationship. Examples of letters to send and a model agreement and supporting guidance are included as annexes and we are keen to get views from stakeholders on these and how they could be used to best effect. Section 7 also asks if there are other types of information or guidance which would be helpful in agreeing settlement, for example a guideline tariff.
6. Section 8 considers whether the cap on compensation for unfair dismissal is currently set at an appropriate level. There has been a limit on compensation for unfair dismissal since the introduction of unfair dismissal rights in 1971. However, the limit was subject to a large one off increase in 1999 and has increased in excess of inflation since then, so that it now stands at the historically high level of £72,300. We therefore want to consider whether the current cap is set at an appropriate level to provide reasonable, but not excessive, compensation for unfair dismissal or whether the level of the cap should be decreased. We also consider that the current level of the cap may lead to unrealistic perceptions among both employees and employers about the level of tribunal awards. The (median) average unfair dismissal award is less than £5,000 – less than 10% of the value of the upper cap on compensation and less than 20% of the annual median wage of £25,882.

7. We therefore want to examine the option of a cap on individual awards of 12 months' pay (where this was less than the overall cap) and whether this would lead to more realistic perceptions of the likely level of awards and thereby encourage employers and employees to make better informed choices when resolving employment disputes. We also want to consider whether the current overall cap is set at an appropriate level. The consultation document invites views on the option of capping the compensatory award at 12 months' pay (which would be in conjunction with an overall cap), the appropriate level of the overall cap and the impact of changes on employers and employees, including whether these changes would encourage the earlier resolution of disputes.



## 2. How to respond

8. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
9. For your ease, you can reply to this Consultation online at :  
<https://www.surveymonkey.com/s/TZNJXGV>
10. A copy of the Consultation Response form is available electronically (until the consultation closes). If you decide to respond this way, the form can be submitted by letter, fax or email to:

Debra MacLeod  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Fax: 020 7215 6414  
Email: [employmentrelationship@bis.gsi.gov.uk](mailto:employmentrelationship@bis.gsi.gov.uk)

11. A list of those organisations that have been consulted is in Annex 4. We would welcome suggestions of others who may wish to be involved in this consultation process.

## 3. Additional copies

12. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845 015 0010  
Fax: 0845 015 0020  
Minicom: 0845 015 0030  
[www.bis.gov.uk/publications](http://www.bis.gov.uk/publications)

13. Other versions of the document in Braille, other languages or audio-cassette are available on request.

## 4. Confidentiality & Data Protection

14. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
15. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## 5. Help with queries

16. Questions about the policy issues raised in the document can be addressed to:

Debra MacLeod  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Fax: 020 7215 6414  
Email: [employmentrelationship@bis.gsi.gov.uk](mailto:employmentrelationship@bis.gsi.gov.uk)

## 6. Introduction

17. The Department for Business, Innovation and Skills is leading a co-ordinated effort across Government to examine and reform laws that affect the functioning of the labour market, under the umbrella of the Employment Law Review. A key part of this is the associated Red Tape Challenge which shone a spotlight on this area in October 2011. The Employment Law Review seeks to address the reality for business that the cost and complexity of employment laws impact on their ability to take on staff and grow. The Review also aims to tackle perceptions about employment law and dispel myths about what employers can or cannot do in the workplace in managing their staff.
18. Responses to the Resolving Workplace Disputes consultation and further feedback through the Employment Law Review and the Red Tape Challenge has highlighted employer concerns about their ability to have conversations with their staff about sensitive work issues without fear of ending up in an employment tribunal. This was most notable in relation to discussions around ending the employment relationship.
19. In November 2011, the Government announced that it would consult on the introduction of a system of protected conversations which would address those concerns. Since then, we have consulted with a range of stakeholders representing employers, individuals and the legal and HR communities and have further developed our understanding of the problem. Two key issues have been highlighted.
20. The first is that employers are more likely to hire staff if they have confidence that they will be able effectively to deal with underperforming staff and to be able to tackle head on the situation where the employment relationship is not working out.
21. The second point is certainty and the ability to make informed decisions. Employers want clarity about what they can do in managing fairly and legally the end of the employment relationship. They have said that the current legislative framework does not give them certainty about whether they are acting appropriately. They feel that they do not have the right information to make informed decisions, to minimise risks, and have a clear picture of their liability.
22. We have also taken steps to publicise the average award and average length of time it takes to reach a hearing in the major tribunal jurisdictions on both the ET1 and ET3 coversheets. This aims to promote a more realistic expectation about the likely level of compensation if a claim is successful and helps the parties make more informed decisions about whether they want to continue with the tribunal process, which may prove long and stressful.
23. It is already common practice for employers and employees to enter into a compromise agreement whereby the employee leaves the employment, receiving some level of compensatory payment in return for a waiver of their rights to bring employment tribunal claims. Often it is in the employee's interests to reach an agreement to end an unsatisfactory relationship. Sometimes, it is better for both parties to reach an agreement quickly rather than go through months of 'performance management', only to end up with a dismissal at a later date. There are limitations to the protections surrounding the current use of a compromise agreement and the Government is, through the Enterprise and Regulatory Reform Bill, introducing measures to promote the use of compromise agreements, including renaming them as settlement agreements.

24. This consultation document therefore seeks views on the following interventions:

- a. The proposed guidance to support settlement agreements in the workplace, including:
  - i. Principles for a settlement agreement which will form a Statutory Code of Practice;
  - ii. Draft letters making an offer of settlement, Annex 1;
  - iii. A model settlement agreement and supporting guidance, Annex 2;
- b. Whether there is a need for a guideline tariff to inform the negotiation of settlement agreements;
- c. Proposals for changing the level of compensatory awards in Unfair Dismissal claims.

25. The proposals in this consultation document seek to:

- Make it easier for employers and employees to have open discussions with each other where the employment relationship is not working out, without the concern that this could be used against them in the event of an unfair dismissal claim;
- Make it easier for parties to explore settlement agreements even where no formal dispute has arisen – creating a faster track to settlement - while reducing the number of cases going to tribunal;
- Give businesses greater clarity about the detail of what they can do and confidence in managing circumstances where the employment relationship is not working out;
- Give employers and employees a more realistic expectation of the level of damages they can expect in ET.

### Why are we taking forward these reforms?

26. We believe that the UK economy should be supported by a framework of laws that ensures that the labour market is both strong and efficient. By strong and efficient, we mean that we want a labour market that is:

- flexible, encouraging the creation of jobs by making it easy to get people into work and to stay in work;
- effective, enabling employers to manage their staff productively; and
- fair, with employers competing on a level playing field and workers provided with a strong foundation of employment protections.

27. The UK is internationally recognised as a ‘successful employment performer’, achieving a steady rise in employment, despite cyclical peaks and troughs, since the significant reforms

introduced in the 1980s (2006 OECD Jobs Study Review). A key driver of the strong performance of the UK labour market is our light-touch system of employment regulation. The labour market, like other markets, needs a framework of rules but the UK framework is less onerous than most. The OECD set out in its Indicators of Employment Protection 2008, that the UK labour market is one of the most lightly regulated amongst developed countries, with only the US and Canada having lighter overall regulation. Our system of employment regulation is an important element of the UK's comparative advantage. Nonetheless, we should never be complacent. We must be aware of steps being taken in other countries to increase flexibility of the labour market, and we also have to be conscious of concerns of employers that the potential cost of termination of employment puts them off taking on new employees.

28. The Government is clear that legislation has an important role in setting a minimum baseline of fair legal protections, but that wherever possible, the State should not interfere in the relationship between an employer and employee. By giving clear messages on what is and is not acceptable in managing the relationship, and providing information, guidance and support, we can empower individuals and their employers to make rational, informed decisions most appropriate to their individual circumstances.

## 7. Settlement Agreements

### Compromise Agreements (to be known as Settlement Agreements) – what they are and how they work

29. Compromise agreements, as they are currently known, are legally binding agreements between employer and employee and can be used to resolve all possible employment claims that the employee could bring. A compromise agreement to end the employment relationship usually provides for a severance payment to the individual by the employer, in return for not pursuing any claim in an employment tribunal. Quite often, the compromise agreement will also include an agreed reference which an employee can use when securing new employment. As compromise agreements are legally binding and put obligations/restrictions on employees, an individual must have independent legal advice<sup>1</sup> and the agreement must identify the adviser.
30. Where an individual signs a compromise agreement, they waive their right to take a case to an employment tribunal on any ground covered by that agreement. If the individual and employer end their relationship without a compromise agreement, an employee has the right to take a case to employment tribunal if there are grounds to do so. This is also the case where negotiations over a compromise agreement break down or if settlement is offered and not accepted.
31. Compromise agreements usually contain confidentiality clauses and, therefore, there is limited reliable information about their use. There is, for example, no source of data that can tell us exactly how many are used in a given year. We understand, however, that they are quite widely used, particularly by larger organisations. Compromise agreements are often made before there is a threat of an employment tribunal claim. In other cases, employers and employees may come to an agreement after a claim has entered the employment tribunal system, sometimes through a compromise agreement, or more often through completing a COT3 conciliation form. In these cases, the case will be withdrawn from the system.
32. In November 2011, the Government announced its intention to amend the title of ‘compromise agreements’, and compromise contracts, as they are referred to in the Equality Act 2010, to ‘settlement agreements’. This term more accurately describes their content and will help to avoid any party refusing to sign an agreement on the grounds that they do not want to be seen as ‘compromising’. We also believe that “settlement agreement” is a more widely understood term, being used in the treatment of contract claims. This is being taken forward through the Government’s Enterprise and Regulatory Reform Bill.
33. In this consultation document, we will use the term settlement agreement.

### Negotiating agreement – how the law affects the process

34. In order to achieve a settlement agreement, one party – usually the employer - will put forward an offer and the two parties will negotiate until the agreement is concluded or either party refuses to continue with negotiations. In some cases this can be a single conversation or exchange of communications. In other cases, this can be a process of negotiation. We understand, from our stakeholder feedback, that the making of offers and the subsequent

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<sup>1</sup> Provided by a lawyer, or trade union official who is authorised to do so, or an advisor in a law centre who is authorised to do so.

negotiations are areas of strong concern for many businesses that fear that their words will be used against them in an employment tribunal. This, of course, results in businesses incurring substantial legal fees to guide them through the process.

35. If the settlement agreement is being discussed as a means of settling an existing dispute, the negotiations between the parties can be carried out on a *without prejudice* basis. *Without prejudice* is a common law principle which prevents statements (written or oral) made in a genuine attempt to settle an existing dispute from being put before a court as evidence against the interest of the party which made them. It is subject to some limited exceptions; for example the evidence will be admissible where there has been fraud, undue influence or some other 'unambiguous impropriety' such as discrimination. Where the *without prejudice* principle applies, the fact that settlement negotiations took place and the contents of the negotiations will not be admissible as evidence in a subsequent employment tribunal case.
36. Therefore, where the *without prejudice* principle applies, an employer proposing settlement in a dispute situation has some security in knowing that if settlement cannot be agreed and they then go on to dismiss the employee at a later date, the employee will not (subject to any unambiguous impropriety) be able to refer to the offer as evidence in an unfair dismissal case. But an employee is not prevented from presenting other evidence where they feel they have a case.
37. Where the *without prejudice* principle does not apply, the offer of a settlement, and all negotiations and communications in relation to that offer of settlement, are potentially subject to scrutiny by a tribunal if the agreement is not finalised and binding.

### Reforms to help parties to settle

38. As noted in paragraphs 17 and 18, feedback through the Employment Law Review and Red Tape Challenge processes highlighted concerns about employers' legal ability to have conversations about sensitive workforce issues with their staff, particularly in relation to discussions around ending the employment relationship where it was clear the relationship was not working out. This reflects feedback from the Resolving Workplace Disputes consultation where a number of respondents, including Confederation of British Industry, Institute of Directors and Engineering Employers' Federation, noted that employers feel unable to start discussions with a member of staff about ending their employment by means of a compromise agreement in the absence of a formal dispute (because the *without prejudice* principle does not apply at this point).
39. Discussions with stakeholders reveal there is some uncertainty and confusion amongst some employers and employees about where "*without prejudice*" applies (i.e. at what point there is a dispute). This can lead to individuals or employers trying to claim – incorrectly – that negotiations are *without prejudice* and subsequently finding themselves exposed in a way they did not anticipate or understand. Indeed, we have been given to understand by employers and practising lawyers that businesses are sometimes advised to begin a formal disciplinary process, where one might not otherwise have occurred, in order to be able to safely propose a settlement agreement on a *without prejudice* basis.
40. In focus groups with businesses, their representatives and lawyers, participants have given examples of where employers have been deterred from making a settlement offer in the absence of an existing dispute in poor performance cases for fear that it would lead to a claim of unfair or constructive dismissal.

41. As set out in paragraphs 35-37, under existing law, settlement discussions where no dispute exists are **not** covered by the *without prejudice* principle (so may be referred to in a subsequent tribunal claim). This means that employers may be put off making a settlement offer to an employee. This is because, if a settlement agreement cannot be agreed and the employer goes on to dismiss the employee at a later date, the employee may argue that the settlement offer itself was evidence that the dismissal was unfair. For example:
- the employee may try to argue the settlement offer was evidence that the employer had already made up its mind to dismiss before it had taken the steps it was required to take to dismiss fairly (such as giving the employee a reasonable opportunity to improve).
  - the employee may argue that proposing settlement gave rise to grounds for the employee to resign and claim constructive unfair dismissal on the grounds of the implied term of mutual trust and confidence being breached by the employer making a settlement offer.
42. In response to this, the Government is, subject to Parliamentary approval, introducing a measure in the Enterprise and Regulatory Reform Bill which will **mean that offers of settlement are not admissible as evidence in unfair dismissal cases**. In effect, this will mean that offering settlement will not give rise to grounds for an unfair dismissal claim. It will be done by amending the Employment Rights Act 1996 and will be supported by a Statutory Code of Practice. To see details of the Bill and follow its progress through the Houses of Parliament, see <http://services.parliament.uk/bills/2012-13/enterpriseandregulatoryreform.html>

### Consideration of other approaches and a wider system of protected conversations

43. Some stakeholders have suggested that providing protection to the content of discussions on a broader range of management and workforce planning issues, such as retirement, would be helpful. It would not, however, be possible to give a broad safeguard without some notable limitations. Given the requirement to comply with EU legislation on discrimination, it would not be possible (nor desirable) to give blanket protection to employers from discriminatory comments or actions. This could put businesses inadvertently at greater risk of an employment tribunal than the current position if they mistakenly believe that they are no longer bound by legislative requirements to avoid potentially discriminatory comments (although efforts would be made to be clear in guidance).
44. The ability to have a “protected conversation” in a very wide range of situations raises a host of procedural questions. In order to work effectively, and fairly, it would need some kind of underpinning process to help the parties identify and agree whether a conversation was protected or not. For example, would the individual need to be given advance warning of a protected conversation and given the opportunity to be accompanied by a colleague or trade union official? How would the conversation be recorded? Would the parties be required to agree the record of the conversation? It is difficult to see how a process which, for the benefit and protection of both parties, clearly denotes the beginning and end of a protected conversation would not impose administrative burdens on business.
45. Whilst it is always sensible for businesses to keep records, including in relation to people management issues, a system of protected conversations might encourage some employers to keep excessive records of all management discussions should there later be a challenge



as to whether a conversation was protected or not, or whether the content was improper. There is a risk that creating additional rules on ‘protected conversations’ could have the unintended consequence of establishing a new area of contention, which results in lawyers being brought in to advise both employer and employee. Some experts have warned that it could create a field day for lawyers.

46. There is also a question as to the value of information gathered during a protected conversation on wider management issues. For example, if an employer wants information about an individual’s plans over the coming years for workforce planning purposes, they are already able to ask without the need of a protected conversation. Any sensitive management conversation, protected or otherwise, is reliant on trust and openness to be successful. A number of stakeholders, including employee representative groups, have suggested that individuals might be reluctant to engage in a “protected conversation”. Even where an individual did participate in a protected conversation, an employer would have no certainty that the information or views disclosed at the time of the conversation would not change. For example, an individual might disclose that they were thinking of moving on or changing career direction in the next 12 months (either within or outside the company), but there would be nothing to prevent them from changing their mind and deciding to stay in their current role.
47. There is also a risk that a system of protected conversations would encourage managers to avoid managing effectively, choosing to discuss any potentially difficult, or even run of the mill, situations in off-the-record discussions. This could undermine employee confidence, engagement, motivation and commitment. In our policy discussions, a number of stakeholders raised this risk, and if realised, such a measure would have the opposite of its intended effect. Instead of facilitating open conversations with staff it could encourage an over-reliance on the regulation around protected conversations in place of ordinary workplace discussions.

### Principles for a faster track approach to settlement

48. The intention is that the amendment to the Employment Rights Act 1996 to facilitate the use of settlement agreements will give employers more certainty and confidence about how to engage in discussions around the end of the employment relationship. In order for this to work effectively, it needs to be supported by effective guidance.
49. We have said that the amendment to the unfair dismissal rules will be supported by a Statutory Code of Practice which will set out the broad principles covering the use of settlement agreements. This will, as far as possible, give employers certainty that if they follow the approach outlined, they will be able to secure a settlement agreement and avoid tribunal claims.
50. Creating a Statutory Code which explains how the protection would work in practice, will give employers and employees a shared understanding of the principles underpinning agreeing settlements. Furthermore, employment tribunals would be required to take the Code into account in making a determination on a case.
51. The Government believes that the Statutory Code should be positioned alongside the existing Acas Code of Practice on Discipline and Grievance. Acas will draft and consult on the Code in due course, and it will be available for employers and employees, and their representatives to familiarise themselves with before the changes to the unfair dismissal rules come into force.

52. The Code will set out the principles of how employers/employees should make an offer of settlement in order to benefit from the protection of the changes to the unfair dismissal rules in the Employment Rights Act 1996. It needs to strike a balance between giving sufficient detail to give employers certainty, and not over-engineering a process which ties up the parties in red tape.
53. We propose that the Code be drafted to embody the following principles and which also explains the types of “improper” behaviour which will not be protected:
- The protection in legislation (inadmissibility of the offer in evidence to Employment Tribunals) only applies in Unfair Dismissal cases;
  - Either party may propose settlement;
  - The reason for being offered the settlement should be made clear;
  - Settlement offers should be made in writing and set out clearly what is being offered (e.g. settlement sum and if appropriate agreed reference) as well as what the next steps are if the individual chooses not to accept the offer;
  - It would not be necessary for an employer to have followed any particular procedure prior to offering settlement;
  - The Code will make clear that if an employer handles settlement in the wrong way (i.e. not as explained in the Code) there is a risk that this will give rise to a breach of the implied term of trust and confidence and allow the employee to resign and claim constructive dismissal;
  - Where an individual refuses settlement, the employer must go through a fair process before deciding whether to terminate the relationship;
  - Individuals should be given a clear, reasonable period of time to respond;
  - The Code should give specific examples of what may constitute “improper” behaviour;
  - No undue pressure should be put on a party to accept the offer of settlement;
  - As closely as possible, the approach should reflect current practice in *without prejudice* negotiations which many employers and legal professionals are already familiar with;
  - The employer should not make discriminatory comments or act in a discriminatory way when making an offer of settlement.

**Question 1: Do you agree that these are the correct principles to underpin the use of a settlement agreement which is inadmissible in unfair dismissal cases?**

## Template Letters Offering Settlement and Model Settlement Agreements

54. We propose that the Statutory Code should include draft letters that an employer can send to an employee to make an offer of settlement and a template settlement agreement, supported by guidance, which can be used with minimal tailoring as a means of agreeing settlement with an employee. These letters will reflect the changes to the requirements under the Employment Rights Act brought about by the Enterprise and Regulatory Reform Bill currently before Parliament.
55. Providing templates in the Statutory Code has two main benefits.
56. The first is certainty. Putting these items in the Statutory Code itself, rather than just existing as non-legislative guidance, gives as much certainty as possible to employers that if they follow the principles and use these materials they should have protection from unfair dismissal claims when making an offer of settlement.
57. The second reason is to make it easier, cheaper and faster to agree settlement. Responses to the 2011 Resolving Workplace Disputes consultation highlighted some disadvantages to the use of settlement agreements. These included the cost in terms of drawing up the settlement itself. It also included the cost to the employee of independent legal advice (which is often at least partially met by the employer). For example, Acas noted in their response to the Resolving Workplace Disputes consultation<sup>2</sup>: “Typically the charges reported to colleagues seem to be in the range of £250 - £500 for independent advice to the employee, plus between £500 and £1,000 for the employer’s advice and the drafting of documentation.”
58. The Chartered Institute of Personnel and Development (CIPD) also surveyed members on the costs of compromise agreements<sup>3</sup>, and found that the median cost of management time for dealing with a typical compromise agreement is reported as £1,000. They found the median cost of legal advice was £750.
59. By creating templates, with supporting guidance, that can be used with minimal tailoring, we believe that employer and employee time and costs will be reduced as they will require less legal advice, if any at all, in creating and explaining the settlement agreement process and content. In this way, they offer a faster track to settlement.

**Question 2: Do you agree that model letters proposing settlement and a template for producing a settlement agreement should be included in a Statutory Code?**

**Question 3: If you currently use settlement or compromise agreements, what impact would these templates have on the costs to your organisation of using agreements?**

□

<sup>2</sup> The Acas response to the Resolving Workplace Disputes consultation can be found at: [http://www.acas.org.uk/media/pdf/2/t/Resolving\\_workplace\\_disputes\\_-\\_a\\_consultation\\_response\\_-\\_accessible\\_version.pdf](http://www.acas.org.uk/media/pdf/2/t/Resolving_workplace_disputes_-_a_consultation_response_-_accessible_version.pdf)

<sup>3</sup> See CIPD response to Resolving Workplace Disputes consultation at: <http://www.cipd.co.uk/NR/rdonlyres/86619BDF-65ED-4532-B0D0-8CB6E12FE721/0/CIPDresponsetoBISonresolvingworkplacedisputes.pdf>

**Question 4: Would model letters proposing settlement and a template for producing a settlement agreement be likely to change your use (increase / decrease / stay the same) – please give reasons**

60. Given that settlement offers may be offered to deal with a range of management problems – poor performance, poor attendance, conduct etc, we have produced a number of letters so that an employer can find the one which reflects the issue they are facing and, therefore, requires minimal tailoring. The aim is to make clear to the employee what the situation/problem is, what the options available to them are, and the implications of accepting/rejecting the offer. The template letters are included at **Annex 1**.
61. The letters provide the basic text which an employer can use to offer settlement in the right way. An employer can tailor the letter, allowing them to decide what best suits their individual circumstances (i.e. whether they wish to offer a reference or pay towards the employee's costs for getting legal advice etc) and make an offer accordingly. The template letters are designed to be as simple as possible, but for those completely unfamiliar with the process, they can be read and considered in light of the model agreement guidance.

**Question 5: Do you have comments on the content of the model letters?**

62. The guidance on settlement agreements aims to explain to employers and employees what a settlement agreement is and what the outcome of signing an agreement will be for the parties. It explains what each section of the agreement document means and why it should or might need to be included. This will allow the parties to make more informed decisions. It may also reduce the need for detailed legal advice.
63. The model agreements, included at **Annex 2**, are designed to form the basis of the final, legally binding, document that the employer, employee and the independent legal advisor sign. As such, the model agreement includes a list of the potential claims that an employee is agreeing to waive by signing the settlement agreement. These have been ordered by the more frequently cited claims first. In preparing the model agreement, we have considered whether it would be beneficial to introduce a system of a blanket waiver (a statement that the individual agrees to waive all current and future claims), to avoid the need for the agreement to list all potential statutory claims. We have concluded that, whilst it might appear neater and simpler to have a blanket waiver statement which makes the settlement agreement significantly shorter, it would lead to an increased need for guidance for the individual to fully understand what they are agreeing to. This would take longer and cost more. Given that many employers choose to contribute to the costs of legal advice for employees agreeing to a settlement, it would also lead to increased costs for some employers too.

**Question 6: Do you have comments on the content of the model settlement agreement and guidance?**

64. We propose that the use of these templates would be entirely voluntary. A business which feels its own processes and paperwork sufficiently meet the requirements of the Code's principles would be able to use those instead. We are mindful to avoid the experience of the 3-stage procedure for discipline and grievance where process took on greater weight than quality of decision.<sup>4</sup>

**Question 7: Do you agree that the use of templates should not be compulsory?**

**Guideline Tariff in Settlement Agreements**

65. If data on the number of settlement agreements entered into each year is extremely limited, evidence around the value of settlement agreements is even more so. The Survey of Employment Tribunal Applicants (SETA)<sup>5</sup> was last carried out in 2008 and provides some information on the value of settlements where disputes are already at the stage of being an Employment Tribunal claim. The median settlement for unfair dismissal claims in 2008 was £2,000. However, this data does not cover settlement agreements made without a tribunal claim being in existence on which we have no data.
66. SETA includes data about employer and claimant hopes and expectations from the Employment Tribunal process, in particular, the amount claimants hoped to receive, the minimum they would have settled for and the maximum employers were prepared to pay. The median figures for unfair dismissal claims indicate that at the start of the process, claimants hoped to receive £5,000, and the lowest amount they would be prepared to settle for was £3,000. At the start of a case, the maximum amount that an employer was prepared to settle for was a median of £2,000.
67. Settlement outcomes recorded on SETA indicate that in reality the value of a settlement agreement is somewhere between claimants' minimum and employers' maximum figure, and crucially, much lower than claimants' hopes. Some stakeholders have suggested that, particularly for businesses which are not experienced in proposing settlement agreements, guidance around what a fair and appropriate level of award should be would be valuable. The rationale is that it gives employers and employees a realistic expectation of the value of the settlement offer.
68. This is not, however, a unilateral view. Others have suggested that even as a non-binding guideline, the effect would be for it to be considered as a de facto minimum which is used as a basis for negotiation upward and ultimately lead to increased costs for business. They suggest that a guideline tariff would lead to employers paying out more than they might have done without the existence of a guideline tariff.
69. If you do favour a guideline tariff approach, we would be keen to hear your views on how guidance should approach the issue. It could, for example, propose a set figure or formula (e.g. notice period salary plus £x). Alternatively, it could list the issues an employer/employee

□

<sup>4</sup> The Employment Act 2002 (Dispute Resolution) Regulations 2004 established a statutory disciplinary, dismissal and grievance procedure that had to be followed when an employer undertook a dismissal. Under this "three-stage process", failure to follow the procedure (where it applied) made any dismissal automatically unfair regardless of the merits of the reasons for dismissal itself. These Regulations were repealed in 2009, and tribunals now decide cases on the basis of what is 'fair and reasonable'. The Acas Code of Practice and non-statutory guidance on disciplinary and grievance procedures establishes the principles of what an employer and employee should do.

<sup>5</sup> Survey of Employment Tribunal Applicants (2008) found at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008>

could consider in deciding their own figure. For example, reflecting that individuals and employers negotiate and agree a figure based on a wide range of factors including:

- the reason for proposing settlement;
- the terms of the employment contract;
- notice periods in the employment contract;
- the length of time it would take to follow the full process for fair dismissal if the individual refused the offer;
- how difficult it would be to fill the post and the value of the employee to the organisation;
- the individual's perception of how long it will take them to find another job;
- the perceived strength of any potential claim an employee might have in tribunal – for example an employer needs to consider the seriousness of the alleged misconduct or poor performance.

**Question 8: Do you think it would be helpful if the Government set a guideline tariff for settlement agreements?**

**Question 9: What would you expect to be the impact of having a guideline tariff?**

**Question 10: If you do favour a guideline tariff for settlement agreements, do you have a view on the approach or formula that should be used?**

**Question 11: Do you have a view on what level of tariff would be appropriate?**

### Examples of agreeing settlement following the proposed legislative change

**Scenario 1:** The performance of an employee is no longer meeting the required standard. The employer sends the employee a model letter, alerting them to the possibility they may be dismissed on unsatisfactory performance grounds, offering as an alternative a settlement agreement with a payment amounting to notice period plus 12 weeks (reflecting the length of their performance management processes), and a factual reference. The individual accepts the offer and waives the right to take an employment tribunal.

**Scenario 2:** An employer has repeatedly raised the issue of poor time-keeping with a member of staff on an assembly line and given several warnings but there has been no improvement. The employer believes it has grounds to dismiss the employee but is concerned about a tribunal claim. So, the employer sends a letter offering a settlement on the basis of conduct proposing a payment amounting to the notice period plus £100. The employee rejects the offer. The employer holds a disciplinary meeting and decides to dismiss. The employee receives only her notice pay and no reference. The employee cannot use the settlement offer to support an unfair dismissal claim and the employer acted reasonably in dismissing the

employee so there are no other grounds for complaint.

### **Making guidance and materials widely available and easily accessible**

70. We are clear that guidance on settlement agreements and the supporting materials to help facilitate their use is made widely and easily available. In addition to forming part of the Statutory Code of practice, they will also be available on the internet via the single Government domain (.gov.uk) as a downloadable resource, and we will look to promote their use through trade associations and business representative bodies.

71. The model settlement agreement and guidance on coming to an agreement are not reliant on new legislation coming into force or the development of a Statutory Code on settlement agreements. The draft letters are based on the premise that the Employment Rights Act 1996 will be amended to include the clause aimed at facilitating settlement agreements (as per the current ERR Bill) and will be made available in time for employers to familiarise themselves before the legislation comes into force.

**Question 12: Do you have ideas for other ways to help effectively disseminate the guidance and materials?**

## 8. Unfair Dismissal – limits on compensatory awards

72. Since the introduction of unfair dismissal rights in 1971, the compensation paid to workers who make a successful tribunal claim has always been subject to a statutory limit.

73. Where compensation is paid, the award consists of 2 elements: the ‘basic award’ and the ‘compensatory award’.

### Basic award

74. The basic award is calculated on the basis of the employee’s age, length of service and weekly pay (according to the same formula as statutory redundancy payments). In certain cases there is a minimum amount of basic award.

75. The basic award is not discretionary but may be reduced (or eliminated) for a number of reasons:

- the employee has unreasonably refused an offer of reinstatement from the employer;
- the tribunal considers that the employee’s conduct before dismissal justifies a reduction;
- the employee has been awarded an amount in respect of the dismissal under a designated dismissal procedures agreement;
- the employee has already been awarded or received a redundancy payment.

76. The Government is not proposing to make any changes to the basic award.

### Compensatory award

77. The compensatory award is an amount which the tribunal considers just and equitable for the loss which the employee has suffered because of the dismissal, insofar as the employer is responsible. It is subject to a statutory maximum (of £72,300) except in cases where the reason for dismissal is that the employee made a protected disclosure under the Public Interest Disclosure Act 1998, or took action relating to health and safety.

78. As well as covering loss of earnings between the date of the dismissal and the hearing, it may also take account of loss of pension, company car and expenses. Future loss is also considered, including the likely length of unemployment and job prospects in terms of future earnings, based on the individual’s skills and labour market conditions.

79. Once an amount reflecting total loss has been calculated, any adjustments are made strictly in the following order:

- deduction of any payment already made by the employer as compensation for the dismissal (e.g. an ex gratia payment, or payment in lieu of notice);
- deductions of sums earned by way of mitigation, or to reflect the employee’s failure to mitigate his/her loss (e.g. by failing to seek/accept alternative employment);
- ‘Polkey’ reduction (i.e. based on the likelihood that the individual would still have been dismissed, had proper procedures been applied);



- adjustment (either up or down by a maximum of 25%, according to liability) for failure to comply with the Acas Code of Practice on Discipline and Grievance;
- a “contributory fault reduction”, where the tribunal finds that the employee was partly to blame for the dismissal;
- a deduction, in cases where the employer has paid any enhanced redundancy payment exceeding the basic award;
- then the statutory cap is applied.

80. The cap on the compensatory element of unfair dismissal awards has increased rapidly in recent years. The cap was subject to a large one-off increase in 1999, from £12,000 to £50,000 and subsequently uprated using a formula that has resulted in above-inflation increases in the cap in most years, bringing it up to its current level of £72,300. We intend to curb future above-inflation increases by amending the uprating formula through the Enterprise and Regulatory Reform Bill.

81. However, the Government considers that the current level of the cap may lead to unrealistic perceptions among both employees and employers about the level of tribunal awards. The (median) average unfair dismissal award is less than £5,000 – less than 10% of the value of the upper cap on compensation and less than 20% of the annual median wage of £25,882.

82. We consider that introducing a cap on individual awards of 12 months’ pay (where this was less than the overall cap) could lead to more realistic perceptions of the likely level of awards and thereby encourage employers and employees to make better informed choices when resolving employment disputes. We believe that this may also have a positive impact on encouraging the earlier resolution of disputes, whether through settlement agreements or mediation and conciliation. These means of resolving disputes are generally cheaper, less time consuming and less stressful for all parties. As set out in the impact assessment, there are very few awards for unfair dismissal that exceed the average annual wage – so few individuals would be affected by the introduction of a cap of 12 months’ pay. This consultation therefore invites views on whether the introduction of a 12 month cap would achieve the aim of encouraging earlier dispute resolution and give businesses greater certainty about the potential costs of a dispute, without having an impact on large numbers of successful claimants.

83. For the purposes of such a cap, the standard definition of “week’s pay” would be used to calculate the limit on an individual’s unfair dismissal compensatory award. Where the employee’s remuneration does not vary with the amount of work done in any given period, the amount of a week’s pay is the amount which is payable by the employer under the contract of employment.

84. Case law has decided that pay includes:

- Wages and salaries;
- Contractual bonuses, commission (i.e. bonuses to which the employee is *entitled*, but not regular *ex gratia* payments);
- Expenses which are only notionally or not at all related to actual expenditure (e.g. an incidental expenses allowance, which does not need to be supported by receipts);

- Tips paid by the employer (e.g. as additions to credit cards which are then distributed by the employer);

and excludes:

- Benefits in kind (e.g. board and lodging, free accommodation, company car, lodging allowance);
- Cash payable by someone other than the employer (e.g. tips received directly from the customer);
- Expenses which represent a reimbursement of actual expenses incurred by the employee;
- Discretionary bonuses (note: if a bonus is described as 'discretionary', but is in fact paid each year to all staff, it will be a contractual payment and therefore part of the remuneration);
- Pension.

85. We also want to consider through this consultation whether the current cap is set at an appropriate level. Clearly, the cap on compensation is significantly higher than it was prior to the one-off increase in 1999. During the period 1999-2011, the RPI has increased by 42% and average (median) earnings have increased by 47%. In contrast, the cap on unfair dismissal compensation has increased by 503%; however this includes the increase from £12,000 in 1999 to £50,000 in 2000. From 2000 to 2011 the cap has increased by 45% (median earnings and RPI both increased by around 38% over this period). We therefore want to consider whether the current cap is set at an appropriate level to provide reasonable, but not excessive, compensation for unfair dismissal or whether the level of the cap should be decreased. A power in the Enterprise and Regulatory Reform Bill would allow the cap to be varied within a range of full-time annual median earnings (currently £25,882) and three times full-time annual median earnings (currently £77,646). Any changes would require affirmative resolution from both Houses of Parliament.

**Question 13: Would the introduction of a cap of 12 months' pay lead to more realistic perceptions of tribunal awards for both employers and employees?**

**Question 14: Would the introduction of a cap of 12 months' pay encourage earlier resolution of disputes?**

**Question 15: Would the introduction of a cap of 12 months' pay provide greater certainty to employers of the costs of a dispute?**

**Question 16: Do you support the introduction of a cap on compensation of 12 months' pay?**

**Question 17: Do you have any comments on the impact of this proposal on claimants?**

**Question 18: Do you have any comments about the impact of this proposal on**

**employers?**

**Question 19: Do you have any other comments on the proposal?**

**Question 20: Do you consider that the overall cap on compensation for unfair dismissal is currently set at an appropriate level (£72,300)?**

**Question 21: What do you consider an appropriate level for the overall cap, within the constraints of full-time annual median earnings (c£26,000) and three times full-time annual median earnings (c£78,000)?**

**Question 22: Do you have any other comments on the level of the overall cap?**

## 9. What happens next?

86. This consultation is open for 10 weeks.

87. The Department will continue to engage with stakeholders throughout the consultation period and seek views from interested parties. Following the closure of the consultation we will produce a Government response in spring 2013, including a summary of views expressed. This will be available on the BIS website.

88. The views expressed during consultation will help inform work with Acas on producing the Code of Practice on facilitating settlement agreements and any change in the level of compensatory award in unfair dismissal cases.

## Annex 1: Draft letters to send to employees offering a voluntary severance package

### Draft letter to send to employees offering a voluntary severance package on grounds of unsatisfactory performance

Dear [ ]

#### Your employment

We are writing to inform you that we have reached a preliminary view that we may have to terminate your employment as a result of your unsatisfactory performance. [Add brief details]

We propose meeting with you on [ ] at [ ] in [ ] [*about 10 days time*] so that we can discuss our concerns fully with you. You have the right to bring a work colleague or a trade union official with you to this meeting. You will be given opportunity to improve your performance to meet the required standard before we reach a final decision.

If we do decide to terminate your employment you would receive [*link to provide advice on statutory minimum notice*] weeks' notice [and any untaken holiday pay]. You would not receive any other payment.

#### Offer to leave on agreed terms

In the meantime you may wish to consider the following offer to leave on agreed terms.

[You would receive a [lump sum] payment free of tax of [£x.] [If appropriate link to the guideline tariff]

[Your employment would end on [*insert date – suggest end of month, if still 3 weeks away*]

[You would receive a reference to reflect your work during your employment with us.] [*delete if you do not wish to offer a reference.*]

This offer is open for you to accept until 5pm on [*day prior to proposed meeting to discuss employment*] If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would give you a further sum of [£x] so that you can seek advice]. [All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will proceed to hold the meeting as set out in paragraph 2.

Yours sincerely,

## **Draft letter to send to employees offering a voluntary severance package on grounds of conduct**

Dear [ ]

### **Your employment**

We are writing to inform you of serious concerns over your recent conduct [insert explanation here].

We propose meeting with you on [ ] at [ ] in [ ] [*about 10 days time*] so that we can discuss our concerns fully with you. You have the right to bring a work colleague or a trade union official with you to this meeting. We will not reach a decision until you have had a full opportunity to have your say. However, it is possible that at the end of the meeting we will reach a decision to terminate your employment.

If we do decide to terminate your employment you would receive [*link to provide advice on statutory minimum notice*] weeks' notice [and any untaken holiday pay]. You would not receive any other payment.

### **Offer to leave on agreed terms**

In the meantime you may wish to consider the following offer to leave on agreed terms.

[You would receive a lump sum payment free of tax of [*if appropriate a link to the guideline tariff.*]

[Your employment would end on [*insert date – suggest end of month, if still 3 weeks away*]

[You would receive a reference to reflect your work during your employment with us.] [*delete if you do not wish to offer a reference.*]

This offer is open for you to accept until 5pm on [*day prior to proposed meeting to discuss employment*] If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would give you a further sum of [£x] so that you can seek advice]. All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will proceed to hold the meeting as set out in paragraph 2.

Yours sincerely,

## **Draft letter to send to employees offering a voluntary severance package on grounds of unsatisfactory attendance**

Dear [ ]

### **Your employment**

We are writing to inform you that we have reached a preliminary view that we may have to terminate your employment as a result of your unsatisfactory attendance record. [Add brief details]

We propose meeting with you on [ ] at [ ] in [ ] [*about 10 days time*] so that we can discuss our concerns fully with you. You have the right to bring a work colleague or a trade union official with you to this meeting. You will be given opportunity to improve your attendance before we reach a final decision.

If we do decide to terminate your employment you would receive [*link to provide advice on statutory minimum notice*] weeks' notice [and any untaken holiday pay]. You would not receive any other payment.

### **Offer to leave on agreed terms**

In the meantime you may wish to consider the following offer to leave on agreed terms.

[You would receive a lump sum payment free of tax of [*if appropriate a link to the guideline tariff.*]

[Your employment would end on [*insert date – suggest end of month, if still 3 weeks away*]

[You would receive a reference to reflect your work during your employment with us.] [*delete if you do not wish to offer a reference.*]

This offer is open for you to accept until 5pm on [*day prior to proposed meeting to discuss employment*] If you wish to accept, then we would ask you to enter an agreement in full and final settlement. You will need to seek legal advice on the terms of this agreement [and we would give you a further sum of [£x] so that you can seek advice]. All sums are payable on signing the agreement.

You are under no obligation to accept this offer. If you do not wish to accept it, then we will proceed to hold the meeting as set out in paragraph 2.

Yours sincerely,

## Annex 2: Draft model settlement agreement and supporting guidance

### **An Introduction to Settlement Agreements**

#### **What is a settlement agreement?**

A settlement agreement is a document that records an employee's agreement not to pursue an employment related claim and to settle the dispute. The settlement may include a one-off payment to the employee by the employer. The Employment Tribunal cannot consider a claim that has been properly settled between the employer and employee.

A settlement agreement may be used where the employee's employment with an employer has terminated or where the employment is continuing but there is a dispute between the parties.

#### **What claims can be settled using a settlement agreement?**

There are different kinds of disputes which can arise from an employment relationship; some of these are set out in legislation and others stem from the common law (which is the law which has been formed over the years by the courts).

Not all of these different disputes can be settled by a settlement agreement. A list of the claims which can be resolved using a settlement agreement are set out in Annex A of the Model Settlement Agreement. It is important that you identify the claims that you want to settle and that you check that it is possible to use a settlement agreement to resolve those claims.

#### **What are the requirements for using a settlement agreement?**

As well as ensuring that the claim is one which it is possible to settle (see above), employment legislation sets out a number of conditions which must be satisfied to ensure that your settlement agreement is binding.

To be legally valid the following points must be satisfied:

The agreement must be in writing;

The employee must have received legal advice from a legal adviser on the terms of the agreement and its effect on an employee's rights before an Employment Tribunal;



The adviser must have a current contract of insurance or professional indemnity insurance covering the risk of a claim by the employee in respect of the advice;

The agreement must identify the adviser;

The agreement must state that the applicable statutory conditions regulating settlement agreements have been satisfied.

In addition to the points above, the agreement must also relate to a particular complaint which the employee may have e.g. an unfair dismissal claim. The employee does not need to have brought this claim in order for this condition to be satisfied; it is sufficient for this to be a potential claim.

Where the employer is raising the possibility of dismissal but offering termination on agreed terms one of the likely potential claims will be unfair dismissal, so this condition should be satisfied.

### **Guidance on the Model Settlement Agreement**

The Government is keen to encourage parties who are involved in a dispute arising from an employment relationship to find alternative ways to resolve their dispute, so that they can avoid the expense and delays which can be experienced in Employment Tribunals.

With this in mind, we have produced a Model Settlement Agreement which employers and employees can choose to refer to and use if they are considering settling a dispute. The Model Settlement Agreement is a suggestion of the kind of text which can be used. Each individual employment dispute raises different issues and the settlement agreement that the parties sign must reflect their circumstances and the disputes between them.

The Model Settlement Agreement is not a substitute for independent legal advice and will not be appropriate for all employment disputes; it must be tailored to your particular needs. However, it is designed to be as simple as possible, and provide a sound basis for many standard separation agreements.

It will clearly be important for both the employer and the employee to get the agreement right. If an employer wants to use the Model Settlement Agreement, we would usually recommend that they ask a lawyer to check that the agreement is accurate and achieves the settlement that the employer wants. And an employee must have received independent legal advice before they sign a settlement agreement.

The following guidance should be read alongside the Model Settlement Agreement, it explains what the different clauses are designed to deal with and how they should be amended to reflect your particular circumstances.

### **Page 1 of the Agreement**

The agreement states that it is “without prejudice” and “subject to contract”, which means the draft agreement cannot be used in evidence in court or Employment Tribunal proceedings (except in limited circumstances) and will not be binding on either party until it is signed.

You should insert the date that the agreement is signed by the parties – if the agreement is signed by the employer and employee on different dates, it should be dated by the final party to sign (which will usually be the employee).

You should insert the name of the employer and the name of the employee.

### **Page 2 of the Agreement**

#### **Clause 1: Background**

The agreement should include a summary of the circumstances which have led to the settlement agreement.

The final sentence of clause 1.1 should be deleted if the employment is and will be continuing.

#### **Clause 2: Definitions**

Sets out definitions of the terms used in the agreement. If appropriate, you could add other terms to this list.

#### **Clause 3: Payment to Termination Date and Notice**

Clause 3.1 deals with the arrangements in the period prior to termination of the employment.

The employer and employee will need to agree a termination date (the date when employment will end). The employee could work their notice period in which case their employment will come to an end when the notice period expires. The employee could continue to carry out their ordinary work during this period or alternatively they could not work and instead be on ‘garden leave’. However, you should check the contract of employment to see whether the employee is required or can be asked to stay on garden leave. If it does not, this is something you will need to ask the employee to agree to. The employee’s contract will determine what payments the employee is entitled to receive during the notice period. The payments made to the employee during

the notice period are subject to the normal rules on taxation of employment income.

Alternatively, the contract of employment may allow the employer to make a payment in lieu of notice. This means that the employee will not work the notice period and the employer will make a payment to the employee to reflect what they would have received. However, you should consult the contract to see whether it allows a payment in lieu of notice to be made. If it does not, this is something you will need to ask the employee to agree to.

Once you have agreed the termination date, you will be able to calculate whether the employee has any accrued but untaken holiday entitlement. The employee has a right to payment of any holiday entitlement that has accrued during the employment but has not been taken at the date of termination.

Clause 3 should be deleted if the employment is and will be continuing.

#### **Clause 4: Withdrawal of proceedings and waiver**

Signing the agreement means that the employee agrees to withdraw any claims which they have presented to an Employment Tribunal and also not to present any new claims to the Employment Tribunal (provided that in both instances those claims are to be settled by the agreement).

The waiver of the right to present claims at an Employment Tribunal is very significant to the claimant – they are agreeing to forgo a judicial determination of the disputes.

The settlement agreement must properly identify the disputes which the parties agree to settle (i.e. which the claimant agrees to waive). Annex A lists all of the possible claims which the parties may wish to settle. It is important that the employer reads that list carefully and deletes any claims which are not relevant (e.g. claims which, in the circumstances, the employee could never bring). For example, if the employee worked in a pet shop, the employer should delete the references to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003. Similarly, if the employee worked full-time and always has done, the employer should delete the reference to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

#### **Clause 5: Settlement Payments**

This sets out the amount of money the employer will pay to settle the claims which the employee has agreed to withdraw and waive. Clause 5.2 sets out the tax liabilities attaching to the Settlement Payment. In certain circumstances the first £30,000 may be paid tax free. You should look at the [HMRC guidance](#) on this issue for further assistance.

The employer and employee might want to consider agreeing that a reference will be provided and the text of that reference could be included as an annex to the settlement agreement.

### **Page 3 of the Agreement**

#### **Clause 6: Conditions Regulating Settlement Agreements**

If a settlement agreement is to be binding it must state that the relevant conditions regulating settlement agreements have been satisfied. This clause, plus Annex B, mean that the parties are agreeing that this requirement has been satisfied.

#### **Clause 7: Employer's Property and Employee's Property**

This means that the employee is agreeing that they have returned any of the employer's property which they had. The employer might want to include a list of the property that needs to be returned or the information which needs to be deleted. It also means that the employer is agreeing that it has returned any of the employee's property which it had.

#### **Clause 8: Confidentiality**

If the employment contract between the parties did not contain any provisions on confidentiality or restrictive covenants, clause 8.1 should be deleted.

The rest of this clause ensures that the parties keep the agreement confidential (except for limited exceptions).

#### **Clause 9: Employee's Representations and Warranties**

This clause sets out a number of promises from employee about the independent legal adviser and the employee's conduct during the employment relationship. The employer can rely upon these representations and warranties and can take some comfort that the agreement is binding. If it turns out that the employee was not truthful in relation to these representations and warranties, the employer may be able to withhold the settlement payment or sue for damages.

### **Page 4 of the Agreement**

#### **Clause 10: Employee's Legal costs**

One of the conditions of a compromise agreement is that the employee has received legal advice and therefore it is common for the employer to make a contribution to these fees. There is no legal requirement to do so. This clause is an opportunity to specify how much an employer is willing to contribute. If the employer is not contributing anything, this clause should be

deleted.

**Clause 11: Entire Agreement and Enforceability**

These sections set out that the agreement supersedes any previous agreement and provides clarification on enforceability.

**Section 16: Parties to a compromise agreement**

This makes it clear that only the employer and employee have any rights under the settlement agreement.

Dated [enter date DD/MM/YYYY]

**SETTLEMENT AGREEMENT**

(Without Prejudice and Subject to Contract)

**[Insert name of Employer]**

-and-

**[Insert name of Employee]**

THIS SETTLEMENT AGREEMENT is dated **[enter date DD/ MM/YYYY]**.

This Agreement is made between **[insert employer name]** (“the Employer”) and **[insert employee name]** (“the Employee”).

### **1: Background**

- 1.1. The Employee has been employed by the Employer as **[enter job title]** since **[enter start date]**. **[It is agreed that this employment [will terminate OR terminated] on [enter date DD/ MM/YYYY] (“the Termination Date”)]**.
- 1.2. The Employer and Employee have agreed to settle the Particular Claims on the terms set out in this agreement.
- 1.3. The Employer enters into this agreement without any admission of liability.

### **2: Definitions and Interpretations**

- 2.1. In this agreement:

“Claims” means any claim, claims or causes of action that the Employee has or may have against the Employer

“Particular Claims” are those Claims which the Employee and Employer intend to be settled by this agreement, arising out of the Employee’s employment or the termination of employment, as set out in Annex A.

“Termination date” means the date on which the employment has ended or will end, as set out in clause 1.1.

- 2.2. References to the singular in this agreement shall include references to the plural and vice versa and words in the masculine include the feminine and vice versa.
- 2.3. The headings in this agreement are for ease of reference and shall not affect interpretation

### **3: Payment to Termination Date and Notice.**

- 3.1 The Employer and Employee will continue to be bound by the terms and conditions of employment until the Termination Date.
- 3.2 **[The Employer will pay the Employee [insert number] weeks salary in lieu of notice which will be paid less statutory deductions.]**
- 3.3 Except as set out in this agreement, the employee will have no right to any benefits under the terms and conditions of employment after the Termination date.

#### **4: Withdrawal of proceedings and waiver**

- 4.1 The Employee accepts that this agreement is in full and final settlement of all of the Particular Claims.
- 4.2 The Employee agrees immediately upon signature of this agreement to write to the relevant Employment Tribunal(s) to withdraw any Employment Tribunal proceedings which have been settled by this agreement and not to present to an Employment Tribunal or any other court any Claim which is a Particular Claim.
- 4.3 The Employer and Employee acknowledge that it is their intention that this agreement covers all of the Particular Claims, whether or not the legal and factual details of a Claim are known or could be known to one or both of the parties.

#### **5: Settlement Payment**

- 5.1 Subject to the Employee complying with the terms of the agreement, the Employer will pay the Employee [**£insert figure**] (“the Settlement Payment”). The Settlement Payment will be paid within 14 days of receipt by the Employer of a signed copy of this agreement. The Settlement Payment includes a sum in respect of outstanding holiday entitlement.
- 5.2 The Employer and Employee believe that [**the first £30,000/£[AMOUNT]**] of the Settlement Payment is not subject to tax. The Employee is and will be responsible for any further tax and employee’s National Insurance contributions due in respect of the Settlement Payment.

#### **6: Conditions Regulating Settlement Agreements**

The Employer and the Employee agree and acknowledge that the conditions regulating settlement agreements which are contained in the legislative provisions listed in Annex B have been satisfied.

#### **7: Employer’s Property and Employee’s Property**

- 7.1 The Employee warrants that [**he/she**] has returned all property belonging to the Employer, including all records, correspondence, documents and any other information and that the Employee has not retained any copies.
- 7.2. The Employer warrants that it has returned all property belonging to the Employee.



## 8: Confidentiality

- 8.1. [The Employee agrees that they will continue to be bound by the terms and conditions of employment which relate to confidentiality and restrictive covenants: see clause[s] **[insert number(s)] of those terms and conditions.**]
- 8.2. The Employer and Employee agree that they will keep the existence and terms of this agreement confidential (with the exception of disclosure to immediate family or relevant professional advisers, provided that those persons agree to keep the information confidential, or where disclosure is required by law).

## 9: Employee's Representations and Warranties

- 9.1 The Employee represents and warrants that:
- 9.1.1 [he/she] has received advice from an independent adviser (“the Adviser”) as to the terms and effect of this agreement, including its effect on the Employee’s ability to present any Claim before an Employment Tribunal or other court;
  - 9.1.2 the Adviser has confirmed that there was in force, when the Adviser provided the advice, a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the Employee in respect of loss arising in consequence of the advice;
  - 9.1.3 [he/she] has no Claims other than the Particular Claims and the Adviser has advised that, on the basis of the information available to the Adviser, which is all of the relevant information in the Employee’s possession, the Employee has no Claims other the Particular Claims;
  - 9.1.4 the Adviser has signed the declaration attached at Annex .
  - 9.1.5 [he/she] has not committed any material breach of the terms and conditions of employment which would justify summary dismissal, and the Employee is not aware of any claim or cause of action against the Employer by any third party of which the Employer is not aware.
- 9.2 The Employee acknowledges that the Employer has acted in reliance on these representations and warranties in entering into this agreement.

## 10: Employee's Legal Costs

The Employer will pay the Employee’s reasonable legal costs incurred in connection with the preparation of this agreement up to a maximum of **[insert figure]** plus VAT. Such fees will be payable directly to the Adviser on receipt from the Adviser of an invoice addressed to the Employee and marked payable by the Employer. The Employer agrees to pay these costs within 14 days of receipt of the invoice.

**12: Entire Agreement and Enforceability**

12.1. This agreement sets out the entire agreement between the parties and supersedes all prior statements, representations, terms and conditions, warranties and guarantees whenever given and whether orally or in writing.

12.2. No variation of this agreement shall be effective unless it is in writing.

12.3. If any term of the agreement is held to be illegal, invalid or unenforceable, in whole or in part, such part shall be deemed not to form part of the agreement but the legality, validity or enforceability of the remainder of the agreement shall not be affected.

**15: Jurisdiction**

This agreement shall be governed by and construed in accordance with the law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the courts in England and Wales in relation to any Particular Claim or any matter connected with this agreement.

**16: Third Parties**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and only the Employer and Employee shall have rights under it.

Notwithstanding that this agreement is marked “without prejudice” and “subject to contract”, once it has been signed and dated by the Employer and Employee it will become an open and binding document (subject to clause 8.2).

.....

<b>Signed by</b>	<b>Date</b>
<b>on behalf of the Employer</b>	

.....

<b>Signed by the Employee</b>	<b>Date</b>
-------------------------------	-------------

### ANNEX A - THE PARTICULAR CLAIMS

**The matters listed below are Particular Claims:**

The following Employment Tribunal claims:

Claim number [insert claim number]	This claim concerns [insert brief details of claim]
[repeat as necessary]	

The following matters which have been raised in any grievance procedure:

<b>A grievance concerning [insert brief details on the issues involved in the grievance]</b>
[repeat as necessary]

Any claim arising from the Employee's employment or the termination of employment:

1. Under the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA):
  - (a) sections 68 (deduction of unauthorised subscriptions)
  - (b) section 86 (exemption or objection to contributing to political fund)
  - (c) section 137 (refusal of employment on grounds of union membership)
  - (d) section 145A (inducements relating to union membership or activities)
  - (e) section 145B (inducements relating to collective bargaining)
  - (f) section 146 (detriment on grounds related to union membership or activities)
  - (g) section 152 (dismissal on grounds related to union membership or activities)
  - (h) section 153 (selection for redundancy on grounds related to union membership or activities)
  - (i) section 168 (time off for carrying out trade union duties)
  - (j) section 168A (time off for union learning representatives)
  - (k) section 169 (payment for time off for union learning representative activities)
  - (l) section 170 (time off for trade union activities)
  - (m) section 191 (termination of employment during protected period)
  - (n) section 192 (failure to pay remuneration under a protective award)
  - (o) sections 238 and 238A (dismissal connected to industrial action)
  - (p) paragraph 156 of Schedule A1 (detriment on grounds related to union recognition, bargaining or voting)

- (q) paragraph 161 of Schedule A1 (dismissal on grounds related to union recognition, bargaining or voting)
- (r) paragraph 162 of Schedule A1 (selection for redundancy on grounds related to union recognition, bargaining or voting)

2. Under the Employment Rights Act 1996 (ERA):

- (a) section 8 (right to itemised pay statement)
- (b) section 13 (right not to suffer unauthorised deductions)
- (c) section 15 (right not to have to make payments)
- (d) section 28 (right to guarantee payment)
- (e) Part V (protection from suffering detriment)
- (f) Part VI (time off work)
- (g) Part VII (suspension from work)
- (h) section 63F (request in relation to training and study)
- (i) section 80(1) (in relation to the postponement, attempted prevention or prevention of parental leave)
- (j) sections 80F and 80G (duties in relation to an application for a change in terms and conditions of employment for flexible working)
- (k) section 92 (right to written statement of reasons for dismissal)
- (l) Part X (unfair dismissal)
- (m) section 135 (right to a redundancy payment)

3. Any claim under the Protection from Harassment Act 1997

4. Under the National Minimum Wage Act 1998:

- (a) section 10 (worker's right of access to records)
- (b) section 23 (right not to suffer a detriment)

5. Under section 10 (right to be accompanied) of the Employment Relations 1999

6. Under Part 5 of the Equality Act 2010:

- (a) Direct discrimination;
- (b) Discrimination arising from disability
- (c) Indirect discrimination
- (d) In respect of the duty to make adjustments

- (e) Harassment
  - (f) Victimisation
  - (g) In relation to the:
    - (i) effect of a non-discrimination rule
    - (ii) effect, or a breach, of an equality clause or rule
    - (iii) enforceability of a contractual or non-contractual term
7. That the Employer instructed, caused, induced or knowingly aided any act which is unlawful under the Equality Act 2010.
8. Under the Working Time Regulations 1998:
- (a) regulations 10(1) and (2) (daily rest)
  - (b) regulations 11(1), (2) and (3) (weekly rest period)
  - (c) regulation 12(1) and (4) (rest breaks)
  - (d) regulation 13 (entitlement to annual leave)
  - (e) regulation 13A (entitlement to additional annual leave)
  - (f) regulation 14(2) (entitlement to compensation related to entitlement to leave where worker's employment terminated during leave year)
  - (g) regulation 16(1) (payment in respect of periods of annual leave)
  - (h) regulation 24 (compensatory rest where worker required to work during rest period or rest break)
  - (i) regulation 24A (adequate rest for mobile workers where relevant parts of regulations 10, 11 and 12 are excluded)
  - (j) regulation 27(2) (compensatory rest for young workers where there has been a force majeure)
  - (k) regulation 27A(4)(b) (compensatory rest for young workers under other exceptions)
9. Under regulation 19 (detriment relating to pregnancy, maternity or parental leave) of the Maternity and Parental Leave etc Regulations 1999.
10. Under the Transnational Information and Consultation Regulations 1999
- (a) regulation 25 (right to time off for members of a European Works Council)
  - (b) regulation 26 (right to remuneration for time off)
  - (c) regulation 31 (right not to suffer a detriment)
11. Under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000:
- (a) regulation 5 (less favourable treatment on the grounds of being a part-time worker)
  - (b) regulation 7(2) (right not to be subjected to a detriment)

12. Under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
  - (a) regulation 3 (less favourable treatment on the grounds of being a fixed-term employee)
  - (b) regulation 6(2) (right not to be subjected to a detriment)
  - (c) regulation 8 (successive fixed-term contracts)
  - (d) regulation 9 (right to receive written statement of variation)
  
13. Under regulation 28 (detriment relating to paternity or adoption leave) of the Paternity and Adoption Leave Regulations 2002
  
14. Under the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003:
  - (a) regulation 10 (entitlement to adequate rest)
  - (b) regulation 11 (entitlement to annual leave and payment for leave)
  
15. Under the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004:
  - (a) regulation 7 (entitlement to adequate rest)
  - (b) regulation 11 (entitlement to annual leave and payment for leave)
  
16. Under the Information and Consultation of Employees Regulations 2004:
  - (a) regulation 27 (right to time off for information and consultation representatives)
  - (b) regulation 28 (right to remuneration for time off)
  - (c) regulation 32 (right not to suffer a detriment)
  
17. Under regulation 13 (duty to inform and consult representatives) of the Transfer of Undertakings (Protection of Employment) Regulations 2006
  
18. Under the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006:
  - (a) schedule, para. 2 (right to time off for functions as a representative)
  - (b) schedule, para. 3 (right to remuneration for time off for functions as a representative)
  - (c) schedule, para. 8 (right not to be subject to a detriment)

19. Under the Companies (Cross-Border Mergers) Regulations 2007
- (a) regulation 43 (right to time off for members of special negotiating body etc.)
  - (b) regulation 44 (right to remuneration for time off in capacity as member of special negotiating body)
  - (c) regulations 49 or 50 (right not to be subject to a detriment)
20. Under the Cross-border Railway Services (Working Time) Regulations 2008:
- (a) regulation 3 (entitlement to daily rest)
  - (b) regulation 4 (sole driver's entitlement to break)
  - (c) regulation 5 (breaks for drivers)
  - (d) regulation 6 (breaks for other drivers)
  - (e) regulation 7 (entitlement to weekly rest)
21. Under the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009:
- (a) regulation 26 (time off for membership of a special negotiating body)
  - (b) regulation 27 (remuneration for time off)
  - (c) regulation 31 (detriment for membership of a special negotiating body)
22. Under the Employment Relations Act 1999 (Blacklists) Regulations 2010:
- (a) regulation 5 (refusal of employment relating to a prohibited list)
  - (b) regulation 6 (refusal of employment agency services relating to a prohibited list)
  - (c) regulation 9 (detriment relating to a prohibited list)
23. Under regulation 33 (detriment relating to additional paternity leave) of the Additional Paternity Leave Regulations 2010
24. For personal injury (except any latent personal injury)
25. For breach of contract
26. In relation to notice or pay in lieu of notice
27. Any other claim arising under UK statute, UK common law and or under European Law (except any accrued and future pension rights).

## **ANNEX B – CONDITIONS REGULATING SETTLEMENT AGREEMENTS**

- section 288(2B) of the Trade Union and Labour Relations Consolidation Act 1992
- section 203(3) of the Employment Rights Act 1996
- section 49(4) of the National Minimum Wage Act 1998
- section 147(3) of the Equality Act 2010
- regulation 35(3) of the Working Time Regulations 1998
- regulation 41(4) of the Transnational Information and Consultation of Employees Regulations 1999
- regulation 9 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- regulation 10 of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002



**ANNEX C – DECLARATION FROM THE EMPLOYEE’S  
INDEPENDENT ADVISER**

I can confirm that:

1. I am a relevant independent adviser within the meaning of the legislation listed in Annex B above.
  
2. At the time that I provided advice to the Employee, a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the Employee in respect of loss arising as a consequence of my advice was in force.
  
3. I advised the Employee on the terms and effect of this agreement and, in particular, its effect on [his/her] ability to pursue [his/her] rights before an Employment Tribunal or other court.

Signed .....

Firm .....

Firm’s Address .....

## Annex 3: The Principles of Consultation

89. The Civil Service Reform Plan commits the Government to improving policy making and implementation with a greater focus on robust evidence, transparency and engaging with key groups earlier in the process.
90. For details of the revised principles of engagement, please see <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>
91. The policy issues addressed in this consultation document have been the subject of ongoing discussion with stakeholders. They are also undergoing Parliamentary scrutiny as part of the Enterprise and Regulatory Reform Bill currently being taken through the Houses of Parliament. For this reason, we consider that a ten-week consultation period is appropriate.

### Comments or complaints

92. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402 or e-mail to: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

## **Annex 4: List of Organisations consulted**

94. Throughout the Employment Law Review, the Department has engaged with a wide range of stakeholders to help inform the policy development process. These include:

Acas

British Chambers of Commerce

British Retail Consortium

Citizens' Advice

Confederation of British Industry

Employment Lawyers' Association

Engineering Employers' Federation

European Employers' Group

Federation of Small Businesses

Forum of Private Business

Institute of Directors

The Law Society

Trades Union Congress

## **Annex 5: Impact Assessments for *Ending the Employment Relationship***

95. In accordance with Regulatory Policy Committee principles, only the unfair dismissal cap section of this consultation requires the production of an impact assessment at this stage. This can be found by accessing the link below:

[Ending the employment relationship: impact assessment](#)

96. An impact assessment of the legislative changes to facilitate the use of settlement agreements (on which the guidance principles we are consulting on are predicated) was prepared as part of the parliamentary process for the ERR Bill. This can be found by accessing the link below:

97. [Facilitating Settlement Agreements: Impact Assessment](#)

## **Annex 6: Ending the Employment Relationship questions**

Question 1: Do you agree that these are the correct principles to underpin the use of a settlement agreement which is inadmissible in unfair dismissal cases?

Question 2: Do you agree that model letters proposing settlement and a template for producing a settlement agreement should be included in a Statutory Code?

Question 3: If you currently use settlement or compromise agreements, what impact would these templates have on the costs to your organisation of using agreements?

Question 4: Would model letters proposing settlement and a template for producing a settlement agreement be likely to change your use?

Question 5: Do you have comments on the content of the model letters?

Question 6: Do you have comments on the content of the model settlement agreement and guidance?

Question 7: Do you agree that the use of templates should not be compulsory?

Question 8: Do you think it would be helpful if the Government set a guideline tariff for settlement agreements?

Question 9: What would you expect to be the impact of having a guideline tariff?

Question 10: If you do favour a guideline tariff for settlement agreements, do you have a view on the approach or formula that should be used?

Question 11: Do you have a view on what level of tariff would be appropriate?

Question 12: Do you have ideas for other ways to help effectively disseminate the guidance and materials?

Question 13: Would the introduction of cap of 12 months' pay lead to more realistic perceptions of tribunal awards for both employers and employees?

Question 14: Would the introduction of cap of 12 months' pay encourage earlier resolution of disputes?

Question 15: Would the introduction of cap of 12 months' pay provide greater certainty to employers of the costs of a dispute?

Question 16: Do you support the introduction of a cap on compensation of 12 months' pay?

Question 17: Do you have any comments on the impact of this proposal on claimants?

Question 18: Do you have any comments about the impact of this proposal on employers?

Question 19: Do you have any other comments on the proposal?

Question 20: Do you consider that the overall cap on compensation for unfair dismissal is currently set at an appropriate level (£72,300)?

Question 21: What do you consider an appropriate level for the overall cap, within the constraints of full time annual median earnings (c£26,000) and three times full time annual median earnings (c£78,000)?

Question 22: Do you have any other comments on the level of the overall cap?

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