

How to handle a protected conversation



If your employer asks you to take part in a 'protected conversation', chances are that you are looking at an attempt to bring your employment to an end.

These conversations can be triggered by the employee or the employer but in practice most are triggered by an employer wanting to 'manage' an employee's exit.

The key advantage for the employer is that the conversation cannot (as a rule) be relied upon in subsequent unfair dismissal proceedings.

So, if your employer approaches you to have a protected conversation what do you need to look out for?

1. Whether it is "protected" - a letter, email or direct approach by a Manager making reference to a 'protected conversation' or 'Section 111A' of the Employment Rights Act 1996 will trigger the process. If the process is not followed correctly by the employer, the conversation may not be protected and you may be able to rely on it at an Employment Tribunal.

2. Get help - the ACAS Code of Practice advises that it is good employment practice for the employer to allow you to be accompanied to any meetings by a work colleague or Trade Union Representative.

3. Seek legal advice - a protected conversation often leads to a Settlement Agreement being proposed. This is a legally binding, often detailed document on which you will need specialist, independent legal advice - such advice should be paid for by the employer. At Morrish Solicitors LLP we regularly provide specialist, experienced advice on these types of Agreements.

4. Take some time - you should not be rushed into agreeing to anything. You should be given a reasonable period of time to consider the terms of a written Settlement Agreement proposal and get advice. The ACAS Code of Practice suggests that you should be given a minimum of 10 calendar days.

5. Handling the pressure - you are (probably) being asked to decide whether you agree to your employment being terminated. This is obviously a potentially life changing decision. It is a difficult one to make even without any unnecessary or improper pressure. If your employer behaves 'improperly', then the protected conversation might lose its special protection and you might be able to rely on it at an ET. 'Improper behaviour' includes discrimination, harassment, intimidation and undue influence. So, being told you'll be dismissed if you don't accept the proposal or the employer rushing your acceptance might both be forms of improper behaviour.

6. Negotiate - once a proposal is on the table, this becomes a two-way process and it might be possible to negotiate an increase to any financial package on offer. Again, seek specialist legal advice at an early stage. At Morrish Solicitors LLP, we regularly provide specialist, practical advice and also assist with negotiations directly with the employer or the employer's lawyers. If you are a member of a Trade Union, seek their assistance.

This Fact Sheet is for information only and is not intended to be a substitute for legal advice.

For more information on protected conversations and other Employment Rights, please call our Employment Rights team on 033 3344 9603.