



PUMP COURT
CHAMBERS

“Shut Up”: Settlement agreements and confidentiality clauses

Carol Cheng

23 June 2026

Compromising claims

- Generally, a contracting-out agreement will be effective to bar a breach of contract claim, but not a statutory claim (s203 ERA 1996 /s144 EqA 2010)
- Wide scope of S.203(1) ERA 1996
 - The words 'bringing any proceedings' are not limited to the initiation of, but also the continuation of proceedings (Naqvi v Stephens Jewellers Ltd 1978 ICR 631, EAT)
 - Broad enough to catch a contracting-out agreement made at any time before the tribunal reaches a final determination on the question of remedy (Courage Take Home Trade Ltd v Keys 1986 ICR 874, EAT)



Compromising claims (cont.)

- Major exceptions:

Advisory, Conciliatory and Arbitration Service
Agreement in respect of an Actual or Potential Claim to the
Employment Tribunal

Claimant		Respondent	
Name:	Mr. Alex Thomas	Name:	Central Bank of India Ltd. (Respondent)
Address:	Flat 101, 101 Leinster Road, Chennai 600 002	Address:	101 Leinster Road, Chennai 600 002

CASE NUMBER: 1001000000

Settlement reached as a result of conciliation
and/or arbitration.

The Respondent agrees to pay the Claimant, without any admission of liability, the sum of £10,000 (Ten Thousand Pounds) in full and final settlement of all claims under statute or common law which the Claimant has brought or could bring against the Respondent arising out of the Claimant's period of employment with the Respondent and its subsidiaries.

It is agreed that the above sum will be paid to the Claimant within 10 days of the Respondent receiving this Agreement signed by the Claimant or the Claimant's Representative.

Both parties agree that the fact and terms of this Agreement will remain confidential between the parties and their representatives, including the Claimant's immediate family, and shall be treated by all concerned as confidential, and will not be disclosed to any third party except as required by law.

The Claimant will refer to the Claimant's Tribunal within 1 day of receiving the settlement sum as a without prejudice matter under 'Case Number' 1001000000 and will certify that the sum of £10,000 has been agreed under the Respondent's signature. The Claimant will refer to the Claimant's Tribunal within 1 day of receiving the settlement sum as a without prejudice matter under 'Case Number' 1001000000 and will certify that the sum of £10,000 has been agreed under the Respondent's signature. The Claimant will refer to the Claimant's Tribunal within 1 day of receiving the settlement sum as a without prejudice matter under 'Case Number' 1001000000 and will certify that the sum of £10,000 has been agreed under the Respondent's signature.

This agreement does not affect any rights the Claimant may have in relation to personal injury claims. The Claimant, in signing this Agreement, acknowledges that the personal injury claim has been settled and the Claimant will not bring any claim for personal injury against the Respondent.

By or on behalf of the Claimant: *[Signature]* Date: 15/01/10

By or on behalf of the Respondent: *[Signature]* Date: 15/01/10

COT3 AGREEMENTS

Without Prejudice and Subject to Agreement

THIS AGREEMENT is made the _____ day of March 2024

BETWEEN:

- (1) _____
- (2) _____

WHEREAS:

- (1) In this Agreement:-
- (a) 'the Employer' is _____;
- (b) 'the Employee' is _____;
- (c) 'the parties' are the parties to this Agreement;
- (d) an 'associated company' is any company that is a subsidiary or a holding company of the Company or is another subsidiary of such holding company and for these purposes the terms 'subsidiary' and 'holding company' have the meanings ascribed to them by s1159 of the Companies Act 2006;
- (e) 'the Severance Payment' is the sum of £ _____.
- (2) The Employee has been continuously employed by the Employer from _____ to _____.
- (3) The Employee was given notice of dismissal on 22nd January 2024, expiring on the 21st March 2024 in circumstances giving rise to the potential for claims of unfair dismissal and unlawful discrimination contrary to the Equality Act 2010 which he and the Employer have agreed to settle on the terms below.

IT IS HEREBY AGREED as follows:-

1. The employment of the Employee with the Employer will cease on the 21st March 2024. The Employee shall remain on garden leave from 1st March to the expiry of his notice on 21st March. The Employee is not required to attend for work and the Employer is not obliged to provide him with any work between the signing of this Agreement and the termination of his employment on 21st March.
2. The Employer has paid and the Employee acknowledges receipt of his salary from March 1st to 21st inclusive and a payment in lieu of accrued paid holiday from March 1st to 21st inclusive.

SETTLEMENT AGREEMENTS



- Involves ACAS Conciliation Officer
- No requirement for either party to obtain legal advice
- Usually after a claim is commenced

COT3 Agreements (cont.)

Settling 'future' claims

- **Royal National Orthopaedic Hospital Trust v Howard [2002] IRLR 849, EAT**
- The clause: *"...in full and final settlement of these proceedings and of all claims which the applicant has or may have against the respondent..."*
- EAT: If the parties wish to contract out of claims of which they have and can have no knowledge – whether those claims already exist or not – they must use language which is *"absolutely clear and leaves no room for doubt as to what it is they are contracting for"*.
- The reference to claims which C *"has or may have"* could cover claims existing at the time of the agreement (whether or not they were known to C) but was not sufficient to cover possible future claims.



COT3 Agreements (cont.)

Settling 'future' claims (cont.)

- **Arvunescu v Quick Release (Automotive) Ltd [2023] ICR 271, CA**
- The clause: all claims A *"has or may have"* against QRA Ltd *"arising directly or indirectly out of or in connection with the claimant's employment with the respondent, its termination or otherwise"*, even if A *"may be unaware at the date of this agreement of the circumstances which might give rise to it or the legal basis for such a claim"*
- ET, EAT, CA: The settlement agreement excluded the victimisation claim. CA held that although the claim did not arise directly or indirectly *"out of"* his employment with QRA Ltd, it nevertheless arose indirectly *"in connection with"* it



Settlement Agreements

Statutory conditions (s.203(3) ERA 1996)

- 1) In writing
- 2) Relate to the particular proceedings
- 3) Employee / worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an ET
- 4) (when the adviser gives the advice) A contract of insurance, or an indemnity provided for members of a profession or professional body, is in force
- 5) Identify the adviser
- 6) State that the conditions regulating settlement agreements under this Act are satisfied.



Settlement Agreements (cont.)

'Particular proceedings'

- **Hinton v University of East London [2005] ICR 1260, CA**
- Facts: Settlement agreement *"in full and final settlement of all claims in all jurisdictions (whether arising under statute, common law or otherwise) which the employee has or may have against the University... arising out of or in connection with his employment with the University, the termination of his employment or otherwise"*.
- This included a list of possible claims to be settled but which did not include claims under s.47B ERA, despite the fact that H had in the past complained to his employer that he had suffered such detriments. H then brought a claim on the basis of such detriments.



Settlement Agreements (cont.)

'Particular proceedings' (cont.)

- **Hinton (cont.)**
- A settlement agreement can apply *"to the compromise of anticipated proceedings in relation to a claim or complaint raised between the parties prior to the compromise, though not the subject of any actual proceedings"*. However, the particular proceedings must be clearly identified, either by a generic or by reference to the section of the statute. Not sufficient for a settlement agreement to use 'a rolled-up expression such as *"all statutory rights"*', nor to identify the proceedings only by reference to the statute under which they arose.
- Here, contractually wide enough to cover the S.47B claim, but did not 'relate to the particular proceedings'.



Settlement Agreements (cont.)

Settling 'future' claims

- **Lunt v Merseyside TEC Ltd [1999] ICR 17, EAT**
- A settlement agreement could not exclude complaints that had not yet arisen. Parliament did not intend to permit a blanket settlement agreement settling claims which had never been indicated.
- **Hilton UK Hotels v McNaughton [2005] 9 WLUK 281, EAT**
- Future claims can be settled but must be done so *"in language which is absolutely clear and leaves no room for doubt as to what it is the parties are contracting for"*.



Settlement Agreements (cont.)

Settling 'future' claims (cont.)

- **Bathgate v Technip Singapore PTE Ltd [2023] CSIH 48, Court of Session (Inner House)** – *employment was terminated*
- Facts: B took voluntary redundancy under a settlement agreement that listed a range of statutory rights, including discrimination claims under the EqA, and included a general waiver of "*all claims... of whatever nature (whether past, present or future and whether under contract, statute... or otherwise) which the employee has or may have*" against the employer.
- Following termination, B's employer withheld a payment on age-related grounds and B sought to bring a claim of age discrimination.



Settlement Agreements (cont.)

Settling 'future' claims (cont.)

- **Bathgate (cont.)**
- ET: The claim was precluded by the settlement agreement.
- EAT: The inclusion of a list of claims defined merely by reference to their legal character or section number would not satisfy s.147. The words 'the particular complaint' anticipate the existence of an actual complaint or circumstances where the grounds for a complaint exist, not a potential future complaint.
- Court of Session: No need for the complaint to be known of or its grounds in existence at the time of the agreement. Question is whether the complaint being made is covered by and clearly identified by the contract terms.



Settlement Agreements (cont.)

Settling 'future' claims (cont.)

- **Clifford v IBM United Kingdom Ltd [2024] EAT 90, EAT** – *continuing employment*
- Clause: C waived the right to bring various specified claims, including for disability discrimination, whether or not they were or could be in the parties' contemplation at the date of the agreement. There was an exception in respect of future claims but this did not apply to matters connected to the grievance or arising from C's transfer to the disability plan.
- ET, EAT: The settlement agreement covered future discrimination claims connected to the grievance or arising out of C's transfer to the disability plan, whether or not they were contemplated by the parties. Future claims can be settled provided that appropriately clear language is employed.



Confidentiality

- No general duty of confidentiality will be implied without an express provision (Brooks v Olyslager OMS (UK) Ltd [1998] IRLR 590, CA)
- In COT3 agreements, statutory protection is afforded to the conciliation process itself (but not the terms of the final agreement): anything communicated to a conciliator in connection with the performance of their functions is not admissible in evidence before an employment tribunal except with the consent of the communicator (s.18(7) of the Employment Tribunals Act 1996)



Confidentiality (cont.)

- Limitations:
 - Outweighed by an employer's duty to disclose information in a safeguarding capacity even where there is an express confidentiality clause (Zinda v Ark Schools EAT 0251/14).
 - Void if it seeks to prevent an individual from making a protected disclosure in whistleblowing (S.43A ERA)
 - S.24 ERA 2025 restrictions render void any provision purporting to preclude the worker from making an allegation of or disclosure of information relating to (i) relevant harassment or discrimination, or (ii) the employer's response to the harassment or discrimination or making of the allegation or disclosure. Not applicable to 'excepted agreements' (see secondary legislation).



Contact details



Carol Cheng
Call: 2022 | Admitted as a Solicitor: 2018

Carol is happy to undertake work representing both Claimants and Respondents in all areas of employment law.

She has appeared in the Employment Appeal Tribunal, including acting for the respondents in appeals against final hearing judgments and case management decisions. She regularly drafts pleadings and provides written advice on merits, and has also represented parties at judicial mediations.

Carol regularly appears in the Employment Tribunal, in preliminary hearings as well as the following notable final hearings:

- 11-day final hearing involving claims of direct race discrimination, harassment related to race and wrongful dismissal, acting for the respondent (a nationwide charity which provides drug and alcohol rehabilitation services to vulnerable people).
- 10-day final hearing involving claims of wrongful dismissal, direct race discrimination, harassment related to race, unlawful deduction from wages, and outstanding payment, acting for the respondent (a luxury car dealership group).
- 5-day final hearing involving claims of automatic unfair dismissal, direct race discrimination, harassment related to race, victimisation, and unlawful deduction from wages, acting for the respondent (a lighting and electrical supplies retailer).



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