



Protected conversations and the Without Prejudice Rule

by

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Outline

- The WP rule
- The Protected Conversations Regime
- What are the dangers if a conversation is not WP/protected?
- What are the dangers of not having the conversation at all?
- Having good protected conversations

What a Mezz(oterro)! The WP rule

- Foundation
 - Public policy
 - Contract
- Limitations
 - Must be a dispute in contemplation
 - Cannot cloak unambiguous impropriety
 - Must be a genuine attempt to settle a dispute

Protected conversations

We will be consulting on the introduction of Protected conversations so a boss and an employee feel able to sit down together and have a frank conversation - at either's request



Protected Conversations

- Limitations
 - ~~Must be a dispute in contemplation~~
 - Cannot cloak ~~unambiguously~~ improper behaviour
 - Must be a genuine attempt to settle a dispute
 - CanNOT be waived even by mutual agreement
 - Only applies to ordinary unfair dismissal

Dangers of Protected conversations

- Employee sees it all as a foregone conclusion
- If ET finds out, it will find against you
- The employee may resign and claim constructive dismissal

Dangers of no protected conversation

**Better
chance
in ET**



More hoop jumping

**More wasted
absorption of
management time**

**Poor performer in the
business for longer**

**Less dignity to the
employee**

More likely to go to ET

**More cost, more
distraction, bad
publicity**

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Good protected conversations

- Explain what WP means
- Get employee's agreement
- Ensure there is a note taker
- Frame it in a way that would not compromise you before an ET
- Avoid the suggestion of a foregone conclusion
- Treat the employee with dignity and respect
 - Make it feel like there is a genuine choice
 - Make a proper offer



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