



# 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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