

GTE Settlement Agreement Solicitors

70 Gracechurch Street
London EC3V OHR

www.gtelaw.co.uk

Dear Sir/Madam

Client care letter – Settlement Agreement Advice for Employees

Thank you for instructing me. This letter confirms details of my firm, how we will work together on your Settlement Agreement, regulation of solicitors and the fixed fee I offer for straightforward ('same day') Settlement Agreements.

A Settlement Agreement is a legal contract. The document can be quite long but in essence they offer an enhanced payment with protections for your reputation such as reference etc. In return, you cannot bring any legal claims at an employment tribunal. Also, if you make a false statement or break the agreement your employer can recover the compensation paid to you and take other legal action. For settlement agreements to be legally binding, you need to take independent advice from an independent solicitor.

If you are thinking of bringing a legal challenge, need to address complex issues... or want to negotiate a significantly higher amount than offered we can refer you to another firm or you can search on the Law Society database: <https://solicitors.lawsociety.org.uk/>.

1. Professional status and regulation

My firm is authorised and regulated by the Solicitors' Regulation Authority ("SRA") no. **563689**. The SRA can be contacted at: <http://www.sra.org.uk/consumers/consumers.page>

Your Settlement Agreement will be dealt by a qualified solicitor, either: Gordon Turner, Vaughan Fullagar, Richard Benny or Phillipa Bellingham. The conducting solicitor will be confirmed in the email accompanying this letter.

2. Assistants

You may be contacted by Sam or Cameron (paralegal) if I am unavailable to get things started.

3. Key dates

If you do intend to bring a tribunal claim, you *must* start the ACAS process within **3 months**. If your employer has set a deadline for accepting the offer. Please let me know if there any urgent dates when we speak.

4. My fee

Your employer will pay for the legal fee which covers advice on the basic terms and (their effect) and reasonable negotiations such as a reasonable increase on a goodwill basis or minor amends to post termination restrictions.

The '**fixed fee**' is the amount your employer has agreed to pay as set out in the Agreement (normally £350-750 *plus vat*). Sometimes the employer pays the employee, who then pays me on receipt of funds. The amount of the fee varies to reflect the complexity of the document but we fix our fee to the employer contribution so provided your employer pays the fee on time, you will not be charged.

A condition of the fixed fee is that you provide clear, proportionate and reasonable instructions and follow my advice, and that the fee is paid no later than **30 days**. Interest is payable at the rate of **8%** on all unpaid invoices after **30 days**.

The fixed fee service does **NOT** cover:

- enforcement of the Agreement (eg: your employer hasn't paid you or won't supply the reference)
- events which take place *after* signing the Agreement (return of employer property, breaches of confidentiality, post-termination restrictions etc.)
- advice on detailed documents or evidence
- consideration and preparation of detailed legal argument
- pursuing unreasonable objectives (goals which would not be achievable at a tribunal)
- conduct of the negotiation in an unreasonable manner (eg: breaching the confidentiality obligations in the Agreement)
- detailed strategic advice such as renegotiating of Post-Termination Restrictions
- financial entitlements such as bonuses, deferred stocks and options, shares

If these issues are relevant to your case, you should promptly instruct another solicitor. It is better for one firm to deal with the agreement and related issues such as shares. I work closely with Tom Moyes at Blacks Solicitors, but you can choose any solicitor.

5. Tax & Calculations of Pay & Compensation

I don't advise on any precise calculations such as: contractual notice, commissions, holiday pay etc. so please check the figures yourself (by looking at payslips etc) or tax calculations. If you want to challenge your employer's calculations, please raise this with your payroll department or send me a note of your calculations and I will forward it to your employer for comment.

I am not qualified to provide tax advice but generally speaking, tax is not payable on the first **£30,000** of any 'compensation' or 'ex gratia' payment (non-contractual payments) and direct payment of some disbursements (outplacement) and contributions by your employer to your pension can be paid tax free. You should seek independent advice on these issues.

6. Benefits of Settlement Agreements

Settlements offer many advantages such as tax efficiency; avoiding legal costs; prompt and certain payment (provided your employer is solvent); protection of career and reputation (Tribunal Decisions are available online); 'closure,' avoiding stress and litigation risk (you might not win in a tribunal).

The main remedy for unfair dismissal is *future* lost earnings so to claim a larger award you must have convincing information that you may be unemployed for a lengthy period, and you must also show that you will take reasonable steps to look for work by being *proactive* and *flexible*.

When considering the offer, it is very important to consider the NET value of any potential claim versus losing the above advantages: what will you take home if you pursue a dispute versus the more predictable NET benefit of a Settlement, *are the risks proportionate to any benefit you are pursuing?* Tribunal awards are made net of tax and the £30,000 tax free threshold doesn't apply. Legal costs (often thousands of pounds) are not recoverable.

7. Re-Affirmation of Agreement

If you are leaving at a date later than the date of signing of the Agreement, your employer may require a Second Agreement, simply confirming that no additional legal claims or issues have arisen after you signed the First Agreement. I will send you an Outlook invite for the day after you leave with a seven- day reminder.

IMPORTANT NOTICE

If anything, significant happens connected with your employment and you do NOT want me to return the final document, then please contact me in writing no less than **3 working days** before your last day. Once the final document is signed you will not be able to pursue any legal rights.

8. Data Protection & your documents

My firm is registered with the Information Commissioner (Reg no. PZ283123X). Data on your file will be processed in accordance with the Data Protection Act 1998. I don't hold original documents from Settlement Agreement clients. Any electronic documents will be deleted after **6 months**. You will be copied in on all relevant communications so please keep a file as you receive them.

9. Insurance & limitations on liability

My firm has professional indemnity insurance up to **£2 million**. By instructing me, you agree that the amount payable to you in total under any claim will not exceed this sum. Details of my compulsory professional indemnity insurance are available on written request.

10. Money Laundering

I don't need '*Know Your Client*' documentation (passport/utility bill) because your employer will pay you direct, and my bill is paid direct by your employer. I don't have a Client Account or ever hold any client money. An unlikely exception is where I consider that any funds discussed may be the proceeds of a crime under s 327 Proceeds of Crime Act 2002 (POCA). If that is the case, I may also terminate the retainer.

11. Contact details & opening hours

My mobile number is **07527 261 926** and can be used between: **9:30-and 4:45**. Switchboard (**0207 247 7190**) is open from **8:30 to 5:30**

12. Concerns, my invoices & the Legal Ombudsman

If you are unhappy with the service I have provided, please email me heading your email: 'Complaint.' I will acknowledge your complaint in writing, normally (except where I am abroad) within **7 working days**. If I can resolve the complaint with you, I will record the outcome in writing. If you are still unsatisfied the next step is for you to contact the Legal Ombudsman:

Telephone: 0300 555 0333
Overseas: +44 12 245 3050
Email: enquiries@legalombudsman.org.uk
In writing: PO Box 15870, Birmingham, B30 9EB
www.legalombudsman.org.uk

You will need to bring a complaint to the Ombudsman within **six months** of receiving a final written response from me or within a year of the thing you are complaining about.

13. Acceptance

Continuing instruction of me (such as sending me the Agreement/seeking advice etc.) will be treated acceptance of these terms. By doing this you are confirming that GTE Settlement Agreement Solicitors are the *sole* firm of solicitors instructed to advise on your agreement.

I look forward to working with you.

Yours sincerely,

Gordon Turner

Gordon Turner

GTE Settlement Agreement Solicitors

Authorised & Regulated by the Solicitors'
Regulation Authority (Reg. no. **563689**)

0207 247 7190 (T) 07527 261 926 (M)

Authorised & Regulated by the Solicitors' Regulation Authority
(Reg. no. **563689**)

Solicitors

Gordon Turner (Roll no. **160967**) Vaughan Fullagar (Roll No. **133007**)
Richard Benny (Roll no. **155509**) Philippa Billingham (Roll No. **314104**)

Guidance on Settlement Agreements

Most terms in a Settlement Agreement are standard.

Here is a brief summary:

1. **Full and Final Settlement**- once signed, you cannot bring any claims to an Employment Tribunal (eg: unfair dismissal, discrimination, whistleblowing). The Agreement doesn't stop you bringing personal injury or pension claims or enforcing the Agreement.
2. **Confidential information & Property**- you must not: copy, retain, pass on, or misuse in any way, employer confidential information and must delete any employer material from your own devices. It is very helpful to start the Settlement Process by sending an email to your manager (introducing me as your solicitor, copied in) listing what you have and *how* and *when* you will return it. This will protect you going forward should your employer assert you have retained items in breach of the Agreement.
3. **Good behaviour and handover**- you must behave appropriately and not harm your employer's interests both up to the termination date and beyond. You must follow reasonable instructions on things such as handover and passwords and honour clauses in contract which continue after leaving (property/client and staff protection). There is a general duty not to breach the implied term of trust and confidence.
4. **Pay**- the following payments should be made:
 - a. Pay up to your termination date less Tax & NI
 - b. Holiday pay less Tax & NI (if the amount isn't confirmed in the Agreement, you should do this by email with your employer)
 - c. Compensation – the amount your employer is willing to pay. The first **£30k** is tax-free
 - d. Redundancy/Basic- if you are being made redundant- **£1078.50** for each year over **41** and **£719.00** for each year under age **41** (to a max **20 years**).
 - e. Bonuses/commission- unless set out in the agreement, you will not receive any bonus, commission or shares. Where there is any discretion about the amount to be paid in the future you may need some clarification on how it will be calculated. Sometimes an employer will fix the amount, so you know where you stand. Many

such schemes give the employer discretion as to how much should be paid. The details should be in writing and you can ask for these.

- f. Consideration for Post Termination Obligations- this is normally a nominal sum such as **£100**. Employers make this payment to bind you into promises you are making into the future such as not misusing confidential information, making derogatory comments or poaching clients and staff in breach of your contract of employment.
5. **Warranties**- these are legally binding promises from you in return for the benefits under the Agreement: you will comply with the Agreement, haven't already got a job to go to etc, you aren't withholding a serious breach of duty from your employer. A breach of warranty will entitle your employer to recover the compensation from you and take other legal action. If you are expecting a job soon, signing the Agreement quickly is normally in your interests.
6. **Post Termination Restrictions**- some clauses in your initial contract of employment continue after you have left such as protecting confidential information/intellectual property and preventing you dealing with clients and poaching employees (normally for 6 months). If you wish to challenge these, please provide a copy of your contract. Sometimes employers will agree reductions to restrictions.

You should also make any future employer aware of these restrictions before accepting an offer of employment.

The Agreement normally contains a nominal payment (normally £100) in return for these duties (see above). By taking that money you are making it easier for your employer to enforce clauses after the termination date. You will normally be expected to affirm your understanding of those restrictions.

Clauses relating to dealings with clients normally refer to clients and potential clients with whom you had material dealings in the last **12 months** of your job. The restriction will normally be that you will not solicit their work or provide similar services for **6 months**. You are also prevented from poaching fellow employees to join you at another employer. Credit is normally given for any time served on garden leave.

When you get a new job offer you should always be open with your new employer about any restrictions on what you can't do when you join them.

7. **Reference**- there is no legal duty to provide a reference to a future employer but if it's agreed in the Settlement, you then have a right to one, and your employer is not allowed to deviate from it unless something serious comes to light. Generally, these are fairly standard but there is nothing to stop you from asking a manager to provide you a *private* reference with more detail on their own notepaper via a personal email.

8. **Reputation & Confidentiality** – unlike Tribunal decisions (which can be obtained with all the details of the case via the Internet) Settlement Agreements- and the facts behind them- are confidential and both parties agree not to make any comments which might harm the other. With employers this is normally a ‘reasonable endeavours’ offer. They won’t agree to policing all the individuals in the organisation but will take reasonable steps such as giving management instructions to your team and HR to act appropriately.
9. **Protected disclosures**- the Agreement cannot prevent you reporting legal issues to the relevant authorities such as the Police, Immigration, Health and Safety or FCA.
10. **Co-operation with legal disputes**- the employer may require to you to co-operate as a witness in any future legal action against it. You cannot be told what to say as a witness, but you would have to co-operate in providing a statement or explaining notes. Your employer will sometimes pay you and agree the time. It will always have to pay any expenses. This very rarely happens. If you don’t agree to this, your employer could seek a court order in any event.
11. **Shares/stocks**- if these are relevant, my role is limited to checking that you are not waiving your rights to these by signing the agreement and possibly that you will be recommended for ‘good leaver’ status. Investments will be covered by pre-existing rules, and I am NOT advising on them. The rules for deferred stocks and options are more onerous against an employee on joining a competitor. If this is an issue in your case, please let me know and I will refer you to another firm. Loss of any deferred option is also something you may negotiate with a new employer. Normally, you will keep all stock which has vested and receive no more after the termination date.
12. **Entire agreement**- the ‘deal’ is all contained in the Settlement Agreement so once it is signed neither party can refer to anything else such as verbal promises or emails, so it is very important to ensure that everything you expect is in the Agreement.
13. **Signature**- the Agreement is legally binding when signed by both parties and I have returned my certificate.
14. **Potential Claims**- if you have concerns about a breach of employment-law rights then I will need to factor this into my advice on the amount under offer or consider referring this on to a firm which does litigation.

Things to bear in mind include:

- a. **Dates**- when did the key issues occur? If there are over 3 months ago, they are probably out of time.

- b. **Large scale redundancies**- where a significant number of employees are being made redundant, bringing an individual claim is very difficult because most claims require a comparison with other employees being treated differently without good reason. The chances of succeeding without a very clear case can be very low and need to be considered against the prospect of damaging relations with your employer, losing the certain deal on offer and also the advantages of being able to explain to future employers that you were 'let go' as part of a restructure (compared with being due to a dispute).

We will go through the clauses individually and I will advise on anything which isn't in this summary or which you raise when we speak.

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