



## **Settlement Agreement Guidance for Members – Frequently Asked Questions**

These 'Frequently Asked Questions' aim to answer the most common questions members have on their settlement agreements once they have been referred by their NEU caseworker to the NEU Settlement Agreements Team.

### **What is the purpose of a settlement agreement?**

Settlement agreements are a way for employees and employers to draw a line under an employment relationship. Generally speaking, the employee will receive a sum of money in return for which they agree not to pursue any claims or raise any further complaints against the employer. They are effectively a lawful means of signing away certain legal rights.

### **What is the difference between my NEU caseworker and my Certified Settlement Agreements Officer ('CSAO')?**

Your settlement agreement is dealt with in two distinct stages:

Stage 1: Your NEU Caseworker/Branch or District Secretary/Regional Officer supports and advises you on the details of your case including the negotiations of the main terms of the settlement agreement i.e. the Termination Date, Settlement Payment and agreed reference.

Stage 2: For a settlement agreement to be valid you must receive independent legal advice as to the terms and effect of signing the settlement agreement. Your CSAO ensures the legal requirements of the settlement agreement are met by advising you on the terms and effect of signing the settlement agreements and sends you the settlement agreements to sign. Their role does not include advising on any of the casework issues dealt with by your NEU caseworker (which led to the settlement agreement) or advising you on the merit or substance of your case. Your CSAO will not advise you whether or not to sign the settlement agreement or provide you with a 'second opinion' on your case - they provide the legal advice on the terms and effect of signing the negotiated settlement agreement only.

### **Now my Certified Settlement Agreements Officer ('CSAO') has been allocated my settlement agreement when can I sign it?**

Your CSAO aims to review your settlement agreement and send it to you to sign as quickly as possible.

There may be times when your CSAO needs to ask your employer to amend some of the legal wording in your settlement agreement in order to protect your interests which may mean it takes longer for us to send you the settlement agreement to sign.

### **What happens after I have signed my settlement agreement?**

Once the settlement agreement is ready for you to sign your CSAO will email you with their advice on the terms and effect of signing the settlement agreement along with their adviser certificate which forms an important part of the legal requirements. The settlement agreement will be attached to this email advice as a password protected document – you will receive the emailed password to open this document separately shortly after receiving the advice email. The advice email includes important and specific steps for you to follow in respect of printing off and signing the settlement agreements before emailing and/or posting the signed settlement agreement and the adviser's certificate to your employer directly.

### **When will I be paid my settlement payment?**

Once your signed settlement agreement has been returned to the employer and they have signed it the agreement usually become binding from the date on which the final signature is entered on to it. This is known as the date of the agreement. The settlement payment clause in the settlement agreement will state when the settlement payment will be paid to you so please make a note of this time frame when you sign it.

### **Will my settlement payment be tax free? Or will it be taxed?**

Certain payments, such as redundancy payments, should be paid to you without any deduction of tax or national insurance. However, all settlement payments are now deemed by HMRC to include compensation for notice pay, known as Post Employment Notice Pay ("PENP") unless notice has been worked leading up to your Termination Date. The Government's intention is to tax, as earnings, the basic pay you would have earned had you worked out the minimum notice the employer is required to give you under your contract. Tax and employee Class 1 National Insurance contributions are deductible from the PENP. Your employer should be asked to identify the amount of any PENP payable to you as part of the settlement agreement. Any remaining balance of the settlement payment should be paid without any deduction of tax or national insurance up to a limit of £30,000.

### **What happens if I don't agree with the amount of tax that has been deducted from my settlement payment?**

If you consider you have paid too much tax on your settlement payment once you have received it please contact your employer directly in the first instance requesting a breakdown of the payment.

If you are still dissatisfied with the amount of tax you have paid and you consider you are due a tax refund please contact HMRC directly or follow this link <https://www.gov.uk/claim-tax-refund>

*For example:* In circumstances where you are receiving a lump sum taxable payment of 3 months' salary this doesn't mean that you will receive your usual net monthly salary x 3 months – instead this 3 month salary payment will be paid and taxed as a lump sum payment (instead of over 3 months) which may push you into a higher tax bracket in the month it is paid meaning you may pay more tax than expected.

### **Can I tell people about my settlement agreement?**

Your settlement agreement is highly likely to include a confidentiality clause. If you have agreed to discuss the terms or existence of your settlement agreement with legal or professional advisers or as required by law only, you should not disclose this to other work colleagues, friends or prospective employers. The majority of settlement agreements will allow you to discuss the settlement agreement with your immediate family but you should ensure that they do not discuss the agreement with anyone else.

### **When can I start working again?**

Our advice is that you do not start a new job until after you have signed the settlement agreement even if the Termination Date in your settlement agreement has already passed. This is because you are still employed by your employer until the settlement agreement is signed and your termination date has passed and you are likely to be in breach of your employment contract if you start another job before effectively bringing your current employment to an end which happens when you sign the settlement agreement.

### **What happens if the Termination Date has passed but I haven't signed the settlement agreement yet?**

You will continue to be employed until the settlement agreement has been signed by all parties. Once the settlement agreement has been signed by all parties the Termination Date will take effect retrospectively and backdated to that date. If your employer has continued to pay you your salary beyond the Termination Date those payments will be deemed as overpayment of salary which the employer will seek to recover. This is usually done by the employer by deducting any overpayments from any settlement payment before it is paid to you.

### **Can I start looking for a new job before signing the settlement agreement?**

Although you can start looking for a new job please be aware that there are sometimes 'limitation of employment' clauses in settlement agreements which prevent you from accepting another job or having the prospect of another job before signing the settlement agreement or which prevent you from working for another employer maintained by your local authority for a certain period of time. The extent of the 'limitation of employment' clause depends entirely on the wording of the clause.

### **I need a reference but I haven't signed my settlement agreement yet – will my employer still provide the agreed reference to prospective employers?**

Your employer is only contractually bound to provide the agreed reference once the settlement agreement is signed by all parties. We hope that employers don't delay providing prospective employers with the agreed reference until the agreement is fully signed and often find that they provide this once they have received a copy of the signed settlement agreement with the adviser's certificate.

### **What should I do if I have an ongoing personal injury claim or feel that I have may have a potential personal injury claim?**

Please inform your CSAO immediately and email them with the details of any injuries and the dates any accidents occurred. This should be done as soon as possible but most importantly before you sign the settlement agreement.

### **What if I am off sick and waiting to sign the settlement agreement?**

Please continue to submit fit notes to your employer until you have signed the settlement agreement even if the Termination Date has already passed.

### **What about returning my employer's property?**

You will be required to return any property belonging to the employer such as laptops, security passes, keys and documents. If you need assistance returning your employer's property please liaise with your NEU caseworker directly.

### **What about collecting my personal belongings?**

Any personal belongings that are still at the workplace should be returned to you. If you need assistance collecting or arranging the collection of your personal belongings then please liaise with your NEU caseworker directly.

### **If I am a teacher and leave my current role, can I still teach?**

You can continue to teach unless the teaching regulators have informed you otherwise.

If you are a teacher and your contract of employment was terminated for reasons relating to child protection, the employer is obliged to refer the matter to the Disclosure & Barring Service (DBS) and may refer the matter to the Teaching Regulation Agency (TRA) (formerly known as the National College for Teaching and Leadership or 'NCTL') in England or the Education Workforce Council (EWC) in Wales. For any other form of serious misconduct (e.g. financial or exam dishonesty), your employer may exercise its discretion to refer the matter to the TRA or EWC. In these circumstances, although you will not be under a contractual obligation to participate in any workplace investigation or procedure once your contract has terminated, you are nevertheless likely to be subject to an investigation by an external agency such as the TRA or EWC and to have allegations against you interrogated by the DBS.

### **What happens if I don't want to sign the settlement agreement?**

The terms of the settlement agreement sent to you to sign will be the best terms that the Union can agree with your employer. If you are not happy with the terms of the settlement agreement you do not have to sign it. In these circumstances you will remain employed by your employer and any procedures that you were under before the terms of the settlement agreement were negotiated will continue. Your CSAO will pass your case back to your NEU caseworker who will continue to provide you with assistance while you remain a member of the Union.

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