

Where the employer went wrong

1. The meeting was conducted off the back of a work discussion with no prior warning or planning
2. No explanation was given of what the meeting was about or the fact that it was a protected conversation
3. The Employer did not ask the Employee if they are happy to proceed with the protected conversation
4. The Employer did not confirm that the conversation was off the record.
5. The Employer did not get the Employee to sign a 'consent to protected conversation' letter
6. The first explanation provided to the Employee about what a Settlement Agreement was, was poor and unhelpful. The second explanation that was given was then aggressive and matter of fact, with little consideration as to how the Employee was feeling
7. The Employer did not confirm what settlement would be paid to the Employee
8. The communication was generally poor which is usually unlikely to yield a good outcome.
9. S.111A, which states that conversations will not be admissible in any later dismissal proceedings, shouldn't apply here as the Employer's behaviour could be regarded as 'improper behaviour' in the following aspects:
 - a. Aggressive and intimidating towards the Employee
 - b. The Employer provided only a short time for the Employee to consider the offer
 - i. Employees should be allowed to have time to consider the offer and then if happy to proceed, time to consider the actual Settlement Agreement
 - c. The Employer stated that the Employee will end up being dismissed even though there has not yet been any disciplinary procedure
 - i. There would have been no harm in the Employer saying that there was a possibility of disciplinary action, which included dismissal. And if the Employer then made it clear that a fair and proper process would be followed before such decision was taken.
10. The Employer did not provide the Employee with anything in writing about the Settlement Agreement that was being proposed.

11. The Employer does not explain to the Employee that upon considering the Settlement Agreement they will need to take independent legal advice
12. The Employer does not check if the Employee has any questions
13. The Employer shows no care towards the Employee or how such a meeting might impact them
14. When the Employee refuses to consider the offer, the Employer threatens disciplinary proceedings and that they would be dismissed despite the fact that no investigation has been undertaken.
15. The Employer states that disciplinary proceedings will be started, however disciplinary is not the correct process – it would be capability/performance management.
16. When the Employee refuses the Settlement Agreement, the Employer should explain that if any subsequent formal action results in their dismissal then that Employee may not be able to leave on the same terms as set out in the proposed Settlement Agreement.
17. The Employer, could have encouraged the Employee, in a non-threatening way, to re-consider the refusal of their proposal
18. It does not seem likely that there was an 'existing dispute' when the settlement offer was made, so the offer and discussion are unlikely to be protected by the 'without prejudice' principle.
19. The Employer ends the call in a very unprofessional and aggressive manner