

# Without Prejudice: Subject to Contract

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The High Court found that a settlement letter from an employer to an employee and the employee's subsequent letter of acceptance amounted to a binding settlement agreement. This automatically prevented any further negotiations. If the employer had intended the settlement letter to be a springboard to further discussions, it should have headed the

settlement offer '*subject to contract*'.

In *Newbury v Sun Microsystems*, Mr Newbury brought a claim against Sun Microsystems. Days before the trial, Sun Microsystems made a settlement offer which Mr Newbury accepted. His lawyer then drafted the agreement based on the offer. Sun Microsystems rejected the draft putting forward new terms relating to payment, confidentiality and national insurance. The new terms were rejected by Mr Newbury who argued that a binding agreement had been concluded at the point when he accepted the written offer. The High Court agreed.

This case is a reminder that in terms of settlement agreement negotiations, contracts can be concluded inadvertently and informally. To avoid that, the three words '*subject to contract*' or something equivalent must be used. Had that been done, there would have been no binding agreement when Mr Newbury accepted the offer. Going forward, employers should make sure when they enter into negotiations that unless an informal offer is intended to be capable of acceptance without more offers are expressly stated to be subject to agreeing additional terms and that no deal will be done until all the terms are agreed.

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