

EQUALITY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Contracts, Etc.

Section 147: Meaning of “qualifying compromise contract”

Effect

474. This section sets the conditions under which a compromise contract settling a case can be lawful, even though it seeks to limit the application of the Act under section 144.
475. It must be a written contract which meets each of the following conditions: the contract must be tailored to the circumstances of the claim, the complainant must have received independent advice from a named person who is insured or indemnified against the risk of a claim against him arising from that advice, and the contract must state that the conditions about independent advice and insurance have been met.
476. The section describes who can be an independent adviser and includes a power to add new descriptions of people who may be independent advisers in the future. It makes clear that a conflict of interest prevents a person being an independent adviser.

Background

477. The section replaces provisions in previous legislation which had the same purpose. The power to add to the kinds of person who may be independent advisers could be used to add, for example, Fellows of the Institute of Legal Executives employed by a solicitors' practice.

Examples

- An employee who settled a claim at an employment tribunal on the advice of a lawyer who works for the employer he was seeking to sue would still be able to pursue the claim (assuming a conciliation officer was not involved in the settlement). The settlement agreement would be unenforceable because the lawyer had a conflict of interest and therefore the agreement would not be a qualifying compromise contract.
- An employee who settled a claim of harassment in a contract which also provides that she will forego all other claims arising under the Act in exchange for a fixed sum would still be able to pursue a claim for damages because of a discriminatory failure to promote her. The term of the contract precluding all claims would be unenforceable in respect of the discrimination claim because it is insufficiently tailored to the circumstances of the claim and therefore is not a qualifying compromise contract in respect of it.