Neutral Citation Number: [2024] EAT 174

Case No: EA-2023-SCO-000105-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 07 November 2024

Before :

JUDGE BARRY CLARKE

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Between :

MR KEVIN GALLAGHER

Appellant

- and –

MCKINNON'S AUTO AND TYRES LIMITED

Respondent

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- -

Mr Neil MacDougall (instructed by Ledingham Chalmers Solicitors) for the **Appellant**
Mr Duncan Milne (instructed by Moorepay HR Services) for the **Respondent**

Hearing date: 25 September 2024

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

The Employment Judge did not err in deciding that evidence of pre-termination negotiations was inadmissible.

JUDGE BARRY CLARKE:

1. In this appeal, Mr Gallagher is the appellant. His former employer, McKinnon's Auto and Tyres Ltd, is the respondent. I shall refer to Mr Gallagher as the claimant, as he was before the Employment Tribunal (ET). The appeal concerns the admissibility of evidence relating to a discussion the parties had about the terms by which they might part ways. The claimant wishes to refer to that evidence in his complaint of unfair dismissal, but the ET has ruled that it is inadmissible. The claimant now appeals that ruling. His substantive complaint of unfair dismissal has yet to be decided.

2. The claimant has been represented by Mr MacDougall (who did not appear before the ET) and the respondent by Mr Milne (who did); I am grateful to them both.

Background

3. Employers and employees sometimes enter into settlement agreements by which an employment relationship is terminated. The agreed terms may include a compensation payment. An employer may consider it commercially beneficial to enter into such an agreement, to avoid the need to go through formal disciplinary, capability or redundancy proceedings with all the attendant costs and risks. An employee may likewise consider it pragmatic to agree exit terms that avoid these costs and risks.

4. Where the parties are in an actual or contemplated legal dispute, exploratory discussions around settlement are generally protected in England and Wales by the common law "without prejudice" principle. This principle prevents things said or done by the parties, in a genuine attempt to settle their dispute, from being put before the court or tribunal as evidence; in legal speak, they are inadmissible. (I say "generally" protected because there are exceptions; for

example, the principle cannot act as a cloak for what is called "unambiguous impropriety". An example of unambiguous impropriety may be where an employer makes an ill-founded threat of criminal proceedings as a lever to get the employee to sign away their statutory employment rights.) In Scotland, the position is similar in that "if offers, suggestions, concessions or whatever are made for the purposes of negotiating a settlement, these cannot be converted into admissions of fact" (**Daks Simpson Group v Kuiper** [1994] SLT 689, approved in **Richardson v Quercus** [1999] SC 278). For convenience I will refer to both approaches as the without prejudice principle.

5. When no legal dispute has arisen, the without prejudice principle has no application. Employers and employees (although it is usually employers) may therefore be cautious about initiating a conversation that could lead to a parting of the ways, if the things they do and say might later be used against them in legal proceedings. To address this concern, Parliament amended the **Employment Rights Act 1996** (**ERA**) in 2013 to introduce a mechanism across all of Great Britain to facilitate confidential discussions held with a view to reaching agreement about terms of severance. To that end, section 111A(1) **ERA** provides as follows:

> **Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111. This is subject to subsections (3) to (5).**

6. The above provision creates a default position that evidence of pre-termination negotiations is inadmissible. These negotiations are sometimes called "protected conversations", although that expression is not found in the **ERA**. This statutory inadmissibility extends to the fact of the negotiations and not simply their content; see **Faithorn Farrell Timms LLP v Bailey** [2016] IRLR 839 (paragraph 40). In an employment context, it operates alongside, and supplements, the without prejudice principle. However, it does so only in respect of complaints of "ordinary" unfair dismissal. Subsection (3) provides in terms that the statutory

inadmissibility does not operate in respect of complaints of "automatic" unfair dismissal. It also does not operate in respect of complaints of discrimination. The inevitable consequence of this approach is that, in the same proceedings, pre-termination negotiations may be inadmissible for an ordinary unfair dismissal complaint but admissible for other complaints (see **Faithorn** (paragraph 38) and **Basra v. BJSS Ltd** [2017] UKEAT/0090/17 (paragraph 26), where this was described as "analytical compartmentalisation").

7. Crucially, section 111A(4) then provides an impropriety exception:

> **In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.**

8. Where there is a dispute about the parties' behaviour during such pre-termination negotiations, the ET must make findings in fact about what happened. Only then can it decide if there has been impropriety and (if there has been) to consider the extent to which it would nevertheless be just to permit the parties to refer to those negotiations; see **Harrison v Aryma Ltd** (UKEAT/0085/19). Put another way, where there has been impropriety, the ET must decide the extent to which the confidentiality of those negotiations should be preserved. Section 111A(4) contains no reference to a burden of proof, but it is clear that a party seeking to invoke the impropriety exception must do more than merely assert it; they must evidence it.

9. This is a topic about which Acas has chosen to issue practical guidance, pursuant to its statutory power as found at section 199 of the **Trade Union and Labour Relations (Consolidation) Act 1992**. Given the importance of constructive settlement discussions to good industrial relations, that is unsurprising. This guidance is found in the Acas Code of Practice on Settlement Agreements. By virtue of section 207 of that Act, a tribunal is required to take the Code into account where it is relevant to any question arising in the proceedings.

Acas has also issued separate guidance on settlement agreements, which supplements the Code and sets out principles of good practice (although, unlike the Code, it has no formal status in tribunal proceedings).

10. The Code deals at paragraphs 11 to 14 with the process by which a settlement agreement is reached:

> **11. Settlement agreements can be proposed by both employers and employees although they will normally be proposed by the employer. A settlement agreement proposal can be made at any stage of an employment relationship. How the proposal is made can vary depending on the circumstances. It may be helpful if any reasons for the proposal are given when the proposal is made. Whilst the initial proposal may be oral, one of the requirements for a settlement agreement to become legally binding is that the agreement must ultimately be put in writing …**
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> **12. Parties should be given a reasonable period of time to consider the proposed settlement agreement. What constitutes a reasonable period of time will depend on the circumstances of the case. As a general rule, a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise.**
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> **13. The parties may find it helpful to discuss proposals face-to-face and any such meeting should be at an agreed time and place. Whilst not a legal requirement, employers should allow employees to be accompanied at the meeting by a work colleague, trade union official or trade union representative. Allowing the individual to be accompanied is good practice and may help to progress settlement discussions.**
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> **14. Where a proposed settlement agreement based on the termination of the employment is accepted, the employee's employment can be terminated either with the required contractual notice or from the date specified in the agreement. The details of any payments due to the employee and their timing should be included in the agreement.**

11. Although the **ERA** does not define "improper" or "improper behaviour", the Code says this at paragraphs 17 to 19:

> **17. What constitutes improper behaviour is ultimately for a tribunal to decide on the facts and circumstances of each case. Improper behaviour will, however, include (but not be limited to) behaviour that would be regarded as "unambiguous impropriety" under the "without prejudice" principle.**

> **18. The following list provides some examples of improper behaviour. The list is not exhaustive:**
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> **(a) All forms of harassment, bullying and intimidation, including through the use of offensive words or aggressive behaviour.**
> **(b) Physical assault or the threat of physical assault and other criminal behaviour.**
> **(c) All forms of victimisation.**
> **(d) Discrimination because of age, sex, race, disability, sexual orientation, religion or belief, transgender, pregnancy and maternity and marriage or civil partnership.**
> **(e) Putting undue pressure on a party. For instance:**
> **(i) Not giving the reasonable time for consideration set out in paragraph 12 of this Code.**
> **(ii) An employer saying before any form of disciplinary process has begun that if a settlement proposal is rejected then the employee will be dismissed.**
> **(iii) An employee threatening to undermine an organisation's public reputation if the organisation does not sign the agreement, unless the provisions of the Public Interest Disclosure Act 1998 apply.**
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> **19. The examples set out in paragraph 18 above are not intended to prevent, for instance, a party setting out in a neutral manner the reasons that have led to the proposed settlement agreement, or factually stating the likely alternatives if an agreement is not reached, including the possibility of starting a disciplinary process if relevant. These examples are not intended to be exhaustive.**

12. The two provisions of the Code identified as most pertinent to this appeal are at paragraphs 18(e)(i) and 18(e)(ii), namely putting undue pressure on a party by not giving them reasonable time for consideration and/or by saying, before any form of disciplinary process has begun, that, if a settlement proposal is rejected, the employee will be dismissed.

13. In **Faithorn** (paragraph 48), the EAT endorsed the suggestion at paragraph 21 of the Code that the impropriety test in section 111A(4) has wider application than the "unambiguous impropriety" exception to the without prejudice principle.

The case before the ET

14. With the benefit of that background, I now turn to the case that was before the ET. It is agreed that the parties engaged in pre-termination negotiations on 1 August 2022 and in text messages over the following few days. It is also agreed that, when this happened, there was no actual or contemplated legal dispute between them; the without prejudice principle is therefore of no application. The claimant has sought to rely in his complaint of unfair dismissal upon things allegedly said and done during that meeting and in those text messages. The respondent has contended that the discussion between the parties was inadmissible by virtue of section 111A.

15. The ET convened a preliminary hearing on 4 October 2023 to decide the matter. Employment Judge Wiseman readily found that the discussions commencing on 1 August 2022 qualified as pre-termination negotiations; her focus was instead on whether anything said or done during the meeting was improper or connected with improper behaviour, which was the claimant's case before her. Having heard evidence from the parties, she decided that nothing improper had taken place. She therefore agreed with the respondent: both the fact and content of the discussion were inadmissible. Because of her conclusion, there was no need for her to go further and decide whether and to what extent it was just for the pre-termination negotiations to be inadmissible.

The facts as found by the ET

16. The facts summarised below are drawn from the ET's judgment (and paragraph numbers correspond to paragraphs in that judgment).

17. The respondent employed the claimant as a branch manager for almost five years. During June and July 2022, the claimant was absent due to illness: a Covid infection and a broken foot.

Having managed successfully to cover his role during this period, the directors considered they could continue without the need for a branch manager (paragraph 12). The directors included Ms McKenzie and Mr McKinnon; they are siblings.

18. Ms McKenzie invited the claimant to a meeting on 1 August 2022. The invitation came as part of an exchange of informal text messages by which the claimant updated her on his recovery. The reason for the meeting was described as a discussion concerning his return to work. However, Ms McKenzie wanted to discuss making an offer to the claimant of an exit package. That package involved terminating his employment for the stated reason of redundancy with an enhanced redundancy payment of £10,000.

19. When the claimant arrived for the meeting, both Ms McKenzie and Mr McKinnon were present. After a brief discussion about his health, Ms McKenzie set out the respondent's proposal to him. She explained that, if he accepted an offer of £10,000, the parties would sign a compromise agreement; but, if he rejected it, the company would "go through a redundancy procedure". Ms McKenzie had taken HR advice before arranging the meeting and described the proposal as "off the record" and "without prejudice" (paragraph 13). She gave him 48 hours to consider it.

20. The claimant told Ms McKenzie that he was at the meeting to discuss his return to work, but Ms McKenzie told him that would not be happening (paragraph 14). The judge accepted the claimant's account that he was shocked by what happened; she adopted his description that his head was "scrambled" and his brain "fried" by the interaction (paragraph 24).

21. The claimant contended that Ms McKenzie was aggressive and forceful in her interaction with

him during the meeting on 1 August 2022. However, the ET found that the meeting was conducted with no aggression or raised voices (paragraph 15), and the judge gave detailed reasons for rejecting the claimant's evidence to the contrary (paragraphs 22 to 27). This included rejecting an assertion by the claimant that there was a written compromise agreement on the table – that stage had not yet been reached (paragraph 25).

22. After the meeting, there was a further exchange of text messages by which Ms McKenzie provided a breakdown of the figure of £10,000 in response to the claimant's request (paragraph 19). In the absence of the claimant accepting the proposal in the stated period of 48 hours, he was invited to a formal meeting on 4 August 2022 to discuss his potential redundancy and the possibility of suitable alternative employment. In due course, the respondent dismissed him. The claimant brought proceedings against the respondent for unfair dismissal, and he sought to rely on the discussion on 1 August 2022 as evidence of unfairness.

23. As already explained, the tribunal arranged a preliminary hearing to decide whether the claimant's evidence of what had been said at the meeting on 1 August 2022 was admissible. By the time of that hearing, the respondent abandoned a contention that the discussion was protected by without prejudice privilege; no doubt this reflected the reality that no formal dispute between the parties had yet arisen. Instead, the respondent relied solely upon the statutory exclusion set out at section 111A **ERA**. The judge agreed with its position in that regard and found both the fact and content of the pre-termination negotiations to be inadmissible.

This appeal

24. The claimant now appeals that judgment to the EAT. As is well known, appeals to the EAT

lie only on a question of law; see section 21(1) of the **Employment Tribunals Act 1996**. A successful appeal must identify an error of law on the part of the ET or findings or conclusions that were perverse in the sense that they were irrational and/or not supported by any evidence. An appeal is not an opportunity to relitigate matters by putting the same material before the EAT. Perversity is a high hurdle; see **Yeboah v Crofton** [2002] IRLR 634.

25. It is accepted by both advocates in this appeal that the judge properly directed herself as to the relevant statutory provisions and the main case law authorities (**Faithorn** and **Harrison**), and that she recognised the need to have regard to the Acas Code. Mr MacDougall has further accepted on the claimant's behalf that all three of his grounds of appeal rest upon a contention of perversity, namely that it was perverse for the ET to conclude that the claimant was not subjected to undue pressure. In identifying those grounds of appeal, I have focused on his skeleton argument which has helpfully narrowed and honed the points of criticism initially made on the claimant's behalf.

26. By the first ground of appeal, the claimant contends that the ET erred by failing to find improper behaviour in circumstances where (firstly) the respondent's directors had told the claimant that they could cover his role and (secondly) the claimant was told he had been made redundant. This, he contended, was a proposition that dismissal would result if the offer was not accepted, and a paradigm example of that which paragraph 18(e)(ii) of the Acas Code identifies as undue pressure: saying, before any form of disciplinary process has begun, that, if a settlement proposal is rejected, the employee will be dismissed. It was perverse for the ET to decide otherwise.

27. By the second ground of appeal, the claimant contends that the meeting was set up under false

pretences. He contends that the impropriety was the setting up of the meeting itself, which must be assessed independently of what followed (such as the respondent providing a breakdown of the proposed settlement figure). He criticises Ms McKenzie for misrepresenting the purpose of the meeting as a "return to work" discussion, when in reality she simply wished to propose terms of severance. The claimant accepts that the Acas Code does not require an employer to give notice of a meeting at which there will be pre-termination negotiations, but he says that is very different from taking the positive step of providing a misleading purpose. The "surprise element" of the meeting exerted further undue pressure upon the claimant. Again, it is said that it was perverse for the ET to decide otherwise. There is an associated contention that the ET had wrongly approached the issue by requiring the claimant to show that he had been prejudiced by the respondent's approach, when the test was simply whether undue pressure had been placed on him.

28. By the third ground of appeal, the claimant refers to the fact that he was given only 48 hours to respond to the settlement proposal, which is also said to have constituted undue pressure. There were no circumstances justifying such a short period of time to respond. The ET dealt with this point by noting that it was a verbal offer, not a written one; but the claimant contends that there is no basis in the Acas Code for drawing such a distinction. Even if there was such a basis, 48 hours was inadequate in any event, falling far short of the period of ten days suggested at paragraphs 12 and 18(e)(i) of the Code. Again, it is said that it was perverse for the ET to decide otherwise.

29. For the respondent, Mr Milne contends that the claimant has taken an excessively pernickety approach to the judgment, inviting the EAT to engage in the type of hypercritical analysis that the Court of Appeal discouraged in its judgment in **DPP Law Ltd v Greenberg** [2021]

EWCA Civ 672. He has impressed upon me that an Employment Judge has a wide discretion in matters of case management, including in respect of the admissibility of evidence, and that Parliament has entrusted the ET with a broad formulation in section 111A **ERA** by which it can exclude evidence that, in its opinion, is tainted by impropriety. On that basis, all three grounds of appeal are said to represent no more than simple disagreement with the ET's judgment. The EAT is invited to conclude that the claimant has not overcome the high hurdle of showing perversity in this case.

Analysis and conclusions

30. I begin my analysis by noting some important context: the alleged impropriety relied upon by the claimant in this appeal is much more limited in scope than what he put before the ET. Before the ET, the claimant contended that Ms McKenzie and Mr McKinnon were rude and aggressive towards him during the meeting; that they swore at him and were unfairly critical of him; and that he was presented with a 48-hour deadline to respond to a written compromise agreement that was on the table during the meeting. These were hotly contested allegations. In view of that dispute, the ET cannot be criticised for focusing most of its factual analysis on those contentions. In full and careful reasons, the judge explained why she did not find the claimant's evidence about those matters to be credible or reliable. To the contrary, the judge found that this was a meeting with no aggression or raised voices.

31. As for the first ground of appeal, I do not consider that this judgment can be categorised as perverse on the basis contended. The judge had regard to paragraph 18(e)(ii) of the Code, which, as noted above, provides that it can constitute undue pressure on an employee for an employer to say, before any form of disciplinary process has begun, that if a settlement proposal is rejected then the employee will be dismissed. It is true that, on the facts as found

by the judge, Ms McKenzie told the claimant that his branch manager role could be covered by the directors. But the judge was clear that this did not mean, and the directors did not intend it to mean, that the claimant was therefore going to be dismissed. The judge drew a distinction between the respondent's view that the claimant's role was redundant, and separately whether that meant, definitively, that he would lose his job regardless of the outcome of the pre-termination negotiations. The judge explicitly noted at paragraph 52 of her judgment that, if the claimant rejected the proposal, the respondent would need to explore whether there was a suitable alternative role to which he could be redeployed.

32. It was suggested that, in the context of this case (namely, a small employer) the redundancy of the branch manager role would only mean one thing: dismissal. Of course, the judge could have concluded that the directors had a closed mind about what would happen if the claimant had rejected the settlement proposal. However, the judge had the benefit of seeing and hearing evidence from the witnesses and, entirely permissibly, she reached the opposite conclusion: that the directors did not tell the claimant that he would be dismissed if he rejected the offer, telling him only that a redundancy process would commence.

33. Furthermore, as I discussed with the advocates during the appeal, paragraph 18(e)(ii) of the Acas Code (even though not formally binding on tribunals) analyses undue pressure in the context of a disciplinary process, not a capability or a redundancy process. This is an important distinction. Let us consider pre-termination negotiations in a case of alleged misconduct where the employer has yet to commence an investigation. An employer who says that an employee will be dismissed if they reject a settlement proposal effectively confirms that the outcome of the investigation and disciplinary process is set in stone. In that scenario, the employee will be more likely to feel undue pressure to sign a settlement agreement because they can have

no faith in the integrity of the disciplinary process that will be followed if they refuse. A redundancy process is different; generally, employers are best placed to decide how their workforce should be structured in order to maintain efficiency and to identify where redeployment opportunities may exist. There are no disciplinary matters requiring investigation. Moreover, confirmation that a role is redundant does not inevitably mean that the person who previously performed that role will be dismissed. Returning to this case, it matters little that the text messages demonstrated that Ms McKenzie had reached a firm view that the role performed by the claimant was redundant. The judge found that this did not equate to a firm conclusion that his dismissal would follow, and the judge was clear that Ms McKenzie said nothing to the claimant to indicate that this was her view. That being so, it was open to the judge to decide that this did not constitute undue pressure on the claimant.

34. The second ground of appeal is that it was perverse for the judge to fail to find impropriety in circumstances where the claimant was invited to attend the meeting under false pretences. Mr MacDougall called it a lie; but the ET's judgment contains no express finding that Ms McKenzie deliberately misrepresented or lied about the purpose of the meeting. It is clear that the judge found Ms McKenzie's acknowledgment that it was not really a return-to-work meeting somewhat begrudging (see paragraph 48 of the judgment), and it is clear that the judge thought this was unfair on the claimant (paragraph 50). But the judge clearly had in mind that she was dealing not with fairness in all circumstances (which would pertain to the merits of the unfair dismissal complaint brought by the claimant) but with the narrower issue of whether there had been impropriety capable of ousting the default position of inadmissibility.

35. As discussed with the advocates during the appeal, paragraph 11 of the Acas Code expressly

acknowledges that how a settlement proposal is made can vary depending on the circumstances. The accompanying Acas guidance also recognises that, sometimes, a meeting about one thing, such as a disciplinary investigation, can legitimately shift to a discussion about severance and settlement terms as the conversation unfolds; see "Example 5" in the guidance (Gary and Youssef).

36. In this case, the claimant contends that the presence of a lie is sufficient by itself to constitute impropriety, and that it was perverse for the judge to decide otherwise. But I will not use the word "lie", since that is not what the ET found. The judge's approach was more nuanced. At paragraph 49 of her judgment, she acknowledged that an employee ought, as a matter of fairness, to be given notice of the type of meeting they are to attend to minimise the element of surprise, but she balanced this with the observation that an employee invited to a "protected conversation" is unlikely to react positively. Stepping back and considering the judgment as a whole, my reading of it is that the judge concluded that, while it may not have been fair for the respondent's directors to use a discussion about the claimant's return to work as a pretext for raising with him the possibility of severance on agreed terms, it did not constitute impropriety to do so. I say again: the judge did not find Ms McKenzie to have lied, and it would be wrong for me to proceed on the basis that she did make such a finding.

37. I reject the claimant's submission that, when analysing this point, the judge effectively placed an onus on him to demonstrate that he had been prejudiced by the respondent's approach to setting up the meeting. In my judgment, that is not what the judge was doing. Instead, to ascertain whether the respondent subjected the claimant to undue pressure, the judge was simply looking at all the surrounding circumstances; and I agree with Mr Milne that this was an entirely permissible approach. In that context, the judge properly had regard to the fact that

the claimant was swiftly provided with a breakdown of the figure offered; that the meeting was conducted calmly; and that he had time to discuss matters with his family (paragraph 50). These features all had a bearing on the nature and extent of the pressure he experienced, and the judge plainly thought they mitigated the initial shock of the meeting. I do not consider it perverse for the judge to have had regard to those matters when deciding that the claimant was not subjected to pressure of a sort that would constitute impropriety.

38. The third ground of appeal concerns the period of 48 hours' notice given to the claimant to indicate acceptance, which is said to have constituted a further aspect of the undue pressure placed on him. In reaching a different conclusion, the judge noted that the period of 48 hours only related to whether the claimant would accept a verbal offer; and he could have accepted it, rejected it, or responded with a counter-proposal (paragraph 55 of the judgment). The judge again had regard to all the surrounding circumstances.

39. As previously noted, paragraph 11 of the Acas Code acknowledges that an "initial proposal may be oral", but it then explains that, to be legally binding, a settlement agreement must be in writing. I therefore reject Mr MacDougall's contention that there is no basis in the Code to distinguish between a verbal offer and a written offer, and I accept Mr Milne's submission to the contrary. At paragraph 12, the Code recommends that an employee is given a "reasonable period of time to consider the proposed settlement agreement" and that the duration of this period will "depend on the circumstances of the case". It suggests that, as a "general rule, a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise". The emphasis is mine, since the Code makes clear that the minimum period of ten days enables an employee to consider a written offer.

40. Of course I recognise that working life is not always so simple that a bright line can be drawn between oral and written offers when parties are discussing the terms on which they might part ways. We are dealing here with workplaces, not commercial contracts. Practitioners in this area will recognise that severance negotiations between employers and employees can be quick or they can be lengthy; they can be simple or they can be tortuous; they can be amicable or they can be hostile; they can be straightforward or they can be legally complex. As a matter of common sense, the journey from initial proposal to written offer can take time. Ultimately, the judgment on impropriety is left to the ET to consider in view of all the relevant circumstances.

41. In this case, the judge had regard to the fact that the claimant was swiftly provided with a breakdown of the figure offered; that the meeting was conducted calmly; and that he had time to discuss matters with his family (paragraphs 56 to 59). It is implicit from what the judge says at paragraph 55 that, if the claimant had accepted the verbal offer, the pre-termination negotiations would have continued and, at some point, he would have been presented with written terms of a settlement agreement to consider. As I noted above, the question for the EAT is whether the ET's conclusion that 48 hours did not subject the claimant to undue pressure can properly be characterised as perverse. While another judge may have reached a different conclusion about the sufficiency of that period, it was open to the judge in this case to conclude, having regard to all the circumstances, that it did not involve subjecting the claimant to undue pressure.

42. Accordingly, I reject each of the claimant's contentions that the ET erred in law by reaching a perverse judgment about impropriety.

43. Mr MacDougall has fairly made the point that impropriety should be assessed by looking at the aggregate effect of the pre-determined redundancy, the false pretences for the meeting and the 48-hour deadline (as they have been described by the claimant). However, reading the ET's judgment as a whole, it is clear that the judge concluded that these factors did not subject the claimant to undue pressure either individually or cumulatively; the judge was clear that the respondent did not behave improperly overall, and that judgment was open to her on the facts as she found them. Accordingly, the ET committed no error of law in concluding that the fact and content of the pre-termination negotiations were inadmissible.

44. This appeal fails. The ET should now decide the claimant's substantive complaint of unfair dismissal without regard to evidence that the judge properly ruled to be inadmissible.