

Off the record: when is a conversation protected?

Label of discussion	Does this mean anything legally?	Are there required facts and/or criteria to have the discussion or conversation?	Can it be relied on in court by the employer?	Can it be relied on in court by the employee?
Without prejudice	Yes	There is a dispute between the parties and the discussion explores the possibility of settlement	No, it should be protected	No, it should be protected
Protected conversation	Yes	A conversation had before the termination of employment with a view to agree terms of exit	Probably, if an employee brings a claim of ordinary unfair dismissal the conversation will be protected and cannot be relied on in court. If the employee brings any other claims, the conversation is not protected and can be relied on in court	Probably, if an employee brings a claim of ordinary unfair dismissal the conversation will be protected and cannot be relied on in court. If the employee brings any other claims, the conversation is not protected and can be relied on in court
“Off the record”	No	N/A	Yes, it is not protected	Yes, it is not protected
Informal discussion	No	N/A	Yes, it is not protected	Yes, it is not protected
Formal discussion	No	N/A	Yes, it is not protected	Yes, it is not protected
Open discussion	No	N/A	Yes, it is not protected	Yes, it is not protected