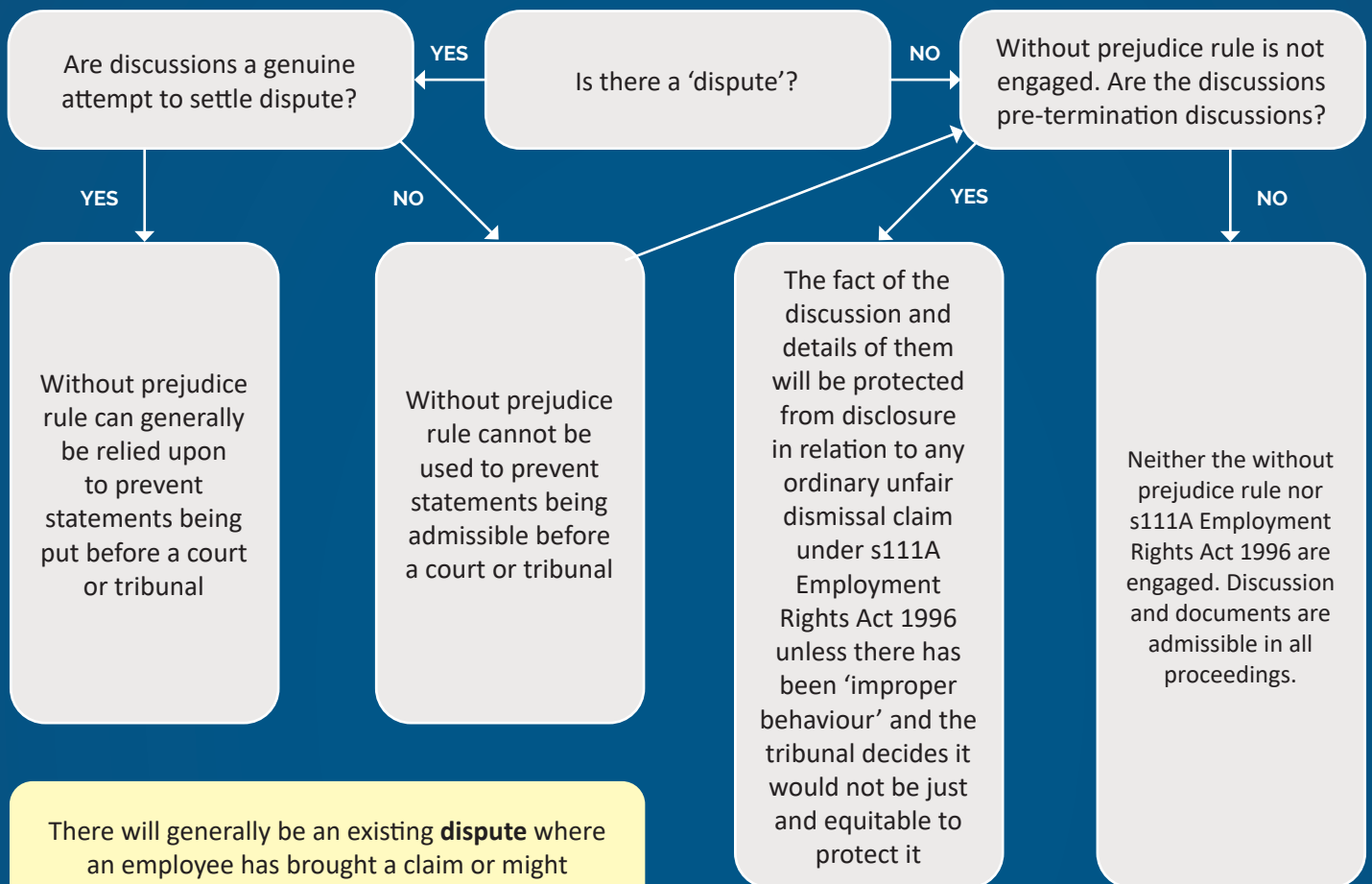


# WITHOUT PREJUDICE AND PROTECTED CONVERSATIONS FLOWCHART



There will generally be an existing **dispute** where an employee has brought a claim or might reasonably contemplate bringing a claim

In order to be regarded as a '**genuine attempt to settle**' the dispute the parties must do more than simply set out their differing positions

Even if the **without prejudice** rule is engaged it **cannot be relied upon if:**

- The question is whether a concluded settlement was reached in a dispute
- There is evidence of misrepresentation, fraud or undue influence
- There is evidence of perjury, blackmail or other procedural impropriety

**Pre-termination discussions** are any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee (s111A(2) ERA 1996)

The ACAS Code on Settlement Agreements lists examples of **Improper behaviour** to include:

- All forms of bullying, harassment, and intimidation
- Physical assault or the threat of physical assault or criminal behaviour
  - All forms of victimisation
  - All forms of discrimination
- Putting undue pressure on a party