

[Insert name and address]

[Insert date]

BY EMAIL: [insert email address]

Our Ref: [insert reference]

Dear Mr/Mrs/Dr etc.

**[Insert names of likely parties and description of work]**

This letter and appendix, sets out the key terms and conditions under which we will represent and advise you. Please take time to read this carefully as these terms will apply to all work undertaken for you. We are required us to place a signed copy of this on your file, so please sign and return a full copy to us.

If you have any questions we are happy to deal with these in order to ensure that you are clear on the agreement. If you are clear on the terms below please sign and send them back to us. If you are not clear it is your obligation to contact us and clarify any matters that you are unclear upon.

Your attention is drawn particularly to paragraphs 9 - 16, and 25 - 42 and 58. Your signature marks your express agreement to these terms and that you understand the terms and have been advised on the terms appropriately.

**Nationwide Employment Lawyers**

1. Nationwide Employment Lawyers is a trading name of Merlin Employment Services, which is owned by Mr Howell John. Nationwide Employment Lawyers, Merlin Employment Services and Mr Howell John are regulated by the Claims Management Regulator in respect of regulated claims management activities. The Claims Management Regulator can be contacted at: [www.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk).
2. We are specialist employment lawyers and represent employers and employees. This letter addresses general issues and those, which are specific to employers or employees. Separate headings are used to make this clear.
3. We will work with you to ensure that you are represented by the lawyer of your choice and your agreement will be sought before agreeing to use any lawyer. Your case may conducted by a Senior Employment Lawyer, an Employment Lawyer, or an Assistant Lawyer. Some of the work may be delegated to a junior lawyer or a Paralegal, with your agreement, to keep costs down. Your lawyer will be either a Solicitor, Barrister, Employment Law Advocate,

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Employment Consultant or a Chartered Legal Executive. All lawyers are experienced and specialised in employment law.

4. More details about our service are on our website: [www.natemplaw.co.uk](http://www.natemplaw.co.uk)

### **The conduct of your matter**

5. We will do all we can to deal with your case efficiently and expeditiously. However, it is important that we bring to your attention certain points.
6. The person dealing with your matter is [Mr/Ms] **[insert name of fee earner]**, who is a **[Senior Lawyer and Advocate/Lawyer and Advocate/Chartered Legal Executive]**. [Mr/Ms] **[insert surname]** can be contacted by email on **[insert initials]@natemplaw.co.uk** and by telephone on **[insert direct dial telephone number]**. [Mr/Ms] **[insert surname]**'s work will be supervised by Mr Damian McCarthy who is a Senior Lawyer and Advocate.
7. The nature of the work which we undertake inevitably involves attending Employment Tribunal and Court, often on an urgent basis. There are, therefore, times when one of our other fee earners may work on your file.
8. If you telephone [Mr/Ms] **[Insert surname]** and [he/she] is not immediately available, ([he/she] may be at Employment Tribunal or Court, on the telephone, in a meeting or on leave) please speak with client support on the general phone number (08445 71 51 69) who will be happy to assist you.

### **Confirmation of Instructions**

9. In your case we are instructed to **[insert description of work to be done eg complete a Risk Assessment]**. The fee for this is **[insert fees]**. That sum is payment for work undertaken on your behalf in order to **[insert work eg complete a Risk Assessment]**.
10. Any other work undertaken on your behalf or advice given in addition to a Risk Assessment will be charged at the rate of the lawyer instructed to undertake the Risk Assessment (see further below for hourly rate). This rate will remain for the duration of time this lawyer acts for you. If a more senior lawyer acts for you then you will be charged the hourly rate for this more senior lawyer.

In the event that the case proceeds beyond a Risk Assessment, the work which NEL may undertake on your behalf includes but is not limited to:

- (a) advising on the strength and weaknesses of an employee's case (as the situation changes as necessary);
- (b) drafting any necessary documentation including a letter to your employee(s), a response to a grievance, or a response to an Employment Tribunal claim (known as an "ET3");
- (c) advising on tactics, strategy and the collation of evidence to increase prospects of success or resolution;
- (d) advice on any internal hearing such as a grievance or disciplinary hearing;

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- (e) advising on whether settlement of a claim would be appropriate (whether via a settlement agreement or otherwise) and negotiating on your behalf in settlement negotiations;
  - (f) general advice on litigation; and
  - (g) representing you at Employment Tribunal in the event that proceedings are issued against you and/or the company.
11. By asking us for advice in relation to any matter not related to the Risk Assessment you agree to the above charges for the work undertaken.
  12. By Risk Assessment, we mean our undertaking to conduct an assessment of any case issued against you and/or the company, providing you with prospects of success (where possible) and to advise on the next steps in order to progress your defence. We will do so based upon any pleadings (namely the claim form "ET1" and the company's response form "ET3"), and other key documents (where the total number of A4 pages does not exceed 50 pages in total, where the font size is no smaller than 11pts). We also require all relevant documents, subject to the maximum to be sent in one email, with a short explanatory note to clarify the documents attached.
  13. In the event that your Risk Assessment documentation is greater than the above we reserve the right not to undertake the same for the aforementioned fee. In the event that this situation arises you will be contacted with a revised fee for the Risk Assessment with no obligation.
  14. Please allow 14 days for your Risk Assessment to be conducted. In the event that your matter is more urgent please contact us urgently.
  15. If, following receipt of the Risk Assessment you wish to proceed with litigation, then you agree to place three hours fees into the NEL client account to be used as a starting point for future work and fees due. All further work is chargeable as above and subject to these Terms and Conditions, which operate at all times.
  16. If at any point you wish to instruct others within our firm, for example if you feel a more senior lawyer is appropriate, then their hourly rate will be chargeable for any work undertaken on your behalf.

### **Timescales and dates to avoid**

17. On instructing us you must make sure that we have all relevant papers including any and all Employment Tribunal or Court documents so that we can carefully record vital dates:
  - (a) **Employers** - if you have been served with a claim, there will be a date for filing a response (usually 28 days from the claim);
  - (b) **Employees** - Tribunal claims must usually be lodged within 3 months of the incident complained of (e.g.: dismissal or discrimination). The deadlines are very strict.

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18. If you have missed the deadline you must inform us immediately. To avoid unnecessary adjournments, you should provide us with all relevant information including any dates when either yourself, or any witness may be away in the coming months.

### **Charges, funding & risk/benefit assessment**

19. **General fees** - It is difficult to accurately predict the costs of a case at the outset; most are resolved without a hearing, in which case costs will be lower. Whilst we provide an excellent service and very reasonable costs protracted legal proceedings can be expensive and it is important for you to be satisfied that you wish to pursue your case in light of the likely costs. Conciliation and early settlement may be a sensible option but you must normally set out your legal position firmly to be able to negotiate effectively.
20. Alternative and possibly cheaper representation may be sought from other bodies. We cannot guarantee that these bodies will be able to provide competent or appropriate advice or representation or any representation at all. Nor do we make any recommendations or guarantees about the service you will receive. However, if you would like cheaper or free representation you may contact: the Free Representation Unit (who are volunteer lawyers), a trade union (if you are a member and you were a member at the time when you suffered the act about which you complain) or a trade association (if you are an employer and are a member).

Always bear in mind that it is your responsibility to ensure that you comply with all Employment Tribunal deadlines. There is no excuse if you miss a deadline because you were looking for representation.

21. By instructing us, you must make a value judgement: parties can represent themselves or there may be other providers who charge different rates, for example.
22. **Fixed fees** - in limited cases we will work on a fixed fee. This means that we will undertake to complete all work on an agreed fixed rate. For example, we may agree to prepare a case and represent you in a case for fixed fee. This means that even if we have to undertake more work than expected the total bill will not exceed the maximum set-out in the fixed fee agreement. This is dependent on you supplying us with all relevant information and evidence.
23. **Employers** - We will discuss your objective with you and the risks and benefits of pursuing it. If you wish to defend a case as a 'point of principle' or to 'set an example' the amount of legal costs may exceed the monetary value of the claim brought against you, for example, if the employee has low future losses or a low salary. It is not possible to assess how long it will take an employee to find a new job until information has been exchanged.
24. **Reviewing risk benefit** - when we receive relevant information regarding the likely value of any claim, we can look again at what you are hoping to achieve.
25. **Hourly rates (where no fixed fee applies)** - **[Example of fees that may be charged: The hourly rate for a Senior Advocate is £250 - £360 plus VAT. The hourly rate for a Lawyer and Advocate is £175 plus VAT. The hourly rate for a Chartered Legal Executive is £175 plus VAT]. Mr/Ms [surname]'s hourly rate will be £[rate] plus VAT for any work on your case. [Mr McCarthy's hourly rate will be £250 plus VAT for any work on your case]. As our client, you will remain primarily responsible for payment of our**

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**bills.** If a third party, such as an insurance company, employer, colleague, friend, trade union or professional/business association has offered to pay your bill, you will still be personally liable for all costs incurred or any shortfall in the fees (in the event that any such third party does not pay our bill). You should note that, for example, although different insurance companies vary in their terms and conditions they commonly will not pay for work such as: incoming e-mails and correspondence sent to us, work that has been undertaken prior to agreement by the insurer, our full hourly rate, all of the hours that we need to undertake tasks (insurance companies may well give an unrealistic estimate of the number of hours to complete a task to save themselves money), photocopying or internal correspondence.

25. **How are fees calculated?** - Unless otherwise agreed, our fees are based on a time basis in six minute increments. Preparation, attendance and advocacy are charged at the normal hourly rate. All cases must be conducted to professional standards, regardless of the monetary value of the claim.
26. Waiting, travelling and preparation time is also chargeable unless otherwise agreed.
27. Disbursements such as photocopying, expert's fees, our travel costs and overnight charges will also be charged to you and must be paid by you. VAT is generally payable on these.
28. **Managing legal costs** - You can help manage your legal costs by for example assisting us with certain aspects of preparation, for example by:
  - 29.1 providing ALL relevant information at the outset in a logical and clear way;
  - 29.2 providing requested information/documentation in one email
  - 29.3 checking draft documents;
  - 29.4 providing summaries of what witnesses may say;
  - 29.5 sorting evidence into order;
  - 29.6 if there is a group of claimants - appointing one representative to manage communications with us;
  - 29.7 contacting us to discuss a group of issues at one time rather on an item basis.

We will assume that you are willing to work in this way unless you indicate otherwise. It will also ensure that you are active in the creation of your case, which tends to improve the chances of succeeding at a full hearing.

### **Future fees**

31. We will normally request payments on account for our fees and disbursements. This will be an amount, which we determine to be reasonable. It is a fundamental condition of this retainer, that you ensure that you are in a position to promptly provide any requested payment on account no later than 7 days from the request, or on demand, when this relates to imminent court or Tribunal work or our incurring a disbursement, such an expert or

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counsel's fees. The final bill may well be greater than the amount requested on account and we will terminate the retainer if you do not comply with this request.

32. For any further advice we will require a payment based on the hourly rate set out above plus VAT.
33. We require payment of **all** bills and fees in advance. Please ensure that you are in a position to pay all fees in advance. *Please note that we will be unable to represent you or undertake work on your behalf unless all fees are received by us on or before the date they become due for payment. To be clear we will be unable to represent you at Employment Tribunal or complete paperwork (including any application to the Employment Tribunal) unless these fees are received by the date they become due.*
34. We will inform you of the date that fees are due to be paid. In the event that we do not state a date for payment you must pay fees at least seven days before a piece of work is due to be completed, at the very latest. All fees must be received at least seven days prior to the date of your Employment Tribunal in any event and at the very latest. This allows us to keep our costs to a minimum.

#### **Payment in arrears - billing and updates**

35. We only work on payment arrears if we expressly agree this in writing.
36. If we agree that fees may be paid in arrears we will normally provide bills on an interim basis, most probably each month. These must be paid strictly no later than **30 days** after the day they are sent out. Any unpaid bills (interim or final) attract interest at **8%** per annum and non-payment of our fees may well result in the termination of your retainer with us ceasing to act for you and the commencement of enforcement proceedings for which legal costs and fees will be incurred.
37. There will be a summary of work with the bill and queries in relation to work undertaken for that bill should be raised within 7 days of its receipt.
38. Whilst we provide a generic fee-estimate below, the monthly billing guide should give you indications of ongoing liability, for example, in more difficult cases.

#### **Fees estimate**

39. In terms of an estimate of the likely overall costs, it is not possible to be precise at an early stage because we do not know how the other party will respond. Most of our cases that proceed to an Employment Tribunal claim can be resolved without a full hearing but you may need to be prepared to fund your case all the way to an Employment Tribunal, where the typical cost of proceedings for a one day hearing can often be in the range of £7,000 - £15,000 plus VAT, depending on the case. These costs are not normally recoverable from your opponent.
40. Costs in the High Court are normally higher than in the Employment Tribunal and we will advise you of the likely exposure as we go along but you will need to take extra care to budget in this forum to meet your financial obligations. In addition, you need to bear in mind that if you lose in the High Court you will normally be ordered to pay your opponent's legal costs.

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41. Factors that can add to legal costs include:

- Failures to follow correct internal procedures;
- Postponements of hearings;
- Evidence provided in a piecemeal manner;
- Inaccurate or untruthful evidence being provided;
- Instructions received from varying sources;
- Amendments to evidence or not dealing with questions from us or the Employment Tribunal quickly or comprehensively;
- Legal representatives acting inappropriately or parties acting without lawyers;
- Animosity between the parties;
- Delays at the Tribunal;
- The need for expert reports.

### **Legal costs and settlement**

42. **Rejection of advice and/or breach of settlement agreement**

In the event that you and/or the company:

- (a) reject our advice and/or refuse to follow our advice in particular on the issues of litigation tactics, evidence, substantive issues or settlement sum; and/or
- (b) breach any of the terms of a settlement agreement;

NEL will have the option of electing to charge all fees based on the hourly rate set out above plus an additional 40% plus VAT

43. **Costs orders** - On some occasions, even the Tribunals can order costs, for example, where a party brings a claim with no reasonable prospect of succeeding. Sometimes, the Court and Tribunal can look at 'without prejudice- save as to costs' letters and consider whether a party has acted unreasonably in refusing offers to settle.

44. **Settlements** - There are many reasons why settlements can leave the parties in a better position generally. Litigation should be avoided where reasonable offers are available and we cannot guarantee that a Court or Tribunal will exercise its judgement in a particular client's favour. Advantages include:

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- 44.1 **Financial** - settlements can be paid in a tax efficient way. In addition, for employees, settlement avoids recoupment of benefits received, which an Employment Tribunal would always seek to recover;
- 44.2 **Opportunity cost** - litigation is a major distraction. Time and money spent on litigation could be wisely invested in other projects;
- 44.3 **Reputation** - being involved in a Tribunal can have less obvious 'costs'. An employer may find that being cross-examined in front of junior staff is undermining. Employees may find that it puts off future employers.
45. **Litigation risk** - A Tribunal will decide a case on the 'balance of probabilities' (what is more likely than not to be the case). Evidence will be assessed on the day and is a matter for the Panel. It is very difficult to challenge Tribunal decisions on questions of fact.

### **Recovery of monies on your behalf**

46. Where we recover compensation or a monetary settlement for you, this will be paid direct to our client account and we will deduct our outstanding fees or other monies due, accounting to you in the normal way. This will not affect your right to have your invoice assessed by a court (see below).

### **Risk of paying opponents costs**

47. We recommend that you arrange insurance against the risk of paying the other side's costs and expenses. By signing this document you confirm that you have been advised by NEL. We do not offer such insurance but further information can be sought at <http://www.abi.org.uk/Information/Consumers/General/What is Legal Expenses Insurance.aspx>.

### **Contesting our bills**

48. Employment Tribunal work falls within the 'non-contentious' category. If you are dissatisfied with your bill you have the right to have it assessed. This must be requested within **1 month** of the date of any invoice.
49. If your case was brought in the Civil Courts then a different system applies. You can apply to have your bill assessed.
50. In either case you must make your request **promptly** and if all or part of the bill remains unpaid interest will be charged at 8%.

### **Money-back guarantee**

51. We want you to have peace of mind. Accordingly, in the unlikely event that a piece of work we undertake on your behalf is entirely unsatisfactory and has undermined your case, on an important part of your case, you may make a complaint to us using our complaints procedure. If this shows that the work was entirely unsatisfactory and has undermined your case, on an important part of your case, we will offer your money back for that piece of work.

### **Liability for fees and third party indemnities**

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52. If another person has offered to pay all or some of your bill, as our client you remain primarily liable and if third party does not pay us on time, we reserve the right to seek payment from you. You should provide a copy of this letter to any party who might assist with your bill.

### **Your objective or strategic issues**

53. You must give us clear instructions on what you hope to achieve, which may include defending the case, offering conciliation or looking for other pragmatic solutions. If you change your objective please send any such change to us **in writing** clearly indicating that this is the case.

### **Our Approach**

54. Our objective is to assist you in achieving your legitimate objectives, efficiently and proportionately using our legal expertise to its best effect. We have professional standards and it is important for us to work together adopting this approach.

### **Money Laundering**

55. For the protection of our clients and to comply with current legislation, we may request, from clients, proof of their identity as follows:

- (a) **Employees and individuals** - A copy of your passport; and a utility bill from the current or preceding month
- (b) **Companies** - a certificate of incorporation and proof of director's identity;

We have a duty to report concerns to the National Crime Intelligence Service if we are aware or have reasonable cause to suspect any organisation or person is involved in money laundering. This duty overrides client confidentiality.

### **Concerns you may have**

56. In the event that you have any concerns about the conduct of your case, or any other matter including, for example, billing, you should **promptly** contact the lawyer conducting your case. You should set out your concerns in writing.

57. If you wish to pursue a complaint, the procedure thereafter is as follows:

- (a) You should promptly email and write to Mr Howell John, Managing Director, setting out the issues in clear, numbered paragraphs with any proposed solution. Email contact address is [hj@natemplaw.co.uk](mailto:hj@natemplaw.co.uk)
- (b) We aim to respond in writing within 7 days.

### **Acceptance of terms**

58. Please sign and return a copy of this agreement. If we do not receive a signed copy of this agreement you will be deemed to have accepted the terms and conditions (and the Appendices) set out in this agreement after a period of seven days or by permitting us to

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carry out any work on your behalf, whichever is the sooner. You will not be deemed to have agreed to the terms and conditions (and the Appendices) set out in this letter if we agree in a hard copy signed letter (signed by Mr John) that you are not bound by these terms and conditions.

We look forward to working with you.

Yours sincerely

**NATIONWIDE EMPLOYMENT LAWYERS**

**(This letter has been sent electronically and therefore bears no signature)**

Client's Signature:

**For and on behalf of [insert name of client company]**

Dated:

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## **APPENDIX Additional Terms**

### **Your choice of lawyer**

Before deciding to instruct us (or to continue to do so) you may wish to look at other options. There are other lawyers available and you may consider other choices such as representing yourself or using a non-qualified representative.

### **Referral Fees**

Where your case is referred to us by a third party a referral fee may be payable by us, to the third party. This may be 10% - 15% of fees excluding VAT or some other arrangement. You will not be charged for any referral fee.

### **Other duties & Termination of Retainer**

We have a duty to you, the Claims Management Regulator, Employment Tribunal and Court. Where these obligations are unnecessarily compromised, we will normally terminate the retainer and decline to act for you. In addition, a failure to indemnify us for costs and disbursements, at any stage of your case, could well lead to termination of the retainer and our ceasing to act for you.

### **Barristers**

Where a barrister is instructed, their payment is normally based on a 'brief fee' and a daily 'refresher' fee. The brief fee will cover preparation for the hearing and the first day of the hearing and the refresher fee will cover each day of work (or part of a day) thereafter. The brief fee becomes payable at the time the barrister is formally instructed in writing. At that point the barrister is obliged to represent you and the brief fee will have to be paid even if the case does not go ahead.

### **Legal Aid**

Legal aid is not available for Employment Tribunals (though it can be provided in the higher courts) and we are not part of the Legal Aid Scheme. Some advice and assistance may be available for those with a low income or no income but you would need to speak to firms with a Legal Aid Franchise if you want to look into this.

### **Insolvency**

This retainer will be terminated immediately in the event of your insolvency or other inability to meet your financial obligations under it.

### **Confidentiality**

Your instructions and any documents provided you are treated as confidential and will not be disclosed to any third party (except as required by Law for the presentation of your case). Consent to other disclosures, for example to the Press, must be agreed by you in writing. Most Tribunal cases take place in open court and by participating in proceedings you will normally waive your right to privacy in relation to matters addressed in open forum.

### **Third Party Liability**

From time to time, we may instruct third parties in the pursuance of your objective. We are not liable for any act or omission of any third party.

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### **Failures to Properly Instruct Us**

In addition, we will not be liable for any loss occasioned by you as a consequence of any failure to provide us with reasonable, prompt, clear and honest instructions.

### **Mobile Phones**

If appropriate you will be given the email address and mobile phone number of your lawyer. Please take care to use this reasonably. Detailed advice cannot be given by mobile phone as it is important that we are in a position to properly consider and record any advice given and confidential matters should not be discussed in public. Calls should normally only be made between **09:00** and **18:00 hrs**.

### **Changes**

If there any changes to the points in this letter, we will notify you as soon as possible in writing. This letter constitutes the sole source of all terms and conditions agreed between us. These terms will apply from the date of this letter. Any delay in asserting our enforcing our rights under these terms will not amount to a waiver or variation of any sort and any changes to these terms must be confirmed in writing by us.

### **Address for Communications**

We will communicate to you via your last known address/email address and phone numbers. If these change you must notify us in advance. Equally, you must always communicate with us at our stated address.

### **Severability**

If any part of these terms is found to be unenforceable by any competent court, this will not affect the enforceability of all other terms.

### **File Storage**

At the end of your case, we will ask you to store the files in your case. You should retain these files for seven years in a safe place.

Client's Signature:

**For and on behalf of [insert name of client company]**

Dated:

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