

Damian McCarthy

Employment
Law

Terms and Conditions

General Terms

1. I am a Senior Employment Law Advocate. I 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.
2. Your case will be conducted by me. On occasion, with your agreement, I may use another Senior Employment Lawyer. Some of the work may be delegated to another Lawyer, a Junior Lawyer or a Paralegal. This is done to try and keep your costs to a minimum.

The conduct of your matter

3. I will do all I can to deal with your case efficiently and expeditiously. However, it is important that I bring to your attention certain points.
4. The nature of the work which I undertake inevitably involves attending Employment Tribunal and Court, often on an urgent basis. There are, therefore, times when I will be unable to speak to you.
5. If when you telephone I am not immediately available, (I may be at Employment Tribunal or Court, on the telephone, in a meeting or on holiday) please speak with my Personal Assistant.

Confirmation of Instructions

6. I am instructed in relation to preparation and representation for an Employment Tribunal claim but the remit may be expanded.

Timescale & Dates to Avoid

7. On instructing me you must make sure that I have all relevant papers including any and all Employment Tribunal or Court documents so that I can carefully record vital dates:-
 - Employers - if you have been served with a claim, there will be a date for filing a response;
 - Employees – Employment Tribunal claims must be lodged within 3 months of the incident complained of (eg: dismissal or discrimination). The deadlines are very strict. If you have missed the deadline you must inform me immediately.
8. To avoid unnecessary adjournments, you should provide me 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

9. 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 I 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. In instructing me, you must make a value judgement: parties can represent themselves or there may be other providers who charge different rates, for example.
10. Fixed fees - in limited cases I will work on a fixed fee. This means that I will undertake to complete all work on an agreed fixed rate. For example, I may agree to prepare and represent you in a case for a fixed fee. This means that even if I have to undertake more work than expected, the total bill will not exceed the maximum set-out in the fixed fee agreement. This is dependant on you supplying me with all relevant information and evidence.
11. Conditional Fee Agreements ("CFA") - in very limited cases I will work on a CFA. It means that if you lose the case you do not pay legal fees, only limited agreed expenses. If the case is won you will pay a higher rate for legal fees to reflect the risk taken by me. Many providers who offer CFA's do so as they know they are likely to win your case and will be able to charge you higher fees as a result (make sure you read their terms and conditions). I would rather charge you lower fees so that you get more compensation. If I agree to work on a CFA I will need to set out the terms of the CFA in more detail when I have agreed the prospects of success with you. This is dependant on you supplying me with all relevant information and evidence.
12. Employers - I 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.
13. Employees - The larger part of any claim for compensation is future lost earnings. You must look for work under the 'duty to mitigate' (if you do not, the Employment Tribunal may not award you compensation). You might find a job relatively quickly, in which case costs might exceed the monetary value of the claim.
14. Reviewing risk benefit - when I receive relevant information regarding the likely value of any claim, I can look again at what you are hoping to achieve.
15. Hourly rates (where no fixed fee applies) – The hourly rate for a Senior Employment Law Advocate is £275 plus VAT. As our client, you will remain primarily responsible for payment of our bills. If a third party, such as an employer, colleague or an insurance company has offered to pay your bill, in the event that they do not do so, you will still be personally liable for all costs incurred. Assistant Lawyers are charged out at £150 plus VAT and Paralegals at £70 plus VAT.
16. How are fees calculated? - Unless otherwise agreed, my fees are based on a time basis. Preparation, attendance and advocacy are charged at the normal hourly rate. All cases will be conducted to professional standards, regardless of the monetary value of the claim.
17. Waiting and travelling is also chargeable unless otherwise agreed.
18. Disbursements such as photocopying, expert's fees, our travel costs and overnight charges will also be charged and VAT is generally payable on these.
19. Managing legal costs - You can help manage your legal costs by for example assisting me with certain aspects of preparation, for example by:
 - providing ALL relevant information at the outset in a logical and clear way;
 - checking draft documents;
 - providing summaries of what witnesses may say;
 - sorting evidence into order;
 - if there is a group of claimants - appointing one representative to manage communications with me;
 - contacting me to discuss a group of issues at one time rather on an item basis.

I 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.

Payments on account

20. I will normally request payments on account for our fees and disbursements. This will be an amount, which I 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 as an expert or counsel's fees. The final bill may well be greater than the amount requested on account and I will terminate the retainer if you do not comply with this request.

Billing and updates

21. I 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 result in the termination of your retainer with me ceasing to act for you and the commencement of enforcement proceedings for which legal costs and fees will be incurred.
22. 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.
23. Whilst I 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

24. In terms of an estimate of the likely overall costs, it is not possible to be precise at an early stage because I do not know how the other party will respond. Most of our cases 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 a one day hearing can often exceed £8,000 plus VAT. These costs are not normally recoverable from your opponent.
25. Costs in the High Court are normally higher than in the Employment Tribunal and I will advise you of the likely exposure as I 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.
26. Factors which can add to legal costs include:
- Failures to follow correct internal procedures;
 - Postponements of hearings;
 - Evidence provided piecemeal;
 - Inaccurate or untruthful evidence being provided;
 - Instructions received from varying sources;
 - Unqualified legal representatives or parties acting without lawyers;
 - Animosity between the parties;
 - Delays at the Tribunal;
 - Strategic issues such as unlawful competition;
 - The need for expert reports.

Legal costs and settlement

27. 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.

28. 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 I cannot guarantee that a Court or Tribunal will exercise its judgement in a particular client's favour. Advantages include:
- Financial - settlements can be paid in a tax efficient way whereas Tribunal awards are based on net pay;
 - Opportunity cost - litigation is a major distraction. Time and money spent on litigating could be wisely invested in other projects;
 - 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.
29. Litigation risk - A Tribunal will decide a case on the 'balance of probabilities' (which is more likely than not to be the case). Evidence will be assessed on the day and is matter for the Panel. It is very difficult to challenge Tribunal decisions on questions of fact.

Recovery of monies on your behalf

30. Where I recover compensation or a monetary settlement for you, this will be paid direct to the client account and I will deduct the 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).

Contesting our bills

31. Employment Tribunal work falls within the 'non-contentious' category. If you are dissatisfied with your bill you have the right to have it assessed by the Court under sections 70, 71 and 72 Solicitors Act 1974. This must be requested within 1 month of the date of any invoice.
32. If your case was brought in the Civil Courts then a different system applies. You can apply to have your bill assessed by the Court under Part 111 of the Solicitors Act 1974.
33. 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%.

Liability for fees and third party indemnities

34. 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 me on time, I 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

35. You must give me 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 me in writing clearly indicating that this is the case.

Our Approach

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

Money Laundering

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

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

I have a duty to report concerns to the National Crime Intelligence Service if I am 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

- 38. 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 me. You should set out your concerns in writing.
- 39. If you wish to pursue a complaint, the procedure thereafter is as follows:
 - (a) You should promptly e-mail and write to Mr Howell John, Managing Director, setting out the issues in clear, numbered paragraphs with any proposed solution. E-mail contact address is howelljohn@me.com;
 - (b) He will aim to respond in writing within 7 days;

Acceptance of terms

- 40. The terms in this letter and Appendix of additional terms will apply if I carry out any work for you whether or not you have signed and returned a copy of this letter.

APPENDIX

Additional Terms

Your choice of lawyer

Before deciding to instruct me (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 me by a third party a referral fee may be payable to me, 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

I have a duty to you, the Ministry of Justice, the Employment Tribunal or Court. Where these obligations are unnecessarily compromised, I will normally terminate the retainer and decline to act for you. In addition, a failure to indemnify me for costs and disbursements, at any stage of your case, could lead to termination of the retainer and my ceasing to act for you.

Legal Aid

Legal Aid is not available for Employment Tribunals (though it can be provided in the higher courts) and I am 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, I may instruct third parties in the pursuance of your objective. I am not liable for any act or omission of any third party.

Failures to Properly Instruct

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

Mobile Phones

You will be given my e-mail address and mobile phone number and that of my PA. Please take care to use these reasonably. Detailed advice cannot be given by mobile phone as it is important that I am 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, I 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 my 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 me.

Address for Communications

I will communicate to you via your last known address/email address and phone numbers. If these change you must notify me in advance. Equally, you must always communicate with me 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, I will ask you to store the files in your case. You should retain these files for seven years in a safe place.