



## LEGAL AND MEMBER SERVICES

### A MEMBERS' CHARTER

#### **Definitions**

For the purposes of this Members' Charter:

"**ATL**" includes the officers, elected Members and employees of the Association of Teachers and Lecturers.

"**Case**" means the Member's Case referred to ATL about which the Member seeks advice and in respect of which the Service is made available. It includes Court and Employment Tribunal proceedings.

"**Claimant**" means an individual who has issued proceedings in the Employment Tribunal or Court.

"**Member**" means a standard, standard support or individual affiliated member of the Association of Teachers & Lecturers.

"**The other party**" includes the Member's employer and the party or parties against who a Case is contemplated or brought.

"**Settlement Offer**" means any offer to settle the Member's Case which includes an offer of financial settlement or any situation in which the Case may be concluded or disposed of generally or without further financial liability on either side and which may encompass terms relating to confidentiality, publicity or other appropriate matters.

"**The Service**" means ATL's casework and legal assistance on matters arising from employment to which ATL provides support with, in its absolute discretion to Members, who seek assistance.

#### **Introduction**

1. At its office in London, ATL has an in-house team of legal staff, a team of member advisors and specialists in particular education sectors. It also has a nationwide network of Senior Regional Officials, Regional Officials and other caseworkers who assist Members locally. ATL has offices in Belfast and Cardiff with caseworkers supporting these offices.
2. The Member agrees that s/he will treat ATL with dignity and respect. ATL will reciprocate. The Member will at all times maintain honesty in her or his dealings, including with the Court, Employment Tribunal, ATL, experts, Counsel, witnesses and those

representing the other party or any party defending legal proceedings.

3. The Service is provided at ATL's absolute discretion to its members if they seek assistance with any matters arising from their employment.
  4. It is an absolute condition of receiving the benefit of the Service that the Member must abide by the Members' Charter at all times.
  5. Following the introduction of fees in the Employment Tribunal, ATL has agreed to pay those fees subject to the terms and conditions of this Charter. In particular it must be noted that:
    - (a) ATL will only pay fees if it has made the decision to issue proceedings in an employment tribunal.
    - (b) Fees are paid on the understanding that the advice of ATL is followed at all stages.
  6. A Member to whom the Service is made available agrees to abide by any requirements of confidentiality or other restrictions as to the publicity which may be imposed by the signing of an agreement or by ATL.
  7. A Member to whom the Service is made available also agrees that ATL may consider publicising the outcome of the Case, with the agreement of the Member.
  8. One of the principal objectives of ATL when supporting a Claim for a Member will be to secure a reasonable settlement for the member. If a Member wishes to proceed to a hearing regardless of ATL's assessment that a reasonable offer has been made, then support may be withdrawn at any stage.
- #### **General Principles**
9. Responsibility for decisions concerning the terms or provision of the Service

lies with the Defence Committee of ATL. Details of the role of the Defence Committee are contained in the Association's publication, "Legal Advice and Professional Help", which explains the help available to Members. A copy of this publication is available to download from the ATL website <http://www.atl.org.uk/Images/legal-advice-professional-14.07.14.pdf>. The Defence Committee may delegate its powers and responsibilities in relation to the Service to its Chairman and, in the absence of the Chairman, the Vice Chairman. There is no right of appeal against decisions of the Defence Committee but the Committee may review decisions if new information is provided.

10. The Member benefiting from the Service must respond to correspondence from ATL promptly and generally within two weeks, or sooner if requested. Failure, without good reason on the part of the Member, to provide information or respond to communications within the requested time limits may lead to ATL withdrawing support for the Case.
11. The Member agrees:-
  - 11.1 to co-operate fully in making and keeping appointments with ATL and others (including medical appointments).
  - 11.2 to make available to ATL, the other party and their advisers any relevant personal and other records which may be essential to the Case.
  - 11.3 to attend all hearings and meetings, including a full Court or Employment Tribunal hearing if the Case proceeds to this stage, unless there is a justifiable reason for non-attendance e.g. illness. If the Member fails to attend a hearing or meeting for a reason which ATL considers to be unjustified, support may be withdrawn.
  - 11.4 that any information provided to ATL for the purposes of the Case may be disclosed to the Defence Committee.
  - 11.5 to co-operate fully in response to all reasonable requests concerning any preparation

required in the course of the Case.

- 11.6 to accept ATL's decision as to the type of claim (i.e. unfair dismissal, discrimination) issued. If the Member insists that ATL pursues a claim which it considers unlikely to be successful the Service may be withdrawn.
12. The Member agrees to pay the expenses s/he incurs in attending meetings, hearings and appointments which are required to be held for pursuing the Member's Case unless:
  - 12.1 ATL calls a meeting with the Member; or
  - 12.2 there is exceptional hardship in which event ATL may, at its discretion, meet the expense.
13. The Member must ensure that all information provided in connection with the Case is full and accurate. Where a Member knowingly provides false or misleading information or the information required is not provided, ATL may withdraw the Service.
14. ATL believes that it is essential that the Member and her/his representative have a working relationship therefore ATL requires a Member to communicate directly with ATL and not through a third party (e.g. the Member's spouse), unless in exceptional circumstances.
15. ATL does not provide or allow dual representation. The Member must not instruct or seek advice from her/his own legal adviser, alternative representative or any other third party in connection with the Case. In this eventuality, ATL will withdraw from any further involvement in the Case and the Member will be responsible for any costs associated with the instruction of a legal adviser and agrees to reimburse ATL for any fees ATL has incurred on the Member's behalf.
16. The Member must not enter into any correspondence with any party, including the employer or their representatives, whom s/he believes to be associated with the case unless and until s/he has agreed the content of the

communication with her/his ATL representative.

17. ATL will continue to make the Service available if the matter occurred during a period of paid up standard, standard support or individual affiliated membership, and the member is in continuing membership, which includes retired membership. The Service is not available in respect of matters that are pre-existing at the date on which membership of ATL commenced.
18. All advocacy in the Employment Tribunal is provided by ATL's in-house legal team. Under no circumstances will ATL pay costs incurred in employing an external lawyer/adviser without prior authority. Such authorisation will be granted only in exceptional circumstances and at the discretion of the Defence Committee.
19. If the Service is withdrawn at any stage the decision of the Defence Committee, or the Legal & Member Services Department, will be notified to the Member by ATL in writing. The Defence Committee may in its discretion consider the Member's views if there is a disagreement concerning withdrawal or if new information comes to light. The Member will be advised that s/he can make written representations to the Defence Committee.
20. Decisions made by the Defence Committee may be reviewed at any time, especially if new information comes to light.

#### **Early conciliation through Acas**

21. From April 2014 prior to issuing Employment Tribunal proceedings a Claimant must register their claim with Acas (Advisory, Conciliation & Arbitration Service) for a scheme known as early conciliation. This process lasts for a period of one month.
22. An early conciliation form must be submitted on line by the Member whom Acas will contact in the first instance. When contact is made the Member must provide, to Acas, the details of her/his ATL representative (of whom details will be provided to the Member).

23. If early conciliation fails (for whatever reason) the Member will be issued with an Early Conciliation Certificate. Employment Tribunal proceedings cannot be issued without this Certificate. Unless advised otherwise it is the Member's absolute responsibility to ensure their ATL representative is provided with a copy of the Certificate immediately. ATL will accept no responsibility if the certificate is not given to the appropriate person in time for Employment Tribunals to be issued.

#### **Employment Tribunals and Court Proceedings**

24. The Service is funded by the Members' subscriptions. Any decisions made concerning support of a particular claim takes into account not only the prospects of success of the claim itself, but also the interests of the membership as a whole. Claims will be supported where the prospects of success appear reasonable i.e. where the prospects of success are greater than 50%. These prospects are reviewed throughout the course of a Case and if the prospects of success diminish (usually because new information comes to light) support may be withdrawn. Please note that each Case is dealt with on an individual basis. It should also be noted that ATL does not support all claims.
25. If false or misleading information is given by the member that causes ATL to over-estimate the prospects of success so that a claim has been lodged which, if the correct information had been provided, would not have been, the member will be responsible for any fees incurred by ATL.
26. When accessing the Service, the Member will be required to provide full information and documentation relating to the case, within 5 working days of any request made by ATL as there are usually strict time limits for commencing legal action. After the case is assessed a decision will be made as to whether the Service will be made available to the member.
27. During the period that the Service is provided in relation to Employment Tribunals and Court Proceedings, ATL

will indemnify the Member in respect of the costs of: -

- 27.1 any solicitors instructed to act on the Member's behalf with ATL's authority
- 27.2 any barrister instructed by ATL
- 27.3 any expert or agent instructed by ATL

The indemnity will cease immediately on withdrawal of the Service.

- 28. If a Member withdraws instructions from ATL, she/he will be responsible for reimbursing ATL in respect of any fees paid and will be responsible for the payment any further fees payable in the future.
- 29. If a Member fails to co-operate with ATL and support needs to be withdrawn then the Member will be responsible for any fees incurred.
- 30. If a Member refuses to accept advice from ATL in respect of settlement or withdrawal the member will be responsible for all future fees.
- 31. ATL will advise the Member on any offer of settlement. In giving advice, ATL will have due regard to the interests of the Member and of ATL, including the cost to ATL of refusal. If the Member refuses to accept ATL's advice regarding an offer of settlement, the case will be referred to the Defence Committee for a decision on whether the Service should continue or be withdrawn.
- 32. Once court proceedings have been issued they can be discontinued before trial only if a settlement with the other party is reached. In some cases this may only be possible if the other

party's legal costs and expenses are paid. In considering settlement offers ATL will have regard to its potential liability for legal costs and expenses.

- 33. Employment tribunal proceedings may be issued and subsequently withdrawn without settlement. This may occur, for example, when it becomes apparent that there are not reasonable prospects of success and there is no possibility of a settlement.
- 34. Generally the Service will not be withdrawn unless:
  - 34.1 ATL is of the opinion that the prospects of success are less than 50%
  - 34.2 where relevant, it appears unlikely that any judgment will be enforceable
  - 34.3 it appears that the Member has knowingly given false or misleading information
  - 34.4 the total costs of pursuing the Case appear likely to be disproportionate to the likely benefit
  - 34.5 the Member fails to co-operate or to communicate promptly or properly with ATL or any third party involved in progressing the Case
  - 34.6 the Member breaches his or her obligations or otherwise behaves unreasonably. Such behaviour includes disrespectful conduct.
  - 34.7 the Member refuses to accept ATL's assessment that a reasonable offer of settlement has been made and should be accepted.