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Sent by e-mail only

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**EMAIL: [sainsburys@leighday.co.uk](mailto:sainsburys@leighday.co.uk)**

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**TELEPHONE: 0800 037 0846**

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**YOUR REF:**

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**OUR REF: LWG/0011026/1**

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Dear Sainsbury's Colleague

**Client Care and Costs Letter: Sainsbury's Equal Pay Claim**

Thank you for instructing Leigh Day to deal with your case.

The purpose of this letter is to explain and record, for the avoidance of any doubt, the nature of the instructions that you have given to us, the advice that we have given you so far and the action that we have agreed to take to pursue the case further.

This letter should be read together with our Damages-Based Agreement (DBA) which contains important information about the costs of your claim and how we charge you for our work. A DBA is a form of "no win, no fee" arrangement whereby lawyers take a fee but only if you win your claim.

The DBA does not apply to appeals. Later in this letter we explain the terms on which we will represent you in the event of any appeal.

**Your requirements and objectives**

You confirm you are, or have been in the last 6 months, an employee of Sainsbury's Supermarkets Limited ("Sainsbury's") and worked in an hourly paid role in a Sainsbury's store in England, Scotland or Wales.

During your employment with Sainsbury's you believe that you were paid less than male employees of Sainsbury's employed in distribution centres for work that was of equal value.

You believe that you were subjected to breaches of equal pay legislation and unlawful sex discrimination in relation to your pay and conditions.

As a result of these breaches, you wish to obtain compensation in the shortest possible time, and also ensure equal pay in future (whether by a pay rise or some other means).

You require us to advise you as to the possibilities of claiming compensation in respect of these breaches. You have also instructed us to begin the investigation of your claim and preparation of evidence.

## **The issues involved**

The issues involved in your case are that we will need to prove that you were subjected to breaches of equal pay legislation in relation to your pay and conditions. We also need to prove the extent of the breaches in your circumstances.

The issues include:

- proving work of equal value with the comparators
- rebutting any argument that Sainsbury's has a "material factor" defence (a lawful reason to pay male-dominated jobs more than female-dominated jobs); and
- proving that you and your comparator worked at the same establishment or at establishments at which common terms apply.

## **Your Options**

We will consider with you the possible ways of achieving your objectives, including whether mediation or some alternative dispute resolution procedure may be more appropriate than legal action.

ACAS is a government funded free service that offers advice to employers and employees. They are also able to assist in the settlement of potential employment claims and for claims that have already been issued. If, as your case progresses, there is a realistic chance the case may settle without the need for a hearing, and we believe ACAS input will be of assistance we may contact them to see if they can offer assistance.

Please be aware that before presenting claims at the Employment Tribunal (ET), we are required to engage in Early Conciliation.. We will therefore submit a request for Early Conciliation before submitting your claim to the ET. ACAS also manages this process.

## **Limitations or exclusions**

At this stage, we are only representing you in relation to your equal pay claim, and not any other complaint about your employment with Sainsbury's. If, as the matter progresses, you wish us to take some further action other than that which we can foresee now, we will discuss with you at that point whether we are able to assist you and the cost implications of our doing so.

We have accepted your instructions in relation to your Equal Pay claim and have given you some preliminary advice and prepared a plan of some further action which is set out below.

## **Advice**

Our preliminary advice is that there are reasonable prospects of our establishing that you were subjected to breaches of equal pay legislation and unlawful sex discrimination in relation to your pay and conditions.

As discussed, we believe that the potential benefits to be gained by bringing a legal case will justify the costs and risks involved, including any risk of having to pay an opponent's costs.

## **Action**

The next steps that we need to take in these cases are:

- Start the conciliation process through ACAS
- Present a claim form (ET1) to the Employment Tribunal

We will consider this plan further and send you any updated details in due course.

## Key Dates

If you are still employed by Sainsbury's, there is no time limit to present your claim in the Employment Tribunal (although your claim will only relate to the latest contract of employment, unless there is a stable employment relationship).

If you are no longer an hourly paid Sainsbury's store worker, you will need to bring a claim to the Employment Tribunal within six months of leaving your Sainsbury's role.

If your employment with Sainsbury's has ended, the key dates will be carefully diarised on our central computer system.

Equal pay claims can also be brought in the Civil Courts (i.e., the High Court) which has different time limits. However, we are not bringing claims in the Civil Courts.

**IMPORTANT: If any of the situations below happen or have happened, please let us know immediately, as this may affect your ability to bring a claim and the deadline for doing so:**

- (1) Your employment ends;**
- (2) You sign a new contract;**
- (3) You change jobs (or job title);**
- (4) You stop working in England, Scotland or Wales.**

Another key issue is the period for which you can claim back pay. This is any time that you have been underpaid in the six years before the date on which a claim is brought in a court or tribunal. The longer the time between your contract with Sainsbury's ending and you presenting your claim, the less back pay you will be able to claim.

## The Management of Your Case

I Linda Wong, shall personally be dealing with your case. I am a partner of the firm. I will be assisted from time to time by Solicitors; and a team of paralegals in the equal pay team in the Employment Department.

It is the policy of our firm, and indeed one of our professional responsibilities, that the work of the person handling your case be supervised by one of the partners in the practice. This rule applies even if the person handling your case is himself or herself a partner in the practice. The partners charged with responsibility for supervision of the work done on your case are Emma Satyamurti and Nigel Mackay, Heads of Employment Department.

## Service Levels

At this stage, it is impossible for us to give an accurate prediction of the timescale for us to conclude your claim, as this will in part depend on the approach that Sainsbury's take to your claim. Our current best estimate is that it is likely to take around five more years for this claim to be resolved. However, we will keep you informed if this is likely to change.

We will provide you with regular updates on the progress of your case. In these updates, we will explain the legal matters that arise and the work required as a result in plain English. We will also update you on the costs incurred on your case at least every 6 months, notifying you if and when we envisage a more substantial cost. We will also keep you informed of the likely timescales for each stage of your case, and any changes to those. When there is a material change in circumstances, we will update you on whether the likely outcomes still justify the likely costs and risks associated with your matter. Finally, we will continue to review whether there are alternative funding options for your pursuit of this claim.

Our office is open from 9.30am to 5.30pm each weekday. If we need to meet with you, and if it is difficult for you to visit during these hours, it may be possible to arrange to meet outside normal office hours. Generally, the switchboard only deals with incoming telephone calls during office hours.

## **Conflict of Interest**

We have an overriding duty to act in the best interests of each client. We may therefore be unable to act for you or have to stop acting for you if there is a conflict between your interests and those of another client, or between our interests and your interests. This is known as a conflict of interest. We have procedures designed to prevent us acting for a client in a matter where there could be a potential conflict of interest and we carry out conflict of interest checks in each case.

## **Costs**

### **Our legal costs if your claim is successful:**

As detailed in the accompanying Damages Based Agreement (DBA), to which you should refer, the fee you pay to us for the work we have done on your behalf, if your claim is successful will be equal to 35% of your financial compensation. Our Fee includes VAT, but excludes Disbursements (that is payments which we will make on your behalf to third party service suppliers such as expert witnesses), which we have capped at £150 contribution. Our Fee and the £150 Disbursement Contribution, which includes VAT, will be deducted from any compensation you receive.

In very exceptional circumstances, the Respondent(s) may be required to pay some of our costs in the employment tribunal. Our Fee, together with the £150 Disbursement Contribution will be first be taken from any costs recovered from Sainsbury's, and the balance (if any) will then be taken from our compensation.

In the event of an appeal, we will not make any additional charge for our services directly to you. However, you agree to pay us any costs that you are awarded by the appeal court and recover from the Respondent(s), and we may keep these costs in addition to Our Fee and the capped Disbursement Contribution under the DBA.

### **Our legal costs if your claim is unsuccessful:**

We are acting on "no win, no fee" terms, which means that if the claim is unsuccessful or you do not recover compensation at the end of the claim, you will not be required to pay us anything.

## **Estimate of the Costs**

Even though we are acting on "no win, no fee" terms, we are nevertheless required to give you an estimate of the likely costs of the claim. Please do not be alarmed by the figures because under the DBA, so long as you have complied with it, you will only pay us if you win, in which case Our Fee, together with the £150 Disbursement Contribution will be deducted from your compensation, as explained above.

Our costs are calculated based upon the time we spend engaged on your matter (see clause 9 of the DBA for details).

Throughout the course of the claim we have made, will make and will agree to make payments on your behalf; such 3<sup>rd</sup> party payments which typically include the fees of barristers, experts and third-party disclosure providers. These are called Disbursements.

Unfortunately, it is almost impossible for us to give accurate estimates of the probable total costs of your claim or the amount of time it will take. This is because there are some things we cannot control, in particular, the approach Sainsbury's will take to your case. Based on our current best estimate it is likely to take around five more years for this claim to be resolved. This gives a revised total time estimate of 15 years, and we anticipate that the litigation could cost:

Cost per individual client:

<b>Possible number of clients</b>	<b>Annual cost for each individual</b>	<b>Cost for each individual for 15 years</b>
10,000	£174 plus VAT	£2,614 plus VAT
15,000	£116 plus VAT	£1,743 plus VAT
20,000	£87 plus VAT	£1,307 plus VAT

The above estimates are based on 10,000, 15,000 and 20,000 clients. If we have more clients than this, the cost to each client is likely to be lower. This cost estimate does not include the costs of any appeal. In the even of an appeal, we will give you a further cost estimate.

Once you have entered into the DBA your right to challenge the terms including the hourly rates set out in that Agreement will be restricted. If you dispute the amount of our costs and expenses you have the right to make an application to the Court for these to be checked. You may also ask the Court to consider whether the DBA is unfair or unreasonable. We will not make the application to the Court for you. You may make an application within a year of receiving a bill from us, but if you make the application more than a month after receiving a bill you may be ordered to pay some money to us or to court. If you delay for more than a year you may not be allowed to have our bill checked by the court.

### **Funding Options**

This is a brief overview of the options available to you in funding this claim.

#### **Damages-Based Agreements (DBA)**

We are offering to bring your claim under a DBA, which is a form of "no win no fee" arrangement whereby lawyers take a fee but only if you win or settle your claim. This fee represents our fee for the work we undertake/incur in acting for you and sharing the financial risk in pursuing your claim on your behalf. This fee is calculated as set out in the DBA, which also explains how disbursements will be covered (these are payments we make on your behalf to others involved in the case).

If we win your claim, we will ask Sainsbury's to pay us your compensation directly, from which we will take Our Fee, together with the £150 Disbursement Contribution before transferring the remaining compensation to you.

If you lose, you don't have to pay Our Fee.

If you end the DBA before we consider that the work is completed, or behave unreasonably, you may be liable to pay Your Share of the Total Cost. Full details including our usual hourly rates are set out in the DBA.

As we have explained, the DBA does not apply to appeals. We will give you further information about appeals if there is one, but absent further agreement any appeal will be subject to the payment terms in the "Appeal Appendix" to the DBA.

## Other Options

If you do not wish to enter into a DBA with us, the following options may be available to you although they are not funding options we offer:

1. **Trade union** - If you are a trade union member, your trade union may provide funding for employment claims and you may wish to discuss your claim with them. We understand that a lot of Sainsbury's colleagues are members of USDAW or UNITE. USDAW have not yet confirmed if they are bringing claims on behalf of union members, however we are aware that UNITE are doing so.

2. **Community legal service** - In very limited circumstances Community Legal Service (CLS) assistance (previously known as legal aid) is available. It is generally only available to those on benefits or in receipt of very low income. In employment tribunal claims such advice does not cover representation at employment tribunal hearings. We do not believe that CLS funding is suitable for this claim since you will require representation at what is very likely to be a number of contested hearings.

3. **'Pro bono' or free advice** - Such advice is sometimes available from organisations such as the Free Representation Unit or Bar Pro Bono Unit. Given the complexity of your case and the fact that the claim is being brought on behalf of a large number of individuals in a similar position to you, I do not think you will find solicitors and barristers prepared to represent you for free.

4. **Private funding** - If none of the other forms of funding are available or appropriate for a particular claim, then you can pay us privately. This means you pay our costs and disbursements as your case proceeds. We do not, however, think this is the most appropriate method of funding this particular claim.

5. **Legal Expenses Insurance** – Some individuals have legal expenses insurance as part of their home and contents insurance, care insurance policies and credit cards. If you have this insurance, the insurer may be required to cover the costs of your litigation against an employer. If you are unsure whether you have other legal expenses insurance, please contact your home/contents insurer and ask as soon as possible, but please be aware that we are not able to represent you via any legal expenses insurance for this claim.

## Funding Next Steps

At this stage, we recommend that the most suitable funding arrangement in your case will be for you to enter into a Damages-Based Agreement (DBA). We require all of our clients pursuing this claim to agree to the DBA, so that we have a retainer in place to enable us to do work on your behalf.

We have entered into an arrangement with a litigation funder for the funding that will be used to cover some of our costs in connection with your Claim. Should your Claim succeed, Leigh Day will share a portion of Our Fee with the litigation funder. You will not have to pay anything directly to the litigation funder. The involvement of a third-party funder does not constrain, influence or affect the legal and professional judgement of Leigh Day.

## Complaints

Leigh Day is committed to providing high quality legal advice and client care. If you are unhappy about any aspect of the service you have received or about your bill, please bring it to our attention as soon as you can. We will try to resolve the matter fairly and quickly. We will apologise if need be and do our best to offer a practical solution.

You can obtain a copy of our complaints procedure here:

<https://www.leighday.co.uk/our-complaints-policy> or by request.

If we are unable to resolve your complaint, then you can have the complaint independently looked at by the Legal Ombudsman. The Legal Ombudsman investigates complaints about services issues with solicitors.

The Legal Ombudsman expects complaints to be made to them within one year of the date of the act or omission about which you are concerned or within one year of you realising there was a concern. You must refer your concerns to the Legal Ombudsman with six months of our final response to you.

You can contact the Legal Ombudsman at PO Box 6167, Slough, SL1 0EH.

Telephone: 0300 555 0333.

email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

The Legal Ombudsman has produced helpful booklets to guide you if you have a complaint. You can find it on the Legal Ombudsman's website under 'how to complain'.

The Solicitors Regulation Authority (SRA) can help you if you are concerned about our behaviour and that it may be in breach of the SRA's Code of Conduct. You can find information on how and when to raise a concern with the SRA on the SRA website here; <https://sra.org.uk>

If your complaint is about your bill you can apply for an assessment of the bill under Part III of the Solicitors Act 1974. The Legal Ombudsman cannot consider a complaint about the bill if you have applied to the Court for assessment of the bill. We may be able to charge interest on all or part of an unpaid bill.

Any concerns about our commitment to equality, diversity and inclusion will be dealt with in line with our Equality, Diversity and Inclusion policy, which is available upon request.

## **The Firm**

Leigh Day is a legal disciplinary partnership. We are regulated by the Solicitors Regulation Authority under registered number 00067679. Our VAT number is 429700745. A list of partners is available for inspection at our Registered Office: Panagram, 27 Goswell Road, London, EC1M 7AJ.

## **Professional Indemnity Insurance**

We maintain Professional Indemnity Insurance in the interests of our clients. If you require details of this insurance, it may be obtained from our offices on request.

## **Confidentiality/ Communication**

Generally speaking the law says that the information you give to your solicitor and/or their agents for the purpose of obtaining legal advice or because you are involved in litigation is confidential. Your solicitor may not disclose it to anyone, even members of your family, without your permission.

Leigh Day are likely to be assisted by other third parties. The provision of these services to the firm does not constrain, influence or affect the legal and professional judgement of Leigh Day; it merely improves the service we offer you as our client. We therefore may be required to share claim information from time to time. Third parties might include barristers, experts, technology solutions providers and litigation funders who will abide

by similar rules of confidentiality as those that apply to us. It will also be necessary to share information with the legal representatives to the parties in the proceedings.

We are often contacted by the media and, if requested to do so, we will discuss your case in generic terms only whilst the claim is still active. If you are interested in being featured in media stories about your case or about equal pay matters more generally, please let us know.

## **Data Protection**

All information that we hold concerning you as an individual will be held and processed by the firm in accordance with current UK data protection legislation. Such personal and sensitive data will be used by the firm to provide you with legal services for related purposes, such as to inform you about the firm's services and events. We will not, without your consent, supply your name and addresses to any third party except where:

- such transfer is a necessary part of the legal services that we undertake,
- the transfer is necessary to comply with the reasonable requirements of the third party who is funding your claim,
- the transfer is necessary to comply with the reasonable requirements of any after the event insurer we engage, or
- we are required to do so by operation of law.

As an individual, you have a right under Data Protection Legislation to obtain information from us, including a description of the data that we hold on you. Should you have any queries concerning this right, please contact our Data Protection Officer, Viviana Marcus ([dataprotection@leighday.co.uk](mailto:dataprotection@leighday.co.uk)). A copy of our firm's Privacy Policy is available on our website. Please let us know if you would like the policy sent to you.

## **Communicating with you**

We usually correspond with clients by ordinary first-class post to their address and/or by email, where our clients are able to access email often. However, if that is not appropriate in your case, we can agree with you an alternative method of communicating with you. We take the privacy of all our clients very seriously. Where we are sending sensitive material in the post, such as, for example, medical records or reports, we will use Recorded Signed For delivery to protect, so far as possible, against the loss or misuse of this information. We have a Data Protection policy (available upon request), which explains in more detail the email and the security standards that we apply.

Finally, if you are happy for us to discuss your case with any other person, would you please provide their details to us, including their name, relationship to you and contact details.

## **Taking Instructions**

As your claim will be one claim within a group of claims based on same/similar facts, and to ensure that we deliver a timely service in a cost-efficient manner, we are unable to take your individual instructions in relation to each aspect of the litigation. Accordingly, we will take strategic and day to day decisions about the litigation on your behalf, provided always that we act in accordance with our duties to you and the Employment Tribunal.

In the event that a settlement is offered to settle your case, we will advise you whether to take the settlement in accordance with the Damages Based Agreement. It is your choice as to whether you wish to accept our advice. If you choose not to accept our advice on settlement or any other matter, then we may end the Damages Based Agreement in accordance with clauses 7 and 10.

## Terminating our Retainer

You may end your instructions to us in writing at any time (except in the particular circumstances outlined in the DBA), but we can keep all your papers and documents while there is still money owed to us for fees and expenses. We may decide to stop acting for you if we have good reason to do so. We must give you reasonable notice that we will stop acting for you. If we decide that we should stop acting for you (in the circumstances detailed in the DBA), you may have to pay our costs up until that point in accordance with our DBA. If there is anything that you would like to discuss at this stage regarding the arrangements for the conduct of your case or you would like any other information please do not hesitate to contact the Sainsbury's team on 0800 037 0846 or [sainsburys@leighday.co.uk](mailto:sainsburys@leighday.co.uk).

Yours sincerely



**Linda Wong**  
**Partner**  
**Leigh Day**

## **DAMAGES-BASED AGREEMENT**

This Agreement is a Damages-Based Agreement (“DBA”). A DBA is a form of “no win no fee” arrangement whereby you only pay Our Fee out of the Compensation your legal team recovers if you Win your Claim.

This Agreement is a legally binding contract between you and Leigh Day, acting as your solicitors. Please read it carefully and keep it for future reference. If there is anything you do not understand, or if you want any further explanation, please do not hesitate to ask us. You may wish to take independent legal advice to confirm that you understand the content herein and that you want to be bound by this legally binding contract.

You should also read our Client Care Letter which is provided with this Agreement and which covers other key aspects of our relationship with you. The information in the Client Care Letter applies to this Agreement. Where there is any inconsistency between the terms of this Agreement and the Client Care Letter then the terms of this Agreement take precedence.

This Agreement is a DBA within the meaning of section 58AA of the Courts and Legal Services Act 1990 (the “Act”) and the Damages-Based Agreement Regulations 2013 (SI 2013/609) (the “Regulations”).

### **1. The parties**

- (1) Leigh Day of Panagram, 27 Goswell Road, London, EC1M 7AJ (referred to below as “us” and “we”)
- (2) You ‘the client’, (referred to below as “you” and “your”)

### **2. Work covered by this Agreement**

Work done by us from when we began work on this matter, in respect of your Employment Tribunal claim for equal pay and sex discrimination against Sainsbury’s Supermarkets Limited or an associated company (the “Claim”). This Claim is part of a multiple party claim brought on behalf of a number of individuals with the same or similar claim to yours.

### **3. Work not covered by this Agreement**

- Any counterclaim against you;
- Any appeal proceedings;
- Any proceedings you/we take to enforce a judgment, order or agreement; and
- Any proceedings for the detailed assessment of the costs of this Claim.

### **4. What happens if you Win**

If you Win the Claim you pay us a fee equivalent to 35% of any compensation awarded by the Employment Tribunal or any settlement sum obtained (“the Fee”). The Fee includes VAT, but it excludes your contribution to Disbursements, which is capped at £150 including VAT.

A “Win” for the purposes of this Agreement means:

- The Employment Tribunal award you a sum of compensation in respect of all or any of your complaints; and/or
- You agree to accept compensation under a settlement; and/or
- The Employment Tribunal finds in favour of another claimant who is bringing a claim against Sainsbury's for Equal Pay and that decision is applied to you by the Tribunal or Respondent.

**“Disbursements”** are payments we make on your behalf to others involved in the case. We would expect the main disbursements to be barristers' fees and experts' fees. We may also incur travelling and subsistence expenses for attending any tribunal hearing or meetings.

The level of your contribution towards the Disbursement is in addition to the Fee and is based upon our assessment of the Claim as set out in the schedule at the end of this Agreement.

For what happens if the Agreement ends before the case is won or lost, please refer to paragraph 10.

You agree that we may receive the compensation your opponent has to pay and deduct our fee from that sum received. We agree to pay you the remainder of the compensation.

If your opponent fails to pay any compensation or settlement sum owed to you we have the right to take recovery action in your name to enforce a judgment, order or agreement. The costs of this action are payable by you to us in addition to our fee.

## **5. What happens if you lose**

If you lose the Claim (meaning that an employment tribunal reaches a decision to not award you any compensation) you do not have to pay us anything. We will pay the disbursements that have been incurred on the claim and the VAT on disbursements.

## **6. Our responsibilities**

We must always act in your best interests in pursuing your Claim for compensation and obtaining for you the best result reasonably obtainable, subject to our duty to the Employment Tribunal. We must explain to you the risks and benefits of taking legal action. We must give you our best advice about whether to accept any offer of settlement.

## **7. Your responsibilities**

You must give us clear instructions, which allow us to do our work properly. You must not ask us to work in an improper or unreasonable way. Unreasonable behaviour also includes, but is not limited to:

- a) deliberately misleading us;
- b) not co-operating with us when asked;
- c) rejecting our advice about reaching a settlement with your opponent;
- d) failing to disclose all information relevant to your Claim;
- e) failing to keep confidential all information received by you in connection with your Claim, and the Claims of any other Claimants in the group Claim;
- f) failing to comply with all the terms of this Agreement;
- g) entering into any direct negotiations or agreements with an opponent without our prior agreement; and

- h) letting us know if you are subject to a bankruptcy order or a bankruptcy petition has been presented by or against you or you are subject to any other form of solvency process. This applies both at the outset and throughout the course of your case. This is because it could affect us being able to conduct your Claim and have an impact on your award of compensation. If you are declared bankrupt, some or all of your compensation may go to your Trustee in Bankruptcy.
- i) being rude or abusive to staff either verbally or in writing.

## 8. Our normal professional charges

These are the figures we use to calculate our costs as part of Your Share of the Total Cost. **“Your Share of the Total Cost”** is calculated by dividing the **“Total Cost”** of bringing the Claim by the number of Claimants by whom we are instructed in the Claim at the time that this Agreement is terminated.

The “Total Cost” includes both our costs and the disbursements for work done on the claim incurred from the date upon which we began work on this matter until the date of termination of this Agreement. The Total Cost will be calculated less any payments received towards the Total Cost from other Claimants.

## 9. How we calculate our normal professional charges

These are calculated for each hour engaged on your matter. The hourly rates are:

Grade of Fee Earner	Hourly Rate (London/Manchester office)
1 Professionally qualified staff with over eight years post qualification experience including at least eight years litigation experience.	<b>£420 / £261</b>
2 Professionally qualified staff with over four years post qualification experience including at least four years litigation experience.	<b>£320 / £218</b>
3 Other solicitors and legal executives and fee earners of equivalent experience	<b>£250 / £178</b>
4 Trainee solicitors, paralegals and other fee earners.	<b>£145 / £126</b>

These rates are subject to review and we will notify you of any change in the above rates in writing.

## **10. What happens if the Agreement ends before the Claim ends**

You can end the Agreement at any time except:

- after a settlement has been agreed; or
- within 7 days before the start of the Employment Tribunal full hearing.

But please be aware that if you end the Agreement before we agree with you that the work on the Claim has ended you agree that you shall be liable to pay Your Share of the Total Cost up to the date you end the Agreement calculated at the hourly rate plus the costs of any disbursements and VAT on both costs and disbursements.

We have agreed to act on your behalf without payment unless we win or settle the Claim. We are potentially acting for you without payment and can therefore end the Agreement at any time.

If you have behaved or are behaving unreasonably we can end the Agreement at any time and charge you for our costs up to the date the Agreement ends.

The following are examples (but not an exclusive list) of the circumstances which might constitute unreasonable behaviour and lead us to end the Agreement:-

- a. If you do not keep to your responsibilities in paragraph 7 above. You are then liable to pay us our costs incurred up to the date the Agreement ends calculated at the usual hourly rate plus VAT plus disbursements.
- b. If you unreasonably reject our opinion about making a settlement with your opponent. You are then liable to pay us our costs incurred up to the date the Agreement ends calculated at the usual hourly rate plus VAT plus disbursements. Please note that we will only advise that you accept a settlement if the sum offered, having regard to the value of any likely compensation and your prospects of success, is, in our opinion, a reasonable sum.

We can otherwise end the Agreement at any time (subject to giving you reasonable notice) but will not charge you for our costs unless you are behaving or have behaved unreasonably.

In any circumstances where we end the Agreement, we will explain our reasons to you in full and will discuss whether we are prepared to enter into a replacement agreement on different terms and, if not, what our normal professional charges would be to continue to act on your behalf.

## **11. Starting work**

By signing this Agreement you authorise us to start work on your case before the end of the 14-day cancellation period. If, in accordance with your instructions, we start work on your case and you then cancel the Agreement we will have the right to decide whether you must pay our basic charges and disbursements.

## **12. What happens after the Agreement ends**

After the Agreement ends we will apply to have our name removed from the record of the Employment Tribunal proceedings in which we are acting. We have the right to preserve our lien over any property of yours (including your full file of relevant documents) in our possession unless any money owed to us under this Agreement is paid in full. This means we can keep your papers until you pay us in full for any fees due from you under this Agreement.

If you would like us to withdraw your existing claim in the Employment Tribunal, you will need to provide us with your explicit agreement. Otherwise, your Claim will continue in the Employment Tribunal without us acting for you.

### **13. Your opponent's costs**

Employment Tribunals have the power to award costs in limited circumstances only. Awarding costs means that one party is ordered to pay the other party's legal costs. At the date of entering into this Agreement we are not aware of any information about your Claim which gives rise to a risk of this happening. If such a risk arises as the Claim progresses we will notify you immediately.

The 2013 Tribunal Regulations provide that a Tribunal may make a Costs Order against a Claimant (or Respondent) where the paying party has in bringing the proceedings, or her or his representative has in conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the claim or defence had no reasonable prospect of success.

If we recover costs from the Respondent, you agree that we are entitled to keep these costs in full. This amount would be apportioned between the number of Claimants, and deducted from the Fee.

If you are ordered to pay costs to the Respondent(s), then those costs will be payable by you.

The Tribunal may also make a costs order against a party who seeks an adjournment or postponement of a hearing or failed to comply with a Tribunal Order or Practice Direction.

The amount of any costs order that an employment tribunal may award is limited to £20,000, but if the issue of costs is referred to the County Court, then an unlimited costs order may be made.

### **14. Death, mental incapacity or insolvency**

This Agreement will end automatically if before the Conclusion of your Claim, you die or become incapable of making a decision as defined in the Mental Capacity Act 2005 or any legislation that amends or replaces the relevant provisions. We will discuss with your personal representative, administrators or executors to your estate the circumstances in which we may continue to pursue your Claim and the requirement to enter into a new agreement.

If you become bankrupt or have an individual voluntary arrangement approved we may end this Agreement. If we do not end this Agreement, you must use your best endeavours to persuade your trustee in bankruptcy, supervisor, administrator, or other appointed insolvency practitioner either to permit you to continue your Claim under this Agreement (for example by assigning your cause of action back to you) or to continue this Claim under a new agreement between us and the trustee, supervisor or insolvency practitioner in similar terms

to this one (and at all times compliant with the relevant governing legislation) and under which your trustee, supervisor, insolvency practitioner agrees to pay the Our Fee in the event of Success. In the event that we cannot reach such an agreement with your trustee in bankruptcy/supervisor, we may still end this Agreement in accordance with clause 10.

If you fail to inform us that you have become bankrupt or have an individual voluntary arrangement approved, in accordance with your responsibilities in clause 7, clause 10 will apply.

**APPEAL APPENDIX – Representing you on any appeal**

As stated above, the DBA does not apply to any appeal.

We are not obliged to represent you in any appeal. However, if we advise you either to make an appeal or to defend an appeal brought by the Respondent(s) then unless otherwise agreed in writing our payment terms for the appeal (including any follow-on appeal) will be as follows:

- The DBA will continue to apply to the proceedings in the Employment Tribunal, and if you ultimately win in those proceedings, you will pay us in accordance with the DBA.
- We will not make any further direct charge to you for work done on the appeal, but if your participation in the appeal is beneficial (e.g. because your appeal is allowed and/or the Respondents' appeal is dismissed), you will pay us any costs you are awarded in the appeal and that you recover from the Respondent(s).
- Those costs will be calculated at the hourly rates stated in the DBA, as updated from time to time. Any Disbursements relating to the appeal and recovered from the Respondent(s) will be payable in addition. Any charges not ultimately recovered from the Respondent(s) will be waived.
- The costs recovered from the Respondent(s) will be payable to us in addition to the costs payable under the DBA in respect of the Employment Tribunal, and will not be credited against the DBA costs.
- If during the appeal process you behave unreasonably we may terminate the Agreement, and you will be liable to pay us for the work and Disbursements in respect of the appeal in any event.

**FORM OF AUTHORITY**

I, hereby authorise any compensation payable in my Claim to be paid in the first instance to Messrs Leigh Day of Panagram, 27 Goswell Road, London, EC1M 7AJ either by BACS or cheque payable to Leigh Day.

I, further authorise Leigh Day to deduct the Fee as defined at paragraph 4 in the Agreement and the contribution to Disbursements, which is capped at £150 including VAT, prior to giving me the balance of my compensation.

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### **Schedule**

The Fee set out in the DBA is the maximum we are permitted to charge under the Damages Based Agreement Regulations 2013, the Fee together with the £150 Disbursement Contribution reflects the following factors as they reasonably appear to us on the date this Agreement is entered in to, including:

- a) the fact that this Claim is taking more than twice as long to conclude as we originally estimated. We initially estimated that the case would take 5 (five) years to conclude. We have now revised that estimate to 10 (ten) years from when it started;
- b) the fact that if you lose, we will not earn our full legal costs and will have to contribute towards the Disbursements incurred plus VAT. The disbursements could amount to millions of pounds;
- c) our assessment of the risks of your case, including the difficulties and complexities inherent in claims concerning Equal pay brought on behalf of large amount of Claimants
- d) the fact that we will not be paid except to the extent that you win and recover some financial benefit;
- e) the fact that over the last 8 (eight) years the Claim has required significantly more preliminary hearings than we anticipated at the outset;
- f) the fact that the Claim is a group Claim (one of several similar claims).
- g) The fact that barrister hourly rates are likely to increase between now and the end of the case;
- h) the need for us to use 3<sup>rd</sup> party providers of legal software to ensure the smooth and efficient management of documentation at the longer hearings;
- i) our experience of Equal Pay litigation against Sainsbury's Supermarkets Limited is that they are likely to contest every legal point open to them rather than seeking an amicable resolution; and
- j) There may also be appeals beyond the Employment Appeal Tribunal, and while the DBA does not apply to appeals (and especially appeals beyond the Employment Appeal Tribunal) will lead to significant further delay in us being paid under the DBA.

**Notice of the right to cancel**

If you sign this Damages Based Agreement (DBA) in a place other than our offices you have the right to cancel it within 14 days of receiving this Notice. You do not have to give any reason for cancelling. This is under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

If you wish to cancel the DBA, you **must do so in writing. This can either be a personal delivery, post, fax or email, at any time** within the period of 14 days, starting with the day you enter into this DBA. The address to send any cancellation notice to is:

**Linda Wong**

Leigh Day  
Central Park  
Northampton Road  
Manchester M40 5BP

T: 0800 037 0846  
F: 020 7253 4433  
e: [sainsburys@leighday.co.uk](mailto:sainsburys@leighday.co.uk)

Quoting ref:

**CDB/LWG/110261/1**

To meet the 14 day deadline, it is enough that you send your cancellation notice before the 14 day period comes to an end.

**You can print off this document and use the form below to cancel your DBA if you wish to cancel by post, but it is not obligatory.**

By entering into this Damages-Based Agreement you give us specific written authority to start work on your case before the 14 day cancellation period has concluded.

If, in accordance with your instructions, we start work on your case and you then cancel the DBA we will have the right to decide whether you must pay our charges at the hourly rates plus disbursements until the date of cancellation.

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*Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THE DBA***

To: Leigh Day, Panagram, 27 Goswell Road, London, EC1M 7AJ

**I, ....., hereby give notice that I wish to cancel my DBA with Leigh Day.**

Signed: .....

Date: .....

Ref: **CDB/LWG/110261/1**

By doing any of the below:

- a) Clicked the button on the Equal Pay Now Website accepting the terms of the Client Care and Costs Letter and Damages-Based Agreement;
- b) Replied "Yes" to our email containing our Client Care and Costs Letter and Damages-Based Agreement; or
- c) Ticking the checkbox at the bottom of our online form agreeing to our Client Care and Costs Letter and Damages-Based Agreement;

you confirm you have **READ, UNDERSTAND, AND AGREE** to the:

- 1. Client Care and Costs Letter;
- 2. Damages-Based Agreement;
- 3. Appeal Appendix; AND,
- 4. Form of Authority.