

NAHT Legal Advice and Representation Protocol

1. General

- 1.1 Legal advice and representation is provided to NAHT members in accordance with the NAHT constitution and rules.
- 1.2 Legal advice and representation is provided at the discretion of the National Executive which will be exercised in accordance with this Protocol. This discretion is delegated under Rule 8. to the General Secretary, Director of Representation and Advice, Head of Legal, Solicitor and Legal Representation Group (LRG) (see paragraph 4. below).
- 1.3 Decisions on the provision of legal assistance are normally taken by the solicitor handling the case or the Head of Legal.
- 1.4 Cases may be referred by the Head of Legal and/or Director of Representation and Advice for decisions to the LRG

2. Civil Cases

2.1 The following factors will be taken into account when deciding whether or not to offer NAHT Legal Representation:

- 2.1.1 Prospects of success. It is unlikely that legal representation will be offered if the solicitor handling the case considers that the prospects of success are not better than 50%. A higher threshold is likely to be set where the overall risk of the case and associated costs are anticipated to be high.
 - 2.1.2 The likely costs of the case.
 - 2.1.3 The likely damages recoverable or other available remedy
 - 2.1.4 Whether the NAHT's appointed solicitors will offer to pursue the case on a 'conditional fee arrangement'. Normally if NAHT's appointed solicitors are unwilling to offer to pursue the case on a 'conditional fee arrangement' the NAHT would not offer or fund advice and representation for the case.
 - 2.1.5 In claims in which costs may be awarded against an unsuccessful party [such as County Court and High Court Litigation] the availability and costs of 'after the event insurance' to cover the risks of costs liability.
- 2.2 Legal advice and representation will only be offered where the cause of action arose during the course of a member's employment at a time when he or she was a full member. Legal advice and representation will be offered to life members in accordance with rule 4.8 of the NAHT constitution and rules. Legal advice and representation may also be offered in connection with a personal

injury claim by a member arising from an accident on the way to or from work.

- 2.3 Legal representation will not be offered or will be withdrawn in the following cases:
- 2.3.1 If a member ceases to be a member or fails to pay his or her subscriptions.
 - 2.3.2 If a member is considered by the solicitor handling the case to have misled the NAHT or withheld relevant information from the NAHT, its solicitors or counsel, or the Court or Tribunal or Regulatory Body.
 - 2.3.3 If a member refuses or fails to take or accept or act upon the advice of the NAHT its solicitors or counsel.
 - 2.3.4 Where a member wishes to pursue a case or a defence or any argument which NAHT, its solicitors or counsel consider has no reasonable prospects of success.
 - 2.3.5 If a member fails to co-operate with NAHT, its solicitors or counsel.
 - 2.3.6 If a member does not wish to be represented by NAHT solicitors or counsel [which may at NAHT's discretion be its in house solicitors or nominated external solicitors or counsel].
 - 2.3.7 If a member seeks advice from other solicitors, counsel or elsewhere without NAHT agreement. Legal advice or representation will not be offered where a member has sought advice from his or her own solicitors or counsel or other adviser and subsequently seeks NAHT legal advice and representation.
 - 2.3.8 Where the solicitor handling the case considers that the case does not meet the criteria in paragraph 2.1 above.
 - 2.3.9 Where a member refuses a settlement offer which the NAHT considers to be reasonable.
 - 2.3.10 If a member refuses to attempt mediation in a case considered by the solicitor handling the case to be suitable for mediation.
 - 2.3.11 If a member or anyone on his or her behalf acts in a hostile, aggressive or disrespectful way towards any NAHT member of staff or anyone appointed by or with the agreement of NAHT in connection with the case.
 - 2.3.12 Defamation, malicious falsehood, misfeasance in public office, claims in foreign jurisdictions.
 - 2.3.13 Where a member has previously received advice and representation from an NAHT officer but has failed to follow that advice or had that support advice or representation withdrawn or has chosen to seek support, advice or representation from other advisers, then legal support will not normally be offered in connection with any subsequent proceedings or potential claims.
 - 2.3.14 Where NAHT's appointed external solicitors will not offer to provide representation under a conditional fee arrangement.
 - 2.3.15 Where the member has delayed seeking NAHT Legal Representation and as a consequence any claim has been prejudiced or the ability of the NAHT to provide advice and support before any relevant deadlines has been prejudiced.

2.4 Costs

- 2.4.1 While NAHT is providing Legal advice and representation for a member, NAHT will not charge the member for NAHT's costs or will indemnify the member for whom it is acting in respect of NAHT's costs.
- 2.4.2 NAHT may at its discretion indemnify a member in respect of disbursements (such as court fees, counsel's fees, expert's fees). NAHT will not incur a disbursement which a member is required to pay without first notifying the member and obtaining the member's agreement to incur the disbursement on his or her behalf.
- 2.4.3 NAHT may at its absolute discretion indemnify a member in respect of an opponent's costs awarded against a member. NAHT will not indemnify a member in respect of an opponent's costs awarded against a member in the following circumstances:
- (i) Where a member is considered by the solicitor handling the case to have misled the NAHT or withheld relevant information from the NAHT, its solicitors or counsel, or the Court or Tribunal or otherwise acted unreasonably.
 - (ii) Where a member proceeds with a case after NAHT Legal advice and representation has been withdrawn.
 - (iii) Where a member refuses to attempt mediation
 - (iv) Where a member proceeds with a case against a settlement offer which the NAHT considers to be reasonable.
 - (v) Where NAHT does not consider it reasonable to indemnify a member in respect of such costs.
- 2.4.4 Where a member is an unsuccessful defendant or respondent to a civil or criminal action NAHT will not indemnify a member in respect of any award of damages or compensation against a member or any order for costs against a member.
- 2.4.5 NAHT may offer to provide or continue to provide legal advice and representation on the basis that a member will pay any opponent's costs awarded against a member and will not be indemnified by NAHT in respect of such costs.
- 2.4.5 NAHT may offer to provide or continue to provide legal advice and representation on the basis that a member will pay any disbursements (including but not limited to counsel's fees).

3. Criminal and Regulatory Cases

- 3.1 Paragraphs 2.2, 2.3.1-2.3.4 and 2.4 apply where relevant to the provision of NAHT legal advice and representation in criminal and regulatory cases. For the purposes of 2.2 the cause of action in criminal and regulatory cases may arise either when the offence or conduct allegedly took place or when a member is first accused by any person of the offence or conduct that forms the subject of the criminal or regulatory proceedings. In any case it will be for the NAHT to determine the date of the 'cause of action' and therefore whether the member is eligible for NAHT legal advice and representation.
- 3.2 Where allegations relate to acts or omissions which allegedly occurred at a time before a member joined NAHT, legal advice and representation

may still be offered if the member can show that he or she was a full member of an independent trade union at the time the acts or omissions allegedly occurred and that the allegations relate to matters which allegedly occurred during the course of the member's employment in the teaching profession or as an school business leader.

3.3 Legal advice and representation may be refused or withdrawn if members wish to rely on a defence which NAHT or its solicitor or counsel consider has no reasonable prospects of success.

3.4 Representation at police interviews.
NAHT may refer a member to external solicitors for advice and representation at a police interview. It is expected that costs will be recovered from the Legal Services Commission. NAHT will not normally indemnify members in respect of the costs of advice and representation at the police station unless prior authorisation has been given by one of the NAHT solicitors.

3.5 Legal Assistance in Magistrates' or Crown Court.

3.5.1 If a member is charged with an offence he or she would normally be expected to apply for Legal Aid. If a member is required to contribute towards his or her legal costs or is refused Legal Aid then subject to the relevant provisions of paragraph 2 above the NAHT will normally indemnify a member in respect of his or her legal costs including where permitted his or her contribution to Legal Aid.

3.5.2 If a member chooses to instruct solicitors other than those to whom the NAHT has referred him or her then NAHT will not indemnify him or her in respect of his or her legal costs and will not subsequently offer NAHT legal advice and representation.

4. Legal Representation Group

4.1 The LRG shall consist of at least 5 members of National Executive and shall meet twice yearly. Its functions are as follows:

- 4.1.1 To receive reports from the Head of Legal and/or Director of Representation and Advice on the work of the legal department.
- 4.1.2 To consider and make recommendations to the Head of Legal and/or Director of Representation and Advice and/or the National Executive and/or Membership Services Committee on the provision of NAHT Legal advice and representation.
- 4.1.3 To make decisions on matters referred to it by the Head of Legal and/or Director of Representation and Advice.

4.2 The LRG may consider at any time cases referred to it by the Head of Legal and/or Director of Representation and Advice either by meeting in person or by considering 'paper' or 'electronic' referrals.

5. Complaints

5.1 Complaints will be handled under the NAHT complaints procedure.

5.2 Members may also refer complaints about the NAHT solicitors to the Legal Ombudsman.

Adopted by NAHT Executive June 2019.