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Dear Sir or Madam

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Yours faithfully

Online Legal Advise

**ONLINE LEGAL ADVISE**

**ONLINE LEGAL ADVISE- Grievance letter:**

**Constructive dismissal after TUPE transfer**

15th June 2018 **Strictly Private & Confidential**

FAO. [Employee 1] name,

[Company name]

[Company address]

By email: [Email]

Dear Sirs

[Employee 1] -v- [Company]

We have been instructed by [Employee 1] named in relation to [Employee 1] employment with [Company 1].

We understand from [Employee 1] that he has recently experienced a number of problems at work. After discussing with [Employee 1] the history of events and the nature of the treatment he has been subjected to, we believe that he has a well-founded claim for unfair dismissal.

We are aware that [Employee 1] was originally employed by [Company 1] as of 11thNovember 2016, and has subsequently, since 12thMay 2017 been TUPE-transferred across to [Company 2]. [Employee 1] current position within [Company 2] is as Operations Director. Over the last 12 years, [Employee 1] remit and responsibilities have increased and he has contributed significantly to [Company 1] performance during his tenure. [Employee 1] performance has never been brought into question and he has always excelled in his role. Unfortunately, recent events within [Company 2] have left our client feeling humiliated, undervalued and as though there have been orchestrated attempts to push him out of the business.

We are aware that in or around 30thSeptember 2017, discussions were taking place with senior personnel in the business, including [Employee 1], [Employee 2], [Job title], [Employee 3], [Job title] and [Employee 4], [Job title] regarding the relocation of the PCO function from Nottingham, to St Albans. It was agreed that such an exercise would result in a more efficient operation as the main projects office would be located in St Albans and ultimately result in less headcount, which in turn, would reduce PRA’s outgoings and increase profitably. The agreement was that staff in the St Alban’s office would absorb the Nottingham project support function.

At the same time, it was also decided that there would be a transition from then-current Enchantè system to the PMR system. In light of this, it was agreed and decided by all involved in these discussions, that 2 temporary members of staff would be hired to perform a dual role, namely, to assist with the project support function and the transition to the new PMR system. Dependant on how the two temporary staff performed, there was potential for them to be made permanent at a later date, should their services be required, as [Company 2] were aware that it was only a matter of time until [Employee 1] would be leaving to continue with higher education and of course, to account for staff turnover.

The Arnold PCO office subsequently closed around the end of January 2018 and the transition of both the project support function to St Albans, and the systems transition commenced. In line with the original strategy, 2 temporary staff members were hired at the St Albans office. On the 25thFebruary 2018 [Employee 1] “formally” presented to the Board, which included, [Board Member

1],[Board Member 2], [Board Member 3] and [Board Member 4]. The purpose of the presentation was to highlight progress of the proposed changes within the operations team and to provide a general overview of current activities.

On or around 5thMarch 2018, we are aware that [Employee 2] commenced employment with [Company 2] with a view to looking at [Company 2]“ challenges, discuss[ing]…successes and [to] get a feel for how [the] business can exceed all…expectations”, and to establish how [Company 2] can “grab a bigger piece of the customer’s wallet”. In essence, [Employee 2] was drafted in to look at the transformation of the business which included the management structure, and to shape the business. It is submitted, that following [Employee 2] appointment, matters at work deteriorated significantly for [Employee 1].

On the 7thMarch 2018 an email was communicated business wide, to introduce [Employee 2**]** who would be joining [Company 2] from [Company 1], the holding company. [Employee 1] was personally informed by [Manager] that he was to take an overview of the professional services on offer and establish the key strengths, pull them together and promote these to the group, in line with the original email sent to the business on the 7thMarch 2018.

Thereafter, on the 15thMarch 2018 [Employee 1] received a very belittling and patronising email from [Employee 2]  which had the effect of humiliating and demeaning [Employee 1]. The email questioned why project admin staff were being hired in St Albans. This was despite [Manager]approval the year before, and [Employee 1] presenting to the Board on the 25thFebruary 2018 which included [Employee 2] and detailing exactly why staff were being hired. Notwithstanding this, [Employee 1] politely responded to [Employee 2]reiterating what had been discussed previous September and again, most recently, some 2 weeks prior.

[Employee 2] responded in a very aggressive tone, making flippant remarks, without any foundation whatsoever. He alleged that it was a “pointless waste of company money to transfer operations to St Albans without a cost saving measure”. This statement is completely incorrect and without merit. Had [Employee 2], paid due consideration to [Employee 1] presentation, he would have known that within that presentation it was noted that the PCO office was to transfer to St Albans with an initial headcount reduction of 2 staff, with a combined non loaded cost of £57k per annum. [Employee 1] found [Employee 2], emails to him completely unacceptable and disrespectful, as [Employee 1]  felt that [Employee 2], was inferring that he was not being honest and was “wasting” company money. Having regard to [Employee 1] loyalty, integrity and commitment to the business, he was deeply offended by [Employee 2], emails. So much so, that [Employee 1] drafted his resignation letter there and then. However, [Employee 2], convinced [Employee 1] to see how the next few weeks progressed, before making a decision. [Employee 1] therefore refrained from submitting his resignation letter.

Our client has informed us that the consensus amongst staff who were previously from [Company 1], is that they do not feel respected by their [Company 2] colleagues and that [Company 2]management are trying to push the original [Company 1] employees out of the business.

A meeting was scheduled for 20thApril 2018. Present in this meeting was [Employee 1], [Employee 2], [Employee 3] and [Employee 4]. During this meeting, [Employee 2] spoke to [Employee 1] in a threatening manner and questioned, what “all this talk of [his] resignation” was. [Employee 1] began to engage in a discussion with [Employee 2], but it stopped when it became apparent that [Employee 2] was taking the discussion to a heated level, which resulted in him forcefully pushing his chair way from the desk and raising his voice. [Employee 1] continued with the meeting

and went through the topics for the meeting, in particular, the figures relating to the relocation to St Albans and demonstrated very clearly, that his cost cutting initiative has been successful.

[Employee 1] remained apprehensive in the business, having regard to the way he was being treated, but continued performing his role with the utmost integrity and to the highest standard.

Subsequently on 28thApril 2018, our client invited [Employee 2] to a meeting which was labelled as a “general catch up meeting”. During this meeting [Employee 2] communicated the he would be taking full accountability for the projects delivery group that reported to [Employee 1]. This decision was made unilaterally, with no prior discussion or consultation with [Employee 1]. [Employee 1] was deeply upset and anxious at [Company 2]  attempts to remove him from the business, worryingly for him, by any means or cost necessary.

[Employee 2] suggested to [Employee 1] that a follow up would take place in a few weeks’ time, to discuss the change further and to formulate a plan of action, including the appropriate form of communication to the business of the proposed change.

On the 4thMay 2018, [Employee 1] met with [Employee 2] to discuss the support services around the MOJ/PICTA contracts. Several hours after this meeting, [Employee 2] entered [Employee 1] office, unannounced and quizzed him on how he thought the earlier meeting went. [Employee 2] then started discussing [Employee 1] our client’s mindset and his current “mental state”, to which [Employee 2] was attempting to suggest that [Employee 1] was struggling and that he would only continue to do so as the business grows. For the avoidance of doubt, yes, [Employee 1] is experiencing symptoms of stress and anxiety, but not because he is unable to cope with his role, but rather, because of the systematic campaign to remove him from a company he has worked tirelessly for and exerted all efforts to make the business a success. After over 12 years of service, our client is appalled at the manner in which he is being treated.

[Employee 2] then went on to suggest that having regard to [Employee 1] current “mental state”, he should consider his options. Our client felt uncomfortable engaging in this meeting which he had no prior warning of, and so, simply stated that has contributed a lot to the business and that he felt he had more to offer. [Employee 2] began detailing that the options were likely to be that [Employee 1] accepted a demotion and took another role, enter into settlement discussions, resign or engage in a performance improvement plan (“PIP”). It was wholly unacceptable and disingenuous for [Employee 2] to even mention the option of the PIP, as we disagree entirely that [Employee 1] performance has deteriorated, or is below an acceptable standard. In the event [Company 2] was concerned about [Employee 1] performance, then relevant discussions should have been had with [Employee 1], discussing the same, which have not happened, and nor is there any foundation or basis for any such improvement plan. In short, [Employee 2] threat of a PIP was vexatious and malicious.

[Employee 1] was alarmed and confused at the tone of the discussion he was having with [Employee 2], especially as he was only a temporary member of staff. [Employee 1] therefore queried with [Employee 2], whether the rumours that had been circulating were correct, namely that he was now a permanent member of staff, to which he nodded in agreement. [Employee 1] also commented that communication on this was substandard, to which [Employee 2] agreed.

[Employee 2] continued to press [Employee 1] as to what he wanted to do, pressurising him to make a decision. [Employee 1] stated that he had never been in a situation like this before, and that he believed [Employee 2] remit was to shape the organisation going forward, and that as part of his plans, he did not see [Employee 1] in his current role, or in any role, progressing forward with the company.

[TEXT OMITTED]

1. On 15th March 2018, our client received very rude and belittling emails from [Employee 2], making unfounded accusations despite a lengthy presentation on the 28th February 2018.
2. Our client has been sidelined because he is an original [Company 1] employee;
3. 3. On the 20thApril 2018, [Employee 2] accosted our client in a threatening and intimidating
manner;
4. On 28thApril 2018, our client was demoted, when [Employee 2]  informed him that he would be taking over the Projects Delivery Group. This was without any prior consultation or discussion with our client;
5. On 4thMay 2018, [Employee 2] entered our client’s office unannounced and questioned his “mental state” and told him that he should consider his options in the business;
6. On 4thMay 2018, [Employee 2] threatened our client with a PIP;
7. On 18thMay 2018 [Employee 2] “nodded” so as to agree that he did not see our client being part of the [Company] future;
8. On 24thMay '18, [Manager]communicated [Employee 2] new role, only 4 days after our client had been informed. This was despite our client being assured that there would be further discussion with him on this communication, as it affected him;
9. The email of 24thMay 2018, failed to mention our client at all, thereby leaving employees
of [Company 2] questioning our client’s future in the business;
10. The above actions were done, with the sole intention of trying to push our client out of the business; and
11. Today, our client received communication from a colleague, confirming his suspicion that [Company 2] are communicating that he has left, which is not the case.

Please would you be kind enough to disclose all of the minutes from the recent meetings with our client, and copies of all correspondence relating to you informing our client that there are concerns over his performance. We have also advised our client of his right to make a Subject Access Request pursuant to the General Data Protection Regulation 2018.  Please note, in the event our client exercises his right to this request, you will be a liberty to furnish and provide him with all relevant documentation.

For the avoidance of doubt, this letter should be treated as our client’s grievance.

We look forward to hearing from you.

Yours faithfully

[Lawyer name and signature]

**[Corresponding Without Prejudice Letter below ( sent at the same time)]**

[Date] **Strictly Private & Confidential**

FAO. [Employee 1] name,

[Company name]

[Company address]

By email: [Email]

Dear Sirs

[Employee 1] -v- [Company]

**WITHOUT PREJUDICE SAVE AS TO COSTS**

Dear Sirs

We write further to our open letter of today’s date.

You will see from our open letter that our client is extremely aggrieved by the way he has been treated and is appalled by the systematic campaign to remove him from the business. You should also be in receipt our client’s sickness note, confirming that he is suffering with stress and anxiety- under management.

We have advised our client, that should he resign and elect to commence proceedings in an Employment Tribunal, we consider that he will be successful in his claim for unfair dismissal.

Our client is prepared to give you an opportunity to settle this matter amicably, without the need for proceedings, having regard to his longstanding employment with the business and his deteriorating health. However, your most recent offer of £25,000 is, to be frank, insulting, and does not even cover our client’s contractual notice pay. Our client considers it will take him a year to get another job, and even then, he is likely to have to take around a £25,000 pay cut.

In an attempt to resolve matters swiftly, I am instructed to make the following counteroffer in full and final settlement:

1.A mutual termination date of our client’s employment – TBC;

2.To pay our client 6 months’ notice in lieu and 6 months’ car allowance in lieu;

3.To pay our client his accrued but untaken holiday;

4.To pay our client an ex gratia sum of £62,462.86 [6 months’ net salary, 6 months’ car allowance, £25,000 deficit in salary]

5.To pay our client a pro-rated bonus of £7,500;

6.The above being incorporated into a Settlement Agreement.

In exchange for the above, my client will agree to confidentiality and mutual non-derogatory comment clauses, as well as forfeiting the grievance procedure and his Subject Access Request.

In light of both my client’s desire and [Company] desire to try and resolve this matter as soon as possible, this offer will remain open for acceptance for 7 days from the date of this letter.

We look forward to hearing from you.

Yours faithfully

[Lawyer]