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Conditional Fee Agreements (Lite) – Clinical Negligence Claims

This leaflet explains Conditional Fee Agreements (sometimes known as “no win no fee” agreements).

A Conditional Fee Agreement (“CFA”) is an agreement by us not to charge you if we do not recover damages for you. However, if we do recover damages for you, we can charge a “success fee” (explained below) in return for us taking the risk of not being paid.

The CFA is a written agreement between us which sets out the work we are going to do and the situations in which we can charge you for that work, as well as the situations in which we cannot charge you. The CFA only covers our fees – it does not cover expenses such as the cost of medical reports and barristers’ fees. We will discuss with you the possible ways of paying for these expenses, which are sometimes called disbursements.

Do I have to pay anything if I win?

Under the terms of the CFA, you are responsible for paying our fees if you win. If you win the case you will usually be entitled to recover your costs from the other party. We would advise you if there was any risk of that not being the case.

Success Fee

The CFA will provide for you to pay us a success fee if you win. The success fee is calculated as a percentage of our fees. The exact percentage will depend on the nature of the case and is calculated according to the risks involved in us taking on your case under a CFA (as we do not get paid any of our costs if we do not win).

Your opponent is responsible for paying this success fee if we win the case. You do not have any liability for this success fee.

The success fee is calculated as a percentage of our fees, not as a percentage of your damages. The maximum that the law allows us to charge is an additional 100% of our fees.

Expenses

During the case there will be expenses, which usually have to be paid as they arise. These include (among other things) the charges of medical experts and other expert witnesses for preparing reports and attending meetings, charges for obtaining copies of medical records and X Rays, court fees and barrister’s fees. Barristers are sometimes, but not always, prepared to enter a CFA as well. We have agreed to fund these for you.

What happens if I lose?

If you lose, or if we both agree not to pursue the case further, you will not have to pay our fees, but you will still have to pay the expenses. You may also have to pay the other side’s solicitors’ fees and expenses.

Insurance policies are available to protect you against this risk. Under these policies the insurer will usually pay your expenses and your opponent’s solicitors’ fees and expenses if you lose or if the insurer has agreed to the claim being dropped.

Penningtons has negotiated an agreement with First Assist Insurance Services Limited to use an insurance policy which they provide for clinical negligence cases, called Pursuit. We can issue an insurance policy to you ourselves without having to make an application to the insurer. The insurance premium is fixed by reference to the costs incurred in the claim ie the longer the claim goes on for and the higher the costs, the higher the premium. The other benefit is that the premiums are deferred and insured, so if you win the premium is not payable until you have recovered damages (and you can then claim most of it back from the opponent) and if you lose you will not have to pay the premium at all.

Under our arrangement with the insurer we have agreed that most clinical negligence claims will be insured through this scheme. Because this spreads the risk for the insurer, it keeps the cost of the premiums down. It also means that we can issue a policy to you immediately on signing the CFA. This will mean that you are protected against liability for the other side's costs and in respect of expenses you are meeting right from the outset of your case.

Other points

Before signing a CFA it is important that you read it carefully and make sure you understand it, or ask us to explain anything you do not understand. This note does not cover every aspect of the agreement. Before you sign it we will also go through it with you, either on the phone or at a meeting.

Once you have signed the CFA, you can only drop the case if we agree, or if you agree to pay us our fees. This is because we agree to take the risk of you losing the case or abandoning it on our advice, but not the risk of you deciding not to go ahead when we think the case should proceed.

Who to contact for further advice

If you would like to discuss your potential claim with an experienced solicitor please contact:

Tim Palmer in Basingstoke

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Specialist advice should be obtained before taking or refraining from taking action based on comments in this handout which is only intended as a brief note.

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