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Conditional Fee Agreements in Clinical Negligence Claims – Standard CFA

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. You will usually be able to claim back most of our fees and the expenses you have paid from your opponent, and we will deal with this for you. The opponent will probably not have to pay all of the costs. This is because there are often costs that it is reasonable for us to charge you, but which the law says you cannot claim back from your opponent. For example:

- If we obtain a medical report which does not support your case and therefore do not disclose it to the other side or rely on it to prove your case

- If we correspond with or obtain a statement from a potential witness whose evidence turns out not to support the case and we decide not to use that evidence
- If the claim is based on several specific allegations and some of those succeed but others do not.
- Certain costs in relation to funding

We will usually be able to agree with the other side what costs they have to pay. If this is not possible, the costs will be assessed by the Court, which will decide how much the opponent has to pay and how much you have to pay.

If you have taken out an insurance policy (see below), the opponent will also have to pay the insurance premium at the end of 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. There are two elements that we take into account in deciding what percentage we will charge:

- A. How risky we think the case is (because if you lose, we do not get paid) and
- B. How long we think the case will last (because we will not get paid until the end of the case if you do win) and whether we have agreed to pay any of the expenses

Part A is usually the larger part of the percentage charged. Your opponent is responsible for paying this part.

Part B is usually between 5% and 10%. You are responsible for paying this part and you cannot claim it back from your opponent.

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.

These may be paid by you or we may agree to fund them 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 i.e 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 the cost 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.

We consider each case on its own facts to see whether we will offer a CFA. If we can offer it in your case, we will contact you with details of the proposed success fee, the insurance premium if applicable and an agreement to sign.

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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Philippa Luscombe in Godalming
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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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