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Conditional fee agreements and personal injury 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 and not to charge you in any event until the conclusion of your claim. The CFA is a written agreement between us which sets out the work we are going to do and explains what costs you will not be responsible for and where you may be liable for some costs. 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. Please note that the opponent will probably not have to pay *all of* the costs. Successful claimants usually get back between 75% and 90% of the total amount of the costs incurred. 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 an expert 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.
- Costs associated with setting up funding and advising you on certain aspects

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. You will not however be liable to pay anything unless and until you have succeeded in your claim and recovered damages and we will aim to keep any sums payable by you to a minimum.

If you have taken out an insurance policy (see below), the opponent will also have to repay you *most of* the insurance premium, although it is possible that not all of the premium will be recovered.

Success fee

The CFA will provide for you and the other side 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 such as experts fees, court fees etc as we go through the case

Part A is usually the larger part of the percentage charged. Your opponent is responsible for paying this part and you do not pay any of this.

Part B is usually between 5% and 10% of the costs incurred. 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 but the majority will usually be the part payable by the other side.

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 barristers' fees. Barristers are sometimes, but not always, prepared to enter a CFA as well.

Sometimes clients are able to pay these expenses themselves but usually Penningtons will be willing to lend money to pay for specific expenses in return for an increased success fee being payable under Part B, explained above. We will need to discuss with you how expenses will be paid in your case.

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 reimburse you for any expenses and will pay 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 DAS insurance to use an insurance policy which they provide for personal injury cases, called 80e Justice Solutions. We can issue an insurance policy to you ourselves without having to make an application to the insurer. The policies have agreed fixed premiums for the early stages. 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 all personal injury cases 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.

We do not get any financial benefit, such as commission, from this arrangement with the insurer. It just means that we can issue policies more quickly and on agreed terms, which is better for us and for you. We can only deal with the 80e product of DAS for insurance contracts of this particular type.

Other points

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
01256 407100
Tim.Palmer@penningtons.co.uk

Philippa Luscombe in Godalming
01483 791800
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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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