



CONDITIONAL FEE AGREEMENTS AND 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 and not to charge you, in any event, until the conclusion of your claim.**

The CFA only covers our fees - it does not cover expenses such as the cost of medical reports, court fees and barristers' fees known as *disbursements*, nor does it cover any costs that you may be liable to pay the other side. You will be protected against these costs by insurance that you will take out.

SUCCESS FEE

In all CFA cases we take the risk that we will not win and so will not get paid for any of the work we do. As such, we are entitled to charge you a success fee if you win. The success fee also takes into account the fact that we do not get paid for the work that we do until the end of the case and will be funding expenses and disbursements for you (things such as experts' fees) up front throughout the case so that you do not have to pay for them.

The success fee is calculated as a percentage of our fees (and not of your damages). The exact percentage will depend on the nature of the case and we will advise you of this when we send you the CFA to sign. Because this comes out of your damages, we will agree that we will never take more than a certain percentage of the damages that you recover. You are therefore guaranteed to retain the majority of your damages.

INSURANCE POLICY

Under the terms of your CFA, you do not bear any risk of paying any of our costs if you do not win your claim. If you win your claim, you are liable only to pay the success fee. However, win or lose, you are responsible for the payment of any disbursements that are incurred in the case and in some circumstances, even if you win (mainly if you fail to 'beat' a defendant's offer to settle

your claim), you can end up with a liability for some of the defendant's costs.

Insurance policies are available to protect you against this risk. Under these policies the insurer will usually reimburse you for any expenses if you do not win the case (the defendant will reimburse you if you win - see below) and will pay your opponent's solicitors' fees and expenses if you end up with a liability to pay any because you fail to beat an offer made by the defendant.

Penningtons Manches has an agreement with DAS to use an insurance policy, 'LawAssist', which they provide for clinical negligence cases and has delegated authority to issue those policies. It means that we can issue your policy immediately on signing the CFA without having to apply to the insurer. This protects you against liability for any defendant's costs and your expenses from the outset of your case. A further benefit is that the premiums are deferred and insured so if you win the premium is not payable until you have recovered damages and if you lose you will not have to pay the premium at all.

We are required to tell you whether we have a financial interest in recommending this insurer and we confirm that we do not. However, there are a number of such insurance products on the market, all of which operate in different ways and with different formulas for the premium payable. We have decided to use one insurance provider, DAS. We do not carry out a detailed analysis of the other products available and comparative premiums. Our agreement to use this policy enables us to have the benefit of the delegated authority scheme to offer to our clients so, to that extent, we have an interest in using this policy.

In your case we are recommending the LawAssist policy because it offers fixed premiums for cover for cases. We think that the certainty of a fixed premium means that you know your liability and we think it likely that the premium in your case will be lower than those calculated according to the exposure that the insurer has in the case.



Full details of the policy terms and cover are in the client documentation that we will send to you.

PREMIUMS PAYABLE

Unlike most insurance policies, you do not need to pay a premium when you take out your policy and **if you do not win your case, no premium is payable.**

If your case is successful, the insurance premium becomes due. It is calculated at the end of the case because the premium you pay is calculated according to the damages that you recover. The premium is two parts:

Part A - cover for expenses incurred in getting expert reports on breach of duty and causation of damage. This part of the premium is recoverable from the other side – although they can argue about the amount they should pay. **However you only have to pay what is recovered from the other side.**

This is calculated as follows:

- Expenses incurred pre issue of proceedings – premium = 200% of sum incurred + IPT
- Expenses incurred after issue of proceedings – premium = 25% of sum incurred + IPT

Part B - protects you in relation to all other expenses that you incur – other expert fees, barrister's fees, court fees etc **and** protects you if the Court awards costs against you for failing to beat an offer made by the other side. **This part of the premium is payable by you out of your damages** and is calculated as follows:

- Case settled prior to issue of proceedings and for up to £10,000: £250 + IPT = £273.75
- Case settled prior to issue of proceedings and for less than £100,000: £500 + IPT = £547.50
- Case settled prior to issue of proceedings and for more than £100,000: £3,000 + IPT = £3,285
- Case settled after issue of proceedings for up to £10,000: £500 + IPT = £552.49
- Case settled after issue of proceedings for less than £100,000: £2,000 + IPT = £2,190
- Case settled after issue of proceedings for more than £100,000: £12,000 + IPT = £13,140

WHAT DO I PAY IF I WIN MY CASE?

Our fees - 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. We will usually be able to agree with the other side what costs they have to pay. If this is not possible, the court, will decide how much the opponent has to pay. We will not charge you the difference between the costs we incur and the costs that are recovered.

- **Success fee** - this is an agreed percentage of our fees that we charge you. To ensure that you retain the majority of your damages we will not take more than 25% of your past losses and compensation for your injury by way of success fee. We will agree the specific percentages with you when we send the CFA.
- **Your disbursements (expenses)** – we will pay these for you whilst the case is ongoing but you are responsible for repaying us if you win. You will usually be able to claim back most, if not all of the expenses you have paid from your opponent. You will not however be liable to pay anything unless and until you have succeeded in your claim.
- **Opponent's costs** - if you have won your case, you should not have any responsibility for the other side's costs. The only situation in which this may be different is if the other side makes you a Part 36 offer to settle your claim which you do not accept and you later fail to do better than that offer. Should that occur, the other side may seek to recover their costs from you after the offer was made. Your insurance policy with DAS will protect you from this provided that we and they advised you to reject that offer.
- **Insurance premium** – your insurance premium will only become payable if you win your case and is then payable by you out of your damages. We will advise you of the level of your premium when setting up your CFA.

WHAT DO I PAY IF I LOSE MY CASE?

- **Our fees** - we will **not charge you any fees** if we do not win your case.



- **Success fee** - if we do not win the case, **no success fee is payable.**
- **Your disbursements (expenses)** - we will pay these for you whilst the case is ongoing but you are responsible for repaying us if you do not win your case. However, your DAS insurance policy will protect you and pay these expenses so that you pay nothing.
- **Opponent's costs** – if you have not won your case, the court rules provide that the other side cannot seek costs from you.
- **Insurance premium** – your insurance premium is self-insured and will only become payable if you win your case.

FIND OUT MORE

For further information or to discuss your potential claim with an experienced solicitor, please contact:

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