

## **Conditional Fee Agreement**

- For use in personal injury cases, but not clinical negligence

This agreement is a binding legal contract between you and your solicitor/s. Before you sign, please read everything carefully.

Words like 'our disbursements', 'basic charges', 'win' and 'lose' are explained in condition 3 of the Law Society Conditions which you should also read carefully.

### **Agreement date**

[.....]

**I/We, the solicitor/s** [.....]

**You, the client** [.....]

### **What is covered by this agreement**

- Your claim against [.....] for damages for personal injury suffered on [.....].
- Any appeal by your opponent.
- Any appeal you make against an interim order during the proceedings.
- Any proceedings you take to enforce a judgment, order or agreement.

### **What is not covered by this agreement**

- Any counterclaim against you.
- Any appeal you make against the final judgment order.

### **Paying us**

If you win your claim, you pay our basic charges, our disbursements and a success fee. The amount of these is not based on or limited by the damages. You are entitled to seek recovery from your opponent of part or all of our basic charges, our disbursements, a success fee and insurance premium. Please also see conditions 4 and 6.

It may be that your opponent makes a Part 36 offer or payment which you reject and, on our advice, your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. We will not add our success fee to the basic charges for the work done after we received notice of the offer or payment.

If you receive interim damages, we may require you to pay our disbursements at that point and a reasonable amount for our future disbursements.

If you receive provisional damages, we are entitled to payment of our basic charges, our disbursements and success fee at that point.

If you win but on the way lose an interim hearing, you may be required to pay your opponent's charges of that hearing. Please see conditions 3(h) and 5.

If on the way to winning or losing you win an interim hearing, then we are entitled to payment of our basic charges and disbursements related to that hearing together with a success fee on those charges if you win overall.

If you lose, you pay your opponent's charges and disbursements. You may be able to take out an insurance policy against this risk. Please also see conditions 3(j) and 5. If you lose, you do not pay our charges but we may require you to pay our disbursements.

If you end this agreement before you win or lose, you pay our basic charges. If you go on to win, you pay a success fee. Please also see condition 7(a).

We may end this agreement before you win or lose. Please also see condition 7(b) for details.

### **Basic charges**

These are for work done from now until this agreement ends.

### **How we calculate our basic charges**

These are calculated for each hour engaged on your matter [from now until the review date on [...]]. Routine letters and telephone calls will be charged as units of one tenth of an hour. Other letters and telephone calls will be charged on a time basis. The hourly rates are:

- Solicitors with over four years' experience after qualification  
£ [.....]
- Other solicitors and legal executives and other staff of equivalent experience  
£ [.....]
- Trainee solicitors and other staff of equivalent experience  
£ [.....]

[We will review the hourly rate on the review date and on each anniversary of the review date. We will not increase the rate by more than the rise in the Retail Prices Index and will notify you of the increased rate in writing.]

### **Success fee**

This is [.....]% of our basic charges

The reasons for calculating the success fee at this level are set out in Schedule 1 to this agreement.

You cannot recover from your opponent the part of the success fee that relates to the cost to us of postponing receipt of our charges and disbursements (as set out at paragraphs (a) and (b) at Schedule 1). This part of the success fee remains payable by you.

### **Value added tax (VAT)**

We add VAT, at the rate (now [.....]%) that applies when the work is done, to the total of the basic charges and success fee.

### **Law Society Conditions**

The Law Society Conditions are attached because they are part of this agreement. Any amendments or additions to them will apply to you. You should read the conditions carefully and ask us about anything you find unclear.

### **Other points**

**Immediately before you signed this agreement, we verbally explained to you the effect of this agreement and in particular the following:**

- (a) the circumstances in which you may be liable to pay our disbursements and charges;
- (b) the circumstances in which you may seek assessment of our charges and disbursements and the procedure for doing so;
- (c) whether we consider that your risk of becoming liable for any costs in these proceedings is insured under an existing contract of insurance;
- (d) other methods of financing those costs, including private funding, Community Legal Service funding, legal expenses insurance, trade union funding;
- (e) (i) In all the circumstances, on the information currently available to us, we believe that a contract of insurance with [.....] is appropriate. Detailed reasons for this are set out in Schedule 2.
- (e) (ii) In any event, we believe it is desirable for you to insure your opponent's charges and disbursements in case you lose.
- (e) (iii) We confirm that we do not have an interest in recommending this particular insurance agreement.

### **Signatures**

Signed for the solicitor/s

Signed by the client

I confirm that my solicitor has verbally explained to me the matters in paragraphs (a) to (e) under "Other points" above.

Signed.....(Client)

I specifically confirm that I verbally explained to the client the matters in paragraphs (a) to (e) under "Other points" and confirm the matters at (e) in writing in Schedule 2.

Signed.....(Solicitors)

This agreement complies with the Conditional Fee Agreements Regulations 2000 (S.I.2000 No.692).

### **Schedule 1 The Success Fee**

The success fee is set at [.....]% of basic charges and cannot be more than 100% of the basic charges.

The percentage reflects the following:

- (a) the fact that if you win we will not be paid our basic charges until the end of the claim;
- (b) our arrangements with you about paying disbursements;
- (c) the fact that if you lose, we will not earn anything;
- (d) our assessment of the risks of your case. These include the following:
- (e) any other appropriate matters.

The matters set out at paragraphs (a) and (b) above together make up [.....]% of the increase on basic charges. The matters at paragraphs (c), (d) [and (e)] make up [.....]% of the increase on basic charges. So the total success fee is [.....]% as stated above.

### **Schedule 2 The Insurance Policy**

In all the circumstances and on the information currently available to us, we believe, that a contract of insurance with [.....] is appropriate to cover your opponent's charges and disbursements in case you lose.

This is because

We are not, however, insurance brokers and cannot give advice on all products which may be available.

### **Law Society Conditions**

## **1. Our responsibilities**

We must:

- always act in your best interests, subject to our duty to the court;
- explain to you the risks and benefits of taking legal action;
- give you our best advice about whether to accept any offer of settlement;
- give you the best information possible about the likely costs of your claim for damages.

## **2. Your responsibilities**

You must:

- give us instructions that allow us to do our work properly;
- not ask us to work in an improper or unreasonable way;
- not deliberately mislead us;
- co-operate with us;
- go to any medical or expert examination or court hearing.

## **3. Explanation of words used**

(a) *Advocacy*

Appearing for you at court hearings.

(b) *Basic charges*

Our charges for the legal work we do on your claim for damages.

(c) *Claim*

Your demand for damages for personal injury whether or not court proceedings are issued.

(d) *Counterclaim*

A claim that your opponent makes against you in response to your claim.

(e) *Damages*

Money that you win whether by a court decision or settlement.

(f) *Our disbursements*

Payment we make on your behalf such as:

- court fees;
- experts' fees;
- accident report fees;
- travelling expenses.

(g) *Interim damages*

Money that a court says your opponent must pay or your opponent agrees to pay while waiting for a settlement or the court's final decision.

(h) *Interim hearing*

A court hearing that is not final.

(i) *Lien*

Our right to keep all papers, documents, money or other property held on your behalf until all money due to us is paid. A lien may be applied after this agreement ends.

(j) *Lose*

The court has dismissed your claim or you have stopped it on our advice.

(k) *Part 36 offers or payments*

An offer to settle your claim made in accordance with Part 36 of the Civil Procedure Rules.

(l) *Provisional damages*

Money that a court says your opponent must pay or your opponent agrees to pay, on the basis that you will be able to go back to court at a future date for further damages if:

- you develop a serious disease; or
- your condition deteriorates;

in a way that has been proved or admitted to be linked to your personal injury claim.

(m) *Success fee*

The percentage of basic charges that we add to your bill if you win your claim for damages and that we will seek to recover from your opponent.

(n) *Win*

Your claim for damages is finally decided in your favour, whether by a court decision or an agreement to pay you damages. 'Finally' means that your opponent:

- is not allowed to appeal against the court decision; or
- has not appealed in time; or
- has lost any appeal.

#### **4. What happens if you win?**

If you win:

- You are then liable to pay all our basic charges, our disbursements and success fee – please see condition 3(n).
- Normally, you will be entitled to recover part or all of our basic charges, our disbursements and success fee from your opponent.

- If you and your opponent cannot agree the amount, the court will decide how much you can recover. If the amount agreed or allowed by the court does not cover all our basic charges and our disbursements, then you pay the difference.
- You will not be entitled to recover from your opponent the part of the success fee that relates to the cost to us of postponing receipt of our charges and our disbursements. This remains payable by you.
- You agree that after winning, the reasons for setting the success fee at the amount stated may be disclosed:
  - (i) to the court and any other person required by the court;
  - (ii) to your opponent in order to gain his or her agreement to pay the success fee.
- If the court carries out an assessment and disallows any of the success fee percentage because it is unreasonable in view of what we knew or should have known when it was agreed, then that amount ceases to be payable unless the court is satisfied that it should continue to be payable.
- If we agree with your opponent that the success fee is to be paid at a lower percentage than is set out in this agreement, then the success fee percentage will be reduced accordingly unless the court is satisfied that the full amount is payable.
- It may happen that your opponent makes an offer that includes payment of our basic charges and a success fee. If so, unless we consent, you agree not to tell us to accept the offer if it includes payment of the success fee at a lower rate than is set out in this agreement.
- If your opponent is receiving Community Legal Service funding, we are unlikely to get any money from him or her. So if this happens, you have to pay us our basic charges, disbursements and success fee.

You remain ultimately responsible for paying our success fee.

You agree to pay into a designated account any cheque received by you or by us from your opponent and made payable to you. Out of the money, you agree to let us take the balance of the basic charges; success fee; insurance premium; our remaining disbursements; and VAT. You take the rest.

We are allowed to keep any interest your opponent pays on the charges.

Payment for advocacy is explained in condition 6.

*If your opponent fails to pay*

If your opponent does not pay any damages or charges owed to you, we have the right to take recovery action in your name to enforce a judgment, order or agreement. The charges of this action become part of the basic charges.

## **5. What happens if you lose?**

If you lose, you do not have to pay any of our basic charges or success fee. You do have to pay:

- us for our disbursements;

- your opponent's legal charges and disbursements.

If you are insured against payment of these amounts by your insurance policy, we will make a claim on your behalf and receive any resulting payment in your name. We will give you a statement of account for all money received and paid out.

If your opponent pays the charges of any hearing, they belong to us.

Payment for advocacy is dealt with in condition 6.

## **6. Payment for advocacy**

The cost of advocacy and any other work by us, or by any solicitor agent on our behalf, forms part of our basic charges. We shall discuss with you the identity of any barrister instructed, and the arrangements made for payment.

### *Barristers who have a conditional fee agreement with us*

If you win, you are normally entitled to recover their fee and success fee from your opponent. The barrister's success fee is shown in the separate conditional fee agreement we make with the barrister. We will discuss the barrister's success fee with you before we instruct him or her. If you lose, you pay the barrister nothing.

### *Barristers who do not have a conditional fee agreement with us*

If you win, then you will normally be entitled to recover all or part of their fee from your opponent. If you lose, then you must pay their fee.

## **7. What happens when this agreement ends before your claim for damages ends?**

### *(a) Paying us if you end this agreement*

You can end the agreement at any time. We then have the right to decide whether you must:

- pay our basic charges and our disbursements including barristers' fees when we ask for them; or
- pay our basic charges, and our disbursements including barristers' fees and success fees if you go on to win your claim for damages.

### *(b) Paying us if we end this agreement*

(i) We can end this agreement if you do not keep to your responsibilities in condition 2. We then have the right to decide whether you must:

- pay our basic charges and our disbursements including barristers' fees when we ask for them; or
- pay our basic charges and our disbursements including barristers' fees and success fees if you go on to win your claim for damages.

(ii) We can end this agreement if we believe you are unlikely to win. If this happens, you will only have to pay our disbursements. These will include barristers' fees if the barrister does not have a conditional fee agreement with us.



(iii) We can end this agreement if you reject our opinion about making a settlement with your opponent. You must then:

- pay the basic charges and our disbursements, including barristers' fees;
- pay the success fee if you go on to win your claim for damages.

If you ask us to get a second opinion from a specialist solicitor outside our firm, we will do so. You pay the cost of a second opinion.

(iv) We can end this agreement if you do not pay your insurance premium when asked to do so.

#### *(c) Death*

This agreement automatically ends if you die before your claim for damages is concluded. We will be entitled to recover our basic charges up to the date of your death from your estate.

If your personal representatives wish to continue your claim for damages, we may offer them a new conditional fee agreement, as long as they agree to pay the success fee on our basic charges from the beginning of the agreement with you.

### **8. What happens after this agreement ends**

After this agreement ends, we will apply to have our name removed from the record of any court proceedings in which we are acting unless you have another form of funding and ask us to work for you.

We have the right to preserve our lien unless another solicitor working for you undertakes to pay us what we are owed including a success fee if you win.

### **Notes for Accident Line Protect cases**

- For Accident Line Protect cases, you need to annex the following clause to the agreement

"Accident Line Protect insurance (ALP)

Accident Line Protect is an insurance policy only made available to you by solicitors who have joined the Accident Line Protect scheme.

You agree to pay a premium of £[.....] for Accident Line Protect Insurance when you sign this agreement. We undertake to send this to the broker on your behalf. If you lose after proceedings have been issued, Accident Line Protect will cover our disbursements and your opponent's charges and disbursements. It will not cover fees to your barristers or advocates. The maximum cover is £100,000.

If this agreement ends before your claim for damages ends, Accident Line Protect ends automatically at the same time."