

## **Accidents, Holiday Sickness, Medical Negligence & Personal Injury Claims**

Subject to our prior assessment of your case, we tend to represent all of our clients on general accident, holiday sickness, medical negligence and personal injury claims on a Conditional Fee Agreement, otherwise referred to as a “No Win-No Fee” basis. The maximum level we set our Success Fee at is 25%. In the event that we feel that we can only proceed on a private basis, we will advise you accordingly, in which case our hourly charging rates will apply (please see “Our Fee Earner Rates”).

Please see below for a more detailed explanation as to Bridger & Co Solicitors’ Conditional Fee Agreement (CFA).

### **Conditional Fee Agreements: what you need to know**

Definitions of words used in this document and our CFA are explained at the end of this document.

### **What do I pay if I win?**

If you win your claim, you pay our basic charges, the disbursements incurred and any success fee (see below). The amount of basic charges and disbursements is limited to the amounts you recover for these from your opponent. You can claim from your opponent part or all of our basic charges and disbursements and under our CFA you will be required to pursue the claim from your opponent.

If a success fee applies to your case, you also pay a success fee which will be calculated with reference to the basic charges recovered from your opponent. You cannot recover the success fee from your opponent.

It may be that your opponent makes a Part 36 offer or payment which you reject on our advice, and your claim for damages goes ahead to trial where you recover damages that are less than that offer or payment. If this happens, we will not charge for any work done or any disbursement which are not then recovered. You will probably have to pay the costs incurred by your opponent after the 21 days. If this happens the law prevents you from having to pay your opponents an amount greater than the damages you are awarded, unless:

- The proceedings have been struck out; or
- The claim is fundamentally dishonest; or
- The claim includes a claim for the financial benefit of someone else; or
- The claim is not for personal injuries or death

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

On the way to winning or losing you may be awarded costs, by agreement or court order. Under our CFA you will be required to seek such costs from your opponent. Where costs

are awarded/agreed, then we are entitled to payment of our basic charges and disbursements limited to the sums recovered from your opponent under the costs award/agreement and any additional amount awarded by the court. If a success fee applies to your case the success fee also applies to these basic charges if you win overall. The success fee is capped and will be set out in our CFA and is payable from your damages.

On receipt of any payments from your opponent in respect of your damages, we will retain an amount equal to 25% of your damages for general damages for pain, suffering and loss of amenity, and damages for financial loss, other than future financial loss, (net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions) as an on account payment towards our basic charges disbursements and the success fee applicable to your case. Before advising you to accept or reject any offer of settlement we will tell you how much of your damages relates to general damages and past financial loss. If the success fee (including VAT) payable under the CFA is less than 25% of your damages or is not payable at all, you are entitled to a refund as soon as our legal costs have been paid by the opponent.

### **What do I pay if I lose?**

If you lose, you will have to pay your opponent's charges and disbursements if:

- a) your claim is struck out by the court, for example on the basis that you had no reasonable grounds for bringing the proceedings or the court believe you or your representatives have acted obstructively or;
- b) your claim is found on the balance of probabilities to be fundamentally dishonest;
- c) if the claim was brought for the financial benefit of a third party.

If you lose, provided you keep to your responsibilities as set out in the Conditions below (see 'Your responsibilities') you will not be liable for our basic charges, success fee or the disbursements incurred.

### **Ending the agreement**

You will have the right to end the CFA agreement with us at any time

We will have the right to end the CFA agreement at any time on reasonable notice for good reason including:

- (i) if you do not keep to your responsibilities as set out in the conditions below;
- (ii) if you reject our opinion about making a settlement with your opponent (though we may agree with you to obtain a second opinion from specialist counsel outside our firm. You would then pay the cost of the second opinion when counsel is instructed which we will reimburse to you if counsel's fees are recovered from you opponent as a disbursement – such recovery may be possible in a substantial/complex case known as a multi-track case);
- (iii) if we believe that you are no longer likely to win your claim; or

- (iv) if we believe that your claim is no longer cost-effective. For these purposes we regard a claim as not cost-effective if a reasonable client who was liable to pay the costs of the claim whether or not it succeeded would not think that the potential benefit to be gained from continuing the claim justified the risk of having to pay the costs of the claim.

(This is not an exhaustive list).

Our CFA will end automatically if you die.

For what happens when the agreement ends please read the conditions below under the heading “What happens when our CFA ends before your claim for damages ends?”

### **Basic charges**

These are for work done in your case by our staff or other solicitors/legal representatives we instruct as our agents.

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

These are calculated for each hour or part of an hour engaged on your matter until the review date on 1<sup>st</sup> January annually when our hourly rate may increase by 5% in the absence of notification to the contrary. Routine letters, e-mails and telephone calls will be charged as units of one tenth of an hour. Other letters, e-mails and telephone calls will be charged on a time basis.

Our hourly rates are calculated on the basis of the rates which we think are likely to be allowed for the work in the court in which the claim in question would be conducted if proceedings were to be issued. The rates which apply to your case will be set out in our “Funding Information” letter which we will send to you, but you can also view are current Hourly Rates on our website on the “Our Fee Earner Rates” page.

We review the hourly rate on the review date and on each anniversary of the review date.

### **Fixed Fee Recovery**

In certain cases, the basic charges that we are permitted to recover from your opponent are usually fixed by law. There are various different stages of fixed costs which the Courts have sanctioned. We will happily discuss these with you should you wish to do so.

### **Success fee**

The total success fee shall not exceed 25% of the amount of damages awarded for past financial losses and for general damages (pain, suffering and loss of amenity). This means that the amount you have to pay for the success fee will never be more than 25% of this part of your damages and, as long as you have taken out ATE insurance or there is no payment to the other side for their costs (applicable only in very limited circumstances – see above) you will keep 100% of any damages awarded for future losses.

If your claim is successful you agree we will ask your opponent to pay your damages award to us. We will immediately send payment to you, less an amount on account of our costs of up to a maximum of 25% of the amount of damages awarded for past financial losses and for general damages (pain, suffering and loss of amenity). If our costs are subsequently reduced by the court or we agree a reduction in our fees with your opponent, the success

fee you have to pay may also reduce. If that happens, we will refund you the difference once we receive payment for those costs from your opponent.

If you agree to take out an after the event (ATE) insurance policy which we have recommended to you then the premium will remain your liability

If you are the Executor or Administrator of the estate of a person for whom we were acting on a CFA in relation to the same matter but who died before the case concluded, you agree on behalf of the estate to pay any success fee that would have been payable under that agreement if the deceased had not died and we had continued to represent him/her to the conclusion of the case.

### **Value Added Tax (VAT)**

We add VAT where applicable, at the applicable rate (currently 20%) to the total of the basic charges and success fee and any disbursements on which VAT is chargeable. VAT is included within the success fee cap so, as outlined, the amount you have to pay for the success fee will never be more than 25% of your damages for past financial losses and for general damages and you will keep 100% of any damages awarded for future losses.

### **ATE (After The Event) Insurance**

It may be possible to insure your case against the risk of having to pay your opponent's charges and disbursements but the insurance premium is not recoverable from your opponent and would remain payable by you if you win. If you lose, the premium will not be payable. Such a policy will normally cover your opponent's costs (to avoid them being deducted from your damages) if you fail to beat any (Part 36) Offer to Settle your claim, which you reject following our advice.

As with any insurance policy there are conditions which you would have to comply with and if you fail to do so the insurer could refuse to pay, leaving you to pay from your own pocket the costs of the other party. For example, cover would normally be excluded for dishonest claims, where advice is not followed etc.

### **Conditions**

The Conditions below are part of the agreement. You should read the conditions carefully and ask us about anything you find unclear.

### **Our responsibilities**

We will:

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

### **Your responsibilities**

You will:

1. give us instructions that allow us to do our work properly;
2. not ask us to work in an improper or unreasonable way;
3. not deliberately mislead us or anybody else concerned with your claim;
4. co-operate with us;
5. go to any medical or expert examination or court hearing;
6. fully comply with the terms of this agreement including those terms applicable after this agreement has ended;
7. promptly pay any premium due on a policy of legal expenses insurance covering your claim, where applicable.

Note: If you fail to comply with any of these responsibilities, we will not be liable to pay any disbursements on your behalf, whether or not this agreement is ended. These will be your liability to pay and you will be liable to reimburse us for any disbursements we have paid.

### **Dealing with costs if you win**

1. You are liable to pay all our basic charges and disbursements, limited to the amount of the basic charges and disbursement we recover from your opponent.
2. You can (and are required to) claim our basic charges and disbursements from your opponent if you win.
3. You cannot recover a success fee or insurance premium from your opponent. If a success fee applies to your case you remain responsible for paying our success fee if your case is successful.
4. If we and your opponent cannot agree the amount, the court will decide how much you can recover.
5. It may happen that your opponent makes an offer of one amount that includes payment of our costs (or an amount on terms that no costs are payable). If so, unless we consent, you agree not to tell us to accept the offer. We will consent only if you agree that we may retain from that offer in costs, disbursements and any success fee the amount we would recover for those items if the case had concluded (with costs payable by your opponent) for the amount we advise you should accept.
6. If your opponent is receiving Community Legal Service funding or is insolvent, we are unlikely to get any money from him or her and will not advise the case to proceed.
7. 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 amount payable to us under this agreement. You take the rest.
8. Where an order for costs is made in your favour, we shall seek to recover the interest from your opponent in accordance with the Judgments Act 1838, Senior Courts Act 1981 and County Courts Act 1984.

9. Where applicable, if all or part of a bill remains unpaid due to any non-compliance with 7 above, we are entitled to charge you interest.
10. We are allowed to keep any interest your opponent pays on the charges.

*If your opponent fails to pay*

11. 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 judgement, order or agreement. We will agree a separate retainer and/or CFA for that purpose.

**Payment for advocacy**

1. The cost of advocacy and any other work by us, or by any solicitor/legal representative agent on our behalf, forms part of our basic charges. Barristers' fees are disbursements. 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*

2. If a barrister is working for you on conditional fee terms, s/he will have made a separate CFA with us. This will usually provide that the barrister's fee and any success fee (where applicable) will be payable only in the event that your claim is successful. You will have to pay any fees that the barrister earns under his/her CFA in the same way as any other disbursement as set out in the agreement. If you lose, you pay the barrister nothing.

*Barristers who do not have a conditional fee arrangement with us*

3. If you win, then you may be entitled to recover all or part of their fee from your opponent. If you lose, then their fee is payable but, win or lose, it is a disbursement and so only payable by you to the extent that it is recovered from your opponent.

**What happens when our CFA ends before your claim for damages ends?**

*Paying us if you end this agreement*

- 1.1. As indicated above you will be able to end the CFA at any time. If you do so and you continue with your claim and win, you will remain liable to pay our basic charges, disbursements and any success fee when the claim is concluded. You will be required to take all reasonable steps to be paid those charges and disbursements in full and to recover that, failing which you will remain liable to pay our basic charges and disbursements whatever is recovered for basic charges/disbursements. If you do not continue with the claim, you will be liable to immediately pay our basic charges and disbursement unless we advise you not to continue.

*Paying us if we end the CFA agreement*

- 1.2. If we end the CFA and you continue the claim and win, you remain liable to pay our basic charges, disbursements and success fee when the claim is concluded. You will be required to take all reasonable steps to secure from your opponent an entitlement to be paid those charges and disbursements in full and to recover that, failing which you will remain liable to pay our basic charges and disbursements

whatever is recovered for basic charges/disbursements. If you do not continue with the claim, you will be liable to immediately pay our basic charges and disbursements unless we advise you not to continue.

### *Death*

3. The CFA will automatically end if you die before your claim for damages is concluded. We will be entitled to recover our basic charges and disbursement up to the date of your death from your estate if your personal representatives do not continue your claim for damages on agreed terms as set out below.
4. If your personal representatives wish to continue with your claim for damages, we may offer them a new CFA, as long as they agree on behalf of your estate to pay the basic charges and disbursements, limited to the amounts we recover from your opponent, and the success fee (if applicable) under our current CFA with you.

### **What happens after the CFA ends**

1. After the CFA ends, we may apply to have our name removed from the records of any court proceedings in which we are acting unless you have another form of funding and ask us to work for you.
2. We have the right to preserve our lien for costs unless another solicitor working for you undertakes to pay us what we are owed including a success fee if you win.

### **Explanation of words used**

- (a) *Advocacy*

Appearing for you at court hearings.

- (b) *Basic charges*

Our charges for work done in your case by our staff or solicitors we instruct as our agents.

- (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 (other than legal costs or interest on legal costs) that you win whether by a court decision or settlement. Damages (or “award”) referred to within the CFA includes general damages for pain, suffering and loss of amenity; and damages for financial loss. Damages are net of any sums recoverable by the CRU (Compensation Recovery Unit) unless otherwise stated.

(f) *Our disbursements*

Payment we make on your behalf such as:

1. court fees;
2. experts' fees;
3. accident report fees;
4. counsel's fees;
5. 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) *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 the CFA ends.

(i) *Lose*

An outcome which is not a win.

(j) *Part 36 offers or payments*

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

(k) *Pre-Action Protocol Period*

The period during which a Claimant must (under the Pre-Action Protocols to the Civil Procedure Rules) set out their claim to a potential Defendant together with supporting information, and then attempt to negotiate a settlement without commencement of court proceedings.

(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;

1. you develop a serious disease; or
2. 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. Where a success fee applies, it is usually payable out of your damages but limited to a maximum of 25% (including VAT) of your award for past losses and general damages.

(n) *Trial*



The final contested hearing or the contested hearing of any issue to be tried separately and a reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgement.

(o) *Final judgment order*

An order made on a trial.

(p) *Interim hearing/order*

A hearing or order in the course of a claim other than the claim itself; examples are an application, a directions hearing, an appeal, an enforcement procedure, costs-only proceedings or proceedings for the assessment of costs (this is not an exhaustive list).

(q) *Win*

Your claim for damages is finally decided in your favour, whether by a court decision or an agreement to pay you damages or in any way that you derive benefit from pursuing the claim. If your case is finally concluded on the basis that costs alone are paid, this too would be classed as a decision in your favour.

A win for the purposes of an interim hearing is a decision agreement in your favour in respect of the interim hearing which includes an agreement or order to pay you any part of the costs of the interim hearing.

(r) *'Finally'*

Means that your opponent:

1. is not allowed to appeal against the courts decision; or
2. has not appeared in time; or
3. has lost any appeal.

**Your right to a detailed assessment**

2. You have a right to a detailed assessment by the court of the basic charges, the success fee and disbursements in your case.

**Legal Expenses Insurance**

We will enquire if you have any alternative legal expenses cover for your claim. We will safely assume that you have fully investigated this and unless you inform us in writing to the contrary, namely that you DO have an alternative funding mechanism in place, we will safely assume that you do not and we will then proceed with your case on the basis that:

- a) You have confirmed that neither you nor anyone in your household has any motor insurance or household insurance or, as far as you know, any other form of legal expenses insurance or is a member of a trade union.

Or

- b) You have confirmed that you or someone in your household (and the driver of the car in which you were a passenger if relevant) does have motor insurance or

household insurance or some other form of legal expenses insurance or is a member of a trade union.

3. We will explain and advise you of the possible methods of financing your case, for example, through a trade union, cover provided by an existing policy or before the event insurance. We do not undertake Legal Aid/Public Funded work and it will be for you to separately investigate this option if you so wish.

We will explain that after the event (“ATE”) insurance may be available. If you agree to take out an after the event (“ATE”) insurance policy which we have recommended to you then the premium will remain your liability. However, it is our firm’s policy in such cases to ensure that you receive at least 75% of your general damages and past financial losses and, so if necessary, we will adjust our success fee to achieve that outcome. In those circumstances, you will also retain 100% of any damages for future financial loss. This would not apply if the ATE policy taken out is not one which we have recommended; in such a case you may recover less than 75% of your general damages and past financial losses depending on the cost of the ATE policy.

### **Summary**

5. We will explain the effect of the CFA to you. In summary, provided you comply with the conditions set out in our CFA, you will pay nothing for our fees if you lose. Our fees will become payable if you win. If you win, we will claim these fees from your opponent. Full costs may not be recovered, in which case our basic charges and disbursements will be limited to the amount of our basic charges and disbursements that we recover from your opponent, and a success fee where applicable.