

Disclaimer

This model agreement is not a precedent for use with all clients and it will need to be adapted/modified depending on the individual clients' circumstances and solicitors' business models. In all cases solicitors must therefore ensure that any agreement with a client is made in compliance with their professional duties, the requirements of the SRA and any statutory requirements. The Law Society does not accept any responsibility for any breaches of such requirements in respect of this model agreement which is intended for guidance only.

Conditional Fee Agreement ('CFA')

[For use in personal injury and clinical negligence cases only].

This agreement is a binding legal contract between you and your solicitor/s. Before you sign, please read everything carefully. This agreement must be read in conjunction with the Schedules and the Law Society Conditions attached.

I/We, the solicitor/s

You.....of.....

....., the client

What is covered by this agreement

- Your claim for damages for personal injury suffered on or about the.....of..... as a result of
.....
.....
.....
- Any application for pre-action or non-party disclosure.
- Any appeal by your opponent.
- Any appeal you make against an interim order or an assessment of costs.
- Any proceedings you take to enforce a judgment, order or agreement.
- Negotiations about and/or a court assessment of the costs of this claim.

What is not covered by this agreement

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

Paying us if you win

If you win your claim, you pay our basic charges, our expenses and disbursements and a success fee together with the premium for any insurance you take out. You are entitled to seek recovery from your opponent of part or all of our basic charges and our expenses and disbursements, but not the success fee or (save for clinical negligence cases) any insurance premium. If your claim is for clinical negligence and you have taken out a costs insurance policy, then, if you win, you may be able to recover from your opponent that part of the insurance premium which relates to the risk of having to pay for expert reports.

[The overall amount we will charge you for our basic charges, success fees, expenses and disbursements is limited as set out in Schedule 2 below.]

It may be that your opponent makes a formal offer to settle your claim 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. If this happens, we will **[not add our success fee to the basic charges] [not claim any costs]** for the work done after we received notice of the offer or payment. In these circumstances, you may be ordered to pay your opponent's costs, but (unless you are found to have been fundamentally dishonest in the claim) any order will normally only be up to the amount of damages and interest awarded to you.

Expenses and Disbursements

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

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

If you win overall but on the way lose an interim hearing, you may be required to pay your opponent's charges of that hearing, but usually only up to the amount of damages awarded to you.

If on the way to winning or losing you are awarded any costs, by agreement or court order, then we are entitled to payment of those costs, together with a success fee on those charges if you win overall.

What do I pay if I lose?

If you lose, you do not pay **[us anything] [any base costs or success fee but we may require you to pay our expenses and disbursements]**.

If you lose you may be liable to pay some or all of your opponents costs. However you will normally have the benefit of Qualified One-Way Cost Shifting so the court will not usually enforce an order for costs against you, 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.

The Success Fee

The success fee is set out in Schedule 1.

Basic Charges

Details of our basic charges are set out in Schedule 2.

Ending this agreement

If you have a right to cancel this agreement under Schedule 3 (see below) and do so within the 7 day time limit, you will pay nothing. Otherwise if you end this agreement before you win or lose, you pay our basic charges and expenses and disbursements. If you go on to win, you also pay a success fee.

We may end this agreement before you win or lose, with the consequences set out in the Law Society Conditions.

Other points

Definitions of words used in this CFA are explained in the Law Society Conditions.

You have the right to cancel this agreement in the circumstances set out in Schedule 3.

We add VAT, at the rate that applies when the work is done, to the total of the basic charges and success fee. Our VAT Registration Number is **[Insert]**.

[You may be able to take out an insurance policy against the risk of paying expenses and disbursements (but not our charges) if you lose, or some or all of your opponent’s costs even if you win. You will be responsible for paying the insurance premium for this if you win unless your claim is for clinical negligence in which case you may be able to recover part of the premium. If you lose the premium [is still/is not] payable. Full details are contained in the insurance policy documents. We will give further information about insurance policies to you so that you can decide whether you wish to take one out].

The parties acknowledge and agree that this agreement is not a Contentious Business Agreement within the terms of the Solicitors Act 1974.

Signatures

Signed by the solicitor:

Signed by the client:

Dated:.....

Note: We are not bound to act on a conditional fee basis until both you and we have signed this agreement.

Schedule 1

Success fee

The success fee is set at [.....]% of our basic charges, where the claim concludes at trial; or [.....] % of our basic charges where the claim concludes before a trial has commenced.

The success fee percentage reflects the following:

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

The Success Fee cannot be more than 100% of the basic charges in total.

Cap on the amount of Success Fee which you will pay us in the event of Success in proceedings

In addition, there is a maximum limit on the amount of the success fee which we can recover from you.

In proceedings at first instance, that maximum limit is 25% of the total amount of any:

- (i) general damages for pain suffering and loss of amenity; and
- (ii) damages for pecuniary loss, other than future pecuniary loss;

which are awarded to you in the proceedings covered by this agreement. The maximum limit is applicable to these damages net of any sums recoverable by the Compensation Recovery Unit of the Department of Work and Pensions.

However, this maximum limit applies only to a success fee for proceedings at first instance and not to a success fee in other proceedings (such as, for example, an appeal against a final judgment or order). In proceedings other than proceedings at first instance the maximum limit is 100% of the types of damages set out in (i) and (ii) above. Again this maximum limit is also applicable to these damages net of any sums recoverable by the Compensation Recovery Unit of the Department of Work and Pensions.

These maximum limits are inclusive of any VAT which is chargeable.

[These maximum limits include any success fee payable to a barrister who has a CFA with us.]

We will provide you with a copy of any relevant judgment or of our calculation of any settlement showing how much of your damages should be attributed to General Damages and Past Pecuniary Loss, net of any sums recoverable by the Compensation Recovery Unit. **[If you do not agree our calculation and this makes a difference to the amount of the Success Fee payable you, then we will put the matter for determination by an independent barrister of at least 10 years call, to be appointed by agreement between us or, in default of agreement, by the President of the Law Society of England and Wales, such barrister to act as expert and not as arbitrator and his decision shall be binding. The barrister's costs for assessing this issue are to be paid by you if the barrister agrees with us, but otherwise are to be paid by us.]**

You also have the right to apply to the court for assessment of our costs, including our success fee.

Schedule 2

Basic charges

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

How we calculate our basic charges

These are calculated for each hour engaged on your matter. 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:

| Grade of Fee Earner | Hourly Rate |
|--|-------------|
| 1 Solicitors with over eight years post qualification experience including at least eight years litigation experience. | |
| 2 Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience. | |
| 3 Other solicitors and legal executives and fee earners of equivalent experience | |
| 4 Trainee solicitors, para legals and other fee earners. | |

We review the hourly rate in **[month]** each year and we will notify you of any change in the rate in writing.

[Fixed Fee]

Instead of calculating our Basic Charges by reference to the hours spent on you claim multiplied by an hourly rate, we have agreed with you that, if you become liable to pay our Basic Charges, then you will pay us the fixed amount of £ []. We will be entitled to this sum no matter how many hours we spend working on your claim. References in this CFA to Basic Charges or base costs are references to this fixed amount. If you become liable to pay our Success Fee, then this will be calculated as the [relevant] percentage set out in Schedule 1 of this sum.]

[Overall cap on your liability for costs]

[We will limit the total amount of charges, success fees, expenses and disbursements (inclusive of VAT) payable by you (net of any contribution to your costs paid by your opponent) to a maximum of [25%] of the damages you receive].

Schedule 3

Notice of the Right to Cancel

This only applies if you sign the Conditional Fee Agreement:

- (i) At your home, workplace or at someone else's home; or
- (ii) At our offices but following a visit by us (or by someone acting on our behalf) to your home, workplace or someone else's home; or
- (iii) At our offices but following a meeting between us away from our offices.

You have the right to cancel this contract if you wish and can do so by delivering, sending (including electronic mail) a cancellation notice to the person mentioned below at any time within 7 days starting with the day of receipt of this Notice.

The person to whom a cancellation notice may be given is [] of [Name of Firm]
at [Address of Firm] [Case Reference]

Notice of cancellation is deemed to be served as soon as it is posted or sent to us.

You can use the cancellation form provided below if you wish.

Signed on behalf of [Name of Firm]:

Dated:

If you wish to cancel the contract, you **must do so in writing** and deliver personally or send (which [may] [may not] be by electronic mail) this to the person named below. You may use this form if you want to but you do not have to.

.....
(Complete, detach and return this form ONLY IF YOU WISH TO CANCEL THE CONTRACT)

To: [] of [Name of Firm]

at [Address of firm]

Case Reference No: [.....]

I hereby give notice that I wish to cancel my Conditional Fee Agreement with your firm.

Signed:

Name (please print):

Address:

Date:

Law Society Conditions

The Law Society Conditions below 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.

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.

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.

Dealing with costs if you win

- **[Subject to any overall cap agreed with you]** you are liable to pay all our basic charges, our expenses and disbursements and the success fee (up to the maximum limit) **[together with the premium of any insurance policy you take out]**.
- Normally, you can claim part or all of our basic charges and our expenses and disbursements from your opponent,. You provide us with your irrevocable agreement to pursue such a claim on your behalf. However, you cannot claim from your opponent the success fees **[or the premium of any insurance policy you take out (unless your claim is for clinical negligence in which case you may be able to recover part of the premium)]**.
- If we 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 expenses and disbursements, then you pay the difference **[up to any maximum agreed with you]**.
- You, not your opponent, pay our success fee **[and any insurance premium]**.

- You agree that after winning, the reasons for setting the success fee at the amount stated may be disclosed to the court and any other person required by the court.
- 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, expenses and disbursements and success fee.

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

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 expenses and disbursements; and VAT.

You take the rest.

If your opponent fails to pay monies due to you

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.

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 from your opponent, but not their success fee. The barrister's success fee is shown in the separate conditional fee agreement we make with the barrister. You must pay the barrister's success fee 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.

[The barrister's success fee is included within the maximum limit to the recoverable success fee in proceedings at first instance as explained in Schedule 1].

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.

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. Unless you have a right to cancel this agreement under Schedule 3 and do so within the 7 day time limit we then have the right to decide whether you must:

- pay our basic charges and our expenses and disbursements including barristers' fees but not the success fee when we ask for them; or
- pay our basic charges, and our expenses and 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. We then have the right to decide whether you must:

- pay our basic charges and our expenses and disbursements including barristers' fees but not the success fee when we ask for them; or
- pay our basic charges and our expenses and 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 **[pay us nothing] [only have to pay our expenses and 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 expenses and disbursements, including barristers' fees;
- pay the success fee if you go on to win your claim for damages.

In these circumstances, if your opponent has made a formal offer to settle your claim which you have rejected and the damages you have recovered are less than that offer, you may be ordered to pay your opponent's costs but only up to the amount of damages and interest awarded to you.

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.

What happens after this agreement ends

After this agreement ends, we may 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.

Cessation of Business

If we stop carrying on business then you must pay us or any successor to our business (or to that part of our business which takes over the conduct of your claim) our basic charges and our expenses and disbursements including barristers' fees and success fees if you go on to win your claim for damages.

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 as set out in Schedule 2.

(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 expenses and disbursements*

Payments we make on your behalf such as:

- court fees;
- experts' fees;
- accident report fees;
- travelling expenses;
- the fees of barristers who do not have a Conditional Fee Agreement with us.

(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) Formal Offer to Settle

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) Qualified One-Way Cost Shifting

The rules in respect of costs payable if you lose a personal injury claim set out in [Part 44 Section II] of the Civil Procedure Rules.

(n) Success fee

The percentage of basic charges that we add to your bill if you win your claim for damages

(o) 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 judgment.

(p) 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.

'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.