



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 only covers our fees – it does not cover expenses such as the cost of medical reports, court fees and barristers' fees, sometimes called 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 the insurance policy that you will take out.

SHORTFALL

Claimant's costs are never recovered in full from their opponent and are open to challenge resulting in a 'shortfall'. Unless we have agreed with you otherwise (e.g. for a second opinion) we will not charge this shortfall to you except in cases which are subject to Court proceedings and a costs budget (where the Court specifically restricts the costs the other side have to pay). In such cases (unless the claimant is a protected party) we reserve the right to charge you the shortfall between incurred and budgeted costs.

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 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 which they provide for personal injury cases called DAS Law Assist. As such, we can issue you with an insurance policy without having to make an application to the insurer. The policies have agreed fixed premiums depending on the type of 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.

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 your policy immediately on signing the CFA. This protects you against liability for any defendant's costs and your expenses right from the outset of your case.

We are required to tell you whether we have a financial interest in recommending this insurer and we confirm that we do not. However, we have agreed with DAS to only offer the LawAssist product for personal injury cases. We are aware of other after the event insurance products in the market and believe that the LawAssist product provides the required protection at a competitive rate. We do not carry out a detailed analysis



of the other products available. Our agreement to use this policy enables us to have the benefit of the delegated authority scheme to offer to our clients.

In your case we are recommending the LawAssit 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. 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 our policy and **if you do not win your case, no premium is payable.**

We will inform you which premium applies to your case. The following premium rates apply to personal injury cases:

Motor Cases

Motor premiums are set at the point of policy inception and are fixed.

		Fast Track	Multi Track
	Portal	Pre Issue	Pre Issue
Motor	£75	£150	£900

Non-Motor Cases

Non-Motor cases are insured at the inception rate. If they begin as Portal cases they will be increased to the relevant Pre-Issue premium rate (subject to track) should the case progress out of the Portal.

		Fast Track	Multi Track
	Portal	Pre Issue	Pre Issue
Non-Motor	£150	£350	£1500
Trip/Slip	£150	£1500	£2500
Industrial Disease	£150	£1950	£3000
Mesothelioma	£150	£1950	£3000

All premiums exclude Insurance Premium Tax (IPT). This will be added to the policy cost.

STATEMENT OF NEED

The LawAssit after the event insurance policy issued by DAS meets the demands and needs of a person who enters into a conditional fee agreement with us for the investigation and pursuit of a personal injury claim and wishes to protect themselves against potential costs that are not covered under the terms of the conditional fee agreement such as (but not limited to) liability for any opponent's costs and for such person's own disbursements.

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. Please note that the opponent will 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 to charge you, but you cannot claim back from your opponent. For example:
 - If we obtain an expert report which does not support your case
 - If the claim is based on several allegations and some of those succeed but others do not
 - Costs associated with setting up funding and advising you on certain aspects
 - Any shortfall as detailed above.

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 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.

- **Success fee** - this is an agreed percentage of our fees that we charge you and not the other side. To ensure that you retain the majority of your damages we will agree with you that whatever the success fee is set at and whatever our fees are, we will not take more than a maximum percentage of your damages – no more than 25% of your past losses and compensation for your injury. The percentage for your case will be set out in your 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 of the expenses you have paid from your opponent. We would expect to recover these in full but there may be some circumstances in which we would not recover all of your expenses, in which case you will be responsible for the shortfall. 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.

However, our policy is that we will never deduct more than 25% of your damages for these costs as a maximum, so you are guaranteed to retain a minimum of 75% of your damages.

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:

T: 0800 328 9545

E: pispecialist@penningtons.co.uk

