



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 and court 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. Barristers' fees are also not covered and these are explained below.

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 that 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 to pay the success fee and as described below, a shortfall on our costs.

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 Cooper has an agreement with Markel (an industry recognised insurance provider), to use its 'Clinical Negligence JAG' insurance policy, which it provides for clinical negligence cases and has delegated authority to issue those policies. This means that we can issue your policy immediately upon 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. This means that if you win your case 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 calculating the premium payable. We have decided to use one insurance provider, Markel. We do not carry out a detailed analysis of the other products available or comparative premiums. Our agreement with Markel to use this policy gives us the benefit of the delegated authority scheme, which we can then offer to our clients. So, to that extent, we have an interest in using this policy.



In your case we are recommending the Clinical Negligence JAG policy because it offers fixed premiums for cover for cases. The certainty of a fixed premium means that you will know your liability to the insurer if you win your case 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 according to the damages that you recover. Insurance premium tax (IPT) is also payable and may be subject to change, depending upon the rate set by the Government. IPT is calculated based upon the applicable rate at the time the premium becomes payable. The premium is divided into two parts:

- (i) **Recoverable premium** - cover for expenses incurred obtaining expert reports on breach of duty and causation of damage. This part of the premium is recoverable from your opponent – although they can argue about the amount they should pay. **However if there is an argument about the level of this premium, Markel agrees that this part of the premium will be limited to what is recovered from the other side.**

This is calculated as follows:

- Case concludes with damages of £10,000 or less = £4,299 + IPT
- Case concludes with damages of £25,000 or less = £5,899 + IPT
- Case concludes with damages of £50,000 or less = £6,499 + IPT
- Case concludes with damages of £100,000 or less = £7,499 + IPT
- Case concludes with damages of £250,000 or less = £8,999 + IPT

- Case concludes with damages of £500,000 or less = £10,999 + IPT
- Case concludes with damages of over £500,000 = £13,999 + IPT

- (ii) **Non-recoverable premium** - protects you in relation to all other expenses that you incur – other expert 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 or for the late acceptance of such an offer. **This part of the premium is payable by you out of your damages** and is calculated as follows:

- Case concludes with damages of £10,000 or less = £999 + IPT
- Case concludes with damages of £25,000 or less = £1,399 + IPT
- Case concludes with damages of £50,000 or less = £1,999 + IPT
- Case concludes with damages of £100,000 or less = £2,599 + IPT
- Case concludes with damages of £250,000 or less = £4,299 + IPT
- Case concludes with damages of £500,000 or less = £5,999 + IPT
- Case concludes with damages of over £500,000 = £6,999 + IPT

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 of their fees.

Most barristers will be instructed by us under a separate conditional fee agreement. The Markel policy does enable us to involve counsel up to a maximum fee of £5,000 for initial advice, but the majority of counsel's involvement in your claim will be under a separate CFA. If you win, you are normally entitled to recover the barrister's basic fees from your opponent. The barrister's success fee is shown in the separate conditional fee agreement we enter into with them and would be payable by you out of your damages if you succeed in the claim. 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 described above and this limit will be set out and explained in the CFA. You are therefore guaranteed to retain the majority of your damages.

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.
- **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 deduct more than 25% of your compensation for your past financial losses and your injury by way of success fee. We will agree the specific percentages with you when we send the CFA. This cap includes any applicable success fee relating to barristers fees.
- **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.
- **Shortfall** - claimants' costs are never recovered in full from their opponent and are open to challenge. This can result in a 'shortfall' in recovery of our costs. Unless we have agreed with you otherwise, we will recover this shortfall (subject to a cap) from you (unless the claimant is a protected party). Further, there may be a shortfall in any case where we have not recovered all of the external fees and costs (disbursements) that we have paid during the course of the investigation. In these circumstances, we reserve the right to charge you any unrecovered

disbursements. The total deductions in respect of any shortfall and success fee will not exceed 25% of your **total** damages.

- **Opponent's costs** - if you win your case, you should not have any responsibility for the other side's costs. The only situation in which you may have a liability to your opponent 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, or if you decide to accept such an offer late. Should that occur, the other side may seek to recover from you the costs that they incurred from the date that their offer expired. Your insurance policy with Markel will protect you from this provided that we and the insurer 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 expected premium when setting up your CFA. The premium due on conclusion will be based upon the level of compensation that you receive in your case. Markel agrees that your premium will be calculated based on the level of your compensation at the conclusion of your case. IPT is also payable upon the premium and may be subject to change, depending upon the rate set.

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 Markel 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. You will only be responsible for paying the non-recoverable premium as described above.

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