



# 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 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 the insurance policy that you take out. Barristers' fees are also not covered and these are explained below.

## 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). There may also be a shortfall 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.

## 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.

## INSURANCE POLICY – PIMS PROTECT

Under the terms of your CFA, you do not bear any risk of paying our costs if you do not win your claim. If you win your claim, you are liable only to pay the success fee and possibly, in limited circumstances as already described, 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 of those costs because, for example, you fail to beat an offer made by the defendant.

Penningtons Manches Cooper LLP has an agreement with Markel (an industry recognised insurance provider) to use its personal injury management scheme (PIMS Protect), an insurance policy which it provides for personal injury cases. As such, we can issue you with an insurance policy without having to make an application to the insurer. The policies have premiums based upon the type of case and the level of damages awarded. 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.

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 upon 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 Markel to only offer their products for personal injury cases. We are aware of other after the event insurance products in the market. We do not carry out a detailed analysis of the other products available but believe that the PIMS Protect product provides the required protection at a competitive rate. 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 PIMS Protect policy because it offers competitive premiums for cases, calculated with reference to the level of damages that your claim settles for and therefore proportionate to your damages. 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.

The premium is calculated on the conclusion of the claim and is based upon the damages that are awarded. This ensures that the premium paid is proportionate to the damages. While we can give you an estimate of the damages and therefore the premium that may apply, we will not be able to confirm this until the conclusion of the claim. The following premium rates apply to personal injury cases:

	Damages awarded		
	Under £5,000	Under £25,000	Under £100,000
<b>RTA</b>	£89	£159	£1,099
<b>Other</b>	£339	£549	£2,199
<b>Slip and trip</b>	£469	£599	£2,499
<b>Abuse</b>	£799	£1,299	£2,149
<b>Industrial disease</b>	£1,499	£2,849	£4,899

	Damages awarded		
	Under £250,00	Under £500,000	Over £500,000
<b>RTA</b>	£2,399	£3,799	£5,499
<b>Other</b>	£3,799	£5,899	£7,499
<b>Slip and trip</b>	£3,799	£5,899	£7,499
<b>Abuse</b>	£3,249	£4,399	£6,499
<b>Industrial disease</b>	£6,799	£7,999	£9,199

All premiums exclude insurance premium tax (IPT). This will be added to the policy cost and is payable at the prevailing rate (as set by the Government) when the case concludes.

### STATEMENT OF NEED

The PIMS Protect after the event insurance policy issued by Markel 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.

### 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 (CFA). The Market policy does enable us to involve counsel up to a limit for initial advice in some circumstances, but the majority if not all of counsel's fees 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 the barrister 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 here and this limit will be set out and explained in the CFA.

### 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 which cannot be claimed 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. The percentage for your case will be set out in your CFA. 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 deduct by way of success fee more than a maximum percentage of your damages - no more than 25% of your compensation for your past financial losses and your compensation for your injury. This cap includes any applicable success fee relating to barristers' fees. Therefore you will retain 100% of your future loss claim and at least 75% of the damages recovered for past loss after deduction of the success fee.
- **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 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 beat, 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 day their offer expired. Your insurance policy with Markel 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.

### 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 Market 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: [clinnegspecialist@penningtonslaw.com](mailto:clinnegspecialist@penningtonslaw.com)

