

Conditional Fee Agreement: What You Need to Know

This document forms an important part of your agreement with us. Please read it carefully.

Definitions of words used in this document and the accompanying 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, our Expenses, a Success Fee and an insurance premium. The amount of these is not based on or limited by the damages. You can only claim from your opponent part or all of our Basic Charges and our Expenses.

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. Please refer to the "Paying Us" section in the CFA document to establish the costs we will be seeking for the work done after we received notice of the offer or payment.

If you receive provisional damages, we are entitled to payment of our Basic Charges and our Expenses 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.

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, if you win overall.

What Do I Pay if I Lose?

If you lose, you pay your opponent's charges and Expenses. You may be able to take out an insurance policy against this risk. If you lose, you do not pay our charges.

Ending This Agreement

If you end this agreement before you win or lose, you pay our Basic Charges and Expenses. If you go on to win, you also pay a Success Fee.

We may end this agreement before you win or lose.

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:

Fee Earner	Hourly Rate Excluding VAT	Hourly Rate Including VAT
Member and solicitor (with over 8 years post qualification experience)	£201 + VAT	£241.20
Assistant solicitors and a Chartered Legal Executive of the Institute of Legal Executives (with over 4 years post Qualification experience)	£177 + VAT	£212.40
Assistant solicitor and a Chartered Legal Executive of the Institute of Legal Executives (with less than 4 years post Qualification experience)	£146 + VAT	£175.20
Senior Legal Assistant and In-house costs draftsman	£146 + VAT	£175.20
Trainee solicitor/other legal assistants and paralegals	£111 + VAT	£133.20

How to contact us

Wisbech

01945 461456
wisbech@fraserdawbarns.com

King's Lynn

01553 666600
kingslynn@fraserdawbarns.com

Downham Market

01366 383171
downham@fraserdawbarns.com

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01354 602880
march@fraserdawbarns.com

We review the hourly rate on 1 April of each year and we will notify you of any change in the rate in writing.

Road Traffic Accidents

If your claim is a claim for damages for personal injury arising out of a road traffic accident and is settled before proceedings are issued, for less than £10,000, our basic costs will be £500. These costs are fixed by the Civil Procedure Rules.

If your case is one to which the "Road Traffic Accidents - Fixed Recoverable Costs in Costs Only Proceedings" in the relevant parts of the Civil Procedure Rules ("**the Fixed Costs Rules**") apply then if our actual Basic Charges and/or our actual Expenses are less than the Basic Charges and/or Expenses that you are entitled to recover from your opponent under the Fixed Costs Rules you agree:

- (a) To claim the maximum sums payable under the Fixed Costs Rules
- (b) That we may keep the entirety of the Basic Charges and Expenses that are recovered by you under the Fixed Costs Rules and we shall not be obliged to pay these sums to you

Success Fee

The Success Fee percentage set out in the agreement 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.

Value Added Tax (VAT)

We add VAT, at the rate (now 20%) that applies when the work is done, to the total of the Basic Charges and Success Fee.

The Insurance Policy

At the time that you enter into this agreement you have not taken out any After the Event Insurance.

We have advised you of the effect of progressing the claim without After the Event Insurance and in particular that if you lose the case you will have to pay your own Expenses and will have to pay your opponents basic costs and Expenses.

We believe it is desirable for you to insure your opponent's charges and Expenses in case you lose if you intend to progress the case to trial.

Demands and Needs Statement

On the information currently available to us, we believe that a contract of insurance with Temple Legal Protection Limited is appropriate. This advice is not based on a fair analysis of the after the event insurance market as we do not hold ourselves out as insurance brokers but is based upon a regular review of the market to identify the most appropriate insurance policy to cover your disbursements in the event that you lose.

In addition, the policy covers opponent's costs in certain circumstances, such as arising from pre-action disclosure applications and interlocutory appeals. Despite the rules in relation to Qualified One Way Cost Shifting (QOCS) there remains a significant risk that you could lose some or all of your damages if you fail to beat a Part 36 Offer.

We believe that a contract of insurance with Temple Legal Protection Limited is appropriate because:

- Temple Legal Protection Limited is a reliable insurer and is known as a market leader
- The insurer is financially sound and is based within England
- Temple are known to genuinely pay out on claims
- The Financial Services Compensation Scheme will apply
- The cover provided is comprehensive

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- The premium reflects the category of risk
- The premium is paid at the end of the case
- The premium is self - insured and so need not be paid if the claim is unsuccessful
- It is a delegated authority scheme that enables us to obtain insurance cover on your behalf immediately.

Under our agreement with Temple, when we enter into a CFA with a client for claims that fall within certain parameters, the client is required to enter into an ATE policy of insurance with Temple. While we have not undertaken a market review, we believe that the policy represents a very reasonable premium for the cover given. We have no financial interest (whether direct or indirect) in Temple's scheme. Our interest is merely for the benefit of our clients and also for administrative convenience in not having to submit one – off proposal forms and report to the insurers at regular stages whilst a claim is being progressed.

Qualified One Way Costs Shifting (Personal Injury Cases only, excluding Medical Negligence)

The general rule is that the Defendant's costs are not payable by a Claimant whose case is unsuccessful. However, there are exceptions. The Defendant can recover costs against you, without the Court's permission, if the case is found to have no reasonable grounds for success, the case is decided to be an abuse of the Court's process or either your or our conduct with your knowledge, in dealing with the case is likely to obstruct the just disposal of the matter. If the claim is found to be fundamentally dishonest in any way, the Court has power to order you to pay the Defendant's costs.

The Conditions

The Conditions below 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

- You are liable to pay all our Basic Charges, our Expenses, Success Fee and insurance premium
- Normally, you can claim part or all of our Basic Charges and Expenses from your opponent.
- If we and your opponent cannot agree the amount, the court will decide how much you can recover.
- If your opponent is receiving Community Legal Service funding, we are unlikely to get any money from him or her.

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You agree to pay into a designated account any cheque received by you or by us from your opponent their solicitors, insurers or representatives and made payable to you. We are allowed to keep any interest your opponent pays on the charges and the Expenses.

If your opponent fails to pay

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 but not Success Fee from your opponent. You can pay the barrister's Success Fee from your damages. The barrister's Success Fee is 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.

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.

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. We then have the right to decide whether you must:

- Pay our Basic Charges and our Expenses including barristers' fees but not the Success Fee when we ask for them; or
- Pay our Basic Charges, and our Expenses 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 or if a conflict of interest arises. We can end this agreement if you require us to act unreasonably (for example by asking us to run arguments that we consider will not succeed or which are not properly arguable). In addition we can end this agreement if you require us to act in a manner which conflicts with a protocol.

If we end the agreement we then have the right to decide whether you must:

- Pay our Basic Charges and our Expenses including barristers' fees but not the Success Fee when we ask for them; or
- Pay our Basic Charges and our Expenses 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 you have taken out a conditional fee insurance policy that will pay the Expenses that we have incurred you agree to us claiming payment for these Expenses in your name from the insurance company if we end the Conditional Fee Agreement.

(iii) We can end this agreement if you reject our opinion about making a settlement with your opponent. You must then:

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- Pay the Basic Charges and our Expenses, including barristers' fees and insurance premium;
- Pay the Success Fee if you go on to win your claim for damages.

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.

(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.

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.

This includes all the legal work that we have done for you prior to entering into this agreement. This work shall include:

If we have entered into a non contentious business agreement with you all the work that we have carried out under that non contentious business agreement and

All work we have carried out in taking details from you, assessing the risks involved in your case, setting out the terms upon which we are prepared to undertake the case on a Conditional Fee Agreement and advising you upon the effect of entering into a Conditional fee Agreement.

(c) Claim

Your demand for damages for personal injury and/or other claim mentioned in the Conditional Fee Agreement 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

Payment we make on your behalf such as:

- court fees;
- experts' fees;
- accident report fees;
- travelling expenses.

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(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) Part 36 Offers or Payments

An offer to settle your claim made in accordance with Part 36 of the Civil Procedure Rules. The rules provide a mechanism to enable either party to make an offer in relation to the case as a whole or to an issue within the case. If the opposite party does not accept the offer, and it is subsequently found or decided that the offer was reasonable, there might be cost consequences for the party that refused. For instance if a defendant offers £5000 in compensation to settle a claim, and at the end of the day the court awards the same sum or less, the claimant will be liable for the defendant's costs from the date when the offer should have been accepted.

(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) Success Fee

The percentage of Basic Charges that we add to your bill if you win your claim for 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 judgment.

(o) Win

Your claim 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.

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Conditional Fee Agreement: Information Sheet

The Conditional Fee Agreement ("CFA")

A conditional fee agreement is often referred to as a "No win, no fee agreement". Essentially a Conditional Fee Agreement is a contract between a solicitor and his client to enable the client to pursue a claim for damages, an award of a sum of money or other legal remedy with a minimum cost risk.

Insuring Against your Opponent's Costs

It is generally possible for people who bring claims such as yours to take out insurance to cover legal costs. The purpose of this insurance is to protect you so that if you lose your case the insurance company will pay your opponent's legal costs and Expenses and (depending on the terms of the insurance policy) your own Expenses.

Warning: Some insurance policies will not cover any costs that your opponent has incurred prior to the date on which you took out the insurance. If either now or at a later date you are unable to take out an insurance policy that will cover any costs that your Opponent has incurred prior to the date on which you took out the insurance policy then if *court proceedings have been commenced* and you lose the case you personally will be obliged to pay the costs and Expenses that your Opponent incurred before the policy was taken out. Your Opponent will start to incur legal costs and Expenses as soon as they have been notified of your claim.

You should also be aware that the later you seek insurance cover the more expensive the insurance cover is likely to be. If you would like us to act on your behalf to obtain written quotations for insurance please do not hesitate to call us. When deciding whether to take out insurance now or later you should balance the fact that if you took out insurance now you would have to pay a premium against the fact that your opponent may admit liability or may make an acceptable offer to settle your case in which case if you had paid the insurance premium it would have been an unnecessary expense.

If at any stage we recommend you to take out or you wish to take out insurance (i.e. to insure against the possibility of having to pay the opponents costs if you lose) we shall inform you of any particular contract(s) of insurance that we consider will be appropriate or that we recommended to you.

At that stage we shall inform you:

- a. Of our reasons for recommending that contract of insurance and
- b. Whether we have any interest in recommending that contract of insurance (i.e. whether we have anything to gain by recommending that particular contract of insurance to you)
- c. Whether we are obliged for your case to obtain insurance from a particular insurer (for instance, by virtue of being on a panel or other similar agreement)

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Amount of Costs Awarded to you if you win

Under English Court rules, a court has power to order that the losing party pays costs to the winning party. The general rule is that this order will be made in your favour if compensation is awarded to you. There are exceptions and we will tell you about them if the circumstances arise (for instance if you rejected an offer from your opponent, but the court awarded you less than the sum offered, you would lose some or all of your costs).

Unfortunately there is always likely to be some shortfall as the losing party is seldom ordered to pay the entire costs and Expenses.

If you win your case the Court will normally order your opponent to pay between roughly 65%-85% of the combined cost of your Basic Charges and Expenses.

What if there is a shortfall?

If any of your Basic Charges, Expenses and insurance premium are not paid by the opponent the amount of these will not be deducted by us from your damages, award, settlement figure or other sums.

Please be aware that at the conclusion of cases the courts are increasingly looking at which parties have won which issues at the trial and awarding costs based on the issues that have been won by each party at the trial. For example if there were 5 main issues to be decided at the trial and you won 3 of them the court may order you opponent to pay only 60% of your costs and could even order you to pay 40% of your opponents costs. Your opponent is likely to ask the court to order the 40% of their costs to be set off against any costs or damages that they would otherwise have had to pay to you. If the court agrees to this you will then only receive the balance of your damages after this set off has taken place.

Costs if you lose

If *court proceedings have been started* and you lose your case or we advise you to bring the case to an end *after court proceedings have been started* as we no longer consider that you will win your case, your opponent will ask the court to order you personally to pay their legal costs and Expenses (i.e. their Basic Charges and Expenses). If you have taken out legal expenses insurance either at the start of the case or later then (*subject to the terms and conditions of the Insurance Policy*) the insurance company are likely to pay your opponents legal costs and Expenses in these circumstances.

If *court proceedings have not been started* you will not be obliged to pay your opponents costs if we advise you to bring the case to an end on the basis that we no longer consider that you will win your case.

Important: Alternative means of funding

It is important to consider whether you have alternative means of funding your case.

Alternative means of funding your case might include one or more of the following:

- legal expenses insurance under your household insurance, car insurance or elsewhere or
- as a trade union member you are entitled to instruct your union to take your case for you
- or you have legal expenses insurance under your credit card or
- You are entitled to legal aid.

If you have any of the above alternative means of funding you need to choose whether you wish to instruct us under a Conditional Fee Agreement or whether you wish to use the alternative method of funding your case.

Alternative methods of funding include:

1. Household Contents and other Insurance Policies including Motor Insurance Policies
2. Trade Union Membership
3. Legal Expenses insurance attached to a Credit Card
4. Legal Aid
5. Private Funding

If any of the above methods of insurance are available to you, they do need to be looked into by us and you before you make a final decision on whether you should go ahead with a Conditional Fee Agreement.

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