

## Financing a claim for personal injury compensation

A claim for damages (i.e. compensation) for personal injury can be financed in a number of ways. These are explained briefly below:

### A conditional fee agreement (no win - no fee)

We may be able to offer you a conditional fee agreement (often referred to as a “no win - no fee” agreement). In order to explain how the agreement works it is necessary to explain a little further what we mean by “costs”. These include:

- 1 Your own solicitor's fees: lawyers charge at an hourly rate for the time spent on the case. This hourly rate includes all the general overheads of running the lawyer's office. In a conditional fee agreement these fees are called “basic costs”. VAT is added.
- 2 Disbursements: these are items of expense incurred by the lawyer on your particular case. Typically, in a personal injury case, these will include the fees for medical reports, court fees, travelling expenses and the fees of other experts, such as an accident reconstruction expert.
- 3 Counsel's fees: in personal injury cases it is sometimes necessary to involve a barrister (known as counsel) to advise, to draft court documents and, in particular, to appear in court.

Once court proceedings are started the defendant will also incur legal costs which will include the same three elements – solicitor's fees, disbursements and counsel's fees. As long as you are not fundamentally dishonest during your case, you will incur no liability in respect of these costs even if you lose the claim or have to

withdraw it. The principal exceptions are that you could be liable to pay the defendant's costs (up to a maximum of your damages and interest) if you refused a formal offer to settle the case made by the defendant and subsequently failed to beat that or if you lost at an interim court hearing.

It is important to stress that if you win the case, the defendant will have to pay the majority, but not all, the costs of you bringing the case. This principle applies in the same way regardless of how the case is financed.

A conditional fee agreement applies to the basic costs of the case, i.e. the solicitor's fees. If you are unsuccessful then we charge you nothing for our basic costs for the work done after the agreement takes effect.

If you are successful then, in addition to our normal basic costs, we charge a “success fee”. This is a percentage uplift on our basic costs (not your damages) and can be anything between 0% and 100%. The amount of the success fee reflects the risk we are taking that the case might not be successful. Unlike our basic costs we will not be able to claim our success fee from the defendant. This is therefore a cost that will have to be taken from your compensation.

The conditional fee agreement does not apply to the disbursements incurred in your case. These have to be paid as the case proceeds therefore, unless you are willing to place funds on account in respect of disbursements we are likely to incur, we would ask that you take out an “after the event” insurance policy to reimburse us for the costs of any disbursements in the event that your claim is unsuccessful.

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## Financing a claim for personal injury compensation

Continued

If your claim is successful, the defendant will settle the disbursements in much the same way as your legal fees.

If you are unsuccessful in obtaining compensation the cost of the premium will be written off meaning that you will have no financial liability in the event that you do not win compensation.

The conditional fee agreement that you enter into with us does not cover counsel's fees. Counsel may be prepared to act on a conditional fee basis too, in which case they may also charge a success fee. Otherwise, counsel's fee would form part of the expenses of the case, but counsel's fees would not be paid by the "after the event" insurance company if the case was lost.

By law, your contribution towards your success fee cannot be more than 25% of the damages you receive for your pain, suffering and loss of amenity (we call these "general damages") and your past financial losses.

You will be responsible for payment of our costs irrespective of the extent to which these are recovered from the defendant. However, we will not ask you to pay unrecovered costs (including basic charges, disbursements, success fees for this firm and any barrister, together with any after the event insurance premium) of more than 35% of the damages you recover. For the avoidance of doubt 'damages you recover' refers to gross damages including any repayable state benefits. The 35% cap relates only to costs incurred on your behalf and does not include any costs that you are ordered to pay your opponent which are not covered by any insurance policy. Any costs that you are ordered to pay your opponent which are not covered by any insurance

policy will be separate to and potentially payable on top of the 35% cap.

Obviously we have to consider carefully whether to take a case on a conditional fee basis and, if so, what an appropriate success fee would be. If the case clearly had no realistic prospect of success, then we would not enter into a Conditional Fee Agreement with you. In other cases it might be difficult to assess at the outset what the prospects of success are, and in these circumstances it would be necessary for us to carry out certain investigatory work before making a decision as to whether we could enter into a conditional fee agreement with you.

### Legal expenses insurance

It is becoming increasingly common for people to have the benefit of a legal expenses insurance policy which will cover their costs and their opponent's costs in the event that they wish to bring a claim. The legal expense insurer will only pay costs if they approve of the case and each scheme has different terms and conditions. Some are better than others, i.e. some will pay expenses of the case as it proceeds, whereas others will not.

Often people have legal expenses insurance, but do not realise it. Insurance can be added to a motor policy or to a building insurance policy or possibly to a household contents policy. It is very important for you to check your insurance position to see whether you have any legal expenses cover before consulting us, as this will affect the advice we give to you in relation to the financing of your claim. Please bring any policies you have along to our first meeting, so that we can advise you further.

## Financing a claim for personal injury compensation

Continued

Legal expenses insurers will often have firms of lawyers who are on their “panel” and whom they will want you to use for your personal injury claim. If this is the case, they may not agree to our instruction. If you would like to proceed with Thomson Snell & Passmore representing you it may still be possible under a conditional fee agreement – see above.

### Union membership

If you are a union member you may qualify for legal assistance from the union scheme. Again, it is important to find out whether you have the benefit of such a scheme before you contact us.

### Damages based agreement

Solicitors can act on a “damages based agreement” whereby a claimant will pay a fee related to the level of damages recovered. In this arrangement, a claimant has the certainty as to the proportion of damages that they will recover. Part of this fee is recovered from the defendant. However there is considerable uncertainty at the outset of all cases in relation to both the value and likely costs of the case. Therefore, we are not prepared to act on a DBA.

### As a private fee paying client

You agree to pay us the legal costs and expenses of bringing the case. If the case is successful, you would expect to recoup the majority of these costs and expenses from the defendant. If you lose the case you would, however, have to bear your own legal costs.

Most people cannot afford to proceed in this way, but in those cases which are funded privately, it may be possible to obtain an interim payment of compensation which can then be utilised to help pay the legal fees.

If you have any queries regarding any of the above, please contact partner, Oliver Chapman, on 01892 701234 or [oliver.chapman@ts-p.co.uk](mailto:oliver.chapman@ts-p.co.uk).

## Financing a claim for personal injury compensation

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