



Conditional Fee Agreement

CHAMBERS OF GRAHAME ALDOUS QC

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THE NATURE OF THE AGREEMENT

1. In this agreement:

"Counsel" means: _____ of 9 Gough Square,
London and any other counsel either from Chambers or recommended by counsel in
accordance with clause 25 who signs this agreement at any time at the solicitors request;
"Chambers" means members of chambers at 9 Gough Square, London EC4A 3DG

Chambers case number: _____

"the solicitor" means the firm: Messrs: _____

Reference of persons dealing with case: _____

"the client" means: _____
[acting by his Litigation Friend]

The "opponent" means any Defendant in an action brought by the Claimant in respect of the
personal injury or disease referred to in paragraph 2 of this agreement.

THIS AGREEMENT

2. This agreement forms the basis on which instructions are accepted by counsel from the solicitor to
act on a conditional fee basis for the client in his/her claim for damages for personal injuries or
disease suffered on: _____

THE STANDARD TERMS OF THIS AGREEMENT

3. This agreement incorporates the standard terms of the chambers of 9 Gough Square for
counsel/solicitor conditional fee agreements, which are available on the chambers website at
www.9goughsquare.co.uk, or which will be provided on request or are specifically agreed
between counsel and the solicitor.

WHAT IS COVERED BY THIS AGREEMENT

4. This agreement lasts until:

- (a) the claim is won, lost or otherwise concluded or
- (b) this agreement is terminated.

5. It relates to and covers:

- (a) all work already done and all further work to be undertaken by counsel in respect of the claim;
- (b) issues of jurisdiction, breach of duty, liability, causation, limitation and damages;
- (c) any appeal by any opponent;
- (d) any appeal by the client advised by counsel.

6. It does not cover:

- (a) any Part 20 claim;
- (b) any appeal other than those mentioned above;
- (c) any counterclaim or defence by way of set off which is still in existence after the claim has
settled or been won, lost or otherwise concluded;
- (d) any application under any award of provisional damages that might be obtained
in these proceedings or to vary any order for periodical payments that might
be made in these proceedings.
- (e) enforcement of any judgement or order.

DELIVERY OF THE BRIEF BY THE SOLICITOR

7. The solicitor agrees to deliver the brief for trial not less than 14 days before the trial of all issues or of any preliminary issue, and the brief shall be deemed delivered 14 days before the trial for the purpose of counsel's entitlement to a brief fee;

COUNSEL'S NORMAL FEES

8. **The 'normal rate'** for counsel's fees upon which counsel's success fee is to be applied will be as follows:-

(a) **Advisory work, drafting and interlocutory hearings**

For reading papers, preparation, drafting and written or oral advice; and for interlocutory work including reading instructions, preparation, waiting at court and advocacy:

at an hourly rate of £ _____ ph

(b) **Trials:**

Brief fee

Counsel's "daily rate" for such work in such field is: £ _____

The brief fee is calculated at the time when the brief is delivered by the multiplying the daily rate by the estimated number of days the trial will last, plus 1 daily rate. [so for a 5 day trial: 6 x the daily rate]

If the case requires more preparation or research or travel or other matters then these will be quoted for in the brief fee arranged with Instructing Solicitors.

Refreshers

In accordance with counsel's daily refresher rate for such work in this field, currently: £ _____ pd

(c) **Renegotiating Counsel's fees**

- (i) To the extent that the hours of preparation set out above are reasonably exceeded then Counsel's hourly rate will apply to each additional hour of preparation.
- (ii) If the case is settled or goes short Counsel will consider the Solicitor's reasonable requests to reduce his/her brief fees set out above.

(d) **Inflation Review**

- (i) Counsel's normal rates will be increased by any increase in the **rate of inflation** measured by the Retail Prices Index on each successive anniversary of the date of these terms.
- (ii) After three years have passed from the date of this agreement counsel's normal rates will be increased by an additional **5% pa**.

COUNSELS SUCCESS FEE

9. The rate of counsel's success fee will be as follows:

Table

CASE CONCLUDES :

| Type of Claim | Track | at trial | | more than 'the relevant period' before the date specified in clause (ii) above or before it is allocated to a track: | Place cross in applicable row |
|--|--------------|----------|-------|--|-------------------------------|
| | | % | % | | |
| RTA CPR 45.17 | Multi Track | 100 | 75 | 12.5 | <input type="checkbox"/> |
| | Fast Track: | 100 | 50 | 12.5 | <input type="checkbox"/> |
| Over £500,000 CPR 45.18(2) | | 100 | ----- | ----- | <input type="checkbox"/> |
| Employer's Liability | | | | | |
| General CPR 45.22 | Multi Track: | 100 | 75 | 25 | <input type="checkbox"/> |
| | Fast Track: | 100 | 50 | 25 | <input type="checkbox"/> |
| Over £500,000 CPR 45.18(2) | | 100 | ----- | ----- | <input type="checkbox"/> |
| Asbestos | Multi Track: | 100 | 75 | 27.5 | <input type="checkbox"/> |
| | Fast Track: | 100 | 50 | 27.5 | <input type="checkbox"/> |
| Deafness & VWF & all diseases | Multi Track: | 100 | 75 | 62.5 | <input type="checkbox"/> |
| | Fast Track: | 100 | 62.5 | 62.5 | <input type="checkbox"/> |
| RSI & Stress | Multi Track: | 100 | 100 | 100 | <input type="checkbox"/> |
| | Fast Track: | 100 | 100 | 100 | <input type="checkbox"/> |
| Over £250,000 | | 100 | ----- | ----- | <input type="checkbox"/> |
| Other types eg OLA | Multi Track: | 100 | ----- | ----- | <input type="checkbox"/> |
| | Fast Track: | 100 | ----- | ----- | <input type="checkbox"/> |

Note: 'The relevant period' means:

- (a) in relation to a multi track claim, 21 days
- (b) in relation to a fast track claim, 14 days.

Reason for the success fees:

10. The reasons for these percentages are:

[1] that they are the standard success fees prescribed by Part 45 of the Civil Procedure Rules; or

[2] in the case of road traffic accidents and employer's liability which occurred before the trigger dates in Part 45 (EL 1.10.2004; RTA: 6.10.2003; EL disease letter of claim 1.10.2005) the rates set out in Part 45 are those agreed between Claimant's and Defendant's representatives and are reasonable for all such cases and see risk assessment; or

[3] for all other cases the reasons for counsel's success fee are more fully set out in counsel's risk assessment.

No part of these percentages relates to the postponement of the payment of counsel's fees.

Dated:

Signed by counsel:
or by his/her clerk [*with counsel's authority*]

Additional interlocutory counsel:

Additional interlocutory counsel:

Signed by solicitor:

COUNSEL'S RISK ASSESSMENT

To help counsel make a risk assessment and give a Statement of Reasons in personal injury cases where fixed success fees have not been agreed and incorporated into CPR Part 45.

Name of client:

Counsel's reference:

1. The Success Fee:

See the agreement. If there is not fixed fee in the CPR then the risk assessment below applies.

2. The Success Fee takes into account:

- (a) an element to reflect the prospects of success (as to which see below);
- (b) an element to reflect the fact that the claimant might not pursue his claim for any reason (e.g. he may move abroad, die, lose interest, become a patient and the litigation friend or court does not consent to funding this litigation under this agreement);
- (c) the possibility that the claim may not be pursued to a successful conclusion if it is considered that the case may be lost or it becomes uneconomic or unreasonable for the action to proceed (e.g. costs may become disproportionately high or the defendant or a relevant insurer may become insolvent);
- (d) further evidence may come to light which is adverse to the claim;
- (e) material evidence may be lost;
- (f) evidence may not come up to proof;
- (g) the claim may be struck out or dismissed for non-compliance with a court rule or order;
- (h) costs of an interim hearing may be lost;
- (i) all the claimant's costs may not be recovered (e.g. the costs of particular issues may be lost);
- (j) in a case where an admission has been made, the fact that it may be withdrawn, in particular in multi-track cases since the judgment in *Sowerby v Charlton* [2005] EWCA Civ 1610.

3. The Prospects of Success:

Either:

- (a) If the agreement provides for a single stage success fee:
The prospects of success are estimated by counsel as: ___ %

Or:

- (b) if the agreement provides for a 2 or 3 stage success fee the final stage will cover the case where the Defendants take the case to trial. If that happens, it is likely that they will consider that they have reasonable prospects of defeating the claim or beating a Part 36 offer and the Claimant's chances of success in those circumstances are likely to be little, if any, better than 50%. If trial costs, which will almost certainly be greater than pre-trial for counsel, are at risk,

an uplift of 100% is reasonable (see comments by Lord Woolf CJ in *Callery v Gray (2001)*
EWCA Civ 1117 at paragraph 106.)

Part 36 Success. Whether or not liability has been admitted, there may be a risk that counsel will not recover costs or a success fee because damages may be less than a defendant's Part 36 offer or payment into court.

4. Statement of Reasons

For counsel's assessment of the prospects of success other than the risks common to all claims (here state the particular risks identified);

- TYPE OF CASE:
- COMPLIANCE WITH PRE ACTION PROTOCOLS:
- CLAIMANT'S EVIDENCE:
- OTHER LAY EVIDENCE:
- MEDICAL EVIDENCE:
- OTHER EXPERT EVIDENCE:
- MEDICAL RECORDS:
- OTHER DOCUMENTS:
- STRENGTH OF POSSIBLE DEFENCES (including limitation):

5. Postponement:

Postponement of receipt of fees is not taken into account in the success fee on the basis that the solicitor has agreed to claim interest on counsel's fees and to include such a claim in any costs bill or schedule of costs.

THIS IS NOT AN ADVICE

NOTE

This is not an advice to the client or solicitor. It is a risk assessment made by counsel for his/her own purposes in deciding whether or not to accept instructions upon a conditional fee basis, and, if so, upon what percentage increase (i.e. success fee). It also constitutes counsel's statement of reasons for the percentage increase referred to in the agreement. Counsel will advise as appropriate in the course of the proceedings only after he/she has accepted instructions.

END