

# No win, no fee agreements

A patient's guide

February 2009

Alan Waters' daughter Claire wrote in respect of her claim for compensation for her fathers illness:

*"A big thank you for all your help and hard work in this case. As you well know it is no compensation for what is happening in our lives but this will ensure my mum will be okay and that is my main concern .... I just hope that one day you will take on cases that are able to produce a miracle cure for this awful disease".*



**Alan Waters at his daughter's Claire wedding (four weeks after he was diagnosed with mesothelioma)**

No win no fee agreements are legally known as conditional fee agreements. Conditional fee agreements are a way of funding personal injury claims. In a privately funded claim, you would have to pay all our charges ("costs") for conducting your case up to and including trial. If the case is won, your opponents ("the defendants") pay your damages and your legal costs on top. We would then make a repayment to you in respect of the costs you had paid to us. The risk is, if the case is lost, you would still have to pay our costs and the defendants' costs without recovering any damages - potentially thousands of pounds. It is because of this risk that many clients were deterred from pursuing personal injury cases in the past.

## Conditional fee agreements

We can now say in certain cases that we will not charge you for conducting the case up to and including the trial if you lose. We will take the risk that if the case is lost, the defendants will not pay our costs.

If you win the case, you will still be liable to pay our costs, but we will be able to recover all or the large majority of the costs from the losing defendants.

## Success fee

The defendants will also pay a "success fee" on top of your damages and costs at the end of the case.

We can ask for this because we are taking the risk that we will not be paid and because we will not receive any of our costs during the conduct of your case (which could take up to three years). The success fee is based on a percentage of our costs (inclusive of VAT). The level of the success fee depends on our assessment of the chances and of success in your case.

## Money we have to pay to other people

We will pay the above ("disbursements") throughout the case. These could be for medical reports, court costs, engineers' reports and company searches, travelling expenses and the like. If you win, the outlay will almost always be repaid by the defendants in total. If you lose, the insurance policy will cover the cost of disbursements incurred after the conditional fee agreement is signed.

## Insurance

If you lose the case, you will still be liable to pay the defendants their legal costs. To guard against this, we take out an insurance policy for you. The insurance premium can range from £540.75 - £2,000 in industrial disease cases. Some insurers charge a renewal premium of between 20% and 30% every 12 months during the conduct of the case. In most cases the insurer will not ask you to pay the premium at the start of the case (a "deferred premium").

If the case is lost the insurers will pay the Defendants costs and the disbursements incurred after the date of the conditional fee agreement.

In a deferred premium case you do not have to pay the insurance premium if the case is lost. If the case is won, you pay the insurance premium back in the first instance out of your damages. We then ask the defendants to repay it as part of the solicitors costs claim. In over 95% of cases we are then able to refund the whole cost to you.

## Barristers' Costs

We use barristers for advising on your case and for conducting any trials. We may ask the barrister to enter into a conditional fee agreement at the same "success fee" as ourselves.

### How to proceed

In most cases we will enter into a Conditional Fee Agreement straight away. In others, we may have to carry out some investigations including obtaining a medical report. We may ask for a payment on account to undertake these investigations and give you an estimate as to how much the investigations will cost in total. After the investigations are complete, we can advise you whether we will enter into a conditional fee agreement.

An example of how a conditional fee agreement may work at the end of the case:

If you win £100,000 with 27.5% success fee. Deferred insurance premium:

Damages	£50,000
Defendants pay FFW and barrister cost (say)	£10,000
Defendants pay FFW and barrister success fee (say)	£ 2,750
Defendants pay your insurance premium (say)	£ 2,000
Defendants pay your pre-paid disbursements (say)	£ 3,000
Your net gain	£50,000

If you lose the case:

- your insurance pays defendants costs
- your insurance pays disbursements incurred after date of Conditional Fee Agreement

You will have paid:

- the insurance premium (only if not deferred)
- investigation costs before date of Conditional Fee Agreement if relevant

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Peter has specialised in asbestos-related disease claims since he joined the department in 1993. He gives annual talks to solicitors on asbestos claims for Central Law training. He is a member of the Law Society Personal Injury Panel. He is recommended in the leading legal directories for dealing with high value asbestos related claims and is described as "efficient and hardworking... with great background knowledge..compassionate and empathetic".



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