



Short Form CFA based on "APIL/PIBA 9" for personal injuries and clinical negligence claims from 1.10.2013

DEFINITIONS

1. In this agreement:

"Counsel" means:

and any other counsel either from Lamb Chambers or recommended by Counsel who signs this agreement at any time at the Solicitor's request.

Counsel's Reference:

"The Solicitor" means the firm:

Solicitors' Reference:

"The Client" means:

*acting by his/her Litigation Friend:

or the Client's personal representatives (on death) or the Client's litigation friend (on loss of capacity).

"Success" means that the Client's claim is finally decided in his or her favour, whether by a court decision or an agreement to pay damages or in any way that results in the Client deriving a benefit from pursuing the Claim.

"Finally" means that the Opponent is not allowed to appeal against the court decision; or has not appealed in time; or has lost any appeal.

"Failure" means if the case is lost or on Counsel's advice ends without Success.

"The Opponent" means any Defendant or proposed Defendant in an action brought or contemplated by the Claimant in respect of his or her claim for damages for personal injury, death or disease.

The current Opponents are:

THE CLAIM

- 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 injury, disease or death suffered on or about _____.

INCORPORATION OF APIL/PIBA STANDARD TERMS

- This Agreement forms the basis on which instructions are accepted by Counsel from the Solicitor to act under a conditional fee agreement and incorporates PIBA's standard terms and conditions for CFAs in personal injuries and clinical negligence cases which are available on the websites of Lamb Chambers, PIBA and APIL, and are incorporated in, but not annexed to, this agreement [**"the Standard Terms"**].

THE AGREEMENT

- This agreement is a contract enforceable at law.

5. SOLICITOR'S OBLIGATION TO PAY

- Upon success, subject as provided below, the Solicitor is liable to pay Counsel's normal and success fees.
- Subject to clauses 11 to 13 below the amounts of fees and expenses payable to Counsel under this agreement are payable whether or not the Solicitor is or will be paid by the Client or Opponent.
- Upon success the Solicitor will promptly conclude by agreement or assessment the question of costs and will pay Counsel promptly and in any event not later than one month after receipt of such costs as are recovered from the Opponent/s the full sum due under this agreement.
- Such part of Counsel's normal fees which is not recovered from the losing Opponent and any success fees may be capped or reduced pro rata in accordance with paragraphs 11 to 13 below.
- In the event of failure the Solicitor's obligation to pay Counsel's normal and success fees is as set out in clause 10 of the Standard Terms.

6. THIS SCOPE OF THIS AGREEMENT IS AS FOLLOWS:

- What is covered by this agreement:**

This agreement relates to and covers:

- [all work already done and all further work to be undertaken by Counsel in respect of the Claim until the Claim is won, lost or otherwise concluded, or this agreement is terminated]
- [is limited to part only of proceedings as set out below specifically: _____]

[DELETE AS APPROPRIATE]

(2) What is not covered by this agreement:

- Any Part 20 claim against the Client;
- Any appeal;
- Any appeal against an interim order or final judgment made by the Opponent(s);
- Any counter claim or defence by way of set off which is still in existence after the claim has settled or been won, lost or otherwise concluded;
- Any application under an 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;
- Enforcement of any judgment or order.

DELIVERY OF THE BRIEF BY THE SOLICITOR

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

COUNSEL'S NORMAL FEES

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

Advisory work and drafting: in accordance with Counsel's hourly rate obtaining for such work in this field currently (hourly rate) £_____

Brief fees and refreshers: calculated in accordance with the hourly rate above and can be agreed nearer to the date of hearing

[Please contact Counsel's Clerk if you require an indication of likely brief fees]

- (b) **Reasonableness of Counsel's fees**

The fees set out above are considered by the Solicitor to be reasonable for Counsel's work in this claim.

- (c) **Inflation Review**

Counsel's normal fees will be subject to review with effect from each successive first day of February from the date of this agreement but Counsel will not increase the normal fees by more than any increase in the rate of inflation measured by the Retail Prices Index.

COUNSEL'S SUCCESS FEE

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

Either: **[DELETE AS APPROPRIATE]**

[1] NONE

Or:

[2] 100%

Or:

[3] Staged Uplifts: **[DELETE AS APPROPRIATE]**

one-stage uplift%; or

two-stage uplift:% (where the Claim concludes at trial) or
.....% (where the Claim concludes before a trial has commenced);
or

three-stage uplift:% (where the Claim concludes at trial)
..... % (where the Claim concludes within ___ weeks before trial),
and% (where the Claim concludes more than ___ weeks before the trial)

If no option has been chosen on the face of the document, Counsel will be deemed to have chosen OPTION 1.

Reason for the success fees:

10. The percentage increase reflects the prospects of success estimated in counsel's risk assessment which [is]/[is not] attached to this agreement. **[DELETE AS APPROPRIATE]**

11. Paying Counsel's Success fees

- [1] If the Client wins and Counsel has charged a success fee then the Solicitor is liable to pay Counsel's success fee.
- [2] Counsel's success fee including VAT is subject to a maximum limit (a) in proceedings at first instance, 25%; and (b) in all other proceedings, 100% of (a) general damages for pain, suffering, and loss of amenity; and (b) damages for pecuniary loss, other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions (the Cap).
- [3] In circumstances when the Cap applies Counsel's success fee will **[DELETE AS APPROPRIATE]**:
 - (a) be payable by the solicitor

Or:

(b) be reduced pro rata in accordance with the proportion that Counsel's normal fees as assessed or agreed bear to the Solicitor's base costs (exclusive of disbursements and expenses) as assessed or agreed.

If neither option is selected on the face of the document, 11[3] (b) will apply automatically.

- [4] In the event that the figure for past loss and general damages has (a) not been determined at trial or assessment; and (b) Counsel and Solicitor are unable to agree the appropriate level of general damages and past pecuniary loss; and (c) Counsel's entitlement to fees is in dispute, the parties shall follow the procedure set out in 10(5) and (6) of the Standard Terms and Conditions.
- [5] If the Opponent recovers any costs order against the Client that costs order does not affect the calculation of the Cap set out in [2] – [3] above.

PAYMENT OF COUNSEL'S NON RECOVERED FEES

12. Counsel's normal fees

In the event that, after settlement or assessment of costs, some of Counsel's normal fees are not recovered from the Opponent, the following shall apply:

EITHER: [DELETE AS APPROPRIATE]

- [1] Subject to clause 13 below, the Solicitor **will be** liable for and will pay any of Counsel's normal fees which are not recovered from the Opponent.

Or:

- [2] The Solicitor **will NOT** be liable for any of Counsel's normal fees which are not recovered from the Opponent.

If neither option is selected on the face of the document, [2] will apply automatically.

13. Unrecovered fees following an Opponent's Part 36 Offer

If the Opponent makes a Part 36 offer and the Client recovers damages and interest less than the offer and as a result also recovers no costs from some date after the Part 36 offer then:

- [1] if Counsel advised that the offer should be accepted and the Client rejected that advice and pressed on, Counsel is entitled to normal fees and success fee for the work done before the Part 36 offer was made and only normal fees for work done after the part 36 offer was made.
- [2] if Counsel advised that the Part 36 offer be rejected, then from the date after which the Client recovered no costs because of the effect of the Part 36 offer [Counsel is not entitled to recover any fees]/[Counsel is entitled to recover only normal fees] **[DELETE AS APPROPRIATE]**.

Dated:

Signed by

or by his/her clerk [with Counsel's authority]

Signed by Solicitor:

Additional Counsel

Additional Counsel

SPECIMEN