



Simplifying funding
Options For Your Clinical Negligence Claim

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Funding Your Claim: The Options

This leaflet is intended to outline the alternative ways of funding a clinical negligence claim. We will discuss these alternatives with you in more detail before agreeing to act for you.

Our first concern will be to establish whether there are sufficient grounds to justify bringing a claim on your behalf. The next step is to identify the most suitable method of funding the claim. There are a number of different ways of funding a clinical negligence claim and these are set out below:

- **Conditional Fee Agreement**
(sometimes known as a "no win no fee" agreement)
with After The Event Insurance

- **Before The Event Insurance**

- **Legal Aid**

- **Trade Union Or Other Funder**

- **The Privately Paying Client**

- **Damage Based Agreement**

A member of our specialist team will discuss with you the various funding options available in order to help you to decide which one is best for you.

Conditional Fee Agreements

Conditional Fee Agreements are commonly known as “No Win, No Fee” agreements. Under Conditional Fee Agreements you pay nothing up front. Our charges are based on the amount of work done under our standard hourly rates but we are entitled to a success fee to reflect the various risks associated with this type of funding.

The Conditional Fee Agreement that you will be entering into with this firm is based on a standard agreement produced by the Law Society of England and Wales and which conforms with regulations enacted by the government relating to this type of agreement. Under these regulations, we are obliged to explain to you how the Conditional Fee Agreement affects you.

The Conditional Fee Agreement is an agreement between you and this firm which covers your claim against your opponent in relation to your medical accident. You should read the Agreement carefully to ensure that you fully understand all aspects of it. We will be happy to answer any questions you may have in relation to the Agreement. The Law Society Conditions form part of the agreement and in the Conditions there is an explanation of words used both in the Agreement and in this explanation.

Paying us

If you win your claim, you will be able to recover part of our charges from your opponent. You are responsible for our basic charges, our expenses and disbursements and the success fee. We will seek to recover as much of our basic

charges as possible from your opponent. Your opponent is not responsible for the payment of your success fee. You may be able to recover from your opponent that part of the premium of any After the Event legal expenses insurance policy which relates to the risk of having to pay for expert reports. Our success fee, inclusive of VAT, is capped, and by law cannot exceed 25% of your damages not including any award for future financial expenses. You ‘win’ your case when you get a final court decision or reach an agreement with your opponent for the payment of damages to you.

Opponent’s legal charges and Qualified One Way Costs Shifting

If you lose your claim, you are liable for your opponent’s charges and disbursements. However, Qualified One Way Costs Shifting applies to your claim. This means that if you were to lose your claim you would not have to pay any costs to your opponent except in specific circumstances. The protection of Qualified One Way Costs Shifting would be lost if your claim is struck out by the Court or is found to be fundamentally dishonest. In other words, in either of those circumstances you could be ordered by

the court to pay all of your opponent's legal costs and disbursements.

Qualified One Way Costs Shifting protection is lost where you have not accepted a formal offer (known as a Part 36 Offer) made by the Defendant to settle your claim and you then fail to better that offer at trial. If this happens you may be ordered by the court to pay the costs of your opponent from the date that that offer could have been accepted. The amount of costs that you could be ordered to pay cannot exceed the amount of damages and interest that you have been awarded but it could wipe out part or all of your compensation award.

Legal Expenses Insurance can be taken out to protect you (pursuant to the terms and conditions of the policy) against a costs order being made against you and to pay for disbursements we incur on your behalf, in the event of your claim being unsuccessful. [If a policy is taken out] You are liable for the premium if you win your case. You may be able to recover from your opponent that part of the premium which relates to the risk of having to pay for expert reports. The premium will be deferred until the end of the claim. If you win, the cost of the premium will be deducted from your compensation when it is received.

Ending the Agreement

You may end the Conditional Fee Agreement at any time. If you do end the Agreement before the conclusion of the claim you are liable to pay our basic charges and disbursements. In such circumstances, we may decide to defer our charges to the end of the case and

if you succeed we will be entitled to our success fee as well.

We may end this Agreement if you do not keep to your responsibilities, as set out in the Law Society Conditions, and if we do we can then ask you to pay our basic charges and disbursements or agree to defer them to the end of the claim. We can also end this Agreement if we believe that you are no longer likely to win your claim. If so, you will only be responsible for our disbursements. We can also end the Agreement if you reject our opinion about making a settlement with your opponent.

Our basic charges

Our basic charges are calculated on an hourly rate and the details of these rates are set out in the Agreement.

Success Fee

The Conditional Fee Agreement contains a success fee. We are entitled to charge a success fee which is a percentage of the basic charges. The success fee reflects the risks that we take.

The success fee cannot be more than 100% of the basic charges in total and cannot legally exceed, inclusive of VAT, 25% of the total of that part of your award which relates to pain, suffering and loss of amenity and your financial expenses other than future financial expenses.

You are responsible for the success fee. You cannot recover this from your opponent.

The success fee is a percentage of our basic charges and is not a percentage of the compensation you are awarded.



Before the Event Legal Expenses Insurance

This is becoming an increasingly popular means of providing for legal costs. Many clients are unaware that they have the benefit of legal expenses insurance. It is important that you should check whether you already have legal expenses insurance cover, either provided by a dedicated policy or legal expenses cover incorporated in one or more other insurance policies. For example: household or home and contents insurance, motor insurance, even some credit cards provide some legal expenses.

Please will you make a detailed search of your policies and double check whether you already possess some legal expenses insurance cover. Depending upon what you find, we may require you to supply us with copies so we can investigate the extent of your cover, if any, on your behalf.

The advantages of having a legal expenses insurance policy are obvious. Although you remain primarily responsible to Dutton Gregory for payment of your fees on a private client retainer basis, your policy will indemnify you against this

Indemnity is conditional on there being reasonable prospects of success in defending or bringing your claim. There is often a time limit within which to report a claim on your policy to the Legal Expenses Insurer. You will need to study the terms and conditions carefully; these vary.

Because a legal expenses insurer has a legitimate financial interest in the prospects of your claim, you will find that the indemnity provided will be subject to certain terms and conditions set out in your contract/policy of insurance. For example, the insurers usually stipulate that it can withdraw the indemnity if they or Dutton Gregory believe that there are no reasonable prospects of success and/ or of bettering an offer in settlement of your claim. The insurance policy usually requires your solicitor to report regularly to the insurers on the progress and merits of the claim.

Dutton Gregory acts for a number of clients who are funded by legal expenses insurance. If you have legal expenses insurance you have a right to the solicitor of your choice.

Legal Aid

The availability of Legal Aid for clinical negligence cases is limited to claims for damages caused by a neurological injury to a baby, resulting in them being severely disabled.

Clinical negligence must have occurred either in the mother's womb or during or after birth, subject to certain conditions.

We will check if you qualify for legal aid and if, so, apply for legal aid on your behalf.

if you qualify, The Legal Aid Agency will first assess the merits of funding your case, in other words whether there are reasonable grounds for taking proceedings. It will then consider your financial eligibility.

The criteria for financial eligibility are usually published by the Legal Aid Agency in April each year. Your income, savings and other relevant assets that can be readily converted into cash (together with those of your partner) are compared with the Legal Services Commission's eligibility criteria. Some litigants are eligible for partial legal aid, and pay monthly contributions, others are granted legal aid free of contributions. If the injured person applying for legal aid is a child or a protected party it is their income and savings that will be financially assessed, not their parents/guardians.

If you think that you may be eligible for legal aid then it is important that you let us have benefits payment book, wage slips and other evidence of your income together with your partner's and your own national insurance number.

The effect of a Legal Aid Certificate is that Dutton Gregory's costs and expenses will be paid by the Legal Aid Agency.

Applications for legal aid involve the completion of a number of forms, which we can help you with.

If you are successful you will be issued with a Legal Aid Certificate which would entitle Dutton Gregory to act for you up to an initial financial limit, and limits the firm to taking certain steps. Provided that there continues to be a reasonable prospect of securing a successful outcome of the claim, it is possible to extend the ambit of the Legal Aid Certificate as appropriate.

The Legal Aid certificate is granted on the condition that you agree to grant the Legal Services Commission certain rights over any money recovered by you as a result being granted the Legal Aid Certificate. This is termed: the Legal Aid 'statutory charge'. The Legal Services Commission can, in certain circumstances, enforce the Statutory Charge in order to recover any shortfall due to the difference between the charges and expenses paid to Dutton Gregory and the costs recovered from the opponent on the standard basis.

One of the benefits of a Legal Aid Certificate is that even if you do not succeed, an assisted litigant is rarely ordered to pay his opponent's costs.

Trade Unions or Other Funders

Some clients have the benefit of free advice and representation funded by their Trade Union. If you are a member of a Trade Union or similar organization you should provide us with the details of your membership so that we can contact the organization and request that they provide you with an indemnity in relation to the legal expenses of your claim.

The Privately Paying Client

You may instruct us as a privately paying client paying our legal costs on an hourly basis, at agreed hourly rates. The amount that you will be charged will be determined by the number of hours spent working on your case. We are likely to ask you to pay sums on account of our costs during the course of the claim and to pay any disbursements before they are incurred. Under this arrangement, there will be no success fee payable by you.

The hourly rate varies depending upon the seniority and experience of the lawyer handling your claim.

Damage Based Agreements

A damages based agreement is an agreement whereby you do not pay your lawyer on an hourly rate but agree to pay to them a percentage of your damages. The maximum amount that can be charged, inclusive of VAT and Counsel's fees is 25% of your damages. Dutton Gregory does not currently offer this type of agreement.



Disbursements

Usually all expenses incurred by the firm on your behalf during the course of your case (these are called disbursements) are paid either by you directly or by the firm and then refunded by you immediately afterwards. We will try to estimate the disbursements which are likely to be incurred on your behalf, such as Court fees and expert and Barristers' fees, at our initial interview.

It is common practice with privately funded clients for solicitors to ask for moneys on account of costs. These funds are paid into a 'client account' in your name; they provide the firm with some security for charges and expenses incurred on your behalf.

It is usual to present privately funded clients with an interim bill every three or six months. The interim bill is not an exhaustive statement of the full costs due at that date, but it is intended to broadly reflect the amount of work undertaken up to the date of the interim bill. Interim bills are tendered on account of costs due; not in settlement of all the costs incurred up to the date of the invoice.

In the event of a successful outcome, we will make a claim against your opponent for the cost of pursuing your claim on the 'standard basis' (this is a scale of costs regulated by the Courts). The standard basis often results in a recovery of between 80% and 90% of the costs that you have actually incurred. The difference lies in the fact that the Court's policy is to restrict a losing party's liability for costs to the reasonable costs of the winner's solicitors taking steps that progress the claim; as opposed to all the costs of advising about the claim and attending you generally.

BOURN E M O U T H

3 Poole Road
Bournemouth BH2 5QJ
T: 01202 315005

contact@duttongregory.co.uk | duttongregory.co.uk

