

NOTES on Funding Your Claim

Funding is important because with some forms of funding you might be required to pay costs (either to us or to the defendant). As such, we set out the options. For the reasons set out in the body of this letter we believe that you will not find a better source of funding than the one that we are offering, but we set out the details so that you can make up your own mind. The alternatives are as follows:

Community Legal Service: (formerly known as “Legal Aid”). Road traffic accidents such as yours are generally excluded from CLS funding. This means that we cannot recommend CLS funding in the vast majority of cases. In the unlikely event that you might qualify for CLS funding, we will give you separate advice in writing.

Legal expenses insurance: Some households and motor insurance policies include legal expenses cover for personal injury claims; this is usually known as BTE cover (which stands for “before the event”). In view of this we would like to see a copy of your policies as soon as possible so that we can advise you about this. Please ensure that you send all relevant policies to us. Those policies may not necessarily be in your name; for example, you might be covered under the policy of another member of your household or you may be covered under the policy of the person who owned the car at the time you were injured. If in doubt, please err on the side of caution and send us the policy. We will look at the policies and, if necessary, we will advise you accordingly. However we are not on any BTE insurers Panel. Most BTE insurers will not permit their policyholders a free choice of solicitor until proceedings are issued which frankly is too late because a solicitor has to do a considerable amount of work before proceedings can be issued. This firm has been recommended to you because we specialise in your type of case. We do nothing else. Finding out if any BTE insurer is prepared to pay our fees prior to the issue of proceedings is likely to cause significant delay which may prejudice your claim. If however you want to discuss the possibility of BTE cover please let us know.

Trade union membership: Some trade unions provide their own version of legal aid in that they will cover the cost of legal proceedings brought by or against their members. If you are a member of a trade union or other similar membership benefit scheme then please tell us. This would include professional representative groups such as the British Medical Association. Our advice is likely to be much the same as they advise we have given above about BTE cover.

Private funding: Whilst we would rarely advise such a method of funding, it is open to you to pay our fees privately as you go along. This is rarely in your best interests because it would mean that you would have to pay our fees in full if you lost, and you may have to do this with no-one else providing you with an agreed indemnity. This is a very risky way of bringing a claim, and it is not something we would generally advise.

Damages Based Agreement: This is an agreement where the Solicitor charges the Client a percentage of damages regardless of how much time has been spent

on the case. This Firm does not offer a damages based agreement because such agreements are governed by the damages based agreement regulations 2013 which have received widespread criticism and the Law Society has not issued a model agreement because the regulations are unclear and unless the agreement complies with the regulations, it will be unenforceable. Furthermore the maximum percentage chargeable in your case will be 25% of damages. In a simple personal injury case that is likely to be insufficient to cover the costs of running the case and if your claim includes vehicle damage and hire charges you would be left with insufficient monies to pay for repairs or hire costs.

Conditional Fee Agreement: The most common form of funding for this type of claim is by way of a conditional fee agreement, and it is the one we recommend in your case. It is usually also the best form of funding because it means that you do not have to pay our fees if you lose the claim. It is usually combined with an after the event policy or "ATE insurance" which is insurance that will pay the defendant's costs in the event of the claim failing, where Qualified One Way Cost Shifting (QOCS) does not apply. QOCS comes into play if you lose a case and means that provided that you have not misled anybody, you will not have to pay your opponent's legal costs and disbursements. You will however still be responsible for your own disbursements. QOCS does not apply if you fail to beat any Part 36 Offer made by your opponent. In such circumstances your opponent will be entitled to recover their costs up to the amount of the Part 36 Offer and may also seek to set off any shortfall against any costs to which you may be entitled from them. We advise therefore that you take out an After the Event insurance policy.

How a conditional fee agreement works

In general, the form of funding we offer works in this way: If your claim succeeds the defendant will be ordered to pay your legal costs (excluding the success fee and any After the Event Insurance Premium) but if your claim fails, neither we nor the ATE insurer will raise a fee. This means that - in very general terms - you will not have to pay anything to fund your claim other than the 25% of your damages for personal injury only and the cost of the ATE Premium. There are exceptions to this, but they will apply only in circumstances such as where you lie to us, sack us, or fail to cooperate with us, or we do not recover all of your costs from the defendant.

In view of the above, we are bearing a risk of not being paid. To compensate us for that risk, we charge a fee known as a "success fee". This is calculated as a percentage of our normal costs. In your case the success fee is 100%, however we will limit your liability for the success fee and any unrecovered costs excluding disbursements to 25% of any damages recovered for your personal injury claim only.

In addition to the success fee, you will be liable for the ATE Premium (if any) and any unrecovered disbursements.

We are required to explain to you the following:

The circumstances in which you may be liable for costs:

- ***Your costs:*** It is proposed that you will enter into a conditional fee agreement with us. As explained above, this is what is often referred to as a “no win no fee” agreement. Accordingly, in the event that your claim fails, then we will not charge you for any work undertaken by us, **but** you will be responsible for any expenses (known as disbursements). These expenses may be covered if you agree to take out an ATE policy. If your claim succeeds, then you will be liable for our costs, including a success fee, disbursements and an ATE premium. However if you are prepared to forego the commission on the ATE premium, we will limit the costs of setting up the policy and reporting to the ATE insurer to the amount of that commission and therefore we will limit our costs to those costs recovered from your opponent, the success fee capped at 25% of your damages for personal injury only and the amount of any commission which you allow us to keep. You will have to pay us for our work if you de-instruct us or mislead us, lie to us or otherwise fail to cooperate with us.
- ***Your opponent's costs:*** In general, you will have no liability for the defendant's costs unless we issue proceedings against them on your behalf; if this happens and your claim includes a claim for Personal Injury QOCS will apply provided you have not misled or lied to anybody.

Your right to assessment of costs

Please note that in the event that you are required to pay our costs, you have the right to have those costs assessed by the court. Should that position arise, we will provide you with the appropriate information. In general terms you have the right to ask the court to assess our costs, but that right should be exercised within a month of your receiving a bill from us; if you leave it more than a month, then the court may refuse your request, and if you leave it more than a year, you will have to persuade the court that there are “special circumstances” which would justify to the court looking at the matter.

Any interest that we may have in recommending a particular policy or funding

Every case involves an element of risk, even if the other party admits liability. It is our view that you should safeguard your position by insuring against those risks. In the event that you lose your case and assuming that QOCS applies because the claim includes a claim for Personal Injury, you will still have to pay your own disbursements which in a Fast-Track Trail case may be as much as £1,360.00 in court fees alone, not including medical report fees or barrister's fees. It is even possible in some circumstances for the case to succeed and for you to have to pay a contribution towards the other side's costs in relation to certain parts of the claim. For example, if you fail to beat your opponent's Part 36 Offer, your damages and entitlement to costs will be at risk to satisfy your opponent's costs. In addition you will be liable for your own disbursements incurred after the latest date for accepting your opponent's Part 36 Offer. As such, we recommend

that you purchase an after the event legal expenses insurance policy (usually known as an “ATE policy”).

In our view the after the event policy provided has a premium of £250.00 which is priced at a reasonable level based upon the current market and it provides an appropriate level of cover. Please note that it is entirely your choice as to whether or not you wish to purchase this policy or indeed any other product.

The cost of the premium will be paid by you unless your claim includes a claim for credit hire charges, in which case the credit hire company will pay the premium on your behalf.

Likely payments

We do not believe that you are likely to have to make any payments to anyone to fund your claim during the currency of the claim itself. Once it is concluded, you will be liable for our costs or your opponent’s costs (as the case may be), but you ought to be able to rely on most of the costs being paid by either the defendant or the ATE insurer and your contribution to costs limited to 25% by your claim for damages for Personal Injury Only. If you disinstruct us before the claim is concluded, then you may be liable for our costs incurred up to that point.

We will have to make a number of payments to third parties (such as experts, the court, etc.) but you will not have to fund these yourself before the end of the case and only then if these have not been recovered from the defendant and you have not allowed us to retain the commission for the ATE policy. We will be happy to provide you with further details about these monies upon request.

Potential liability for adverse costs cost-benefit analysis

- a) If you lose the claim **and it does not include a claim for Personal Injury** you may be ordered to pay the defendant’s costs. You can also be ordered to pay the defendant’s costs in other circumstances, such as where the defendant has won on a particular argument or issue, or where the defendant has made an offer and it later transpires that you would have done better to accept the offer than to go to court. Where this happens and where you have not recovered any damages or costs, the ATE insurer will usually pay those costs (but this will not always be the case). If you have recovered either costs or damages (or both), then if a costs order is made against you, it is possible that those monies will be used to pay the defendant’s costs
- b) i.) if you lose the claim **and it does include a claim for Personal Injury** you will be liable for the defendant’s costs and disbursements but provided your claim is not fundamentally dishonest, any order for costs will **not** be enforced against you. This is called Qualified One Way Cost Shifting (QOCS).
ii.) QOCS does **not** apply if you fail to beat your opponent’s Part 36 Offer. In those circumstances any order for costs will be enforceable up to the amount of the Part 36 Offer. In addition the defendant will seek to set off (i.e. not pay) any costs which they are required to pay you.

iii.) QOCS does **not** apply to your own disbursements in either of the two situations (b i and b ii) set out above.

We will never be in a position to provide you with an accurate cost-benefit analysis because we cannot see into the future, but we are required to discuss with you whether the potential outcomes will justify the expenses or risk involved including, if relevant, the risk of having to pay an opponent's costs. We believe that the potential outcomes justify the risk. In particular, we believe we can protect you from costs to such an extent that it is unlikely that you will have to pay any costs out of your own pocket (unless they are subtracted from your damages). Unless we have said otherwise, we will work on the basis that there is nothing unusual about your claim which would make it particularly expensive to pursue; we also work on the basis that if you win you are likely to be awarded costs. On the basis of these assumptions we conclude that the risk to you is not that great. This is in contrast to the potential benefits, which are that you will be awarded damages.

If the assumptions mentioned above are not appropriate in your case, we will write to you separately for the purposes of discussing this matter in more detail.

Insurance and “Demands and Needs” Statement

We are not authorised by the Financial Services Authority. We are, however, included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. In particular, we advise about after the event insurance. This part of our business, including arrangements for complaints or redress if something goes wrong, is authorised and regulated by the Solicitors Regulation Authority. This firm is entered into the Financial Services Authority register, registered number LS533910.

The register can be accessed via the Financial Services Authority website at: www.fsa.gov.uk/register.

We are of the view that your case is likely to succeed – otherwise we would not be willing to deal with the matter of a “no win no fee” basis – but there are always risks in any litigation. Unless we have said otherwise, we recommend that you purchase a legal expenses insurance policy. (This recommendation may be provisional in the sense that our advice might change if our investigations show that you ought not to be funding the claim in this way; if this is so, we will explain that to you).

The policy is arranged by our firm. We confirm that we receive a commission of £180.00 from the premium in respect of the work we do in setting up the policy. You are entitled to ask to keep that commission if you wish, but we have taken that commission into account when organising your funding generally. As we have indicated early in this document if we win the case you are responsible for our costs and disbursements. We expect to receive most of your costs from the other side. However we will not be able to recover the costs of setting up the

funding arrangements including the setting up of the ATE policy (or the costs of investigating whether or not BTE cover is available). You would be liable for that shortfall in costs and the cost of setting up the funding arrangements including the ATE policy under the terms of the Conditional Fee Agreement. However, if you agree to let us have the commission whatever those costs are, we will not seek any further payment from you so that you will be able to receive your damages intact and without deduction other than 25% of your damages for Personal Injury as explained in the Conditional Fee Agreement. If you want to keep the commission then we will arrange for a detailed bill to be prepared for the costs of setting up the funding so that you can have those costs assessed if you disagree with them. Your right to assessment of costs is explained earlier in this document.

We confirm that we have no interest in recommending this policy other than the fact that we get paid commission.

We are obliged to give you a “demands and needs statement”. Your demands and needs are that you need after the legal event expenses insurance that will provide up to £25,000.00 of cover. You also need a policy which will provide the cover at a reasonable cost (i.e. at a cost which is reasonably likely to be recovered from your opponent). We recommend this because the policy is adequate for your needs (and in particular it provides a reasonable level of cover), the premium is reasonable, it is self-insuring, and there is the additional advantage that we have delegated authority to issue policies on behalf of Templeton (which cuts down on administrative costs and delay). There are no exclusions, excesses, limitations or conditions which are likely to make the policy less suitable than any similar policy. We are not, however, insurance brokers and cannot give advice on all products which may be available.

You are not obliged to take this or any other legal expenses product. If you do not wish to purchase this policy, then please advise us and alternative funding options can then be discussed.

The information we give you is intended to be clear, fair and not misleading: if you have any questions, please feel free to discuss them with us. We are obliged to tell you that our recommendation has not been based on an analysis of a sufficiently large number of insurance contracts to enable us to make a recommendation regarding which contract of insurance would be adequate to meet your needs. This is because it would be disproportionately expensive to carry out such an analysis. Instead, we have examined the suitability of the policy generally, and in view of the fact that it is adequate for your needs, and in view of the fact that the premium is in line with what the market is charging generally, we believe that it is a suitable policy. We are not contractually obliged to make recommendations only with one or more insurers (and in particular, we are not contractually obliged to recommend). We are obliged to inform you that you can request details of the insurance undertakings with which we conduct business.