

GUIDANCE NOTES- Personal Injury Matters

We are required by the Solicitors Regulation Authority to provide you with certain information¹; this booklet sets out that information and, hopefully, will answer any questions that you may have. It addresses the following: -

- The issues involved;
- Funding your Claim;
- How a conditional fee agreement works;
- Who is dealing with your Case;
- Arrangements with any Third Party;
- Grievance procedure;
- Recording of Calls;
- Use of Data;

The issues involved

In order to succeed in your claim, you will need to show that the accident was the defendant's responsibility, and that this has caused you loss (which will include pain, suffering and loss of amenity). We will need to obtain evidence to prove these things. This will mean that we may have to take a statement from you and from any other witnesses and that we may have to obtain a medical report. Unless we are able to come to an agreement with the defendant, there are no alternatives to dealing with the claim in this way. We will, however, bear in mind alternative dispute resolution and, if appropriate, advise you about this accordingly.

In brief, the process is as follows: we will take instructions from you, advise you about funding, write to your opponent, and seek to settle the claim by negotiation. If the claim does not settle, we will issue proceedings on your behalf and, if necessary, represent you all the way through to trial. If necessary, we will instruct a barrister to represent you. Upon conclusion of the claim we will, if appropriate, represent you in the proceedings for your costs of the claim.

Funding your Claim

"Funding" is the issue of how to pay for 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. One way of funding your claim is by way of a conditional fee agreement (or "no win, no fee" agreement as they are often called), but there are other ways of funding litigation and it is possible that one of those will be best for you. The alternatives are as follows: -

¹ The majority of the requirements are set out in the Client Care Chapter 1 SRA Code of Conduct 2011 (which has replaced the Client Relations Rule 2.03(2) of the Solicitors' Code of Conduct 2007). You can find these documents on the internet or we can provide them upon request.

- Community Legal Service: (formerly known as “Legal Aid”): Personal injury claims 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 household and motor insurance policies include legal expenses cover for personal injury claims. 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 may 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. It is important that you cooperate with us in this regard because if it subsequently transpires that you did have the benefit of legal expenses cover and that you failed to use it, then you may have to pay the success fee and/or premium unnecessarily.
- 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.
- 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.
- Conditional Fee Agreement: The most common form of funding for this type of claim is by way of a conditional fee agreement. It is usually also a good form of funding because it means that you do not have to pay our fees if you lose the claim. We (i.e., Axiom Stone Solicitors) are happy to offer you such an agreement (unless, of course, our investigations tell us that a better form of funding is available: see above). From the information currently available to us it is likely that we will be offering you a conditional fee agreement. It is usually combined with an after the event policy, or “ATE insurance”.

The rest of this leaflet is based on the assumption that our investigations show that it is in your best interests to fund your claim by way of a conditional fee agreement. If this is not the case, we will advise you in writing.

How a conditional fee agreement works

In general, if your claim succeeds the defendant will be ordered to pay your legal costs, but if it fails, we will not raise a fee. This means that – in very general terms – you will either not be charged at all, or if you are charged, the defendant will pay at least part of your costs.

In view of the fact that we may not get paid if you lose, we are bearing a risk of doing work for nothing. 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 but it is limited to a quarter of a certain part of your damages (broadly speaking, that part of your damages that does not relate to losses you have yet to incur). The success fee is not recoverable from the other side and as such must be paid by you.

We have a policy of charging a success fee of 100% of our normal costs (limited as above); this is for many reasons, but it is primarily because of the risk we bear both in terms of losing the claim and in terms of us having to (or choosing to) reduce our fees, including the success fee, so as to leave you with a reasonable part of your damages. Moreover, we strongly believe that we provide a premium service that is worth paying extra for. We should point out, however, that not all solicitors charge a success fee (and that not all of those that do charge a success fee of 100%). Despite this, we are happy that it is in your best interests to instruct us and to agree to pay the success fee, this being because of the quality of service that we provide and because of the expertise we have in this area of the law.

We would like to explain a number of things to you. Again, this is on the assumptions previously mentioned (just before the “how a conditional fee agreement works” above). If those assumptions are wrong then we will tell you; in particular, in the event that we discover that you do, in fact, already have the benefit of legal expenses insurance and if we continue to act for you, we will not charge you a success fee and we will cancel the policy that you have purchased. Assuming the assumptions to be correct, however, then the following will apply: -

1. The circumstances in which you may be liable for your own costs and for your opponents costs

Your costs – In the event that your claim fails, then we will not charge you for any work undertaken by ourselves or any expenses incurred by us on your behalf. Unless you withdraw your instructions, the only circumstances in which you might be liable for our costs in the event of failure would be where you have misled us, lied to us, failed to cooperate with us, etc. In the event that your claim succeeds you will be liable for our costs, but we would expect to recover at least some of these from the defendant. You will be required to pay the success fee, but this is limited to a quarter of (a part of your) damages. We may also require you to pay the difference between our other fees and those recovered from the other side. If you have taken out ATE insurance, then you may also have to pay the premium (see above).

Your opponent’s costs – It used to be the case that if you lost, you would normally pay the defendant’s costs, but this is no longer the case. Now, there are only certain circumstances in which you would have to pay the other side’s costs (such as where the defendant has made an offer and done better at trial than the terms of that offer). In any event, we have already recommended that you take out insurance against having to pay the other side’s costs; we deal with this under the heading “Financial Advice and Legal Expenses Insurance” below.

2. Irrecoverable costs

Please note that not all of our fees and expenses are recoverable from the other side; in particular, the success fee is not recoverable, nor is the ATE premium, and nor are any of our fees that exceed “fixed costs” (if any). By signing the conditional fee agreement you agree to pay those fees (if required to do so) notwithstanding the fact that they are not recoverable from the other side.

3. Your right to assessment of costs

You have the right to have our fees assessed by the court. Should you wish to do this, then we will provide you with the appropriate information upon request. 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 you 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 the court looking at the matter.

4. Any interest that Axiom Stone Solicitors may have in recommending the particular policy or funding

As we have already discussed, every case involves an element of risk and we recommend that you insure against the risk of having to pay the defendant’s costs. Please note that neither Axiom Stone Solicitors nor any employee or partner has any interest in recommending that you purchase an AU Insurance policy.

5. Your right to independent legal advice

We do not believe that you need to receive independent legal advice about what we propose, but if you would like to do so, please let us know.

6. The basis of our terms of our charges

This is set out in the conditional fee agreement. Basic charges are calculated for each hour (or part thereof in six minute units) engaged on the matter from the first date covered by the agreement (which is usually the date of instruction) until the review date on 1 January each year. Routine letters and telephone calls will be charged as units of one-tenth of an hour. Other letters and telephone calls will be charged on a time basis. There will be no charge for short incoming letters, but longer incoming letters will be charged on a time basis.

At the time of writing, the hourly rates are: -

• Solicitors/Partner/Consultants/Filex Lawyer (PQE 8 years +)	£250- £350
• Solicitors/Partner/Consultants/Filex Lawyer (PQE 4- 8 years)	£175- £250
• Solicitor/Partner/Consultants/Filex Lawyer (PQE less than 4 years)	£150- £175
• Trainee Solicitor/Paralegal	£120.00

7. Increase in rates

We will, where appropriate, increase our hourly rate in line with the market. The details are set out in the conditional fee agreement.

8. 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 at least some of those costs being paid by either the defendant or the ATE insurer. If you dis-instruct 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 during the claim. We will be happy to provide you further details about these monies upon request.

Use of Data

As a result of Data Protection Regulations, we are obliged to confirm the following to you: -

If your claim falls under the Ministry of Justice Process then please note that it may be necessary from time to time for us to enter the data that you have provided to us onto a secure portal to allow us to communicate details of your claim directly to the other side's insurers. We may also confirm such information in writing or by telephone communications. By confirming instructions for us to act on your behalf, you are allowing us to use the data for this purpose. The Ministry of Justice will use this data in accordance with the operational structure of the Portal Process.

Please note that your data will only be used for purposes relating to this claim.

Conclusion

It is our policy at Axiom Stone Solicitors to provide you with a service of the highest standard at all times. We have outlined information concerning general personal injury matters and we hope that it will assist you in understanding your matter. Should you have any queries that you would like to have clarified please do not hesitate to contact us.