



Virtuoso Legal

Intellectual Property Specialists

31 Harrogate Road
Leeds, LS7 3PD
England

Tel: +44 (0) 844 800 8871

Fax: (0) 844 800 8872

Web: www.virtuosolegal.com

“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

Principal: Elizabeth M Ward BSc (Hons)
Associate solicitor Kirsten Toff BSc (Hons)
Associate solicitor Deborah Niven LLB (Hons)
Practice Manager Elizabeth Lock BSc (Hons)

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Conditional Fee Agreements and Insurance

Conditional Fee Agreements (CFAs) are also known as 'no win, no fee' and can be used as an alternative method of funding litigation.

A CFA is an agreement between a lawyer and a client setting out the agreed financial arrangement relating to fees payable to the solicitor which are dependant on the outcome of the relevant litigation.

There are various types of CFAs including:

CFA without success fee

The client must pay ordinary costs if he wins (a proportion of these may be paid by the other party) and either no costs ("No win, no fee") or reduced costs ("Shared risk") if he loses.

CFA with success fee

A success fee can be charged in addition to the "normal" costs. The maximum success fee that can be charged is 100% of the time charge costs (often referred to as the amount of 'uplift').

What does the client pay if he wins?

If the client wins the case, he must pay the basic charges, the disbursements and any success fee. He can claim from the opponent part or all of the basic charges, the disbursements, a success fee and insurance premium.

Success Fee

The success fee is recoverable from the loser of the litigation. The success fee is intended to cover two elements: the risk element and the deferred fee element. The client may be able to recover some or the entire risk element from an opposing party if he wins.

A lawyer will calculate the success fee percentage after carrying out a risk assessment. The success fee percentage set out in the agreement will reflect the following:

- » The fact that if the client loses, the solicitor will not earn anything;
- » The solicitor's assessment of the risks of the client's case;
- » Any other appropriate matters;
- » The fact that if the client wins the solicitor will not be paid for basic charges until the end of the claim;
- » The solicitor's arrangements with the client about paying disbursements.
- » It is perfectly possible for a client in any case to challenge his or her own solicitor's bill. A client can, as part of that challenge, if appropriate, challenge all or part of the success fees even if the client freely entered into the agreement. Likewise, if the opponent is paying the success fee, it is also entitled to have the success fee assessed by the court.

What does the client pay if he loses?

If the client loses, he normally pays a contribution to the opponent's charges and disbursements. He may be able to take out an insurance policy against this risk. If the client loses, he does not pay his own solicitor's charges but may be required to pay the disbursements.

If the winning opponent has the benefit of a CFA and/or after the event legal expense insurance, such costs may include the success fee and/or insurance premium.

After the event insurance

After the event (ATE) insurance often goes hand in hand with CFAs. If the client loses the case they are likely to be ordered by the court to pay their opponent's legal costs. These can be very substantial. The loser's liability to pay the other side's costs and disbursements and his own disbursements can be insured by ATE insurance. ATE can cover a portion of, or the entire risk of, paying the opponent's costs.

Some insurers are happy to provide insurance for a one-off premium and we could assist with obtaining quotes if a client requires this. A one-off insurance premium can be recovered from a client's opponent



as part of his costs if he is successful, but one off policies are likely to be very expensive.

Before the event insurance

We are required to enquire whether a client holds any form of Legal Expenses Insurance before we agree to funding the matter by way of a CFA.

This type of insurance is commonly associated with car insurance and household contents insurance. Some policies are so widely worded and may enable the client to defend or bring litigation not connected with the house but generally.

They generally cover personal injury type or property related claims - not claims associated with intellectual property.

An employer, Trade Union, or any other body that a client belongs to (such as a sports club) may also have arranged insurance. Many banks offer legal expenses insurance to the holders of certain kinds of accounts or credit cards.

Legal expenses insurers are most unlikely to fund difficult test cases or cases where the cost of the proceedings may hugely outweigh the damages available, even in the event of total success.