

Conditional Fee Agreement Explanation Leaflet for Leaseholder Housing Conditions

What you need to know about the CFA

1) Explanation of words used

- (a) **Appeal** - Any action taken to challenge a final or interim decision of the court
- (b) **Applicable Damages** - The total of General Damages for pain, suffering, and loss of amenity, (often referred to as Personal Injury Damages) and Damages for Past Financial Loss, other than future pecuniary loss, net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.
- (c) **ATE Insurance** - A policy of legal expenses insurance taken out after the event to cover in certain circumstances your liability for payment of Disbursements and / or your opponent's Costs. A Policy of ATE Insurance is recommended to be taken out in all cases. The cost (which may be subject to change) is currently £280 + IPT pre issue and £350 + IPT post issue – both with £25,000 indemnity limit
- (d) **Basic Charges** - Our charges for the legal work we do on your Claim or which we arrange for others, not including barristers, to do on our behalf excluding any Success Fee. This includes the costs we deem reasonable for copying the file at your request.
- (e) **Cancellation Period** - The period of 14 days starting with the date of receipt by you of the Notice of the Right to Cancel this Agreement (a notice is included with this Agreement).
- (f) **Claim** - Your demand for Damages or other relief whether or not court proceedings are issued.
- (g) **Costs** - The collective term for some or all of the Basic Charges, Disbursements, Success Fee and VAT thereon.
- (h) **Counterclaim** - A claim that your opponent makes against you in response to your Claim.
- (i) **Damages** - Money that you win whether by a court decision or settlement that are not part of and are separate from Applicable Damages.
- (j) **Disbursement** - Payments we make or incur on your behalf such as:
- court fees;
 - experts' fees;
 - accident report fees;
 - travelling expenses.
- but not including any ATE insurance premium
- (k) **Expenses** - Payments we or you incur or we make on your behalf other than Disbursements, eg an ATE insurance premium.
- (l) **General Damages** - The part of the Damages awarded or paid to you which are for your pain, suffering and loss of amenity.
- (m) **Interim Hearing** - A court hearing that is not final.
- (n) **Lien** - Our right to keep all papers, documents, money or other property held on your behalf until all money due to us is paid. A Lien may be applied after this Agreement ends.
- (o) **Lose** - The court has dismissed your Claim or you have stopped it on our advice and any other outcome not being a "Win".
- (p) **Offer to Settle (formal)** - An offer to settle your Claim made in accordance with Part 36 of the Civil Procedure Rules.
- (q) **Overall Damages** - The total amount of all your Damages (interim, final and/or provisional) actually received by us or you (or others on your behalf) after deduction of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions but not including any future

periodical payments or further Damages after a Provisional Damages award.

- (r) **Past Financial Loss** - The part of the Damages awarded or paid to you which are for pecuniary loss, other than future pecuniary loss.
- (s) **Percentage Increase** - The percentage by which the Basic Charges are multiplied. See also Success Fee.
- (t) **Personal Injury Damages** - Damages in respect of personal injuries to the claimant or any other person or in respect of a person's death, and 'personal injuries' includes any disease and any impairment of a person's physical or mental condition;
- (u) **Provisional Damages** - Money that a court says your opponent must pay or your opponent agrees to pay, on the basis that you will be able to go back to court at a future date for further Damages if:
 - you develop a serious disease; or
 - your condition deterioratesin a way that has been proved or admitted to be linked to your personal injury claim.
- (v) **Qualified One-Way Costs Shifting ("QOCS")** - The rules in respect of Costs payable if you Lose a personal injury claim set out in the Civil Procedure Rules. Applies to claims for Damages:- a) for personal injuries, b) under the Fatal Accidents Act 1976, c) estate claims under S.1 of the Law Reform (Miscellaneous Provisions) Act 1934
- (w) **Success Fee** - The amount that we add to your bill expressed as a percentage of Basic Charges if you Win your Claim for Damages.
- (x) **The Client(s). You or Your** - means the person, persons or entity represented under the CFA. If the CFA is intended to cover joint tenants then a "Win" on either or both tenants claims shall be a "Win" for the purposes of triggering the right for Us to be paid by You and such a liability is on a joint and severable liability.
- (y) **Trial** - The final contested hearing or the contested hearing of any issue to be tried separately and a reference to a claim concluding at trial includes a claim settled after the trial has commenced or a judgment.
- (z) **VAT** - Value added tax. Our VAT number is 135 5784 92
- (aa)**Win** - Your Claim is finally decided in your favour, whether by a court decision or an agreement to pay you Damages or by a court decision or an agreement to pay you Costs, or in any way that you derive benefit from pursuing the Claim.

'Finally' means that your opponent:

- > is not allowed to Appeal against the court decision; or
- > has not Appealed in time; or
- > has lost any Appeal.

In the context of an Interim Hearing a Win shall amount to the securing of an order in your favour in respect of the subject matter with which the Interim Hearing was concerned.

2) General Terms

If any of the following events occur, you will **break** the Agreement and **you will be liable to pay our fees as set out below whether you Win or Lose**:

- (a) You fail to co-operate with us
- (b) You fail to attend any Court hearing which we reasonably request you to attend
- (c) You fail to give us necessary instructions when we ask for them
- (d) You withdraw instructions from us

3) Procedure

If your Claim is successful, your opponent will pay compensation. We will seek to recover our Basic Charges and the Disbursements made on your behalf from your opponent. We will deduct our Success Fee and VAT thereon, and ATE insurance premium from your compensation.

4) Basic Charges

These are our charges for the legal work we do, based on the rates we charge. Letters and telephone calls are charged out on a time recorded basis at 1/10th of the hourly rate.

5) Disbursements

These are our expenses and fees that have to be paid on your behalf, by us, to others involved in the case. For example, these may be court fees, barristers' fees, experts' fees, and official search fees. It may become necessary for a barrister to be instructed and if so we will discuss this with you. If a barrister is instructed you will be responsible for their fees. We will aim to engage the barrister under a conditional fee agreement. If you Lose you will have nothing to pay.

6) Success Fee and Applicable Damages Explanation

Our Success Fee, when applicable, is calculated as 100% of the Basic Charges which we are entitled to recover from you for conducting your Claim to a Win. The Success Fee (including VAT) is subject to an overall maximum limit of 25% (plus VAT) of the Applicable Damages or, if your Claim includes a claim for personal injury, 25% (twenty five percent) of your Applicable Damages. In so far as this may be inconsistent as to the treatment of VAT with s58 of the Courts and Legal Services Act 1990 (as amended) then the foregoing shall be read so as to be and remain consistent with such Act.

Example for a Leaseholder Housing Conditions only claim

A claim settled at trial for £1000 Applicable Damages. Our Basic Charges are £2500 including VAT.

The Success Fee would be 100% of our Basic Charges, i.e. £2500. This exceeds 25% of the Damages.

The Success Fee that would therefore be deducted is £250 Plus VAT totaling £300. You would receive £700 in Damages (on the basis VAT is 20%).

The Success Fee reflects the following:

- (a) the fact that if you Lose, we will not earn anything;
- (b) the arrangements about payment of our Costs including the fact that we will not pursue you for any of our Basic Charges or Disbursements unrecovered from your opponent.
- (c) the fact that if you Win we will not be paid our Basic Charges until the end of the Claim;
- (d) our arrangements with you about paying Disbursements.

How the success fee is calculated:

The Success Fee of 100% is based on our consideration of risk of not recovering our Basic Charges if a matter proceeds to a contested Trial. If the claim settles before a Trial then the Success Fee percentage we will charge you will reduce as follows: 25% if the claim settles pre-issue, 50% if the claim settles post issue but before the Trial date/window is determined and 75% if the claim settles after the Trial date/window is determined but before the Trial. All being subject to the overall cap of 30% of Damages or 25% of Applicable Damages.

We will provide you with a copy of any relevant judgment or of our calculation of any settlement showing how much of your Damages should be attributed to Applicable Damages. If you do not agree our calculation and this makes a difference to the amount of the Success Fee payable by you then we will refer the matter for determination by an independent barrister of at least 10 years call, to be appointed by agreement between us or, in default of agreement, by the President of the Law Society of England and Wales, such barrister to act as expert and not as arbitrator and his decision shall be binding. The barrister's fees for assessing this issue are to be paid by you if the barrister agrees with us, but otherwise are to be paid by us.

7) What happens if you Win

- > You are then liable to pay all our Basic Charges, Success Fee, Disbursements and VAT;
- > If you and your opponent cannot agree the amount, the Court will decide how much you can recover. If the amount agreed or allowed by the Court does not cover all our Basic Charges and Disbursements, we will not seek the balance from you;
- > It may happen that your opponent makes an offer that includes payment of our Basic Charges and Disbursements. If so, unless we consent, you agree not to tell us to accept the offer unless we and you agree what percentage is to be taken as representing our Basic Charges and Disbursements under this Agreement;
- > If your opponent is receiving Community Legal Service funding, we are unlikely to get any money from him or her. So if this happens, you will not have to pay us our Basic Charges and Disbursements.
- > You are liable for our Success Fee and the premium for any ATE Insurance policy.
- > We are allowed to keep any interest your opponent pays on our Basic Charges and Disbursements.

8) Part 36 Offers

It may be that your opponent makes a Part 36 offer or a payment which you reject and, on our advice, your Claim for Damages goes ahead to Trial where you recover Damages that are less than that offer or payment. In such circumstances you may be required to pay your opponent's Costs and Disbursements. If you are insured against payment of these amounts by your insurance policy, we will make a Claim on your behalf.

9) What happens if you Lose

You do not have to pay any of our Basic Charges or Success Fee save to the extent that they are covered by insurance. You do have to pay:

- > Your opponent's legal charges and Disbursements
- > Your Disbursements to the extent that they are covered by insurance;

If you are insured against payment of these amounts by your insurance policy, we will make a Claim on your behalf. If you are not already insured against such risks we may, at any stage of your Claim, recommend a policy of insurance against this risk to you. Where any claim we make for your Disbursements under such a policy exceeds any indemnity provided, we agree to cap our claim for Disbursements at a sum not exceeding the available indemnity. The premium for the policy is deferred and self-insured, so that it does not need to be paid where a Claim is unsuccessful.

If your Claim includes a claim for personal injury then if you Lose and do not recover any Damages you will normally have the benefit of Qualified One-Way Cost Shifting ("QOCS") so the court will not usually impose an order for Costs against you, unless:

- > The proceedings have been struck out; or
- > The Claim is fundamentally dishonest; or
- > The Claim includes a claim for the financial benefit of someone else; or
- > The Claim (or part of it) is not for personal injuries or death.

In the first two of the above circumstances it is unlikely that any policy of ATE Insurance or any third party funding would protect you against your opponent's Costs. Please discuss this with us if you do not understand.

10) What happens if You die before You Win or Lose:

In the event of your death, this agreement will survive subject to your Personal Representative agreeing to continue to instruct us under the terms of this agreement. If your Personal Representative does not provide such instruction, this agreement will be deemed terminated by You. If that happens, then We will be entitled to recover Our Basic Charges, applicable VAT and any Disbursements and ATE Premium incurred up to the date of Your death from Your estate, and, if applicable, the Success Fee if You or Your successors go onto Win Your Claim.

11) Children and Protected Parties

If this Agreement has been entered into on behalf of a child or a protected party, that person will do so both as an express agent of the child or patient and as litigation friend.

Where the child or protected party reaches majority or regains capacity, he will be deemed to ratify or adopt this Agreement if he gives instructions under it or if he allows instruction to be given on his behalf. Such ratification or adoption will be both retrospective and prospective in effect.

If You lose capacity during the course of this Agreement, any person who subsequently provides instructions on his behalf will, in the absence of agreement to the contrary, be deemed to be acting as Your agent and/or Your litigation friend, and shall be deemed to be doing so on the terms as set out in this Agreement.

In circumstances where any Damages are invested into the Court Funds Office You agree that We can make any necessary application to recover any applicable Success Fee and ATE Premium payable under this Agreement.

12) Other Circumstances

We may end the Agreement if either:

- > You reject our opinion about making a settlement with your opponent;

If this happens you may instruct us to obtain an opinion from an independent barrister on the merits of the proposed settlement. If the independent barrister agrees with us but you do not accept his advice, you must pay our Basic Charges plus VAT and Disbursements up to this point. If the independent solicitor or barrister agrees with you but we do not accept his advice, you must pay our Basic Charges plus VAT and Disbursements up to that point if later you go on to Win your Claim. This is subject to the provisions of Section 7), however you must ensure that you take no action to endanger recovery of these Costs and must include a Claim for these sums as a condition to any future settlement of your Claim.

- > We believe that you are unlikely to Win your Claim but you disagree with us;

If this happens you do not have to pay our Basic Charges plus VAT or Disbursements unless you go on to Win your case whereupon these must be included in any claim for Costs from the Defendant, subject to Section 7).

- > You act in a manner prejudicial to your Claim;

After this Agreement ends we will apply to have our name removed from the record of any court proceedings in which we are acting. We have the right to preserve our Lien unless another solicitor working for you undertakes to pay us what we are owed including a Success Fee if you Win.

13) Interim Hearings

If on the way to winning or losing you win an Interim Hearing, then we are entitled to payment of our Basic Charges plus VAT and Disbursements related to that hearing in so far as the court orders them to be paid by the defendant and the defendant pays them, together with a Success Fee on those charges if you Win overall. If you Win but on the way lose an Interim Hearing, you may be required to pay your opponent's Costs of that hearing.

If you receive interim Damages, we may require you to pay our Disbursements at that point and a reasonable amount for our future Disbursements. If you receive Provisional Damages, we are entitled to payment of our Basic Charges and Disbursements and Success Fee at that point.

14) Value Added Tax (VAT)

We add VAT at the rate that applies when the work is done to the total of the Basic Charges and Success Fee and, when applicable, Disbursements. Wherever we refer in this Agreement to any of those relevant VAT is added as appropriate.

15) Insurance

If you do not have suitable insurance in place to cover the risks of losing your Case we may recommend such cover to you. We only recommend insurance cover provided by companies with whom we have made contractual arrangements. We do not conduct an analysis of the insurance market. We may recommend

insurance underwritten by Financial and Legal Insurance Limited, Anthony Pope is a director of this company as well as Antony Hodari Holdings Limited and also has a very limited financial interest in both companies. This Agreement complies with the requirements of the Access to Justice Act 1999, section 58 of the Courts and Legal Services Act 1990 (as amended) and the Solicitors Code of Practice.

16) Other Matters

- > It may be that your opponent makes an offer of one amount that includes payment of our Basic Charges. If so, unless we consent, you agree not to tell us to accept the offer if it includes payment of our Basic Charges at a lower rate than is set out in this Agreement or if it is not deconstructed by your opponent sufficiently to allow you and us properly to calculate the Success Fee.
- > Pursuant to the Civil Procedure Rules, your recoverable Costs may be fixed under the "fixed recoverable Costs" regime or they may be capped by a judge under a costs management order or reduced on assessment by a Judge if considered disproportionate to the issues in your Claim. As such it may be that the Costs you recover from your opponent if you Win are no more than a contribution to the Basic Charges, Disbursements and Success Fee you have incurred.
- > In all cases whereby this Agreement has ended pursuant to Section 12) we reserve the right to charge our Basic Charges whether or not they are recovered in whole or in part from your opponent. It is recorded that you accept that the difference remains payable and as such your rights under s74(3) of the Solicitors Act 1974 and your right to rely on the presumption in CPR r46.9(3)(c) are expressly waived.
- > Our charges are set out in the client care letter and / or this Agreement. They are calculated by reference to hourly rates and six minute units. VAT is added. Disbursements or Expenses as defined herein elsewhere may be payable. The arrangements for payment and the right to cancel are set out in this Agreement and in the notice of the right to cancel at the end of it. If you agree to services starting within the cancellation period then the right to cancel will be lost.
- > The services to be provided are legal services. The time for delivery of those services to a conclusion in any individual Claim cannot be determined at this time. It is expected that it will take in excess of 30 days.
- > Definitions of words used in this CFA are explained in the Conditions.
- > You agree to pay into a designated account nominated by us any money received for or on your behalf and out of that money to allow us to settle the balance of our Costs. Such settlement by deduction will, upon our delivering to you a Bill, be 'payment' for the purposes of s70 of the Solicitors Act 1974.
- > The parties acknowledge and agree that this Agreement is not a Contentious Business Agreement within the terms of the Solicitors Act 1974. You have the right to apply to the court for assessment of our Costs, including our Success Fee.
- > If you seek such an assessment and as part of that process you seek copies of documents previously supplied, then, if we agree to provide duplicates, you will be liable to pay our reasonable Costs for addressing such a request charged at our usual hourly rates together with reasonable copy charges and postage.
- > This Agreement is governed by the law of England and Wales. Any disputes must be litigated there. In the event that any term, condition or provision of this Agreement is held to be a violation of any applicable law or statute or regulation, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement.

17) Assignment

The benefits and obligations under this Agreement may be assigned by us at will. If we transfer our business to any other legal entity or, if you give instructions through any person, then, unless it is agreed otherwise, such will act so as to automatically novate this Agreement between the new entity or other person (as applicable) and all rights and obligations under the Agreement immediately prior will be suspended until Win or Lose etc. The novated agreement and the original agreement will coexist and will be regarded as a continuous whole agreement. To be effective (and unless the court orders otherwise), any variation of or supplement to this Agreement must be made in writing (but need not be contained in this document).

18) Insolvency

Unless the contrary is agreed in writing or implied by conduct, then the insolvency of either party will not have the effect of terminating this Agreement. If, for whatever reason, a new agreement or retainer is made with the successor practice, administrator, assignee, etc. or with anyone else, then (in the absence of reason to believe otherwise) this Agreement will coexist with that Agreement such that in so far as the accrued rights are concerned, monies will be payable according to the outcome of the Claim.

19) Referral Agreements

You may have been introduced to us by a third party company (an 'introducer'). Under Solicitors Regulation Authority Rules, before we can begin to act for you, we must give you information about the financial arrangement which we have with your introducer (if applicable). We make a payment where applicable to the introducer for the referral to us of a Claim which is valued at a minimum of £1,000, if we agree to accept instructions.

20) Independence

Any advice that we will give you will be independent and you are free to raise questions on all aspects of the Claim process. Where we are also acting for your introducer in the same matter and a conflict of interest arises, we may be obliged to cease acting.

21) Fraud

Although the great majority of claims are entirely genuine, it has to be acknowledged that dishonest claims do exist. Any claimant who is found to have brought a fraudulent claim risks having this reported to the police and being subject to criminal prosecution. In the event that the evidence establishes that a claim is being brought dishonestly, we will be entitled both to terminate the CFA and to seek recovery of any Costs and Disbursements which we have incurred.

22) Money laundering and proceeds of crime

The British money laundering legislation is contained in the Proceeds of Crime Act 2002. By law we must advise you about that legislation. The legislation covers the proceeds of any crime if money is made and then passes to a third person and back again in a way that makes that money appear as though it was obtained by legitimate means. If a claim has not taken place or occurred in the way in which we are instructed, or injury/damage is not as great as we are led to believe but a claim is made and money is paid by way of compensation then those monies would be deemed to be the proceeds of crime and if those monies passed through a solicitor's client account an offence under the money laundering provisions would have occurred. If we have reasonable grounds for suspicion that a crime has been committed we are obliged to report it.

23) Professional Indemnity Insurance

In accordance with the rules of the Solicitors Regulation Authority we maintain professional indemnity insurance, details of which are available at our offices.

24) Financial services – helping to arrange insurance

This firm is not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at www.fca.org.gov.uk/register. The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society.

25) Electronic Identification

We may validate name, address and other personal information supplied by you against appropriate third

party databases. By accepting these terms and conditions you consent to such checks being made. In performing these checks personal information provided by you may be disclosed to a registered Credit Reference Agency which may keep a record of that information. This may affect your credit rating. All information provided by you will be treated securely and strictly in accordance with the Data Protection Act 2018.

26) Instructing Experts

During the course of acting for you in connection with your Case we usually need to obtain expert evidence to support your Case such as from an Environmental Health Officer, Surveyor, Doctor or other expert. In some cases, Antony Hodari Solicitors instructs Ultima Legal Services Limited ("ULS"). Antony Hodari Esq, Stephen Lund and Anthony Pope are shareholders and directors of Antony Hodari Holdings Limited which trades as Antony Hodari Solicitors ("AHHL") and are also directors of ULS which is wholly owned by AHHL. Emma Rees is a director and shareholder of AHHL but has no direct relationship with ULS.

AHHL does not receive any commission or fees in respect of referrals to ULS. You are free to refuse to use the services of ULS but we should warn you that this may result in a delay in obtaining evidence required to progress your case. Unless we hear from you to the contrary, we will assume that you are happy for us to use the services of ULS and will issue instructions accordingly.

27) Solicitors Code of Conduct

We are subject to a professional Code of Conduct which can be obtained from the Solicitors Regulation Authority website (<https://www.sra.org.uk/solicitors/standards-regulations>).

28) Complaining about our service

If you are unhappy with the service you have received from us please contact your case handler. If the issue cannot be resolved or the issue relates to the processing of personal data, you should contact our COLP, who is responsible for our complaints procedure, by email at clientcare@antonyhodari.co.uk or at our registered address. Should you remain unhappy with the outcome of your complaint, you have a right to complain to the Legal Ombudsman, PO Box 6167, Slough, SL1 0EH, www.legalombudsman.org.uk, within 1 year of the act/omission, or 1 year from when you should reasonably have known there was cause for complaint. You must also refer your concerns to the Legal Ombudsman within 6 months of our final response to you.