

No win, no fee. Limits on success fees.

Initiatives to promote fixed recoverable success fees in personal injury cases are being translated into action.

New initiatives to promote fixed recoverable success fees in personal injury cases will curb the excessive success fees (often 100%) that claimant's solicitors have sought to recover since the introduction of conditional fee arrangements (CFAs). This will introduce an element of certainty into the reserving for and settlement of claims and allow underwriters to rate risks more accurately. Under a new scheme, that started on 1 June, more than an estimated 100,000 consumers making claims for personal injury in road accidents under no win/no fee arrangements should benefit from quicker and more predictable settlements.

Road traffic accidents

The rules of court introducing the scheme (the Civil Procedure (Amendment No 4) Rules 2003) fix recoverable success fees in all road traffic accident disputes where the claimant is funded by a conditional fee agreement (CFA) that provides for such a fee. This implements an agreement reached nearly two years ago between representatives of the legal professions and the liability insurance industry which was facilitated by the Civil Justice Council (CJC) with assistance from the Department of Constitutional Affairs. So, for example, insurers will now pay solicitors a 12.5% success fee on top of their costs if they win cases that settle out of court and a 100% success fee in respect of claims that actually go to trial. Certain exceptional cases will be subject to individual assessment. For barristers, the fixed success fee will be 12.5% for issued cases; 100% for those that conclude at trial; 75% for multitrack cases that conclude within 21 days before trial; and 50% for fast track cases that conclude within 14 days before trial. In addition, the rules provide an escape mechanism from the fixed success fee regime in the case of disputes with a value in excess of £500,000.

Accidents at work

The 48,000+ employees injured in accidents at work who are making claims for personal injury under no win/no fee arrangements will also benefit as rules for a similar fixed success fee scheme are being finalised with a view to implementation in the autumn. The proposals are based on the Montague Hotel Agreement of the 7 May 2004 and it is proposed will apply to all employers' liability accident claims regardless of value and regardless of track. The success fee agreement in employers' liability accident cases (the current proposal excludes disease claims) will be the same as the road traffic accident scheme except for the base percentage increase for solicitors and barristers which will be 25%. A further uplift of 2.5% will be provided for solicitors where the CFA claim is funded by a membership organisation (mostly, trade unions) which traditionally selfinsure (in respect of the claim under the Access to Justice Act 1999, section 30) rather than take out after-the-event insurance. Increased percentage success fees will be available in exceptional cases (where damages are agreed or awarded at over £500,000) but it will be for the successful claimant to show that the correct uplift exceeds 40% or for the defendant to show that the correct uplift was lower than 15% and, if not, the conventional uplift should apply.

Government support

Certainly the government is convinced of the virtues of the new scheme. Civil justice minister David Lammy is quoted as saying: "Fixed success fees will help bring stability and certainty to the personal injury claims market following a series of court battles that delayed hundreds of thousands of cases as insurers challenged success fees claimed by solicitors. "Consumers will benefit as it will help ensure that solicitors, barristers and defendant liability insurance companies deal with genuine claims more efficiently, effectively and economically. As between 80% – 90% of cases are settled out of court, fixed success fees will help ensure that justice is delivered at reasonable and proportionate cost." Mr Lammy continued: "People who have suffered injuries as a result of someone else's negligence deserve to be able to claim redress without delay. These changes will help revolutionise no win/no fee arrangements for personal injury cases and help put the professionals back in charge of providing quality personal injury services to people with genuine claims."

Judicial backing

The Master of the Rolls, Lord Phillips, who also heads the CJC, is equally enthusiastic. "The introduction of fixed recoverable success fees in road traffic claims and the agreement in respect of employers' liability claims continues the welcome momentum in developing workable solutions to the costs problems we face. "Once again, some of the decisions made to produce these agreements have been difficult ones for all sides. But certainty and prompt settlement bring considerable benefits to all participants, lead to a better

service for those seeking compensation and leave the courts to focus on dealing with cases on their merits rather than the costs involved.”

Other innovations

These changes follow the introduction nine months ago of a new scheme to fix recoverable base costs for road traffic accident cases that are settled before the start of court proceedings and where the value of the claim does not exceed £10,000. The CJC and the Department of Constitutional Affairs is currently working with a variety of professional and insurance industry-related bodies to try to reach agreement on fixed recoverable success fees for other categories of personal injury. The aim is to achieve agreement on fixed success fees for employers (both accident and disease) and public liability claims by the end of this year. The Civil Procedure (Amendment No 4) Rules 2003 can be downloaded from www.dca.gov.uk/civil/procrules_fin/index.htm *This article is based on a press notice issued by the Department for Constitutional Affairs entitled “Improvement to No Win No Fee arrangements for personal injury claims” (28 May 2004).*

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