

Brethertons BIG FAQs Series

Basic Information Gathering and Frequently Asked Questions on....

Legal Retainers

In what might be the driest topic in our BIG FAQs Series, here we cover an issue rarely discussed but which underpins everything a solicitor is engaged to do for a client in connection with their compensation claim following spinal cord injury.

Who needs a legal retainer?

The firm of solicitors and the client instructing them are the parties to a legal retainer. The client needs the legal retainer so they can be sure of what the solicitor has agreed to do and on what terms. The retainer will set out (in some detail) exactly what the solicitor has agreed to do having been asked to do it by the client.

What is a legal retainer?

The legal retainer is the agreement and contract between the solicitor and the client defining what is to be done and how it is to be done and how it is to be paid for in connection with the legal work the client engages the solicitor to undertake.

Why are legal retainers important?

Without agreeing and documenting what is to be done, how it is to be done and how it is to be paid for, the potential for disputes between client and solicitor about the nature and extent of what was agreed significantly increases. Wordy as they can be, the document setting out all that should be documented as part of good client care and then delivering the services agreed, should usually mean that the document can be put away and never need to be looked at again. Of course, in the event of an issue arising between solicitor and client the document should help clarify the situation. Perhaps even more importantly, without a legally enforceable retainer the solicitor will not be able to recover fees ordinarily payable by an opponent in litigation where the claim was successful. The opponent would argue that if the Claimant was never legally obliged to pay anything towards their legal costs (and as usually evidenced by a written retainer) then in turn the (Defendant) should not be obliged to pay any legal costs incurred in the litigation that otherwise a losing Defendant to a claim would be ordered to pay. In fact, a solicitor attempting to recover costs from a Defendant where there is no legally enforceable retainer would be breaching the indemnity principle – a party cannot recover costs that exceed the amount due to their own solicitor and would potentially be guilty of fraud.

Where are legal retainers entered?

Retainers can be entered wherever the parties are comfortable entering them. Increasingly that happens by the client arranging to sign documents in hospital or at home. Where documents are signed other than in the solicitor's office (as is the norm in spinal cord injury claims) the client does have a 14 day 'cooling off' period in which to cancel the arrangement.

When are legal retainers entered?

It is usual to enter a retainer soon after you first engage with the solicitor you choose to represent you. We will usually assume that the retainer will proceed on the basis of a no win no fee arrangement from the date of the initial retainer. We will make clear that you should not expect to receive any request for payment prior to that arrangement being confirmed save in very exceptional circumstances where separate terms may have been agreed at the outset (for example where external input might be needed to determine whether a conditional fee agreement can be offered but where an external service provider's charge needs to be met).

How does the retainer affect my case?

The retainer is the key to what the solicitor is asked to and agrees to do in order to pursue your case. Without a retainer the solicitor will not be pursuing the case.



If you would like any more information or have any questions, please contact Jon Rees.

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