

Brethertons BIG FAQs Series

Risk Assessment

Risk Assessment is a vital and ongoing part of the solicitor's job when advising in relation to life changing injuries compensation claims. It refers to the assessment of risk in connection with the case being successful or unsuccessful. Cases can only proceed on a No Win No Fee basis as long as the prospects of success remain such that the case is more likely than not to reach a successful conclusion.

Who does the risk assessment for my case?

Your solicitor will seek to collate as much information from you about your claim from the very first meeting. Sufficient information must be gathered to allow the solicitor's firm to then take a view on whether they should offer you a No Win No Fee arrangement otherwise known as a conditional fee agreement ('CFA'). Expert and experienced solicitors who work with life changing injuries clients use that expertise and experience to assess whether they think the case will be successful or not because if it turns out to be unsuccessful the solicitor's firm doesn't get paid at all for the work undertaken in helping you irrespective of the stage the claim reaches.

What does risk assessment involve?

Risk assessment involves a thorough analysis of the facts of the case; the legal position; in respect of allegations, you may need to establish; the Defendant's stated or anticipated position in response to the claim; the evidence (expert and non-expert, medical and non-medical) that may be needed to establish the case and also an engagement with what expenditure may be needed on disbursements such as experts' fees and Court fees. A case plan will need to be formulated identifying which experts and barristers may need to be involved and when, and an assessment as to likely value of the claim and costs to be incurred will need to be made. The solicitor will also explore the legal expenses insurance position and other alternative funding options that might be available to the client besides a CFA approach. This is particularly important at the outset, but it is kept under review throughout the course of the case as each new development emerges – most of which (though not all) will have been possible to anticipate at least to some extent if the risk assessment is sufficiently rigorous.

Why is risk assessment important?

Commercially a solicitor who offers No Win No Fee agreements in claims that are unsuccessful will soon go out of business. Risk assessment facilitates the process of case planning and the litigation strategy to be deployed to progress the claim. It is also important for the client to understand each part of the process to a level where they are comfortable their expectations are being met.

Where is risk assessment undertaken?

Risk assessment is a largely paper-based exercise that the solicitor will undertake in the office. Obviously, the process of gathering information needed to inform the risk assessment process may involve meeting and communication with the client and potentially input from screening experts and others.

When does risk assessment take place?

Risk assessment needs to be robust and thorough. In a life changing injury case liability will be robustly disputed. It is therefore essential that the assessment of all risks in the case is made as soon as it is practically possible to undertake that assessment. It may require medical notes and records and screening input from expert witnesses who may be called in at a later stage. All of that can be a prelude to entering the conditional fee agreement, but then as the case progresses at various milestone points and with each new development the solicitor will be mindful to address whether the case is still on track or where the development is such as to change the assessment of risk. Sensible risk management demands an approach where risks are identified and dealt with early rather than missed and then surprises at a Trial which may then be unsuccessful.

If you would like any more information or have any questions, please contact:

Jon Rees - Partner - Life Changing Injuries

07772 081566

jonrees@brethertons.co.uk

Brethertons LLP Solicitors
Montague House
2 Clifton Road
Rugby, Warwickshire
CV21 3PX



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