**Success Fee Agreement Template – Explanatory Note**

The 2018 Act and the 2020 regulations prohibit the client being charged anything other than a Success Fee and an After the Event Insurance premium. However, that assumes the Recipient abides by their obligations under the Success Fee Agreement (SFA). Clause 2 of the template sets out what their obligations are.

The legislation also makes it clear that the SFA has to outline what the Recipient will have to pay if the agreement is terminated.

Clause 5 of the style SFA deals with the charging basis depending on which element of clause 2 is breached. The view taken by the Law Society’s working group is that clauses 2 (a) to (e) inclusive are “conduct” breaches where the Recipient’s conduct justifies time and line charging, and that remains the position in the revised agreement. However, it was considered a potential bar to accessing a second opinion where a genuine difference of opinion arises between Provider and Recipient on the issues of prospects of success or acceptance of a settlement offer if Recipient faced time and line charging in those scenarios.

The template SFA is now worded in such a way that:

1. If advice about prospects are rejected but the Recipient goes on to win, the original Provider is not entitled to a share of the success fee, only a fair share of recovered judicial expenses.
2. If advice about settlement is rejected and the Recipient goes onto win, the original Provider is entitled to charge a success fee calculated by reference to the value of the financial benefit which the recipient actually obtains, capped at what the success fee would have been if the settlement advice had been accepted.
3. If advice about settlement is rejected and the Recipient goes on to lose, they only have to pay the original Provider for the outlays which they incurred or were committed to incur prior to the agreement being terminated.

It remains open to all Providers to adapt the wording of the template on a case by case basis to suit the needs of specific Recipients provided the terms are compliant with the 2018 Act and 2020 regulations.