

Conditional Fee Agreement ('CFA') **for Claim for Compensation following UCU Strike Actions**

This agreement is a binding legal contract. Before you sign, please read everything carefully.

Agreement date: 17 July 2018

We/Us: Leigh Day, of Priory House, 25 St John's Lane, London, EC1M 4LB

You (the client)

What is covered by this agreement:

- Your claim for remedies arising from breach of contract as a result of the UCU strike action 22.2-16.3.2018. Your claim will be pursued under such causes of action and against such defendants as Leigh Day advise, including, but not limited to, your University or place of Higher Education (the **Defendants/the Opponents**).
- This agreement applies to your claim from the date that we were first informed of your claim and started work on it, even if that was before the date of this agreement, until the agreement ends. This agreement will continue until the end of the proceedings to which it relates, unless it is expressly terminated by either party before that date.
- Any appeal you make with our agreement.
- Any appeal made by an opponent which we advise you to defend.
- Any proceedings you take to enforce a judgment, order or agreement.
- Negotiations about and/or a court assessment of the costs of this claim.
- Any pre-action applications or non-party disclosure applications which we advise you to make.

What is not covered by this agreement:

- Any counterclaim against you.
- Any appeal made by you without our agreement, or any appeal by your opponent which we advise you not to defend.

Paying us if you win

If you win your claim, you pay our basic charges explained in 'Your Legal Costs', our disbursements and a success fee, plus VAT where applicable [collectively 'our costs'], together with the premium (or your share of the premium) for any insurance you take out and the fees of any third party litigation funder (see schedule 4). You may seek recovery from your opponent of part or all of our basic charges and our disbursements, but not the success fee, any insurance premium or any third party litigation funder fees.

Although you are liable to pay any shortfall on the recovery of our costs from your opponent (including the irrecoverable success fee, premium and any third party litigation funding fees), so long as you keep to this agreement and comply with its terms, we will limit your liability for unrecovered costs to an amount equal to 30% of the damages you recover, and we will waive any balance. This 'overall cap' on what we will ask you to pay includes any fees payable to barristers and any VAT.

Formal offers to settle by your opponent

It may be that your opponent makes a formal offer to settle your claim which you reject on our advice, and either on our advice you later accept that offer, or your claim goes ahead to trial where you fail to obtain a judgment more advantageous than that offer. If this happens, you will only have to pay our disbursements during any period when you do not recover our basic charges from your opponent because you did not accept or originally accept the offer.

Interim Hearings etc

If you win overall but on the way lose an interim hearing, you may be required to pay your opponent's costs of that hearing. This may be covered by insurance – see schedule 4.

If at any time you are awarded any costs, by agreement or court order, then (even if you lose or have lost your claim) we are immediately entitled to payment of the costs you recover from your opponent, together with a success fee on our relevant basic charges if you win or have won your claim overall.

Paying us if you lose

If you lose, you do not pay our basic charges or success fee, but you are liable to pay our disbursements. This may be covered by insurance or a third party litigation funder – see schedule 4. We will waive your liability for our disbursements to the extent that they are not paid in full by your opponent or any insurer or litigation funder.

Paying opponent's costs if you lose or fail to better a formal offer to settle

If you lose or fail to better a formal offer to settle after court proceedings are started you will be at risk of paying your opponent's costs. However, we will arrange an insurance policy to insure against paying opponent's costs – see schedule 4.

Disbursements

If you have third party litigation funding or insurance that covers payment of disbursements as the claim progresses, we may require you to use that insurance/funding to pay for disbursements or money on account of disbursements as your claim progresses.

The Success Fee

See schedule 1.

Basic Charges

See schedule 2.

Right to Cancel

See schedule 3.

Legal Expenses Insurance and Third Party litigation funding

See schedule 4.

Law Society Conditions

See Schedule 5.

Ending this agreement after the cancellation period

In addition to any right to cancel this agreement under schedule 3 below, you may end this agreement at any time. If you end this agreement before you win or lose, you must immediately pay our basic charges and disbursements, together with any insurance premium. If you subsequently win, you also pay the success fee. See further the Law Society Conditions, at Schedule 5, below.

We may end this agreement before you win or lose, in the circumstances and with the consequences set out in the Law Society Conditions below.

We may also end this agreement before you win or lose if we cannot obtain sufficient insurance/third party litigation funding for you.

We may also end this agreement before you win or lose if we fail to sign up enough clients with similar cases to yours to make it likely that, when shared by winning clients, our costs and the ATE insurance premium/litigation funding fees will be covered within the overall cap. If this is the reason for ending the agreement, you do not pay our costs.

Costs sharing and group litigation

Where we act for groups of clients pursuing similar claims it may be necessary for arrangements to be made between clients to share liability for costs.

Where cost-sharing applies to your claim, you may be added to the group once we determine that your claim has prospects of success of at least 50%. Until we add you to the group, this section of the agreement does not apply.

Unless otherwise agreed, and subject always to any contrary order of the court, members of the group will share liability for our costs (including any barristers' fees) as follows:

- a) The member will be exclusively liable for costs which relate exclusively to his or her claim.
- b) A member who wins his or her claim will be liable for a share of such of the costs which are common to multiple claims ('common costs').
- c) Irrespective of the date of their agreement with us, each member of the group will be treated as if they were a member from the earliest date on which common costs began to be incurred, or otherwise from such date as we will nominate, and liability to pay common costs may then be calculated quarterly beginning with that date.
- d) In each quarter, liability to pay the common costs will be divided by the number of members pursuing claims on the first day of each quarter who (in due course) win their claims, and each such member will be liable to pay an equal share.
- e) If in any quarter a member compromises his or her claim with an opponent on terms which provide for the opponent to pay that member's costs, then that member will be liable to pay his or her share of the common costs up to and including the last day of that quarter.

Where there is an insurance policy or third party funding agreement, liability for the premium/funder's fee will be shared by the members of the group under the terms of the policy/agreement, or under any costs sharing agreement required by the insurers/funder (see schedule 4)

You agree that it may be necessary to enter different costs sharing agreements. Where we reasonably consider this is necessary, you agree that we may substitute such alternative costs sharing terms as are reasonable. If you do not agree to these terms, we may end this agreement – see 'Your responsibilities' below.

Where you are part of a group, any liability to pay the costs of an opponent will, in default of agreement, be determined by the court.

Other points

Definitions of some words used in this agreement are given at the end of the Law Society Conditions, at Schedule 5, below. We add VAT to our costs where this is required by law. Our VAT Registration Number is 429700745.

You agree:

- a. this agreement is not a contentious business agreement within the meaning of the Solicitors Act 1974;
- b. if any part of this agreement is found to be unlawful or unenforceable, or would if given effect render all or part of this agreement unlawful or unenforceable, then that part of the agreement will be without effect and is severed from it, and the remainder of this agreement continues in full force and effect;
- c. this agreement is governed by English law, and (save where otherwise provided for below) any dispute arising out of or related to it or arising out of or relating to us acting for or advising you (or purporting to act for or advise you) will be subject to the exclusive jurisdiction of the courts of England and Wales;
- d. in the event of any court determining that the governing law provision in the previous clause is invalid or ineffective or otherwise is not to apply, then (save where otherwise provided for below) any dispute arising out of or related to this agreement or arising out of or relating to us acting for or advising you (or purporting to act for or advise you) will be referred to arbitration in England by a sole arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of England and Wales. The language of such arbitration will be English and any dispute arising out of or related to it will be determined by the courts of England and Wales;
- e. this agreement comprises the above and below text (the CFA), the schedules and the Law Society Conditions (as amended by us), together with the notice of the right to cancel, all of which form a single document, and all of which you have been provided with and given a fair opportunity to read and ask questions about before accepting;
- f. [IF YOU DO NOT WISH US TO START WORK UNTIL THE END OF ANY CANCELLATION PERIOD DELETE THIS SECTION (if you delete this section we

will not start work on your claim until the end of any cancellation period)] that you authorise us to start work on your claim immediately despite any right you may have to cancel this agreement. You understand that as a result then, if you cancel the agreement, you must pay for any work done or disbursements paid before you cancelled.

Acceptance of terms and signatures

You may accept this agreement either by sending us an email confirming you accept the terms and the obligation to pay if you win, or by signing and returning a paper copy.

Signed by the client:

Date:

I confirm that Leigh Day agrees to be bound by the terms of this Agreement.

Signed by the authorised representative of Leigh Day.



**Bozena Michalowska, Partner
Leigh Day**

Schedule 1

Success fee

The success fee is a percentage uplift on our basic charges. The applicable percentage depends on the point at which your claim concludes. The applicable percentage will be:

- Stage 1 – from the start of the case up to the issuing of legal proceedings 25%
- Stage 2 – from issue of legal proceedings to the close of pleadings 50%
- Stage 3 – from the close of pleadings to the listing of the case for a date for trial 75%
- Stage 4 – from the date the case is set down to trial and thereafter 100%

For the avoidance of doubt, the success fee which results from the stage at which the claim concludes will apply to the whole of the claim, and not simply from the conclusion of the previous stage and is payable by the claimant notwithstanding the existence of a valid legal expenses insurance policy.

The success fee percentage reflects the following:

- a. if you lose, we will earn nothing;
- b. we are unlikely to get paid costs after the effective date of a formal offer to settle made by your opponent which you fail to better;
- c. our costs are subject to the overall cap, so we are at risk of a substantial shortfall if you are deprived of a significant part of your costs (for example because you lose on certain issues in your claim), or if you cannot enforce awards of damages or costs against your opponent;
- d. litigation is inherently uncertain;
- e. we defer your liability to pay basic charges until you have won;
- f. these specific risks:
 - i. Depending on your degree type and university, there may have only been a small amount of lecture time missed during the strike period. This may mean that the amounts of damages you can recover are quite low. If compensation recovered by the group is low, then because of the 30% of damages costs cap, the amount recovered for you may be insufficient to cover the insurance premium and our and counsel's success fees;
 - ii. The method of payment for your degree course may mean that you are not entitled to pursue a claim, for example, in specific scenarios such as where your university course fees are paid for by way of a bursary or Trust. The Defendants may successfully argue that there was no breach of the contractual agreement between you and the university;
 - iii. The Defendants may successfully argue that the strike action taken by members of UCU was an "*unavoidable act*" and is exempt from compensation under a *force majeure* clause.

- iv. Other causes of action that we may bring such as deceit or breach of contract (term as to satisfactory quality) may fail for similar reasons;
- v. We may not attract enough claimants to support sufficient funding to pursue the claim to completion.

The staged success fee reflects in addition that; (i) cases should only reach the later stages where an opponent believes either that it will win, or that it has made a formal offer to settle which you will not better; and (ii) that factor (e) above increases in significance as your case proceeds.

The Success Fee cannot be over 100% of the basic charges in total, and if in error a success fee of over 100% is provided for, then the success fee will be limited to 100%.

You may apply to the court for assessment of our costs, including our success fee. Your right to detailed assessment is subject to court time limits and other special rules. We will provide you with full information about detailed assessment immediately upon request.

Schedule 2

Basic charges

Basic charges are calculated by the time spent by us or our agents on your claim. We will calculate our basic charges in units of one tenth of an hour. The hourly rates are:

Grade of Fee Earner	Hourly Rate (location)	Hourly rate including VAT at 20%	The Team listed below will be working on your case
[1] Solicitors, in-house counsel and legal executives with over eight years post qualification experience including at least eight years litigation experience, and other fee-earners of equivalent experience and/ or responsibilities.	£500 - London based	£600	Boz Michalowska
	£217- not London based	£260.40	Sarah Moore
[2] Solicitors, in-house counsel and legal executives with between four and eight years post qualification experience including at least four years litigation experience, and other fee-earners of equivalent experience and/ or responsibilities.	£320 – London based	£384	N/A
	£192 – not London based	£230.40	Tamlin Bolton
[3] Solicitors of up to 4 years post qualification experience and legal executives and fee earners of equivalent experience and/ or responsibilities, based in London.	£270	£324	Harriet Bass Sarah Askew
[4] Trainee solicitors, paralegals and other fee earners of equivalent experience and/ or responsibilities.	£150 – London based	£180	Thomas Rowson TG Onuba
	£118 – Not London based	£141.60	

Schedule 3

Notice of the Right to Cancel

Client Reference Number: 175466/1

You may cancel this agreement without giving any reason within a period of 14 days starting with the day after the date on which the agreement was entered. Your right to cancel will expire once this period ends.

To exercise the right to cancel, you must inform us of your decision to cancel this agreement by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached cancellation form if you wish but you do not have to.

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired. You can cancel by:

post to: Leigh Day, Priory House, 25 St. John's Lane, London EC1M 4LB, UK

or

e-mail to: bmichalowska@leighday.co.uk

or

fax to: + 44 20 7253 4433

If you cancel this agreement, we will reimburse to you all the payments received from you. We will make the reimbursement within 14 days of being informed that you have cancelled. We will make the reimbursement using the same means of payment as you used, unless you have expressly agreed otherwise; in any event you will not incur any fees as a result of the reimbursement.

Where you requested us to begin the performance of services during the cancellation period, you will pay us an amount which is in proportion to what has been performed until you have communicated your cancellation to us.

Leigh Day

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Cancellation Notice

To: Leigh Day, Priory House, 25 St. John's Lane, London, EC1M 4LB, UK
Email: bmichalowska@leighday.co.uk
Fax: + 44 20 7253 4433

If you wish to cancel the agreement you may use this form if you want to, but you do not have to.

I/We give notice that I/we wish to cancel my/our conditional fee agreement, your reference 175466/1.

Signed

Name:

Address:

Date:

Schedule 4

Legal Expenses Insurance and Third Party litigation funding

We recommend you take out insurance or third party litigation funding because:

1. you are liable to pay our disbursements win or lose; and
2. you are at risk of having pay your opponent's costs if proceedings are issued.

We will endeavour to arrange a policy/funding for you, but if we cannot obtain sufficient cover to protect you we will advise you about your options.

You are liable to pay the premium for the policy or fees of the third party litigation funder (or where you are part of a group, a share of the premium/funder's fees to be determined by the terms of the policy/funding agreement or of any costs sharing arrangement required by the insurer/funder).

However, the insurance premium will either be paid upfront by a third party litigation funder, or will be deferred so it does not have to be paid until the end of the case. The premium and third party funder's fee cannot be recovered from your opponent, and will be deducted from any damages you are awarded. Your share of the premium and third party funder's fee is subject to the overall cap.

Subject to the terms of the policy/third party funding agreement, you will not have to pay the premium/funder's fees if you lose.

We will not take out an insurance policy/third party funding agreement for you unless it is likely there will be a sufficient number of claimants in the group to cover the cost of the premium/funding within the overall cap.

We do not have a financial interest in recommending any particular policy/funding (aside from protecting you against the risk of losing so your claim can proceed) and we receive no commission.

We should also advise you of these points:

1. We are not insurance brokers. The legal expenses insurance and third party litigation funding markets are complex and change frequently and we may not have carried out a full assessment of other alternative insurance products which may be available in the market. Different types of policy may be available. You may seek alternative insurance/funding if you wish, for example through an insurance broker.
2. We are not directly regulated 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.

Schedule 5

Law Society Conditions (as amended by us)

The amended Law Society Conditions below are part of this agreement. You should read the conditions carefully and ask us about anything you find unclear.

Our responsibilities

We must:

- always act in your best interests, subject to our duty to the court;
- explain to you the risks and benefits of taking legal action;
- give you our best advice about whether to accept any offer of settlement;
- give you the best information possible about the likely costs of your claim for damages.

Your responsibilities

You must:

- give us instructions that allow us to do our work properly;
- not ask us to work in an improper or unreasonable way;
- observe the utmost good faith in all your dealings with us, disclosing all information relevant to your claim, and never providing us with information which is misleading or untrue ;
- co-operate with us;
- go to any expert examination or court hearing;
- provide us with all reasonable assistance to recover costs from your opponent;
- pay any disbursements or money on account of disbursements when requested;
- pay the insurance premium when it becomes due;
- comply with all the terms of this agreement and the terms of any insurance policy;
- where your claim becomes part of a group, enter into any costs sharing agreement with other claimants which we advise you to enter (thereby consenting where necessary to the variation of this agreement), and thereafter comply with the terms of that costs sharing agreement, and do nothing which might unreasonably prejudice any other members of the group;
- not enter into any direct negotiations or agreements with an opponent without our prior agreement;
- even where this agreement has ended, not make or accept any offer of settlement without our agreement;

- even where this agreement has ended, not do anything which might unreasonably prejudice our recovery of any part of our costs from your opponent;
- keep confidential all information received by you in connection with your claim, and the claims of any other claimants who with you form part of a group.

Dealing with costs if you win

Subject to the overall cap, you are liable to pay all our basic charges, our disbursements, success fee, and the premium for any insurance policy you take out and any third party litigation funder's fees.

Normally, you can claim part or all of our basic charges and our disbursements from your opponent, and you will use your best endeavours to do so. You further provide us with your irrevocable authority to pursue such a claim in your name on your behalf. However, you cannot claim from your opponent the success fee, and this will be deducted from your damages, subject to the overall cap. Any insurance premium/third party funder's fees will also be deducted from your damages, subject to the overall cap.

If we and your opponent cannot agree the amount of our basic charges and disbursements, 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 our disbursements, then you pay the difference, subject to the overall cap.

We may keep any interest your opponent pays on costs. If you are awarded enhanced costs or interest on costs because you have made a formal offer to settle, then the enhanced costs or interest which you recover will be payable to us. (Save that where you have paid sums to us already, you are entitled to a *pro rata* share of that part of the interest reasonably referable to those sums.)

You agree to pay into a designated account any cheque received by you or by us from your opponent and made payable to you. Out of the money, you agree to let us take our costs and any insurance premium/funder's fee, subject to the overall cap. We will pay you the remainder.

An opponent may make an offer of one amount that includes payment of damages and costs. If so, unless we consent, you agree not to tell us to accept the offer. You agree that, unless we otherwise consent, in no circumstances will you make or accept, or instruct us to make or accept, any offer to settle your case on terms that your opponent pays less than 100 per cent of your standard basis legal costs for the whole of your claim.

If your opponent pays no damages or charges owed to you, we may take recovery action in your name to enforce a judgment, order or agreement. The charges of this action become part of the basic charges, and are payable in accordance with this agreement. You must provide us with all the assistance which we reasonably require in such proceedings.

Your obligations under this section of the agreement survive even if the agreement is ended.

Payment for advocacy & barristers

The cost of advocacy by us, or by any solicitor agent or costs draftsman on our behalf, forms part of our basic charges.

We may instruct a barrister (or a team of barristers) to represent you, and you authorise us to do this.

Barristers who have a conditional fee agreement with us

If you win, you may normally recover their fee from your opponent, but not their success fee. The barrister's success fee is shown in the separate conditional fee agreement we make with the barrister. You must pay the barrister's success fee shown in the separate conditional fee agreement we make with the barrister if you win. If you lose, you will usually pay the barrister nothing. The barrister's fees, including success fee, will be subject to the overall cap.

Barristers who do not have a conditional fee agreement with us

The barrister's fees will be a disbursement under this agreement, and therefore subject to the overall cap.

What happens when this agreement ends before your claim ends?

(a) Paying us if you end this agreement

(This section does not apply where this agreement is cancelled by you under Schedule 3.)

If you end this agreement, you must pay our basic charges and our disbursements immediately, together with any insurance premium. You must also pay our success fee if you go on to win your claim. The overall cap will not apply.

(b) Paying us if we end this agreement

(i) We can end this agreement if you do not keep to your responsibilities. You must then pay our basic charges and our disbursements immediately, together with any insurance premium. You must also pay our success fee (subject to the success fee cap where applicable) if you go on to win your claim. The overall cap will not apply.

(ii) We can end this agreement if we believe you are unlikely to win. If this happens, you will only have to pay our disbursements to the extent that they are recovered under an insurance policy or from a third party funder. See schedule 4.

(iii) We can end this agreement if you reject our reasonable opinion about making or accepting a settlement with your opponent. You must then pay our basic charges and our disbursements immediately, together with any insurance premium/funder's fees. You must also pay our success fee if you go on to win your claim. The overall cap will not apply.

If a dispute arises between us as to our right to end the agreement, the matter will be referred to an independent barrister, such barrister to act as expert and not as arbitrator and his decision will be binding. The barrister will be of a standing and seniority which is suitable having regard to the complexity and value of your claim. In default of agreement

on the identity of the barrister, the chairman of the Personal Injury Bar Association or his delegate will nominate the barrister. Both you and we may then make representations to the barrister in writing within 21 days of receiving notification of his appointment. He will then immediately prepare a written opinion deciding whether we may end the agreement. We will undertake to pay the barrister's fees in the first instance, but the barrister will direct that you pay his fees if he agrees with us, and that we pay his fees if he agrees with you.

You may apply to the court for assessment of our costs, including our success fee. Your right to detailed assessment is subject to court time limits and other special rules. We will provide you with full information about detailed assessment upon request.

(c) Death or Incapacity

If you die or become incapable of giving us instructions (or are found without our prior knowledge to have been incapable of giving us instructions), this agreement does not end automatically. We may either agree with your personal representatives that they will continue to instruct us under the terms of this agreement as if they were you, or we may end this agreement, in which case you or your estate must immediately pay our basic charges and disbursements, together with any insurance premium and funder's fees. In addition, the success fee will be payable if your personal representatives or you continue your claim and subsequently win.

(d) Attaining capacity

Where this agreement has been entered by a person other than the person for whose benefit the claim is primarily brought ['the beneficiary'] because the beneficiary did not have the capacity to enter the agreement him or herself, then if the beneficiary thereafter attains capacity s/he may, where we agree, ratify and adopt this agreement, and will thereafter be bound by it as if s/he had been a party to the agreement with capacity from the start.

What happens after this agreement ends

After this agreement ends, we may apply to have our name removed from the record of any court proceedings in which we are acting unless you have another form of funding and ask us to work for you. We may preserve our lien unless another solicitor working for you undertakes to pay us what we are owed including a success fee if you win.

Explanation of words not elsewhere explained

Advocacy

Appearing for you at court hearings.

Claim

Your demand for damages or other remedies whether or not court proceedings are issued. There is no set time limit within which we must conclude work on your claim.

Counterclaim

A claim that your opponent makes against you in response to your claim.

Damages

Compensation that you win whether by a court decision or settlement.

Disbursements

Payments we make on your behalf such as court fees, experts' fees, or travelling expenses.

Formal Offer to Settle

An offer to settle your claim made in accordance with Part 36 of the Civil Procedure Rules.

Interim hearing

A court hearing that is not final.

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.

Lose

The court has dismissed your claim or you have stopped it on our advice.

Opponent

Any party to proceedings or proposed proceedings against whom you seek relief, including any party joined (whether formally or otherwise) to proceedings for costs purposes. Where this agreement identifies an opponent, it is not limited to claims against that opponent, and will also apply to claims against any other opponent arising out of the same or similar subject matter to the claim against the named opponent.

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. Where there is a reference to the commencement date of trial, the commencement date will be deemed to be (a) where there is a trial window or period, the first day of that period; and (b) where the trial or trial window is subsequently adjourned, the day on which the trial or trial window would have commenced but for the adjournment. Where as part of a trial there is a pre-reading day, the trial will be deemed to commence on the first such pre-reading day.

Win

Your claim is finally decided in your favour, whether by a court decision or an agreement to pay you damages (including provisional damages) or where there is any other outcome whereby you derive benefit from having pursued 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.