



## Funding and Costs of Litigation

Litigation can be a complex and time consuming process. It is therefore important to consider the costs of litigation and how to fund these at the very outset, particularly as it may be difficult to get out of the process once it has begun.

We will give you an overview of the likely overall costs of litigation before proceedings are started and provide estimates of costs at every stage. However, estimates are never intended to be fixed unless we expressly agree fixed costs with you, and due to the unpredictable nature of litigation a degree of flexibility is always required.

The various funding options are:

### LEGAL EXPENSES INSURANCE

You may already have legal expenses insurance as part of your household or car insurance policy. You will need to check your policy documents to establish if you have such cover.

### AFTER THE EVENT INSURANCE

If you don't already have cover, then it may be possible to take out after the event insurance. We will be able to advise you on the variety of policies available.

### CONDITIONAL FEE AGREEMENTS

A Conditional Fee Agreement (CFA) is an agreement between you and us setting out the funding terms of your claim or defence.

Under a CFA we will share the risk of litigation with you and as such will ask to be rewarded in return for doing so, if your case is successful, by reference to a success fee.

### PRIVATE FUNDING

If no other options are available, then you will be asked to pay for our fees and disbursements out of your own funds and we will invoice you at the end of each month for fees incurred during the course of that month.

PLEASE NOTE: we are not able to act for you on the basis of Legal Aid. If you would like to find out if you can get Legal Aid for your claim, please visit the following website: <https://www.gov.uk/check-legal-aid>.

Whilst as a general rule you can expect to recover a proportion of your legal costs if you successfully bring or defend a claim, you will usually only make this recovery at the end of the litigation process, and as such need to consider how you fund your case as it progresses. If you are unsuccessful, you will be required to make a significant contribution towards your opponent's costs, in addition to your own. Legal costs of litigation consist of solicitors' fees, disbursements (such as barristers' fees, court fees, fees of expert witnesses, travel expenses and photocopying costs), and fees related to mediation and arbitration.

Finally, before embarking on litigation, you should consider the time costs, such as time spent by you (or your employees) in dealing with our requests for information, time spent on the phone and in meetings with us, barristers and expert witnesses (as appropriate) and attending any court hearings. In addition, the emotional cost that some litigation brings should not be underestimated.



## Legal Expenses Insurance

Once you have established that you have legal expenses insurance, it is important that you contact your insurer to provide details of your claim, so that they are able to tell you if your particular claim or defence is covered. We would be happy to guide you through this process, but cannot act until cover has been confirmed, unless you agree to pay us privately for any work done before then. Your insurer is likely to have a panel of preferred firms, but that does not mean that we cannot act for you. By law you are entitled to choose your own solicitor. If you would like us to act for you, then we are happy to contact your insurer on your behalf to discuss this.

## After the Event Insurance

Typically, after the event insurance (“ATE”) will provide cover for your opponent’s costs and for the disbursements (such as court fees, barristers’ fees, expert fee etc.) that will be incurred as your case progresses. The insurers require applications to be accompanied by evidence that your claim or defence has a good chance of success, so that they may assess your claim. This means that we will need to investigate your claim and in most cases need to obtain advice from a barrister on the merits of your claim and some cases also expert advice. Unless we agree otherwise, you will be liable to pay for the costs of the investigation and obtaining the advice.

You need to bear in mind that you may have to pay a non-refundable application fee (although in some cases this is off set against the premium) and that the insurer may withdraw cover should the circumstances of your case change as it progresses. Another consideration is that if you lose you will be liable for our costs (fees and disbursements). Furthermore, should you win but not actually obtain payment of your costs from your opponent, then you are likely to be liable to pay our costs, as the insurance policy is unlikely to cover payment of our costs in those circumstances.

The amount of the premium varies from case to case, depending on the type of cover and the chances of success. The premium may be payable up front or in stages or sometimes even at the end. The premium cannot be recovered from your opponent and you will have to pay it whether you win or lose, unless the premium is self-insured in which case you don’t have to pay it if you lose.

### Getting in touch

For more information on our Funding and our Litigation Services please contact David Whiting at our Banbury office on 01295 204105 or email.



## Conditional Fee Agreements

Depending on the nature of your claim, we may be willing to enter into a Conditional Fee Agreement (“CFA”) with you. This can either be a straightforward CFA or a discounted rate CFA. Which CFA we are willing to offer you will depend on the circumstances of your case and we will discuss our decision and the reasons for it with you. The CFA only deals with payment of our fees. If you are unsuccessful in your claim/defence, then you will be liable to pay your opponents costs, unless payment of these costs is covered by an after the event insurance policy.

Under a straightforward CFA you will not be asked to pay us any fees as the case progresses. You will be liable to pay for any disbursements as and when they are incurred, unless payment of these is covered by an after the event insurance policy. Liability to pay our fees at our standard hourly rates (our “standard fees”) will arise upon conclusion of the case if your claim/defence is successful. In that instance, you are likely to recover a substantial payment of our standard fees from your opponent. However, you will be liable to pay our standard fees, to the extent that they are not recovered from your opponent. This means that you may be liable to pay for a part or all of our standard fees.

Under a discounted CFA you will be asked to pay our fees at a discounted hourly rates as your case progresses. Unless after the event insurance is put in place, you will be liable to pay for any disbursements as and when they are incurred. At the end of your case, if your claim/defence is successful, you will be liable to pay the difference between the discounted hourly rates and our standard hourly rates (our “standard fees”). You can normally expect to recover a substantial part of our standard fees from your opponent. However, you will be liable to pay our standard fees, to the extent that they are not recovered from your opponent. This means that you may be liable to pay for a part or all of our standard fees.

### Success fee

Under both types of CFA, you will be liable to pay a success fee if your case is successful. The success fee is not recoverable from your opponent. The success fee is an uplift on our standard fees and is our reward for sharing the risk of litigation with you. Full details of our standard and discounted fees and the success fee will be set out in the CFA. The level of the success fee will depend on the nature of your claim/defence and we will provide a full explanation to you about the level of the success fee prior to entering into the CFA.

### Costs incurred prior to the entering into of a CFA

In order that we are able to properly assess your case and its chances of success, we will need to investigate your claim and in most cases will obtain advice from a barrister on the merits of your claim and some cases also expert advice. Unless we agree otherwise, you will be liable to pay for the costs of the investigation and obtaining the advice.

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