

Funding your claim

Litigation

Cases which may go to Court or Tribunal are known as 'litigation'. It is always difficult to estimate the likely costs of such a case. There are risks and uncertainties such as:

- ⊕ might the dispute be settled early
- ⊕ will the other side fight all the way
- ⊕ will expensive expert evidence be needed

Quite often these and other questions cannot all be answered when you first come to us for advice.

How we charge you for our work

Our costs are normally based on the time we spend dealing with a case. This will include meetings with you and perhaps others, any travelling, considering, preparing and working on papers, correspondence and making and receiving telephone calls and emails.

The hourly rate is set out in our terms of business letter. This will be reviewed on 1st January each year and we will notify you of any changes. Routine letters we write and routine telephone calls we make and receive will be charged as units of one tenth of an hour.

Can you give me an estimate as to your likely costs?

It is often difficult to give an accurate estimate of the likely costs at the start of a claim. That is because it is often unknown what the other side will agree and disagree.

If you instruct us on a traditional solicitor and client basis we usually agree an initial limit to our costs to take us to the stage of the other party's response and an evaluation of your options. The likely cost of this will be agreed between us and is set out in the covering letter. We should then be able to give you a better estimate of our likely costs.

We will give you a breakdown of our costs and disbursements every six months and an estimate of our total costs and disbursements.

You may set a limit. When the limit is reached we will have to agree a new limit or stop acting for you.

When will I have to pay you?

This depends upon the funding arrangement. We tell you about the funding options below.

It is normally our practice to ask clients to pay sums of money at the start and from time to time on account of the charges and expenses which are expected in the following weeks or months. When we put these payments towards your bills we will send you a receipted account. We will offset any such payments against your final bill, but it is important that you understand that your total charges and expenses may be greater than any advance payment.

Payment is due to us within 28 days of us sending you an account. We will charge you interest on the bill at 8% per year from the date of the bill if you do not pay our bill within this time interest will be charged on a daily basis. If you have any query about your bill you should contact us.

What happens if I win?

It is important that you understand you are responsible for paying our account(s). Even if your case is successful, the other party will almost certainly not be ordered to pay for all your costs and disbursements. If an order is made, the other party may be unable to pay in full or at all. If the other party is legally aided you may not get back any of your costs and disbursements, even if you win the case. You are responsible for paying any shortfall in our costs and disbursements.

Most cases of a value of not more than £10,000 will be likely to be dealt with by the Court as 'small claims' for which costs recovery from another party is very restricted.

If the Court does order the other party to pay some or all of your costs and disbursements, interest can sometimes be claimed on them from the other party from the date of the Court Order. We will pay to you the interest to the extent that you have made advance payments as described above. We are entitled to the rest of any interest.

If the Court makes an order against the other party we will also charge you for our costs and disbursements in recovering the payment due from that party.

What happens if I lose?

In some circumstances the Court may order you to pay the other party's costs and disbursements; if you lose the case or if you lose an application during the case. This is payable in addition to our costs and disbursements.

If you lose the case you will have to pay your own costs and disbursements as well as towards your opponent's. This may not be the case with our fees if you have the benefit of a Conditional Fee Agreement. Also it might be covered in whole or part if you have legal expenses insurance in place. It is likely also to be restricted if the case is a small claim.

What about costs if my case is not dealt with at Court?

Your case may not be suitable for proceedings in the County Courts or High Court. The appropriate body may be a Tribunal or Committee. In these circumstances, the usual position is that each party pays its own costs and disbursements regardless of the outcome of the case. This may change if there is an appeal or if your conduct is deemed to be unreasonable. We can discuss this in more detail if these circumstances arise.

Costs control by the Court

Many cases are subject to Court Rules whereby the Court will approve a budget for any case before it. Such a budget will have a significant bearing on the level of costs you might if successful be able to have ordered against the other side and also, if unsuccessful, the level of costs you might have to pay the other side. Any such budget may also impact on the work we can do for you on the case, for instance in involving experts. It does not however guarantee that our costs for you will be in that budget. We will explain this further as your case progresses.

Alternative dispute resolution (ADR)

It is likely to be to your advantage to negotiate rather than litigate. We will consider with you the possibility of ADR. Please read our leaflet on ADR.

Does your charging rate apply to all other services?

Not necessarily. The hourly rate is fixed by reference to a number of factors depending upon the type of work.

If you would like information on the cost of other services, please ask.

OTHER FUNDING OPTIONS

You will understand that the work done for you in a litigation case has to be paid for. Clients will normally be expected to meet the legal charges and expenses of their own case.

There are however a number of other possible options. Please let us know if you want information on any of these:

- ⊕ funding from third parties such as a Trade Union, family or employer
- ⊕ risk sharing:
 - Those who may offer a risk sharing arrangement include:
 - i Insurance companies
 - ii Lawyers
 - iii a combination of these two
- ⊕ damages based agreements
- ⊕ Community Legal Service Funding. Now only available on a very limited basis in litigation cases

Many cases will simply not be suitable for risk sharing or damages based agreements.

Risk sharing with legal expenses insurers

⊕ Before the Event Policies

There are legal expenses insurance policies which can be taken out, usually with an annual premium, to provide cover for a possible future legal problem. You may have one, for example, as an 'add-on' to a home contents, car insurance policy or through your credit card. We should warn you that they are frequently very limited in what they cover and may include restrictions on your freedom of choice of lawyer. If you think that you may have such a policy, please let us see details of it.

⊕ After the Event Policies

These are policies which help to cover the cost of litigation once the dispute has arisen. If the premium is affordable, then it can provide some peace of mind against the possibility of the total litigation costs if you lose the case.

Insurance cover can be purchased to protect against:

- ⊕ your opponents' legal charges
- ⊕ your own 'disbursements': expenses such as Court fees and experts fees
- ⊕ your own legal charges

The usual basis of such policies is that payment is made only if you fail completely with your case.

Meeting the Premium

The problem with all insurance is paying the premium. Points to consider are:

- ⊕ the money has to be found for the premium. Sometimes we may be able to help you arrange this
- ⊕ all new policies from 1 April 2013 must be paid for by the person who gets the policy. So the expense cannot now be ordered to be paid by your opponent
- ⊕ is the expense of the premium 'worth it'? The cost of the premium will not be recoverable from the other side

In this leaflet we are providing information rather than specific advice. We cannot be aware of all the possible insurance policies available to the public. We do not undertake any responsibility to give you 'best advice' on these products. While any policy or funding arrangement which we suggest to you will be believed by us to be suitable, we cannot guarantee that the means of funding adopted by you will necessarily be the most appropriate to your needs.

Please note that insurance policies are policies of utmost goodwill. You must disclose to us and to your insurers all information which is relevant to your claim. Should your policy become invalid after we have been instructed, we reserve the right to recover our fees from you. These fees will be calculated at our full hourly rate(s) on the basis of a traditional solicitor-client instruction.

Should you instruct us to deal with a dispute with your insurer, this work is not recoverable under the policy and must be paid for privately. We will provide a costs estimate in these circumstances.

Risk sharing with lawyers

There are now various possibilities:

- ⊕ **a conditional fee agreement** - inaccurately but regularly called 'no win - no fee'. If this is offered, your lawyer makes no charge if the case is lost but you have to pay your disbursements and your opponents' legal charges. If you win, your lawyer charges a 'success fee' on top of the normal hourly rate. This success fee will not be recoverable against the other party
- ⊕ **contingent fees** - an hourly rate is agreed as being payable if the case is won but the rate is reduced if the outcome is unsuccessful

- ⊕ **damages based agreement** - where you are not charged if you lose but the fee, if you are successful, is a percentage of what is recovered

Points you should bear in mind regarding risk sharing

The idea of 'no fee', 'reduced fee' or a damages based agreement is obviously attractive to clients but there are other aspects of such arrangements:

- ⊕ instead of simply being a client and independent adviser, we may be sharing a joint venture with you. We will be entitled to have a say in the conduct of the litigation
- ⊕ similarly, sharing the risk with an insurance company means they will have a say in the conduct of the litigation and any offers of settlement. We will obviously be obliged to share details of your case with the insurers in accordance with their terms of appointment

We will carry out a risk assessment at the beginning of the case and at times during it to decide whether we are prepared to take it on or to continue with it.

If we are effectively going to be sharing in the rewards with you, you will have to satisfy yourself whether our proposal is fair and reasonable.

We usually require you to pay for some initial investigation into your case before deciding whether any risk sharing arrangement may be available.

Our usual funding arrangements

Unless between us we agree to one of the funding arrangements mentioned above, we will need you to sign our terms of business setting out our charges on an hourly rate basis.

Regular payments on account of these charges will be expected and we will not be able to start work on your case until this letter is signed. Under this arrangement you do of course know that you are paying for wholly independent advice and that you retain control of your own litigation. For instance, please tell us if you wish to place a limit on the costs being incurred up to, for example, the issue of Court proceedings, or for us to try to provide you with an estimate of the next stage of your case. Remember, an estimate is only a guide not a binding quotation.