

Funding of Dispute Resolution

This guide aims to explain how our fees and expenses can be funded, whether from your own resources or by a third party and the range of charging options that we offer.

If you are interested in saving fees by running the case yourself with us only assisting with specific advice or tasks please refer to our separate guide titled 'Struggling with Fees? Unbundling explained'.

What needs funding?

In addition to solicitors' fees, expenses ('disbursements') need to be funded as they arise.

Examples of disbursements are:

- Counsel's ('barrister's') fees for specialist advice, drafting key documents and in representing you at trial and, sometimes, mediation;
- Experts' fees for opinions and reports on technical issues;
- Court fees

The loser of a case is usually ordered to pay a proportion of the opponent's costs, as well as their own. A party may also have to pay some of the opponent's costs if they win but lose any application made during the case.

In cases involving personal injury the rule is modified to 'qualified one way costs shifting' (QOCS). A claimant will not have to pay the defendant more in costs than the defendant has been ordered to pay to the claimant in damages and interest (subject to exceptions for the claimant's bad behaviour or if it was unreasonable to bring the claim). This means that if the claimant loses, the claimant will not have to pay the defendant's costs; and if the claimant wins but is ordered to pay some of the defendant's costs, the claimant's costs liability is effectively capped.

Legal Aid

Legal Aid is the name given to Government funding of legal fees and disbursements. It is now only available for civil disputes in very limited circumstances. As it is very advantageous when available, we advise that you investigate whether or not you are eligible as soon as you become involved in a dispute.

Eligibility depends on the type of dispute and your own financial situation. The Citizens Advice Bureau have on-line advice, or you can contact them in person (website: www.citizensadvice.org.uk). The Civil Legal Advice Service (website: www.gov.uk/civil-legal-advice) should be able to give you some initial advice and give you details of a solicitor who can work under the Legal Aid scheme.

This fact sheet provides information and comments on legal issues, however the contents of this fact sheet do not constitute legal advice, is not a comprehensive treatment of the subject matter covered, and should not be relied on as such. Legal advice should be sought about your specific circumstances before taking any action with respect to the matters discussed.

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Laceys only undertakes work on a legal aid basis for some family or tenant housing cases. If your case relates to either of those please refer to the pages on our website that relate to them.

Before the event insurance (BTE)

You may already have the benefit of a legal expense insurance policy which covers you for certain types of dispute. This cover is often included with other policies, for example household or car insurance. This can also be very advantageous.

As soon as you think you may have a legal dispute check your existing insurance policies carefully and let the insurers know about the case as policies often have tight deadlines to do this. Let us know if you have a policy that appears to offer legal expenses insurance for the current dispute, and whether you wish to use it. If you request, we can look at the policies for you.

If you do have cover we may be able to act for you under the policy. We would agree the basis for charging with your insurers, who would usually agree to cover the costs up to the policy cover limit. This limit, which is available to pay both your own costs and any you have to pay to the other side, can be insufficient if the dispute is not resolved before trial.

We would need to make alternative arrangements for payment of the additional costs if it became apparent that the costs would be more than the cover. We may, for example, be able to offer you a conditional fee agreement, or help you to find third party funding (see below), for those costs. If the situation did arise, we would discuss the options with you in detail.

Alternatively, insurers may tell you that you must instruct one of their own panel of solicitors if you wish them to cover your costs. In some circumstances you can still insist on using solicitors of your choice but they/we would have to agree the basis of charging with the insurers

Pay as you go

If you are not eligible for legal aid and you do not have BTE cover or any other suitable alternative, you need to consider funding the dispute yourself.

Our fees and expenses are calculated according to the agreement we reach with you. Under our standard 'pay as you go' model, we calculate the fees by multiplying our hourly rates by the time we spend working for you, as the case proceeds.

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We usually ask you to pay our fees on a monthly basis, so that the charges are spread evenly during the life of the case, rather than present you with a large bill at the end. We usually require an amount to be paid in advance on account.

We can often agree fixed fees for certain stages.

In some cases we may be able to offer a conditional fee agreement (either a 'no win no fee' or 'no win reduced fee') as explained below.

Conditional Fee Agreements

Conditional fee agreements are agreements between clients and their solicitors (and/ or barristers), under which clients pay different amounts for legal services depending on the ultimate outcome of the dispute or litigation. When coupled with insurance cover or third party funding to cover the exposure to costs not already provided for under a conditional fee agreement, the litigation funding solution for clients can be one which both reduces risk and strengthens litigation strategy.

A conditional fee agreement is an agreement under which we agree that you will pay our legal fees at a discounted rate (up to 100% discount) and you will only be liable for additional fees if you win your case. If you lose, your potential exposure to your opponent's legal fees and expenses, as well as your own legal expenses, could be covered in whole or in part by insurance.

You will pay our fees at a discounted rate on the usual ongoing basis, as a result of which we will share the risk with you. These are the non-conditional fees and the level of discount will depend on the strength of your case as determined by the early risk assessment. The additional part of our fees which would take the level of non-conditional fees up to our standard rates are the conditional fees; these are only payable if you win and the majority can usually be recovered from your opponent in those circumstances.

A conditional fee agreement usually has a success fee. This is an uplift on our fees and is only payable if you win. The success fee is up to a maximum of 100% and reflects the risk we are taking in respect of our fees and the overall risks in the case.

If you win, you are liable to pay:

- Our non-conditional and conditional fees
- Your legal expenses
- The success fee
- Insurance premium if you take out insurance
- VAT.

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You will normally be entitled to recover some of these costs from the losing party.

You cannot recover the success fee or insurance premium from the losing party. If you win and we agree the level of costs which will be paid by the losing party, you will only be liable to pay the difference between the fees due and the amount recovered. The exact level will depend on the amount recovered from your opponent. If you win but we are unable to agree costs with your opponent, the amount of costs payable by your opponent will be decided by a court assessment. If you win but your opponent is unable to meet any costs order made against them, you remain liable to us for the payment of those costs.

If you lose, you are liable to pay:

- Our non-conditional fees (payable at the discounted rate on an ongoing basis in any event)
- Your legal expenses, if any, in excess of the insurance cover
- Your opponent's legal fees and expenses, if any, in excess of the insurance cover
- Any insurance premium
- VAT.

You do not have to pay any of the conditional fees or the success fee if you lose. In this way, even if you are not successful in the litigation, you will have transferred a significant share of the financial risk to us.

The overall effect is a significant reduction in your litigation costs as a whole and a minimal costs exposure in terms of your opponent's costs. As a result, this method of litigation funding can give you a position of strength in relation to your opponent.

Contingency Fees

Sometimes we can agree to charge our fees as a percentage of the sum you successfully recover. It is usually an arrangement on a 'no win no fee' basis.

This option is only available for money claims.

If you win you pay us as set out in the agreement. If you lose you don't pay us but are likely to have to pay the other side's costs.

If there are no court proceedings we can agree with you the basis on which we will charge a contingency fee. They can be useful in cases in the Employment Tribunal.

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If proceedings are anticipated, court rules permit a 'damages based contingency fee' i.e. you pay us a percentage of your damages if you win and you pay us nothing if you lose, but the rules are complex and this type of agreement is not suitable in most cases.

You may be able to protect yourself against the risk of having to pay your opponent's costs if you lose, by taking out After the Event insurance (ATE).

After the event Insurance cover (ATE)

After the event insurance provides cover against the risk of having to pay an opponent's costs, your own disbursements (and, in some cases although this is very expensive, your own legal fees) if you lose the claim.

It is often used with 'no win no fee' Conditional Fee Agreements to offer high protection on costs.

Generally speaking ATE is available for claimants only, but may be available for defendants in certain cases.

It gives protection on costs up to a certain level. The premium cannot be recovered from an opponent as part of a costs order if you win. It must be paid out of the damages/other monies recovered or other resources.

Availability of ATE is decided by insurers on a case by case basis. We can advise whether it is suitable or beneficial to purchase it on a case by case basis. In some circumstances it is unnecessary, too expensive or disproportionate. In others, it is a very valuable way to reduce your risk.

For further advice on Dispute Resolution funding options, please contact:

Mark Timberlake: m.timberlake@laceyssolicitors.co.uk or 01202 755200

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