

Costs of litigation

It is always important to consider the possible cost of bringing a legal action. Regardless of how strong or weak your argument may be in law; you will want to strike a balance between what the case may cost and what you stand to gain or lose. Your decision may have a bearing on the way you want us to handle your case.



HOW CAN WILLANS HELP?

Highly-skilled and experienced in handling small cases as well as multi-million pound disputes, our litigation solicitors will give you a full picture of the potential outcomes, risks and routes to resolving the issue.

The basics

Legal costs are made up of three elements: our fees + any disbursements (expenses we have paid on your behalf) + VAT. Remember also to factor in the other side's costs.

Solicitor's fees

Our fees are based on the amount of time spent working on a case. Hourly rates vary, depending on the skills and experience of the lawyer who is handling your case. We will quote you an hourly rate at the outset.

Effectively, the meter is running all the time we are working on your case. Our work is recorded in 6-minute units which will be charged to your account. This includes time spent considering and preparing documents, in meetings, writing letters, emails or faxes, and on the phone.

Disbursements

These are sums we have to pay to progress your case, for example court fees, payments for company searches or fees for expert witnesses. We will discuss these with you in advance. We usually ask for a sum on account at the start of the case to cover disbursements. If further sums have to be paid, we will bill you at the time.

VAT

You should note that VAT will be added to our own fees and any barrister's fees. In some cases, VAT may also be added to disbursements.

Estimating the cost

It is impossible to predict how long a dispute will last. For this reason, it is impractical to try and give an accurate assessment of the costs at the start.

We will provide estimates at the outset and will revise these as the case progresses if you would like us to do

so. It is important that you are aware of likely future costs as well as those incurred to date.

Spreading the cost

If the case drags on, there is always the risk of a large bill to pay at the end. We therefore advise spreading the cost.

There are two ways of doing this: we can send interim bills at intervals (e.g. every few months) detailing work done to that point. Alternatively, we can ask you for payments on account from time to time to cover costs as they are incurred. We will be happy to discuss these options with you.

Limiting the cost

If you like, you can put a ceiling on our costs. You might, for example, instruct us not to go over a certain amount without referring back to you.

Who pays the bill?

The general rule is that the loser must pay the winner's legal costs but this is not automatic and the court has a wide discretion and can order otherwise.

There is a distinction regarding the costs between the parties in the litigation and solicitor/client costs:

- > Solicitor/client costs are essentially governed by the contract between the client and the solicitor.
- > Party/party costs are those that a party in the litigation is to pay in respect of another party's costs as a result of a court order or agreement between the parties.

The starting position when determining what costs are payable as a result of a court order or agreement between the parties is that the costs will be assessed on the standard basis. This means that the court will:

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- > Not allows costs which have been unreasonably incurred or are unreasonable in amount.
- > Only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced, even if they were reasonably or necessarily incurred.
- > Resolve any doubt it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.

Any shortfall in the amount of costs recovered from an unsuccessful party following an assessment of those costs will be payable by you in accordance with the terms of your contract with us.

One word of warning: if your opponent has a legal funding certificate it is unlikely that you will get an order for costs against him even if you win the case.

If the case is settled out of court, or before proceedings are issued, costs are dealt with by agreement between the parties.

If you lose, you normally have to pay your opponent's legal costs as well as your own. The court has some discretion over this and in some circumstances, they might not order you to pay. However, it is wise to assume you will have to pay the other side's costs which will probably be similar in size to your own.

Enforcing payment of costs

If you win your case, a detailed bill will be sent to your opponent showing the amount you are asking him to pay. He must pay everything on the bill providing it was reasonable for the work to be done and the amount claimed for that work is reasonable.

Usually, the other side will make an offer of less than the sum you are claiming. If the offer isn't acceptable, then the bill goes before the court in mini-proceedings called 'detailed assessment'. Once the court reaches a decision, you will have an

official court order that can be enforced in various ways. If it becomes necessary to chase payment, we can advise further on these.

If you lose, this procedure works the other way round.

Methods of Funding

In the alternative to the usual contractual provision for payment of your costs, whereby you agree to pay for work carried out on your behalf on a standard hourly rate basis, regardless of the outcome, there are various other options which may be used to fund a case in the civil courts. These may be summarized as follows:

Conditional fee agreement (CFA):

- > A CFA is an agreement with a person providing litigation or advocacy services which provides for their fees and expenses, or any part of them, to be payable only in specified circumstances. Generally, if the client loses the case, it will not be liable to pay for the fees and any expenses that are subject to the CFA (the conditional fees). If the client wins the case, it will be liable to pay all fees and expenses, including the conditional fees, and a "success fee", if provided for in the CFA.

A success fee is an additional amount payable for the legal services, over and above the amount that would normally be payable if there was no CFA. It must be expressed as a percentage uplift on amount that would be payable if there was no CFA, and that percentage cannot exceed 100%. The success fee is not recoverable from the other side and must be paid by the client.

Legal Expenses Insurance:

- > After the event (ATE) insurance is a form of legal expenses insurance policy taken out after a legal dispute has arisen. ATE insurance usually covers a party's potential liability in the event of losing their case, in respect of their own disbursements and their opponent's costs and disbursements. It is therefore often taken out with another form of funding

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to cover the client's own legal costs, such as a CFA or third-party funding.

ATE insurance is different from pre-purchased before the event (BTE) insurance which is often included as part of a household or motor insurance policy and is therefore taken out before a dispute arises. BTE insurance usually covers legal fees and disbursements up to a specified limit.

Third party funding:

> Third party funding usually involves a commercial funder agreeing to pay some or all of the claimant's legal fees and expenses in return for a fee which is payable out of the proceeds recovered from the resolution of the claim (whether by judgment or settlement).

If the claim is unsuccessful, the funder loses its investment and is not entitled to receive any payment. ■



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