

The cost of litigation: Q&A

Litigation can be stressful, and is also likely to be expensive. Failing to address the issue of costs from the outset will not make it any easier for either the person involved, or for the lawyer. We answer some commonly asked questions:

How much will it cost?

This is impossible to answer at the start, but with more information an experienced lawyer can make an informed guess when the basics of the case are known. A more detailed estimate can be provided when that stage is reached but it may need revising if any unexpected events occur. A successful party may recover some costs from the loser.

Will I have to pay up front or can I defer payment?

We will usually ask for payment of any expenses (disbursements) before we incur the cost of, for example, search fees, court fees, expert's fees and counsel's fees. We normally request a payment on account to cover our initial assessment of the case and then we will send further invoices as the case progresses (as agreed with you).

In exceptional circumstances you may be able to defer payment until the end of the case if we agree another way of structuring it.

Will you work for a percentage of any damages that I obtain?

Generally, this is not how we prefer to work, and it would not of course be appropriate in cases where you are defending a claim or where the claim is of little or no monetary value. In some cases we would consider the option of a conditional fee agreement (CFA) or a damages based agreement (DBA), where our fee, or part of it, would be dependent upon the outcome of the case. But the pros and cons of both have to be carefully considered.

What is a CFA?

A CFA allows for all or part of our fees and expenses to be payable only in specified circumstances. Generally, if you lose the case, you will not have to pay for the fees and expenses that are subject to the CFA (the conditional fees). If you win the case, you will be liable to pay all fees and expenses, including the conditional fees, and a "success fee".

The advantage is a reduced risk to you in the event that the case is lost. The disadvantage is that any success fee will be payable to us in addition to our normal fees, to take account of the risk that we carry of not being paid. This "success fee" is not recoverable from the losing party.

What is a DBA?

A DBA is a type of contingency fee agreement under which you pay our fees if you are successful and obtain an order that the other side pays damages. The amount due will be an agreed percentage of the compensation received. This is therefore only suitable in higher value

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claims where you are the claimant and expect to receive a monetary remedy if successful. As this is a percentage of damages awarded to you it will be payable by you. If the case is unsuccessful, we may not be entitled to any or part of our fees, depending upon the wording of the agreement.

What happens if I lose?

If you are unsuccessful in a case you will almost always be liable to pay the other party's costs. This could be a considerable sum. To protect against this risk we advise clients to consider taking out an insurance policy, called an after the event insurance policy (ATE).

Will this cover all of my costs?

Not usually. If you lose your case an ATE will typically cover your liability for your own expenses and your opponent's costs and expenses. Although we will always discuss this option with you, it will not be appropriate in every case, nor will it always be available, not least because the amount of the premium may be disproportionate to the value of the claim.

In determining whether or not to provide cover insurers will want to know that there are good prospects of success and they therefore require adequate case analysis to be carried out before they will insure a risk. Methods of paying this insurance premium vary, but it may often be deferred until the case is won. In those cases, it will not be an expense that can be recovered from the other party, so it will have to be paid by you if you succeed.

What if I already have insurance?

Legal expenses cover is often included as part of a household or motor insurance policy and is therefore in place before a dispute arises. It usually covers legal fees and expenses up to a specified limit. You should always check that you have such insurance cover as soon as you become involved in a dispute. Your insurer may insist on using a panel solicitor but you may still be entitled to financial assistance to bring, or to defend, a claim.

Is there any other way my case can be funded?

There are several companies who may be prepared to fund the costs of your case, in return for a share of any damages. These arrangements are usually linked to ATE policies so the risks are substantially reduced. If you are successful you would pay their share out of the damages that you receive. Percentages vary but can result in a substantial payment so usually this method is only worthwhile for high value claims.

What if I am being sued?

Unfortunately, neither litigation funding nor ATE insurance are likely to be available, but home insurance may well include some liability cover.

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