

INFORMATION FOR CLIENTS ON FUNDING OF DISPUTE RESOLUTION AND LITIGATION

Cases which involve court proceedings 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?

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

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 options. Please let us know if you want information on any of these:

- Community Legal Service Funding. Now only available on a very limited basis in litigation cases. If you wish us to advise you on eligibility, we will need your personal financial details.
- Funding from third parties such as a Trade Union, family or employer (please tell us if this may be available to you).
- Risk sharing. Those who may offer a risk sharing arrangement include:
 - Insurance companies.
 - Lawyers.
 - A combination of these two.

Some cases will simply not be suitable for risk sharing. Remember too, that third parties who offer to fund you will normally expect to share the rewards.

Risk sharing with legal expenses insurers

“Before the Event Policies”

These are legal expense insurance policies which can be taken out, usually with an annual premium, to provide cover for a possible future legal problem. Private

individuals often have one, for example, as an 'add-on' to a home contents or car insurance policy. Increasingly, companies are encouraged by their brokers to add legal expenses insurance to their normal commercial policy. 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 and may not provide full cover for our hourly rates and other charges. If you think that you may have any such 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. (insurers are increasingly reluctant to provide this cover).

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 the insurer will agree to defer payment until the end of the case for an extra amount of premium.
- The Access to Justice Act 1999 makes it possible for the court to order your opponent to repay you this premium if you win. But you cannot be sure of complete recovery.
- Premiums for accident cases are modest. For other types of litigation, for example, they may be about 20% to 30% of the total legal charges against which you want to protect yourself.
- In substantial commercial litigation, the premiums may be even higher.

We do not undertake any responsibility to give you “best advice” on these products although we will provide you with a “demands and needs” statement if we do recommend a policy to you. We will have to charge you at our normal hourly rates for the time spent investigating and advising in respect of such a policy, and those fees would not be recoverable from your opponent if you win your case.

Risk sharing with lawyers

Until recently, solicitors were not permitted by law to offer clients any such arrangements. 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; your opponent may be ordered to pay at least part of these charges, including the success fee.
- **Contingency fees** – where again you are not charged if you lose but the fee if you are successful is a percentage of what is recovered. However, this arrangement cannot be used for cases which require court proceedings.
- **Discount conditional fee** – an hourly rate is agreed as being payable if the case is won but the rate is reduced if the outcome is unsuccessful. Such an agreement could also provide for a success fee .

Points you should bear in mind

The idea of “no fee” or “reduced fee” is obviously attractive to clients but there are other aspects of such arrangements:

- Instead of the normal client and independent adviser relationship, we will be sharing a form of joint venture with you. You may expect us to have a greater say in the conduct of the litigation.
- 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. You cannot expect us to advise on that!
- We may require you to pay for some initial investigation into your case before deciding whether to offer a risk sharing arrangement.

Our usual funding arrangements

Unless you agree with us one of the other funding arrangements mentioned on this fact sheet, we will need you to sign our terms and conditions of business (TCB) 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 these TCB are 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 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.

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