

Litigation – key facts

Dispute Resolution

Funding your claim

We will discuss payment options with you and answer any questions you have. We will not charge you anything until you have agreed how we are to be paid. Your main funding options are:

- Private funding

You pay for your legal fees directly from your own resources. This is the most common method of funding litigation. We are transparent and open about our fees and will discuss these with you from the outset. We will also update you on a regular basis as your case progresses.

- Legal expenses insurance (LEI)

You may have the benefit of legal expenses insurance which typically covers the cost of a wide variety of legal work. We will assist you in identifying whether you have any LEI available on your existing insurance policies.

- After the event insurance (ATE)

ATE is an insurance policy taken out after a dispute has arisen. It protects against the risk of having to pay your opponent's legal costs if you lose. The premium will be payable by you only if you win, the amount of which is usually determined by the level of cover required. We will arrange the ATE insurance for you.

- Conditional fee agreement (CFA)

We may be able to offer to fund your case on a "no win, no fee", commonly described as a Conditional fee agreement or CFA. This is subject to an assessment of the merits of your case and you may need to pay the cost of us assessing your case yourself. A CFA helps to protect you from financial risk. This means that if you lose your case, you do not have to pay our fees or only such fees as we agree with you under a discounted CFA arrangement and your opponent's costs are covered by ATE insurance.

Litigation risk

However good we regard your case to be, you should understand from the outset that we cannot guarantee success. It is possible for the strongest of claims to fail and vice-versa. There are always winners and losers. This is known as "litigation risk".

We will carry out a cost/benefit analysis of your claim at the outset and throughout on a regular basis as the strength of a case can change as it progresses. If we feel that the costs of carrying on with the claim are likely to outweigh the overall benefit to you we may advise you that you should not carry on with the litigation.

Costs

It is also important that you understand the risks relating to your and your opponent's legal fees and disbursements, which are known as "costs".

Although the general principle is that the loser pays the winner's costs, the Judge has complete discretion and can make a whole range of very different orders. You should also be aware that even if the Judge orders your opponent to pay your costs recovery of 100% of the costs you have been billed by us is rare. You will be responsible for any shortfall between the costs you incur and the costs recovered from your opponent.

Conversely, if the other party is successful in the claim, or any part of it, they may be entitled to recover their costs from you.

A Judge may sometimes make different orders in favour of different parties relating to different issues or stages in a case. Also, on assessment (when a costs judge decides the amount of costs to be paid), the court is likely to disallow some costs claimed primarily where it appears to the court that the costs are not proportionate to the value of the claim. If this happens you will remain fully responsible for any shortfall.

Small claims

Please note that if your claim falls into the “small claims track” (typically claims of £10,000 or less) legal costs (other than court fees) are not recoverable at all, even if you win.

Recovery and enforcement

It is also important to remember that even if your opponent is ordered to pay you damages and/or costs that they will only be able to pay if they have the money to do so.

Attempting to get your opponent to pay the damages or costs he has been ordered to pay is called “enforcement”. This can include the use of bailiffs, securing debts against property and the threat of or actual insolvency proceedings such as bankruptcy. Enforcement methods are limited and it is sometimes impossible to recover your damages and/or costs your opponent has been ordered to pay.