
Financing a Claim for Personal Injury Compensation

A claim for damages (*i.e.* compensation) for personal injury can be financed in a number of ways. These are explained briefly below:

1. Legal Expenses Insurance

It is becoming increasingly common for people to have the benefit of a legal expenses insurance policy which will cover their costs and their opponent's costs in the event that they wish to bring a claim. The legal expense insurer will only pay costs if they approve of the case and each scheme has different terms and conditions. Some are better than others, *i.e.* some will pay expenses of the case as it proceeds, whereas others will not.

Often people have legal expenses insurance, but do not realise it. Insurance can be added to a motor policy or to a building insurance policy or possibly to a household contents policy. It is very important for you to check your insurance position to see whether you have any legal expenses cover before consulting us, as this will affect the advice we give to you in relation to the financing of your claim. Please bring any policies you have along to our first meeting, so that we can advise you further.

2. Union Membership

If you are a Union member you may well qualify for legal assistance from the Union scheme. Again, it is important to find out whether you have the benefit of such a scheme before you contact us.

3. As a Private Fee Paying Client

You agree to pay us the legal costs and expenses of bringing the case. If the case is successful, you would expect to recoup the majority of these costs and expenses from the Defendant (the person against whom the claim is brought). If you lose the case you would, however, have to bear your own legal costs and you would be expected to pay the bulk of the Defendant's costs.

Unfortunately, not many people can afford to proceed in this way, but in those cases which are funded privately, it may be possible to obtain an interim payment of compensation which can then be utilised to help pay the legal fees.

4. As a Fee Paying Client with "After the Event" Insurance

Similar to 3 above, but you purchase insurance cover to safeguard you should you lose the case. If you win you may be able to recover the cost of the insurance premium from the other side. If you lose then provided you have taken out sufficient cover the insurance should cover your own legal costs and also your liability to pay the Defendant's costs.

5. A Conditional Fee Arrangement ("No win - no fee")

The Conditional Fee Agreement is a complicated Agreement and to explain how the Agreement works it is necessary to explain a little further what we mean by "costs".

(a) *Your own solicitor's fees:* Solicitors charge at an hourly rate for the time spent on the case. This hourly rate includes all the general overheads of running the solicitor's office. (In a conditional fee agreement these fees are called "basic costs".) VAT is added.

(b) *Disbursements:* These are items of expense incurred by the solicitor on your particular case. Typically, in a personal injury case, these will include the fees for medical reports, court fees, travelling expenses and the fees of other experts, *e.g.* an accident reconstruction expert. In an average personal injury case these disbursements would generally total £500-£1000.

(c) *Counsel's fees:* In personal injury cases it is sometimes necessary to involve a Barrister (*i.e.* Counsel) to advise, to draft court documents and, in particular, to appear in court.

Once court proceedings are started the Defendant will also incur legal costs which will include the same three elements - solicitor's fees, disbursements and Counsel's fees.

It is important to stress that if you win the case, the Defendant will have to pay the majority, but not all, the costs of your bringing the case. This principle applies in the same way regardless of how the case is financed.

It is also very important to appreciate that if you lose the case or have to withdraw after court proceedings have been started, then you are liable to pay the majority, but usually not all, of the Defendant's costs.

A Conditional Fee Agreement applies to the basic costs of the case, i.e. the solicitor's fees. If you are unsuccessful then we charge you nothing for our basic costs for the work done after the Agreement takes effect.

If you are successful then, in addition to our normal basic costs, we charge you a "success fee". This is a percentage uplift on our basic costs (not your damages) and can be anything between 0% and 100% of the basic costs. The amount of the success fee reflects two factors, firstly the risk we are taking that the case might not be successful and secondly the fact that we do not get paid at all until the case is finished.

In principle you can recover the first part of the success fee, ie. that which reflects the risk we are taking that the case may not be successful, but the second part of the success fee, ie. that which reflects the fact that we will not be paid until the case is finished is paid by you from your damages.

The Conditional Fee Agreement does not apply to the disbursements incurred in your case and these have to be paid as the case proceeds. If you can afford to pay your disbursements, we will ask you to make a payment on account to cover the disbursements we are likely to incur. If you cannot afford to pay your disbursements, we can help you to enter into an agreement with another agency who will lend you money to pay the disbursements. You will be charged interest on the amount outstanding. If the case is successful we would hope to recover the bulk of your disbursements from the Defendants, but we would not be able to recover the interest and that would be deducted from your damages.

Obviously, if we take a case on a conditional fee basis, we very much hope that the case will be successful, but if you were to lose the case, you would have to pay the Defendant's costs. We therefore advise all our clients who are entering into Conditional Fee Agreements to take out an "After the Event" insurance policy. That policy would then pay any costs that you are ordered to pay to the Defendant and the insurance company would also indemnify you in respect of your expenses and possibly any interest which has been incurred by you in paying these expenses.

Nowadays many "After the Event" insurers will enter into an agreement with you whereby you do not have to pay the premium at the outset and the premium can be paid at the end of the case. If the case is successful, we expect to be able to recover the insurance premium from the

Defendant. In a case which is not successful, the insurance company will generally waive the premium.

The Conditional Fee Agreement that you enter into with us does not cover counsel's fees. Counsel may be prepared to act on a conditional fee basis too, in which case he would also charge a success fee. Otherwise, counsel's fee would form part of the expenses of the case, but counsel's fees would not be paid by the "After the Event" insurance company if the case was lost.

Obviously we have to consider carefully whether to take a case on a conditional fee basis and, if so, what an appropriate success fee would be. If the case clearly had no realistic prospect of success, then we would not enter into a Conditional Fee Agreement with you. In other cases it might be difficult to assess at the outset what the prospects of success are, and in these circumstances it would be necessary for us to carry out certain investigatory work before making a decision as to whether we could enter into a Conditional Fee Agreement with you. In these circumstances, we would need to enter into an agreement with you for any costs incurred before any Conditional Fee Agreement was signed.

If you have any queries regarding any of the above, please contact us:

Jonathan Clement jonathan.clement@ts-p.co.uk
Alan Care alan.care@ts-p.co.uk
