

## Financial and Funding Options

There are a number of alternative ways in which work in relation to litigation/disputes can be funded. This note is intended as a brief summary of some of the options. Unfortunately, not all options are likely to be available on every case and independent advice might be required for some options. Please contact us to discuss further if you are interested:

### ATE – After the Event Insurance

This is insurance cover which is purchased after a dispute has arisen. It has the objective of insuring against a litigant's responsibility to pay the other side's legal costs in the event that they lose in litigation. These premiums are not recoverable in the litigation and so this is an expense although in some instances one can delay payment of the premium until the end of the case. Market conditions are likely to vary from time to time but in general insurers require a very high probability of success and the premium is a significant percentage of the required insured amount.

### CFA – Conditional Fee Agreement

This is sometimes known as a "no win/no fee" agreement. The solicitor agrees to act on the basis that they do not get paid at all unless they achieve "success" (to be defined) in return for getting a mark-up on their fees of up to 100% if they win. There are a number of regulations governing how these arrangements work. The mark-up element of the fees is not recoverable from the other side in litigation. Sometimes one can have a partial CFA where the lawyers charges a lower hourly rate if they fail to achieve success, as opposed to a slightly higher hourly rate if success is achieved. In other words the solicitor is paid something as the case goes along but there is a success element kept in reserve.

### DBA – Damages Based Agreement

This is where the solicitor charges a proportion of the damages that are recovered (usually up to 50% maximum in a commercial case). Because of the complexity of the regulations which govern valid DBA agreements, in practice they are relatively rarely used.

### Fixed Fee

The lawyer agrees to charge a fixed fee for a specific phase of work. The scope of the work required will need to be carefully defined. This is unlikely to include all work to trial although it may be possible to break down the work to trial into several distinct phases.

### Hourly Rate

This is the most common basis of charging in litigation. The solicitor charges by reference to the number of hours spent by the hourly rates of the different fee earners working on the case.

### Insurance Cover

Sometimes clients are covered by insurance (e.g. professional indemnity insurance; D & O cover; household policy legal expenses cover) in a way that means legal costs (or damages) are covered by insurers. Insurers need to be notified of claims as early as possible. Sometimes special requirements apply.

### Third Party Funder

On larger value claims with good prospects of success, sometimes a company can be persuaded to fund the litigation in return for a share of the winnings.

### Third Party Lender

These are commercial companies who will lend money to fund the disbursements in litigation (e.g. counsel's fees, court fees or expert fees).