

GUIDE

DISPUTES: FUNDING YOUR CASE

CONDITIONAL FEE AGREEMENTS

Legal disputes are notoriously costly to pursue or defend. As a result, many people are deterred from taking legal action because of the financial risk and uncertainty of the outcome. At Cohen Cramer, we offer a range of attractive funding options to clients to protect them against the costs associated with legal action. The options below can help clients pursue their dispute without fear of the costs consequences.

Conditional Fee Agreements are more widely known as ‘no win, no fee’ agreements.

At Cohen Cramer, we are happy to undertake a risk assessment to decide whether your case is suitable for a Conditional Fee Agreement.

This type of agreement means that we will only be paid if your claim is successful. We would also be entitled to an extra fee (known as a success fee). This is usually expressed as a percentage of our costs. The success fee is payable in exchange for the risk that we may not receive any payment at all. Both the basic fee and this extra fee are normally paid in whole or part by the losing party if you are successful. In addition, the losing party will normally be ordered to pay any third party expenses incurred by us such as court fees or expert’s fees. However, you are liable to pay any costs that the losing party is not ordered to pay.

In the event that you are unsuccessful, we will not receive any payment for the work undertaken therefore you are not obliged to pay anything to us. However, it is likely that you will have to pay the costs of the successful party – your opponent. In addition, you will have to pay any expenses which we have had to pay to a third party on your behalf. However, we will normally be able to arrange insurance to cover these risks. This is known as ‘After The Event’ insurance, and it is explained in further detail below.

LEGAL EXPENSES INSURANCE

Legal Expenses Insurance is usually taken out by those wishing to protect themselves against the potential litigation costs, which could be incurred following a future event. Generally, it is sold as an add-on to car or house insurance. This is typically for a small extra premium however it can be included free of charge. The insurance will normally cover the costs of your solicitors’ fees, court fees, barrister’s fees and any legal costs awarded to the other side.

If you are unsure as to whether any of your existing insurance policies include legal expenses insurance, we are happy to consider the policy documents on your behalf. If you do have legal expenses insurance, you will need to put in a claim to your insurer.

Your insurer will then assess the dispute to determine whether there is an arguable case. Normally, there is a requirement that the legal action must have a reasonable prospect of success. If your insurer concludes that your case has little prospect of success, it is unlikely that they will agree to fund the action.

In the event that your insurer agrees to fund the legal action, they may refer you to one of their panel solicitors. These are solicitors with whom your insurers will have pre-agreed commercial contracts. However, if you would like a solicitor of your choice, it is worth talking to your insurers. In many cases, they will authorise your choice of solicitor.

AFTER THE EVENT INSURANCE

After The Event insurance is usually used by people who do not have before the event insurance. The policy is purchased after the cause of a legal dispute has arisen, which is why it is called "After The Event" insurance.

If you lose your case, then the insurance company will pay your opponent's legal costs and expenses. Most policies will also make provision for payments made by your solicitors to others such as to the court or an expert. However, you would be responsible for your own legal fees and VAT. At Cohen Cramer, we appreciate that many people simply cannot afford these solicitors' costs. In these circumstances, we would consider working on a "no win no fee" basis alongside your insurance policy. This means that if you lose the case, we would not charge anything for the work carried out and you would not be liable to pay our costs.

If you are successful in your case, the court will generally order that your opponent will have to pay your legal fees.

Most insurers will not require you to pay the insurance premium upfront. Generally, payment of the premium will be deferred until the conclusion of the case. If you are successful, the court will usually order that the insurance premium is paid by your opponent. Should you lose the case, the policy covers the cost of the premium as one of the solicitors' disbursements.

LITIGATION FUNDING

Litigation Funding is similar to After The Event Insurance in that a Third Party Funder will bear the cost risk of your litigation in the event that the case is unsuccessful. However, unlike After The Event insurance, the Third Party Funder also provides financing for your own legal costs.

The funder will bear the risk and expense of the legal action in return for a share of the proceeds if the litigation is successful. Prices can vary, although the size of the share can normally be negotiated. If the case is unsuccessful then you pay nothing.

Unfortunately, litigation funding is only available in a small proportion of cases. The type of cases that would be considered are cases where the claim has good prospects of success, the opponent has the ability to satisfy the claim against it if successful and a large sum of money is involved. It is typically heavyweight litigation that will secure litigation funding. After The Event Insurance would be the most suitable method of funding in smaller disputes.

If you would like further information about the types of funding available, please do not hesitate to contact us by email or telephone.

FOR FURTHER INFORMATION

**Tel: 0800 542 9408 | Fax: 0113 298 7363 | info@cohencramer.co.uk
St. George House, 40 Great George Street, Leeds, LS1 3DL**

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