



BLAKE MORGAN
LITIGATION FUNDING

Professional Negligence

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This document explains your options in relation to funding your claim or the defence of a claim.

Typically litigation is funded on a pay-as-you-go basis. Solicitors charge hourly rates for the work done and this is usually billed on a monthly basis. However, this is not the only funding option available.

1. Hourly rates
2. Fixed or capped fees
3. Conditional Fee Agreements (CFAs / no win no fee)
4. Damages Based Agreements (DBAs)
5. Before the Event Insurance / Legal Expenses Insurance
6. After the Event Insurance
7. Third Party Funders / Loans
8. Union or membership funding

The right to charge is contractual and arises out of the retainer (normally a letter of engagement). Therefore the retainer must set out the basis upon which the solicitor will charge, including the rates and an estimate of costs. The SRA Code requires law firms to act fairly towards its clients and to provide transparent costs information.

In all cases if litigation is successful clients can expect to recover a proportion of their fees. This process is known as assessment during which the Court will consider which party will pay costs and how much. Typically, costs follow the event, that is to say the loser pays. However, the level of costs is usually assessed on what is known as the 'standard' basis where any doubt as to the reasonableness of costs is resolved in the paying party's favour. This means that a successful party may expect to receive between 60% and 70% of its overall costs. However, recovery could be more or less depending on a number of factors such as whether a party has behaved reasonably (for example refusing to [mediate](#) or refusing to accept a reasonable offer). In some cases of unreasonable conduct, the winning or losing party may be entitled to 'indemnity' costs where any doubt as to the reasonableness of costs is resolved in the receiving party's favour. More information can be found on our litigation [Costs Recovery page](#).

The different types of charging model are set out below. Not all of these charging models may be suitable for your matter.

Hourly rates

The traditional charging model for law firms is the hourly rate. Most law firms record time in units of 1/10ths of an hour (six minutes) and bill the client at agreed intervals (or, in relation to transactions, at the end of a matter). Because most firms bill monthly this is often called 'pay-as-you-go'.

Fixed or capped fees

For transactions or work that can be clearly defined and which do not include any element of uncertainty, clients may prefer fixed fees. Fixed fees apply regardless of the time spent on the matter, sometimes the client will pay more than they would have by the hour and sometimes less. In any event a fixed fee provides certainty. However, fixed fees are not normally appropriate for litigation unless there are defined stages, in which case a capped fee may be more appropriate. A capped fee is where the client and lawyer agree that the fees will not exceed a certain level. For both fixed and capped fees the scope of work will need careful definition so that both parties know what is included within the fees.

Conditional Fee Agreements

Conditional Fee Agreements or CFAs are often known as 'no-win-no-fee' agreements. Under these agreements the client's liability if the case is lost is restricted to disbursements. The client does not have to pay the full solicitors fees if the case is unsuccessful. However, if the case is successful then the client agrees to pay a success fee or uplift to the solicitors' basic charges. The success fee is not recoverable from the opposing party and cannot be more than 100% of the fees. This means that CFAs can often be more expensive than standard charging models but they have the advantage of transferring some risk to the solicitors and reducing cash flow demands that would otherwise be present if the solicitors were billing on a monthly basis.

Damages Based Agreements

Damages Based Agreements (DBAs) are a less common type of contingent fee. Instead of a time spent model and an uplift, the fees are calculated based on a percentage of the damages recovered. The percentage depends on the agreement with the solicitor and can be up to 50% of the damages recovered. The client will usually be required to pay disbursements such as court fees and barristers fees separately.

Before the Event Insurance

Clients should always check their insurance policies to determine if they have the benefit of legal expenses insurance. Often insurers will provide legal expenses cover for disputes associated with the particular policy. Legal expenses insurance is usually subject to a limit of indemnity and therefore may not be sufficient to fund litigation all the way to trial. Once the indemnity is exhausted clients will have to consider an alternative funding model.

Loans / Third Party Funding

Some third party funders may provide loans to fund litigation costs and disbursements. In these circumstances repayment may involve an additional payment or premium upon conclusion of the case. The amounts repaid will depend upon the contract between the client and the funder but usually the loan is repayable whether or not the case is successful. Often the loans provided will require security. Unless a law firm is regulated by the FCA they cannot recommend or advise on financial products.

Memberships

Union memberships, club memberships or professional organisations may provide some legal expenses cover which is usually provided through insurance.

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