

HUGHES ENTERPRISE LAW PRACTICE INFORMATION FOR CLIENTS ON FUNDING OF DISPUTE RESOLUTION, LITIGATION AND TRIBUNAL CLAIMS

This note deals with cases which involve Court proceedings (sometimes known as “litigation”), arbitration or tribunal hearings. It is always difficult to estimate the likely costs of such a case. There are many factors outside our control such as:

- What orders will the court make?
- Will the other side fight every issue?
- Will expensive expert evidence be needed?
- How difficult will it be to prove your case?

These and other questions cannot all be answered when you first come to us for advice.

Funding Options

You will understand that the work done for you in resolving a dispute has to be paid for. Clients will normally be expected to meet the legal charges and expenses of their own case.

There are, however, a number of options. Please let us know if you want information on any of these:

- Community Legal Service Funding. This is now only available on a very limited basis in litigation cases. If you wish us to advise you on eligibility, we will need your personal financial details.
- Funding from third parties such as a Trade Union, family or employer. (Please tell us if this may be available to you).
- Household or Business Protection Insurance (see “Before the Event Policies” below).
- Risk sharing: Those who may offer a risk sharing arrangement include:
 - Insurance companies and other “third party” funding organisations;
 - Lawyers;
 - A combination of these two.

Some cases will simply not be suitable for risk sharing. Remember too, that third parties who offer to fund you will normally expect to share the rewards.

Third party funding

Generally speaking, any third parties who may be prepared to help you to fund your case will not do so retrospectively. It will be necessary to present them

with details of the case and ask for and obtain their express approval before they will provide any contribution. Therefore it is in your best interests to do this as soon as possible.

In higher value litigation cases it is possible to obtain funding from financial institutions set up specifically for this purpose. In return, the funders will want to acquire a significant percentage of the value of the claim. Please let us know if this might be of interest to you.

Risk sharing with legal expenses insurers

“Before the Event Policies”

These are legal expense insurance policies which can be taken out, usually with an annual premium, to provide cover to fund the costs of (and sometimes the liability incurred by) a possible future legal problem. Private individuals often have one, for example, as an “add-on” to a household contents or car insurance policy. Increasingly, companies are encouraged by their brokers to add legal expenses insurance to their normal commercial insurance policy. We should warn you that they are frequently very limited in what they cover, may include restrictions on your freedom of choice of lawyer and may not provide full cover for our hourly rates and other charges. These policies commonly cover the costs of employment advice. **If you think that you may have any such policy, contact your broker to notify the claim as soon as possible. The cover will not take effect until you have submitted, and they have approved the claim.**

“After the Event Policies”

These are policies which are purchased after the dispute has arisen which help to cover the cost of litigation. They are not usually available for employment cases. If the premium is affordable, then they can provide some peace of mind against the possibility of having to pay all the litigation costs if you lose the case.

Insurance cover can be purchased to protect against potential liability for:

- Your opponent’s legal charges including disbursements;
- Your own “disbursements” i.e. expenses such as Court fees, experts fees and barristers fees;

- Your own legal charges; (though insurers are increasingly reluctant to provide this cover).

The usual basis of such policies is that payment is made only if you fail completely with your case.

We have negotiated special arrangements for certain types of case.

Meeting the Premium

The problem with all insurance is paying the premium. Points to consider are:

- The money has to be found for the premium. Sometimes, for an increase in the amount of the premium, the Insurer will agree to defer payment until the end of the case or insure against the risk that it will not be recovered..
- The Access to Justice Act 1999 makes it possible for the Court to order your opponent to repay you the basic premium if you win. But you cannot be sure of complete recovery.
- Premiums for accident cases are modest. For other types of litigation, for example, they may be about 20% to 30% of the total legal charges against which you want to protect yourself.
- In substantial commercial litigation, the premiums may be even higher. Much depends on the prospects of making a successful recovery of monies.

We do not undertake any responsibility to give you “best advice” on these products although we will provide you with a “demands and needs” statement if we do recommend a policy to you. We will have to charge you at our normal hourly rates for the time spent investigating and advising in respect of any alternative funding arrangements and those fees would not be recoverable from your opponent if you win your case.

Risk sharing with lawyers

Until recently, solicitors were not permitted by law to offer clients any such arrangements. There are now various possibilities:

- A conditional fee agreement – inaccurately but regularly called “no win – no fee”. If this is offered, your lawyer makes no charge if the case is lost but you may still have to pay your “disbursements” and your opponents’ legal charges. If you win, your

lawyer charges a “success fee” on top of the normal hourly rate: your opponent may be ordered to pay at least part of these charges, including the success fee.

- Discounted conditional fee agreement – an hourly rate is agreed as being payable if the case is won but the rate is reduced if the outcome is unsuccessful. Such an agreement could also provide for a success fee.
- Contingency fees – you are not charged if you lose but the fee if you are successful is a percentage of what is recovered. However, this arrangement cannot be used for cases which require Court proceedings.

Points you should bear in mind.

The idea of “no fee” or “reduced fee” is obviously attractive to clients but there are other aspects of such arrangements.

- Instead of the normal client and independent adviser relationship, your lawyer will be sharing a form of joint venture with you. You may expect him to have a greater say in the conduct of the litigation.
- Your lawyer will carry out a risk assessment at the beginning of the case, and at times during it, to decide whether he is prepared to take it on at all or, having started, to continue with it.
- If your layer is effectively going to be sharing in the rewards with you, you will have to satisfy yourself whether his terms for doing so are fair and reasonable.
- You may need to pay for some initial investigation into your case before your lawyer can decide whether to offer a risk sharing arrangement.

Our usual funding arrangements

Unless you agree with us one of the other funding arrangements mentioned in this leaflet, we will need you to pay our charges on an hourly rate basis, as set out in the Engagement Letter.

Regular payments on account of these charges will be expected and we will not be able to start work on your case until the Engagement Letter has been signed and returned. Under this arrangement you know that you are paying for wholly independent advice and that you retain control of your own litigation. Therefore, please tell us if you wish to place a limit on the costs to be incurred up to, for example, the issue of Court proceedings.

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