



CLAIMS FUNDING FACT SHEET

INTRODUCTION

The subject of how to pay for legal fees to bring claims is a complicated one and Salmons Solicitors have prepared this fact sheet to guide you through the various funding options available. This fact sheet applies to the following types of claim :-

- Personal Injury Claims (including claims to the Motor Insurers Bureau for uninsured drivers)
- Clinical Negligence Claims
- Injury Claims against the Motor Insurers Bureau (for untraced drivers)
- General Litigation Claims
- Employment Claims
- Claims against the Criminal Injuries Compensation Authority (for victims of crimes of violence)

The expenses of such claims may consist of three types of expense. Firstly, solicitors fees and VAT, secondly, barristers fees and VAT and thirdly other expenses (we call these "disbursements") and VAT.

THE AVAILABILITY OF LEGAL AID OR COMMUNITY LEGAL SERVICE FUNDING

In April 2000 Legal Aid became known as the Community Legal Service Fund (CLS Fund for short) and what was formerly known as Legal Aid Advice and Assistance became known as Legal Help. What was formerly Legal Aid became known as Legal Representation.

For all types of legal aid covered by this note, you will have to be financially eligible. Even if you are financially eligible, depending upon the type of case it is, you may not get state funding.

Legal Help (Advice & Assistance)

Legal Help is available for claims against the Criminal Injuries Compensation Authority, for employment claims and for some general litigation claims. This is available for people on low income. We can assess eligibility and make this form of legal help available to you. It is generally limited to cover basic advice only. If a claim is successful and you ultimately recover compensation, you may have to repay out of your compensation the costs claimed under legal help. For medical negligence, and personal injury claims, see below. These must be of sufficient benefit to you to justify the expense of public funds.

Legal Representation

Legal Representation is not available for Criminal Injuries Compensation Claims and employment claims. Legal Representation is not generally available for personal injury claims (but see "Investigative and Support" and "Litigation Support" below). The following types of case are excluded from Legal Representation (and from Legal Help):-

- A personal injury claim arising out of an allegation of negligence or breach of legal duty (this involves most claims)
- Boundary disputes
- Matters of trust law
- Defamation and slander cases
- Company and partnership law and any matter arising out of the carrying on of a business
- Conveyancing disputes
- Dispute regarding a Will

Even if you are financially eligible for state funded Legal Representation, and your case is not one of the excluded cases listed above, the Legal Services Commission can still refuse to help you if :-

1. Your case is highly likely to succeed and would therefore be appropriate for funding under a no win no fee agreement (see below).
2. It does not satisfy something called the “**costs/benefits test**”. If a case has a fifty to sixty percent chance of success, the “**costs/benefits test**” is satisfied if compensation exceeds costs by a factor of four. For cases having a sixty to eight percent chance of success, the “**costs/benefits test**” is satisfied if the compensation exceeds the costs by a factor of two. If the prospects of success are eighty percent or more the “**costs/benefits test**” is satisfied if compensation simply exceeds costs.

There are a number of exceptions to these restrictions.

Exception 1 - This applies to personal injury claims. **Investigative Help/Investigative Support** and **Litigation Support** can be made available provided you are financially eligible. **Investigative Help/Investigative Support** is available to assist you in getting a solicitor to take on the case under a no win no fee agreement where expenses (disbursements) are likely to be £1,000 or more or solicitors costs £3,000 or more to investigate the claim before the prospects of success are reasonably certain. **Investigative Help/Investigative Support** is only available to firms such as Salmons who have a legal aid contract. Compensation must be likely to exceed £5,000.

Litigation Support is available where a case is already being run under a no win no fee agreement but it is turning out to be expensive. If the expenses are £5,000 or more or the solicitors and barristers fees together are £15,000 or more, the Community Legal Service can take over the funding and sharing the success fee, provided the prospects of success are clear and the costs/benefits test is satisfied.

Exception 2 - Certain public interest cases still merit funding from the state provided they have a wide public interest and are proceedings against a public authority or in breach of human rights (eg: judicial review cases).

Exception 3 - This applies to housing and family cases. Please ask for more information, if you feel you have a housing or family case which needs funding.

Exception 4 - Mixed Cases. This exception applies where some services are fundable and some are not.

Exception 5 - Clinical Negligence. Many people do not qualify financially for CLS Funding (legal aid) and we fund such claims without resort to the Community Legal Service Funding Scheme. Some of our clients prefer this alternative method of funding to state assisted funding. If you require state assisted funding, we can provide you with the name and address of another firm of solicitors.

Exception 6 - Very expensive cases – a decision is made individually by the Legal Services Commission.

Exception 7 - Mental Health cases.

Even if you obtain a Legal Representation Certificate you may have to pay a monthly contribution until the case finishes. If you win, some or all of your costs may be recoverable from your opponent. The amount recoverable depends upon the value of the claim and the amount and type of work done. A greater percentage of costs are recoverable the less work is done. Legal fees and expenses which cannot be recovered are normally payable out of your contribution or out of your compensation or both. This is known as the statutory charge. If you lose a state funded case, it is unlikely that you will have to pay your opponents legal fees whilst you were state funded, unless you ask us to conduct the case unreasonably.

PRIVATE RATES

When a solicitor provides a service to a client, the solicitor can charge for the amount of time spent on a client's case by reference to an hourly rate. Letters, phone calls, meetings, reading, thinking and writing time are all recorded and charged for at this rate. Letters written and telephone calls made or received are charged at fractions of the hourly rate, usually at units of one tenth of an hour. Details of the hourly rates are available on request. They differ depending upon the seniority of the person handling your claim. These are also known as "**basic costs**" in the paragraph dealing with no win no fee agreements.

UNION FUNDING

You may be injured at work or require advice about employment law and be a member of a trade union. Your union will have their own solicitors who may take on your case at little or no cost provided you were a union member when the incident occurred which gives rise to the need for advice. Union solicitors may prefer to deal with the stronger easier cases because in some circumstances they do not get paid if they lose.

PRE-PAID INSURANCE FUNDING

You may have a policy of insurance which covers the costs of you bringing a claim. You will have already paid an insurance premium for such a policy. You should check your policy wording carefully. If you do not understand your policy, we can help you, but we need to see the policy wording. Legal expenses cover is normally available in household buildings or contents policies, motor policies and with travel insurance. Some credit cards also have legal expenses insurance. You do not have to have the insurance company's choice of lawyer forced onto you. These lawyers are often not local. If you prefer face to face meetings with your solicitor, and the ability to call in to drop off documentation etc or to see how your case is getting on, the insurance companies choice of lawyer will not be for you. You have the right in law to chose your own lawyer and to get your insurance company to pay for it if pre-paid insurance funding is available. We can help you write a letter to your insurers in your name to request they appoint Salmons to deal with the claim.

CONTINGENCY FEES

A contingency fee is a method of paying for your solicitor where the amount you pay your solicitor depends upon the outcome. House selling and buying is normally contingency fee work where the fees are assessed by reference to a percentage of the sale or purchase price. Some claims do not involve claims made in a Court of Law. Examples are claims to an employment tribunal, claims to the Criminal Injuries Compensation Authority and claims to the Motor Insurers Bureau in respect of a road traffic accident caused by an untraced driver. Where you have a claim which consists of one of the above three categories of claim, a contingency fee agreement may be for you. Typically, these agreements provide for no fee (apart from an administration fee) in the event that the claim fails, but provide for you to pay a percentage of your compensation plus out of pocket expenses in the event that the claim succeeds. The percentage is typically twenty five or thirty three percent.

These agreements are not suitable as a method of funding claims brought in a Court of Law. If it is likely that legal proceedings will need to be issued, it will not be appropriate for a solicitor to offer a contingency fee agreement to a client in a case where there is a reasonable expectation of securing a costs order or agreement to pay costs by an opponent. Contingency fees are only appropriate where it is unlikely an opponent can be ordered to, or will agree to, pay your legal fees.

There is no opponent in a Criminal Injuries Compensation case or a Motor Insurers Bureau (untraced driver) case so you would not have to pay your opponents fees even if you lost. In an employment tribunal case, whilst there is an opponent, it is unlikely that you would have to pay your opponents fees even if you lost the case (unless you conducted the case unreasonably). However since there remains a remote possibility, you should consider whether you would prefer to have insurance against this remote chance. If you require insurance against the risk of paying your opponents costs in an employment tribunal case, please ask for details.

CONDITIONAL FEE AGREEMENT WITH SUCCESS FEE ("NO WIN, NO FEE")

When you hear the phrase "no win no fee", this is normally the type of agreement which is being referred to. This is available for reasonably strong cases, namely those cases that have prospects of success of at least sixty five percent. We must first assess the prospects of success for which information and evidence may be required. Once a conditional fee agreement is signed, we get paid if we win and we do not get paid if we lose. If we win we receive, in addition to our basic costs calculated at private rates, a success fee which is a percentage increase on the basic costs. The success fee is assessed on the chances of success, the cost of the case and the likely duration of the case. The success fee is normally paid from your compensation though your opponent, more likely than not, may be ordered to reimburse you the amount of the success fee, either in full or only in part. If we lose there is no success fee and no basic costs to pay under such an agreement.

If the claim fails you may have to pay your opponents fees and expenses and you need to insure yourself against this risk. We can sell you an insurance policy for a one off premium. The policy is Accident Line Protect and it is the only one recommended by The Law Society. It is made available to firms such as Salmons who are members of The Law Society's Personal Injury Panel and members of The Accident Line Scheme. The premium can often be expensive in cases with an anticipated value of over £15,000.

You can choose to pay the premium yourself or you may prefer to take out a loan facility from a bank linked to the Scheme.

If the claim fails, you can make a claim on the insurance policy to repay the premium to the bank or to you as the case may be.

If the claim succeeds it may be possible to ask the Court to order (or your opponent may agree) to reimburse you your insurance premium either in whole or in part.

In addition to our own fees there are also barristers fees and disbursements which were mentioned at the start of this information bulletin. There are two choices with regard to barristers fees. You can either pay your barrister yourself or we can ask the barrister to work for you under a No Win No Fee Agreement. The disbursements must still be paid by you in any event. If you cannot afford to pay for the disbursements, we will be able to provide you with a loan facility from a linked bank. In the event that the claim succeeds, you will be expected to pay off the sum which you have borrowed from the bank from the costs you recover from your opponent and/or from your compensation. In the event that the claim fails you can claim on your insurance to repay those expenses which have been incurred.

There is interest on any sums loaned to you to pay expenses or the insurance premium. If you lose you can claim the interest on the insurance. If you win you pay the interest.

This type of funding is normally appropriate where an opponent might be ordered to pay your legal fees and can afford to do so or has insurance to enable them to do so. These cases are cases such as personal injury claims, general litigation claims and claims against the Motor Insurers Bureau in respect of an uninsured driver. It is not appropriate for Motor Insurers Bureau (Untraced Driver) claims, employment claims and claims against the Criminal Injuries Compensation Authority.

Some medical negligence cases can be funded under a No Win No Fee Arrangement and backed by an insurer other than Accident Line Protect. For further details, contact our Clinical Negligence Department.

We have no financial interest in insurance policies supporting this method of funding.

LITIGATION FEE AGREEMENT (NO SUCCESS FEE)

This type of agreement is an agreement where a solicitor works at an hourly rate. This type of agreement is suitable for personal injury claims, general litigation claims, medical negligence claims and Motor Insurers Bureau claims in respect of accidents caused by both uninsured and unidentified drivers. It is usually used as an alternative to a Conditional Fee Agreement With Success Fee.

Whereas in a Conditional Fee Agreement With Success Fee, the charges depend upon success in the claim, in this type of agreement, the charges are calculated by reference to the time spent on the matter. If you do not have pre-paid insurance to fund your claim, we consider it highly advisable to purchase "after the event insurance". After the event insurance works like this. You pay a premium for as much insurance cover as you wish to purchase based upon our advice. If you cannot afford the premium, do not worry, we can provide you with a loan from a linked bank to pay the premium which is then paid direct to the insurer.

The premium is assessed by reference to the amount of insurance cover you wish to purchase and the likely prospects of success. It is tailored to the individual risks of the case. You will have to pay a nominal fee (about £40) to obtain an insurance quotation.

In the event that the claim succeeds, your opponent may agree or, more likely than not, may be ordered to pay your costs, disbursements and insurance premium either in whole or in part.

In the event that your claim is wholly unsuccessful, you will normally have to pay your opponent's fees and you pay these by claiming on the insurance policy which pays both your opponent's fees and disbursements and your own legal fees and disbursements including the insurance premium, provided you have purchased enough insurance cover in the first place.

You will have to pay the interest yourself on any loan, win or lose.

This is a very attractive form of funding. Many clients prefer this form of funding to the No Win No Fee arrangement.

We have no financial interest in insurance policies supporting this method of funding.

EXPENSES FUNDING AND INSURANCE PREMIUM FUNDING

Do not worry if you cannot afford to pay the expenses such as doctors fees, Court fees and (in the case of after the event insurance) premium fees. We may be able to provide loan facilities to you at a competitive rate of interest. If the claim succeeds, and you then go on to recover your legal fees including your expenses from your opponent, you can pay the loan back from the money you recover. In the event that the claim fails, you may be able to claim on the insurance to repay to you what you have paid out in disbursements. Policy conditions attach. In the case of Accident Line Protect, (the insurance attached to Conditional Fee Agreements With Success Fee), you may be able to claim the disbursements and insurance premium where the Court orders the opponents to pay the costs, or makes no order as to costs or when you, we and the insurer agree to discontinue after proceedings have commenced or where a claim is abandoned after a letter of claim has been sent. With after the event insurance you may be able to claim the disbursements and the policy premium if you have purchased enough insurance cover and the policy conditions are satisfied. This normally means that the claim must be wholly unsuccessful. If you lose and you do not have any form of insurance you will have to pay the loan back over a number of months. Interest on such loans will always have to be paid by you unless you lose a case funded under a no win no fee arrangement, in which case you may be able to claim on Accident Line Protect.

FINALLY

If you have any questions, please ask. We appreciate that this subject can be complicated.