

Funding the cost of your injury claim

This brief guide outlines the basic rules about costs and alternative ways of funding a personal injury claim. We will discuss these alternatives with you before advising on the best solution for you.

Legal Costs - The basic position

In litigation the usual rule is that the losing party pays the winning party's reasonable legal costs and expenses. This is conditional upon the value of the claim exceeding £10,000 (£1,000 for injury compensation) Depending on the value and type of claim, costs recovered from the losing party are either assessed on a "time spent" basis or on a fixed tariff basis.

If you lose your claim a rule referred to as 'qualified one way costs shifting' applies that protects Claimants by ensuring that if a Court makes a costs order against you, it can be enforced only up to the total value of any compensation the Court awards you. If these costs are higher than your award you do not pay the balance. If you are not awarded any compensation, no costs are payable by you.

It is important to note that the protection provided to Claimants by this "one way costs shifting" rule can be lost if:

- Your claim is found to be fraudulent
- The Court finds that you have been fundamentally dishonest about any aspect of your claim
- You discontinue your case after you issue proceedings
- The case has been struck out because the claim discloses no reasonable cause of action
- Where the claim is otherwise an abuse of the court's process

Our policy at Ashfords is to ensure that if you win your case we recoup our basic costs from your opponent and any shortfall is not passed on to you, except in exceptional circumstances.

Funding options

The alternative ways of funding your claim are set out below. Not all will necessarily apply to you. We will ask you to complete our Funding Enquiry Form so that we can advise you.

Legal expenses insurance

Legal expenses insurance (LEI) cover is often incorporated in financial services or insurance policies, for example:

- household or home and contents insurance
- motor insurance
- an "extra" benefit offered within a bank account or credit card

Although you remain primarily responsible to your solicitor's costs, your LEI policy will insure against the risk of having to pay if your case fails. The LEI will normally cover both your opponent's costs and your own costs. The cover will be conditional on your claim having reasonable prospects of success. You will need to study the terms and conditions of your policy carefully. Your insurer has the right to instruct their own solicitor but they may let you instruct Ashfords. If not, you have the right to a solicitor of your choice at the point when Court proceedings have commenced. If that happens we can arrange alternative funding until court proceedings are issued at which point the funding arrangement can be changed to insurance funding.

Trade Union funding

Some clients have the benefit of free advice and representation funded by their Trade Union. Trade Unions tend to control who can act on their members' behalf and have a limited panel of approved solicitors. You will need to check with your union to see if we can act for you.

Conditional fee agreements

Conditional fee agreements (CFA's) provide an alternative way to pay for your solicitors legal costs. Under a CFA, Ashfords will not charge you for its services if you do not win your case. This is sometimes referred to as a "no win – no fee" funding arrangement.

Ashfords may charge you an additional fee over and above our basic costs. This is called the "success fee". The success fee will be calculated as a percentage of our costs – it will not be a percentage of your compensation monies, however it will be capped at no more than 25% of the net damages, (excluding damages for future care and loss and any recoverable DWP benefits).

By way of example, if the success fee in your case is 50% and your case settles for £4,000 and our costs are £5,000 the success fee calculated would be £2,500 (50% of £5000). However as your settlement was for £4,000 the success fee would be capped at 25% of £4,000 i.e. £1,000, leaving you with £3,000 in compensation.

Unlike our basic costs, if you win, the success fee is not recoverable from the Defendant and will be your liability. Normally we deduct it from your compensation monies.

A success fee is not charged in every case and depends on the type of case. We will discuss what fee we will levy and explain how it works before you agree to it.

If you win your case on a CFA, you would then be responsible to pay Ashfords the following:

- Our basic costs (the usual rule is these are paid by your opponent - as explained above)
- The success fee (if applied)
- Any expenses that we have incurred on your behalf (usually paid by your opponent)

If you lose the case then you will be responsible to pay the following:

- Any expenses that Ashfords have incurred on your behalf (such as medical report fees), but not Ashfords' costs
- Your opponent's legal costs (limited to the amount of damages you have been awarded and subject to the exceptions to the one way costs shifting rules set out above)

You can take out insurance against the risk of losing your claim (see below)

Insurance with a conditional fee agreement

If you have a CFA it is also recommended that you to take out an insurance policy now to cover you against the risk of having to pay your opponent's legal costs in the event that your claim is unsuccessful. This is called "After the Event" insurance (ATE). We can recommend an ATE policy. A premium is payable for the ATE, usually at the conclusion of the claim and only if you win. The premium will be paid by you. We can supply further information upon request.

