

## **LITIGATION FUNDING - A CLIENT GUIDE**

It is possible to bring a claim with the benefit of a funding agreement. This can include a conditional fee agreement (under which the amount we charge is dependent on the outcome of your claim) and insurance cover against an adverse costs order. Such funding arrangements provide clients with a means of funding and managing the costs of litigation or arbitration claims through to trial and of limiting risk and exposure in the event a case is lost. We offer our own litigation funding package, Risk Assist, that is available to clients of Stevens & Bolton LLP in certain cases (we will advise you if that is the case).

Following a review and investigation of your claim, we will notify you whether or not we are able to offer a Risk Assist or other funding agreement and if so on what terms.

### **Conditional fee agreements**

A conditional fee agreement is a contract made between us and you. Under it we agree to act on a conditional fee basis. That means that we will undertake your claim on the basis that you will only pay us our usual fees if the case is successful and, in addition, you will pay a success fee. Our usual fees are recoverable as costs of the action (subject to assessment by the court) if the court orders your opponent to pay your costs. The success fee is not recoverable from your opponent and therefore you are liable to pay this to us in the event of success. If the case is not successful, you will not have to pay our success fee or our usual fees but you may have to pay a reduced fee where under the conditional fee agreement we have agreed to undertake your claim on the basis of reduced rates.

In either case, you will have to pay disbursements. The most significant disbursements are counsel's fees and expert's fees. If funding counsel's fees is a problem, we may be able to help you by either finding a barrister that is prepared to act on a conditional fee basis or by finding a funder that might be prepared to fund counsel's fees and expert's fees on commercial terms.

A personal guarantee might be required from shareholders or directors where we are acting for a limited company.

### **After the event (ATE) insurance**

It may be possible to take out insurance to cover an adverse costs order which may be made against you in your claim. This is known as After the Event (ATE) insurance. Under an ATE policy the insurer offers to pay the opponent's costs up to a specific limit in the event that the

court orders the client to pay the opponent's costs. The ATE insurance premium is not recoverable from your opponent.

If the claim is lost, the ATE insurance will provide indemnity up to an agreed level for the opponent's costs and your own disbursements (which excludes counsel's fees but includes expert fees).

For further information, please contact Michael Frisby, David Wilkinson or your usual partner contact on 01483 302264.

*This note is a summary of conditional funding agreements and ATE insurance. The information is necessarily brief, it is not intended to be an exhaustive statement of the law of England and Wales and it does not detail all of the terms and conditions of such agreements or of an ATE insurance policy. It is essential that professional advice is sought before any decision is taken.*

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