
Funding a Personal Injury claim

If you want to be represented by a lawyer in a personal injury claim, there are different ways to fund the claim which may be available to you, depending on your circumstances. The most common forms of funding are set out below.

Paying privately

You can pay your lawyer's fees and costs privately if you so wish. If you choose this option, the lawyer should write to you confirming what their hourly rate is and what other costs may be chargeable in relation to the claim, for example court fees and barristers' costs, if appropriate. The lawyer should also provide an overall estimate of the fees you can expect to pay for the work that they will have to do in order to represent you in your claim, and they may require you to place a sum of money on account with them before they will agree to commence your claim. We would then expect the lawyer's firm to issue regular bills throughout the course of the claim.

Conditional Fee Agreement (CFA)

This is a common form of funding for personal injury claims – they are more commonly known as 'no win no fee' agreements. In a CFA claim, your lawyer will not receive any fees if you lose your case.

Your lawyer will normally ask you to take out insurance to cover this situation – commonly known as After the Event Insurance. If you win your case, your lawyer's fees and expenses will normally be paid by the party you are claiming against.

Although the intention with this type of agreement is that you do not have to pay any money if you do lose your case it is possible, in some circumstances that you will have to pay your legal fees and expenses. This is a rare occurrence however - you would only be ordered to pay fees and expenses if it is found that either that the claim had no merit from the start, that there had been an abuse of the claims process, or that there had been fundamental dishonesty in the claim. You may also be ordered to pay the fees and expenses of the party you are claiming against in these circumstances, and where the other side make a formal offer (known as a 'Part 36 offer') which you reject and the court do not then award a higher amount. It is important to note however that this is not a common occurrence – the intention with a CFA is that you are protected from having to pay legal fees if your claim is unsuccessful on merit.

As there is an element of risk to the lawyer and to the insurer in this form of funding, the lawyer will assess the prospects of the claim at the outset and then throughout the course of the claim, to ensure that the prospects of success are and remain reasonable.

The insurer will usually agree to cover the risk of having to pay the other party's costs and expenses whilst the prospects of success are assessed as being more likely to succeed than to fail. If evidence comes to light that changes the firm's assessment of the prospects of success, they may

choose to end the agreement and the insurer may withdraw cover. The lawyer will write to you to explain if this is the case and set out what your options are then to progress the claim.

When a claim is funded through a CFA, the lawyer will send you a copy of the agreement which they will require you to sign before they start work on the claim. It is very important that you read and understand the agreement before you sign it, as this is a legal contract and, once you sign it, you are bound by its terms. This agreement will place obligations on you as a claimant to behave in certain matters, and if you do not do so you risk breaching the agreement. It will also place obligations on the lawyer in progress the claim and to provide you with updates and relevant information in relation to the claim.

A CFA may include a provision of a success fee – which entitles the lawyer to retain a percentage of any settlement sum you receive, and will impose obligations on you such as the requirement to co-operate with the lawyer throughout the claim and not to mislead them. It is also worth bearing in mind that most CFAs state that if you choose to end the claim before it settles or reaches court, you will be liable for the firm's fees and costs up to the point that you end the agreement. If you are unsure about any of the terms and conditions set out in the CFA, you should ask your lawyer to explain them to you.

Damages Based Agreement (DBA)

In a DBA, the lawyer will be paid a proportion of the total damages recovered as part of the claim. This will usually be set out as a percentage of the damages. Like a CFA above, the lawyer will ask you to sign an agreement if you choose this funding option which imposes obligations on you. You must ensure that you have read and understood the agreement before signing it.

Legal Expenses Insurance (LEI)

It may be the case that your lawyer can fund your claim through a Legal Expenses Insurance policy which you can obtain yourself or which may be part of another insurance policy such as your household policy. It is always worth checking whether you hold such a policy before you instruct a firm as the insurance can be used to pay the lawyer's fees and costs without you having to make any deduction from the settlement amount to pay the lawyer's fees or any success fee they impose under a CFA or DBA. These policies will generally provide cover for fees up to £50,000.

How to contact the Legal Ombudsman for further information

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