

No-win, No-fee Actions

Ways to help pay for legal action



*Community
Legal Service*



Taking legal action against someone, for example, if you think they were responsible for injuring you, can be very expensive. With some kinds of case, you can use a system where you have to pay your legal fees only if you win your case. These are called 'conditional-fee agreements', and this leaflet explains how they work.

- The cost of taking legal action 3
- What does 'no-win, no-fee' mean? 3
- How do I know what I will have to pay? 4
- How can I make sure I won't have to pay a big bill if I lose? 5
- How does legal-expenses insurance work? 6
- Terms used in legal actions 8

The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 11 for sources of information and advice.

The cost of taking legal action

Taking legal action can be expensive as well as stressful. If you have a problem or dispute with someone and you want to take them to court, you should first talk to your solicitor or adviser to see if there are easier, quicker or cheaper ways of dealing with the problem. For example, there are conciliation and mediation services for sorting out disputes, which can be simpler than using the courts. See the Community Legal Service leaflet 'Alternatives to court' for more information.

However, if you do find that you need to use the courts, you need to think about how you will pay for your case.

There are ways that you can get public funding to help pay for your case (formerly called Legal Aid), through the Community Legal Service. You can get this help only if you genuinely cannot afford to pay yourself. There are other conditions to do with your case and your situation that you have to meet, too. For more information, see 'The Community Legal Service' on page 11.

If you do not qualify for money from the Community Legal Service Fund, there are other options to help you pay.

One of the main ways is to use a 'conditional-fee agreement', more commonly called a 'no-win, no-fee' agreement.

A 'no-win, no-fee' agreement can help you pay for a solicitor (unless your case relates to a family dispute, or it is a criminal matter). For information on dealing with the breakdown of a relationship, see the Community Legal Service leaflet, 'Divorce and separation'.

No-win, no-fee agreements are mostly used to pay for personal injury cases. See the Community Legal Service leaflet, 'Personal injury', for more information.

Alternatively, you may already have legal-expenses insurance (as part of some other insurance policy), which will cover your costs (see 'Before-the-event insurance' on page 6).

What does 'no-win, no-fee' mean?

Under a 'no-win, no-fee' agreement, your solicitor will take on your case on the understanding that if you lose, they will not get paid. But it is important to remember that there is more to the costs of a legal case than your solicitor's fees. And if you lose your case, you may still have to pay:

- your opponent's legal costs; and
- both your and your opponent's 'disbursements' (other expenses or charges, such as fees for expert witnesses if you need to use them).

However, you can (and you should) take out insurance to cover these payments in case you lose. Your solicitor will try to arrange this for you at the start of the case and will tell you if they cannot find an insurer willing to cover you.

If you win your case, you must pay your solicitor's fees as well as their disbursements. But you may be able to get these costs (or most of them) paid by your opponents.

Your solicitor may also charge a 'success fee'. This is meant to compensate the solicitor for:

- the risk of not being paid (if you lose); and
- the delay in getting paid.

The amount of the success fee depends on your chances of winning your case. The riskier your case, the higher the success fee is likely to be. Success fees can mean that you are charged up to twice as much as the solicitor's normal fee.

If you win, the court will usually order your opponents to pay most of your solicitor's fees, disbursements (including the insurance premium) and the part of the success fee which covers risk rather than delay, as long as the court thinks these costs are reasonable.

How do I know what I will have to pay?

It is important to get a written estimate of all the likely costs from your solicitor before they start to work on your case.

Remember that a 'no-win, no-fee' agreement removes some of the uncertainty and financial risk of taking legal action, but it doesn't remove all of it. And remember that it's only an estimate. The final cost may be higher if, for example, the case takes longer than expected.

The Law Society, the professional organisation for all solicitors in England and Wales, has a model conditional-fee (no-win, no-fee) agreement, which many solicitors use as a basis for their own agreements for their clients. Ask your solicitor for a copy of their agreement to look at before you sign it. If there is anything in the agreement you don't understand, ask your solicitor to explain it to you.

If you win, you will pay:

- your own solicitor's basic charges;
- a success fee (if there is one); and
- any other fees (like expert witness or barrister's fees) that you or your solicitor had to pay.

If you lose, you will pay:

- expenses, such as court fees, disbursements and expert-witness fees;
- your opponent's legal fees, including their solicitor's basic charges and success fee (if there is one), and any insurance premium they have paid; and
- your opponent's disbursements (for example, expert's fees).

How can I make sure I don't have to pay a big bill if I lose?

To protect yourself from a big bill, you can take out insurance to pay for:

- your opponent's legal costs; and
- expenses for both you and your opponent.

Your solicitor should tell you that you should take out insurance. They may offer you insurance, for example, through the Accident Line Protect scheme, which is endorsed by the Law Society. But you are free to arrange insurance yourself if you want to, although it is much easier (and probably cheaper) if your solicitor does it.

If you win you will have to pay the success fee but you should be able to get the part of it relating to risk, and the insurance premium, back from your opponent.

CFA Lite or CFA Simple

A new scheme called CFA Lite or CFA Simple has just been brought in to simplify conditional-fee agreements. Your solicitor can now agree with you that you will receive all your damages and that the solicitor will simply be paid whatever reasonable costs can be recovered from the losing side. But the new rules will still leave you liable to pay your solicitor's charges and fees if you do not

co-operate or if you withdraw your case from the solicitor. And the solicitor will be able to recover from you any insurance premium that has been paid and is not recovered from your opponent.

The CFA Lite or CFA Simple scheme may not be suitable in every case but your solicitor should be prepared to tell you whether it is suitable in yours and if not, to explain why not.

How does legal-expenses insurance work?

There are two basic types of legal-expenses insurance. They are called 'before-the-event' and 'after-the-event' insurance and they work in different ways.

After-the-event insurance

An after-the-event policy is for when you are already in a dispute, and you need to cover the cost of going to court and having to pay the other side's legal bill if you lose your case.

As well as paying for you to take legal action, this type of legal-expenses insurance may also cover costs in some cases brought against you. However, don't presume it will cover the costs. Check with your insurer first.

Before-the-event insurance

A before-the-event policy is mainly sold together with other insurance (for example, car insurance to cover car-related disputes, or house insurance). It cannot generally be bought once a problem exists. In effect, if you have this kind of insurance to cover your costs, you would not need to enter into a conditional-fee agreement.

Before-the-event insurance pays your costs only if your insurance company thinks you have a good chance of winning your case. The insurance will usually pay for:

- your solicitor's fees and expenses;
- costs for expert witnesses;
- court fees; and
- your opponent's legal costs.

However, it won't cover any compensation you are ordered to pay if you lose your case.

Also, this type of insurance does not cover you for all types of legal problem, nor will your insurer necessarily take your case on, which is why it is important to get advice.

If you want to use insurance to cover your legal costs, there are several conditions that you need to remember.

- In most cases, you must report the incident that your case is about within six months of it happening.
- Most policies say you can choose your own solicitor, but many say you can do this only once legal proceedings have started. The insurance company can turn down your choice of solicitor if they don't agree with their costs, or if they don't think the solicitor has the right kind of expertise.

- Once the case has started, most policies say that you must accept any reasonable offer from your opponent to settle your case. If you don't accept an offer, you may no longer be covered by the insurance, and you will have to pay the costs from that point.
- There may well be a limit on the amount of legal expenses that the policy will cover (for example, £25,000). If you reach that limit, and your case has not yet finished, you may have to pay out of your own pocket to finish the case. And some policies may require you to continue your case once the limit is reached – even if you want to pull out – if you are to benefit from the protection provided by the policy. This would mean that you have to take your case to court to be able to claim anything under the policy.
- Personal injury (if you or a family member, are injured or killed due to someone else's negligence).
- Employment issues (for example, if you are dismissed unfairly, or injured at work).
- A consumer problem relating to a contract to buy or hire goods and services.
- Loss or damage to your property through someone else's negligence.
- Disagreements with neighbours about things like boundaries or noise.
- Tenancy disputes if you live in a rented house or flat.
- Contract problems when you are buying or selling a house or with non-structural building work (re-decoration, for example).

But you should always check first whether the insurance will cover any problem you want to take legal action over.

Add-on insurance normally won't cover disputes relating to:

- problems with government organisations (your local council, for example);
- slander or libel;
- the amount of an insurance claim;

Where can I buy before-the-event insurance?

If you already have home-contents insurance (for your flat or house) you can buy legal-expenses insurance as an 'add-on'. It should cost you between £10 and £50 a year. Your policy with the add-on will usually cover you for the following types of case.

- a problem about a will or inheritance; or
- personal injury after a road accident if you were the driver (although this can be covered through your car insurance).

If you belong to a trade union

Your trade union may also have cover for certain (mainly work-related) disputes. However, trade unions are increasing their non-work-related legal services, so it is worth talking to your union representative to see if they could help pay for your court case. And remember that trade unions offer legal services not just to members, but also to your husband or wife, partner and other close relatives. Your trade union can also instruct its lawyers on a 'no-win no-fee' basis.

Terms used in legal actions

Basic charges The hourly rate that most solicitors charge to do your legal work.

Claim How much you are asking for in damages.

Conditional-fee agreement A way of paying for your case, also known as 'no-win, no-fee'.

Counterclaim When someone sues you in response to you suing them.

Community Legal Service Fund What used to be called Legal Aid. This is a fund of government money to help people pay in certain circumstances who can't afford to pay for a legal case themselves.

Damages The money you win, either in court, or if you settle out of court.

Disbursements Payments made by the solicitor above and beyond the basic charges, to work on your case. This may include court fees, accident-report fees or expert-witnesses' fees, as well as paying for a barrister to argue your case if it goes to court.

Legal-expenses insurance Insurance taken out to protect against financial loss as a result of going to court.

Lose When the court dismisses your claim or you stop the claim.

Success fee The amount that your solicitor will add to your bill if you win your claim.

Win When the court decides in your favour, or you settle out of court.

Further help

Community Legal Service Direct

A free, easy-to-use service to help you solve your legal problems.

Call: 0845 345 4 345

to speak to a qualified legal adviser about Welfare Benefits, Debt or Education or find local advice services for other problems.

Log on at: www.clsdirect.org.uk to search for a quality local legal adviser or solicitor or find links to other sources of online information and help.

The Law Society

phone: 020 7242 1222
www.lawsociety.org.uk

Accident Line

The insurance scheme for no-win, no-fee actions which is endorsed by the Law Society

phone: 0800 192939
www.accidentlinedirect.co.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the CLS Direct website at www.clsdirect.org.uk

*Community
Legal Service*



The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

legal services
COMMISSION

The leaflets are also available online at: www.clsdirect.org.uk

- 1 Dealing with Debt
- 2 Employment
- 3 Divorce and Separation
- 4 Renting and Letting
- 5 Buying and Selling Property
- 6 Losing your Home
- 7 The Human Rights Act
- 8 Claiming Asylum
- 9 Welfare Benefits
- 10 Wills and Probate
- 11 Dealing with the Police
- 17 Personal Injury
- 18 Rights for Disabled People
- 19 Community Care
- 20 Education
- 21 Immigration and Nationality
- 22 Mental Health
- 23 Alternatives to Court
- 24 Family Mediation

12 No-win, No-fee Actions

- 13 Problems with Goods and Services
- 14 Medical Accidents
- 15 Equal Opportunities
- 16 Racial Discrimination

The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCleafletline@stivesdirect.com or Fax 01732 860 270



This leaflet is published by the Legal Services Commission (LSC). It was written in association with Consumers' Association



* L S C 0 1 2 E *