

SOLICITORS' COSTS - PAYING FOR CLAIMS THROUGH THE COURT

There are a number of ways to pay for the costs of litigation.

The word "**costs**" can have a number of meanings but, in its widest sense, it includes:-

- * The fees of the solicitor
- * The fees of the barrister
- * Various expenses, eg paying for experts' reports to back your claim, paying the fees of expert witnesses to get them to attend Court or any conferences and payment of Court fees.

NB: VAT is chargeable on solicitors' and barristers' fees and also on the fees of some experts

There are a number of ways in which these costs may be paid for.

- * The conventional basis - you pay the fees as you go along
- * Public Funding - whereby the State-funded Legal Service Commission pays your costs but sometimes requires you to pay a contribution
- * Legal Expenses insurance- perhaps linked to a motor or even household insurance policy or provided by your employer
- * Conditional Fee Agreement - the so-called "no win - no fee" arrangement
- * Union funding - where your fees are paid by a Trade Union

This Fact Sheet is only about the conventional way of paying for costs - see our Fact Sheet No C2 for Conditional Fee Agreements.

Fixed Fee or Hourly Rate?

In some types of case, it may be possible to agree a fixed fee with your solicitor, or to agree a ceiling beyond which he will not incur further costs. Normally your solicitor will only ever suggest such an agreement in the most simple case or where you agree that the solicitor conducts some limited investigation to see whether your case is worth pursuing.

Otherwise the usual arrangement will be that the solicitor will quote an hourly rate for his work. Remember that you should add VAT to that hourly rate.

The solicitor will also quote a rate for so much for each routine letter email or telephone call (often this will be 1/10th of the hourly rate); long letters emails or long telephone calls will be charged on the amount of time spent.

Remember that your solicitor will be working on your case when you are not seeing him - reading or preparing documents, preparing for hearings and so on. He must keep a record of the time that he has spent. You are entitled to ask for a breakdown of the time spent, numbers of letters written etc.

What about these expenses?

In most claims, it will be necessary for the solicitor to spend money on your behalf in order to get experts' reports, pay for Court fees, perhaps obtain copies of medical records. These expenses are known as "**disbursements**".

Your solicitor should agree with you in advance before he incurs these disbursements.

Remember that if a solicitor commissions an expert's report on your behalf, the solicitor is

personally responsible to pay the expert - so he will often ask for you to pay the amount of the fee before he instructs the expert.

It would be wise to ask your solicitor to get a quotation from the expert as to his fee before the expert is instructed.

What about Court fees?

Court fees have been going up steadily in the last few years and can now form a large part of the expenses.

What is a "payment on account"?

Your solicitor may well ask you to pay a lump sum at the outset of the case before he will start work. This is called a "**payment on account of costs**".

What about interim bills?

Your solicitor may well require that you pay bills from time to time during the course of the case. He would usually expect that you pay those bills as they come up in full so that any payment on account that you have made at the outset will cover ongoing costs.

What if my financial circumstances change for the worse during the course of the case?

You may be able to apply for Legal Aid part way through the case if your financial circumstances change for the worse and you become financially eligible.

What if I disagree with the solicitor's bill at the end of the day?

In a contentious case (ie a case going through the High Court or the County Court), you can ask for a "**solicitor-and-client assessment**" of the solicitor's bill. This means that the solicitor will have to produce an itemised bill to the Court and the District Judge will go through that bill dealing with each of your objections and, if appropriate, reducing the bill. However, you must remember that, if you demand an assessment, you may be ordered to pay the solicitor's costs of the procedure and also the Court fee.

Gross overcharging may also be a disciplinary matter which may be taken up by the Consumer Complaints Service which is administered by the Law Society, but usually only after an assessment.

Can I recover my costs from the other side of the litigation?

The normal rule in the English Civil Courts is that the loser pays the winner's costs. However, you

will be entitled only to the "**inter partes**" costs. Often these costs can be agreed between your solicitor and the other side's solicitor. However, if agreement cannot be reached, then your solicitor will have to have a detailed bill drawn up for "**assessment**" by the District Judge. There may be a hearing at which the District Judge will hear the objections of the other side's solicitor to your solicitor's bill and decide on each of those objections in turn.

Remember that, if you lose, you normally have to pay the other side's costs - and again, your solicitor can require assessment of the other side's costs - but this can be expensive as you may have to pay both solicitors' costs of the assessment and a Court fee. It is sometimes possible to insure against these risks of losing.

NB: The above rules only apply in relation to costs incurred in litigation through the High Court or the County Court. Different rules apply in Employment Tribunals and other tribunals and Coroners' Courts, where there would normally be no inter partes costs.

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