

# QualitySolicitors Gould & Swayne

## FUNDING OF DISPUTE RESOLUTION AND LITIGATION

Clients will normally be expected to meet the legal charges and expenses of their own case. However with various funding options available to you, access to justice could now be possible for those who would previously have found it unviable to pursue a claim.

In all cases, we will advise you on the most appropriate method of funding your case.

The possible options.

- The usual “pay as you go”. An estimate of likely costs will be given and regular interim bills provided as the matter proceeds.
- We can look to agree fixed fees at each significant stage of an action including:-
  - investigation and provision of initial advice
  - obtaining expert evidence as required
  - preparation for and representation at ADR and/or drafting proceedings
  - directions and management of a claim/defence
  - evidence gathering including disclosure and preparation of witness evidence
  - interim hearings as appropriate
  - representation at a final hearing
- Legal Aid (more properly known as Community Legal Service Funding) is now only available on a very limited basis in litigation cases. If you wish us to advise you on eligibility, we will need your personal financial details.
- Funding from third parties such as a Trade Union, third party funders, family or employer.
- Risk sharing: Those who may offer a risk sharing arrangement include:
  - Insurance companies.
  - Lawyers.
  - A combination of these two.

Some cases will simply not be suitable for risk sharing. Remember too, that third parties who offer to fund you will normally expect to share the rewards.

### **Risk sharing with legal expenses insurers**

#### ***“Before the Event Policies”***

These are legal expense insurance policies which can be taken out, usually with an annual premium, to provide cover for a possible future legal problem. Private

individuals often have one, for example, as an 'add-on' to a home contents or car insurance policy. Increasingly, companies are encouraged by their brokers to add legal expenses insurance to their normal commercial policy. We should warn you that they are frequently very limited in what they cover and may include restrictions on your freedom of choice of lawyer and may not provide full cover for our hourly rates and other charges.

### **"After the Event Policies"**

These are policies which help to cover the cost of litigation once the dispute has arisen. If the premium is affordable, then it can provide some peace of mind against the possibility of the total litigation costs if you lose the case.

Insurance cover can be purchased to protect against:

- Your opponents' legal charges.
- Your own "disbursements": expenses such as court fees and experts fees.
- Your own legal charges. (insurers are increasingly reluctant to provide this cover).

The usual basis of such policies is that payment is made only if you fail completely with your case.

### **Risk sharing with lawyers**

Until recently, solicitors were not permitted by law to offer clients any such arrangements. There are now various possibilities:

- **A conditional fee agreement** – inaccurately but regularly called "no win – no fee". If this is offered, your lawyer makes no charge if the case is lost but you have to pay your "disbursements" and your opponents' legal charges. If you win, your lawyer charges a "success fee" on top of the normal hourly rate: your opponent may be ordered to pay at least part of these charges, including the success fee.
- **Contingency fees** – where again you are not charged if you lose but the fee if you are successful is a percentage of what is recovered. However, this arrangement cannot be used for cases which require court proceedings. An example of where this could be available to you is in relation to Employment matters before an Employment Tribunal
- **Discount Conditional Fee** - an hourly rate is agreed as being payable if the case is won but the rate is reduced if the outcome is unsuccessful. Such an agreement could also provide for a success fee.

**Please speak with us about the alternative options to funding your litigation**