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L.E. LAW INFORMATION SHEET NO. 14

GUIDE TO FUNDING OPTIONS FOR LITIGATION

Introduction

This guide is intended as a brief introduction to the various methods of funding court proceedings (also known as “litigation”) following the Jackson Reforms introduced with effect from 1st April 2013.

Please note that whilst we have a professional duty to inform clients of the various options available, it does not follow that we will be able to offer all of these options in any particular case.

1. Funding the case yourself

This is the traditional method of funding. You are responsible for our charges and expenses, whether you win or lose. Our charges will be calculated on the number of hours that we have spent on your case and at the hourly rate we have agreed with you at the outset.

In straightforward cases where the amount of work we have to do is easier to predict, we may be willing to agree a fixed fee.

You can put a limit on the amount of work that we do, and we will not exceed that limit without your permission.

2. Public funding (formerly known as Legal Aid)

Public funding is only available to individuals, not to companies or partnerships.

The types of case in which public funding is available have been limited as a result of successive reforms introduced over a number of years. Public funding is not available for any dispute involving a business, wills, conveyancing, trusts, and personal injury claims.

In any case involving a claim for money, public funding will usually be refused if a conditional fee agreement would normally be available.

Please note that this firm does not act under the public funding system.

If you want to apply for Public funding, we suggest you contact a firm which has a public funding franchise, or contact the Legal Services Commission which administers the scheme, to see whether you are eligible for public funding. There is an online calculator on the LSC website (www.legalservices.gov.uk) if you want to work out yourself whether you are likely to be eligible.

3. Conditional fee agreements (or “CFA”) (also known as “no win no fee”)

We will consider acting for Claimants under a CFA in any claim involving money (subject to being satisfied that you have reasonable prospects of success). A CFA will not generally be suitable in non-money claims, or when acting for Defendants.

There are detailed rules regarding CFAs, and if we agree in principle to act under a CFA a separate agreement will be prepared between you and us.

If your case succeeds, we will be entitled to our normal fee plus a success fee to be calculated as a percentage of our normal fees subject to a maximum of 100 per cent.

The amount of the success fee will be fixed at the outset, to reflect the degree of risk involved to us in taking on your case.

The success fee will not in any event exceed 50% of your damages (25% in personal injury cases).

If your case succeeds, you will be able to recover most of our charges and expenses from your opponent, but as a result of the April 2013 reforms you will NOT recover the success fee or ATE premium from your opponent, and these will therefore come out of your damages.

If your case fails we will receive either no fee or a reduced fee depending upon the terms of our agreement with you. You will also be responsible for our expenses.

You may wish to take out an insurance policy (known as ATE insurance) to cover your opponent's costs in the event that you lose the case.

Example One

We act under a CFA in a claim in which you recover compensation of £200,000.

Our normal charges are £50,000 and our success fee is 100% (ie a further £50,000). We are able to recover £45,000 in costs from the Defendant.

You pay £5,000 towards normal charges (£50,000 less £45,000), and £50,000 as the success fee, meaning you keep £145,000 out of the £200,000 awarded.

Example Two

The same facts as in Example One, except you only recover £50,000 in compensation.

Our success fee is therefore limited to £25,000 of your recovery in accordance with the regulations, meaning you pay £5,000 towards normal charges and £25,000 as the success fee, so you keep £20,000 out of the £50,000 awarded.

Please ask if you want further information about CFAs.

4. Damages Based Agreements (known as DBAs).

This is a new option introduced in April 2013.

Our charges are based solely on the amount recovered from your opponent, limited to a maximum of 50% of the amount recovered (or 25% in personal injury cases).

Any costs recovered from the opponent will be limited to our normal costs (based on hourly rates and the number of hours worked on your case) and will reduce the amount payable out of your damages.

Example

We act under a 50% DBA. You recover damages of £100,000, so our charges are £50,000 under the DBA. Our normal costs payable by the Defendant are £30,000.

Defendant pays £100,000 plus £30,000 = £130,000

Our charges are £50,000 of which £30,000 are payable by Defendant, and £20,000 by you out of your damages. You keep £80,000 of your damages.

However a number of problems have been identified with DBAs which will often make them unattractive to lawyers:

1. The lawyer's fee is only payable from damages recovered not damages awarded, so the lawyer is in effect taking a risk on the solvency of the Defendant.
2. The DBA Regulations are widely regarded as poorly drafted, which may mean doubts as to the precise form of agreement should be worded to make it compliant with the Regulations.
3. It is unclear whether a DBA can be on the basis of "no win reduced fee" (as is possible with a CFA) or whether it has to be "all or nothing".

5. Legal expenses insurance

This comes in two different forms: -

(i) Before the event insurance

This is insurance which has been arranged before any dispute has arisen. It will usually be found as part of a more general insurance policy, such as motor insurance, household buildings or contents insurance. It is always worth checking your policies to see whether legal expenses cover is included.

In practice, BTE insurance will often be available in the following cases, but it is always worth double checking your policies :

Motor claims – see your motor insurance policy

Employment claims – see your buildings and contents insurance

Property disputes – see your buildings and contents insurance

(ii) After the event insurance

This is arranged after a dispute has arisen. The insurers will assess the prospects of the claim, and if satisfied that it stands good prospects of success, will sell a policy to cover your estimated legal costs and your opponents' costs in case you lose. The cost of the policy will typically be in the region of 10 to 25 per cent of the cover required according to the insurer's view of the strength of your case.

A bank loan may be available to cover the cost of the premium, and any expenses which have to be met as the case proceeds.

We can provide proposal forms for this type of insurance but please note that there are a number of such policies now available from different insurers. We are not insurance brokers, and we cannot recommend any one particular policy.

6. Trade union funding

If you are a member of a trade union, your union may be prepared to assist with your legal costs. This particularly applies in relation to accidents suffered in the workplace, and employment disputes.

Some unions may be prepared to assist with other types of claim. You will need to approach your union to obtain further details.

7. Funding by a third party guarantor

You may be in the fortunate position of having a friend or relative who is willing to fund your case. In those circumstances, we will usually require a formal guarantee from that third party to meet your costs as the case proceeds. You will still be liable for our costs, in the event that they are not paid by your guarantor.

8. Pro Bono (i.e. free) advice

Certain organisations may be willing to give free legal advice and representation, e.g. Law Centres, charities and others. As a general rule we do not take on Pro Bono cases.

For employment and social security tribunal cases, the Free Representation Unit may be able to assist (tel 020 7611 9555). However, they will normally require you to be referred by one of their referral agencies (e.g. the Citizens Advice Bureau).

Disclaimer

This information sheet is for guidance only and does not avoid the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

Contact Details

For further help please contact:-

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