

No-win, No-fee Actions

And other ways to help pay for legal action



**Community
Legal Service**



Call or click for free high quality legal information
0845 345 4 345 www.clsdirect.org.uk

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. To do this, you use a 'conditional-fee agreement'. This leaflet explains how these work, and about other ways to fund a legal case.

● The cost of taking legal action	3
● What does 'no-win, no-fee' mean?	4
● How do I know what I will have to pay?	5
● How can I make sure I won't have to pay a big bill if I lose?	6
● How does legal-expenses insurance work?	6
● Terms used in legal actions	9

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are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.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, you should first talk to your solicitor or adviser to consider the various ways of dealing with the problem. For example, there are conciliation and mediation services, which can be simpler than using the courts for sorting out disputes. See the Community Legal Service Direct leaflet 'Alternatives to Court' for more information.

If you do find that you need to use a solicitor, you should think about how you will pay for your case.

You may be able to get public funding through the Community Legal Service Fund (formerly called legal aid) to help pay for some cases. You can get this help only if you genuinely cannot afford to pay by yourself and only for certain types of case. The main type of case for which you cannot get public funding is a claim for a personal injury. For more information, contact the Community Legal Service (see page 11).

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

- You might already have legal expenses insurance (see 'Before-the-event insurance' on page 6).
- If you belong to a trade union, you may be able to get help from them (see 'What if I belong to a trade union?' on page 8).
- You could use a 'conditional-fee agreement', also called a 'no-win, no-fee' agreement.

A no-win, no-fee agreement can help you pay your solicitor's costs, 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 Direct leaflets 'Divorce and Separation' and 'Living Together and Your Rights if You Separate'.

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

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 your case, 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
- your and your opponent's 'disbursements' (other expenses or charges, such as fees for expert witnesses if they are needed).

However, you can – and you should – buy insurance to cover these payments in case you lose. Your solicitor will try to arrange this for you at the start of the case. They will tell you if they cannot find an insurer willing to cover you, and what this means for you.

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

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). It may also cover the delay in getting paid (the time between starting work on your case and receiving a fee if you win).

The amount of the success fee depends on your type of case, and your chances of winning. For example:

- in most types of road-traffic case that don't involve large sums of money and are resolved without a trial, the maximum success fee is 12.5 per cent of the solicitor's normal fee;
- in cases made by employees against employers, and for personal injury claims that involve a disease (for example, an asbestos-related illness), there are fixed success fees.

In most cases, if there is a trial, the success fee will usually be twice the solicitor's normal fee.

If you win, the court will usually order your opponent to pay most (or sometimes all) of your solicitor's fees, disbursements (including the insurance premium) and that part of the success fee which covers risk rather than delay, as long as the court thinks these costs are reasonable. Any part of the success fee not covered by the court's order will have to come out of the damages (compensation) you are awarded.

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, even though you may not have to pay these costs under a no-win, no-fee agreement.

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 at this stage you are getting 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 agreement for their clients. The professional regulations that solicitors must follow say that your solicitor must explain their agreement to you.

If you win, you will have to pay:

- your own solicitor's basic charges;
- a success fee (if there is one);
- other fees and disbursements (like expert witnesses' or a barrister's fees);
- the premium for after-the-event insurance, if you have taken out such cover (see 'After-the-event insurance' on page 6).

However, your opponent will be ordered to pay most, if not all, of these charges.

If you lose, you will have to pay:

- expenses, such as court fees;
- your expert-witness fees and other disbursements;
- 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-witness 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.

In most cases, your solicitor will advise you to take out legal-expenses insurance. Other insurance policies are available, and you are free to arrange insurance yourself if you want to, although it is much easier (and probably cheaper) if your solicitor does it. Sometimes with this kind of insurance you will not have to pay the premium if you lose your case.

How does legal-expenses insurance work?

There are two basic types of legal-expenses insurance. They are called 'after-the-event' and 'before-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 your disbursements and the risk of having to pay the other side's legal bill if you lose your case. Your solicitor will have to send regular reports on the progress of your case to the insurance company providing the policy, especially any offers by the other side to settle your claim.

Before-the-event insurance

A before-the-event policy is usually sold with other insurance (for example, car insurance or house insurance). You cannot generally buy it to cover you for a problem you already have. If you have this kind of insurance to cover your legal costs, you may not need to enter into a conditional-fee agreement. The cover provided by this type of insurance varies but it will often 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, before-the-event insurance covers you only for certain types of legal problem and your insurer will not necessarily take your case on, which is why it is important to get advice. If you want to use this type of insurance to cover your legal costs, you need to be aware of several conditions:

- In most cases, you must report the incident that your case is about within six months of it happening, though this time limit is shorter with some policies.
- Most policies say you can choose your own solicitor, but only if legal proceedings have already started. At any earlier stage the insurance company can refuse your choice of solicitor without giving any reason. Your solicitor will advise you how to persuade the insurance company to let you use the policy and choose who will act for you. If it refuses, your solicitor may still be able to act for you under a no-win, no-fee agreement.

- Most policies say that once the case has started you must accept any reasonable offer from your opponent to settle. If you don't accept an offer, you may no longer be covered by the insurance, and if you wish to continue with your case you will have to make other arrangements 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 (which might be for both your and your opponent's costs) and your case has not yet finished, you may have to pay out of your own pocket to finish the case. Alternatively, you may be able to increase the limit by paying an extra premium.

Where can I buy before-the-event insurance and what will it cover?

If you have car insurance, home contents insurance or a credit card, you can often buy legal-expenses insurance as an 'add-on', or it may be included with the policy or card. If you have to pay for it, it should cost you between £10 and £50 a year. It will usually cover you for:

- 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 that was someone else's fault;
- disagreements with neighbours about things like boundaries or noise;
- tenancy disputes if you live in a rented house or flat; and
- contract problems with buying or selling a house or with non-structural building work (redcoration, for example).

If you have a before-the-event policy, you may also be able to use it for problems that your family members have.

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; or
- a problem about a will or inheritance.

What if I belong to a trade union?

Most trade unions offer free legal assistance for certain disputes. These are mostly work-related disputes, but trade unions are now more often willing to help with other disputes too, so it is worth asking your union representative to see if the union could help pay for your legal case. Many trade unions offer legal services to a member's husband or wife, partner and other close relatives as well as to the member.

Terms used in legal actions

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

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.

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.

Damages or compensation The money you win, either in court or from settling out of court.

Disbursements Expenses paid by the solicitor to other people on your behalf. They 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 legal costs that result from going to court.

Lose When the court dismisses your claim or you stop the claim without receiving any benefit.

Success fee The amount that your solicitor will add to your bill if you win your claim. If you win, you should be able to get a large part of this paid by the losing party.

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

Further help

Community Legal Service Direct

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment or housing. Also find a high quality local legal adviser or solicitor.

Click www.clsdirect.org.uk

Find a high quality local legal adviser or solicitor, link to other online information and see if you qualify for legal aid using our calculator.

The Law Society

phone: 020 7242 1222

www.lawsociety.org.uk

Association of Personal Injury Lawyers

To find a solicitor in your area who specialises in personal injury cases
phone: 0870 609 1958
www.apil.com

Accident Line

The insurance scheme for no-win, no-fee actions which is endorsed by the Law Society
phone: 0800 19 29 39
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 website: 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
- 12 No-win, No-fee Actions**
- 13 Problems with Goods and Services
- 14 Medical Accidents
- 15 Equal Opportunities
- 16 Racial Discrimination
- 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
- 25 Veterans
- 26 Domestic Violence, Abuse and Harassment
- 27 Living Together and your Rights if you Separate
- 28 Dealing with Someone Else's Affairs
- 29 Care Proceedings
- 30 Neighbourhood and Community Disputes
- 31 Changing your Name

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 LSCleaflets@ecgroup.uk.com or fax 020 8867 3225.



This leaflet is published by the Legal Services Commission (LSC). It was written in association with Roger Bolt of Bolt Burdon Kemp.

Specialist Compensation Claim Solicitors

BOLT BURDON KEMP



LSC012E