



HilliersHRWSolicitors

INFORMATION SHEET COSTS IN LITIGATION MATTERS

(a) Method Of Charging

In litigation matters fees for work are calculated on the basis of actual time spent in the conduct of a clients case. The time spent is chargeable on an hourly basis. However, the rates may vary depending on the type of activity being carried out. For, example travelling from the office to court would be charged at a lower rate than something requiring a high degree of concentration, such as advocacy or researching the law. We will endeavour to give you an accurate estimate of costs at the outset of a case. As matters change we will keep you updated as to the likely costs of proceeding to trial and at certain stages of the action.

(b) Money on Account

As your legal representatives we may have to carry out certain activities on your behalf that require immediate expenditure. To cover such action we may request some money from you up front, i.e. before we are able to act. In most cases the amount we request will not exceed £500.00, however, in more complex cases a higher figure may be sought. This money will be held separate from our office funds in a designated client account.

(c) Interim Billing

Accounts will be prepared not less than every two months. You will then receive an account of the work we have done to date. Once we have sent you the account we may transfer some of the money we received from you 'on account' into our office account from the designated client account to cover our costs. This money then becomes the firms and we may require additional sums from you if the funds in the designated client account are exhausted.

(d) Definition of 'Costs'

The overall term 'Costs' comprise of three elements. Our own fees for our time and expertise are known as 'profit costs'. Money paid out on your behalf for thing such as court fees, counsel's fees or fees for expert witnesses are termed 'disbursements'. The third element is VAT on all of the profit costs and disbursements but not court fees.

(e) Success Fee

Based on the merits of the case and the likelihood of the case being won or lost we may charge an agreed percentage increase on our costs which will be no more than 100 per cent. It only becomes payable if you are successful in your claim/defence. This is known as a success fee because it depends on the complexity of the case. Thus, a complex case where there is great uncertainty as to the likely outcome may be charged with a higher success fee, whereas a straightforward case where the chances of success greatly outweigh the chances of failure may be charged with a lower success fee. If we take your case on a conditional fee basis you will be advised separately of the success fee to be charged, and you will be asked to enter into a conditional fee agreement (see next paragraph).

(f) Conditional Fee Agreement and After-The-Event Insurance

We may agree to act for you on a conditional fee basis, commonly known as a “no win-no fee” arrangement. This is where we do not charge you a fee if you lose your case. (This method is usually only used in Personal Injury matter) Such an agreement is a binding contractual agreement and thus if you win your case but your opponent is unable, for whatever reason, to fully satisfy our costs, in whole or part, you will be liable for any shortfall in payment. In “no win-no fee” cases we may charge a ‘success fee’ depending on the complexity of your case and the likely outcome of success. As noted above if you win your case our fees and any success fee are normally recoverable from the losing party. However, if you lose your case you are liable for our fees and disbursements and the disbursements of your opponent. You may, however, be able to take out some form of after-the-event insurance to cover such expenses. Many insurers now offer this service and charge a one-off premium provided that your solicitor states that there is a good prospect of success. Thus, if you were to lose your case the insurance policy would cover our fees and disbursements and the disbursements of your opponent as well as the one-off premium which is recoverable as part of your opponents costs. **(See Disbursement Funding below)**

(g) Legal Expenses Insurance

Many household or motor insurance policies contain provision for legal expenses insurance in that you, the policyholder, have the right to receive legal advice and funding towards litigation in whole or part. Most policies cover matters which arise outside of the home and can extend to members of the policyholder’s family. The insurer will pay any award of damages the court orders against you, the solicitors cost of defending/bringing the claim and the opponents costs if he is successful. Such insurance normally starts by notification to your insurer on a prescribed form detailing the matters on which you seek advice. By using its own specialist panel of solicitors your insurer will inform you as to whether you have a viable claim and decide whether to approve your application for legal expenses insurance. You are unlikely to receive funding if the cost of proceedings greatly outweigh the damages available.

(h) Court Orders as to Costs during the Case

Generally 'costs follow the event'. This means that the successful party will be able to recover his costs from his opponent, although the court always has an overriding discretion. It therefore follows that if you lose you may become liable for your opponents costs as well as your own. Furthermore, even if you are successful you may not recover all of the costs in the case if one of the following apply or if the losing party is unable to pay. The court may impose one of the following Costs Orders after a hearing:

- (i) *Costs in the Case*
This means that whoever wins the eventual trial will recover the costs of that particular application. These costs cover not only the actual court attendance but also any preparation and drafting of documents which may have been carried out prior to the hearing. Such a costs order is appropriate where the hearing was routine and has progressed the case to the advantage of both parties.
- (ii) *Claimant's (or defendant's) Costs in any Event*
This order means that regardless of who wins the trial, the named party will recover the costs of the application. This type of order normally implies a level of criticism on the other party, because they have not complied with court orders or have failed to comply with the case management timetable for example. If this is ordered by the court there will be an immediate summary assessment of costs and the judge will normally direct the costs to be paid within 14 days.
- (iii) *Claimant's (or Defendant's) costs in the Case*
This implies a lesser level of criticism on the party who has lost the interim application. It means that the successful party will get his costs of this stage if he is successful at trial. If he loses the trial he will not get his costs of this stage but nor will his opponent who does win the trial.
- (iv) *Costs Thrown Away*
This covers costs which have been wasted due to the default of a party. For example, where the opponent has been incorrectly summoned to a hearing by the defaulting party who has made an incorrect court application. The defaulting party will therefore have to pay the opponents costs of having come to court to defend the wrong application.
- (v) *Costs of and Caused By*
The party who is awarded this order is entitled to the cost of any preparation or attendance which results from the court having granted the other side permission to undertake some act, normally to comply with case management directions.
- (vi) *Costs Reserved*
In principle this means the same as 'costs in the case' in that the winner of the eventual trial will receive the costs of the interim hearing. However, the matter which was in issue at the interim hearing can be re-opened by

the trial judge who may take a different view and review the costs order if he deems it appropriate.

(vii) No Order for Costs

If nothing is said as to costs at a hearing then it is presumed that neither party is to obtain any costs from the other party in relation to the actual hearing or any preparatory work done.

(i) Alternative Dispute Resolution (ADR)

The Courts now actively encourage ADR. The most common form of ADR is mediation. We will discuss with you whether mediation is suitable in your case. The Court may displace the normal costs rules to order a winning party to pay costs if it acted unreasonably in refusing to mediate.

(j) The Indemnity Principle

This rule states that, in relation to costs, the successful litigating party can recover no more from the losing party than he would have been liable to pay his own solicitor. Thus, you cannot claim from the losing party money which you do not really owe your solicitor.

(k) Assessment of Costs

The loser of a case will normally be ordered to pay the winner's costs. If the losing party disputes the costs incurred by the successful party he can apply to a costs judge who will assess the winner's costs. The assessment may be made on the 'standard basis' and in such a case the court will only permit costs that are proportionate to the case and were reasonably incurred by the successful party. Alternatively, the costs judge may adopt the 'indemnity basis' for assessment, usually used if the loser's conduct has been improper. It means that if there is any doubt as to the propriety of an item charged the benefit of the doubt is to be given to the party claiming the sum (the successful litigant). It must again be pointed out that where your opponent is unable, for whatever reason, to fully satisfy our costs, in whole or part, you will be contractually liable for any shortfall in payment. This is due to the nature of the agreement for representation which you entered into at the outset of your case.

(l) Security for Costs

On occasion the court may order a claimant to pay a substantial sum into court funds ('security for costs') to satisfy the court that the claimant is serious about continuing his action and will be able to pay any costs order made against him. Certain conditions must be satisfied in order for the court to make an order for costs which will be explained to you should you be ordered to make such a payment. However, in essence the court must be satisfied that – it is just to make such an order having recourse to all the case circumstances, and be of the opinion that the claimant falls within one of the suspect categories for possible non-payment. Such an order can be made against an individual or a business (incorporated or not). The amount to be paid is at the discretion of the court having regard to all the case circumstances. If the

amount is not paid in the manner in which the court directs then the court is likely to strike out the claim.

(m) Objections to our bill

If you are dissatisfied with the amount you have to pay us at the end of your case you are entitled to have our bill assessed in that we must justify to the court all of our charges. To do this you must use a Part 8 claim procedure and obtain an order for costs to be assessed. We would then have to submit a 'breakdown of costs' to which you have to indicate, within 14 days, what you dispute. We then have a further 14 days to reply. If you are not satisfied by our costs explanation you may then request a detailed assessment from a costs judge. However, if the judge is in any doubt as to the propriety of an item charged the benefit of the doubt is given to the solicitor.

(n) Premium Credit Plan

This service allows you to stagger the payments (our fees and disbursements etc) you owe to us over a monthly period. We employ the services of Premium Credit Limited (PCL) who pay us the full amount of what you owe to us in fees and disbursements. You then pay what you would have paid to us directly to PCL. This can be done over a 6, 10 or 12 month period at a variable but very competitive interest rate. There is a £25 administrative charge for using this facility.

(o) Negotiated Settlements

If we reach an agreement with the other side at an early stage the party initiating the compromise usually agrees to pay the other sides costs. If this offer is not made then the compromise is usually counter-refused.

(p) Counter claim of an Equivalent Value

If you initiated a claim against another party (or vice versa) who subsequently raised a counter claim of the same or similar value and it was agreed between the parties that the costs of the litigation would outweigh any possible advantages each party may agree to withdraw their claim and settle their own costs.

(q) Payments into Court

A defendant (or a claimant in varying circumstances) can make a Part 36 payment into court. This is a method of forcing a compromise on the other side. If you, as a defendant, make a payment into court that the claimant does not accept and at the trial the claimant is awarded a lesser or equal sum to the payment then the court will order 'split costs'. This means that you, the defendant, are liable for the claimant's costs from the date of the cause of the action until 21 days after notice of the payment was given; and that the claimant is liable for the costs from 21 days after notice of the payment is received until the end of the trial. Obviously, if the court decides entirely in your favour, the defendant, then the payment is irrelevant and the claimant will usually be ordered to pay your costs. Conversely, if the court decides in favour of the claimant who is awarded a sum greater than the payment then the payment is irrelevant and the defendant, you, will usually be ordered to pay the claimants costs.

If the claimant is likely to be awarded interest on a defendant's part 36 payment, the defendant must estimate how much interest is likely to be awarded and add this to his payment into court. A claimant has 21 days from the notice of payment into court in which to accept the offer. Once accepted the case comes to an end and costs are then assessed on the standard basis.

A claimant can also make a part 36 Offer and indicate to the defendant the terms on which he will settle the case. As with the defendant's offer a claimant can make an offer before proceedings have begun and at any time after they have commenced. A defendant has 21 days to accept the offer and the claimant will be entitled to his costs up to the date of notice of acceptance from the defendant. The case is then over except for a costs assessment. If the defendant rejects the offer and at trial he is held liable to pay more than what the claimant offered the court has the power to order interest at a rate not exceeding 10 per cent above bank base rate on any sum awarded to the claimant.

(r) The costs consequences of withdrawing from an action

If a Claimant or Defendant decides that they no longer wish to pursue or defend court proceedings then it is more than likely that they will have to pay the other sides costs. Such costs would be subject to assessment by the court and have to be in proportion to the matter. These costs would be in addition to the costs their own solicitor would be able to charge for dealing with the case.

(s) Disbursement Funding

In Conditional Fee Agreement (CFA) matters we will normally require our clients to enter into a Disbursement Funding Agreement. This agreement between the client and a specialist Bank sees the Bank loan the funds that we need to cover the expenses that we incur on a case. Such expenses are things like: Medical Records and Report Fees; Police Report Fees and Court Fees. At a successful conclusion of the case the loan is then usually repaid by the other side's insurance company. **The small amount of interest on the loan is paid by the client and is deducted direct from their damages.** If the client loses the case then both the loan and interest are paid by the legal expenses insurer through the insurance policy taken out at the beginning of the case.