

Personal Injury claims insurance products

Making a personal injury claim against a third party can be an expensive undertaking, with the fees and costs of both your lawyer and the other party often reaching thousands of pounds. If your claim is successful, it is usually the case that the other party will pay both your lawyer's costs and their own, so you will just receive the compensation paid to you. In normal circumstances, claimants have the protection under what is known as 'Qualified One Way Costs Shifting' which means they will not be ordered to pay the defendant's costs except in exceptional circumstances, for example where there has been a finding of fundamental dishonesty against the claimant or where there has been a breach of contract by the claimant in respect of the claim.

Your lawyer may however offer you an insurance product which will cover their own costs and expenses in the event that the claim is unsuccessful – this is known as 'After the Event Insurance'. There is also an insurance product which covers the lawyer's expenses, commonly referred to as 'Legal Expenses Insurance'.

Legal Expenses Insurance (LEI)

You may hold a Legal Expenses Insurance policy, either on its own or as part of another insurance policy, such as your household insurance policy. It is always worth checking whether you hold such a policy before you instruct a firm of lawyers as the insurance can be used to pay the lawyer's fees and costs up to the limit of the policy, without you having to make any deduction from the settlement amount to pay any success fee the firm of lawyers under a 'no win no fee' type arrangement. These policies will generally provide cover for fees up to £50,000.

After the Event Insurance (ATE)

Where you enter into a 'no win no fee' agreement with a firm of lawyers, your lawyer will not receive any fees if you lose your case. Your lawyer will normally arrange for you to take out insurance to cover the risk arising from this situation – this is commonly known as After the Event Insurance.

Before agreeing to cover the claim, the insurer will require the lawyer to assess the prospects of the claim, to ensure that the prospects of success are reasonable. Most insurers will only agree to cover the risk of having to pay the other party's costs and expenses whilst the prospects of success are assessed as being more likely to succeed than to fail. The prospects are generally assessed on the basis of a percentage, so 'more likely than not' is 51% or higher.

If evidence comes to light later that changes the firm's assessment of the prospects of success, the insurer may withdraw cover. The lawyer will write to you to explain if this is the case and set out what your options are then to progress the claim.

What does my lawyer have to tell me before they obtain insurance on my behalf?

Before your lawyer obtains any insurance products for you, they have to provide information about the product so you can decide whether it is right for you and you want the lawyer to purchase the policy on your behalf. We would expect the lawyer to provide a statement setting out the benefits and cover of the policy (known as a 'demands and needs' statement) and a copy of the policy cover wording. You should read the information provided carefully and ensure that you ask your lawyer to clarify anything you do not understand or are unclear on before you agree for the lawyer to obtain the policy for you.

What do I need to do if I have a complaint about an insurance product that my lawyers obtained on my behalf?

If you have any complaints or concerns about any insurance product that your lawyers purchased for you, you should raise it with the lawyers in the first instance. If your complaint concerns something that the insurer has or hasn't done, this complaint can then be referred to the Financial Conduct Authority who regulate all insurance providers including firms of lawyers who purchase insurance products on behalf of their clients.

You can find further information about this on the Financial Ombudsman Scheme's website www.financial-ombudsman.org.uk. The Legal Ombudsman is here to look into complaints about the service provided by your firm of lawyers - any complaints about something that the firm of lawyers has or hasn't done, but we cannot determine any complaints about insurance providers. The Financial Conduct Authority and Financial Ombudsman Scheme are there to do that for you, and their website has lots of useful information on it regarding what you can do. If you are unhappy that your lawyers have made a decision that the prospects of success of your claim have fallen below 51% which means that the insurer is no longer willing to cover the risk, then this is something that we can look into for you providing you have raised the complaint with your lawyers first.

How to contact us if you need further information

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If you need information in another language, large print, Braille or on audio CD then please let us know when contacting us.