

Costs in Litigation

Updated: April 2020



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This guide represents a summary note on the material provisions of the Civil Procedure Rules in so far as they impact on the costs of your claim. As ever, advice tailored to your specific circumstances will always be required. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Legal costs in litigation and other dispute resolution processes (such as arbitration) are often significant and can be the cause of real concern. It is therefore important that you understand the following essential points:

Expense

- Litigation is very often expensive. Furthermore, significant disbursements are likely to be incurred over and above our fees (for example, Court fees and barristers' fees) and, unless expressly agreed otherwise, these will need to be paid up front, on account.

Cost/Benefit

- It is essential to regularly carry out a cost-benefit analysis in relation to your case. This should compare the costs that you are likely to incur, your prospects of recovering those costs from your opponent and the likely outcome of the proceedings.

Who is to pay costs

- An award of costs in litigation (for example, to the winner) is always in the discretion of the court, save in very limited circumstances (for example, where a party discontinues its claim or where a settlement offer under Part 36 of the Civil Procedure Rules applies). It is, however, often open to the parties to agree provisions as to costs before an automatic rule applies or the court is asked to make an award.
- Where the court is called upon to make an award (which it will be after any contested hearing or trial) the general rule is that the loser pays the winner's costs; however, this is very often not applied in practice. It is simply a starting point and the court can (and regularly does) make a different order in its discretion.
- In deciding what costs order to make, the court must have regard to all the circumstances of the case, including the conduct of the parties. The court can reduce the winning party's costs if - amongst other factors - their conduct has been unreasonable.

- Relevant aspects of the conduct of the parties that the court may take into account include:
 - Conduct before, as well as during, proceedings.
 - Whether it was reasonable for a party to raise, pursue or fight a particular allegation or issue.
 - The way in which a party has pursued or defended its case, particular allegation or issue.
 - Whether a winning party has exaggerated its claim.
- All work that we carry out for you, as our client, must be paid for when we invoice you for it, whether or not the court says that you are entitled to recover all or some of your costs from your opponent.

Discontinuing a Claim

- If you instigate but then discontinue a claim, the standard rule is that you will be liable to pay your opponent's costs. This rule can sometimes be displaced, but only in exceptional circumstances. It is important to be aware of and to understand this rule before issuing and serving a claim.

The amount to be paid

- Even where the court orders your opponent to pay your costs, this does not mean that you can recover everything that you have paid to us (in respect of legal costs and disbursements) from your opponent. 100% costs recovery is almost unheard of, even where the winning party has been emphatically successful. Indeed, it is likely that you will only recover a percentage of your costs, in which circumstances you will not recover the difference (i.e. between what you have paid or must pay us, and what you recover) from anyone else.

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- If you are successful and obtain a costs award, it is normal for the parties to try and agree what proportion of your total costs should be paid by the losing party. If this is not possible, however, the costs have to be the subject of an assessment process where the court decides what costs can be recovered. Unfortunately, this can be like a trial all over again, albeit probably less lengthy and solely concerned with the question of costs.
- If costs cannot be agreed and they have to be assessed by the court, then there are two bases for doing this: the standard basis and the indemnity basis. The standard basis is much less generous than the indemnity basis. In both cases, costs which have been unreasonably incurred, or which are unreasonable in amount, will not be allowed by the court. On an indemnity basis, doubt as to reasonableness is resolved in the favour of the successful party. On the standard basis, doubt as to reasonableness is resolved in favour of the losing party. Further, on the standard basis, the court will only order the other party to pay costs which are proportionate. When considering whether costs are proportionate the court will assess whether they bear a reasonable relationship to factors such as the sums in issue, the value of any non-monetary relief, the complexity of the litigation and the conduct of your opponent. It is this assessment process that results in only a proportion of the costs you have actually incurred being recoverable from your opponent.
- For these reasons, the proportionality and reasonableness of any costs incurred is crucial. You should, however, appreciate that notwithstanding a reduction by the court in the amount of costs that your opponent must pay, as stated above, you must still pay us all of your legal costs and disbursements.

The Multi Track

- For the vast majority of cases allocated to the multi track (in simple terms, complex claims and claims with a value exceeding £25,000), the court will usually pre-manage costs. This will require the preparation of budgets for agreement by your opponent or approval by the court.
- Budgets have to be kept under review during the proceedings and updated, either with the agreement of your opponent or the approval of the court.
- Only proportionate costs will be approved by the court.
- On an assessment of costs on the standard basis, approved or agreed budgets will only be departed from if there is good reason.
- We will endeavour to represent you within budgeted costs, but we cannot guarantee to and you will still be liable to pay all of our fees and disbursements if we do not.

The Small Claims Track

- Most court claims are allocated to one of three tracks, depending (essentially) on their value and importance. Straightforward claims for £10,000 or less will generally be allocated to the Small Claims Track.
- Ordinarily, the costs that you incur in obtaining legal advice and representation are not recoverable in cases that are allocated to the Small Claims Track – only very limited costs are recoverable. This is so whether you win or lose. The practical effect of this is that it can be uneconomic to instruct us to act for you in a matter which is (or is likely to be) allocated to the Small Claims Track.

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Fixed Costs

- In some types of claim, the amount of costs you can recover is pre-fixed. Examples include residential possession proceedings and debt claims which are not defended. Again, where your costs recovery is limited in this way, you will still be liable to pay us all our charges and disbursements.

Liability of Non-parties

- In exceptional cases, costs orders can be made against people who are not parties to the litigation. This is relevant to both the winner and the loser. If the winner finds that the loser cannot pay, there still might be circumstances justifying an award of costs against someone else altogether. This is possible where the non-party not only funds the proceedings, but substantially also controls or at any rate is to benefit from them.

Summary Assessment

- On occasions, costs may be assessed after a particular application in litigation as opposed to after a trial (this is called summary assessment of costs). It is a rough and ready assessment which results in an order for an amount of costs to be paid within 14 days. This can happen even if you are the ultimately successful party in the overall litigation.
- The assessment of costs after the conclusion of the litigation is a longer, more formal, process and can take months to conclude.

Recovery from the party liable

- Even if you are successful in the litigation and obtain a costs order against your opponent, there is no guarantee that your opponent will be able, or willing, to pay the costs. If this is the case, then the costs award can be treated like any other monetary judgment and enforced. However, again, this is no guarantee of payment. As before, you must still pay us when we invoice you.

LEGAL EXPENSES INSURANCE

(i) Before the Event Insurance (“BTE”)

- Before the event insurance is taken out by those wishing to protect themselves against potential litigation costs that could be incurred following an insured event. These costs generally include fees of solicitors, barristers and expert witnesses, court fees, and any legal costs awarded to the other side. It is often sold as part of a house or auto insurance policy and is also sometimes offered as a benefit to members of a trade union or association.
- Please confirm whether you have a BTE insurance cover, for example do you have any home credit card or motor insurance which would cover the cost of the legal fees in respect of this matter. Alternatively, please confirm whether you are a member of a trade union and whether they provide any legal expenses insurance.

(ii) After the Event Insurance (“ATE”)

- After event insurance is taken out after an event such as an accident which has caused damage to insure the policy holder for disbursements, as well as any costs should they lose their case.
- We are under an obligation to inform you that you may seek to take out ATE which may protect you from your opponent’s costs if your litigation proves to be unsuccessful. However, we are not authorised by the Financial Conduct Authority and are not able to undertake insurance mediation activities on your behalf.

If you would like to know more about this topic or our other legal services, please contact William Angas: wangas@pdt.co.uk

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Commercial Dispute Resolution

Resolve issues quickly and gain strategies to avoid future disputes

Disputes are an inevitable part of business life, but they're distracting, unproductive, expensive and a drain on time and energy. We provide clear, considered advice that focuses on the resolution not the dispute.

We have considerable experience dealing with a wide range of corporate and commercial disputes, including:

Commercial contract disputes

- Disputes arising out of commercial contractual relationships in the course of business. We have experience of advising on a wide range of contractual situations between our clients and those they do business with, such as customers, suppliers, distributors, agents, franchisees and licensees.

Director and shareholder disputes

- Disputes arising from the internal governance of companies and ownership issues, such as claims against directors, disputes shareholders may have between themselves and the company, and disputes between partners.

Corporate transaction disputes

- Disputes arising out of corporate transactions such as company sales, financing, joint venture agreements and shareholder agreements.

Professional negligence

- Disputes against professionals who have failed to meet the standards expected of them in the services that have provided.

Banking and financial services

- Disputes relating to banking, such as loan agreements, guarantees, consumer credit and other forms of financing, and other financial services such as insurance.

We have particular expertise in [asset based lending and invoice finance](#), [contentious insolvency](#), and [property disputes](#).

Working alongside our [debt recovery team](#), our commercial disputes team can assist you in collecting debt when the debt is disputed.

Litigation Key Contacts

Our lawyers have the technical expertise, business acumen and dedication to meet the legal needs of business clients operating in complex, competitive, commercial environments.

We can advise on the full spectrum of dispute resolution techniques, from negotiation to litigation, including alternative dispute resolution (ADR) methods such as mediation and arbitration.



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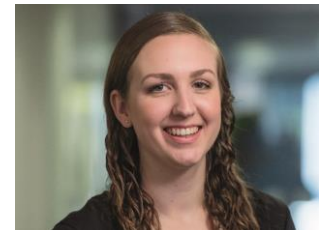
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Corporate Law & Deals Investment Shares Mergers & Acquisitions Buy-ins
Buy-outs International Business Corporate Restructuring Corporate
Finance Debt Refinancing Strategic Advisory Work Commercial Services
Terms of Business Commercial Documentation Commercial Agreements
Research & Development Agreements Data Protection & GDPR Intellectual
Property Commercial Real Estate Acquisitions & Disposals Development &
Regeneration Planning & Construction Property Investment Secured Finance
Insolvency & Corporate Restructuring Insolvency Investigations Administra-
tion & Receiverships Individual Insolvency & IVA S Liquidation & CVAS Directors
Disqualification Debt Collection Corporate & Commercial Disputes Contract
Disputes Partnership Disputes Property & Land Disputes Employment Law
Monthly Support & Advice Packages Management and Health & Safety
Training Employment Dispute Resolution Documentation Contracts Settlements
Corporate Law & Deals Investment Shares Mergers & Acquisitions Buy-ins
Buy-outs International Business Corporate Restructuring Corporate
Finance Debt Refinancing Strategic Advisory Work Commercial Services
Terms of Business Commercial Documentation Commercial Agreements
Research & Development Agreements Data Protection & GDPR Intellectual
Property Commercial Real Estate Acquisitions & Disposals Development &
Regeneration Planning & Construction Property Investment Secured Finance
Insolvency & Corporate Restructuring Insolvency Investigations Administra-
tion & Receiverships Individual Insolvency & IVA S Liquidation & CVAS Directors
Disqualification Debt Collection Corporate & Commercial Disputes Contract
Disputes Partnership Disputes Property & Land Disputes Employment Law
Monthly Support & Advice Packages Management and Health & Safety
Training Employment Dispute Resolution Documentation Contracts Settlements



Contact us to discuss how we can help your business

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