

Background

Whether you are acting on a conventional basis or on a full or partial Conditional Fee Agreement, your client will want 'cost certainty'.

Your costs are of course only one side of the coin.

If your client loses or their claim is withdrawn they will almost certainly have to pay for :

- **Their Opponent's legal costs and disbursements.**
- **Their own disbursements such as Court Fees and Expert Witness Fees.**
- **Their Opponent's Insurance Premium (if applicable).**

In addition, if there is a failure to improve upon a Part 36 offer (or equivalent), the client may also be liable for some of their Opponent's legal costs/disbursements even if they succeed.

"After The Event" legal expenses insurance (ATE) can cover some or all of these eventualities.

Questions

When will the premium have to be paid?

The premium due is normally payable at the conclusion of the claim. The premium will generally depend upon the stage at which the case ends. The premium may well be recoverable from the claimant's Opponent. If your client loses their case the premium itself is normally insured i.e. it is no longer payable.

If an action is lost, how is the claim paid?

The Insurers will generally pay the claim for the Opponent's costs directly to the Opponent's solicitor

Will any money be deducted from your client's damages if they win?

This will depend upon whether the premium has been recovered in full or in part from the other side. If it has been collected in full, no deduction will be made. If there is a shortfall in premium collected, your client could be responsible for a proportion of the premium. This will be carefully explained to the client at the outset.

EFM SPECIALIST RISKS

EFM are Independent Commercial Insurance Brokers who have been working with the Bar Council in order to formalise After The Event Insurance facilities for clients of Public Access Barristers. EFM are a Bar Council Service Partner.

EFM have been established for almost 20 years and specialise in niche insurance schemes. They have been at the forefront of insurance and risk management innovation in the Banking, Telecommunications, Veterinary and Accountancy sectors.

EFM have assembled a comprehensive panel of ATE insurers, all of whom can be accessed via a single enquiry form. The panel of insurers is constantly monitored with new insurers being added and others removed as required.

Procedures

By all means please make your clients aware of the facilities that are available via EFM. We also have a separate client - facing Briefing document.

Your clients will need to contact EFM **directly** in order to ensure that you do not stray into Regulated Financial Services territory.

Your clients will be provided with a preliminary Enquiry Form and EFM will progress matters from that point. You may be asked by your client for an up to date written opinion on the prospects of success of the case to support their insurance enquiry. We will provide the client with full terms and conditions relating to the insurance cover that may be available to them.

At the client's request, you will be provided with all copy correspondence and specifically the final insurance quotation.

Insurance Regulation

It is important to note that you must not undertake any activities which require authorisation and regulation by the FSA. This includes advising upon or arranging contracts of insurance. It is important to ensure that the provision of information (including fulfilling a request by the Client for a written Opinion to support their Enquiry Form) is the extent of your involvement with the insurance in order to avoid straying into FSA Regulated territory.

Contacts

Mark Felman ACII and Graham Berg ACII can both be contacted on **01702 482284** or by e-mail at ateinsurance@efmgroup.co.uk

Further information is available [at www.publicaccessbarristers.com](http://www.publicaccessbarristers.com)



SERVICE PARTNER

EFM are a Bar Council Service Partner

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Specialist Risks

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This document is generic and reflects our current understanding of the law and is subject to change.

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