

## Supplementary sheet

### 7. Litigation (non-criminal)

#### 7.1 Liability for adverse costs

If you were to lose your case, or for some other reason the court made a costs award against you, then you would have to pay in the region of 70% to 90% of the other party's legal costs.

#### 7.2 Costs recovery

If you are involved in a successful court action, you may receive payment of your costs from the other party. However, it is rare for this system of "assessment of costs" (as it is known) to result in the other party having to pay the full amount of your costs.

Costs recovery is normally in the region of 70-90% but may be less if the court decides that your costs were disproportionate to the amount or issues at stake. You will remain liable to us for the balance of the costs.

From 1st October 2023, new procedures relating to the recovery of costs were introduced and apply to cases worth between £25,000 and £100,000. It is likely that the introduction of these rules on Fixed Recoverable Costs will reduce still further (and possibly quite significantly) the amount of costs which can be recovered from the losing party.

#### 7.3 Enforcement

If you do obtain a costs and/or damages award against your opponent, there is no guarantee that your opponent will be willing or even able to pay. If your opponent does not pay, then you may have to incur further legal costs in taking enforcement measures against your opponent in order to extract payment.

#### 7.4 Disclosure of documents

You should be aware of the obligation on both parties to give disclosure of all documents relevant to your case. The definition of what is included in the term "documents" is very wide indeed. It includes any kind of record, however stored, and includes electronically stored documents such as emails, spreadsheets, word processed documents and electronic diaries from any source whether computers, backed-up tapes, servers, mobiles, PDAs or web based applications. Certain documents are what are called "privileged" from disclosure, but we will identify those during the course of the disclosure process. You should also bear in mind that we will be under obligation, once lists of documents are exchanged, to allow your opponent/his solicitors to inspect (or take copies of on payment of our firm's photocopying charges) the originals of all documents disclosed.

It is therefore essential that you should not destroy any document which could conceivably be relevant however unimportant it may appear to you. Furthermore, you should bear this in mind that your opponent/ his solicitors will be entitled to inspect any new documents you create which are not privileged. We would therefore wish to be involved in the formulation of anything relevant to this matter which you may wish to commit to writing. Among other heads of privilege all communications between this firm and you relating to this case, and all communications between this firm and third parties for the same reason, will broadly be protected from compulsory disclosure by privilege.

#### 7.5 Alternative dispute resolution

Attempting to settle your dispute either before or during the course of the case by means of alternative dispute resolution ("ADR") is something you should consider.

It would usually involve bringing in a paid mediator who would attempt to reach a settlement between you and your opponent. Mediation services can also be provided free of charge by the court, although our experience is that this is not as effective as engaging a paid mediator.

There are a variety of other forms of ADR which we can discuss if you would like:

- Early neutral evaluation: a preliminary assessment of the facts, evidence or legal merits to give guidance as to how a dispute would be determined to assist a negotiated settlement.
- Expert determination: appointment of independent expert or third party to decide the dispute.
- Med-arb: a more developed form of mediation which would allow the mediator to arbitrate the dispute and make a binding decision, if mediation was unsuccessful.

Both sides would have to agree to ADR in advance and each side would have to pay its own legal costs and the mediator's fees (except in the case of the appointment of a court mediator).

The process would be on a without prejudice basis and you would not therefore be committing yourself to a settlement imposed by a third party (except in the case of binding arbitration). Please let us know if you would like to explore this possibility further.

#### 7.6 Third party payment of legal costs

If another person has agreed to pay all or part of our charges or expenses, you will still remain liable for those costs. You accept we may keep that third party informed about the progress of any dispute and the costs and expenses which are incurred. Third party funding may be provided, for example, under a legal expenses or public liability policy. Such policies are often added to household, business or motor insurance policies. You should therefore check any such policies carefully.

If we have not been notified about third party funding, we will proceed on the basis that no such funding is available to you.

#### 7.7 After the event insurance

If you do not have the benefit of legal fees insurance through an existing policy and your case has sufficient merit, it may be possible to obtain after the event ("ATE") insurance cover against your obligation to pay your opponent's costs in the event that your case is unsuccessful. Such cover, when provided, often does not require a premium to be paid until the conclusion of the case, but the premium is not recoverable from your opponent as part of your costs if the claim is successful. If your case is unsuccessful, the policy, in addition to paying your opponent's costs, often insures the premium. We have established contacts with a reputable ATE insurer which we can contact if your case has sufficient merit and you instruct us to do so. Please note that we do not act as an insurance broker and at all times you are free to contact such a broker yourself or to instruct us to do so on your behalf to seek quotations for such cover. We will charge you for the time we spend in dealing with insurers and/or brokers in seeking and/or obtaining such ATE insurance.

### **7.8 No win no fee**

It is possible to pursue or defend most types of case under a conditional fee agreement or damages based agreement (also known as a contingency fee agreement). We do sometimes enter into agreements of this kind (other than for family litigation) and so please let us know at the outset of the matter if you would like to explore this possibility further.

### **7.9 Unbundling of legal services**

We are conscious that the cost of litigation is often very high and sometimes unaffordable for some clients. As an alternative to you instructing us to “come on the record” at court as acting for you in litigation and handling every aspect of the case for you, you may wish to consider instead acting as a litigant in person and asking us from time to time to handle only one aspect of the case. This is known as the “unbundling” of legal services and we are prepared to consider acting on this basis, in order to keep your costs down. We would only agree to do this after discussing this with you, because it would mean that you would be acting in person and primarily responsible for handling the case yourself and you would have to agree that we would not be held liable for any problems which arise in the case in relation to aspects of it (including meeting court deadlines) other than those which you have specifically instructed us to handle.

## **8. Employment Disputes– Important Information**

### **8.1 Recovery of costs**

It is almost impossible to recover legal costs in employment tribunal claims, even if you win you should assume that costs will not be awarded. Costs are an exception, are rarely awarded and it is very difficult to persuade an employment tribunal to make an award in the limited circumstances that apply. An employment tribunal must make a costs or preparation time order in unfair dismissal proceedings in limited specified circumstances. Otherwise, an award may only be made against a party or their representative, where a tribunal finds that they have acted vexatiously, abusively, disruptively, or otherwise unreasonably in the bringing or conducting of proceedings, or a part of them or, if any claim in the proceedings has no reasonable prospect of success. A costs order may also be made if a party is in breach of any order or practice direction or a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date of the hearing.

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### **8.3 ACAS Conciliation**

Most employment disputes require a party to contact Acas before a claim can be issued in the employment tribunal, unless one of the limited exceptions applies. If both parties agree, you will enter into a conciliation period which aims to settle the claim without the need for proceedings, this can last up to six weeks. There are strict time limits for bringing an employment tribunal claim, which must be adhered to but may be extended by up to a month where mandatory conciliation takes place. The exact time limit is complicated, you should take legal advice on this.