

## Background

Whether you are acting on a conventional basis or on a full or partial Conditional Fee Agreement, your client will want 'costs 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If your client loses or their claim is withdrawn they will almost certainly have to pay for: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. Typically, the ATE premium quoted is subject to a discount in the event that the case concludes at an early stage (the proportion of the quoted premium payable would be detailed in any ATE quote provided).

As a result of changes to the Law, After The Event insurance premium is no longer recoverable from the Opponent if the Insurance is taken out after 1<sup>st</sup> April 2013 (other than in very limited circumstances such as commercial claims for insolvency, defamation, asbestos injury and certain elements of claims arising from clinical negligence). If the case is lost the premium itself is normally insured i.e. it is no longer payable.

### What cases might be suitable for ATE Insurance?

Cases suitable for consideration for ATE Insurance are usually regarded by Insurers as those cases where there is an anticipated award of damages which significantly exceed the likely level of the ATE Insurance premium (see further below for an indication of the likely cost of cover).

The ATE premium is generally calculated based upon a percentage rate applied to the Limit of cover required.

The limit of cover is made up of:

Value of the expected Opponent's Costs + the value of your client's own Disbursements\*

*\* Excluding own Barrister's Fees (as these are not usually covered). Disbursements cover is optional*

The rate applied to the limit of cover can be in the region of 25% - 30% plus of the amount being insured. Insurance Premium Tax at the current rate (6%) is added.

## Questions continued

### Will any money be deducted from your client's damages if their claim is successful?

The ATE insurance premium will usually need to be paid by the client from the sums recovered from the Opponent, unless the ATE premium is paid by the client up front.

### If an action is not successful, how is the claim paid?

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

### Are there any ways to reduce the ATE insurance premium?

Sometimes, an ATE insurer will be willing to provide a discount in premium if the client elects to have an excess where they agree to be responsible to pay the first part of a claim up to a pre agreed amount.

### How is a quote obtained?

Your client will need to contact us directly. We will ask them to complete a preliminary Enquiry Form and will progress matters from that point. You may be asked by your client to provide an up to date, short written opinion regarding the prospects of success of the case to support their insurance enquiry. Following receipt of responses from our various panel insurers, we will provide your client with full terms and conditions regarding the insurance cover that may be available to them.

At the clients' request, we will also provide you with all copy correspondence and specifically the final insurance quote. The Barrister must not provide the client with insurance advice.

## 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.

## Insurance Regulation

It is important to note that you must not undertake any activities which require authorisation and regulation by the FCA. 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 FCA Regulated territory.

## Contacts

Mark Felman ACII or David Mahony can both be contacted on

- 01702 482284
- or by e-mail at [ateinsurance@efmgroup.co.uk](mailto:ateinsurance@efmgroup.co.uk)

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

# AFTER THE EVENT – LEGAL EXPENSES INSURANCE BRIEFING NOTES FOR PUBLIC ACCESS BARRISTERS



## EFM Specialist Risks

EFM is an Independent Insurance Broker who has been working with the Bar Council in order to provide After The Event Insurance facilities for clients of Public Access Barristers. EFM is a Bar Council Service Partner.

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

EFM has assembled a comprehensive panel of ATE insurers, all of whom can be accessed via a single enquiry form



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