



Dispute
Resolution



Dispute Resolution: Sharing The Risk, Managing The Cost

“How much is this going to cost me?” It’s usually one of the first questions we’re asked when advising on a legal dispute.

And so it should be. Whether you’re making a claim or defending one, litigation can be both expensive and uncertain – often both at the same time.

Unsurprisingly, that can be a powerful deterrent for clients, even if they have a strong claim.

Charging an hourly rate for the time spent dealing with a case is the traditional charging method used by solicitors. If this is what a client is comfortable with, we can happily work on this basis.

It doesn’t suit every client or every dispute, however. That’s why at Aaron & Partners, we offer a range of funding options that not only give clients much more certainty on the costs of litigation, but also enable the risk of winning or losing the case to be shared in appropriate cases:

- **Damages-based agreements (DBAs)**
- **Contingency fees**
- **Fixed fees**
- **Third-party funding**
- **Insurance (both before and after the event)**

Offices

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Aaron & Partners

Adding Clarity To Litigation For Clients

Aaron & Partners has a proven track record of winning cases for clients where the risk has been shared.

Our specialist team has in-depth experience of diverse types of dispute and across a wide range of industry sectors.

We specialise in providing cost effective, commercial solutions to business critical problems. Above all, we specialise in providing funding options that add clarity and certainty to the costs of disputes.

For a no-obligation chat about how we could help your clients, or to discuss a client dispute, call Nick Clarke, our head of dispute resolution, on **01244 405558**.

Conditional Fee Agreements

Conditional fee arrangements (CFAs) are perhaps the most widely known and widely used risk sharing option.

A CFA, or 'no win, no fee' agreement, is where we agree to accept a lesser fee, or no fee at all, if the client loses the case. If we win the case, the client pays us a 'success fee' on top of our standard rates.

The level of success fee depends on our initial assessment of the chances of success. The higher the prospect of a win, the lower the success fee. If the client wins, they can usually recover the majority of their basic costs from their opponent, but they cannot recover the success fee.

Before a client agrees a CFA with us, we will carefully consider whether the amounts realistically recoverable make a CFA cost effective.

A variation of this arrangement is for a client to pay us at a reduced hourly rate as the case progresses, only paying the full rate, plus a success fee, if we achieve a successful outcome.

CFAs are not totally risk-free. Even if the case is lost and no fee is payable to us by the client, there is still the risk that they will be ordered to pay the other side's costs. This risk can be covered by 'after the event' insurance, reducing the risks even further.

Damages-Based Agreements

Under a damages-based agreement (DBA), the client agrees to pay us a percentage of the amount they recover from their claim. This can not be anymore than 50%. If they recover nothing, they pay us nothing.

A DBA provides certainty from the outset and spreads the risk, as clients don't have to pay us if they don't make a recovery. Because DBAs are based on the amount recovered, however, they don't work for defendants, unless they have a counterclaim that substantially exceeds the value of the initial claim.

As with a CFA, there is still a risk that a client who loses a claim will have to pay the opponent's costs, but insurance can mitigate this risk.

DBAs are new and many solicitors do not offer them. At Aaron & Partners, however, we believe they are a valuable addition to the funding options we provide to help reduce the financial uncertainty of litigation.

Contingency Fees

Where it's possible to settle a dispute without formal court proceedings, another risk-sharing option is a contingency fee. This is similar to a damages-based agreement (DBA), but can only apply before court proceedings are commenced.

As with a DBA, we take a percentage of whatever the client recovers. If they don't receive anything from the claim, there will be no charge. However, because the arrangement only applies before court proceedings are commenced, the work we might need to do is more limited than under a DBA. Therefore the percentage we agree to take can be less than under a DBA.

If a settlement can't be achieved and court proceedings become necessary, we may be able to move onto a formal DBA, which are required when there are court proceedings.

Third-Party Funding

Third-party funding is where a venture capitalist provides the funds to pursue a claim. In return, they 'buy' a percentage of any amount recovered.

Because of the risks involved, third-party funders are usually only interested in very high value cases of £500,000 plus – and they generally want a substantial percentage of any recovery. Therefore it's not a realistic option for many cases.

If you believe it might be appropriate for a particular claim, however, our team can put you in touch with potential funders.

Insurance

The risk of having to pay the other side's costs is a major consideration when deciding how to deal with a dispute. There are two main types of insurance to cover this risk:

'Before the event' insurance

Some of the insurance policies a client already has in place may include legal expenses cover. Subject to the terms of the policy, this can be used to cover the legal costs in connection with a claim.

Our specialist team can review a client's existing insurance policies to see whether they could help to fund legal costs. Although an insurer might try and steer the client to its own solicitor, clients are usually entitled to refuse and to choose their own solicitor to handle the case.

'After the event' insurance (ATE)

As the name suggests, an ATE policy is taken out after the event giving rise to the claim has happened. There are various different kinds of ATE policies. They include policies where:

- the premium is paid upfront
- the premium is paid in stages as the case progresses
- the premium is paid at the end of the case and only if the claim is successful

This last option has obvious benefits, but the premiums are substantial due to the risks involved for the insurer. Nor can ATE premiums be recovered from the other side.

The benefit of ATE policies is that they will pay the other side's costs if the claim is lost. This means that for the cost of the premium, the client, in conjunction with a CFA or DBA, can substantially reduce their risk in bringing a claim.

When deciding on a funding strategy for a case, we will consider the insurance options. This will include the likely cost of premiums and the impact this will have on the overall likely recovery. This is key to ensuring that any strategy delivers a cost effective solution.



"I'd like to kindly thank you for the support you have given us, you have been extremely professional in all aspects which has given me comfort throughout. I would be delighted to pass on your details totally secure in the knowledge that they would be thoughtfully and professionally cared for."



To learn more about Dispute Resolution services and how we could assist your business, visit aaronandpartners.com or call us today on **01244 405555**



Nick's approach to disputes is to first understand his client's objectives and plan a strategy to achieve them. He is a firm believer that dispute resolution is about much more than Court procedures, but is about finding cost effective solutions to the problems clients face.

Nick Clarke

Partner & Head of Dispute Resolution & Insolvency

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A great believer in legal risk management, John helps clients to minimise their risk of legal disputes and lectures on the topic. He has also lectured on director's duties and liabilities and helps directors understand the risks they face in their role as directors.

John Devoy

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Dealing with insolvency office holders, the Court or the Insolvency Service can be very stressful and Jan works hard to smooth the path towards a satisfactory outcome in matters such as asset purchases, director disqualification proceedings or bankruptcy annulment.

Jan Chillery

Insolvency Partner

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David advises owners of small-to-medium-sized enterprises, directors, partners, and other professionals, on contentious matters in relation to company and business disputes, insolvency issues, partnership disputes, professional and regulatory issues, and engineering and product liability cases.

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