

ROLE OF THE LEGAL PROFESSION

The legal profession in private practice is the largest provider of legal services to the public. It has the largest client base with the overwhelming majority of clients paying privately.

Conditional Fee Agreements (CFAs)

When it comes to litigation there has been a huge growth in the use of conditional fee agreements (CFAs) to finance court actions. CFAs finance civil court actions with the upshot that the client does not pay his solicitor/barrister if he loses the case. CFAs, though not available for criminal trials or family matters. ***The Conditional Fee Agreements Order 2013*** - If the claim is successful, the client pays the lawyers' standard charges, expenses and disbursements (e.g. court fees) plus a ***success fee*** which is a per centage above the standard charges. This can be 100%, though limited to 25% in personal injury cases (and this excludes damages for future care and loss in order to protect the claimant). The claimant is then entitled to seek recovery from the defendant the standard charges, expenses and disbursements, but ***not*** the success fee. **SIMMONS v CASTLE** - level of general damages 10% higher. **NOTE** CFAs can be risky for lawyer and client.

Damages-based agreements (DBAs)

Under a DBA, lawyers are not paid if they lose a case but may take a ***percentage of the damages*** recovered for their client as their fee if the case is successful. The maximum payment that the lawyer can recover from the claimant's damages is capped at: (1) 25% of damages in personal injury cases (excluding damages for future care and loss); (2) 35% of damages in employment tribunal cases; and (3) 50% of damages in all other cases. Like CFAs, successful claimants will recover their costs from defendants in the usual way.

The losing claimant

ATE Insurance. ATE insurance premiums are not recoverable from a losing party. Hence, they must be paid out of damages.

Qualified one way costs shifting (QOWCS)

QOWCS introduced in April 2013 as a shield protecting a losing claimant from having to pay the defendant's costs. It is 'qualified' because it does not apply in all circumstances e.g. claimant has behaved unreasonably or not accepting Part 36 offer.

Pro Bono

Advocate - Acts as a clearing house, matching barristers prepared to undertake pro bono work with those who need their help. Receives applications for assistance through advice agencies and solicitors in cases where the applicant cannot afford to pay for assistance or obtain public funding.

LawWorks - Solicitors' pro bono organisation.

Others - (1) Free Representation Unit - deals with tribunals cases (2) Access to Justice Foundation - a cross-profession initiative that provides funding and support to charities that give free legal help to those in need (3) Law on the Web - gives free online advice (4) Free Legal Answers - set up in 2020 to provide initial advice to individuals who struggle to attend existing pro bono centres, for example due to mobility issues, health issues or COVID-19 restrictions.