

After the Event Insurance (“ATE Insurance”)

An ATE Insurance policy is provided by a specialist insurer to provide protection to a party in the event after court proceedings they have to make payment of an opponent’s legal costs.

The type and extent of the cover will depend on the policy that you select. This summary is intended to provide a high-level overview and guidance as to what ATE Insurance is and how it works. If you obtain ATE Insurance, you should carefully read the policy documentation provided by the insurer. This will provide you information on the level of cover and the cost of the premium.

WHAT IS ATE INSURANCE

A simple analogy is ATE Insurance is similar to car insurance. Whilst you hope that you never have an accident, if you do, depending on the level of cover, you know that the insurance company will make the payment on your behalf. It is designed to mitigate your risk.

ATE Insurance protects you for some, or all, of the cost risk after a dispute has arisen. The general rule of thumb in litigation is that the losing party pays the successful parties’ costs. If you were unsuccessful in your claim you would typically be liable for not only the costs that you have incurred, but also a proportion of the opponents’ costs (generally around 70-80%). Whilst ATE Insurance generally does not cover you for the costs you have incurred, the idea is that it would “*pick up*” the other sides costs and possibly your disbursements. ATE insurance will therefore provide some comfort in knowing if the worst were to happen (you lose at trial), your financial exposure would be limited.

WHEN SHOULD ATE INSURANCE BE PURCHASED?

ATE Insurance is purchased after the dispute has arisen, but should be purchased before any significant legal costs or disbursements have been incurred; in other words, right at the outset. Most ATE Insurance policies are purchased at the point when a solicitor begins a claim. If a claim proceeds and insurance is sought at a late stage, it is likely that this would be rejected, or a significant premium would be payable.

There are a variety of policy types ranging from payment of premiums up front, staged payments through the life of a claim or fully deferred and contingent on the outcome which usually means payment of the premium in the event you succeed.

HOW MUCH DOES ATE INSURANCE COST & WHEN IS IT PAYABLE?

The cost of ATE Insurance depends on the specific terms of the premium relating to the policy that is provided on inception. The premium is calculated by what the insurers deem the risk to be on the facts of the case. Generally, most ATE Insurance policies have staged policies across the life cycle of litigation. If a case settles early, the premium payable may be modest. If your claim is successful (either at trial or a settlement is reached), the premium will be due to the insurer.

In general, the ATE Insurance premium is payable by you and is not recoverable from the opponent. There are some limited scenarios (such as publication and privacy proceedings), where if you are successful in your claim and awarded costs, you may be able to recover all or a proportion of the premium from the other side. If there is a shortfall in the amount recovered for the premium, you may be liable for this sum.

WHAT DOES THE ATE INSURANCE POLICY COVER

Generally ATE Insurance covers you from paying the other sides costs if you are unsuccessful and, on some occasions, disbursements you have incurred. What is specifically covered by the ATE Insurance policy is entirely dependent on the type of policy you incept and its specific terms and conditions. Before inception, the insurer will explain what cover is provided. The documentation provided by the insurer should be read extremely carefully.

WHAT ARE THE BENEFITS OF OBTAINING ATE INSURANCE?

- Peace of mind as it manages risk of paying the opponents costs. You know that if you are unsuccessful in your claim, the insurance company will pay all, or a proportion of, the opponent's costs.
- Certain policies may cover you for all or a proportion of your own legal costs (although this is not common practice).
- Certain policies may cover any disbursements you have incurred.

HOW DOES ATE INSURANCE RELATE TO A CONDITIONAL FEE AGREEMENT (“CFA”)

A CFA is better known as a “*No win, no fee*” agreement. Typically, if you are unsuccessful in your claim, you will not be liable for any of our costs incurred, apart from if we have agreed deferred discounted hourly rates and your disbursements may be paid back to you (if you incurred them in the first place). If you are successful in your claim, you should be permitted to recover a percentage of your costs from the other party (typically around 70-80%). If a shortfall exists, you may be liable to us for this sum.

Despite the above, you will be liable for any disbursements we incur whether you win or lose. As above, if you are unsuccessful in your claim, not only are you liable for your own costs, but also the other parties.

ATE Insurance may be obtained to minimize your cost risk, such as disbursements or opponents' costs if you lose.

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