

Security For Costs

Once proceedings are issued, security for costs can be an important tool to use in litigation. The process is predominantly used by defendants in litigation who are confident in defending their claim but suspect that the claimant will not or cannot pay any costs awarded against it. Security for costs can also be sought by a claimant against the defendant in respect of any counterclaim.

WHAT IS SECURITY FOR COSTS?

Security for costs is when a party to litigation (usually the defendant) makes an application to the court seeking that the claimant pay an amount of money or provide other security to the court within a specified period of time. If payment or security is provided, the claimant will be permitted to continue its claim. Payment by the claimant will be required to be made within a specified period of time. If payment is not made, the claim will be suspended.

WHEN SHOULD A SECURITY FOR COSTS APPLICATION BE MADE?

Whilst an application for security for costs can be made at any stage of the proceedings, it is beneficial to do so promptly and normally after an acknowledgment of service or defence has been filed. This will reduce the risk of possible cost exposure.

WHEN WILL SECURITY FOR COSTS BE GRANTED?

Security for costs cannot be applied for in every case. Strict conditions are required to be met and even if these are satisfied, the court still has the final discretion. The court is very careful to ensure that an award for security for costs would not be oppressive or stifle a genuine claim.

The court may award security for costs if:

- It is satisfied, after examining all of the circumstances in the case that it is just to make such an order; and
- One of the following conditions apply:
 - The claimant resides abroad but is not a resident of the European Union or European Free Trade Area;
 - The claimant is a company and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - The claimant has changed their address since the claim was commenced with a view to evading the consequences of litigation;
 - The claimant has failed to provide their address on the claim form or have provided an incorrect one;
 - The claimant is a nominal claimant and there is reason to believe that they will be unable to pay the defendant's costs if ordered to do so; or

- The claimant has taken steps in relation to their assets that would make it difficult to enforce an order for costs against them.

GENERAL PROCEDURE FOR SECURITY FOR COSTS

Before making an application for security for costs, we would normally write to the claimant requesting that security is provided voluntarily. An application would only be made if the claimant refused.

If the court approves the application, it will generally order the claimant to make a payment into the court account/provide security to the sum the court thinks fit and proportionate.

BENEFITS OF SECURITY FOR COSTS

- It can focus the claimant's mind on the merits of their case, possibly encouraging an early settlement or an end to vexatious claims; and
- It provides peace of mind for the defendant.

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