



APPROPRIATE FUNDING FOR AFFORDABLE JUSTICE

In recent years a number of funding mechanisms have been developed to enable people to manage the cost of litigation. These include:

- No win no fee agreements – where payment is based on the outcome of the case
- Damages based agreements – where the fee is a proportion of the damages awarded
- Third party funding.

These have played a major role in enabling people to establish their rights.

However, there are limitations:

- They tend only to work where there is likely to be a financial outcome – so there is a pot of money from which additional costs can be paid – this is now an issue following the recent increases in civil costs arrangements
- They are not appropriate in many family cases involving children because the concept of winning is wholly inappropriate in cases involving children
- Third party funding is only available for the highest value cases
- Insurance products have also played a part. Car insurance and household buildings and/or contents policies sometimes also include legal advice cover. Car insurance often, but not always, limits cover to motoring issues. Household policies often cover a range of civil and social welfare issues, but usually not crime and family. They sometimes limit what help you can get – perhaps via a telephone helpline, or from a limited number of panel solicitors.





What can be done?

The Law Society believes that these problems need to be addressed. We recommend that:

- The effects of the changes to the civil justice system are reviewed to put the victims of negligence and other civil wrongs back in a position where they can properly enforce their legal rights. Defendants found to have acted wrongly should pay the wronged party's full costs, including any success fees payable under a no win no fee agreement
- Any further increase in the small claims limit in non-personal injury cases be cancelled and active consideration given to reducing the limit back to £5,000 (it is currently £10,000)
- Any increase in the small claims limit in personal injury cases beyond the current £1,000 limit be ruled out. Given that even relatively small cases may involve serious injury such as broken bones or serious scarring, it is vital that injured people have clear access to appropriate legal advice
- Alternative methods of funding should be encouraged. Frequently consumers may not be able to find the up-front costs of litigation but can do so over time. In addition to existing insurance products, there is scope for loan arrangements to be developed to enable legal services to be properly funded.

