

Guidance on what Guardian Legal Services need from you to raise funding or an offer of ATE insurance

You should always aim to provide as much information as possible with the initial application for ATE Insurance and Litigation Funding. This will help to expedite a decision from the insurance underwriter and/or funder.

What are the key facts of the case?

- Who is the claimant?
- Who is the defendant against whom you are alleging liability?
- Is the defendant able to pay any costs or damages awarded to the claimant?
- What is the reason for bringing the claim?
- What specific laws / regulations, duty of care or incidence of negligence has been perpetrated?
- What was the date of the alleged infringement or the claimant's knowledge of that event?
- What defence, if any, has the defendant given for their actions?
- What is the value of the claim?
- How will the claimant pay back the cost of funding and/or the ATE premium if they are successful?

What level of risk is involved?

ATE Insurers and Litigation Funding companies will need to assess their risk exposure (the prospects of success of a claim) and their cost exposure (amount they will pay out if case is lost at trial).

The cost exposure of the ATE Insurers and the Litigation Funder will probably differ. A key condition of the funding provider, which usually has the greatest exposure, is invariably that a large part of this risk is underwritten by ATE Insurance.

ATE and litigation funding premiums will generally reflect:

- Risk and cost exposure
- The expertise and track record of legal representatives and Counsel
- Any existing relationship you may have with the insurers/funders
- Your experience in that particular field of litigation

Key requirements for obtaining ATE insurance

- The ATE insurance Limit of Indemnity you request should be restricted to what is required to cover adverse costs and disbursements if the case is lost at trial. (Sometimes it's possible to cover own costs to a limited extent, i.e. those which are not covered by a CFA).
- You should provide an itemised explanation of the costs estimate, for example expert witness fees, expert reports, court and barrister's fees.
- Note any existing Before The Event legal expenses insurance that can be used.

Key requirements for obtaining Litigation Funding

The funder will need:

- Accurate and detailed information about what will be covered by ATE insurance
- Details of any additional costs which require funding
- Precise timescales for funding payments, for example for court, expert or legal fees

How will the case be funded by you?

In most cases ATE insurers and litigation funders will expect solicitors and counsel to act under a CFA, Part-CFA, No CFA or DBA. This will be a key factor in their decision to back your case.

- When making your submission, please indicate if the case is on a Full CFA, a Part CFA, No CFA or DBA
- Where the Counsel is not on a Full CFA, please indicate if you require own Counsel's Fees to be covered by ATE Insurance
- If you require Funding, please provide details of the amount needed.
- If a top up to a pre-existing Before the Event (BTE) policy is required from the ATE Insurer, please supply:
 - the name of the existing insurer
 - the amount of cover provided by the policy
 - the top-up amount required.

Application checklist

Please supply copies of following documentation if available and where appropriate.

1. Completed Proposal Form
2. Case Summary
3. Particulars of Claim
4. Witness statements
5. Admission / Denial of Liability
6. Defence
7. Claim Form
8. Advice on Merit
9. Advice on Liability
10. Advice on Quantum
11. Inter-party Correspondence
12. Expert Reports
13. Estimate of Damages sought

Conclusion

If you would like to discuss Funding and ATE in more detail please contact us by telephone or by email or DX/Post at your convenience.

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Guardian Legal Services

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