

Types of Costs



What are costs in litigation matters?

This fact sheet provides information for Complainants about the types of costs in litigation matters.

Introduction

The term 'costs' generally refers to:

- A lawyer's professional fees for work they have done; and
- Disbursements, or expenses, such as barristers' fees, search fees, fees for reports by doctors or other experts and photocopying.

Lawyers may sometimes talk about 'solicitor/client' costs and 'party/party' costs. Solicitor/client costs are the costs which a lawyer charges the client for legal services. Party/party costs are costs which the court orders another party to pay, or which another party has agreed to pay, as part of the terms of settlement of a court case. These costs are also known as 'ordered costs'.

In litigation it is usually the losing party who has to pay the other party's costs. In personal injury matters, the losing party's insurance company will normally pay for them (if the party has insurance). An order for party/party costs is very rare in family law matters, where each side usually pays their own costs.

There are other kinds of costs orders which might be awarded during the matter. If you are unsure about a term relating to an order for costs you should ask your lawyer for an explanation.

How do party/party costs work?

Party/party costs are intended to reimburse one party, usually the successful party, for legal costs which they have paid or owe to their lawyer, where these costs have been agreed or assessed as being fair and reasonable. However, party/party costs normally provide only partial reimbursement of a client's total legal costs. It is like the gap between a doctor's actual charge and the amount paid by Medicare. A lawyer may charge a client more than the client receives from the other party because the party/party costs do not cover all of the time the lawyer spent on the matter with the client.

If costs are awarded to you, you cannot claim from the other party more than you have paid or have to pay to your own lawyer.

In some cases the maximum costs payable by the other party are fixed by legislation.

How do I recover party/party costs?

Your lawyer will normally do this for you.

The lawyers for each party might first try to agree on a figure for costs. The negotiations can take time, especially when an insurance company is involved. This is because party/party costs have to be fair, even to the unsuccessful party. For example, party/party costs may not cover a higher rate charged by a more experienced lawyer, or the costs of unnecessary applications. If the lawyers cannot agree on a figure, costs will normally have to be assessed by an independent costs assessor (taxing officer) appointed by the Supreme Court of Tasmania.

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The costs assessor will determine what amount the paying party should pay. This process can take some months. A costs assessor's determination can be registered as a judgement and enforced by a court.

Contact the Supreme Court of Tasmania for more information about costs assessment, including what fee applies.

If costs were awarded to me, can my lawyer deduct professional fees and disbursements from my verdict/settlement money?

Generally your lawyer will receive the verdict/settlement money and pay it into the law firm's trust account. After sending the client a bill, the lawyer can hold in the trust account enough of the verdict/settlement money to cover the professional fees and disbursements. The lawyer then pays the balance to the client.

The money must remain in trust until the procedures laid down by the *Legal Profession Act 2007* and *Legal Profession Regulations 2018* have been followed. Generally, the lawyer can use the money in trust to pay costs if:

- The costs are withdrawn in accordance with a costs agreement that authorises the withdrawal; or
- The lawyer has given the client a bill, or notice of proposal to withdraw the money and the client does not object to withdrawal within 7 days of having been given the notice, or if they object within 7 days, but have not applied for a formal review of the legal costs within 60 days; or
- The lawyer has the client's authority to do so.

[See the Law Society of Tasmania Fact Sheets on [Legal Costs – Your Right to Know](#) and [Your Right to Challenge Legal Costs](#)]

Any costs deducted from a client's settlement money will usually be at least partially reimbursed when party/party costs are paid by the other party.

Why should I have to pay anything if I have been awarded costs?

A costs order simply entitles the client to be reimbursed (usually only partial reimbursement) from another party for costs which the client has paid or has to pay. The client will still have to pay their own lawyer for work the lawyer has done.

A lawyer might agree to accept any party/party costs recovered from the other side as full payment for their services, but they are not obliged to do so. Such an agreement may be contained in the costs agreement, in a separate agreement or in correspondence. The client will normally have to pay the difference between the costs charged by the lawyer and the costs recovered from the other side.

Does my no win, no fee agreement with my lawyer mean that I will not have to pay any costs if I win my case?

A 'conditional' costs agreement – also called a 'no win no fee' agreement – is usually just an agreement between the lawyer and client to defer payment of costs until the successful outcome of the legal matter. Once the matter is successfully concluded, the lawyer can seek payment of their costs and any disbursements, usually by deducting them from the verdict/settlement money. Any costs paid by the client, either up front or from money in trust, will normally be at least partially reimbursed when party/party costs are received from the other party.

Make sure you clearly understand what constitutes a successful outcome in your 'no win no fee' agreement. An amount of money less than you are hoping for may still be a successful outcome.

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Remember, if you do not win you may still have to pay your lawyer's disbursements and the other party's costs. It is most important to carefully review the terms contained in a 'no win no fee' agreement.

[See LPBT Fact sheet on [No win No fee agreements](#)].

Further information

If you have any questions about your legal costs, as a starting point you should ask your lawyer to explain them to you.

The Supreme Court of Tasmania has an information sheet *Lawyer's Costs*, available on its website at http://www.supremecourt.tas.gov.au/practice_and_procedure/costs

If you require further information, or wish to make a complaint about costs, please contact the Legal Profession Board of Tasmania.

The information contained in this fact sheet does not constitute legal advice.

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Case Study

The Complainant suffered a personal injury and entered into a no win no fee (conditional) costs agreement with the lawyer. The agreement came to an end after a significant amount of work had been done on the Complainant's behalf, but before the matter had been finalised or settled. The Complainant then instructed a new lawyer at a different firm. The complaint related to the lead up to and termination of the client lawyer retainer and what occurred when the new lawyer sought transfer of the file.

During investigation the Board found that the retainer agreement provided that the Complainant would be liable to pay legal costs if there was a successful outcome. A successful outcome was defined in the agreement. The lawyer claimed a lien over the file and would only transfer it to the new lawyer provided the Complainant executed an irrevocable authority in relation to fees owing. Lawyers generally have a right to retain a client's documents as security for unpaid fees.

The Board considered there was a reasonable basis for the lawyer to claim that the retainer had been terminated by the Complainant and that the agreement enabled the lawyer to seek fees and disbursements on success of the claim. The Board determined there was no reasonable likelihood of a finding of unsatisfactory professional conduct or professional misconduct as a consequence of the lawyer's conduct around the transfer of the file to the new lawyers, including the claiming of fees.

Further information

If you have any questions or require further information, please contact the Legal Profession Board of Tasmania.

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