

Protecting yourself from cost shifting



We recently published an article ([Litigating a will dispute: What if I can't afford it?](#)) which goes through some of the options available to a person who is faced with a will dispute but cannot afford the costs associated with it.

This article summarises the principle of cost shifting and the options that are available to parties to protect themselves from the risks this presents.

The basic rule in litigation (in England and Wales) is that 'the loser pays the winner's costs'. This is known as 'costs shifting'. This principle does not guarantee the 'winner' 100% reimbursement of costs but, if you do win your case, your opponent will usually have to reimburse a proportion of the costs that you have paid. Similarly, if you lose your case, you will likely have to pay some of your opponent's costs (this would be in addition to your own). The exact sum payable between the parties will either be agreed between the parties or, failing this, decided by the court.

To protect yourself from the risks associated with cost shifting, you may wish to consider After the Event Insurance ('ATE'). This is a type of insurance which provides cover against the risk of having to pay an opponent's costs if you lose the claim. It will generally give protection up to a level agreed with the insurer and can be used in conjunction with a Conditional Fee Agreement (for more details on this please click on the link in the paragraph above) to try to provide complete protection on costs. The price, or 'premium', payable for ATE varies with the amount of costs covered, the strength of the case, and the point when the case ends.

Insurers decide on a case by case basis whether or not to offer ATE. In some circumstances it is unnecessary, too expensive or disproportionate to enter into ATE. In other cases, it is a valuable addition to a party's litigation strategy.



If you wish to pursue a claim, are involved in a dispute or worried about a future claim and you would like to consider how to fund that claim and/or protect yourself against a cost order, don't hesitate to [contact our team](#).



[Dino Sikkel](#)

Partner