

Fact Sheet 3 - Types of Costs

December 2023

The term *costs* generally refers to:

- a solicitor'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

Solicitors may sometimes talk about *solicitor/client costs* and *party/party costs*. Solicitor/client costs are the costs which a solicitor 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 it has insurance). An order for party/party costs is very rare in family law matters, where each side usually pays their own costs.

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 solicitor, 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 solicitor who charges a client more than the client receives from the other party is not necessarily overcharging.

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 solicitor.

In some cases, most notably motor accident claims and some personal injury claims, the maximum costs payable by the other party are fixed by legislation.

How do I recover party/party costs?

Your solicitor will normally do this for you.

The solicitors 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. If the solicitors cannot agree on a figure, costs will normally have to be assessed by an independent costs assessor appointed by the

Supreme Court of New South Wales. 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 judgment and enforced by a court.

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

If a client has signed an Authority to Receive, their solicitor will receive the verdict/settlement money and pay it into the solicitor's trust account. After sending the client a bill, the solicitor can hold in the trust account enough of the verdict/ settlement money to cover the professional fees and disbursements. The solicitor then pays the balance to the client.

The money must remain in trust until the procedure laid down by *the Legal Profession Uniform General Rules 2015* has been followed. Generally, the solicitor can use the money in trust to pay costs if:

- the solicitor has given the client a bill relating to the money and referring to the proposed withdrawal, and the client does not object to the amount specified within 7 business days or, having objected does not refer the costs dispute to the NSW Legal Services Commissioner or for costs assessment within 30 days of the date of the bill
- the solicitor has the client's authority to do so.

[Further information can be found on the OLSC **Costs Disclosure** and **Costs Disputes** Fact Sheets]

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 seek reimbursement (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 solicitor for work the solicitor has done.

A solicitor 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 solicitor and the costs recovered from the other side.

Does my no win, no fee agreement with my solicitor 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 solicitor and client to defer payment of costs until the successful outcome of the legal matter. Once the matter is successfully concluded, the solicitor 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.

Remember, if you do not win you may still have to pay your solicitor’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.