



## Litigation insurance and outlay funding

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We take the risk so  
that your client  
doesn't have to

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# Solicitor's Guide

## Introduction

### Who are Temple?

Temple Legal Protection Limited was established in 1999 and is widely recognised as one of the foremost providers of after-the-event (ATE) litigation insurance.

Our insurance is administered through two principal underwriting divisions - one for clinical negligence and personal injury cases, the other for commercial disputes. This guide is intended for commercial litigators.

The underwriters in the Temple commercial team have a wealth of knowledge and experience of commercial litigation, having been in practice or qualified as solicitors or barristers.

Temple Legal Protection is authorised and regulated by the Financial Conduct Authority.

### Who is the insurer?

Royal & Sun Alliance Ltd ("RSA"), the UK's oldest general insurance company, is the insurer. It has been in the insurance business for 300 years and has an "A" credit rating.

Temple is proud to be RSA's exclusive ATE managing general agent. We have delegated authority to quote, bind and issue contracts of insurance on their behalf.

In addition we develop, market and promote new litigation insurance products on their behalf, as well as dealing with complaints and administering all claims.



# Solicitor's Guide

## Litigation Insurance

### What we insure

- (a) **adverse expenses and outlays** - including expenses and outlays arising out of a taxation plus interim costs for interlocutory applications;
- (b) **the insured's outlays** - such as court fees, expert's fees and mediator's fees.

### What we don't insure

We do not offer cover in respect of your own solicitors' expenses, counsel's fees, costs lawyer's fees and recoverable VAT.

### Are appeals insured?

If a Temple litigation insurance policy is issued, it specifically excludes any costs of appeal, whether in relation to an interlocutory decision or judgment after debate or proof.

If you wish to appeal any decision or are the respondent in any appeal, you can apply to us for insurance and the application will be dealt with in the usual way.

If we offer terms which are accepted by you, a separate and distinct policy of insurance will be issued relating to the appeal. This will entail the payment of an additional premium in the event of success (in addition to that of the underlying policy).

### Who we insure

Ordinarily it is the pursuer, but we can and do insure defenders. Read more about this - see ['Not Just for Claimants - Insuring Defendants'](#)

We also insure group actions and have recently insured a large number of claimants in their professional negligence claims against firms of solicitors acting for them in their purchases of off-plan apartments. You may want to [read more about this case](#).

Where we are asked to insure group actions, we would ordinarily like to see some kind of litigation management agreement between you and the pursuers.

### What types of cases we insure

We insure a wide range of cases, including but not limited to, contested wills and probate, financial mis-selling, professional negligence, breach of contract, shareholder disputes, unfair prejudice petitions, insurance disputes, insolvency claims, construction disputes and defamation and privacy actions. You may want to read more about these - see [Commercial Litigation Insurance - Case Types](#)

We insure cases brought in the courts as well as tribunals, arbitrations and adjudications.

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## Jurisdiction and Security for Costs



### Jurisdiction and governing law

**The proceedings and arbitrations we insure** must commence in either the UK, Channel Islands or Isle of Man.

We can also insure cases heard in the UK where the applicable law may be that of a country outside the UK; for this we will need to see compelling expert evidence dealing with any important or contentious legal issues in the case.

### Caution and Security

**Subject to the merits of the legal action** and prospects of success at trial being assessed at the requisite level, we can offer to incorporate cover for this into the insurance contract by way of an endorsement adding an anti-avoidance clause.

### Retrospective cover

**Unless we otherwise specify in any offer of terms**, the cover is retrospective and thus covers all expenses and outlays incurred prior to the date of inception of the policy. Depending on when the case is presented to us this can amount to a considerable sum.



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## Level of Indemnity

### The level of indemnity

**This is the total sum you wish your client to be insured against.** It comprises two elements:

- (a) the opponent's projected expenses and outlays - up to and including trial;
- (b) your client's projected outlays - up to and including trial.

### "Top-up" of level of indemnity

Estimating the opponent's expenses and outlays and your client's own outlays to proof will be an estimate based on your experience and a set of assumptions.

If those assumptions prove incorrect and, as the case progresses, the actual expenses exceed the predicted expenses by a significant margin this could mean your client will be under-insured and without adequate protection for the financial risks of the case.

In such circumstances you can easily apply to us for an increase in the level of indemnity. Subject to there being no material deterioration in the merits and prospects of succeeding at trial we will, more often than not, agree to such request.

### Right to Cancel

Should we issue an insurance policy and (where applicable) outlay funding credit agreement to your client, they can cancel the policy provided they do so within fourteen days of the date of policy and credit agreement.



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### The insurance premium

**Payment of premiums are fully deferred until conclusion of the legal action**, whether by way of settlement or judgment. This is contingent on success; in other words if your client loses, no premium is payable.

All premiums are subject to Insurance Premium Tax, currently levied at the rate of 12% (unless the client resides outside the UK).

#### Premiums for commercial cases

We have a number of different models for calculating the premium:

- some are fixed and staged and based on the level of indemnity;
- some are staged and based on your client's own expenses and damages, whichever is the greater with the premium capped at each stage as a percentage of the level of indemnity;
- some are fixed no matter what the stage of the proceedings.

We want to be fair to your client. Each case is different in terms of its potential value; we try to cater for this and can offer indicative terms as well as give the client a choice of different premium models.

Please note that these premiums are irrecoverable from the opponent.

**See below for guidance on premiums for some specific commercial case types:**

#### Media and communications litigation

**Our premium pricing for publication and privacy claims** is a fixed amount, staged and calculated with reference to both the level of indemnity sought and an assessment of succeeding at trial. Read more about [Media and communications litigation](#).

#### Insolvency proceedings

**The premium pricing for these types of actions** are also fixed, staged and calculated with reference to the level of indemnity sought and the value of the claim. Read more about litigation insurance for [Insolvency Litigation](#).

### Construction Adjudication and enforcement

**The insurance premium amount is fixed** - no matter what stage of the proceedings the case is at - and calculated with reference to the level of indemnity sought. The risks insured against typically relate to enforcement of the adjudicator's decision and/or final determination proceedings. Read more about litigation insurance for [Enforcing Adjudicator's decisions in construction disputes](#).

These premiums are irrecoverable from the opponent.

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## Working with us



### What we look for in a case

- a) **Are the legal and factual merits strong?** We typically expect an assessment of the merits and prospects of succeeding at trial to be 60% or more;
- b) **Does the client have the funds to see the matter all the way to trial?** If not, what arrangements have been - or are proposed to be - put in place to ensure the client is able to do so? For example are you and/or Counsel acting on a conditional fee agreement, or has funding been secured?
- c) **Does the opponent have the financial resources** to satisfy any monetary judgment and adverse expenses award?
- d) **Does your client have the financial resources to pay any balance** of the irrecoverable premium and irrecoverable own expenses?
- e) **Is the expenses to value ratio more than 1:2?** We would expect the 'value' of the claim to be at least twice the projected expenses of taking it to trial. Otherwise the expenses are likely to be disproportionate and any likely recovery of damages will not be sufficient to pay all stakeholders in full. This could leave the client with very little, if anything.

### The application process

The process is free of charge and straightforward.

Simply complete the [Commercial Proposal Form](#) and send it to us, together with digital copies of all relevant papers including (but not limited to) any letter of claim, letter of response, draft pleadings and any Counsel's advice.

- We aim to turn this around within five to ten working days.
- We will either ask for further information, offer indicative terms or decline it with reasons.
- If you wish to discuss the case before submitting papers, any of [our commercial underwriting team](#) are available to do so.

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**With Temple litigation insurance your client is eligible for our outlay funding**



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If you take out ATE insurance with us, we can make [outlay funding](#) available to your client through our wholly owned subsidiary, Temple Funding Limited. This loan pays for outlays incurred in the legal action, such as court fees, expert's reports and mediator's fees.

If you wish access to such a facility you can indicate this in the Commercial Proposal Form referred to above. A one-off outlay (disbursement) funding form will be required to be completed by you.

Temple Funding Limited is authorised and regulated by the Financial Conduct Authority.

The interest rate on the outstanding balance of any loan is 10% per annum compounded monthly. There is a transaction fee of £75 per drawdown.

You pre-agree with us the level of funding required and, if further funding is required as the case progresses, you simply email us with the reason for this and the amount required.

Should your client lose their case, then a claim will ordinarily be made under the policy in respect of outlays and monies remitted to the insured. This will in turn be applied by it to pay off any outstanding loan balance and interest and charges to Temple Funding Limited.



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## Delegated Authority

### Delegated authority schemes

Finally, if you have a steady stream of instructions each month from clients wishing to take out ATE insurance, we can offer you a [delegated authority scheme](#). This essentially puts you in our shoes and allows you to assess each case and, using our dedicated online policy system, incept policies on behalf of clients and offer outlay funding (if/as required).

The insurance premium pricing for such delegated authority schemes are at a substantial discount to our standard pricing.

In addition if your firm is a specialist in a particular area of law such as insolvency or professional negligence we can tailor the scheme to your caseload helping you to satisfy your compliance obligation to your clients.

A bespoke delegated authority scheme will also allow you to provide a complete offering to your client that fits with your retainer, helping you to win more instructions without additional unbillable time taken up instructing broker or insurers.

Should such a scheme be attractive to you, it will be necessary for us to conduct due diligence on your firm and an initial [Solicitors' Application Form](#) will need to be completed.

Please do feel free to [get in touch](#) if this is of interest.

“Temple's litigation insurance cover is the real deal for commercial litigators; it's second-to-none, as is the service from their Underwriters.”

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Temple Legal Protection is one of the country's leading underwriters of legal expenses insurance. We provide a wide range of litigation insurance solutions to law firms and brokers in order to help people reduce their financial risks in litigation.

Temple Funding offers straightforward, affordable outlay funding that gives claimants the freedom to pursue their claim without having to pay expenses along the way. Our facility provides law firms with a solution to the significant cash flow burden that comes with funding litigation.

Temple Funding Limited is a subsidiary of Temple Legal Protection.

Temple Legal Protection and Temple Funding are authorised and regulated by the Financial Conduct Authority

## Contact Us

To find out more about how our litigation insurance and outlay funding and litigation insurance can help you and your clients:

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