

# Guide for In-house Counsel

**temple**  
legal protection



## Litigation insurance and disbursement funding

**We take the risk, so  
you don't have to**

Contact us now on  
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### In-house Counsel

If you are a general in-house Counsel or Attorney for a company, the burden on your shoulders is heavy. The board will look to you for advice on a whole range of often highly specialised and legally complex matters - some of them contentious, some non-contentious.

- Here at Temple we are in the business of assisting you in mitigating risk should your company find itself on the wrong end of a legal action or be prosecuting one.
- Litigation is expensive and no matter the perceived strength of the claim or defence, there is always the risk of losing and having to pay a substantial proportion of the opponent's costs in addition of course to those of your own legal representatives.

**Temple litigation insurance can protect your company against such a risk.**

- Because the premium is fully deferred until conclusion of the legal action and only payable on success, this enables provision for such a contingent liability to be kept off your company's balance sheet.
- We will support you throughout the duration of often lengthy legal actions and act as a valued partner and sounding board.

Our highly experienced commercial team deal with a wide range of different types of cases from contractual disputes relating to such matters as joint ventures, software development agreements, supply and distribution agreements to insurance business interruption disputes, intellectual property and trademark infringement.



- We are seen as a fresh pair of independent eyes and, when assessing a case, are not afraid to ask the awkward and sometimes obvious questions which need to be addressed both from a legal and commercial perspective.
- Whether or not you ultimately take out litigation insurance relating to a particular case is of course entirely a matter for you, but the provision of information as to its existence and what it covers is something that your company should be made aware of and advised on at the outset.

**We are here to help.**

Please do feel free to contact any member of our [commercial team](#) to discuss cases you or your company's legal representatives have conduct of. It doesn't matter if the case is at the early stages or advanced.

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## About Us

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### Who are Temple?

**Temple Legal Protection Limited** is an English-registered company incorporated in 1999 and widely recognised as one of the foremost providers of litigation insurance, also known as after-the-event or ATE insurance.

**Our litigation insurance offering** 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, however we also provide litigation insurance for Clinical Negligence and Personal Injury cases

**The underwriters in the Temple** commercial team have a wealth of knowledge and experience of commercial litigation; they have practised either as a solicitor or barrister for many years prior to becoming underwriters - or have qualified to do so.

**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. They are a UK based “A rated” insurer and have been in the insurance business for more than 300 years.

Temple is proud to be the litigation insurance managing general agent of RSA. We have been given exclusive delegated authority to quote, bind and issue contracts of insurance.

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





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## Litigation Insurance

### What we insure

- (a) **adverse costs** - including costs and disbursements arising out of a detailed assessment hearing plus interim costs for interlocutory applications;
- (b) **the insured's disbursements** - 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' costs, counsel's fees, costs draftsman'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 at trial.

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 claimant, but we can and do insure defendants. 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 ordinarily would like to see some kind of litigation management agreement.

### What types of cases we insure

We insure a wide range of different types 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

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### Jurisdiction and governing law

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

For cases where the governing law is that of [Scotland](#) or [Northern Ireland](#), we are more likely to ask for counsel's opinion to support the application for cover. 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.

### Security for Costs

**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 costs and disbursements 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 company to be insured against.** It comprises two elements:

- (a) your opponent's projected costs - up to and including trial;
- (b) your company's projected disbursements - up to and including trial.

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

**If costs budgets have not been filed and served**, appraising the opponent's costs and your company's own disbursements to trial 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 costs exceed the predicted costs by a significant margin this could mean you are under-insured and without adequate protection for the financial risks of litigation.

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) disbursement funding credit agreement to your company, it has the right to cancel both - if it so chooses - provided this is within fourteen days of the date of policy and credit agreement.



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## Premiums and Case Types

### 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 company loses, no premium is payable.

All premiums are subject to Insurance Premium Tax, currently levied at the rate of 12% (unless the company 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 company's own costs 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.

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 company a choice of different premium models. We want to be fair to your client but have a degree of flexibility when offering terms.

Please note that these premiums are irrecoverable from the opponent.

**See to the right 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 company 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 company is able to do so? For example are you and/or Counsel acting on a conditional fee agreement, or has disbursement funding been secured?
- c) **Does the opponent have the financial resources** to satisfy any monetary judgment and adverse costs award?
- d) **Does your company have the financial resources to pay any balance** of the irrecoverable premium and irrecoverable costs?
- e) **Is the costs to value ratio more than 1:2?** We would expect the 'value' of the claim to be at least twice the projected costs of taking it to trial. Otherwise the costs 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 company 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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## Disbursement Funding

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



**WE HELP MORE**

If you take out litigation insurance with us, we can make [disbursement funding](#) available to your company through our wholly owned subsidiary, Temple Funding Limited. This loan pays for disbursements 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 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 disbursements 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.

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 disbursement 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 disbursement funding and litigation insurance can help you and your clients:

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Visit: [www.temple-legal.co.uk](http://www.temple-legal.co.uk)