

**At what cost?**

**A Lovells multi jurisdictional  
guide to litigation costs**



## Foreword

The cost of litigation is undoubtedly one of the greatest factors in persuading litigants either to settle, or just stay away from the courtroom altogether.

All judges are fallible, and no prudent litigant will go to law (or arbitration) with a belief in a guarantee of success. Costs, however, like death and taxes, are an inevitable consequence of suing or being sued.

So it is perhaps surprising that the incidence of costs in jurisdictions other than one's own home state is frequently so poorly understood by litigants – and their advisers.

I started my career in a field of marine insurance which was rather specialised. "F.D&D.", or "Freight, Demurrage and Defence" cover offered by a mutual insurer: a P&I Club. The claims involved requests for advice and support from the Club's in-house lawyers, but, more substantially, for coverage of legal costs incurred in disputes associated with the shipping industry. Freight and demurrage certainly formed a substantial part of the range of issues that gave rise to disputes, but by no means the whole picture. Disputes with insurers, agents, charterers, suppliers, port authorities, directors, surveyors, classification societies and all the rest spawned a huge volume of contentious activity; since the vessels concerned went all over the world, so did the claims. Within two years, my portfolio of active claims exceeded 2,000 files, on which lawyers all across the world were busily generating fees, invoicing the insured members, who passed the legal bills to the Club for settlement under their "Defence" coverage.

The lawyers' billing practices were many and varied; as was the quality and the frequency of proper advice, in many cases.

The costs, however, were invariably very active, as the members of the Club spurred on their lawyers to greater and faster efforts in the pursuit or defence of the claims. Bills of substantial proportions would build up. My job was to approve the claim for payment, but also to give direction where the economics or the merits of the dispute made no sense or were otherwise not in the interests of the Club's membership as a whole. It was a full time job in all senses.

Looking back, however, 30 years on, it is striking that I had no guidance or reference book whatsoever that could help me understand the basis on which these exotic foreign legal enterprises were entitled to bill their clients; court costs were regarded as a tax on litigation; and recovery of costs from the other side a rare and celebrated event. The costs of pursuing or defending claims were usually, if not always, ascertained only after they had been incurred, and with dozens of very active jurisdictions around the world's coast-lines, any attempt at a comprehensive analysis of costs regimes would have been a hopelessly expensive exercise. We flew by the seat of our office chairs, and by the life-long experience of our weary colleagues. By the end of two years, I had a working knowledge of the costs regimes of no more than a dozen overseas jurisdictions; but even with these, the depth and detail was patchy, and much of the learning anecdotal rather than studied.

I suspect that there are still today many risk managers, claims handlers, finance directors and entrepreneurs who find themselves embroiled in occasional or persistent bouts of litigation in the places of the world with which they are least familiar. Some will have studied the incidence of costs in great detail in some, but not all, of these jurisdictions. But a wide-ranging and systematic treatment of the issue of litigation costs around the world is unlikely to be available to the average litigant.

Prompted by the comprehensive study of the current regime of costs in England and Wales conducted by Lord Justice Rupert Jackson, it occurred to me and some of my litigation colleagues that there was an untapped fount of knowledge as regards costs, in the form of the network of legal experts with whom we were all regularly in touch, both through our own overseas offices or in correspondent law firms.

We determined to draw some of this learning together, and to explore the basics, the peculiarities and the similarities between litigation costs regimes in a wide range of jurisdictions, both those of a "common-law" or "Anglo-Saxon" ethos as well as "civil law" and codified regimes.

We were surprised and relieved in equal measure to learn of the similarities and the oddities that occurred around the world; many prejudices were confirmed; a few pre-conceptions overturned; much solid detail was garnered and collated by a team of contributors, correspondents, sub-editors and editors.

The results are contained in the volume you have before you:

*At what cost? A Lovells multi jurisdictional guide to litigation costs*

The Guide covers 56 jurisdictions. Its contents, methodology of analysis and some resulting themes and conclusions are summarised in the overview of findings on pages 4 – 7.

We offer it as a pilot study, albeit one of substantial proportions; we propose to extend the global coverage to other key jurisdictions in subsequent editions, and to deepen and broaden the range of topics by reference to the reactions of and feedback from our readership.

I should like to thank all of the contributors, their colleagues and firms who have allowed them to spend the time and effort in contributing to this report. For editorial infelicities, I offer our apologies; for any misunderstandings and persistent emails chasing for drafts, and comments, our thanks for your patience and persistence.

In particular, I should like to thank Graham Huntley, my co-editor and partner, but most of all, Sara Bradstock, the producer and director of this publication.

**Peter Taylor, partner**

## Introduction and approach

The credit crunch sparked anticipation in many countries of an increased level of disputes. It also sharpened the attention in the business and legal worlds about the expense of litigation.

Our 2008 survey *The Shrinking World* showed that even before the onset of the credit crunch, General Counsel were concerned about the increasingly global nature of disputes. In particular, one-third of respondents (31%) noted a trend towards more multinational disputes. A slightly smaller number (25%) cited a lack of information about the relevant law and procedures across jurisdictions as one of the most significant issues facing them when managing such disputes.

It is therefore clear that businesses, and lawyers advising them, need to grapple with the expense of litigation as well as the variations in the costs regimes around the world designed to manage and enable recovery of the expense. This is so not only for corporations faced with often complex variations in the rules concerning recovery, funding opportunities, predictability and enforcement, but also for smaller claimants who can face an increasingly changing consumer scenario in different jurisdictions in which they may operate.

A comprehensive survey into the legal and procedural regimes for funding and recovering costs in all the major business jurisdictions is thus overdue and more needed now than ever before. It is therefore hoped that the Lovells' survey will be of real and practical assistance to businesses and lawyers around the world. Our aim is to provide a tool which will enable informed decisions to be taken as to where to conduct litigation in cases where costs are a central issue, and which exist. The choice is not a real choice without information and clarity, and our report has been structured in a way to achieve this.

The report therefore covers over 50 jurisdictions and benefits from input from expert lawyers to enable a comparison to be made of issues such as:

- the recoverability of litigation costs by both claimants and defendants
- the manner in which costs are recovered, if at all
- factors taken into account where fixed costs are recoverable only
- what "costs" are for the purposes of recoverability
- the enforcement of costs orders
- the setting off of costs orders
- interest on costs
- the types of permitted costs arrangements between client and lawyer
- the funding arrangements available in each jurisdiction – such as insurance, legal aid and third party funding.

The publication of this report in England and Wales comes hard on the heels on the review of costs carried out by the Right Honourable Lord Justice Jackson. As part of the research carried out, he and his team travelled to major jurisdictions to learn how costs were controlled and managed. The result of that was the most comprehensive review of costs ever carried out in England

and Wales, and a set of proposals which will mark the first truly significant attempt to manage costs through the procedural vehicle of litigation and the environment of regulation that is growing up in this country. If nothing else, this report will enable readers to compare how the developing regime in England and Wales compares to the major international jurisdictions.

Our basic approach was to compile information from and relating to each jurisdiction in response to a standard list of questions. We obtained input from each jurisdiction from two sources: the Dispute Resolution practices in each of Lovells' global offices, and from other jurisdictions we obtained answers to the standard questions from leading and senior litigation practitioners in law firms with known Dispute Resolution capability and reach. A full list of the law firms who participated in the project is set out later in the document.

Some countries have separate jurisdictions for separate states, most notably Australia, Canada and the United States. In those instances we have identified the key jurisdictions and obtained a similar level of input from leading practitioners. Despite the variations across each jurisdiction, broadly there is a common position throughout the country.

In some countries, such as the United Arab Emirates and the Ukraine, there are distinctly separate litigation jurisdictions. Therefore, in these instances the input has been obtained and reported on separately.

The input from each jurisdiction was obtained by using a standard questionnaire. This ensured consistency of approach. Lovells then assimilated the answers to the questions and issues raised into a common style and format, producing for each jurisdiction:

- very summary answers to questions seeking an affirmative or negative response, for example, "yes" or "no", which were then cross-referenced to:
- more detailed explanations for the answers applying to that jurisdiction which were then rechecked by the relevant practitioners in each jurisdiction.

The result is the quick reference table (pages 8 – 26), cross referenced to the country by country detailed responses (pages 28 – 193).

In order to ease review and assimilation of the information, the Guide uses common terminology to identify specific topics, issues or parties, even though different terminology is used across the jurisdictions. Thus, and by way of example, in both the questionnaire and this Guide:

- "**Costs**" means the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.)

- **“Lawyer”** is used to describe the legal adviser, including the solicitor, counsel, barrister, advocate, attorney or other legal practitioner
- **“Claimant”** is used to describe the party bringing the claim, including the plaintiff

unless the term is otherwise defined or specified within the relevant country commentary.

This Guide is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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The information contained in this report is current as at February 2010.

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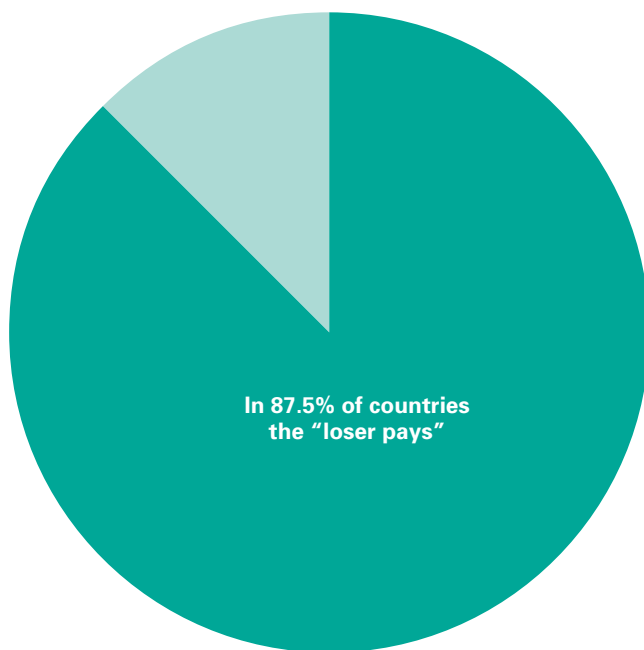
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## Overview of findings

**Figure 1: Jurisdictions where the “loser pays”**



**Surveyed jurisdictions where the “loser pays”**

The global costs review reveals that some of the central features of the costs regime in England and Wales are present across the many of the world’s main business jurisdictions. Perhaps the most important feature is the general principle that the “loser pays”. This generally applies in 49 of the 56 surveyed jurisdictions (Figure 1). In a few others very limited costs may be “shifted” to the loser.

Perhaps the best known perceived example of a jurisdiction without a loser pays rule is the USA, but even this has to be treated with caution given that damages in that jurisdiction are often inflated to levels that more than compensate the costs incurred. Japan is a less well understood example of the jurisdiction where lawyers’ fees are not recoverable in any event. As a further contrast, in Taiwan, the fees are recoverable only when the lawyer has been appointed by the court.

In about 75% of jurisdictions the costs that can be recovered include most of the range of items that would normally be included within the recovery in England and Wales. Thus, lawyers’ fees, counsels’ fees, agency fees and disbursements such as copying charges and witness expenses are recoverable in the majority of instances where costs are permitted to be recovered (Figure 2).

As to the level of costs which may be recovered, here the variation is greater. Businesses will therefore wish to pay more attention to jurisdictions where costs recovered are closer to the full costs incurred by the business, in comparison to those jurisdictions where costs may be fixed or capped.

The survey established that in just under 40% of jurisdictions reviewed, the amount of costs recovered are fixed by reference to the value of the amount in dispute. In those instances there is a direct correlation between the value and the amount recovered.

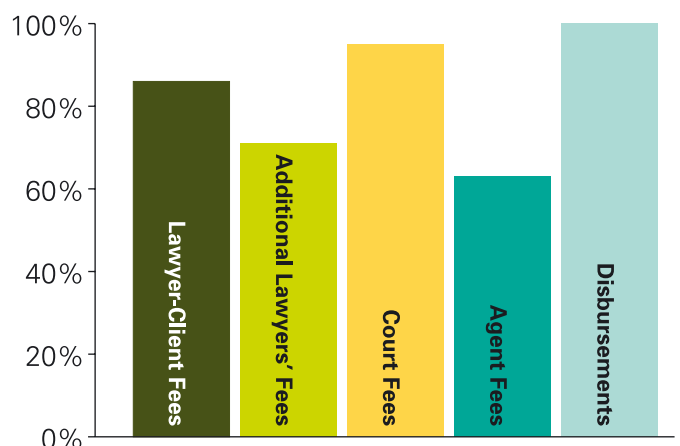
Many other jurisdictions (around 32%) treat the value in dispute, or the issues at stake, as a relevant factor in determining the amount of recoverable costs. However, in these additional instances for the most part those factors have relatively little weight in determining the overall reasonableness of costs.

England and Wales falls into this latter category. But even here, there is a growing trend towards emphasising the value of a dispute in determining the level of recoverable costs. This features highly in the list of conclusions and recommendations in the report of Lord Justice Jackson dated 14 January 2010. It is clearly a growing trend worldwide, albeit one which at the present time is having less impact on the largest and most complex business disputes than in smaller lower value cases.

Of particular interest for businesses is the widespread scope for a client to agree a special costs arrangement with its own lawyer, irrespective of the regulation of recoverable cost. This is permitted in around 89% of the jurisdictions reviewed (albeit with some limitations and/or restrictions). This includes, in nine jurisdictions, the scope for variations of “no win, no fee” arrangements (Figure 3).

Given the increasingly rigorous financial disciplines applying to businesses, it is notable that interim awards of costs can be obtained in 46% of jurisdictions, and to a more limited extent in a further 12% of jurisdictions. This leaves at least one-third of jurisdictions where costs can be recovered only when proceedings come to an end. But it will be of some comfort that in at least three-quarters of jurisdictions the conduct of a party can lead to costs being increased or decreased from the levels that would otherwise be recovered.

**Figure 2: Jurisdictions allowing the recovery of the range of items normally recoverable in England and Wales**



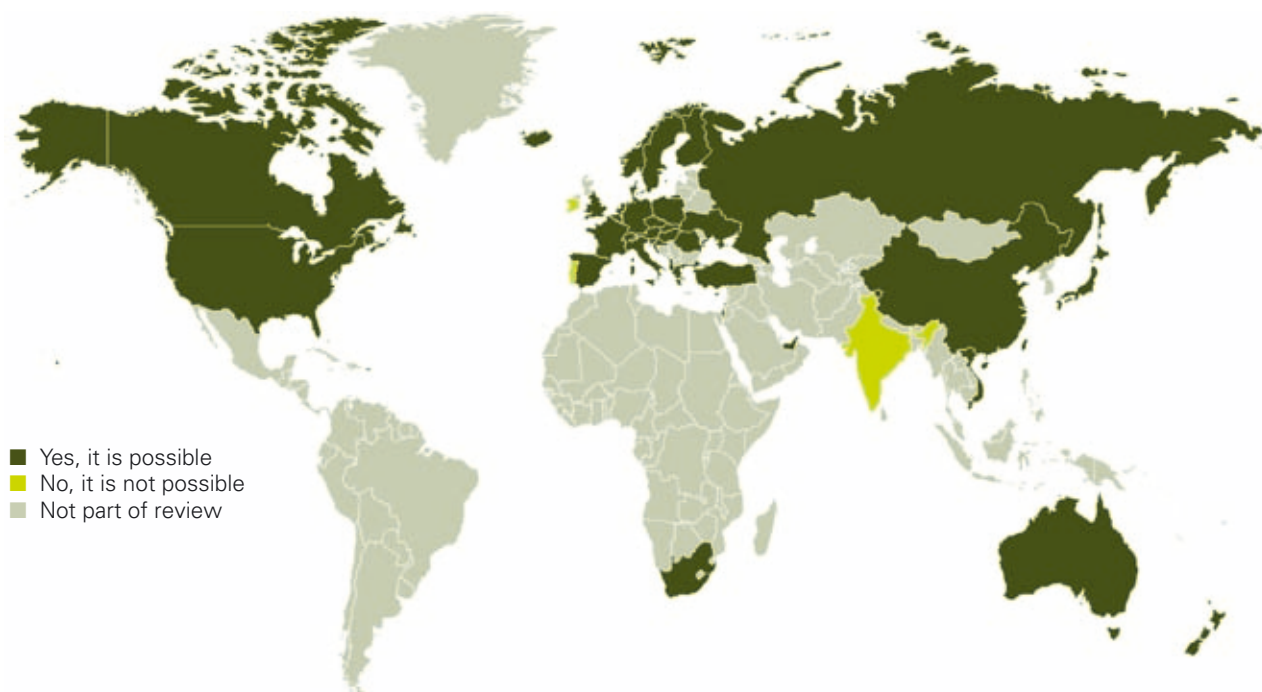
More worryingly, in around 16% of jurisdictions it would appear that interest is not payable on unpaid costs orders (Figure 4). This creates potentially serious business issues for parties unable to obtain the fruits of their litigation labour. Businesses should therefore make use of the information in our report on how costs awards are enforced globally.

Businesses wishing to enter into partnering relationships with third party funders to support litigation would be interested to note that over half of jurisdictions surveyed permit costs to be insured by a third party. In around 38% of further jurisdictions there is limited scope for this. The trend towards worldwide insurance costs is therefore strong and apparent (Figure 5). That said, our research establishes that in practice the market for insurance and the ability of the legal profession to take advantage of it means that the level of take-up is much more limited.

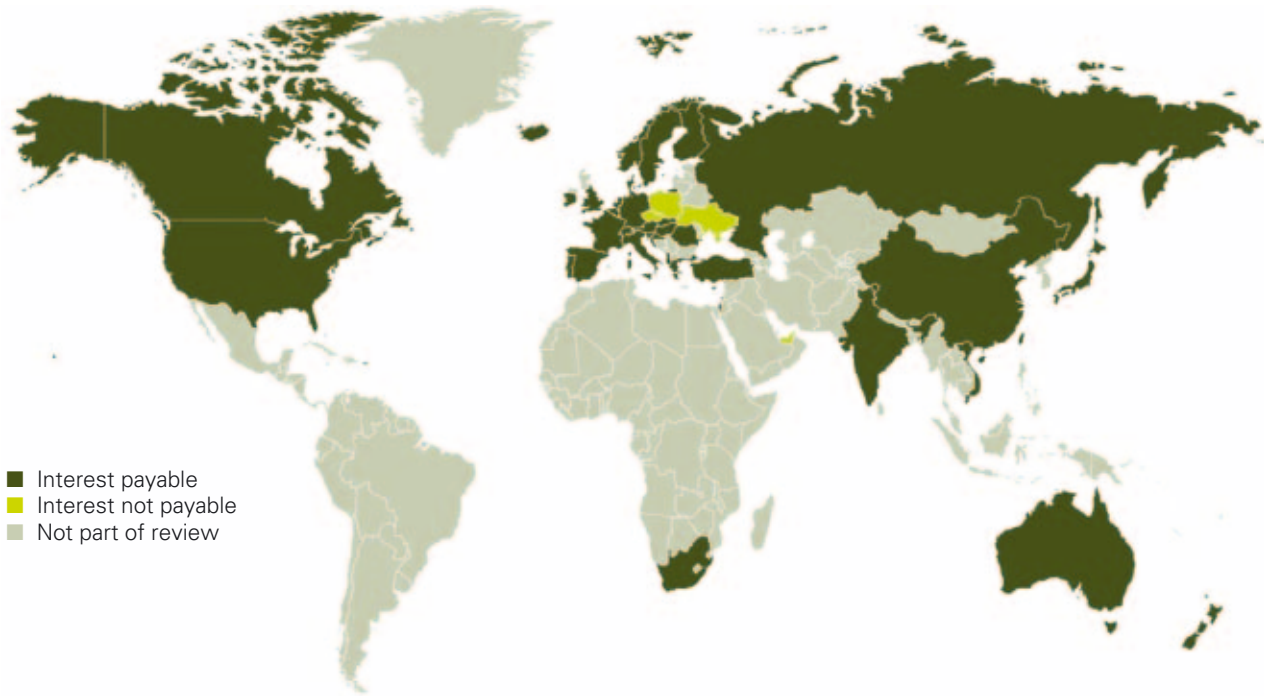
Outside insurance, there is more qualified scope for third parties to fund litigation claims. In around one-quarter of jurisdictions third parties are permitted to do so without significant qualification. In just under half of the jurisdictions surveyed the scope to do so exists, but is heavily qualified by what would appear to be appropriate levels of regulation (Figure 6).

These are some of the key findings which emerge. The review provides scope for many other themes and conclusions to be extrapolated.

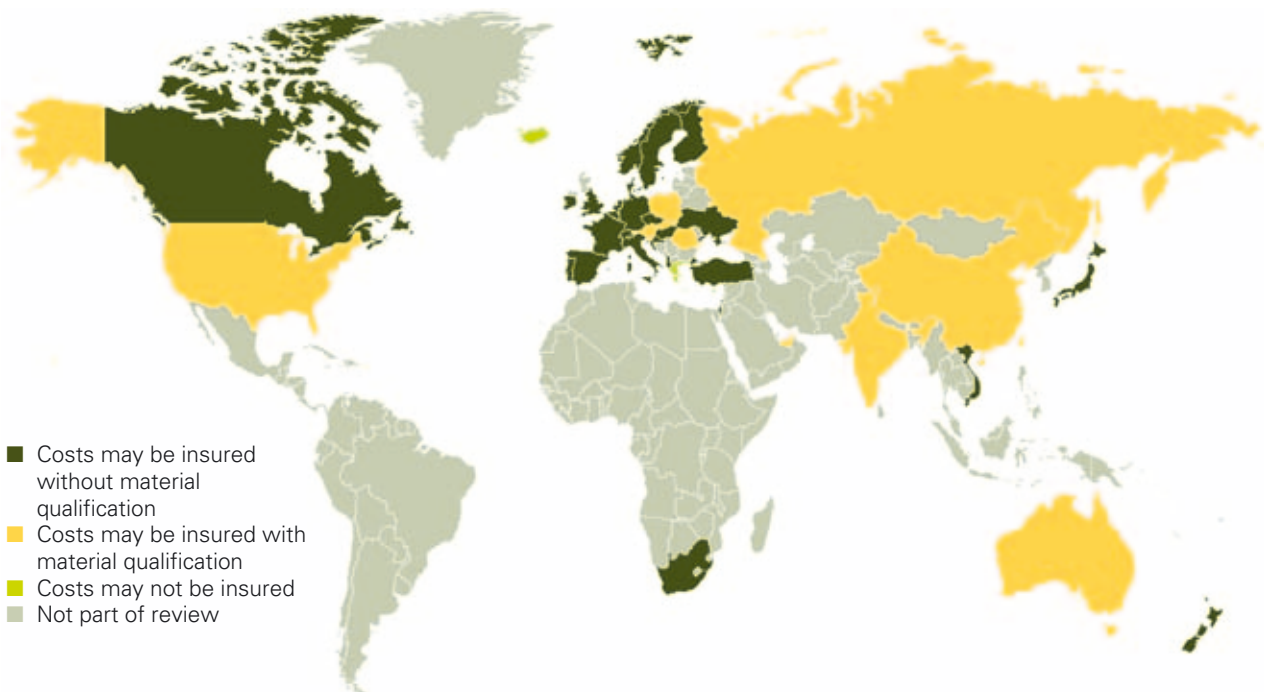
**Figure 3: Can a party agree with its own lawyer, a special costs arrangement?**



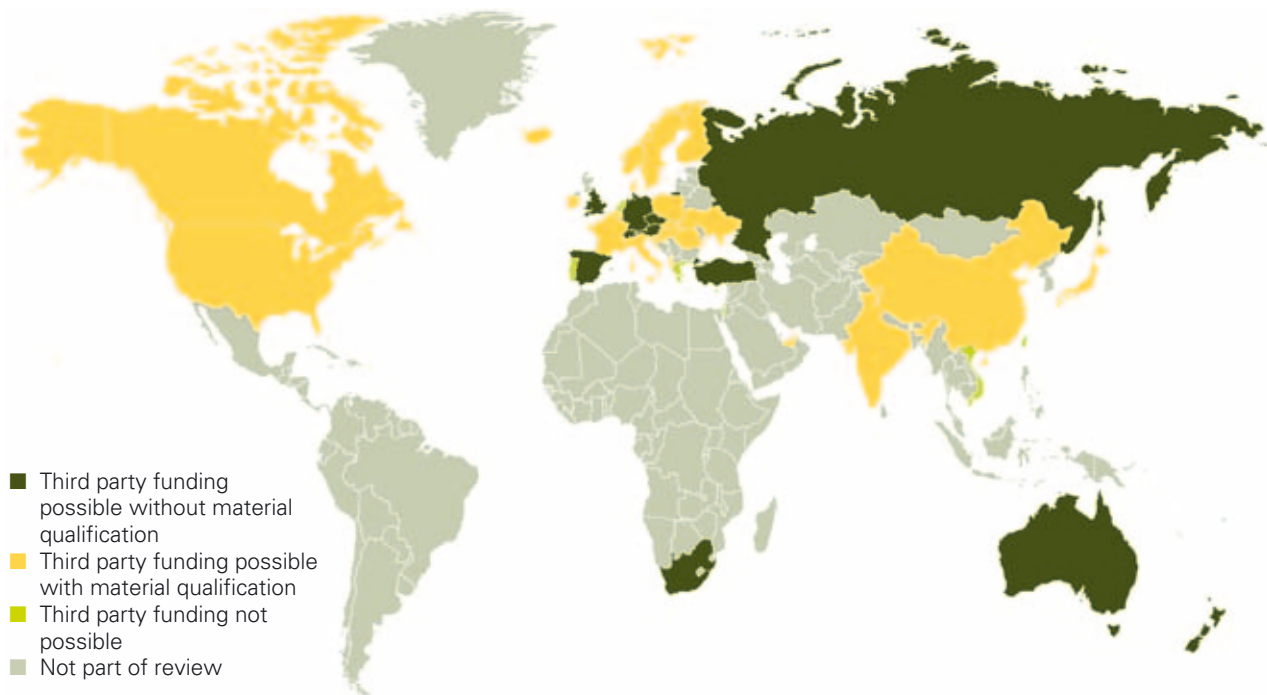
**Figure 4: Is interest payable on unpaid costs?**



**Figure 5: Can costs be insured?**



**Figure 6: Is third party funding of claims available?**



## Country-by-country detailed responses

The following pages list our country-by-country findings in alphabetical order. Countries covered are:

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### NOTES

In the following sections, the term “**costs**” (unless otherwise specified within a country section) is used to describe the costs incurred by a party during the course of litigation in connection to that litigation, and which include, but are not limited to, costs that the party has paid to its lawyers (including solicitors, counsel and advocates) to agents, to courts, to process servers and in respect of disbursements (for example, photocopying, expert witness, travel, translation, notarial services and witness attendance etc.).

The term “**lawyer**” (unless otherwise specified within a country section) is used to describe the legal adviser, solicitor, counsel, barrister, advocate, attorney or legal practitioner.

The term “**claimant**” (unless otherwise specified within a country section) is used to describe the party bringing the claim, including the plaintiff.

# England and Wales

## 1. Recoverability of costs

### 1.1 Can costs be recovered by a party to civil litigation?

Yes.

### 1.2 Does the losing party usually pay the successful party's costs?

Yes.

Where a party succeeds against the other party, it is usual for the successful party to be awarded an order for costs against the losing party, which is called "costs following the event" or "costs shifting."

Despite substantive success for a party; in many cases the court will exercise its discretion to adjust the order for costs to reflect the relative success of the parties on the substantive issues determined by the court.

Where a claimant succeeds against multiple defendants, costs will be ordered against each defendant, and the claimant can then recover costs against any one (or more) of the defendants. Any defendant paying such costs can then seek a contribution from the others under the Civil Liability (Contribution) Act 1978.

### 1.3 Can costs be ordered to be paid to, or by, a non-party?

Yes.

Costs orders in favour of or against non-parties are referred to in CPR Part 48.2. Where the court is considering whether to exercise its discretionary power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of, or against, a person who is not a party to proceedings:

- that person must be added as a party to the proceedings for the purposes of costs only
- he must be given a reasonable opportunity to attend a hearing at which the court will consider the matter further.

## 2. Details of recoverability of costs

### 2.1 On what basis are costs recoverable?

Discretionary (but predictable). The costs payable by one party to another are in the discretion of the court (section 51 of the Supreme Court Act 1981 and CPR Part 44.3(1)).

In exercising its discretion the court is required to have regard to all circumstances, and in particular the following matters (CPR Part 44.3(4) & (5)):

- the extent to which the parties followed any applicable pre-action protocol
- the extent to which it was reasonable for the parties to raise, pursue or contest each of the allegations or issues
- the manner in which the parties pursued or defended the action or particular allegations or issues
- whether the successful party exaggerated the value of the claim
- whether a party was only partly successful

- any payment into court or admissible offer to settle.

There are two bases of assessment of costs: the standard basis and the indemnity basis.

Where costs are assessed on the standard basis a party only recovers a proportion of his costs and not the exact amount that he has paid. In assessing costs on the standard basis the judge will only allow costs which are proportionate to the matters in issue and he will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount, in favour of the paying party. This means that the party seeking to recover its costs has to prove the reasonableness of the amount claimed. Under standard assessment a party can usually obtain an order for around 60-70% of the costs claimed.

Where a judge assesses costs on the indemnity basis he will resolve any doubt as to whether the costs were reasonably incurred, or were reasonable in amount, in favour of the receiving party. There is no requirement for the costs to be proportionate. The onus is on the paying party to show that the costs being claimed are unreasonable. Thus, the receiving party is likely to obtain an order for a higher percentage of their costs on the assessment than an assessment on the standard basis. Indemnity costs are generally awarded for unreasonable conduct or abuse of process.

### 2.2 Is the amount of recoverable costs fixed?

Yes, in certain cases only.

In certain circumstances the amount of costs that a judge can award a successful party are fixed at certain amounts which are set out in Parts 45 and 46 of the CPR. These provisions set out the many types of claims in which fixed costs apply, but they do not include large complex commercial claims.

Under the "indemnity principle" a party cannot be liable to pay more to the other side in costs than the winner is liable to pay its own lawyers. If lawyers representing the successful party have intimated that their client need "not worry" about paying their fees, there is a prospect that the court will hold that the loser has no liability in costs: *British Waterways Board v Norman* (1993) 26 HLR 232.

### 2.3 Is the amount of recoverable costs calculated by reference to the amount in dispute?

Yes to the extent that this is considered as part of the court's discretion.

CPR Part 44.5(5)(3)(b) states that in assessing costs, the court must have regard to the amount or value of any money or property involved when deciding the amount of costs.

## 2.4 What can be recovered as "costs"?

CPR Part 44 sets out what can be recovered as costs.

|   |   |
|---|---|
| Lawyer – client fees  | Yes.  |
| Additional lawyer fees (for example, counsel fees or trial advocate fees)   | Yes.  |
| Agency fees (for example, London agents, local agents, appellate lawyer, bailiff/process-server)                                    | Yes.  |
| Court fees  | Yes.  |
| Disbursements (including, but not limited to, photocopying, expert witness, travel, translation, notarial, witness attendance etc.) | Yes.  |
| Other expenses  | A party attending court to give evidence is entitled to an allowance for proved loss of earnings and expenses which can be claimed for on assessment. |

## 3. Particular costs issues

### 3.1 Can a party agree with its own lawyer, a special costs arrangement?

Yes.

Conditional Fee Agreements ("CFA") were introduced by section 58 of the Courts and Legal Services Act 1990. Since 1998 it has been possible to enter into CFAs in all types of civil litigation other than family work (Conditional Fee Agreements Order 1998, SI 1998/1860). Any concern that a CFA might be attacked by the opposite side as savouring of maintenance or champerty was removed by *Hodgson v Imperial Tobacco Ltd* [1998] 1 WLR 1056. Most of the technical rules on the format of CFAs were revoked with effect 1 November 2005 (Conditional Fee Agreements (Revocation) Regulations 2005, SI 2005/2305). The only continuing requirements are that a CFA must:

- be in writing
- relate to a type of case where CFAs are permitted (all civil proceedings other than family cases)
- specify the success fee, if any, which must not exceed 100%.

### 3.2 Which tribunal resolves costs disputes and how?

The court normally resolves costs disputes by way of summary or detailed assessment.

Assessment proceedings should be commenced within three months of the judgment, order, award or other determination giving rise to the right to costs (CPR Part 47.7). This is done by

serving on the paying party a notice of commencement together with a copy of the bill of costs (CPR Part 47.6(1)). The paying party may dispute any item in the bill by serving the receiving party with points of dispute. These must be served within 21 days after service of the notice of commencement (CPR Part 47.9). If the paying party fails to serve points of dispute within the permitted time, the receiving party may, on filing a request, obtain a default costs certificate (CPR Parts 47.9(4) and 47.11). The receiving party has the right, but is not obliged, to serve a reply to any points of dispute. Any reply should be served on the party who served the points in dispute within 21 days after service (CPR Part 47.13).

Hearings are relatively informal, with the points of dispute being taken in turn and both sides making submissions and the costs officer making rulings on each point in turn.

### 3.3 Can a party be required to provide security for costs (or some other sum) in advance of costs being decided?

Yes, if order for security of costs is sought by claimant.

An order for security of costs can be made only against a party in the position of a claimant. Once security is given it may be retained, subject to the court's discretion, pending an appeal. An order for security for costs usually requires the claimant to pay money into court as security for the payment of any costs order that may eventually be made in favour of the defendant, and staying the claim until the security is provided.

## 4. Costs awards

### 4.1 Can interim awards of costs be obtained?

Yes.

Costs of interim applications are in the discretion of the court, but the discretion is usually (but not always) exercised in favour of the party who was successful in the application.

In many interim applications an order is made for "costs in the case", which means the cost is recovered at the end of the litigation by the successful party.

Costs of interim applications can be assessed summarily, based on a breakdown supplied by the receiving party, or by way of an interim payment with the balance to be assessed by the court at a later date if the parties fail to agree.

Costs of interim hearings which have been summarily assessed must be paid within 14 days of the court order.

### 4.2 Can an award of costs be increased or decreased by reference to such matters as a party's conduct of the case?

Yes.

Misconduct by the successful party may result in costs not following the event (CPR Part 44.3(4)(a)).

The indemnity basis can be applied as a penalty for misconduct, or as a result of the claimant recovering more at trial than the amount offered in his own Part 36 offer (of settlement).

#### 4.3 How are costs awards enforced?

Methods of enforcing money judgments are contained in CPR Part 70.2. A judgment creditor may enforce a judgment or order for the payment of money by any one or more of the following methods:

- a writ of fieri facias or warrant of execution (RSC Orders 46 and 47 and CCR Order 26)
- a third party debt order (CPR Part 72)
- a charging order, stop order or stop notice (CPR Part 73)
- in a county court, an attachment of earnings order (CCR Order 27)
- the appointment of a receiver (CPR Part 69).

#### 4.4 Can a costs award be set off against a monetary judgment?

Yes.

In *Arkin v Borchard Lines Ltd* (2001) LtL 19/6/01, an interim costs order had been made in favour of the claimant and the defendant respectively on different interim applications. The two costs orders were set off against each other.

An application may be made to the court for permission to set off any sums, including costs, payable under several judgments or orders. The application may be heard and determined by the court and any order giving permission shall direct how any money paid into court is to be dealt with (CCR Order 22 Judgments and Orders Rule 11).

#### 4.5 Is interest payable on unpaid costs?

Yes, at the court's discretion.

Unless otherwise ordered, interest runs from the date of the order for costs.

The rule is that post-judgment interest runs at the rate provided by the Judgments Act 1838 (currently at eight per cent simple interest which is fixed by statutory instrument). The period when interest runs can, however, be varied by the court in appropriate cases.

Note that the court also has power to award interest on costs incurred and paid prior to an order for payment.

### 5. Costs of an appeal

#### 5.1 Are costs of an appeal treated differently?

No.

The costs of an appeal are essentially dealt with in the same way as above save that a court dealing with a case on appeal can make orders relating to the costs of the proceedings giving rise to the appeal as well as the appeal itself (CPR Part 44.13(2)).

If an appeal is successful, the appeal court may order the losing party to pay the costs "here and below," or may make different orders relating to the proceedings at the two levels, or may leave the costs order of the court below undisturbed.

It may be appropriate to deprive a party of its costs if the decision on the appeal turned on points not raised below, or on points not raised in the notice of appeal, or where the appeal is only partly successful or where the court's time has been wasted.

### 6. Funding of civil and commercial claims

#### 6.1 Can costs be insured?

Yes.

Before the event insurance ("BTE") or legal expenses insurance ("LEI") and after the event insurance ("ATE") are permitted and widely available.

#### 6.2 Is legal aid available?

Yes.

Public funding of litigation is administered by the Legal Services Commission, with funding in civil cases being provided by help under the Community Legal Service. The courts have no power to provide litigants with such funding (*Perotti v Collyer-Bristow* [2004] 2 All ER 189).

The Community Legal Service (Funding) Order 2000 SI 2000/627, as amended by SI 2001/831, provides that the Legal Service Commission's powers to fund cases are largely restricted to solicitors licensed under contract (Article 3). Generally, rates of remuneration under Community Legal Service contracts cannot exceed rates provided in Schedule 6 to the Legal Advice and Assistance Regulations 1989 (SI 1989/340) and the Schedules to SI 2001/831. The prescribed rates are substantially lower than market rates for private work.

Help under the Community Legal Service is available to clients who are unable to afford to litigate. The financial limits are set at very low levels, although they are subject to annual updating (Community Legal Service (Financial) Regulations 2000 (SI 2000/516)).

#### 6.3 Is third party funding of claims available?

Yes.

Traditionally third party funding has been characterised as maintenance or champerty and has therefore been held to be unlawful. It is now recognised that many claimants cannot afford to pursue valid claims without third party funding; that it is better for such claimants to forfeit a percentage of their damages than to recover nothing at all; and that third party funding has a part to play in promoting access to justice.

Third party funding is currently unregulated.

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