

GUIDANCE NOTE: ATE INSURANCE

Regulator: Costs Lawyer Standards Board

Issued: 10 April 2013

These notes seek to offer a greater understanding of what a Costs Lawyer can and cannot do in relation to ATE insurance provision and the reasons why. Reference in this guidance to a Costs Lawyer refers to a Costs Lawyer with a current practising certificate.

What is ATE insurance?

ATE insurance is short for After the Event Insurance, it is also sometimes referred to as "litigation protection insurance". ATE insurance is a type of legal expenses insurance policy that provides cover for the legal costs incurred in the pursuit or defence of litigation and arbitration. The policy is purchased after a legal dispute has arisen. ATE insurance can be purchased for nearly all areas of litigation with the exception of matrimonial or criminal law.

Are the costs of ATE insurance recoverable?

The general rule is that where an ATE insurance policy was taken out on or after 1 April 2013 insurance premiums are no longer recoverable from an opponent except in limited circumstances e.g. clinical negligence, insolvency & defamation.

What are the practical implications for a client with an ATE insurance policy?

ATE insurance constitutes a "funding arrangement" and therefore, in accordance with CPR 44.15, notification must be filed at court and served on the other parties to the litigation so that all parties are aware of the existence of the ATE policy.

I am a sole practitioner Costs Lawyer can I source, recommend, put in place, take commission for an ATE policy for a client?

Only if you are registered with and authorised by either the Financial Conduct Authority (FCA) for solo regulated firms or the Prudential Regulation Authority (PRA) for dual regulated firms. Both these bodies replaced the Financial Services Authority on 1 April 2013. An application to either carries a fee and if successful, there will be annual reporting arrangements and an annual fee payable to FCA/PRA based on permissions/ATE income.

Without FCA/PRA registration and authority a Costs Lawyer may therefore only recommend to a client that they look into such a policy via an insurance broker registered and authorised by the FCA. That broker will then source the best insurance options for a client in order to enable them to make an informed decision based on the advice of an FCA/PRA regulated professional.

I am a Costs Lawyer working for a Costs Lawyer firm can I source, recommend, put in place or take commission for an ATE policy for a client?

Only if your firm is registered with and authorised by either the FCA or PRA (see above). The Financial Services and Markets Act 2000 (“FSMA”) sets out that any person wishing to carry on one or more Regulated Activity by way of business must apply for authorisation unless they can abide by the terms of exclusion or are exempt.

Regulated Activities: In relation to ATE insurance:

- effecting or carrying out contracts of insurance as principal; and
- assisting in the administration and performance of a contract of insurance (insurance mediation activity).

Exclusions: Provisions that turn activities that would otherwise be regulated activities into unregulated activities, examples include introducer exclusion, overseas person’s exclusion. These exclusions would not apply to Costs Lawyers.

Exempt Professional Firms: Some professional firms are permitted to perform limited Regulated Activities in addition to their normal professional services e.g. solicitors, accountants and chartered surveyors without authorisation, however:

- they must be members of a professional body which sets the standards they have to meet by way of supervision and regulation; and
- the firm must be covered by complaint and compensation arrangements of their appropriate professional body as clients of an Exempt Professional Firm will not have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme if things go wrong.

Costs Lawyer firms are not Exempt Professional Firms because:

1. At present CLSB regulates individuals not firms/entities.
2. Compensation arrangements would be too high to be sustainable.

Without FCA/PRA registration and authorisation a Costs Lawyer may therefore only recommend to a client that they look into such a policy via an insurance broker authorised and regulated by the FCA/PRA. That broker will then source the best insurance options for your client in order to enable them to make an informed decision based on the advice of an FCA/PRA regulated professional.

I am a Costs Lawyer working for a firm of Solicitors regulated by the SRA. Can I source, recommend, put in place or take commission for an ATE policy for a client?

You will be covered by the rules of the Solicitors Regulatory Authority, please refer to and comply with those rules.

I am a Costs Lawyer working for a firm licensed as an ABS. Can I source, recommend, put in place or take commission for an ATE policy for a client?

Please refer to the provider of your employers ABS licence.