

PROTECT³⁶

ATE Cover for where the real risk is

PROTECT 36 from Keystone Legal is an after the event (ATE) legal expenses insurance policy that covers the key risks in a personal injury (PI) claim once the defendant insurer has made a monetary Part 36 offer. PROTECT 36 allows Firms to provide a proportionate, best advice ATE solution for Clients who do not want ATE cover prior to the Part 36 offer stage.



Key features include:

- **Cover** for adverse costs, litigation disbursements **and** our unique Part 36 shortfall indemnity
- **Value** for money for Clients – no need to pay for unnecessary cover
- **Unique** Part 36 offer indemnity – peace of mind for Clients, Keystone can effectively guarantee the Part 36 offer
- **Simplicity** – easy to explain to Clients, with premiums only payable if their Part 36 offer is improved upon
- **All** PI case types can be covered, both Fast track and Multi track – including RTA, EL, PL & OL Clinical Negligence and Industrial Disease

ATE Insurance in the post-Jackson regime

Since the Jackson / LASPO Act changes on 1st April 2013, ATE premiums are in most scenarios no longer recoverable from the defendant and the claimant is now responsible for any ATE premium. As a result, many Firms are realising that a standardised, one-size fits all approach may well not represent best advice and that in many cases, the primary need for ATE insurance is at the Part 36 stage of the claim. It is at this stage that significant adverse costs risks may arise for Clients with the loss of QOCS protection if a defendant Part 36 offer is not subsequently beaten.

PROTECT 36 is a 'stand alone' policy that covers these adverse costs risks, as well as providing a unique damages shortfall indemnity, at the Part 36 stage of a claim. PROTECT 36 can be used on its own or as a 'top-up' to an existing BTE or ATE policy if required.

Firms can apply for cover for Fast track and Multi track cases on a bespoke, one-off basis. Delegated authority is also available for Fast track cases online, 24/7.



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Protect 36 is provided by Keystone Legal Benefits Ltd who are authorised and regulated by the Financial Conduct Authority

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Proportionate, self-insured premiums

All PROTECT 36 premiums are based on the amount of monetary **improvement** between the defendant Part 36 offer and the final award of damages. If the final award of damages is less than the last defendant Part 36 offer, PROTECT 36 will cover the damages shortfall and adverse costs, all with no premium due from the Client.

PROTECT 36 has a £100,000 level of indemnity and premiums are also further discounted by 75% should a case settle pre-issue.

Fast track premiums

For Fast track cases, the premium will be 25% of the increase between the first defendant Part 36 offer and the final award of damages, but with the following maximum premium caps based on the first defendant offer:

First defendant Part 36 offer	Up to £4,999	£5,000 to £9,999	£10,000 to £14,999	£15,000 to £24,999
Premium is capped at	£250	£500	£750	£1,000

Fast track premiums include IPT.

Multi track premiums

As Multi track claims are far more complex and risk factors vary considerably between cases, premiums are calculated on a case by case basis to ensure that they are both suitable for the specific risk factors involved as well as being fair and proportionate.

Overall, Multi track premiums are based on an individually assessed, fixed premium or percentage of the monetary improvement between the defendant Part 36 offer and the final award of damages. The type and amount of premium quoted will be specific for each case and based on a variety of risk factors such as liability, quantum, and just as importantly, whether it is a first offer or a subsequent offer (generally speaking the premiums will be lower for earlier stage offers).

Multi track cover is also available without the damages shortfall indemnity if required.

Protect 36 in use – Multi track premium examples

Please see the additional 'Multi track premium examples' document for a range of 'real world' Protect 36 Multi track usage scenarios and premiums.

For more information and to find out how your Firm could benefit from PROTECT 36, please contact Keystone Legal on **01252 354100** or **protect36@keystonelegal.co.uk**



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Multi track premium examples

The following examples are based on 'real world' cases to help illustrate how Multi track Protect 36 premiums are bespoke for each case and can be flexible to ensure proportionality and best value. In very general terms, the higher the quantum, the lower the percentage premium (which in some cases may be as low as 1 or 2%). Premiums for cases settling pre-issue of proceedings are further discounted by 75%, and all premiums quoted are exclusive of IPT.

Example 1 - Multi track RTA case

In this case, liability is fully conceded and there are no major causation issues. The defendant makes a Part 36 offer £40,000, with the claimant solicitor valuing the case at up to £50,000 in a best case scenario.

Keystone assess the case and a Protect 36 policy (full adverse costs, ongoing disbursements and damages shortfall cover) is issued at a premium of 10% of the damages recovered in excess of £40,000, but with a maximum premium cap of £1,250. The claim settles for £47,500, an increase of £7,500, resulting in a premium of £750.

Example 2 - Multi track PL case

Liability in this example is agreed, but the case has significant causation medical issues and, with the claimant being self-employed, there are various concerns relating to elements of special damages. The defendants make a Part 36 offer of £65,000. The value of the claim is estimated to be £100,000 in a 'best case' and £60,000 in a 'worst case' scenario.

After assessing the case, Keystone offers a choice of two Protect 36 premiums:

1. A policy with full adverse costs, ongoing disbursements and damages shortfall cover at a premium of 17.5% of the damages recovered in excess of £65,000, but with a maximum premium cap of £4,000.
- Or
2. A policy excluding the damages shortfall cover (ie: just adverse costs and disbursements covered) for a fixed premium of £2,500.

The percentage / full cover option (option 1) is chosen and the case goes on to settle for £75,000 - a £10,000 improvement over the offer - resulting in a premium of £1,750.

Example 3 - Multi track Industrial Disease case

In this high value case, liability is agreed and the defendant makes a Part 36 offer of £650,000. There are causation issues in a number of areas because of the claimant's medical and employment history, and also disputes between medical and care experts regarding loss of earnings and future care needs. The overall claim value range is £500,000 worst case to £1,000,000 should the claim succeed on all points.

Assessing the case in conjunction with the claimant's solicitors, an increased level of indemnity to £250,000 is agreed and Keystone issue a Protect 36 policy including adverse costs, ongoing disbursements and damages shortfall cover at a premium of 10% of the damages recovered in excess of £650,000, but capped at a maximum premium of £25,000. The case settles for £750,000, so a £10,000 premium applies.

Example 4 - Multi track EL case that loses

In this example, Keystone issue a Protect 36 policy on an EL case to include adverse costs, ongoing disbursements and damages shortfall cover, at a premium of 7.5% of any increase over the offer. The defendant Part 36 offer is £65,000, but this offer is not beaten and the case eventually settles for £60,000, with an adverse costs order of £10,000.

As well as covering the adverse costs of £10,000, the Protect 36 policy also covers the damages shortfall of £5,000, a total claim pay-out of £15,000. As Protect 36 premiums are self-insured, in this example there is no premium to pay.

