Contentious Probate

Frequently Asked Questions
For Solicitors
in England and Wales
Novitas is a specialist lender to the legal profession. Operating across the UK, we provide innovative and cost effective solutions for solicitors and their clients.

Novitas has now launched a service to fund the legal costs of clients going through contested probate proceedings, including claims under the Inheritance (Provision for Family and Dependents) Act 1975, (‘75 Act Claims’).

The loan is provided under a facility so you drawdown what your client needs, when they need it, providing fast and efficient lending. There is a global agreement that we put in place between the solicitor and Novitas, this covers all loans that Novitas provides to your clients.

**Key benefits of this scheme**

- **Improved cash-flow** - the funding is provided as a facility against which the solicitor can drawdown as required; in advance of each stage of the legal proceedings

- **Combine funding options** - use Novitas to pay all the fees or combine with a CFA

- **Pre-approval of funding** - you know exactly what funding is available

- **Rapid lending decisions** - clearly defined, simple lending criteria

- **Flexible timing** - use the loan at any point during the proceedings

- **Limited outlay for your client** - the interest and set-up fee are rolled into the loan. The client will only have to pay for independent legal advice and counsel’s fees for the initial assessment.
Frequently Asked Questions

1. What areas will the scheme cover?
   - The scheme covers loans for ‘75 Act Claims
   - Lending can be to claimants or defendants
   - Other areas of contentious probate will be looked at on a case by case basis.

2. What are the key product features?
   - Funding is provided by way of a loan to the client backed by the security of either:
     - A charge over a UK property; or
     - An insurance policy;
   - Lending only through scheme approved firms
   - Panel of nominated counsel to provide diligence opinion.

3. What can the loan be used for?

   The loan can be used solely to pay solicitors fees and any disbursements, for example a barrister or expert fees. We fund all or part of a case. You may decide to use Novitas just for disbursements, for fees or combined with an element of the work under a CFA.

4. What security do you require from the client?

   The Novitas lending scheme requires the loan to be backed by security. Novitas will therefore offer two options to cover each situation where the client may or may not have assets over which security can be taken:

   **Secured** - security is taken over a UK property, either through an equitable or legal charge. We look at the OCE, valuation and mortgage statement to confirm the level of equity in the property and then decide how much we will be prepared to lend that individual. No further borrowing is allowed on the property without our consent. Other forms of security may also be considered on a case by case basis.

   **Insured** - Where a client cannot offer sufficient security for the loan, they will have the option of using an insured product. Specifically, Novitas purchases insurance to cover the repayment of the loan if the client is
unable to repay the loan themselves. The cost of insurance is added to the loan and is not recoverable.

5. **How much will you lend and how is it paid?**
   - Each case will have a maximum amount of lending agreed at the outset. This is provided as a facility against which funds can be drawn down.
   - The client signs a drawdown request each time money is drawn down confirming no material change to their circumstances and the amount of the draw.
   - Funds will be paid directly to the solicitor’s client account to clear any approved outstanding invoices and to meet future invoices until the next drawdown.

6. **Do you pay 100% of the solicitor’s bills?**
   Under the **Secured scheme**, up to 100% of the fees can be paid.
   Under the **Insured scheme**, to keep commercial alignment between all the parties, 90% of the loan may be used to pay fees and costs. The remaining 10% is held back until repayment of the loan. If the loan is not repaid, this 10% is released back to Novitas. This amount may vary depending on the characteristics of a specific case.

7. **What will the scheme cost?**
   - Interest is charged at 18% per annum (i.e. 1.5% per month). Please note that this is not recoverable from the losing party in the litigation.
   - Interest is only charged on the money drawn down, not the whole facility; any funds that have been drawn down but which remain unused post conclusion of the case, are returned to Novitas.
   - The interest will roll-up on a simple basis so nothing to pay until the loan is settled.
   - Administration fees of 2% of the facility are charged, with a minimum fee of £500. This is added to the loan.

**Additional charges:**
- Client must gain independent legal advice which they pay for directly.
- Cost of insurance if no security is available: This premium is a percentage of the facility and will be added to the loan.
- ATE insurance for adverse costs: client has the discretion whether to
8. **Is the loan recourse and is it regulated?**

It is important to note that this is a fully recourse loan and the client is always responsible for repayment of the loan. Under the secured option, if the loan is not repaid by the client, Novitas may ultimately take legal action to recover the loan monies. This may include the sale of any property used as security for the loan.

With the insured product, should the insurance be called upon, the client may still have an obligation to repay the loan, depending on the circumstances.

The loan is regulated under the Consumer Credit Act 1974.

9. **What are the lending criteria?**

Authority to issue an offer of lending on satisfaction of the following conditions:

- Eligibility under Act
- Confirmation by panel counsel of at least a 60% prospect of success
- Funding for pre-trial stages
- Client has assets of 3x max loan amount if using the Secured option
- Security or insurance available
- Satisfactory credit history.

Lending may also be considered in the following situations:

- Adult children cases
- Trial stage
- Client has assets of <3x loan amount
- Confirmation by panel counsel of less than a 60% prospect of success
- Where client wishes to insure for adverse costs
- Credit history unsatisfactory
- Any other areas of contested probate.

There is no requirement for Novitas to meet the client unless there are exceptional circumstances.
10. How long does it take to get the loan in place?

Once Novitas has received and approved the loan application it will issue
the draft loan agreement to the client. Novitas aims to have this done within
5 days. There is then a 7 day cooling-off period before Novitas sends the
actual legal agreement to sign (to be compliant under the Consumer Credit
Act). The whole process can be as quick as two weeks but more likely
takes approximately 3-4 weeks.

11. Does the solicitor have to prepare the legal agreements for
the client?

No; Novitas is responsible for the preparation of all the loan contracts
and legal agreements with the client. Once the client is approved, Novitas
deals directly with the client.

12. How do we get access to the scheme?

Novitas will only make this scheme available to approved firms. To be on
the panel of approved firms, the solicitor must:

- Be a member of ACTAPS
- Sign a one-time framework agreement that covers the undertakings
  that the solicitor’s firm gives for any loans we provide to their clients.

13. What agreement do we have with Novitas?

A framework agreement is put in place between your firm and Novitas. This
is a global terms agreement so is only signed once and will cover any loans
Novitas makes to your clients under this scheme. The agreement includes an:

- Undertaking to only use the scheme for cases you believe meet the
  lending criteria
- Undertaking to inform Novitas of any material change in the case that
  may impact its ability to recover the loan
- Undertaking to pay Novitas from any proceeds you receive as part of
  the settlement, before you send the outstanding balance to the client
- Agreement that the solicitor will retain 10% of the drawdown in their
  client account until the loan has been settled
- An agreed list of people in your firm who can submit cases.
14. How do we take out a loan?

• Client seeks advice from panel law firm;
• Firm undertakes fact find, prepares draft statement of facts in form required for originating process
• Statement of facts and supporting information provided to nominated counsel with instructions in prescribed form
• Counsel advises in prescribed form (paid for by the client or deferred fee by counsel)
• Solicitor sends completed application form and supporting documents to Novitas
• Novitas issues loan documents to client
• Client then takes independent legal advice for which they pay
• Documents are executed and first drawdown sent to solicitor’s client account.

15. Which Counsel can we use for provisional advice?

Novitas has an agreement with a number of barristers to provide case analysis. These barristers are of different levels of seniority, with different hourly rates, so the cost of the opinion is commensurate with the scale and complexity of the case under consideration. The choice of barrister is at the discretion of the solicitor but please contact Novitas for the most current list of panel barristers.

• If the case is taken on by Novitas the barrister’s fee can be added to the loan and repaid to the client
• The client will be expected to pay this fee as there is no guarantee the case will be approved for funding (the barrister may act on a deferred fee basis but Novitas will need to be notified so this can be added to the loan)
• In the first instance, the solicitor should contact the Senior Clark at Chambers to agree the correct fee
• On simpler cases, we expect that no more than 2-3hrs should be required
• If the case is approved, this barrister can then act after the initial advice. Alternatively, the solicitor is free to instruct another barrister
• With prior approval from Novitas, the solicitor may use a non-panel barrister.
16. Will Novitas fund the final hearing?

If a case does not settle and is likely to go to trial, Novitas:

- May ask for a new opinion from counsel at the case management meeting before agreeing to fund the trial stage
- Has the right to decline further funding for trial at its discretion (typically when counsel believes a current offer is in the range of possible outcomes and ought reasonably to be accepted).

17. Do Novitas require the client to have ATE insurance?

Novitas do not require the client to have ATE to cover their adverse cost risk. This is purely a decision for the client. Novitas does not accept responsibility for the clients’ adverse cost risk.

18. Does the client have to take independent legal advice?

Yes; and this cannot be given by your firm. Novitas can provide names of solicitors who can provide this advice or you can recommend someone. The client must pay for this advice directly.

19. What does the client need to sign?

- Loan agreement – subject to CCA requirements
- Deed of Assignment over proceeds - the client assigns the proceeds of their settlement to Novitas. For example, any lump sum payments or proceeds from a property sale are used to pay the Novitas loan before being passed to the client
- Authorisation letter - authorises the solicitor to communicate with Novitas
- Security document - a legal charge over their property or insurance cover for Novitas fees
- Letter of independent legal advice - every client has to take independent legal advice.

20. Can Novitas stop funding during the case?

Yes, there are a series of events which may mean we stop any further drawdowns. These include:

- Disclosure of subsequent material facts that adversely affect the case
- Solicitor coming off the record
• Solicitor not meeting the undertakings in the framework agreement
• Client behaviour that gives concern about the performance of the loan and its recoverability.

21. **When can Novitas call in the loan?**

Any breaches of the loan agreement by the client can result in Novitas calling-in the loan. This can include:

• Dis-instructing their solicitor without agreement from Novitas
• Failing to follow advice from their solicitor in any material way.

22. **Can the client change solicitor or stop proceedings?**

As you give undertakings to Novitas, any new firm of solicitors would have to be approved to use the Novitas scheme (and agree to take on the case). Otherwise this is a breach of the loan agreement and the loan will need to be repaid by the client as per the terms of the loan agreement. Likewise, if proceedings are discontinued the client is liable to repay the sums drawn down.

23. **Are we required to recommend this scheme to our client?**

No; there is no requirement for you to recommend the scheme to your clients. The scheme should be considered as one funding option potentially available to the client and you receive no financial incentive from Novitas. Typically the solicitor will add a section to the client care letter saying that they are an approved firm and include a copy of the Novitas client FAQ brochure.

24. **If I am interested, what do I do next?**

Once you have read these FAQs, if you are interested in the scheme then please contact Novitas for an initial discussion and to arrange a meeting. Contact details are on www.novitasloans.co.uk or email: enquiries@novitasloans.co.uk
If you would like to discuss any aspect of our services, please contact:

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