



What is litigation funding?

- Litigation funding essentially involves a third party paying some or all of the costs of the litigation or arbitration.
- The UK funders have an estimated £2bn to invest.



Do I pay for the funding?

- Only if your case is successful. The agreement will provide the return based on the circumstances of your case - typically 2.5 x investment, plus the initial investment but the price will depend on a number of factors.
- If your case is unsuccessful you do not repay the funding!



What can it cover?

- Legal fees and Expert fees.
- Seed funding to enable the initial research work to be carried out and the case to be built.



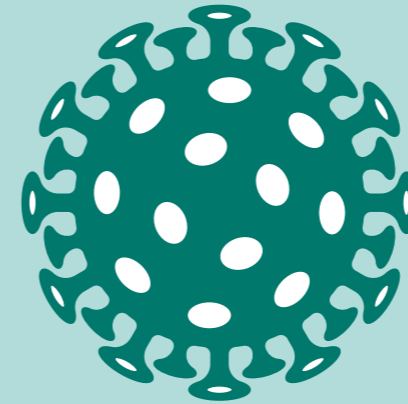
What type of claimant uses litigation funding?

- This is not solely about impecunious claimants, increasingly corporates are engaging with funding as a way of preserving their capital and cash flow, and pursuing claims they might otherwise have let go.



Geographic reach?

- Funding is not permitted in all jurisdictions, England is one of the many where funding is encouraged.



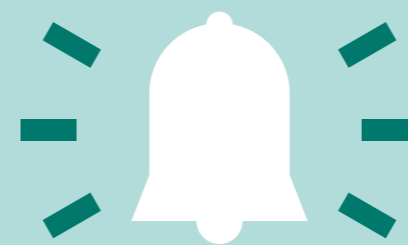
How can litigation funding help in light of COVID-19

- Funding can take away the risk of litigation (it is non-recourse/no payback if you lose), especially if After The Event (ATE) Insurance is also taken out.
- Preserve cash flow- by eliminating the need to pay legal costs etc.
- Create revenue for departments that are usually a cost centre - e.g. by 1) pursuing subrogation claims and debt claims that would not otherwise be brought; and 2) monetising judgments or claims by selling them to funders and receiving a percentage of their value.



Are all cases right for funding?

- Funders have preferences: some prefer larger cases where their potential returns are higher, some prefer lower value cases, with smaller margins, but which can be funded in a greater volume and are typically resolved more quickly.
- Nearly all require a merits advice with a 60% or higher chance of success.
- Likely damages figure of £1m and above.
- The ratio between the total amount invested (legal fees, ATE premium, expert fees etc) and the likely damages to be 1:6 or greater.
- The greater the risk and the longer the matter takes to resolve then the greater the return on their investment the funders will require.



Issues?

- Beware of which funder you work with – not all are equal, check the capital position, carry out due diligence, ensure the funding agreement is thoroughly reviewed.
- The process is not quick – it can take up to six months.
- Putting a case together and presenting it to funders is not a cheap process – before they will invest funders typically require opinions on the success /merits, on the damages amount/quantum, and enforcement. Some funders will be prepared to reimburse this amount if the claim is funded but this should be agreed at the outset and a provision for these costs should be included in the budget.

For more information on funding please contact your usual HFW contact, or the HFW Funding Committee on funding@hfw.com or visit our HFW Funding and Financing web page, at www.hfw.com/Disputes-Funding-and-Financing