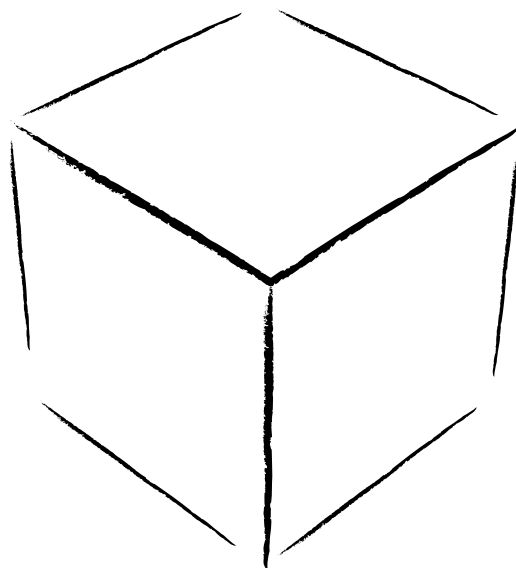


ADDLESHAW GODDARD

CONTROL[£]™



THE CHANGING LANDSCAPE

The legal costs and expenses of litigation are one of the foremost concerns of any party involved in a dispute. Payment of the day-to-day legal costs, and the potential legal costs to which you will be exposed if you lose, can greatly influence the dispute resolution strategy you adopt. Or whether you even bring a claim or defend a claim at all.

The English Courts have been concerned for some time over the mounting costs to which parties are exposed in litigation. High legal costs can prevent access to justice, even for those cases with good prospects of success. In an effort to combat this, the Courts have made changes to the ways in which litigation can be funded. If you have a good case, these recent changes can be of real benefit to you, by giving more certainty over the financial exposure you face across the full range of possible results.

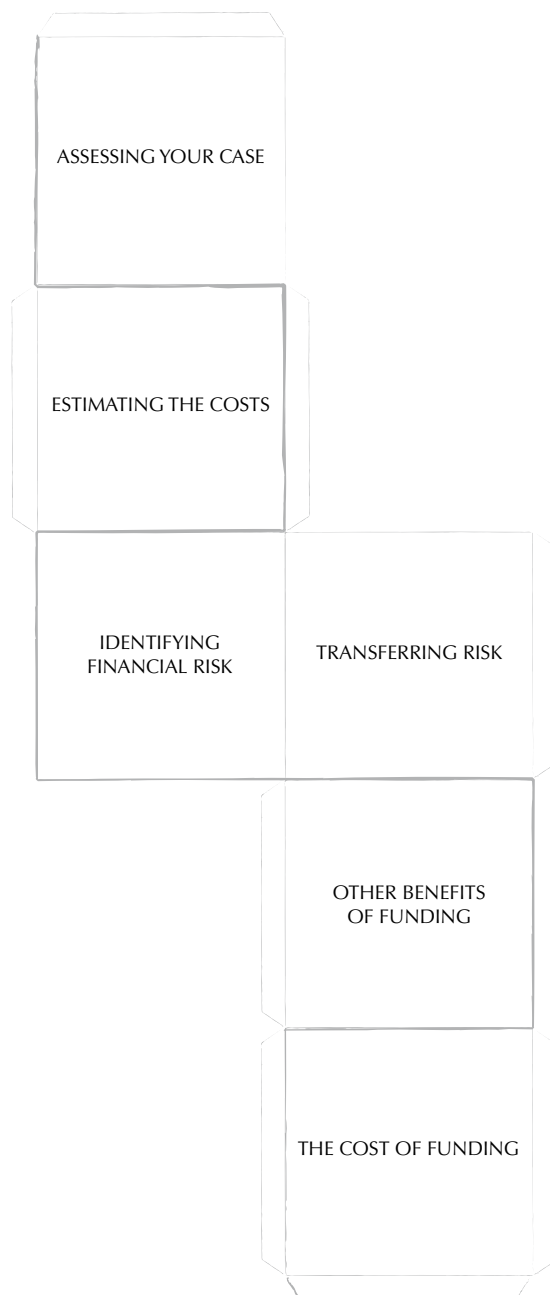
NEW OPTIONS

By adopting the right litigation funding model, you can reduce the day-to-day cost of running your dispute. In addition you can reduce, or eliminate entirely, the amount you have to pay in costs and expenses (including opponents' costs) if you lose. In an arena full of uncertain risks, at last there is a way in which we can help to put you, our client, back in control.

THE SOLUTION

The ability to reduce financial risk is effected through sharing or transferring some of the risk to Addleshaw Goddard, to insurers, or to specialist third party litigation funders with no connection to the claim or its management.

Our litigation funding package offers an integrated solution that will help you to retain control of litigation costs and reduce the financial exposure you face.



ASSESSING YOUR CASE

Recent developments in the way in which litigation can be funded may allow you to transfer a substantial part of the financial risk that you face in a dispute. There are considerable benefits to you if you can do this. However, to do so, whether you are a claimant or a defendant, you will need to have a good chance of succeeding on some or all of your case. Establishing whether or not you have a good case (or part of a case) is the first step in the litigation funding process.

We will identify with you the specific risk factors in your case in order to assess your prospects of success. We will analyse:

- the facts of your case and the people who are likely to give evidence on your behalf
- the documentation you have that is relevant to your dispute
- the legal basis for the claim against your opponent, or the legal basis for your defence
- your chances of succeeding
- the strength of any claims made as threatened against you by your opponent
- the level of damages/losses that you can expect to recover from your opponent
- the ability of your opponent to pay you

It is not always possible to answer all of these questions - to give a clear, unqualified view on your chances of success - at the start of a commercial dispute. Where it is possible, we will do so. Otherwise, we will advise you at the earliest opportunity we can if we consider that you might benefit from some form of funding solution. We have experience of implementing different forms of litigation funding both at the outset and part way through disputes. We have also been successful in putting in place funding for parts of cases, such as interim hearings, where we believe our client will succeed, regardless of what may happen during the remainder of the dispute.

If we think you have good prospects of success for some or all of your case, we agree with you what you want to achieve and therefore precisely what "success" will mean. The chances of achieving your objectives are often better than the chances of succeeding in full on all aspects of the claim. Understanding this is important, as it may affect the quality of the litigation funding terms that are available to you.

Finally, in addition to having a good case, it is vital that your opponent has the ability to pay you. Insurers and third party funders will favour strongly those cases where your opponent is backed by insurance or has significant assets in the EU.

ESTIMATING THE COSTS

The cost of litigating in the English Courts is notoriously high. Despite this, all too often businesses do not budget properly for litigation costs. Through the use of Addleshaw Goddard's unique and innovative costs estimating tool, we will provide you with a realistic estimate of what it will cost you to take your case to trial. Our tailored estimate will identify for you in simple terms:

- the likely stages that will arise in your dispute
- the corresponding cost of each stage
- a timetable showing when the costs for each stage will fall due

The estimate will include all legal costs and expenses that we think you can reasonably expect to incur over the life of your dispute. This will include our fees, and those of counsel, experts and all other likely expenses connected with seeing the dispute through to its end. Armed with this information at the outset, you will be in control. You will be able to:

- budget accurately for the costs that lie ahead
- measure progress against budget as your dispute progresses
- make decisions about whether to settle or continue the claim based on accurate forecasts

Since our estimate is not an agreement to carry out the work at a fixed price (unless we expressly agree otherwise with you in writing) we will review the costs estimate with you regularly. This will ensure if the developing circumstances of your case require us to increase or reduce the estimate you will know as soon as possible and can plan your business on relevant and accurate information.

Legal costs and expenses play an ever more important role in the litigation decision making process. We acknowledge that it is essential for us to identify at an early stage and keep updated the level of financial exposure you may face, and for that analysis to be as accurate as it can be. We achieve this by:

- monitoring costs on all our cases, identifying trends and applying that knowledge to our costs estimating process
- training our lawyers to estimate accurately the legal costs and expenses of litigation and other forms of alternative dispute resolution
- using our internal costs estimating tool which allows all our lawyers to supply you with a bespoke estimate

Although you face many risks in litigation, we believe that legal costs and expenses should be capable of being defined with reasonable accuracy. With this in mind, we will help you understand the financial parameters of your dispute at an early stage and allow you to budget properly for the costs that lie ahead.

IDENTIFYING FINANCIAL RISK

There are many risks involved in litigation. Some risks are unpredictable: such as how not knowing what documentation your opponent may have may affect the claim. Being aware of such risks is the limit of your control. The financial risks of any dispute are, however, a different matter: they can be identified and measured; they can be controlled.

The financial risk you face in any dispute is a combination of:

- the amount of your claim
- the amount of your opponent's claim, if there is one
- your legal team's costs and expenses
- your opponent's legal costs and expenses
- market and time related financial risks of interest and exchange rates

If your claim is successful, you should recover the amount of your claim, interest, and around two-thirds of your own legal team's costs and expenses (the balance of which you will have to pay). This is your best expected outcome.

If you lose your claim, you will have to pay your opponent's claim (if there is one) and interest on that claim, plus around two-thirds of your opponent's legal costs and expenses, as well as your own legal team's costs and expenses. This is your worst expected outcome.

The total financial exposure you face in a dispute is the difference between your best expected outcome and your worst expected outcome. Addleshaw Goddard's costs estimating tool will automatically produce this figure for you, based on our estimate of your own and your opponent's legal costs and expenses.

It is this figure that is used as your starting point for identifying the level of your financial exposure and is the basis for considering whether or not some form of funding arrangement, under which some of this financial risk might be transferred to someone else, might be acceptable to you.

TRANSFERRING RISK

Once we have identified the total financial exposure you face on the dispute, we will quantify for you how much of that financial exposure you can transfer using the methods of funding set out below. Each funding alternative transfers a separate and distinct portion of financial risk that you face. A combination of all three methods of funding can reduce your exposure significantly.

CONDITIONAL FEE AGREEMENT (CFA)

Under a CFA, Addleshaw Goddard will agree to discount its fees by a fixed percentage (usually between 10% to 50%) from the time that we agree a discounted rate with you up to a specified point in the case, normally the determination or settlement of the dispute. During the life of the dispute, prior to determination by the Court or earlier settlement, all you will have to pay us is:

- our fees calculated at the discounted rate
- our expenses (which may include counsel and experts' fees)
- VAT

If you lose the case, this is all you will ever have to pay us. A CFA allows you to transfer to us the cost differential between our normal rates and our discounted rates if you lose - the loss will be borne by Addleshaw Goddard, not you, if "success" (as defined in the CFA) is not achieved.

AFTER THE EVENT INSURANCE (ATE)

A CFA does not control your exposure to your opponent's costs if you lose the case. An ATE Insurance Policy, which can be purchased after a dispute has arisen, achieves this: it indemnifies you against any liability to pay your opponent's legal costs and expenses if you lose. It may be possible to extend the scope of this indemnity, if you lose, to cover the expenses that we might incur on your behalf, such as counsel's fees or expert's fees. An ATE policy can be a powerful risk transfer tool, shifting a significant degree of financial exposure away from you and on to the insurer if you lose.

THIRD PARTY FUNDING

A third party funder will provide funding for your legal team's costs and expenses (including counsel's and expert's fees). If you lose the case, the funder will bear these costs and you will have nothing to repay. By entering into a third party funding agreement, you can therefore transfer the financial exposure to some or all (at your option - you can "part third-party fund") of your own legal costs and expenses: you incur no actual cost of the day-to-day running of the litigation. In return, however, the funder will require a share of your damages if you win.

OTHER BENEFITS OF FUNDING

The Courts in England and Wales have made it clear through the recent developments in the law relating to litigation funding that legal costs and expenses should not hinder access to justice. To this end, the Courts have:

- simplified the requirements and regulation of CFAs in an attempt to encourage solicitors to back their advice to clients and share some of the litigation risk by using CFAs more frequently
- supported the full recovery of ATE premiums from opponents where the premiums are reasonable
- encouraged the use of third party funding as a method of providing access to justice for those who cannot afford, or do not wish, to pay the cost of taking their case to trial

If you have a good case, you should take advantage of the funding structures that the Court has endorsed. By using any one of, or a combination of a CFA, ATE Insurance and Third Party Funding (TPF), you may be able to do one or more of the following:

- define more clearly what financial risk you are exposed to in each of the possible outcomes of your case (CFA, ATE & TPF)
- pay a reduced rate (CFA or TPF) or nothing at all to bring your dispute to Court (TPF)
- exclude the risk, at effectively no cost, of paying your opponent's costs and expenses, and possibly some of your own disbursements, if you lose (ATE)

As well as giving you control over your financial exposure to the litigation, these funding arrangements may also bring strategic advantages:

- Your opponent will be on notice that your case is being funded, with the likely downside to them of additional payments - the ATE insurance premium, a CFA success fee - if you are successful. Your opponent will not know the amount of these additional liabilities. In other words, its financial exposure and the level of its litigation uncertainty have been increased, probably significantly. This will impact, to your advantage, any settlement negotiations
- The fact that your case is being funded will mean that another party - Addleshaw Goddard via a CFA, the ATE insurer or the third party funder - has assessed the merits of your case and decided to invest in it. Your opponent will know that following these independent assessments of your legal position, unconnected parties are willing to "buy into" the prospects of your success. This is a powerful message to send to your opponent

THE COST OF FUNDING

The ability to transfer financial risk in a dispute is undoubtedly a significant and very positive development for anybody contemplating legal proceedings. However, whether you will choose to take advantage of one or more of the litigation funding options will of course depend on the cost. Not unsurprisingly, the party sharing your risk will also want to share in your success. The extent of the impact on your financial recovery will depend on the type and combination of litigation funding arrangement put in place.

CONDITIONAL FEE AGREEMENT

If you lose your case, you will only ever have to pay us our fees at the agreed discounted rate, plus expenses and VAT. If you are successful, you will have to pay us the discounted rate plus the difference between the discounted rate and our normal hourly rates, plus a success fee, expenses and VAT. All of these costs can be claimed from your losing opponent and are subject to the normal rules of costs recovery. (VAT is only recoverable from an opponent to the extent that you are not able to recover it from HMRC). The court may assess both the costs and the level of success fee claimed.

AFTER THE EVENT INSURANCE

As with any insurance, you must pay a premium to obtain cover. The unique aspect of ATE insurance is that, if you lose the case and you have ATE insurance, the insurer will cover you for your opponent's costs and expenses that you may be ordered to pay, but it will not charge you for this (i.e. it waives the premium). If, however, you do not lose the case, you will be liable to pay the premium to the insurer.

The premium for ATE Insurance is likely to be in the region of 20% - 45% of the level of cover that you need (i.e. enough to pay your opponent's legal costs and expenses if you lose). Although this additional cost might at first appear unattractive, ATE insurers may well be prepared to:

- defer payment of the premium until the end of the litigation and
- make actual payment of the premium contingent on success, so that it only becomes payable if you win your case

This would mean that although you are liable to pay the premium from the time that you enter into the ATE insurance policy, you do not actually have to pay anything unless and until the case is determined, and then only if you win. Provided the ATE premium is reasonable, it will be recoverable in full from the opposing party. ATE insurance, if structured correctly, really is a "win-win" situation for you whatever the outcome of the litigation. You will in effect have no premium to pay if you win (as it is recoverable from the losing party), and no premium to pay if you lose, even though you will have the benefit of the indemnity from the insurer.

THIRD PARTY FUNDING

In return for funding your own legal team's costs and expenses, the third party funder will look to take approximately 3 times the amount it was prepared to fund or 25% - 40% of the proceeds that you recover from your opponent, whichever is the higher. This is a significant portion of your claim to give away, so you need to consider carefully whether you are prepared to enter into this sort of arrangement. Third Party Funding tends to be more suitable for larger claims, where the legal costs and expenses of bringing the case, whilst still high, are a fraction of the overall claim value.