

# Litigation Funding



## Innovation and Flexibility in Litigation Funding

Cost control and certainty is key to successful litigation.

We can help you take the risk and cost of litigation funding off your expense account and bring the benefit of litigation straight back onto your bottom line.

We understand that uncertainty in the litigation process can create financial risks. Identifying and adopting the most appropriate funding model can be the difference between bringing or defending litigation or, having done so, between success or failure.

Just as each case is different, we understand that all our clients' business needs are different; there is no "one size fits all" solution to successful litigation funding.

On any claim we will carry out an early assessment of the strength of your claim and discuss the funding options that best suit your case and your business. We believe that an evaluation of funding arrangements and strategy is an essential element of successful litigation.

We can help you minimise your exposure by moving the risk of costs away from you to insurers and third party funders or by sharing risk with Taylor Wessing LLP. We do this through using one or a combination of:

- Conditional Fee Agreements
- After The Event insurance
- Third Party Funding agreements
- Bespoke fee structures

Read on to find out more about the services we can offer and each of these funding options.

## Case assessment and costs estimates

The key to identifying the best litigation funding model for you is a case assessment.

In some instances, the availability of certain funding options depends upon the strength of your claim or defence. The first stage of identifying the right litigation funding solution for you is therefore for us to understand your case. We will review core documents and speak to relevant people to enable us to understand the main facts of the dispute. Where necessary we will also identify relevant witnesses ultimately with a view to assessing the merits of your case and the chances of success. We will also investigate the likelihood of the other party being able to pay for your losses and costs.

In some cases it will not be possible to conclude on all of these points at a preliminary stage, for example because detailed expert evidence is required, or certain key witnesses or documents not being available. In that situation, we will ensure that you are advised of the availability of litigation funding at the first opportunity.

The next stage will be to prepare detailed estimates of the costs of the proceedings, namely our fee costs, counsel's costs and significant disbursements such as expert's fees and document production. All litigation funders and insurers will need to know the extent of costs cover required and this is founded on the estimate prepared by us. Accurate costs estimating and budgeting is in any event an essential tool in the efficient conduct of litigation, irrespective of what funding model is used. We recognise your need to know what costs are likely to be incurred and when.

We will therefore work with you at the outset to prepare a costs estimate using our bespoke costs estimating tool to identify the key stages of the litigation, the estimated costs of those stages and the timescales within which that work is likely to be undertaken. Once prepared, it is important that we review the estimate with you regularly and keep it updated as the litigation progresses.



## Moving costs risk off your expense account

Having undertaken a case assessment and prepared a costs estimate, we can then work with you to identify the risks in the litigation and how to remove them. In the case of costs, exposure can be reduced by one or a combination of Conditional Fee Arrangements, After The Event insurance and Third Party Litigation Funding.

## Conditional Fee Agreements (“CFAs”)

One of the ways that we can reduce the pressures of litigation is by giving funding options that share the financial burden of the process with us. Successful litigation needs a cohesive team ethic between client and lawyer, and well considered CFAs can be a crucial part of this relationship. Discussions over CFAs should take place at an early stage of your claim, typically once we have carried out an early assessment of your case.

A CFA is an arrangement whereby we agree to reduce our standard fees by a discounted percentage (for example 25%) for the duration of the case. Should the outcome of the case not be successful, the discounted amount of our fees is the only amount payable. Using our example, this would mean that you only pay 75% of our fees if the outcome of your case is unsuccessful.

Conversely, If the outcome is successful then our standard rates become payable together with a pre-agreed success fee. The success fee can be defined by reference to a percentage uplift on our standard rates or as a fixed fee element.

The level of discount applied to our fees and the success fee that becomes payable will depend in part on our assessment of the strength of your case.

CFAs can bring both financial and tactical advantages. We will notify your opposition that you have entered into a CFA, this can send a strong message that your legal team believe in the strength of the case sufficiently to enter into a CFA. Your opponent will also know that by entering into a CFA, your exposure to legal costs has been reduced.

When used in conjunction with After The Event legal insurance, this can be a powerful tool. Aside from the tactical benefits, our clients find that CFAs improve cash flow during the course of a case by reducing the amount payable on an interim basis.

In addition, a well structured CFA helps confirm our absolute commitment to your case. When operating under a CFA, Taylor Wessing shares a common interest in achieving the best result possible.

Under current law, fees charged under CFAs are recoverable from your opponent under the standard rules of cost recovery. This means that should you enter into a CFA and are successful in your case you can recover these costs on the standard basis (including the conditional and success fee) from your opponent. Cost recovery is a complex issue that we will discuss in detail with you at the outset of any litigation.

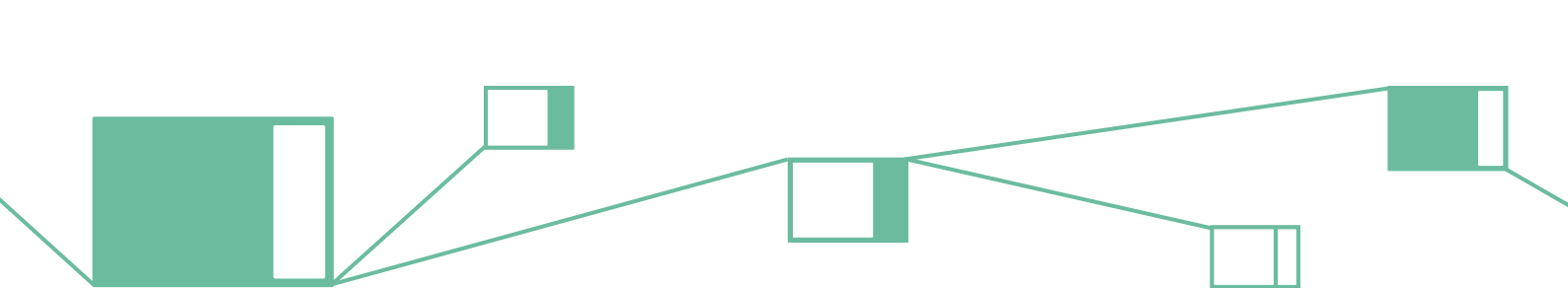
## After the Event Insurance (“ATE”)

CFAs and Third Party funding are both options that can help reduce or remove your own costs in litigation. However, whilst both can be useful tools, neither cover the risk of paying an opponent’s legal costs should the case be unsuccessful. ATE insurance has been developed to help cover this risk and can be a crucial part of a litigant’s financial control.

ATE provides insurance that is intended to cover the risk of having to pay your opponent’s legal costs if you are unsuccessful in your claim. In addition, some products also extend to cover your own disbursements incurred during the action. In major litigation where disbursements include counsel and expert’s fees, this can be a significant cost.

Cover can be provided at a very early stage in the litigation and if it is to be taken, it makes sense to do so as early as possible to benefit from the maximum protection possible.

We work closely with the industry’s leading brokers to ensure that you have access to as many alternative insurers as possible. Unlike other firms, we have not tied ourselves to any one broker or insurer meaning that you can take advantage of our network of contacts and the full range of options that the market has to offer.



Before making an offer to provide ATE, insurers will usually ask us for key information and a synopsis of the case. They will then make their own assessment of the merits of the case. Whether an insurer offers cover, and in turn the premium that they charge, will depend in part on this risk assessment. As a result, premiums and terms of cover can vary considerably.

There can be several advantages to obtaining ATE cover. The fact that an insurer has carried out their own assessment of a case and is prepared to offer cover can send a strong message to your opponent. ATE cover, used in conjunction with a CFA agreement can create a formidable opponent in litigation.

Timing of payment of the insurance premium can often be negotiated with the insurers. It is often the case that you would not have to pay the insurance premium if the case were to be lost. Instead, the premium is usually payable if the claim is successful. If these terms can be agreed, this means the premium would only become payable should you be successful in your claim.

Under current law, the insurance premium itself can often be recovered from your opponent. The amount of premium that can be recovered is subject to challenge if the court decides that the premium is not proportionate.

## Third Party Litigation Funding

Third Party Funding is the payment of your legal costs by a third party. Funding is provided in return for a share of the litigation recoveries (being either a settlement or award) or an agreed multiple of the costs advanced.

Payment of costs by a third party is a relatively new development. Such funding was once considered illegal in the UK but changes to the law in the last decade have seen a growth in the market and there are now several highly respected funders operating in the UK.

The basis on which funding is offered can vary considerably according to the facts of each particular case and the amounts in dispute. To obtain a quote for funding we will need to provide the funder with an opinion on the merits of your case (based upon the case assessment we will have undertaken) and also a detailed costs estimate.

Funding is usually given to a pre-agreed level, which may be increased if necessary. Once funding has been provided, funders will not exert control on how the case is progressed.

## Key Contacts



**David de Ferrars**  
Partner  
+44 (0)20 7300 4883  
d.deferrars@taylorwessing.com



**Alistair Day**  
Partner  
+44 (0)20 7300 4265  
a.day@taylorwessing.com

[www.taylorwessing.com](http://www.taylorwessing.com)

Berlin Brussels Cambridge Dubai Düsseldorf Frankfurt Hamburg London Munich Paris Beijing<sup>□</sup> Shanghai<sup>□</sup> Warsaw<sup>△</sup>

© Taylor Wessing 2010

<sup>□</sup>Representative offices

<sup>△</sup>Associated office

This publication is intended for general public guidance and to highlight issues. It is not intended to apply to specific circumstances or to constitute legal advice. Taylor Wessing's international offices operate as one firm but are established as distinct legal entities. For further information about our offices and the regulatory regimes that apply to them, please refer to: [www.taylorwessing.com/regulatory.html](http://www.taylorwessing.com/regulatory.html)