Funding insolvency litigation

UK – 2026

This quick guide provides an overview of the evolving litigation funding market, and how insolvency practitioners (IPs) may use this in pursuing potential insolvency claims, including the insurance products and funding structures widely available in the market to facilitate this, together with the types of claim that may be particularly suited to funding and key considerations when looking at funding options.

Available funding options

If an IP has a potentially lucrative claim but does not have the funds required to bring the case through to judgment, there are various options available, by which the costs (or part of the costs) may be funded from outside the estate. This quick guide will look at the following options that may be available to an IP:

- Conditional fee arrangements
- Damages-based agreements
- Third-party litigation funding

What are conditional fee arrangements?

Conditional fee arrangements (CFAs) are agreements between a claimant and their lawyer whereby the legal team agrees to defer payment of its legal fees (in whole or in part) until the case is successfully concluded, with deferred fees being paid from the recoveries, along with an additional success fee.

CFAs reduce upfront legal costs, but do not eliminate them. Often only a portion of the fees are deferred and all disbursements (such as court fees, expert fees, etc.) need to be met.

What are damages-based agreements?

Damages-based agreements (DBAs) are agreements under which a law firm agrees to act for a percentage of damages recovered, rather than charging fees by the hour.

DBAs eliminate upfront legal costs; however, they are less popular in practice than CFAs (in part because DBAs must comply with the Damages-Based Agreements Regulations 2013, which reduce the flexibility in the terms that can be offered).

What is litigation funding?

Litigation funding is where a third-party funder provides cash to enable costly litigation or arbitration cases to proceed. In return, if the case is won, the funder will receive an agreed share of the proceeds of the claim. If the case is lost, the funder will generally receive nothing.

Litigation funding has always been a key option in an IP's toolkit, as, properly structured, it will allow an officeholder to pursue good claims where there are insufficient funds in the estate to do so, or where they consider that they cannot properly use estate funds to pursue the claims. There is, therefore, a well-established stable of litigation funders specialising in insolvency claims.

While this remains the case, the interest in litigation as an asset class in its own right has increased exponentially in the last few years, resulting in many new entrants in the funding market, and providing a wealth of funding opportunities for the right claim.

What about residual costs risk?

In UK litigation, costs are usually dealt with on a "loser pays" basis. Therefore, while using one of the funding options detailed above can manage one element of costs, the estate may still be liable for the other side's costs in the event that the case is unsuccessful.

This is generally managed by taking out after-the-event insurance (ATE). ATE covers the other side's costs in such circumstances. There are a number of ATE providers and various payment options, including options by which the premium is only paid in the event of a successful outcome, using the proceeds of the claim. This type of structure eliminates upfront payments.

	CFA	DBA	Litigation funding
Cost risk	Sits with law firm, and often only a percentage is deferred (fees only – disbursements must be paid).	Sits with law firm, and usually 100% of fees deferred (fees only – disbursements must be paid).	Sits with funder, and up to 100% of fees, disbursements and insurance premium covered.
Claimant upfront costs	Disbursements.	Disbursements.	None (if fully funded).
Adverse costs risk	Yes – usually addressed by ATE.	Yes – usually addressed by ATE.	Yes – usually addressed by ATE.
Return to funder/lawyer	Base fee plus success fee.	Percentage of damages.	Usually a multiple of investment.
Control of litigation	Claimant.	Claimant.	Claimant (funder is consulted).

How is funding the claim different from assigning the claim?

Assignment offers an alternative structure whereby an IP can realise value from a claim without requiring the estate to fund the litigation itself.

This is achieved by assigning the estate's rights in the claim to a third party, which then assumes responsibility for pursuing the claim and bears the associated litigation risk.

The commercial terms of an assignment will vary from case to case. Depending on the circumstances, the estate may receive either:

- An upfront payment on completion of the assignment
- A share of any future recoveries generated by the claim
- A combination of both

Unlike a traditional funding arrangement, responsibility for the conduct of the litigation transfers to the assignee. However, the IP will often remain involved in a supporting capacity, for example by providing access to books and records, assisting with disclosure exercises, providing witness evidence and otherwise supporting the assignee where reasonably required.

Assignment vs. funding

There are a number of potential advantages to assignment when compared with traditional litigation funding arrangements:

- **Early realisation** – The estate may receive an upfront payment shortly after the assignment completes, allowing funds to be realised before the litigation concludes.
- **Reduced litigation risk** – The assignee ordinarily assumes responsibility for funding and pursuing the claim, as well as the associated adverse costs risk.
- **Reduced administrative burden** – Responsibility for the day-to-day conduct of the claim transfers to the assignee, reducing the time and resource commitment required from the officeholder.
- **Potential participation in future recoveries** – Many assignment arrangements provide for the estate to receive a share of future recoveries in addition to any upfront payment, enabling creditors to benefit from a successful outcome.

When deciding whether assignment or funding is the more appropriate option, the IP should carefully consider the commercial terms available. Some assignments provide certainty through an immediate realisation, whereas a funded claim will typically allow the estate to retain a greater proportion of any successful recovery. The most appropriate structure will depend on the circumstances of the estate, the nature of the claim and the appetite of stakeholders for risk, delay and potential return.

	Funding (CFA/DBA/third-party funding)	Assignment
Claim ownership	Remains with estate.	Transferred to assignee.
Decision-making	Day-to-day running of the claim remains with the estate (with high-level oversight from the funder).	Conduct of the claim transfers to the assignee, although the officeholder will typically be contractually obliged to provide ongoing assistance and information in support of the claim as reasonably required.
Timeline to realisation	No realisations until the claim is decided. Uncertain court timetables. Could be a very extended period.	May provide an immediate or early realisation through an upfront payment, with further sums potentially becoming payable if the claim succeeds.
Cost risk	Could be found liable for the other side's costs, in the event that the claim fails (usually addressed by ATE).	Cost risk lies with the assignee.
Proceeds split	Proceeds of a successful claim are split between the estate and the funder according to their commercial agreement.	Commercial arrangements vary, but the estate will often receive an upfront payment and/or a share of recoveries, with the assignee retaining the balance in return for assuming responsibility for the litigation and its associated risks.

Types of claim

In deciding how best to realise claims, IPs will also need to consider whether any claim that they might have is suitable for funding or assignment, and whether there will be any counterparties willing to fund or take on the claim at a rate of return that represents value to creditors.

Funders (including law firms taking on risk via a CFA or DBA) will generally look at the following factors when deciding whether or not to invest in a claim:

- **Legal merits** – Funders will only invest in cases with a good legal case. Litigation funders will often require counsel's opinion on the likelihood of success (with many funders requiring an opinion that success is at least 80% likely).
- **Sound legal representation** – Funders require cases to be in "safe hands", run by experienced legal teams, with experience in the relevant area.
- **Quantum of damages** – The anticipated damages must be sufficient to cover the legal costs, funder's upside and insurance premiums, as well as leaving a meaningful sum for the estate.
- **Recoverability of damages** – The defendant must have sufficient assets to make any awarded damages recoverable.

While there is no right answer as to which claims should be funded by which structure and each claim should be considered individually, the following is a fair rule of thumb:

Litigation funding	Most suited to cases where costs are high, and the claim value is high (and recoverable) enough to make the funder's return sensible while leaving value for the claimant. Generally more suited to larger and more complex claims
CFA	Often used where the claimant already has a strong relationship with the law firm and has cash available to fund disbursements. Generally more suited where there is an ongoing relationship, and costs are relatively low, in absolute terms.
DBA	Often used where the potential damages award is high compared to the legal costs required. Generally used where absolute legal costs are relatively low.
Assignment	A good option where the officeholder wants an early realisation, lacks funding to pursue the claim and/or does not wish to assume the risks and responsibilities associated with conducting the litigation.

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