CASE CAPITAL

Financing Commercial Claims: The Case Capital Process

A structured approach to financing and de-risking commercial claims

Introduction

Commercial litigation often creates a pressing financing question.

A business may have a valuable claim and a realistic route to recovery, but pursuing it requires a significant capital commitment *now*, while the outcome — and any recovery — may remain uncertain for months or years.

That means the financing decision has to be made before the result is known.

The business therefore needs to decide how much of the cost and risk it is prepared to carry itself.

Continue paying the legal costs internally and the business commits its own capital and bears the risk of losing it if the claim fails.

Transfer some of that cost and risk to a third-party funder and the business preserves capital and reduces its downside — but gives up an agreed part of the recovery if the claim succeeds.

Neither is inherently right or wrong.

Some businesses rationally choose to self-fund. Others use non-recourse litigation finance to transfer part of the cost and downside risk. Others prefer to use conventional commercial finance, or combine several of these approaches.

The important point is to make the financing decision deliberately, after considering the trade-offs— rather than allowing it to emerge by default.

Case Capital helps commercial claimants work through that decision.

We start by understanding the claim, the capital requirement and the risks you are trying to manage. We then identify the financing and risk-transfer routes that may fit, consider whether the claim is ready for market, and coordinate a selective approach to relevant providers. Finding potential providers is only part of the problem. The harder question is knowing which providers genuinely have appetite for the claim when it reaches the market.

We do not start with the assumption that litigation finance or external funding is necessarily the answer. We look at the trade-offs, the economics, and your objectives before working with you to decide which routes are worth exploring.

1. The financing decision behind the litigation

A strong claim can still be financed wrongly

Once a business decides to pursue a commercial claim, it is also making a financing decision - whether it treats it as one or not.

Self-funding legal costs from your own cash reserves is a financing strategy.

Drawing on existing borrowing capacity is another.

So is bringing in non-recourse litigation funding.

Or the business may seek to arrange new conventional finance, using a recourse facility suited to the litigation.

Each choice can materially affect how much risk the business carries and how much of the recovery it retains.

A company may commit cash that it later wishes it had preserved. Or a business may assume that non-recourse litigation funding is the obvious solution, when cheaper conventional capital could have been viable.

A strong claim can therefore still be financed wrongly. The question is not simply whether capital is available, but which form of capital makes sense for the business and the claim.

There are therefore different ways to finance and de-risk a claim.

For some claimants, external finance is a necessity. For others, it is a choice. And for some, self-funding remains the simplest and cheapest answer.

The question is not simply:

Can I get litigation funding?

It is:

How should I finance this claim, which risks am I prepared to retain, and what route makes commercial sense?

2. The principal ways to finance and de-risk a claim

Different financing structures allocate cost and risk in different ways.

At the highest level, a claimant can fund the litigation itself, transfer the risk of funded capital to a non-recourse litigation funder, or use conventional recourse finance while retaining the litigation risk.

The key differences are set out below.

Structure	Who funds the legal spend?	Repayable if the claim fails?	Who bears the own-cost risk?	Main trade-off
Self-funding	Claimant	N/A	Claimant	Retain the recovery, but carry the cost and downside risk
Non-recourse litigation finance	Litigation funder	No	Litigation funder	Transfer funded-capital risk in exchange for an agreed return from a successful recovery
Recourse commercial finance	Lender	Yes	Claimant	Potentially cheaper capital, but repayment and litigation risk remain with the claimant

Self-funding

For a well-capitalised claimant, paying the legal costs directly may remain the simplest and cheapest option, depending on their risk tolerance and how productive their alternative use of capital may be.

The claimant retains the recovery, but also carries the legal expenditure and the risk that those costs will not produce a successful recovery.

Non-recourse litigation finance

A specialist litigation funder provides capital against the potential recovery from the claim.

If the claim fails, the claimant does not ordinarily repay the funder's investment. If the claim succeeds, the funder receives an agreed return from the proceeds.

That can make sense where the claimant cannot reasonably carry the legal spend itself — or where it could, but prefers to transfer the cost and downside risk.

The trade-off is economic. The claimant reduces the capital at risk, but gives up part of a successful recovery in return.

Recourse commercial finance

For some businesses, conventional commercial finance may produce a superior economic result.

A business with sufficient assets, cash flow or borrowing capacity may be able to arrange a recourse facility suited to the litigation — for example, bridge, asset-backed or other specialist commercial finance.

The debt remains repayable whether the claim succeeds or fails, meaning the claimant retains the litigation and repayment risk.

But where the business can support the borrowing and is comfortable carrying that risk, conventional capital may be materially cheaper than non-recourse litigation funding.

The business may therefore retain more of a successful recovery.

Other ways to reduce or manage the risk:

Law firm risk sharing

A law firm may sometimes be willing to defer or share part of its fees through a conditional, contingent or hybrid arrangement. This can reduce the amount of external capital required, although availability depends on the firm and the nature of the claim.

Adverse costs insurance

This specialist insurance addresses a different risk. It can protect against defined liabilities for an opponent's recoverable costs if the claim is unsuccessful. It is insurance rather than a source of capital and can sit alongside self-funding, litigation finance or other financing.

Case Capital may also be able to assist with relevant introductions where these arrangements form part of an appropriate structure.

Combining structures

Different structures can also be combined where appropriate. For example, a claimant might use partial litigation funding alongside a law-firm discount, or combine recourse finance with adverse costs insurance.

The objective is not to add complexity, but to allocate cost and risk in a way that fits the economics of the claim and the claimant's objectives.

3. One claim, different rational financing choices

Consider a company pursuing a £16million commercial claim, with approximately £1.4 million of remaining legal expenditure over two years. The defendant appears able to satisfy a judgment.

The claim is the same in each example. What changes is the business context and the trade-offs the claimant is prepared to make.

Business A — self-funds

The business has £25 million of available cash, limited competing demands for that capital and is comfortable carrying the litigation risk.

Committing £1.4 million to the claim does not materially constrain the business. Self-funding may therefore produce the strongest economics: it bears the downside, but retains the full recovery.

Business B — uses litigation finance

The business has £5 million of available cash, but expects to need most of it for working capital and planned investment over the next two years.

It could fund the litigation itself. But doing so would put £1.4 million — more than a quarter of its available cash — at risk in an uncertain claim.

Instead, it obtains non-recourse litigation finance under terms that entitle the funder to up to a third of the recovery if the claim succeeds. If the claim fails, it does not have to repay the funder.

The business therefore gives up a significant part of the upside if it wins, but preserves its £1.4 million of capital and transfers the risk of losing the funded legal spend.

Business C — uses recourse finance

The business is profitable and owns assets against which it can borrow, but does not want to commit £1.4 million of cash to the litigation.

Because it can support conventional borrowing, it may be able to finance the legal spend at a substantially lower cost than the contingent return required by a litigation funder.

It keeps the litigation and repayment risk, as the loan remains repayable whether the claim succeeds or fails — but, if the claim succeeds, it retains materially more of the £16 million recovery.

The claim has not changed. The financing decision has.

The appropriate route depends not only on the claim, but on the claimant's liquidity, balance sheet, risk tolerance and alternative uses for its capital.

That is why Case Capital starts with the claimant's economics and objectives rather than assuming that one form of finance is automatically the answer.

4. How the Case Capital process works

The process is designed to answer two questions efficiently:

Which financing route best fits the claim, its economics and your objectives?

And, if external finance is worth pursuing:

How should the relevant market be approached?

We work through those questions in four stages:

01

Understand the claim and the financing objective

What funding requirement does the claim create, and what are you trying to achieve?

02

Test the economics and identify the right financing route

Which form of finance best fits the claim, the business and the economics?

03

Approach the relevant market

Which providers should be approached, what information do they need, and how should those approaches be coordinated?

04

Coordinate the process through to a decision

Manage information flow and coordinate discussions between the claimant and interested providers.

Stage 1 — Understand the claim and the financing objective

We begin with the essentials.

- What is the claim about?
- Has litigation started, and if so, what stage has it reached?
- What is the realistic value and what else is at stake?
- What has been spent so far, what expenditure is likely to remain, and are there any important upcoming deadlines?
- Is there a realistic prospect of recovering from the defendant if the claim succeeds?

We also need to understand what the claimant is trying to achieve financially.

A company that needs £1 million — because funding the litigation from its own resources would put pressure on the business — has a different problem from one with substantial liquidity that could self-fund but would prefer to preserve its capital or reduce its downside risk.

At this stage, the aim is simply to understand the claim, the financing requirement and the claimant's objectives well enough to identify which routes should be explored.

Stage 2 — Test the economics and identify the right financing route

The next step is to compare the available routes against the nature of the claim and the claimant's financial position.

A legally strong claim is not automatically a financeable claim— external providers will consider the economics as well as the law.

Equally, a claimant that could afford to self-fund may still have good commercial reasons to use third-party capital instead.

Therefore, selecting the right financing route means comparing the economics of:

- **self-funding;**
- **litigation finance;**
- **recourse finance; and**
- **potentially, a combined structure.**

For specialist litigation finance, relevant considerations include the claim merits, the realistic potential recovery, the estimated legal budget, the likely claim duration, the enforcement prospects, and the value to the claimant of transferring the risk of the funded legal spend.

For conventional commercial finance, the claimant retains the litigation risk and the borrowing remains repayable, but the cost of capital may be substantially lower. The business's cash flow, assets, existing borrowing, available security and repayment capacity therefore become central to the analysis.

Self-funding remains part of the comparison. For a claimant with sufficient liquidity, an appetite for litigation risk, and no more productive use for the capital, it may still produce the better economic result.

The purpose of this stage is therefore not simply to produce a universal **"fundable / not fundable"** answer. It is to identify the financing route — or routes — that best fit the claim, its economics and the claimant's objectives.

THE DECISION GATE

That analysis leads to one of four broad outcomes:

Proceed to market	The claim and claimant are sufficiently developed for the financing route identified, and there is a clear basis for approaching relevant providers.
Develop the case or financing proposition further	The preferred financing route may still be viable, but something material needs to be developed before approaching providers. Depending on the route, that might mean clearer quantum evidence or budget information, further procedural progress, stronger financial information, or a more credible repayment case.
Explore a different financing route	The route initially contemplated may not remain the best fit once the claim merits and economics, or the claimant's financial position are fully understood. Another financing route may then be appropriate to explore if the characteristics of the claim or business support it.
Do not seek external capital	There may be no viable external financing route at present because the claim or business cannot support it. Alternatively, external finance may not improve the commercial position sufficiently to justify its cost, in which case self-funding may remain the better answer.

The value of the decision gate is a clear next step: proceed to market, develop the case further, explore a different financing route, or conclude that external capital is not viable or appropriate.

Stage 3 — Approach the relevant market

Once the right financing route has been identified, the focus shifts from **which type of finance** to **which providers within that market should be approached**.

Providers will need enough information to make a meaningful initial assessment. The information required varies and will also depend on the financing route. Generally:

For litigation finance	For recourse finance
Concise claim summary and key merits material	Business overview and financial information
Realistic claim value / quantum	Cash flow and repayment capacity
Remaining legal budget	Existing borrowing
Procedural stage and likely duration	Available assets and security
Enforcement position	Proposed facility size and term

Different providers also operate to different mandates.

Those mandates may turn on claim type, size, stage, capital requirement, security, portfolio exposure and other provider-specific criteria.

Case Capital uses those criteria to identify the right providers whose mandates appear aligned, organise the information needed for an initial review, and coordinate a selective approach.

More than one provider may respond positively. Where that happens, we will help coordinate the parallel discussions so the claimant can compare initial appetite before deciding which provider or providers to take forward.

Some funders may then request a defined period of exclusivity before committing further resources. If that process does not complete, other providers that responded positively can be revisited once any exclusivity period has ended.

Stage 4 — Coordinate the process through to a decision

Once a provider is engaged, Case Capital remains involved as the matter moves through further review and towards a decision.

We manage the communication flow between the claimant and interested providers, helping to obtain and organise any further information required as providers progress their assessment.

Our role is to coordinate that process.

Providers remain responsible for their own assessment and decisions. If a discussion progresses towards formal terms, the claimant and its professional advisers take the process forward from there.

The client decides whether to proceed, with its legal or other professional advisers advising on the terms and effect of any agreements.

5. Why use Case Capital

Finding a list of providers is not necessarily the difficult part.

The difficult part is knowing **which providers genuinely have a mandate for the claim, and how to put the matter in front of the right section of the market, at the right time.**

The right claim can still reach the wrong funder

The litigation-finance market is not homogeneous.

Funder mandates differ by claim type, size, jurisdiction, procedural stage, capital requirement and portfolio exposure. One provider may currently favour large late-stage commercial disputes; another may be prepared to consider smaller or earlier-stage claims.

Their investment appetite can also change as capital is deployed and priorities evolve. A strong and otherwise financeable claim can still be declined for reasons that have nothing to do with the claim itself. A funder may be managing concentration risk because it already has significant exposure to the same defendant, sector or jurisdiction, or it may have moved from active deployment into harvest or realisation mode. In those circumstances, a rejection does not necessarily mean the claim itself is not fundable. **It may simply mean it reached the wrong funder at the wrong time.**

This is why a provider that appears an obvious fit on paper may not actually be the right counterparty at the time the claim reaches the market.

The same need for specialist market knowledge applies to conventional commercial finance. You may have an existing bank or lender willing to fund litigation-related expenditure, and if they can do so on commercially viable terms, that may be the right answer.

But many mainstream lenders are uncomfortable with litigation as a use of funds. Some will not lend for it at all; others may only do so on terms that make the borrowing unattractive. The key is therefore to identify lenders that are comfortable funding litigation-related expenditure and can do so on competitive terms.

Across both non-recourse litigation finance and recourse commercial finance, the challenge is therefore understanding which providers have genuine appetite, what constraints apply, and whether they are actively deploying into that type of risk at that stage of the market cycle.

The Case Capital advantage

Case Capital specialises in these financing markets. We work repeatedly with litigation funders and specialist commercial lenders, build deep relationships with the people making deployment decisions, and maintain a detailed understanding of changing mandates, appetite and deployment priorities.

That market intelligence is combined with experience of the issues that repeatedly affect financing decisions: claim merits and quantum, proportionality between budget and recovery, enforcement, timing, information requirements, the claimant's financial position and the provider's own portfolio considerations. It helps us judge not only **which route to explore, but which providers to approach, when to approach them, and which issues are likely to drive their assessment.**

Because we work across both non-recourse litigation finance and recourse commercial finance, we can also move between those markets where the economics point in a different direction rather than treating one form of finance as the default.

The result is a focused market process designed to reach the right counterparties at the right time.

6. What the process requires from you

The first step is deliberately light.

Our short initial enquiry form asks for the basics: the approximate claim value and funding requirement, where the claim is being brought, its current stage, whether you already have legal representation, the type of funding or support you are interested in, and a brief description of the dispute.

That is usually enough for us to decide whether a fuller discussion would be useful.

If there is a financing route worth exploring, more information will be needed as the process develops. For litigation finance, that may include key legal materials, evidence, quantum and budget information. For recourse finance, the focus will be more on the business, its financial position, available security and repayment capacity.

It is also useful to have thought about what you want the financing decision to achieve. That might be preserving cash for the business, reducing the amount of capital at risk, avoiding additional borrowing, retaining as much of the recovery as possible, or simply finding a way to fund a claim that would otherwise be difficult to pursue. You do not need to know which financing route is right — part of our role is to help you work through that — but understanding your priorities gives us a better starting point.

Candour is also important. Known weaknesses, adverse developments and any previous approaches to funders or lenders should be raised early. Providers will carry out their own assessment, so the aim is not to present a perfect case, but a clear and accurate one.

How long does it take?

There is no single timetable.

Case Capital can often reach an initial view within days once the necessary information is available.

A provider process is usually measured in **weeks rather than days**. Litigation-funding processes commonly take several weeks; complex matters can take considerably longer where diligence is extensive. Commercial-finance timescales will depend on the lender, the structure and the information required.

The main variables are the complexity of the matter, the quality and completeness of the available information, and the provider's own review process.

Good preparation cannot guarantee speed, but it can prevent avoidable delay.

7. Fees, confidentiality and boundaries

How Case Capital is paid

In most cases, you do not pay Case Capital directly. We operate as an independent gateway to litigation funding and specialist providers. Our role is to give you structured access to the relevant market — not to steer you towards any single provider.

Our usual model is to receive a success-based fee from the provider. For commercial finance, that fee is generally payable when the financing is agreed or completes. For litigation finance, our fee is typically contingent on the funded claim succeeding and is paid from, or calculated by reference to, the resulting recovery.

Where we are paid by a third-party provider, those fees:

- Do not create an additional fee payable by you to Case Capital; and
- Do not affect which offers are presented to you.

We work with a broad range of funders and you will always see every offer exactly as presented by each provider. You remain free to choose whichever provider you prefer, or none at all.

In some cases, the most suitable provider for your claim may not pay Case Capital a fee. If that happens, we may ask you to agree a separate fee before proceeding. **No client-paid Case Capital fee is payable unless it has been specifically agreed with you in writing in advance.**

Because Case Capital is typically only paid either when a transaction completes or a funded claim successfully concludes, our interests are aligned with progressing matters towards a realistic financing outcome.

That model also creates discipline. We are not rewarded for circulating every enquiry indiscriminately. Our long-term provider relationships depend on bringing forward matters that properly fit their mandates and are sufficiently developed to justify their attention.

In practice, that gives us two strong incentives: to help clients find a financing route that can realistically complete, and to maintain the quality of the matters we introduce to providers.

Confidentiality and information sharing

Commercial disputes often involve sensitive and potentially privileged material.

The initial discussion is therefore purposefully at a high level. In appropriate circumstances, an anonymised outline may be used before the claimant is identified to a potential provider.

As the process develops, providers will generally need more information to carry out their own assessment. Before detailed confidential information is shared with Case Capital, we will always put a non-disclosure agreement (NDA) in place with the claimant. Any further disclosure to potential providers is then managed carefully with you and, where material may be privileged, with your legal advisers.

Where Case Capital's role ends

Case Capital is not a litigation funder or lender. We do not provide finance ourselves or guarantee that finance will be available. Providers carry out their own assessment and decide whether they are prepared to offer capital.

We coordinate the financing process as discussions progress, but we do not negotiate or advise on the legal or commercial effect of term sheets, funding agreements or other transaction documents. Those matters remain for the claimant and its professional advisers.

Once the financing has been agreed or completed, our role will ordinarily come to an end and the ongoing relationship is between the claimant, the provider and their respective advisers.

Your legal team remains central

Where you already have solicitors or counsel, Case Capital can work alongside them on the financing process. They remain responsible for advising you on the legal issues arising from the claim and, depending on the scope of their instruction, may also advise you on any term sheet, funding agreement or other financing documents.

Where that advice falls outside their instruction, you should consider obtaining appropriate independent advice before entering into any financing arrangement.

If you do not yet have legal representation, that is not a barrier to approaching Case Capital. You can still make an initial enquiry and appoint an appropriate legal team as the matter develops. You are free to choose your own advisers or, where helpful, we may also be able to introduce specialist firms with relevant experience.

8. Speak to Case Capital

You do not need to know which financing route is right before getting in touch.

Tell us a little about the claim and the approximate funding requirement, and we can discuss which financing routes may be worth exploring.

Start an initial enquiry