

Litigation Finance: A Commercial Primer

How litigation finance is priced, how funders assess claims, the risks it transfers — and when self-funding may make more commercial sense.

A business may be perfectly capable of self-funding a claim, and yet still decide that it should not carry the full capital commitment and downside risk itself.

The commercial question is not simply whether the business can afford the litigation. It is whether that capital could be deployed more productively elsewhere, and how much litigation risk the business is prepared to retain.

Litigation finance offers another way to allocate both capital and risk.

1. What is litigation finance?

Litigation finance is specialist third-party capital used to pay some or all of the costs of pursuing a legal claim.

It is typically non-recourse: if the claim succeeds, the funder is repaid from the proceeds; if it fails, the claimant is not required to repay the capital the funder has deployed.

That makes it fundamentally different from ordinary business borrowing.

A conventional lender expects to be repaid regardless of the outcome of the litigation. A specialist litigation funder puts its capital at risk alongside the claim.

The trade-off is straightforward: much of the financial downside risk is transferred to the funder; and in return the claimant gives up part of any successful recovery.

2. Why use it if you can afford to self-fund?

Affordability is only part of the equation.

A business might have £1 million available for litigation. That does not mean putting £1 million into a multi-year claim is necessarily the most efficient capital allocation decision.

Those same funds could instead support working capital, reduce debt, finance an acquisition or expansion, or be reinvested in the business.

External litigation finance can also preserve balance-sheet capacity, protect borrowing headroom and reduce the drag of litigation spend on financial performance.

There is also the downside to consider. If the claim fails, a self-funded claimant bears the legal spend itself, but recovers nothing.

Litigation finance changes that exposure.

The usual starting question is:

Can we afford to fund the litigation ourselves?

A more useful question is:

Is retaining all of the upside worth carrying all of the cost and downside ourselves?

3. How does funding change the risk profile?

The benefit of litigation finance is not simply that someone else pays your legal fees. It's that it can fundamentally reshape the financial risk of pursuing the claim.

This is because, when it's combined with appropriate adverse costs insurance, it can essentially curtail both your own-side cost exposure and your liability for any opponent's costs.

When self-funding, you retain all of the upside — but also all of the downside. Litigation funding, together with insurance for adverse costs, lets you exchange part of that recovery in order to transfer away most of the downside.

The result is an asymmetric exposure: you pursue meaningful upside, while putting a floor under your risk of loss.

4. What does litigation finance cost?

Reducing both your risk and financial commitment has an economic price: sharing part of any successful recovery with the funder.

That price needs to be weighed against the capital preserved and the downside risk transferred.

There is no standard tariff.

Single-case commercial litigation finance is usually structured around the amount of capital required, the risk the funder is taking and the expected duration of the claim. The funder's return may be calculated as a multiple of capital, a percentage of the recovery, or a combination of the two.

For rough orientation only, a commercial claim with an expected duration of about two years might be priced at around **2.0–2.5× the capital invested, inclusive of returned capital**. Percentage-based structures might instead fall somewhere around **20–30% of an agreed recovery base**. These are **illustrations, not market rates**: actual pricing can be materially lower or higher depending on the claim and structure.

Duration matters because longer claims will usually justify a higher return to the funder. Pricing will also reflect the merits, quantum, stage of proceedings, recoverability risk, budget and amount of capital required. Different funders will structure and price those risks differently.

The mistake is comparing headline funding cost only in the success scenario. A proper comparison looks at the full economics:

- What you retain if the claim succeeds;
- What you stand to lose if it fails;
- How much of your own capital has to be committed;
- The impact on your balance sheet, borrowing capacity, and financial performance; and
- What value that capital could create if deployed elsewhere.

Only then are you comparing the options on like-for-like commercial terms.

5. What does a funder need to see?

Funders are not simply asking whether the claimant has a strong legal argument.

They are underwriting your claim as an investment.

That means looking beyond just the merits, and considering the commercial characteristics of the claim, including whether there is:

- A credible legal case, supported by good evidence;
- A realistic assessment of what the claim is likely to recover;
- A legal budget proportionate to the likely recovery;
- A defendant against whom a judgment or settlement can realistically be recovered;
- An experienced legal team; and
- A credible route and timetable to resolution.

Strong merits are necessary, but are not sufficient on their own.

A legally sound claim can still be unattractive to funders if the economics are unworkable, or the path to recovery is too uncertain.

Funders also have different mandates, specialisms and risk appetites. A decline from one funder does not necessarily mean another will reach the same conclusion.

6. When is self-funding probably the better choice?

If a company has:

- Abundant capital or cheap access to credit;
- A litigation budget it can comfortably afford relative to its resources;
- Weak alternative returns, or limited competing uses for that capital;
- High risk tolerance and the capacity to absorb the full downside without materially affecting operations; and
- A claim where the price of funding would consume an unreasonable share of the recovery,

then self-funding may remain the rational choice.

Sometimes the cost of external capital can outweigh the value of the risk reduction it provides.

The commercial question is whether the value of transferring risk and preserving capital justifies the funding cost.

7. How should a business assess its options?

The price of litigation finance is visible, while the true economic burden of self-funding is easier to overlook.

Over a multi-year dispute, the risk retained and the value forgone by committing your own capital to the claim can be significant.

So the real comparison is between the price of litigation finance and the **full economic cost of self-funding** — including the capital at risk, the downside retained and the opportunity cost.

Compare the economics

Model the trade-offs in just a few minutes, using your own assumptions, and see how self-funding, adverse costs insurance, and litigation finance compare.

[Use our Litigation Economics Calculator →](#)

Want more detail? Explore our in-depth guides to litigation finance pricing, fundability, insurance, funding agreements and economics.

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Find the right funding fit: Case Capital helps you navigate the market — identifying funders whose mandates best fit your claim, whether proceedings are still being considered or are already underway.

[Discuss your funding options →](#)

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