

News

External funding booms as litigators plot upturn

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Published: 20/03/2008 06:00

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Eight out of 10 of the City's top law firms are already using or assessing external funding for litigation and arbitration cases, it has emerged, marking a dramatic move of third-party funding into mainstream practice.

All of the top 10 City firms except Linklaters and Slaughter and May are now offering, or considering offering, clients external funding in some cases, *Legal Week* has established.

Clifford Chance (CC) is currently using third-party funding for an arbitration case, while Allen & Overy (A&O), Freshfields Bruckhaus Deringer, Herbert Smith and Lovells are all actively seeking funding for a number of cases. Ashurst, meanwhile, confirmed that it has already used external funding. Simmons & Simmons is considering it as a serious option for the future.



A&O is believed to be representing a claimant on a \$1bn (£494m) arbitration in which it expects to find funding, while US heavyweight Skadden Arps Slate Meagher & Flom is also using third-party funding in an arbitration case.

The dramatic adoption of the once-controversial technique illustrates the fast-changing attitudes as City litigators position themselves for an expected upturn in group claims and litigation in general.

The model, which has attracted interest from a range of financiers and intermediaries over the last two years, sees outside investors offer litigation funding in return for a slice of the damages.

News of its take-up by leading firms comes less than eight months after *Legal Week* revealed that Herbert Smith was breaking with tradition and considering outside funding options. At the time, the move by the City's leading litigation team was seen as highly symbolic.

Freshfields litigation partner Paul Lomas told *Legal Week*: "We are now starting to see some serious proposals for the [outside] funding of major cases - if they are the right kind of cases - which clients are analysing a bit like any other deal."

CC arbitration partner Audley Sheppard (*pictured*) commented: "For some clients, it is attractive for the burden and uncertainty of paying for complex and expensive litigation or arbitration to be passed on to a funder, even if it means giving up some of the compensation that they may be awarded."

Skadden European arbitration head Paul Mitchard added: "Funding is definitely here to stay. It is a significant development in dispute resolution, where litigation and arbitration are now being viewed as a commercial venture for outside funders for the first time."

Norton Rose was one of the first law firms to use outside funding when it represented Stone & Rolls in its \$173.6m (£85.7m) negligence claim against City-based accountancy and advisory firm Moore Stephens.

Businesses that have entered the maturing market include funders IM Litigation Funding, Allianz, hedge fund MKM Longboat and Juridica Investments - which publicly listed for £78.4m last year - as well as a number of brokers such as Calunius Capital and The Judge.

However, Linklaters advocacy head, Mark Humphries, sounded a note of caution, saying: "The one area where it might have a role is in small group actions. But I have not seen evidence that there is a gap in the market crying out to be filled by funding."

Ashurst partner Ed Sparrow also warned that external funding had considerable drawbacks: "It is a useful new tool in the box but third-party litigation is very expensive - most of my clients say too expensive. The going rate is between 25% and 40% of recoveries."

Talkback: Is third-party funding a welcome phenomenon? Click [here](#) to have your say.

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