

# PANNONE

## ILLUSTRATION OF ADVANTAGE FUNDING

This is an illustration of how Advantage funding could work in practice as compared to traditional methods of funding. We have set out the facts and figures which have been assumed for the purposes of this illustration under Assumptions below. This example is based on the party funded under Advantage being the claimant, however, Advantage funding is also available to defendants.

As the full example shows, Advantage could provide a significant financial benefit and tactical gain. Although this is an example necessarily based on assumptions, the potential financial implications would follow through in respect of any monetary claim.

### Summary

The full example demonstrates what might be the claimant's best and worst outcomes respectively and then compares how these would differ where the same claimant is funded under Advantage. The example then shows how the opponent's position also changes depending upon how the claimant is funded.

The table below highlights the key differences that can be taken from the full example and demonstrates the significantly stronger position that Advantage funding could give to the claimant.

	Claimant's worst case scenario	Opponent's worst case scenario
Traditional funding	£170,000	£670,000
Advantage funding	£35,000	£830,000

Using the assumed facts and figures, the claimant's worst case scenario under traditional litigation funding is a deficit of £170,000. However, if the same party was funded under Advantage, the worst case scenario would be a deficit of only £35,000.

In addition, where the claimant is using traditional methods of funding, his opponent's worst case scenario is a deficit of £670,000. Where the same claimant is funded under Advantage, his opponent's worst case scenario has increased to a deficit of £830,000.

As a result, the changes to both parties' positions where one is funded under Advantage entirely alter the negotiation landscape and the claimant's ability or willingness to risk pursuing a dispute.

## Assumptions

This example assumes:

There is a claim for £500,000 and there is an all or nothing chance of success ie 50/50

- The level of costs to trial for the claimant would be £100,000 (£70,000 of solicitor's fees and counsel's fees of £30,000)
- The level of costs recovered if the claim succeeds would be £70,000 ie 70%
- The opponent has a similar level of costs to trial

## Traditional funding

The best case scenario for the claimant, if he wins, might be:

Damages awarded	Own costs incurred to pursue claim	Own costs recovered	Shortfall of own costs recovered (payable from damages)	Final damages received after deducting shortfall
£500,000	£100,000	£70,000	£30,000	£470,000

The worst case scenario for the claimant, if he loses, might be:

Damages to be paid	Own costs incurred to pursue claim	Opponent's costs if lose	Shortfall of own costs recovered	Cost to claimant
£0	£100,000	£70,000	N/A	£170,000 (ie loss)

The net cash difference between the best and worst case scenarios is £640,000. On the basis of a 50/50 chance of success, the difference is £320,000. As a result, the claimant might consider accepting (if offered by the opponent): £150,000.

The best case scenario for the opponent, if he wins, might be:

Damages awarded	Own costs incurred to defend claim	Own costs recovered	Shortfall of own costs recovered	Cost to opponent
£0	£100,000	£70,000	£30,000	£30,000 (ie loss)

The worst case scenario for the opponent, if he loses, might be:

Damages to be paid	Own costs incurred to defend claim	Opponent's costs if lose	Shortfall of own costs recovered	Cost to opponent
£500,000	£100,000	£70,000	N/A	£670,000 (ie loss)

The net cash difference between the best and worst case scenarios is £640,000. On the basis of a 50/50 chance of success, the difference is £320,000. As a result, the opponent might be prepared to offer and pay in settlement: £350,000.

## Advantage funding

Under Advantage, commercial litigation could be funded on the following basis:

- A split conditional fee agreement i.e. 50/50 on solicitor's fees of £70,000 (where counsel is not acting on a CFA so client pays counsel's fees of £30,000 as the claim progresses). Read more...

- The claimant would initially pay only £50,000 for the Early Risk Assessment. Read more...
- After the event insurance with a premium of £90,000 (payable only if the claimant wins, and otherwise self insured and not payable if the claimant loses). Read more...
- The claimant's success fee (if he wins) is 100% of the total fees
- The opponent is not funded by a conditional fee agreement or insurance
- The level of costs for either side are the same

The claimant's best case scenario, if he wins, might be:

Damages awarded	Own costs incurred to pursue claim (50% of solicitor's fees plus all counsel's fees)	Own costs recovered (70% of £65,000 paid out)	Shortfall of own costs recovered (payable from damages)	Final damages received after deducting shortfall
£500,000	£65,000	£45,500	£19,500	£480,500

The insurers will also recover the insurance premium. We assume that they will not recover this from the claimant but that it will be recovered in full from the opponent. The balance of solicitor's fees will be recovered (in whole or in part) from the losing opponent.

The worse case scenario for the claimant, if he loses, might be:

Damages awarded	Own costs incurred to pursue claim	Opponent's costs if lose	Costs paid by insurer (opponent's costs plus own counsel's fees)	Cost to claimant
£0	£65,000	£70,000	£100,000	£35,000 (ie loss)

The net cash difference between the best and worst case scenarios is £515,500. On the basis of a 50/50 chance of success, the difference is £257,750. As a result, the defendant might be prepared to offer and pay in settlement: £222,750.

The best case scenario for the defendant, if he wins, might be:

Damages awarded	Own costs incurred to defend claim	Own costs recovered	Shortfall of own costs recovered	Cost to defendant
£0	£100,000	£70,000	£30,000	£30,000 (ie loss)

The worst case scenario for the defendant, if he loses, might be:

Damages awarded	Own costs incurred to defend claim	Opponent's costs if lose (£100,000 x 70% plus success fee (£70,000) and insurance premium £90,000)	Shortfall of own costs recovered	Cost to opponent
£500,000	£100,000	£230,000	N/A	£830,000 (ie loss)

The net cash difference between the best and worst case scenarios is £800,000. On the basis of a 50/50 chance of success, the difference is £400,000. As a result, the opponent might be prepared to offer and pay in settlement: £370,000.

To find out more about Advantage or to arrange a discussion with a dispute resolution solicitor click [here](#) or call us on 0800 840 4929.