FUNDING SERVICES

Pay for play

With an English barristers' chambers now offering third party funding services, Edward Machin looks at the ever-growing number of brokers looking to finance the UK's litigation requirements

Liverpool, Manchester and Leeds-based **Exchange Chambers** recently partnered with litigation funding broker **Maxima** to become the latest UK legal services provider to enter the increasingly lucrative third party litigation financing market. Exchange's chambers director **Tom Handley** says the partnership "will enable our commercial department to source funding for almost all types of litigation."

Given that the litigation funding market is extensive, with multiple providers and numerous product options, he explains, "finding the most suitable funding arrangements for clients can be both complex and time consuming."

For **Mark Andrews**, Maxima's CEO, "Exchange Chambers is a fast expanding and progressive set with a first rate commercial department. We are delighted to be working with them."

"As the UK's premier independent broker funding all sizes of litigation, we recognise the range and differentials between funders," he continues. "We are looking forward to working closely with Exchange Chambers so they can pass this knowledge and expertise onto their clients."

Exchange is the first barristers' chambers to enter into a partnership with Maxima – although not the first set to engage the litigation funding market, as has been claimed. ▶




"The use of a third party to fund litigation provides a simple, cost-effective and risk-free alternative for lawyers and their clients"

Nick Rowles-Davis, Vannin Capital



Argent Law, an in-house offshoot of **Argent Chambers** in London, has been brokering litigation funding deals since 2010 – the divorce of celebrity chef **Marco Pierre White** representing its most high-profile case to date. Having worked with Maxima to secure funding to assist Pierre White's estranged wife in litigation, Argent Law then did the unthinkable – it referred the case, and fees, to rival barristers.

Because Argent specialises largely in criminal law, it stood to gain little financially from the arrangement. "We don't take a percentage of the brokerage fee – we benefit in goodwill," **Michael Martin**, the set's senior clerk, told *The Times* last year. "Solicitors may refer cases on to us," Martin added. "It's good old-fashioned rain-making."

Taking AIM

While it remains illegal in the UK for a third party to interfere with or control another party's litigation (known as champerty), statute permits the funding of litigation provided the funder does not dictate legal strategy.

Indeed, the English courts have explicitly endorsed such funding since the 2005 case of *Akin v Borchard Lines*, while recognising the general principle – in the context of insolvencies, at any rate – since *Seear v Lawson* in 1880.

Nonetheless, as **Gavin Foggo** of **Fox Williams** told *CDR* earlier this year, "the third party market is still in its infancy in the UK."

The Civil Justice Council (CJC), too, says that no more than 100 commercial litigation cases have been funded by third party vehicles. **Susan Dunn** of **Harbour Litigation Funding** argues otherwise. "Just because you haven't heard about it, doesn't mean that it's not going on," she says. "A lot of the cases we fund have been confidential."

According to Dunn, "there have been lots of well-known cases that have actually been funded but people just don't know about it." This, though, appears soon set to change. With Lord Justice Jackson's reforms of civil justice costs placing increasing importance on litigation funding, and the imminent GBP 100 million launch of **Astraea Capital** on the London Stock Exchange's junior market, AIM, case numbers are unlikely to stagnate for long.

Litigation funding vehicles **Burford Capital** and **Juridica Investments** similarly came to AIM in 2009 and 2007, respectively, while Harbour Litigation Funding last year launched a GBP 60 million fund to finance UK-based corporate lawsuits. Juridica, while listed in London, largely funds US suits, and has recently secured its largest win to date: a US federal court judgment concerning an action for breach of contract, fraud and related claims.

On an initial investment of USD 2.4 million, Juridica is set to pocket USD 4.5 million from the ruling, the company said in a statement. Final judgment is being awaited, too, on an arbitration worth over USD 85 million, in which Juridica is entitled to 33% of the net proceeds after its initial investment – USD 4 million – has been returned.

"Good prospects of success"

Given such potentially spectacular rates of return, it is perhaps no surprise that arms of the legal profession previously absent from the third party funding market – barrister's chambers such as Exchange, for one – are now making their intentions known. Launched in July by **Ely Place Chambers** barrister **William Evans** and **Nick Rowles-Davis**, previously head of dispute resolution at **Bridgehouse Partners** in London, **Vannin Capital** is yet another organisation entering the increasingly lucrative litigation funding marketplace.

Providing finances since January, the firm – backed by Isle of Man-based private equity house **Bramden Investments** – is currently supporting seven cases, including one international arbitration and a US claim. The company expects to finance cases with "good prospects of success" and recoverability, and a minimum value of GBP 5 million.

"The use of a third party to fund litigation provides a simple, cost-effective and risk-free alternative for lawyers and their clients," Rowles-Davis explains. The increased use of such funding mechanisms in the UK is, he added, "inevitable."

Historically, the role of litigation finance has been to help financially distressed claimants and liquidators," said **Leslie Perrin**, whose third party litigation fund, **Calunius Capital**, raised GBP 40 million in January. Now, Perrin explains, "it is increasingly about equalising resources, especially in David and Goliath cases where the claimant is facing litigation against a defendant with much greater resources."

For **Kerry Underwood**, chairman of **Law Abroad**, however, "there are 10,120 firms in the country. [Third party funding] is irrelevant to 10,110 of them."

Rocco Priozzolo, a senior underwriter at **QBE**, offers a similarly balanced picture. "Funders are asking investors to tie up their money for the best part of five years before there is any return," he says. "There can't be many investors who are willing to shut away millions of pounds for no return for a long stretch." It is, Priozzolo remarks, "a big ask in this economic climate."