



HARBOUR  
LITIGATION FUNDING

## Harbour in the hot seat

During our conversations about third party funding (TPF), people often raise similar concerns. With new funders entering the litigation funding market it is - more than ever - important to work with professional funders.

### **TPF encourages unmeritorious claims.**

This is a misconception we hear often, but it simply is not true: we don't back cases unless we believe they will win. If a case is unsuccessful, we lose our investment and therefore it is not in our interest to fund cases that we don't think will win. The merits of the case need to be supported by strong legal opinions and the litigation or arbitration needs to be led by experienced lawyers who are specialist in the practice area(s) required to win the case.

### **There is a risk that funders pull out or become insolvent during the proceedings?**

It is important to work with funders who can demonstrate experience in both funding as well as litigation. The Harbour team's track record in both, enables Harbour to deal with issues as and when they arise - as they inevitably do in the unpredictable world of litigation. This

offers the claimant and their lawyers peace of mind.

In addition, the Harbour Funds have over £750 million of committed capital, and as soon as funding has been approved, the entire budget is immediately set aside and protected from day one.

Harbour is also a founding member of the Association of Litigation Funders, the UK regulatory body responsible for litigation funding, and abides by its Code of Conduct which regulates the limited circumstances where a funding agreement can be terminated and requires funders to maintain a certain level of capital adequacy.

### **The administration of justice is taken away from claimants and determined by financiers trading legal claims as commodities.**

Once funding has been agreed Harbour does not control the litigation: the lawyers and claimant will run the case in the same way as they would without funding. Once the investment agreement has been signed, we are committed to the claim.

### **Disclosure of TPF.**

Where disclosure is discretionary, it remains a decision of the funded party

but we usually recommend disclosure of the name and involvement of the funder.

**Cases which would otherwise have not run will be given a new lease on life.**

The Harbour Funds can give a case a new lease of life in the sense that claimants who do not have the money to pay for the legal costs, can get access to justice through funding - but only after we thoroughly examine the case and believe it will succeed.

**Funders aggressively manage the cases they fund, because of the perceived need to deliver a return.**

We agree the return beforehand and do not interfere with how the litigation is run.

**Conflicts of interest: settle or proceed?**

Harbour is of the view that settlement should be considered at all times if it is in the best interest of the claimant, not necessarily just before trial or as a tick box exercise. Our pricing process, agreed upfront with the claimant, includes discussions regarding their settlement expectations. The pricing is set out clearly in the funding agreement, so the claimant

can easily calculate its return at any stage of the proceedings. Ultimately the decision whether to settle or proceed rests with the claimant and its legal team.

**Negotiating the % share of proceeds would be a major commercial concern.**

We agree the cost of funding based on the risks, the size and length of the case before sign-up. From the claimant's perspective: (s)he will have to assess the share of proceeds element versus the benefit of being able to run the litigation at all, and not having to repay our investment if the case is lost.

**Competing interests may have undue influence on the case and arbitration proceedings.**

The Harbour Funds only pay the costs of legal representation for a case. The claimant retains control and is permitted to run the litigation in exactly the same way as if they were paying the bills. While we are happy to provide input from our considerable funding and litigation experience, we are not the decision-maker.

**Important information**

Harbour Litigation Funding Limited ("HLF"), a company incorporated under the law of England and Wales, is authorised and regulated by the Financial Conduct Authority of the United Kingdom and acts as the exclusive investment sub-adviser to each of Harbour Litigation Investment Fund, L.P., Harbour Fund II, L.P., Harbour Fund III, L.P. and Harbour Fund IV, L.P. (the "Harbour Funds"). Each of the Harbour Funds is an exempted limited partnership organised under the laws of the Cayman Islands.

For the purpose of this material, a reference to "Harbour", "we", "us" or "our" shall mean (a) in the context of approving and providing litigation funding, any of the Harbour Funds (as the case may be) operating out of the Cayman Islands; and (b) in the context of investment advisory and/or marketing activities (including but not limited to general promotion of the Harbour Funds; market research on case opportunities; and identifying potential cases), HLF operating out of the United Kingdom.