

Race to recovery

Navigating the Debt
Enforcement Climate
with Bespoke Costs
Solutions

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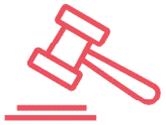
Poll #1

Is your organisation seeking to enforce debts, notwithstanding the current economic and social climate?

Today's session



Introduction to us and today's webinar



Difficulties with debt enforcement in recent times



Attention increasing back to debt enforcement in post-Covid and post-Brexit world



Available costs solutions and recent trends



Case studies of bespoke costs solutions we have implemented

Difficulties in debt enforcement in recent times

Debt enforcement



Challenges

- Simple concept: recovery of amounts due to creditors
- But creditors face various challenges:

Practical challenges

e.g. reluctant debtors,
insolvent or potentially
insolvent debtors,
quality and location
of security

Legal challenges

e.g. jurisdictional
hurdles, limitation,
corporate personality,
debts tainted by fraud

Resource challenges

e.g. insufficient legal
spend, not priority
compared
to other issues

Commercial challenges

e.g. is litigation the
best route,
is there a market
for this debt

Debt enforcement

Recent challenges

- Recent times have presented even greater challenges for creditors:
 1. Government measures to assist debtors
 2. Insolvency protection
 3. Reputational / commercial concerns with pursuing debts
 4. Delays in using court proceedings
 5. Uncertainty of Brexit
- But, times may be changing?

Enforcing debts in post- Covid and post-Brexit world

Post-Covid debt enforcement



Is it too soon to talk of a post-Covid world?

Landscape may be shifting to favour creditors:

- Government support measures easing or ceasing
- Remote or online dispute resolution facilitating quicker access to justice

Creditors now likely to be more eager to pursue debt:

- Debt is increasing
- Cash-flow issues
- Reputational issues now not so significant

Post-Brexit debt enforcement



- Brexit has created uncertainty, which may have had a chilling effect on the enforcement of debts e.g. doubts around the enforceability of English court judgments
- But, the impact of Brexit should not be overstated:
 -  It shouldn't affect the pursuit of debts, whether in the EU or otherwise
 -  Pursuing debts through agreed dispute resolution mechanisms is not affected
 -  Enforcement of English court judgment may not always be required and might not be an issue anyway

Costs solutions and recent trends

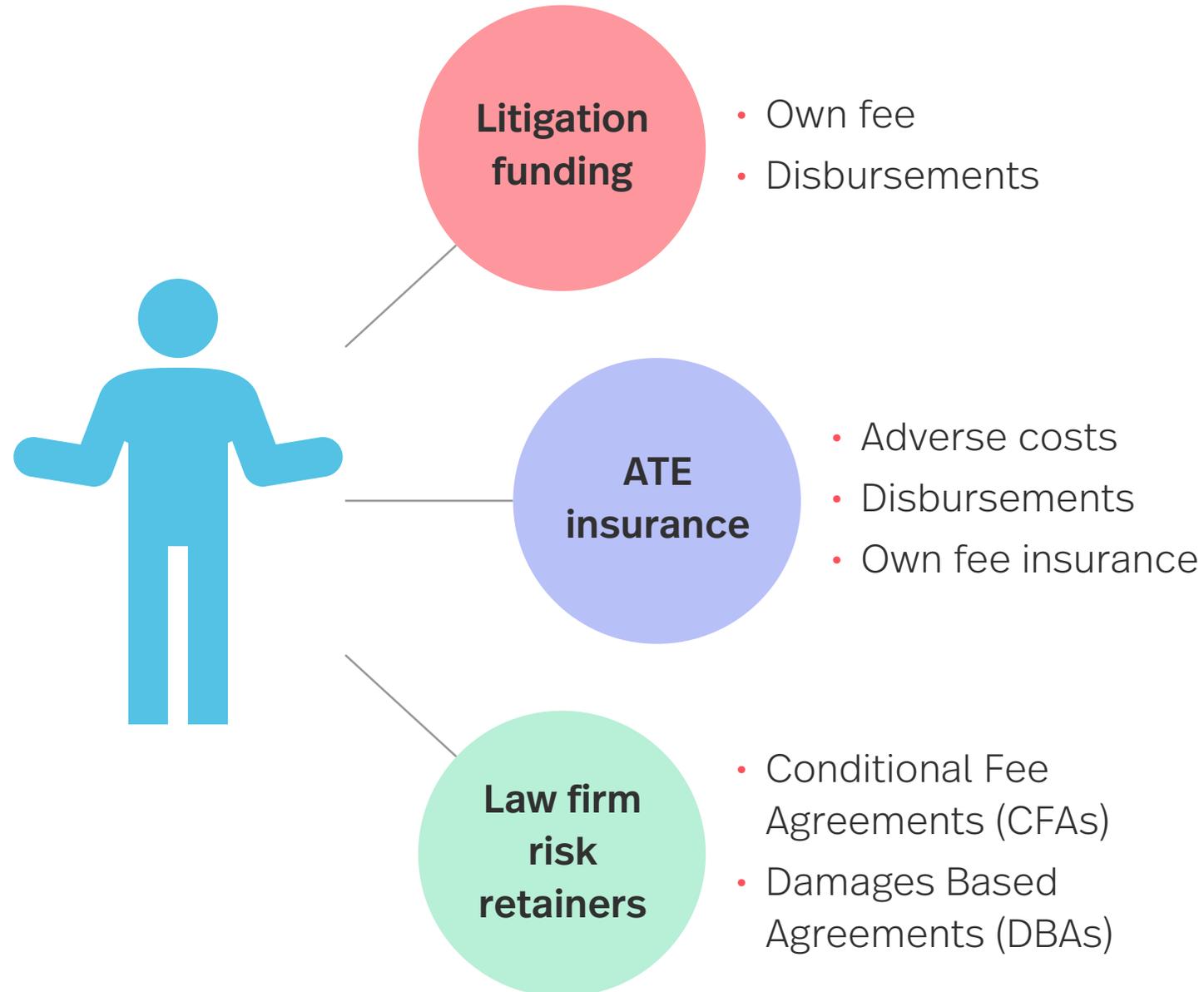
Poll #2

Does your organisation use
alternative costs solutions to
enforce these debts?

Poll #3

If yes, has there been an increase in the use of alternative costs solutions to enforce these debts?

Typical cost solutions



Solutions are becoming more creative

- Third party funders are more flexible
- Law firms are increasingly taking a share of risk
- Distinct solutions are now frequently combined

Organisations are now attracted by the possibility of obtaining bespoke costs solutions:

- Solution can be tailored to suit specific risk appetite
- Means cost solutions can be used for wider range of claims
- Litigation is also now seen more as an investment

Case studies

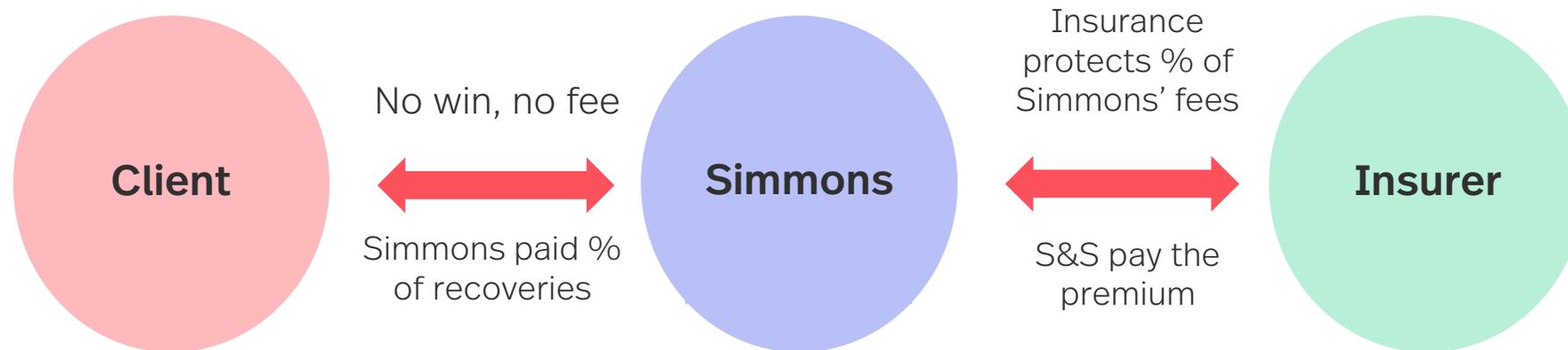
Case study 1:

Innovative DBA



Challenge: A risk free solution to pursue debt that might otherwise have been written off.

Solution: A DBA, backed by DBA insurance, that enables the client to pursue the matter on a “no win no fee basis” whilst the insurance hedges the risk for Simmons & Simmons.



Case study 2:



Pick and mix solutions

Challenge: The client needed a complete cash flow and risk transfer solution on the cheapest possible terms.

Solution: A pick and mix approach to allow for full cost and risk transfer whilst minimising the cost impact to the client.



Funding for 25% of our fees and the client's disbursements



Simmons acting on a CFA for the remaining 75% fees



Insurance for 25% of Simmons' fees at risk under the CFA



Insurance for the client's exposure to adverse costs

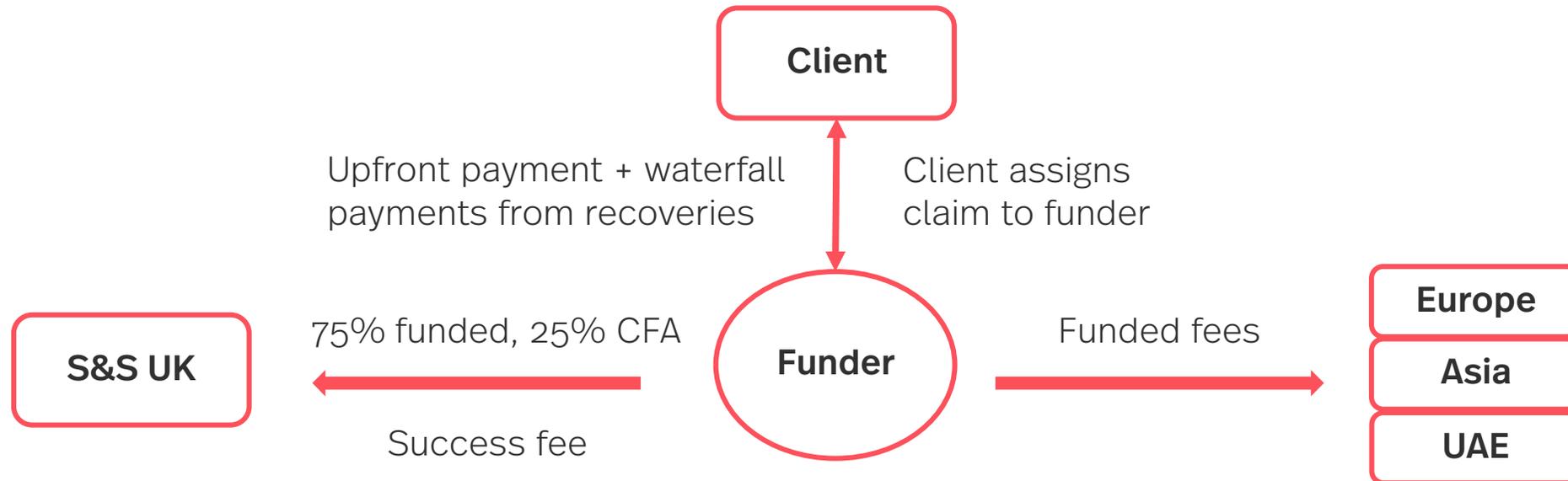
Case study 3:

Assignment of debt



Challenge: A complete risk transfer with an immediate payment, followed by further returns depending on recoveries.

Solution: The rights to the claim were assigned to the funder, releasing an upfront payment to the client. We then combined a CFA in the UK with litigation funding for other jurisdictions.



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