

The consultation closes on **Friday 31 January 2025 at 23:59.**

Consultees do not need to answer all questions if only some are of interest or relevance.

Answers should be submitted by PDF or word document to CJCLitigationFundingReview@judiciary.uk. If you have any questions about the consultation or submission process, please contact CJC@judiciary.uk.

Please name your submission as follows: 'name/organisation - CJC Review of Litigation Funding'

[illegible]

Information provided to the Civil Justice Council:

We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous, we will not include your name in the list unless you have given us permission to do so. Please let us know if you wish your response to be anonymous or confidential.

The full list of consultation questions is below:

- Please give reasons for your answers. Please do so by reference, where applicable, to the guidance given in the footnotes.
- All answers should be supported by evidence where possible to enable evidence-based conclusions to be drawn.
- It is not necessary to answer all the questions.

About Amgen Limited (“Amgen”)

Amgen’s mission is to serve patients. A biotechnology innovator since 1980, our science-based heritage is at the heart of everything we do. We develop medicines for hard-to-treat illnesses in areas of high unmet need, to not only help patients, but also reduce the social and economic burden of disease in society. As a regional hub, we employ around 600 people in the UK and Ireland across our commercial, R&D, and corporate functions. Committed to driving sustainable solutions that can adapt to an ever-evolving health system, we are proud to serve our patients, people, and customers every day.

Amgen Endorses TPLF Regulation

Amgen welcomes the opportunity to respond to this Civil Justice Council review focused on third-party litigation funding (TPLF).

Our submission is based on the experience of our industry peers. We answer certain questions put forward by the Council while leaving it to the legal experts to answer the most technical questions in detail. Our submission underscores Amgen’s support for greater regulation of third-party litigation funding in the UK.

This is an area of critical importance to Amgen.

Pharmaceutical and biotech companies like Amgen generate revenue by bringing medicines to society and delivering lifesaving or lifechanging therapies to patients; TPLF entities earn by treating litigation as a profit-generating opportunity. And yet so little money actually finds its way into the hands of claimants: a Consumer Financial Protection Bureau Report to U.S. Congress in 2015 found that when claimants in the US received a payment from a class action, it was typically about \$32, while the claimants’ lawyers earned an average of \$1 million per settled case.

Pharmaceutical innovators face an array of challenges in bringing new medicines to market. Regulators and patients want new medicines to become available to patients more quickly, with few side effects and the lowest possible prices. At the same time, the science of developing new treatments is becoming more complicated, IP systems are under attack in several jurisdictions, and health budgets are under pressure everywhere. Companies face rising competition from their counterparts in other nations, who benefit from unfair trade practices and government subsidies. Globally distributed supply chains are vulnerable to trade protectionism, wars, geopolitical tension, environmental pressures, and other risks. The rise in TPLF targeting the pharmaceutical industry further complicates what is already a very challenging environment for doing business.

Amgen supports access to justice for patients and consumers, but how that is properly and transparently achieved is of great importance, including the role that TPLFs play in that equation.

TPLF and the Innovative Pharmaceutical Sector

Because litigation is extremely expensive, time consuming and disruptive, it is generally viewed by Amgen as a last resort for resolving disputes. The opposite is true of third-party litigation funders, who profit from litigation without, in our view, increasing access to justice. Amgen generates revenue by bringing medicines to society and delivering lifesaving or lifechanging therapies to patients; TPLF entities earn by treating litigation as a profit-generating opportunity. Through TPLF, investors finance lawsuits in exchange for a percentage of any settlement or judgment received. The terms of the financing are set out in the litigation financing agreement. Investors can fund one case, or they can invest in a portfolio of cases (including a series of cases managed by the same legal team, over time). TPLF is typically non-recourse, which means the funder is not repaid in cases where there is no recovery.

We observe that TPLF is gaining ground across regions. Amgen welcomes the growing attention from policymakers, who are scrutinising and taking action to regulate this practice. As an initial matter, and at a minimum, transparency is urgently needed.

Disclosure of third-party funding is essential to enable participants in a case and the court to make informed decisions about the litigation because outside funding “fundamentally alters the dynamics and has a major impact on whether the dispute can be resolved through settlement”.*

What is clear is TPLF is a profitable asset class, leveraging the court system and civil litigation as vehicles for securing profits, with certain sectors most affected. One is the innovative healthcare sector, developing pharmaceutical products and medical devices.

Across jurisdictions, health innovators are embroiled in more litigation characterised by higher costs and longer timelines, less willingness by claimants to reach negotiated settlements, and often, frivolous claims. Observers attribute this in part to the growing role, behind the scenes, of TPLF in Europe and the UK creating a more “US style” system for representative actions and opt-out style class actions (e.g. the Competition Appeals Tribunal in England & Wales) which are “big business” for TPLF. Even when faced by lawsuits that are unmeritorious, pharmaceutical companies must divert resources and time away from productive uses such as R&D to address the claims. They may even choose to settle claims without merit to avoid protracted litigation and to focus on their core mission: ensuring patients obtain the therapies they need as soon as possible.

Pharmaceutical and medical device companies have been aggressively targeted by TPLFs, across jurisdictions and especially in the United States. The United States has seen class action lawsuits proliferate in recent years, with tens of thousands of cases and many instances where claimants are found to have no real connection to the case. In the US, multi-million dollar advertising campaigns are relied upon by TPLF entities to advertise litigation and recruit participants, as they simultaneously acquire stakes in the outcome of the (thousands of) cases. Staggering growth in the number of lawyers and advertisers targeting pharmaceutical and medical device companies with class actions has been reported in the United States in recent years*.

*See [*On Litigation Funding: The Drug and Device Industry*](#), published 2018 by Faegre Baker Daniels LLP

As of June 2024, there was an estimated \$15.2 billion in commercial litigation investments in the United States alone**.

Our sector is counting on UK lawmakers to impose regulation – at a minimum, transparency requirements – to avoid this same dynamic undermining the legal system, innovation ecosystem, and investment environment in the UK.

Innovative pharmaceutical companies must increasingly divert resources from research and development activities aiming to create new innovation and improve patients' lives to respond to unmeritorious cases driven by TPLF.

TPLF has already taken root in the UK, where evidence points to rapid growth in the sector. Based on the limited information available, we observe a significant increase in the number of claimant law firms and third-party litigation funders setting up shop in the UK in recent years. TPLF assets in the UK have increased tenfold in the last decade, rising from £200 million in 2010/2011 to more than £2 billion by 2021. Data from the U.S. Chamber of Commerce Institute for Legal Reform suggests that there are now reportedly more of these organisations in the UK than any other European country. TPLFs finance only a small number of cases – those they expect to be most profitable. This strategy is clearly highly profitable, and this explains why the industry continues to grow at pace.

Our industry has seen a significant increase in the number of class actions claims against life sciences and other consumer goods businesses in the UK in the last five years. A report by the law firm CMS suggested that class members involved in UK competition class action lawsuits now total more than 500 million people: for a country with a population of 68 million people, this represents more than eight class actions for each person in the UK ("Class Actions Report 2024"). For pharmaceutical companies, ESG laws could become a further significant area of exposure to claims and TPLF.

Due to their cost and complexity, competition law class actions will always require litigation funding, and these claims are particularly popular with TPLFs. Competition class actions offer the prospect of huge returns for funders: hence the significant recent growth in the number of these claims. TPLFs are interested in profits and opt-out competition class actions deliver this for them, even though we can observe such claims doing little to deliver effective access to justice (a 2019 U.S. Federal Trade Commission study showed that the median take-up rate for consumer class actions was just 9%***).

For pharmaceutical companies, TPLF has opened the door to a rising number of costly, frivolous lawsuits. We understand that other companies within our industry are increasingly directing resources to address a growing number of dubious claims that were made possible only thanks to TPLF. Businesses (across sectors) often settle cases rather than engage in protracted and costly litigation, regardless of whether the claims are legitimate. These are resources that could have potentially gone towards R&D and other efforts to bring innovations such as medicines to society. The interests and actions of TPLFs should be viewed very negatively when compared to the genuine social, economic, and healthcare improvements sought and delivered to citizens by the pharmaceutical industry.

**See What You Need to Know about Third Party Litigation Funding, published June 2024 by the U.S. Chamber of Commerce Institute for Legal Reform

*** Federal Trade Commission, “Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns” (2019)
https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf

Amgen wishes to underscore the point that TPLF are operating in the shadows. In the UK, there is no single, complete source of information about the growth of TPLF, its profitability as an industry, or the outcomes of funded cases. These funders currently face no accountability for engaging in unethical practices, and they do not bear the consequences of driving more litigation so they can profit from it.

Amgen’s view – and that of the many innovators, across sectors, that are now urging policymakers to focus on TPLF – is that transparency and regulation are urgently needed. Without them, third-party litigation funders (TPLFs), whether hedge funds, private institutions specialised in third-party litigation financing, foreign government entities, or others, will continue to compromise the integrity of the UK legal system while undermining the investment environment and threatening the future competitive position of innovative sectors such as pharmaceuticals in the UK.

Questions concerning ‘*whether and how, and if required, by whom, third party funding should be regulated*’ and the relationship between third party funding and litigation costs.

1. To what extent, if any, does third party funding currently secure effective access to justice?¹

Amgen’s Response:

This is the essential starting point for the discussion as to why regulation is urgently needed for TPLF. Amgen is of the view that TPLF – without adequate guardrails -- does little, if anything, to advance access to justice. We are convinced that greater transparency and regulation of TPLF in the UK could help to deliver better outcomes for individuals and therefore improve access to justice in the UK overall.

It is certainly possible, in theory, that third-party litigation funders may enable individuals (both those who have and have not been harmed) to take legal action. However, available evidence suggests that TPLFs do not necessarily act in the best interest of the individual generally. Rather, access to justice is, at best, a by-product of their activities, which are focused purely on generating profits by financing lawsuits. To expand:

First, the total lack of transparency in the third-party legal funding (TPLF) sector makes it difficult to establish any correlation between TPLF and access to justice. There is no obligation under English law to disclose when TPLF is being used to fund a case. Thus, there is no guarantee that either the relevant court or the defendant(s) to a dispute will be aware of its existence, the terms of the litigation finance agreement, which entities are sitting behind the funder, who is influencing the litigation process, and so on.

¹ When considering this question please bear in mind that access to justice encompasses access to a court, judgment and enforcement and access to non-court-based forms of dispute resolution, whether achieved through negotiation, mediation, complaints or regulatory redress schemes or Ombudsman schemes.

Second, providing access to justice is never the primary objective of a TPLF. These entities support claims because they are expected to be profitable. Based on what we know, they support a small number of potential claims that are chosen based on the prospect of a healthy financial return. To decide whether to provide funding, TPLFs assess elements like the substantive merits of a claim, whether there is sufficient quantum for the TPLF provider to make a return when measured against the costs of the litigation, whether enforcement is feasible, and the defendant's perceived propensity to settle. If a lawsuit meets their criteria, particularly the potential for high returns, they may support frivolous cases even with a low likelihood that claimants will benefit.

Third, TPLF may exercise control over strategic decisions like whether and when to settle, to the detriment of courts, defendants and claimants. Without any fiduciary duty to do so, unlike lawyers, they may not act in the best interest of the claimants. They may push to reject a settlement in the expectation that more can be recovered if the proceedings continue (particularly since they typically receive a high percentage of any award or settlement). TPLF is typically non-recourse, that is, there is no obligation for the borrower to repay the funding in the event nothing is recovered as a result of the proceedings.

Fourth, access to litigation is not the same thing as access to justice. Conflicts can be resolved using less adversarial approaches including voluntary redress schemes and ombudsmen processes. It is outcomes that matter, and claimants' subjective views of outcomes differ. Some claimants may be satisfied with a monetary award whereas others are more focused on expert testimony, getting an apology, and/or drawing public attention to their suffering.

Fifth, although complete information is not available about this, TPLFs appear to take the lion's share of any compensation received. By way of example, in the well-known case in the UK involving British postmasters, the settlement was allocated 80% to claimants' lawyers and third-party funders before the postmasters received anything. It is hard to see how these dynamics help individuals.

It is essential that we see TPLFs for what they are. They drum up business through aggressive advertising, turning individual cases into mass tort cases, and financing frivolous claims to earn outsized profits – not to help people to access justice. And they do this without any obligation to work transparently or adhere to ethical rules.

2. To what extent does third party funding promote equality of arms between parties to litigation?
3. Are there other benefits of third party funding? If so, what are they?
4. Does the current regulatory framework surrounding third party funding operate sufficiently to regulate third party funding?² If not, what improvements could be made to it?

Amgen's response:

This is another foundational question as UK lawmakers consider regulatory action in the TPLF space. Based on experience and available information, the primary problems created include:

Lack of transparency means that judges and participants in a lawsuit may not realise that a third party has an interest in the case – and an expectation to profit from its outcome. Participants cannot

² This question includes consideration of the effectiveness of courts and tribunals assessing an appropriate price for litigation funding.

make informed choices about how to manage litigation when they are not aware it's being financed by third parties. For example, they may inadvertently underestimate the willingness of claimants to settle and/or the conditions for reaching agreement on a settlement.

National security concerns can arise due to the lack of TPLF oversight, with foreign governments financing cases against companies in sensitive industries, to tie them up in litigation, make them spend money, or to access their trade secrets. Research from the United States indicates that adversarial foreign governments may be using litigation funding to advance cases against American companies and interests, particularly in intellectual property disputes*. Through TPLF, an adversary can pursue national strategic goals by funding and influencing litigation with little risk of their involvement ever becoming known.

* See What You Need to Know about Third Party Litigation Funding, published June 2024 by the U.S. Chamber of Commerce Institute for Legal Reform

Funders may unduly influence or take control of a lawsuit to protect their financial stake in its outcome. This may include influencing strategic decisions of the funded party including fundamental issues such as when to accept or reject a settlement. Funders don't have to abide by ethical or fiduciary rules. Moreover, litigation funding introduces more complexity into the lawyer client relationship, because while the lawyer has a duty to the client to act in their best interests, the lawyer is (often) beholden to the funder as well. Lawyers may be incentivised to protect or promote their own interests and relationship with funders by advising or persuading the claimant to adopt the funder's preferred course of action.

Amgen believes that funders should have no control over claims. Clients, not funders, should be making decisions and giving the instructions to counsel for their claims. Funders may have important expertise that is directly related to the case being funded, and this can legitimately be shared with claimants. However, no funding agreement should give funders control over how the claim proceeds. Amgen notes with concern the number of UK cases in which funders appear to have had an inappropriate amount of control over litigation.

Transparency is the top concern related to TPLF, as the lack of transparency can give rise to national security risks, result in the funder unduly influencing legal strategy, let conflicts of interest go unnoticed and unaddressed, undermine confidence in the legal system, and more.

Funder fees are an area of concern, with reports that amounts recovered are split unfairly between claimants, their counsel, and third-party funders. Based on information available, litigation financing agreements consistently allocate as much as 40-80% to funders and claimants' lawyers. Funders are reportedly paid before anyone else, taking as much as 20-40% or more of the proceeds. These arrangements can mean that claimants receive little or no money. Their action in court is primarily a vehicle for the funders and attorneys to profit. Further, we are seeing a growth in opt-in class action suits, which require claimants to elect to participate in the distribution stage to receive a share of the award or settlement; this is sometimes called delayed opt-in. Claimants will not bother to do so in cases where the counsel and funders take a large percentage, leaving a small residual amount to divide among the claimants.

Conflict of interest is another key concern. TPLFs will understandably prioritise their own financial investment. Litigation funders are commercial enterprises, and TPLF is recognised as a highly

profitable asset class. Situations will invariably arise when the profits expected by funders may come at the expense of the interest of the funded claimants. Profiting from litigation is a vastly different aim from participating in litigation as a means of seeking justice, recognition, or compensation for alleged wrongs. Based on experience, there is substantial risk that the funder's interests diverge from that of the funded claimants over the course of the legal proceedings. We believe this inherent conflict is a significant problem with the litigation funding model.

Termination of funding is one example where there could be divergent interests between the funder, on the one hand, and the funded parties. It's possible depending on the litigation finance agreement, that a funder could terminate financing for reasons that are related purely to its commercial interests, regardless of the merits of the case and/or the interests of the funded party(ies). Various approaches to addressing this challenge have been proposed in the UK.

Profiting from litigation is a vastly different aim from participating in litigation as a means of seeking justice, recognition, or compensation for alleged wrongs.

5. Please state the major risks or harms that you consider may arise or have arisen with third party funding, and in relation to each state:
 - a. The nature and seriousness of the risk and harm that occurs or might occur;
 - b. The extent to which identified risks and harm are addressed or mitigated by the current self-regulatory framework and how such risks or harm might be prevented, controlled, or rectified;³
 - c. For each of the possible mechanisms you have identified at (b) above, what are the advantages and disadvantages compared to other regulatory options/tools that might be applied? In answering this question, please consider how each of the possible mechanisms may affect the third party funding market.

Amgen's response

See response to question 4.

6. Should the same regulatory mechanism apply to: (i) all types of litigation; and (ii) English-seated arbitration?
 - a. If not, why not?
 - b. If so, which types of dispute and/or form of proceedings⁴ should be subject to a different regulatory approaches, and which approach should be applied to which type of dispute and/or form of proceedings?⁵

³ Please give full details of each possible mechanism and explain how each would work (including who any potential 'regulator' or self-regulator might be). Such details may make reference to mechanisms used in other countries. Possible mechanisms may include, but are not limited to, various forms of formal regulation (including licensing and conditions, requirements, etc) self-regulation, co-regulation, standards, accreditation, guidance, no regulation, or any other relevant mechanism.

⁴ Different forms of proceedings include, for instance: individual claims; group litigation; collective proceedings in the Competition Appeal Tribunal; representative proceedings before the civil courts.

⁵ Examples of types of cases include, for instance: personal injury claims; consumer claims; financial services claims; commercial claims.

- c. Are different approaches required where cases: (i) involve different types of funding relationship between the third party funder and the funded party, and if so to what extent and why; and (ii) involve different types of funded party, e.g., individual litigants, small and medium-sized businesses; sophisticated commercial litigants, and if so, why?
- 7. What do you consider to be the best practices or principles that should underpin regulation, including self-regulation?
- 8. What is the relationship, if any, between third party funding and litigation costs? Further in this context:
 - a. What impact, if any, have the level of litigation costs had on the development of third party funding?
 - b. What impact, if any, does third party funding have on the level of litigation costs?
 - c. To what extent, if any, does the current self-regulatory regime impact on the relationship between litigation funding and litigation costs?
 - d. How might the introduction of a different regulatory mechanism or mechanisms affect that relationship?⁶
 - e. Should the costs of litigation funding be recoverable as a litigation cost in court proceedings?
 - i. If so, why?
 - ii. If not, why not?
- 9. What impact, if any, does the recoverability of adverse costs and/or security of costs have on access to justice? What impact if, any, do they have on the availability third party funding and/or other forms of litigation funding.
- 10. Should third party funders remain exposed to paying the costs of proceedings they have funded, and if so to what extent?

Questions concerning ‘whether and, if so to what extent a funder’s return on any third party funding agreement should be subject to a cap.’

- 11. How do the courts and how does the third party funding market currently control the pricing of third party funding arrangements?
- 12. Should a funder’s return on any third party funding arrangement be subject to controls, such as a cap?
 - a. If so, why?
 - b. If not, why not?

Amgen’s response:

For Amgen, transparency is the first priority for lawmakers in any jurisdiction seeking to regulate TPLF. Additionally, in the UK, we support the enactment of a regulatory and licensing regime with consequences for any unlicensed party improperly participating in TPLF. Below we present select recommended actions that could help to address risks related to TPLF.

Transparency: There should be a mandatory requirement in all funded cases for the funded party to disclose to their opponent and the court, at a minimum: first, the fact that the case is funded by TPLF, second, the identity and address of the funder and, thirdly, basic information about the litigation finance conditions. Disclosure helps the court and parties to determine whether funders are exercising undue influence, violating any ethical rules, or whether conflicts of interest exist. It

⁶ Please explain your answer by reference to a specified regulatory mechanism or mechanisms.

also helps participants in litigation to make informed choices about how to proceed, including regarding the option of potentially settling.

Moreover, transparency can help provide important data and information about activities, conditions and trends in the litigation finance space, so that lawmakers and other stakeholders can better understand and take action to regulate this space.

Amgen understands that several other countries such as Singapore and Hong Kong have already imposed disclosure requirements related to the existence of third-party financing, and the identity/address of the funder. Disclosure of this information is also supported by the majority of academic commentators and the Irish Law Reform Commission's 2023 consultation on TPLF.

Funder fees: Amgen endorses the imposition of controls on funders' fees in consumer cases. Consumers in the UK warrant protection given that often, for them, TPLF may often represent the only method of funding litigation to seek redress for injury. It is not unreasonable to expect an imbalance of power between consumers and funders, with the risk of consumers being under-compensated and funders being over-compensated.

It would seem sensible for legislation to mandate that a percentage floor will apply on the return to claimants/class/group members from any damages recovered in both opt-in and opt-out proceedings. Different percentage floors could apply for the pre-action and post-issue stages, with a higher floor on the return for the pre-action stage given funders will have invested less capital in a case at an early stage. While we support this type of regulation, Amgen does not have a position on any suggested percentages.

Amgen endorses regulations that would impose transparency and licensing requirements on TPLF, limit TPLFs' influence over legal strategies, help to identify and address conflicts of interest, ensure fair division of amounts recovered in litigation or settlements, adapt discovery and other procedural rules in funded cases, and maintain liability for funders regardless of the outcome of funded cases.

Procedural rules designed to limit TPLF influence: Court approval should continue to be required for opt-out proceedings to protect the interests of the opt-out class. For funded opt-in claims court approval seems less necessary, but it is important that our other proposals are followed (including minimum return to the funded class). Also, it's essential that disaffected persons have recourse to regulators, and that regulators are empowered to take swift enforcement action when warranted.

In addition, third-party funders should remain exposed to full liability for adverse costs of proceedings that they have funded. The extent of the funder's liability should remain a matter for the discretion of the judge in the case.

13. If a cap should be applied to a funder's return:
 - a. What level should it be set at and why?
 - b. Should it be set by legislation? Should the court be given a power to set the cap and, if so, a power to revise the cap during the course of proceedings?
 - c. At which stage in proceedings should the cap be set?
 - d. Are there factors which should be taken into account in determining the appropriate level of cap; and if so, what should be the effect of the presence of each such factor?

- e. Should there be differential caps and, if so, in what context and on what basis?

Questions concerning how third party funding ‘should best be deployed relative to other sources of funding, including but not limited to: legal expenses insurance; and crowd funding.’

14. What are the advantages or drawbacks of third party funding?
Please provide answers with reference to: claimants; defendants; the nature and/or type of litigation, e.g., consumer claims, commercial claims, group litigation, collective or representative proceedings; the legal profession; the operation of the civil courts.
15. What are the alternatives to third party funding?
- a. How do the alternatives compare to each other? How do they compare to third party funding? What advantages or drawbacks do they have?
Please provide answers with reference to: claimants; defendants; the nature and/or type of litigation, e.g., consumer claims, commercial claims, group litigation, collective or representative proceedings; the legal profession; the operation of the civil courts.
 - b. Can other forms of litigation funding complement third party funding?
Alternatives include: Trade Union funding; legal expenses insurance; conditional fee agreements; damages-based agreements; pure funding; crowdfunding. Please add any further alternatives you consider relevant.
 - c. If so, when and how?
16. Are any of the alternatives to be encouraged in preference to third party funding? If so, which ones and why are they to be preferred? If so, what reforms might be necessary and why?
17. Are there any reforms to conditional fee agreements or damages-based agreements that you consider are necessary to promote more certain and effective litigation funding? If so, what reforms might be necessary and why? Should the separate regulatory regimes for CFAs and DBAs be replaced by a single, regulatory regime applicable to all forms of contingent funding agreement?

Amgen’s response

See response to question 12.

18. Are there any reforms to legal expenses insurance, whether before-the-event or after-the-event insurance, that you consider are necessary to promote effective litigation funding? Should, for instance, the promotion of a public mandatory legal expenses insurance scheme be considered?
19. What is the relationship between after-the-event insurance and conditional fee agreements and the relationship between after-the-event insurance and third party funding? Is there a need for reform in either regard? If so, what reforms might be necessary and why?
20. Are there any reforms to crowdfunding that you consider necessary? If so, what are they and why?
21. Are there any reforms to portfolio that you consider necessary? If so, what are they and why?
22. Are there any reforms to other funding mechanisms (apart from civil legal aid) that you consider are necessary to promote effective litigation funding? How might the use of those mechanisms be encouraged?

Amgen's response

See response to question 12.

Questions concerning the role that should be played by 'rules of court, and the court itself . . . in controlling the conduct of litigation supported by third party funding or similar funding arrangements.'

23. Is there a need to amend the Civil Procedure Rules or Competition Appeal Tribunal rules, including the rules relating to representative and/or collective proceedings, to cater for the role that litigation funding plays in the conduct of litigation? If so in what respects are rule changes required and why?
24. Is there a need to amend the Civil Procedure Rules or Competition Appeal Tribunal Rules to cater for other forms of funding such as pure funding, crowd funding or any of the alternative forms of funding you have referred to in answering question 16? If so in what respects are rule changes required and why?
25. Is there a need to amend the Civil Procedure Rules in the light of the *Rowe* case? If so in what respects are rule changes required and why?
26. What role, if any, should the court play in controlling the pre-action conduct of litigation and/or conduct of litigation after proceedings have commenced where it is supported by third party funding?
27. To what extent, if any, should the existence of funding arrangements or the terms of such funding be disclosed to the court and/or to the funded party's opponents in proceedings? What effect might disclosure have on parties' approaches to the conduct of litigation?

Amgen's response

See also response to question 4.

Identify and manage conflicts of interest: On this topic, Amgen would expect other consultation responses (notably from defendant and claimant law firms) to be better placed to respond to this question in detail. New guidance for lawyers acting in funded proceedings might help to clarify their duties (relating to potential conflicts of interest) vis-a-vis clients. As an initial matter, we endorse transparency requirements and licensing of entities engaged in TPLF.

Questions concerning provision to protect claimants.

28. To what extent, if at all, do third party funders or other providers of litigation funding exercise control over litigation? To what extent should they do so?

Amgen's response

See responses to questions 4 and 12.

29. What effect do different funding mechanisms have on the settlement of proceedings?

30. Should the court be required to approve the settlement of proceedings where they are funded by third party funders or other providers of litigation funding? If so, should this be required for all or for specific types of proceedings, and why?

Amgen's response

See response to question 12.

31. If the court is to approve the settlement of proceedings, what criteria should the court apply to determine whether to approve the settlement or not?
32. What provision (including provision for professional legal services regulation), if any, needs to be made for the protection of claimants whose litigation is funded by third party funding?
33. To what extent does the third party funding market enable claimants to compare funding options different funders provide effectively?
34. To what extent, if any, do conflicts of interest arise between funded claimants, their legal representatives and/or third party funders where third party funding is provided?

Amgen's response

See responses to questions 4 and 12.

35. Is there a need to reform the current approach to conflicts of interest that may arise where litigation is funded via third party funding? If so, what reforms are necessary and why.

Questions concerning the encouragement of litigation.

36. To what extent, if any, does the availability of third party funding or other forms of litigation funding encourage specific forms of litigation? For instance:
- a. Do they encourage individuals or businesses to litigate meritorious claims? If so, to what extent do they do so?
 - b. Do they encourage an increase in vexatious litigation or litigation that is without merit? Do they discourage such litigation? If so, to what extent do they do so?
 - c. Do they encourage group litigation, collective and/or representative actions? If so, to what extent do they do so?
- When answering this question please specify which form of litigation funding mechanism your submission and evidence refers to.
37. To the extent that third party funding or other forms of litigation funding encourage specific forms of litigation, what reforms, if any, are necessary? You may refer back to answers to earlier questions.
38. What steps, if any, could be taken to improve access to information concerning available options for litigation funding for individuals who may need it to pursue or defend claims?

General Issues

39. Are there any other matters you wish to raise concerning litigation funding that have not been covered by the previous questions?⁷

⁷ Please note that the Working Party is not considering civil legal aid.

Summary and Concluding Remarks

For the reasons outlined above, and based on our knowledge of our industry peers' experiences, Amgen endorses regulation and licensing regimes for third-party litigation funding. TPLFs finance cases against companies across sectors, and many companies have spoken out about the dangers of unregulated TPLF. The pharmaceutical industry has been, and remains, a favoured target for these entities, with growing TPLF threatening innovation, healthcare delivery, and the competitive position of our industry in the UK and globally.

Pharmaceutical innovators and manufacturers in the UK face dubious claims made possible thanks to TPLF; this follows the pattern in other jurisdictions, notably the United States, where the growing cost of TPLF-driven, often unfounded litigation is well-documented. In the US, innovative pharmaceutical companies have faced protracted litigation with higher costs, driven by TPLF entities that are not required to disclose their financing, have no fiduciary duty to the funded plaintiffs, and are not subject to any ethical rules. We observe this dynamic now also in the UK, with rapid growth in the TPLF sector in recent years.

Often, companies targeted choose to settle unmeritorious claims rather than divert the substantial resources required to defend themselves in court away from productive investments like R&D to bring new medicines and vaccines to society. When resources are dedicated to litigation – particularly cases without merit and/or featuring thousands of plaintiffs (some with no real connection to the case) – this means less money for innovation.

While some individuals require third-party financing to participate in litigation, the goal of TPLF is not to increase access to justice. TPLF is a profitable asset class. TPLFs' primary goal is to maximise return – regardless of the impact on the credibility of our legal system, investment environment, innovation and healthcare delivery, and whether the funded plaintiffs benefit from the litigation.

Among the public, there is growing awareness of the need for TPLF regulation. A survey commissioned by the U.S. Chamber of Commerce Institute for Legal Reform in 2021* revealed that European consumers do not want lawsuit finance companies involved in civil litigation without government oversight. Respondents strongly supported safeguards for third party litigation funding. 83% of those surveyed backed regulation to ensure that TPLF align with consumers' best interests. For example, respondents indicated support for mandatory independent reviews of litigation finance agreements, to ensure they are not designed in a way that unfairly benefit funders.

Lawmakers must, at a minimum, impose basic obligations of transparency on TPLFs. Currently, these entities are operating in the shadows. In the UK, there are no reliable, complete sources of information about their activities, the terms of litigation finance agreements, or the scale of third-party litigation financing. Based on available information, the sector is expanding in the UK and elsewhere, with regulators scrambling to understand and address the many risks associated with TPLF.

Amgen thanks the Civil Justice Council for the opportunity to share these perspectives.

*See Consumer Attitudes to Third Party Litigation Funding and its Potential Regulation in the EU, published September 2021 and commissioned by the U.S. Chamber of Commerce Institute for Legal Reform. Respondents to the survey were located in the Netherlands, Spain, France, Germany, Poland, and Italy