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'

You must fill in the following and submit this sheet with your response:

Your response is (public/anonymous/confidential):	public
First name:	Alice
Last name:	Taylor
Location:	
Role:	
Job title:	Legal Policy Manager
Organisation:	Association of Personal Injury Lawyers
Are you responding on behalf of your organisation?	Yes
Your email address:	[redacted]

Information provided to the Civil Justice Council:

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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.

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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.

Civil Justice Council

Review of Litigation Funding

A response by the Association of Personal Injury Lawyers

March 2025

Introduction

We welcome the opportunity to respond to the Civil Justice Council's consultation on litigation funding. Third-party funding is not a common source of funding for personal injury cases, as the significant return on investment usually sought means this will in most cases mean a level of deduction from an injured person's damages that they are rarely able to manage. However, there are limited instances, for example in some group claims, where it may provide an option of last resort to take a case forward where it would otherwise have been impossible to do so. We respond to the questions below from the remit of personal injury only, and the limited applicability that third-party funding has in this sector. We have responded only to those questions within our remit.

In terms of regulation, our view is that there must be a balance between ensuring claimants do not end up in a worse position than if they had not entered the litigation funding arrangement and pursued the claim i.e. they should not be in a position where their costs are higher than the damages that they recovered; but also ensuring that litigation funding remains attractive to funders and can remain an option of last resort in some cases. Rather than the introduction of a statutory cap, which could be abused and could deter funders, we suggest the focus should be on ensuring that claimants are fully informed of what entering an agreement will entail, and that the claimant's solicitor focuses on negotiating the best contract for the claimant in the circumstances – what this looks like will differ from case to case.

We would echo the calls for the Government to introduce legislation to reverse the impact of the decision in *PACCAR*. As it stands, the decision means uncertainty and additional complexity for clients, and specialist firms and funders alike, the latter finding it more difficult to carry the large, complex and risky personal injury cases. Third-party funding can, in some instances related to personal injury, enable access to justice, and the *PACCAR* decision puts litigation fundings as an option, in jeopardy.

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?

While third-party funding is not a common source of funding in personal injury cases, due to the amount of money deducted from damages for the funders' return, and the impact this will have on the claimant's access to full and fair compensation, third-party funding may provide a way to secure access to justice in certain limited cases where other funding models are unworkable. For example, there may be a large number of claims stemming from the same defect in a product, but each case on its own would result in low damages. Claimants in this circumstance would be highly unlikely to find a solicitor who would be willing to take on their individual case via a Conditional Fee Agreement (CFA), given the level of damages. When grouped together with other claimants, the amount of damages increases, but this will then rely on the law firm to maintain the cost of running all of those cases, which can be extremely expensive. Third-party funding may provide a solution in these cases, allowing a

claimant to bring a claim for compensation where otherwise the case would not have been progressed.

2, To what extent does third-party funding promote equality of arms between parties to litigation?

Third-party funding can promote equality of arms where a claim may otherwise have not been pursued and where other funding methods i.e. a CFA, are not possible, or after the event (ATE) insurance policies are not available. In personal injury claims, there is an inequality of arms between the well-resourced defendant, and the claimant who has been brought to litigation through no fault of their own, and who is, likely, a one-time user of the system. The claimant will not be in a position to fund their case themselves, and will need assistance from a funding model to instruct a solicitor. Law firms will usually provide a level of investment in cases through the no-win, no-fee funding model, which means that they will typically cover the ongoing costs of the case until the conclusion, including court fees and experts' fees. It may not always be possible for a law firm to provide this investment, and third-party funding may be able to provide an alternative funding model in limited circumstances. Third-party funding will not be the right option in many personal injury cases, due to the level of return on investment which makes it attractive to the funders, but it may be a funding method of last resort, which provides claimants with an opportunity to bring a claim, where otherwise there would have been no such opportunity. Where third-party funding is a potential funding option, claimants must be informed of their options – if they agree to the third-party funding, a percentage of their damages will be paid to the funder if they are successful (only success fees are capped at 25 per cent, and the deductions taken by third-party funders are not classed as success fees), and if they do not agree to third-party funding, they will be unable to pursue their case.

4. Does the current regulatory framework surrounding third-party funding operate sufficiently to regulate third-party funding? If not, what improvements could be made to it?

We are unable to provide a detailed response to this question, but would note that a lack of regulation means, in general, a lack of safeguards. For example, a list of litigation funders is published in the Law Society's quarterly magazine, "Litigation Funding". A proportion of these may simply be backed by wealthy individuals who are looking to invest and get a return. While there is information provided as to whether the funder is a member of the Association of Litigation Funders, there is little indication otherwise as to whether any particular litigation funder will be reliable, and will provide the money that they have agreed to provide. Additionally, should a litigation funder no longer be able to provide the necessary funds, due to bankruptcy for example, unlike with a regulated insurance product, there is no recourse for the claimant i.e. it is not possible to bring a claim under the Financial Services Compensation Scheme.

We would recommend that all third-party funders should be subject to mandatory membership of the Association of Litigation Funders, to provide some safeguards to claimants that the funder is legitimate.

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; 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.

We have stated some of the risks involved in third-party funding at question 4. One further point is that there is no regulation or cap on the amount that the litigation funders can deduct from the claimant's damages. This could mean that, in theory, a litigation funder could completely wipe out the damages that the claimant receives. In the Horizon/Post Office case, it was asserted that the legal team for the Post Office were attempting to run the litigation fund dry[1] - this will be a risk in third-party funded cases – there is a finite pot of money that is being invested, and defendants may act to deplete this. £57.75 million was reached as a settlement in the Horizon/Post Office case, but when deductions for costs and the funders' return were factored in, only £12 million was left for distribution among the individual claimants. £20,000 was payable to each claimant instead of £99,000.

However, as we mentioned at question 1, third-party funding will be used in personal injury cases as an option of last resort. Without the funding, no case can be brought. It was recognised by Alan Bates, the sub-post master and lead claimant against the Post Office, that without the funding, they would not have been able to bring a claim in the first place. In an article for the Guardian in May 2024, Mr Bates said "We knew exactly what we were entering into; it was the only option we had left to expose the truth that the Post Office were determined to keep from us."[2]. While there are concerns around the lack of a cap, the introduction of a statutory cap may pose the risk of deterring funders, and as such restricting access to justice. The amount taken by the funders will depend on the risks involved in the case, and they should be able to negotiate this with the claimant and their representatives. A statutory cap would provide a blanket limit on the return funders can make, and would jeopardise the availability of third-party funding as a "last resort" option.

In a personal injury context, we do not believe that an injured claimant who has acted reasonably should end up in a worse position than where they started. In other words, if their claim is successful, more than the total of their damages should not be required to be paid by them to meet the costs of the action[3]. There must be a balance, and it should also be made clear to any claimant who is pursuing a case via third-party funding how much money will be taken from their damages if successful. The claimant must be able to make a clear and informed choice as to whether to pursue the case and have to pay the litigation funder out of their damages, or to not pursue the case at all. We believe that rather than the introduction of a statutory cap, that may in turn be used against the claimant by the defendant as they will be aware of how much money the litigation funder can get in return; the preferable approach would be the need for the claimant to be fully informed, and for the

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[1] In an email exchange revealed as part of the Post Office Inquiry, general counsel had wanted to know why the Post Office never sought to assess the overall merits of the claim. Andrew Parsons said the strategy was instead legal and technical, to 'thin the heard' [sic] and reduce the claimant pool so the funding would dry up.

[2] *https://www.theguardian.com/commentisfree/article/2024/may/10/post-office-litigation-funders-subpostmasters-corporate-interests

[3] It was previously the position that a claimant should not end up in a worse position than when they brought a action for injury or illness. This was confirmed in *Ho v Adelekun* [2021] UKSC 43. Unfortunately, the last government 'unpicked' this level of QOCS protection in early 2023 leaving a 'winning' claimant in a position where they may be left to pay a costs order against them (i.e. for failing to beat a Part 36 offer) of up to the level of their full damages, costs and interest. APIL had intervened in *Ho v Adelekun* and so are very clear that this watering down of a claimant's protections is wrong and should be addressed.

solicitor in these cases to focus on negotiating the best contract for the claimant in the circumstances.

A further risk is that a litigation funder may simply withdraw funding part way through a case. This would, though, come down to the individual agreement, and it would be difficult to see how this could be regulated for.

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? e. Should the costs of litigation funding be recoverable as a litigation cost in court proceedings? i.e. If so, why? ii. If not, why not?

Litigation funding can play a role in keeping costs down, as litigation funders will want to see that their money has been well spent and unnecessary costs are not being incurred. They will be looking for efficiency, however, there is a risk (as in the Horizon case) that the defendant attempts to increase costs so that the claimants run out of money.

In most cases there will be a costs budget in play, and parties will know, in theory, how much they have to spend and the court's expectations. This will play a larger part in controlling litigation costs than the funding model used. However, court costs budgeting may not solve this issue if the deep pocketed defendant is unconcerned that their tactic would be outside the budget the court has allowed it. If the costs of litigation funding were to be recoverable as a litigation cost in court proceedings, this would temper deep pocketed defendants, as they would be at risk for paying the claimant's costs – it would provide an incentive to keep costs down. Recoverability of costs would also mean claimants would be at a much lower risk of the entirety of their damages being depleted by costs.

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.

The recoverability of costs and costs shifting help to facilitate access to justice particularly where, as in all personal injury claims, the claimant is not a willing participant in litigation and is almost always faced by a sophisticated defendant with much larger resources. In our current system, if each side were to pay their own costs, it simply would not work.

10. Should third-party funders remain exposed to paying the costs of proceedings they have funded, and if so to what extent?

Litigation funders should not be liable for more than they contribute to the case.

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.'

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?

See answer to question 5.

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?

As mentioned above, claimants are exposed to the litigation process as a result of another's negligence or a breach of a health and safety regulation or code; they are not there by choice in comparison perhaps with many claimants pursuing financial remedies. Self-funding is very likely not an option, and in the absence of being able to fund a claim through a CFA, third-party funding may be a potential way to provide funding. CFAs will not be an alternative to third-party funding in the context of personal injury – if third-party funding is being considered, this is because a CFA is not a viable funding option.

An alternative to third-party funding may be that the solicitor steps into the role of third-party funder themselves, on a wider scale than they do now, via a higher hourly rate. As set out above, solicitors already provide investment into the running of cases and effectively act as a third-party funder, but limitations on costs mean that some cases will simply not be viable to pursue. However, solicitors may be persuaded to take on the cases that may fall within the scope of third-party funding, if they are able to charge a higher hourly rate to do so. Solicitors are already stringently regulated, so this would bypass the issue with the lack of regulation in the third-party funding sector.

We note that legal expenses insurance is cited as a potential alternative, however it should be noted that most, if not all LEI policies expressly exclude group actions[4]. The types of cases that would fall to be covered by third-party funding therefore would not be covered by LEI, so this is not a suitable alternative.

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?

The Damages Based Agreement (DBA) regulations must be simplified and reformed to make them commercially viable and attractive as an option to recommend as a funding option to prospective clients. At present, the regulations are overly complex to explain to clients, and are too rigid to be workable in most litigation but certainly in a personal injury context.

Under the current regulations, recoverable costs must be offset against the DBA cap, which makes DBAs a less viable option than CFAs, where the solicitor is entitled to both recoverable costs plus the CFA success fee, which remains an essential payable element in successful cases.

Aside from this 'offset point', the potential variety of outcomes including but not limited to, partial success for example where there are findings of contributory negligence, split costs orders and the like as well as an uncertainty of the level of damages from the outset make

[4] The Civil Justice Council produced an information study on the law and practicalities of before the event insurance in 2017, which noted the consistent exclusion from BTE policies of group litigation orders

the use of these in personal injury actions very unattractive. It is also complex to explain to the client how much they will need to pay from the outset, because this depends on the amount of recoverable costs that are awarded. The cap of 25 per cent of general damages and past losses is also set too low. The percentage cap is also taken from what the client ultimately recovers, so any liability by the claimant for a claim for contributory negligence could substantially reduce the potential costs that the lawyer could recover for conducting the claim.

An example of the rigidity and uncertainty of the DBA regulations is around when the client should become liable to pay a solicitor's charges. There is no rationale as to why a client should not become liable to pay a solicitor's charges if the client terminates the agreement, save in employment cases. Case law in this area has now clarified matters at Court of Appeal level, but there remains some nervousness by practitioners that this and other points about the regulations could still be taken through the courts and even to the Supreme Court (as seen in the recent *Menzies v Oakwood Solicitors* case). A new set of regulations as suggested, would resolve any uncertainty and would still be preferable

APIL set out in its response to the Civil Justice Council in September 2018 how we believed the DBA regulations should be reformed to be workable. We agreed with the Civil Justice Council that "expenses" should be changed to "disbursements", as disbursements has a widely accepted meaning. We also do not believe that counsels' fees should be a disbursement outside of the cap. There will be uncertainty for claimants if counsels' fees are an additional disbursement. VAT should also remain within the cap, where the VAT is not recoverable by the client.

We proposed that the figure from which the percentage amount is taken should be the amount that the claimant is awarded, regardless of any liability to the other side, set off, or contributory negligence. We also suggested that a tapered approach to the percentage cap for DBAs, as proposed by Sheriff Principal Taylor in Scotland, is the best approach to achieve viable DBAs. We suggest that the percentage cap should apply to all damages, with no ring fencing of future losses, as this makes DBAs an unviable method of funding, particularly in catastrophic cases where a large proportion of the damages awarded are for future loss. The work that needs to be done to bring a high value case with an element of future loss to a successful conclusion is substantial. Lawyers need to be paid fairly to enable them to undertake this work if high value, complex and meritorious cases are still to be considered viable.

A tapered approach to the percentage cap would provide a safeguard for the claimant, preventing carefully calculated damages for future loss from being eaten away by solicitors' fees. There must be a balance between creating a viable funding model to allow these cases to be taken on, and also leaving the claimant with sufficient damages to warrant the trouble and anxiety most litigants experience. The tapered approach achieves this.

Damages Based Agreements are designed to assist with access to justice where otherwise a case would not be brought. If DBAs are to be a workable alternative model, they must be viable in cases where CFAs are not, to provide a solution where a case would otherwise not be taken on. This may mean that a higher percentage of the damages will need to be taken by the solicitor to make it attractive to run the case.

APIL has also advocated on a number of occasions for the abrogation of the indemnity principle. The existence of the indemnity principle makes DBAs unattractive because the claimant solicitor may end up getting less than they are entitled to when the proportionate recoverable costs are more than the DBA fee. Currently, the DBA regulations provide that

the client must not be required to pay an amount which is over and above the contingency fee payment plus any expenses incurred by their lawyer. If the whole of the contingency fee cap is eaten up by recoverable costs, then the client has nothing further to pay the solicitor. It also follows that, if the amount of recoverable costs exceeds the contingency fee cap, the most the defendant will have to pay is the contingency fee cap, notwithstanding that the additional fees have been incurred by the winning party. The indemnity principle means that solicitors may get less than they are entitled to, and less than their client is willing to pay. The principle prevents a more workable version of the DBA regulations from being introduced, and therefore prevents DBAs becoming a viable option for personal injury claims funding in claims outside of the small claims and fixed costs environments.

Aside from the issues we have raised with the current DBA regulations above, we would make the general point that the DBA regulations themselves illustrate the issues that arise when regulations are drafted to be overly complex and inflexible. Caution must be exercised should any new regulations around third-party funding be implemented, to ensure that they are as simple as is possible.

Conditional Fee Agreements

APIL argued, ahead of the reforms in 2013, that it was highly unsatisfactory a client's damages should be eroded by costs. However, the changes made at that stage reflected a policy decision of the Coalition Government that injured claimants should be expected to contribute to their costs. Consequently, solicitors had to adapt so that claimants were contributing to costs so that access to justice could be maintained within the new environment. Overall, solicitors have adapted to the Jackson reforms, made post-Jackson CFAs work and on the whole, access to justice has been maintained. However, we note that there have been a number of cases which have highlighted the uncertainty around issues such as deductions from client damages to pay for solicitors' costs. There should be more guidance, templates, and examples produced around client care and transparency around charges and to help ensure that claimants are fully informed about deductions from damages. We welcome the Civil Justice Council carrying out a review of Solicitors' Act 1974, which deals with client billing, and we will be happy to provide input into that working group.

There is also some uncertainty as to how the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 interact with the Conditional Fee Agreement Regulations. Previously, if a cancellation notice was not given as part of the CFA, then arguably the CFA was unenforceable, but this is not clear cut. Guidance on how consumer contract regulations interact with CFA regulations would be helpful.

However, we do not believe that any reforms are currently required to the Conditional Fee Agreement Regulations, as largely, CFAs work well in personal injury cases.

Could one set of Regulations be possible to cover all contingent agreements?

We can certainly see that this would be attractive if it could be achieved. Given the differences outlined between DBAs and CFA's however, we can see that there would be difficulties. We would be happy to contribute to any discussions if this idea is to be explored further.

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?

As mentioned above, typically, legal expenses insurance does not cover the sort of actions which may require third-party funding (group actions for example).

We would suggest that the question of mandatory legal expense insurance is much larger than this consultation/review of funding and would require primary legislation/comprehensive consultation. For the vast majority of claims, there are funding options available (as referenced in this paper) and so we do not believe it is necessary to introduce mandatory insurance, but rather to simply make sure that the funding options which are available today are working as well as is possible.

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?

From the perspective of personal injury, no reform is needed here.

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?

There are a number of issues with before the event insurance at present. Many BTE insurance policies have such low limits of indemnity to render the policy effectively meaningless. The Financial Conduct Authority should intervene in these situations to prevent such policies being offered. BTE policies also tend to have a high number of exclusions, which again render the policies largely ineffective. There should also be freedom for the claimant to choose a legal provider under a BTE policy, even before issue of proceedings. Freedom of choice to choose a solicitor is a vital component to achieving effective access to justice.

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?

We are unable to answer this question fully until it is clear what the Civil Justice Council recommend in terms of reform to litigation funding.

However, we believe that there should be amendment to legislation to reverse the decision in PACCAR, making clear that third-party litigation funding agreements which provide that funders can recover a percentage of damages, are not Damages Based Agreements and do not fall within the DBA regulations.

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?

We believe that if the defendant is able to make an application for security of costs, the claimant should similarly be entitled to establish that, if they are successful in their case, the defendant has the correct insurance to cover the claim. The defendant should be required to provide proof of sufficient liability cover.

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?

We do not think that pre-action conduct and the conduct of litigation, and the court's involvement in this, should differ where a claim 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? Questions concerning provision to protect claimants.

We do not necessarily agree that funding should be disclosed to the court, however, as mentioned above in relation to security of costs, if the claimant is ordered to disclose their funding, the defendant should similarly be ordered to demonstrate that they have sufficient liability cover in place to satisfy the claim should the claimant be successful. If there are concerns about the effect that disclosure has on parties' approaches to the conduct of litigation, we would suggest that disclosure is to the court only, and not to the parties to proceedings (as was the case in the PIP Breast Implant Litigation, where the managing judge required disclosure of the policy terms to herself only, to be satisfied the court resources would not be wasted by the matter coming to trial and the defendant being unable to defend itself because of insufficient insurance or other means). We would suggest that the risk that a claimant may be pursuing a claim against a defendant with no means is as great a problem, if not indeed greater, than a defendant being concerned as to the extent of the litigation funding available to the claimant. **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?**

There is a concern that litigation funders can exercise undue control over litigation, such as being able to withdraw funding at any point. There is also the prospect that litigation funders are more likely to exercise control over litigation where the third-party funding is an option of last resort.

If merits of the case remain strong, however, typically over 50 per cent, we consider that ATE, BTE, litigation funders operate similarly in this regard, and that the exercise of control by third-party funders would not be dissimilar to that of ATE or BTE insurers.

We also query what could be done to prevent third-party funders exerting undue control in cases where this funding is an option of last resort. As set out above, where the funding is an option of last resort, the claimant faces either accepting the terms of the litigation funder, or not pursuing their case at all. Stricter regulation on this point may deter litigation funders from offering funding in the first place. Claimants must be made aware and be clear of the terms and conditions of any third-party funding agreement, including the circumstances through which third-party funders can withdraw funding part way through the case. The claimant must be able to make an informed choice as to whether they accept the terms of the litigation funder.

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

See answer to Q28.

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?

This is an issue between the solicitor and client – lawyers are regulated, and must act in their client's best interests. It is not for the courts to interfere on this. The court should not get involved in the solicitor and client relationship unless there are exceptional circumstances, such as in cases involving protected parties.

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?

We have mentioned above the protections that need to be in place in relation to claimants whose litigation is funded by third-party funding. Provision would come via regulation of third-party funders.

33. To what extent does the third-party funding market enable claimants to compare funding options different funders provide effectively?

As we mentioned above, the Law Society publishes an industry magazine called 'Litigation Funding' which includes a table of available litigation funders, with some information to enable claimants to compare funders. However, as we mention above, there is not a great deal of information and due to the lack of regulation, it is difficult to ascertain whether a certain funder is reliable. We do question, however, what could be done to enable more effective comparison. **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?**

We would suggest that the conflicts of interest that arise between claimants, their legal representatives and/or third-party funders are analogous to those that arise in relation to Trade Unions, and ATE/BTE providers. The conflict of interest that arises in a third-party funded case is no worse than in those scenarios.

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.

We do not think third-party funding encourages vexatious litigation – we question what the benefit would be to a third-party funder in encouraging litigation without merit. We suggest that the involvement of a third-party funder will often act as a further check and balance as to whether a case has merits or not – a third-party funder will carry out detailed due diligence to prevent unmeritorious claims from being pursued as they would be at risk and most likely only compensated at all in the event of a successful action.

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?

Please see answer to question 33.

General Issues

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

We would be keen to see, and have an opportunity to comment on, any recommendations that the Civil Justice Council make as a result of this consultation.

Any queries in relation to this response should be directed to:

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