

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](mailto:CJCLitigationFundingReview@judiciary.uk). If you have any questions about the consultation or submission process, please contact [CJC@judiciary.uk](mailto: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:	Greg
Last name:	Williams
Location:	
Role:	
Job title:	Manager
Organisation:	FCA
Are you responding on behalf of your organisation?	Yes
Your email address:	

**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.

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.

**General Issues**

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

The activities the FCA regulates are primarily set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order. These ‘regulated activities’ require the FCA’s authorisation before firms or individuals can carry them out. Firms that the FCA authorises for regulated activities may also undertake unregulated activities. Some, but not all, of the FCA’s powers and requirements can extend to the unregulated activities or authorised firms. The FCA’s powers over unauthorised individuals are much more limited.

FCA authorisation is not necessary for a firm to provide third party funding. However, a firm providing third party funding might be authorised by the FCA if it carries out a regulated activity. A third-party funder might be authorised by the FCA if, for example, it manages specified investments or if it is carrying out regulated claims management activity. Regulated claims management activity includes the seeking out, referrals and identification of claims or potential claims. The FCA has very little evidence of third-party funders being authorised by it for seeking out, referrals and identification of claims or potential claims.

If regulation of third-party funding is to be considered, we think it is important that the origin of the underlying funding is fully understood. There is a risk that regulation of third-party funding could be used to attract investors or promote unregulated investments to retail consumers, potentially putting consumers’ money at risk. We suggest this is explored as part of this work.

For example, we have seen examples of litigation funding targeting trust funds which hold assets on behalf of retail investors with relatively low risk thresholds and who have often transferred

monies into the fund on the understanding that they will be safe. In some cases, we have seen litigation funders adopt complex or opaque structures, such as, for example, through the use of loan notes and bonds offered by third parties which act effectively as funnels for the litigation funding. Using such investment vehicles creates additional layering which can make it particularly difficult to understand where the funds are ultimately going to be invested, the risk associated with those investments or enable consumers to claw monies back in the event that anything goes wrong.