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Your response is (public/anonymous/confidential):	Public but please do not publish any identifying personal information about victims of domestic abuse, such as names, ages, locations etc.
First name:	Laura
Last name:	Longworth
Location:	Burnley
Role:	Admin/campaigner/co-founder
Job title:	Journalist
Organisation:	The Legal Negligence & Mismanagement Campaign Group (LNMCG)
Are you responding on behalf of your organisation?	Yes
Your email address:	[redacted]

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 Legal Negligence & Mismanagement Campaign Group (LNMCG), and the Divorce, Debt and Litigation Loans group, champion vulnerable people financially and emotionally devastated by mismanaged legal claims involving third-party litigation funding (TPLF). We campaign for transparency and regulation around TPLF in the UK. It's important to note that not all funders are members of the Association of Litigation Funders, according to a report commissioned by the Legal Services Board last March.

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.

1. Homelessness and family displacement

The financial burden of unfair and unaffordable litigation loans has led to several of our group members being forced out of their homes. This issue is particularly devastating for families with children, especially those with special educational needs and disabilities (SEND), left without a stable living environment. The trauma of facing homelessness on top of financial distress exacerbates an already challenging situation. The Financial Ombudsman Service noted that if a borrower has to either borrow further or sell their home to repay their loan then they are making payments in an unsustainable manner, according to the regulator's guidance in the Consumer Credit sourcebook 5.3.1G (6).

2. Mental health crisis

Financial strain, emotional abuse, and a power imbalance in litigation has caused significant mental health challenges, with many group members diagnosed with anxiety, depression, and post-traumatic stress disorder (PTSD). With financial harm leading to members being referred by the NHS to the Govt Mental Health Debt Moratorium, unable to work, or requiring hospital admission and mental health crisis treatment. This is a direct result of litigation debt financially trapping individuals in litigation for years without regard for routes to repayment.

3. Economic abuse and financial exploitation in family law

Victims of domestic abuse, particularly those seeking divorce, are being further victimised by the high costs of litigation funding. Instead of helping them escape their abusive relationships, the financial strain caused by unfair and unaffordable loans traps them in prolonged legal battles and economic abuse by their former partner.

Some of our members say they felt pressured by their lawyers into taking out litigation loans, despite being victims of domestic abuse and being highly vulnerable at the time. As

Women's Aid highlights, abusive and unhealthy relationships can impact us emotionally, physically, and mentally, leaving us feeling helpless, insecure, broken, and disempowered. Coercively controlling perpetrators may have isolated victims from support systems, leaving them reliant on a partner for support, validation, and decision-making. Common examples of coercive behaviour are: Taking control over aspects of everyday life, such as where you can go, who you can see, what you can wear and when you can sleep; blocking access to support services and medical services; repeatedly putting you down; humiliating, degrading or dehumanising you; controlling your finances; making threats or intimidating you; manipulating you.

Over time, emotional abuse can wear down a person's self-worth, confidence, and their mental and emotional strength. Their access to assets, even if high-value, and their ability to make decisions may both be impeded. As described by the Centre For Clinical Psychology, trauma can negatively affect decision-making. Trauma can also impact an individual's ability to accurately assess risk (Warda & Bryant,1998). They may underestimate the risks of certain behaviours or situations, leading to risky decision-making, including taking out highly expensive third-party litigation loans. Trauma can cause emotional dysregulation, meaning a person may be more likely to make decisions based on their emotions in the moment rather than considering the long-term consequences.

We have seen cases where we feel lawyers, judges and other decision-makers have not taken the impact of trauma and domestic abuse on a claimant's borrowing decision seriously enough. In these cases, it seems as though the abuse victim is expected to have similar functioning capacities as clients who don't have a history of domestic abuse, mental illness and trauma.

One member describes being walked by her solicitor to a neighbouring law firm where she was told where to sign on pre-marked up tabs on a loan application to borrow £100,000. This was supposed to constitute independent advice. She says it took place in the reception area and lasted 10 minutes. This does not seem sufficient time to explain the ramifications of a large litigation loan to a vulnerable lay-person. A judge also remarked that they would have expected her to carry out her own research into funding. This task would be a minefield for any lay-person so we believe it is unreasonable to expect this of a highly vulnerable person.

These experiences reflect a Resolution report, *Domestic abuse in financial remedy proceedings (October 2024)*. In a survey, it found that:

- 80% of family justice professionals believe domestic abuse and specifically economic abuse is not sufficiently taken into account in financial remedy proceedings;
- 85% said it is not sufficiently taken into account in Schedule 1 (awards for parents of children) and 87% in cases where the separating couple have cohabited but not been married.

What's more, some of our members have cases where lawyers and third-party funders have disproportionately profited from the suffering of domestic abuse victims, as divorce proceedings drag out for years, increasing the cost well beyond what is typical. While the average UK divorce costs £14,561, some of our members have been entangled in financial disputes for longer-than-average periods of as much as a decade, costing hundreds of thousands of pounds and ultimately forcing them to sell their home.

These ongoing legal battles add layers of trauma, making it more difficult for victims to rebuild their lives. They feel forgotten and powerless, with financial pressure preventing them from moving on from the abuse and achieving the closure they need.

More needs to be done to stop economic abuse playing out through legal proceedings, such as divorce.
Resolution's view is that the current approach of the courts to s25(2)(g) of the Matrimonial Causes Act 1973 leads to unfair outcomes for some victim-survivors of domestic abuse.
A former partner's failure to comply with the duty to give full and frank disclosure is a barrier to effective resolution and a form of economic abuse.
In our group, one of our member's ex-partner was held in contempt of court for hiding details of his finances.
In a survey by Resolution, which did not differentiate between non-disclosure during NCDR or in court proceedings, the majority of respondents (42%) said that between 21% - 60% of their cases involved non-disclosure.
In a follow-up question, Resolution collected the following consumer experiences of how disclosure – or lack of it - in NCDR, and enforcement, creates unfairness for victim-survivors:
• Disclosure -

1) "The whole process of attaining a clear picture is so open to economic abuse. Dragging things out over months, not being transparent, and using the process to wear the other party down. One party having all the knowledge, and the assets. The other party is powerless and unable to settle as they don't have a full picture. I think it's a huge issue – and worry it's about to get a LOT worse." – London and South-East
2) " … a party refusing to engage with negotiations, refusing to provide disclosure, even choosing to act in person despite being able to afford legal fees. It makes things take longer and more expensive for the client, and there seem to be absolutely no penalties for this behaviour. It can clearly be a form of ongoing abuse and has a terrible effect on a domestic abuse survivor." – Western Circuit

• Enforcement –

1) "Timescales for houses going on the market, assets to be sold, payments to be made. At this point, often my clients have literally no money left, and the costs of enforcing both emotionally and financially are high." – London

Resolution says these complaints are consistent with the Law Commission report on the Enforcement of Family Financial Remedy Orders (2016) and the report from UK Finance, a representative organisation for finance institutions, From Control to Financial Freedom (2024).
"UK Finance identified that the failure to comply with financial remedy court orders allows economic abuse to continue to be perpetrated: There are clear guidelines provided by the Court about the implications of not upholding a Family Court Order. However, despite the seriousness of breaching the Court Order and the threat of being in contempt, some perpetrators continue to abuse the victim-survivor by using a range of delaying tactics including failure to: • engage with the lender, • provide the necessary finance documentation to the Court, and • complete the necessary steps required to sell the family home.
"At every stage of this project, the working party has found overwhelming consensus that there needs to be a cultural shift to stop domestic abuse from continuing (or beginning) post-

separation. This abuse is occurring not only through negotiations, NCDR and during court proceedings but also after proceedings have concluded by the failure to implement final orders. That such abuse exists was recognised by Master Bell in Northern Ireland in G v G (Needs, Discovery and Coercive Control): 20
“Judges hearing cases in which coercive control becomes an issue will, of course, bear in mind that the litigation process itself may be being used as a means of coercive control by one spouse against the other. There is a risk in such circumstances that, if a court does not act to prevent the abuse of its processes, trauma will be induced upon a party by the court experience itself.
“Not paying child support regularly or reliably, or not in full • Manipulating the amount of child support paid (e.g. through misreporting of earnings or voluntarily leaving employment) • Refusal to pay alimony [i.e. spousal maintenance], paying it unreliably or manipulating the amount paid • Using the court system (including divorce or family courts), for example repeatedly bringing cases, delaying hearings or otherwise leading to excessive court costs for victim-survivors • Refusal to comply with court orders, including protection or financial orders, or around transferring property or goods into the victim-survivor’s name.
“Perpetrators frequently make mirror allegations and victim-survivors sometimes fight back, with the result that the professional is usually faced with both people claiming they are the victim of abuse. The danger is that we hold preconceived ideas that victim-survivors should appear totally blameless, and therefore if they have fought back the professional considers the parties to be both as bad as each other. This misunderstanding of the domestic abuse dynamic compounds the harm to the victim-survivor as it leaves them vulnerable. The key for the professional is to look at the underlying reality of which party has control.”

Members have been forced to borrow more money, which they could not afford, due to spiralling legal fees and high interest rates, as their ex-partners used delay tactics, stopping them from selling their homes.

Across the group high interest on TPLF resulted in their running out of funds, and having to act as Litigants in Person.

One member also describes being charged by lawyers to handle day-to-day parenting matters due to their ex-partner’s abusive behaviour.

1. Worsening Inequality and Access to Justice

- **Exacerbates socio-economic divides:** Irresponsible lending practices disproportionately affect vulnerable populations, such as those with low incomes, domestic abuse victims, and people with mental health issues. Those who are most in need of legal representation may find themselves financially burdened or unable to access fair justice, leading to greater inequality in the legal system.
- **Increased financial strain:** People who fall victim to predatory lenders often end up in an ongoing cycle of debt, unable to access legal remedies, which can further limit their opportunities for economic stability. The very system intended to ensure fairness and justice becomes a tool of exploitation.

How does the law define vulnerability?

https://www.sra.org.uk/globalassets/documents/solicitors/freedom-in-practice/vulnerable-people.pdf

https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

Every man or woman with children going through divorce is situationally vulnerable.

2. Perpetuating Trauma and Mental Health Issues

- **Long-lasting emotional toll:** The emotional and psychological toll of being trapped in debt due to litigation funding can have long-term effects on mental health. Victims often experience anxiety, depression, PTSD, and a sense of helplessness, all of which can linger long after the legal proceedings have concluded. This can result in long-term struggles with work, relationships, and overall well-being.
- **Generational trauma:** When families experience these types of financial and emotional hardships, the consequences may be passed down to future generations, particularly in cases of homelessness or prolonged legal battles. Children of those affected may experience instability, which can affect their mental health, educational outcomes, and future prospects.

3. Legal System Integrity and Trust Erosion

- **Undermines trust in the legal system:** If the legal system is seen as being biased or compromised by financial interests, it erodes public trust. People may begin to view the system as one that serves only the wealthy or powerful, leading to disengagement and disillusionment with the courts. This can discourage individuals from seeking legal remedies in the future and undermine the legitimacy of the justice system.
- **Legal manipulation and exploitation:** Irresponsible lenders often exploit the legal process for profit, leading to protracted, drawn-out cases that may not be in the best interests of those seeking justice. This can delay or deny resolution for many individuals who are simply trying to protect their rights or escape an abusive situation, such as in divorce or custody disputes.

4. Prolonged Legal Battles and Financial Ruin

- **Financial exploitation:** Unregulated third-party lending often involves high interest rates, hidden fees, and unfair terms that make it difficult, if not impossible, for individuals to repay the loans without falling into even greater debt. This situation is particularly damaging for those already facing difficult circumstances (e.g., domestic abuse survivors or those experiencing homelessness), as they are trapped in a cycle of borrowing just to meet their legal expenses, which can take years to resolve.
- **Disruption of personal and family stability:** Legal battles prolonged by financial constraints can interfere with people's ability to work, maintain stable housing, or care for their families. For individuals already at risk of homelessness, this can result in job loss, eviction, or even the breakdown of familial relationships, deepening their vulnerability and emotional distress.

5. Encourages Unethical Business Practices in the Legal Sector

- **Profiting from suffering:** If litigation funders are allowed to operate without strict regulation, they may continue to profit from the distress of vulnerable individuals, exacerbating their suffering. This profit-driven model can incentivise funders to encourage or prolong legal disputes, even when it may not be in the best interests of the clients involved, further undermining the pursuit of justice.
- **Impact on lawyers and legal ethics:** While many lawyers work with integrity, the prevalence of irresponsible lending practices could lead to conflicts of interest, where lawyers may feel incentivised to push cases forward unnecessarily to generate further funding or to benefit financially from the ongoing litigation. This undermines the ethical foundation of legal practice and trust in the industry.

https://www.lawgazette.co.uk/news/unpaid-litigation-funder-succeeds-in-intervention-but-loses-out-on-remedies/5120211.article

6. Social Costs of Prolonged Legal Involvement

- **Increased strain on public services:** When individuals are unable to resolve legal disputes quickly due to financial barriers, there is often a greater burden on public services such as social welfare, healthcare, and homelessness support systems. This places strain on public resources and may force governments to allocate more funding to social services instead of focusing on preventive measures or other important initiatives.
- **Reduced societal productivity:** Victims of irresponsible lending are often forced into prolonged periods of financial distress, which can prevent them from engaging fully in the workforce, further limiting their economic mobility. This can have a cascading effect on the economy, leading to lower productivity, higher rates of unemployment, and greater reliance on social safety nets.

Huge costs to apply for TPLF:
Resolution's research found that "instructing a solicitor to make full applications to specialist loan providers is time consuming and expensive. It can cost between £5,000 to £10,000 depending on the firm."

Harming people's credit rating:
Resolution's research found that securing unaffordable commercial loans and failing to keep up with the repayments will impact a party's credit rating and have implications for their financial well-being.

Case study 1:

The Hidden Costs of Litigation Loans:

My Experience with Novitas

[redacted]

The promise of litigation funding is often presented as a lifeline for individuals seeking justice. However, my experience with Novitas paints a far more troubling picture, one of financial devastation, questionable practices, and an overwhelming imbalance of power. After reflecting on my case, I want to highlight key concerns that raise serious ethical and legal questions about the conduct of litigation lenders and their relationships with law firms.

An Unequal Playing Field

From the outset, Novitas knowingly provided my ex-husband with a significantly larger fighting fund than I received. This was despite the fact that he had an income exceeding £2 million and did not require financial assistance. In contrast, my access to funds was tightly controlled, placing me at a disadvantage during legal proceedings.

A Fictitious Property Valuation

The valuation of our marital property was requested by Novitas through a company that, upon closer inspection, appeared to have been created solely for this purpose. According to Companies House records, this entity was shut down just nine months after producing the valuation. The figures were grossly exaggerated, leading Novitas to loan excessive amounts to both parties. As a result, the inflated debt wiped out nearly all marital assets. When my ex-husband later declared bankruptcy, Novitas aggressively pursued him, leaving me at the bottom of the creditor queue and ultimately without the financial settlement awarded to me in court.

A Loan That Became a Trap

The repayment of the litigation loan was tied to the sale of our home. However, my ex-husband secured an Occupancy Order through the courts, which allowed him to move into the property and delay its sale. As a result, the interest on the loan escalated dramatically, trapping me in a worsening financial crisis.

Law Firms Acting as Unregulated Banks

At the suggestion of my lawyers, I reluctantly took out a living expenses loan, but the funds were not transferred directly to me. Instead, the law firm received them first. This arrangement made me question whether the firm was effectively acting as an unregulated financial institution something they are not authorised to do. If this practice breaches financial regulations, it could have serious legal implications.

Silencing Complaints with Settlements

When another complainant successfully challenged Novitas through the Financial Ombudsman Service (FOS), I was quickly contacted with a settlement offer. This raised suspicions that Novitas was attempting to prevent another negative decision from being published, potentially exposing systemic issues within their lending practices.

Questionable Legal Advice and Pressure to Take on Debt

The independent legal advice I received regarding the loan was rushed and unprofessional. I was sent to a solicitor's private residence after hours just two days before Christmas to sign the paperwork. I did not fully understand the terms, nor was I given adequate time to assess my options.

Despite repeatedly stating in writing to my law firm that I did not want or need a loan especially since I had already secured a Legal Services Payment Order (LSPO) I was pressured into taking on this debt. This raises concerns about whether law firms have conflicts of interest when recommending litigation loans.

Lack of Due Diligence and Transparency

At the time of taking out the loan, I had a County Court Judgment (CCJ) against me due to financial and domestic abuse by my ex-husband. A CCJ is a clear warning sign of financial vulnerability, yet Novitas proceeded with the loan regardless. This suggests that they either failed to conduct proper credit checks or deliberately ignored red flags.

Even after taking on the loan, I was never provided with regular statements of account. I had no idea how much interest and fees were accruing over time, making it impossible to manage the debt effectively.

The Devastating Consequences

By the time everything unraveled, the combined loan and legal costs had far exceeded my assets, leaving me financially ruined. My credit rating was destroyed, and I became homeless. This had a direct impact on my children, as my unstable housing situation meant overnight stays with me were nearly impossible. Even finding a rental property became a challenge, as landlords were reluctant to accept tenants with poor credit histories.

The Need for Accountability

My experience highlights the urgent need for greater oversight of litigation lenders and the law firms that facilitate these loans. The unchecked power of lenders like Novitas, combined with law firms that may have their own financial incentives, can leave vulnerable individuals trapped in debt with no way out.

As more cases like mine come to light, it is imperative that regulators take action to prevent others from experiencing similar financial devastation. Justice should not come at the cost of financial ruin.

Feedback from our members:

- Ms S said: "It became clear that the focus was not to conclude my divorce but to bill me up to the amount of the equity in my home…I was trapped in a cycle of greed and could no longer trust my solicitor."

- Mr A said: "Despite lawyers' assurances that enormous loan facilities are there only as a contingency, the limit, based on available equity, is reached and often exceeded.
  "At our first meeting, my solicitor advised me that if all went well, I could expect costs of a few thousand pounds. He applied for a Novitas loan facility of £60,000 explaining 'it's better to ask for more so we don't need to re-apply'. That facility, however, was exhausted and two years later, a further application was made for £30,000. If the facility is there, it will be 'needed' and spent."

Novitas divorce: £200K in 2017; average non-funded contentious divorce £15-18K

Conclusion:

Allowing irresponsible lending in the legal system has severe long-term consequences that extend beyond financial distress. It creates a cycle of injustice, inequality, and trauma, affecting individuals' emotional well-being, stability, and ability to access fair legal outcomes. It also risks undermining the very integrity of the legal system and the ethical practice of law, leading to a society where the most vulnerable are continually exploited for financial gain.

Addressing this issue through regulation, accountability, and the promotion of fairer, more accessible legal funding options is crucial in restoring trust and ensuring that the legal system remains a source of justice for all.

Unfair and unaffordable lending in the legal sector not only causes direct harm to vulnerable consumers but also leaves them even more susceptible to exploitation by predators outside the legal system. These additional dangers further compound the emotional, sexual, and financial vulnerabilities that individuals face.

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

TPLF can provide access to justice for parties who might not otherwise afford litigation. But there are ways in which it has failed to secure **effective access to justice** and instead **led to further injustices** for the consumer:

Unfair and unaffordable lending causing major harm:

Irresponsible lending causes harm to borrowers, especially those who are already highly vulnerable. We question to what extent you can say justice has been served effectively, no matter the amount of settlement secured, if a consumer has lost their home, or faced or experienced homelessness, a mental health crisis or breakdown, suicidal thinking, crushing debts, and prolonged economic abuse during the legal proceedings.

Novitas Loans Limited: an example

- 20 complaints were made to the Financial Ombudsman Service against third-party funder Novitas Loans Limited between 2012 and 2021, FOI data shows.
- Merchant banking giant Close Brothers took over Novitas in 2017 in a £30m deal. In a 2019 Twitter post, Novitas said it was working with more than 900 British law firms.

- But in July 2021, Close Brothers stopped new lending via Novitas and, in January 2023, announced it was facing writing off up to £183m in bad loans relating to the company.

Here are several rulings made by the Financial Ombudsman Service against Novitas Loans Limited since 2021:

Case studies:

1) **Ms H:**

March 2023 - https://www.financial-ombudsman.org.uk/decision/DRN-3992510.pdf

- The loans secured against Ms H's marital home with an around 18% annual interest rate were "unaffordable" as the vulnerable claimant had to sell her home to repay the debt.
- Novitas had not made adequate affordability checks.
- The lending decision was "unfair".
- Novitas "unfairly" charged Ms H interest while failing to provide compliant annual loan statements
- The firm refunded the claimants over £7,000 in interest charges.

2) **Mr A**

https://www.financial-ombudsman.org.uk/decision/DRN-3692047.pdf

- The FOS decision summary revealed:
- Novitas accepted the investigator's findings that it irresponsibly lent to Mr A.
- Mr A borrowed £60,000 lent by Novitas, secured via a second charge against his property, which was the property subject to the litigation in question with his ex-partner. The interest rate on the facility was 18% per annum.
- Mr A's solicitor informed Novitas that it only learned that P's litigation costs were also being funded by a similar credit arrangement with Novitas, almost a year later, in or around November 2015.
- In June 2017, Mr A's solicitor contacted Mr A to say that the funds from the initial facility had been exhausted and an extension to the facility had to be sought as further funds were required. Mr A has said that his solicitor wanted to extend the limit on the facility by a further £70,000. In September 2017, Novitas agreed to provide an extension of £30,000. This time the facility was agreed without a charge on Mr A's property due to changes in the regulatory regime for second charge mortgages which had taken place in March 2016.These funds were agreed on the same interest and repayment terms as the initial loan.
- In November 2017 and before any conclusion was reached on the proceedings between Mr A and P, the Solicitors Regulation Authority ("SRA") closed down the practice of P's solicitor. P obtained alternative representation and following a successful mediation with Mr A, an amicable agreement was eventually reached between Mr A and P in relation to their separation.
- It was Mr A's view that he wouldn't have had a loan to repay if Novitas hadn't negligently approved P's loan in the first place and so he shouldn't be required to repay the balance.

- As a result of reviewing Mr A's loan, it proposed to write-off all interest and fees added to Mr A's loans and also ensure that Mr A would pay no interest going forward.
- The FOS decision-maker added: "I'm satisfied that the checks Novitas carried out weren't reasonable and proportionate. These are: • Novitas appears to have followed its usual lending policy of merely checking the borrower was a United Kingdom resident and had no County Court Judgments or an Individual Voluntary Arrangement ("IVA") recorded against them. It assumed that a lump sum would be available to repay the loan once the property in question was sold. As a result, it considered the borrower had net assets of at least three times the amount being lent. I can't see that Novitas had any regard for Mr A's particular circumstances apart from the general CCA/IVA checks and the fact that he owned a property. • Novitas didn't obtain any income and expenditure information from Mr A. And I've not seen anything to ascertain that Novitas established Mr A had a lump sum available to repay the loan either, if for any reason his property was not sold at the end of the dispute (as was actually the case). This, together with the lack of any payment schedule or reasonable term for the repayment of the amounts lent suggests Novitas' assessment of affordability was based primarily or solely on the value of Mr A's property being three times the value of the amount lent, which runs contrary to CONC 5.3.4R. Given the existing mortgages on the property, it seems to me that any success for P in her TOLATA claim would have taken Mr A's equity below three times the amount Novitas was lending. So, it appears that the decision to proceed without any further checks may even have been against Novitas' own lending policy. •
- "I consider that reasonable and proportionate checks would more likely than not have shown that Mr A was unable to have been able to repay these loans in a sustainable manner. I consider that reasonable and proportionate checks, including those relating to his income and expenditure, would have likely revealed: • that Mr A had earnings of under £10,000 a year in 2014 • Mr A already owed over £240,000 to existing creditors, including almost £217,000 in lending secured on his home. The majority of Mr A's monthly income was spent on his monthly mortgage payments alone. • The above details show that Mr A had an obvious lack of disposable income. So it's difficult to see how he would have been able to repay an additional £60,000 and £30,000 in a sustainable manner. In my view, he was always going to have to either borrow further or sell his home – both of which are examples of making payments in an unsustainable manner in the regulator's guidance at CONC 5.3.1G (6).
- "I'm satisfied that Novitas failed to meet its obligations to Mr A in relation to responsible lending."
- "P's solicitor was involved in fraud and pleaded guilty.
- "Novitas choosing to fund Mr A's litigation in circumstances where it had already agreed to fund P's litigation created an additional conflict and risk to Mr A's interests which Novitas was required to manage fairly under the overarching requirements of Principle 8. 107. The conflict between the interests of Novitas and those of Mr A arose in two ways. Firstly, as Mr A says, the loans were set up in a way that meant Novitas was the only party that had access to legally privileged information from both sides of the dispute. 108. This brings me on to the second source of the potential conflict of interest. Novitas' decision to fund both sides to the same dispute placed it in the position where it effectively controlled the 'purse strings' for both sides. Novitas' decision to fund both sides to this dispute meant that it could make further

funds available for both parties to drawdown, or even simply provide additional funds to just one party. For example, every time Novitas advanced funds to one side, it is reasonable to infer that this could disadvantage the other side, if th it's not unreasonable to conclude that this situation had the potential to become doubly profitable for Novitas as protracted litigation could create an inflationary cycle where it benefitted both directly and indirectly from the need of the other side to respond (by drawing down further funds). 111. This is especially the case bearing in mind the way that interest was accruing on any amount owing without any payments, in line with any amortisation schedule being made to reduce the capital. It's also worth noting that Mr A's debt was secured on his property. Novitas knew that a prospective TOLATA claim was ongoing and that Mr A's share of the property could reduce at the end of the process. 112. I'm also mindful that Novitas funding both sides to the litigation had the potential to be doubly disadvantageous to Mr A and P. After all, the whole reason the litigation was taking place was because there was a dispute over their joint assets. Lending to both parties to the same dispute, especially on the terms the funds were advanced on, had the unusual effect of diminishing these joint assets from both sides. 113. Novitas says that the arrangements here did not create any conflict of interest and that it was in the same position as a bank which had made a personal loan to both parties to fund proceeds. However, I don't agree with this view. Novitas provided Mr A with a loan that was secured on his property and this is different from a personal loan. More importantly, a key feature of this lending arrangement was that Novitas was in a unique position where both solicitors of Mr A and P were members of its Panel under a pre-existing business arrangement. This meant Novitas was the creditor in debtorcreditor-supplier agreements with both Mr A and P. 114. Had P and/or Mr A taken out personal loans from their banks there would have been no pre-existing agreement between the bank(s) and the legal services provider(s) - i.e. it would have been more straightforward and simple debtor creditor agreement. The lack of any arrangement between the bank and the provider of the legal services means the bank is unlikely to have known much about the litigation at all and would simply be concerned with the creditworthiness of the borrower and affordability of any loan. 115. This also ignores the fact that the terms and conditions of Mr A's loan indicated that Novitas would receive regular updates from Mr A's solicitor, which a bank would not receive. And as I've explained above, this placed Novitas in a position where it had access to legally privileged information from both parties.

- "P's solicitor kept the existence of P's loan from the barrister he instructed too. The barrister's letter together with P's, Mr A's and Mr A's solicitor's submissions and evidence on this matter persuade me that it is more likely than not that P's signed and completed form of notice was never served on Mr A. Novitas knew it was funding both sides too. Therefore, the only party who was left in ignorance of this arrangement was Mr A.
- "I'm satisfied that as a regulated lender subject to the FCA principles, Novitas should have considered its own overarching obligations and responsibilities as a regulated lender to manage any conflict of interest and treat Mr A fairly notwithstanding any other separate obligation that may have existed on P or her solicitor to serve the relevant notice Mr A. Novitas has been unable to demonstrate that it had any checks of its own in place to ensure this important disclosure took place. Even if it was enough for Novitas to rely on P and her solicitor to make this disclosure (which I don't

think it was), it should have at least taken steps to ensure that this was done and Mr A had been informed appropriately, which again it did not do.

- “Overall and having considered everything, I’m not satisfied that the form of notice was served on Mr A. I’ve not been provided with anything else which demonstrates Novitas alerted Mr A to the source of the conflict of interest that existed – i.e. the fact that it was funding both sides of the litigation either. 143. Bearing all of this in mind, I’m satisfied that Novitas failed to manage any conflicts of interest between itself and Mr A, caused by it agreeing to fund both sides of the litigation, fairly and in a way that paid due regard to Mr A’s interests. So I’m satisfied that Novitas failed to comply with its overarching Principle 8 and Principle 6 obligations to Mr A.
- “In this case, I’m mindful that (as I set out in paragraph 60 of this decision) basing an assessment of affordability primarily on the value of any security provided is (under CONC 5.3.4R) an example of an act which amounts to an unfair business practice. I’ve explained that why I consider this is what Novitas did (in paragraph 65). Furthermore, as the loan was secured on Mr A’s home, this unfair business practice had the effect of putting his home at risk in circumstances where it is clear that Mr A had no means to be able to sustainably repay the capital advanced let alone any interest accrued.
- “Bearing in mind all of this, I think that a court would likely conclude that Novitas lending to Mr A in breach of its regulatory obligations to lend responsibly is one of the reasons why the lending relationship between Novitas and Mr A was ultimately unfair to Mr A under s140A.
- “Secondly, having given careful thought to the matter, I’m satisfied that Novitas agreeing to fund both Mr A’s and P’s litigation was something done by the creditor within s140A(1)(c).In the particular circumstances of this case, this caused an unfair relationship between it and Mr A.
- “I am satisfied that Novitas agreeing to fund both sides of the litigation created the situation where Novitas had two or more competing interests and that serving one of those interests could damage or harm the other interest.
- “...the available evidence indicates that the same director approved and was in charge of both Mr A’s and P’s applications.”
- “...Novitas did not in fact take any additional steps at all to manage the potential conflict that existed in these unique circumstances fairly.”
- “I therefore think a court would likely find the arrangements Novitas operated here - i.e. taking no steps - over and beyond those taken in any routine application - to negate a conflict of interest which it created by electing to proceed with Mr A’s application in circumstances where it was already funding P’s litigation – rendered the lending relationship between Novitas and Mr A unfair to Mr A.
- “In my view, if Novitas had made Mr A aware of the conflict of interest and its source, this would have removed the unfairness, or at least mitigated the effect of any unfairness, as it would have allowed Mr A to make a properly informed decision about his agreements. However, Novitas’ actions in failing to ensure that Mr A was made aware of the fact that it was funding both sides to the litigation meant that the only party who was left in ignorance of this matter was Mr A. 178. This created a significant inequality of knowledge and understanding between Mr A and Novitas and I’m satisfied that a court would most likely conclude that this made the lending relationship between Novitas and Mr A unfair to Mr A.

- “Bearing in mind Novitas’ submission that it relied on P’s solicitor to disclose the arrangement and that Novitas made no arrangements of its own in relation to notifying Mr A that it was funding P’s litigation (even at the point when it subsequently accepted Mr A’s own application), I now also consider that this reliance by Novitas on this notice means that P’s solicitor’s failure to serve the form of notice on Mr A was another act/omission to be regarded as done or not done by, or on behalf of, Novitas which made the relationship between Novitas and Mr A unfair to Mr A. 183. For the sake of completeness, it is not my finding that there was an unfair relationship because of P’s solicitor’s fraud. My finding here is that Novitas relied on P’s solicitor to serve the form of notice (notifying Mr A of its interest), as a matter of fact this was not done, and that this was something that was not done on Novitas’ behalf. 184. I would also add that it is not my finding that the unfair relationship arose solely because P’s solicitor did not serve the form of notice. The failure to serve the notice is just one of the things (detailed in this section) that were done, or not done, by or on behalf of Novitas which lead me to conclude that a court would consider the lending relationship between it and Mr A was unfair to Mr A.”

“I’m satisfied that Novitas failed to act fairly and reasonably in its dealings with Mr A in all the circumstances of this case.
“Novitas failed to act in accordance with its regulatory obligations set out in CONC 5 in order to lend responsibly and this led to it providing Mr A with unaffordable loans. Novitas failed to manage a conflict of interest between itself and Mr A fairly. This conflict was caused by its decision to fund both sides of the litigation. It failed to manage this conflict, fairly and in a way that paid due regard to Mr A’s interests. This also meant that Novitas failed to comply with the FCA’s overarching Principles - particularly Principle 8 and Principle 6. It is likely a court would conclude that the relationship between Novitas and Mr A was unfair to Mr A under s140A of the CCA for each or any of the following separate reasons taken together: (1) Novitas’ failure to lend responsibly. This created an unfair relationship both generally and because it meant Novitas failed to comply with CONC 5. (2) Novitas’ failure to take any steps to manage the conflict of interest it created by agreeing to Mr A’s loans, despite it already having agreed to fund P’s litigation. This created an unfair relationship both generally and in light of Principle 6 and Principle 8. (3) The inequality of knowledge and understanding created by Mr A being left as the only party not to know about Novitas funding both sides of the litigation. This deprived Mr A of the opportunity to make an informed decision on whether to agree to his Novitas loans despite the conflict of interest that this would create. (4) P’s solicitor’s failure to serve the form of notice on Mr A, as done on behalf of Novitas as the creditor.
“Novitas’ decision to lend irresponsibly meant that Mr A was provided with loans that he cannot pay back sustainably. And Novitas’ failure to manage fairly the conflict of interest caused by it funding both sides of the litigation meant that Mr A was deprived of the opportunity of making an informed decision on whether to proceed with his loans. 192. So the impact of the unfairness created by Novitas irresponsibly providing Mr A with unaffordable loans and also failing to manage a conflict of interest fairly, is likely to be the possibility that Mr A lost out on the chance of fairly evaluating other alternative options, instead of these loans, which Novitas accepts he cannot pay back without selling his property.

“First, if Mr A had been made aware that Novitas had already agreed to fund P, I think that he could, as he now says, have opted against taking any funding at all and instead decided to act for himself as a litigant in person. I accept the possibility that Mr A is making this argument with the benefit of hindsight. Nonetheless, it would have been a real possibility for Mr A to represent himself as a litigant in person – as many do. 224. Mr A has also said that he has friends in the legal profession. Not only has Mr A shown himself to be articulate but his tenacity in pursuing this complaint in the way he has and for as long as he has leads me to think that Mr A could have represented himself in this claim. So Mr A could well have benefited from being a litigant in person with friends who may have been able to advise him such that he could have been very effective at representing himself – albeit he would still have incurred some legal costs such as mediation fees or court fees. 225. Secondly, I am persuaded that if Mr A had been informed that P had already taken litigation funding from Novitas, he would likely have contacted P directly and attempted to reach a settlement privately. I say this because, as I’ve previously explained, the whole reason the litigation was taking place was because there was a dispute over Mr A and P’s joint assets. This was a finite pot of assets. Novitas’ lending to the parties, especially on the terms the funds were advanced on, were potentially diminishing these joint assets from both sides. There is no dispute that the longer the litigation went on for, repaying these funds would leave Mr A and P with less overall at the end. It is also likely that had Mr A known Novitas was also funding P’s litigation, he would have been mindful of P’s ability to repay the funds she borrowed sustainably. 226. In reaching my conclusions, I’m mindful that Novitas may say that P’s solicitor was being obstructive and instructing her not to contact Mr A. But given Mr A and P had a child, I don’t think that it was possible for them to have ceased all contact completely.
“Indeed, an email from Mr A’s solicitor to Novitas, on 12 April 2016, informed Novitas that ‘they (Mr A and P) have been discussing child arrangements between themselves directly’.
“So it is clear that Mr A and P remained in contact because of their daughter and I think that it was a possibility they could have reached a private settlement, without incurring further costs or indebtedness to Novitas. 227. In my view, knowing that the overall amount they’d have for themselves was going to reduce significantly because repayment of Novitas’ loans was going to deplete their joint assets might well have spurred Mr A and P to reach an amicable settlement without the involvement of litigation. I think that this was an especially realistic course of action given both sides’ financial means at the time and the fact that Mr A and P had a child to look after and these loans would likely require the sale of their property. 228. Finally, I also think that even if Mr A had decided to go ahead with the loan, had Novitas taken steps to ensure Mr A made an informed decision about his loan, I think that he would have acted differently in the course of his dealings with his own solicitor and applied pressure to move things forward.
“Refund all the interest and charges so that only the capital sum remains outstanding. • Reduce the capital sum by 50% and cap Mr A’s total liability as a result of its loan agreements with Mr A to £36,627.50. • Arrange an affordable payment plan with Mr A to repay this amount. • End Mr A’s existing agreements and amend any information it has recorded on Mr A’s credit file to reflect that his total liability is a maximum of £36,627.50.”

3) **Miss H**

July 2021

https://www.financial-ombudsman.org.uk/decision/DRN5132754.pdf

4) **Mr S**

February 2021

https://www.financial-ombudsman.org.uk/decision/DRN0812737.pdf

Failure to achieve compensation:

Residents nationwide say door-knockers representing legal firms Pure Legal and SSB Law pressured them into taking on no-win, no-fee compensation claims for botched cavity wall insulation (CWI) that turned their homes mouldy.

Victims face astronomical extraction costs, some surpassing £100,000. The average extraction cost is more than £47,000. Homes have become less energy efficient. They also face financial distress, and health crises, with some losing life savings or homes. Damp, mould, and structural issues have led to declining physical and mental health, with respiratory illnesses, anxiety, and depression being common among victims.

Their 25-year guarantees have proven ineffective, covering only a fraction of extraction costs (e.g., £6,729 vs. extraction costs exceeding £100,000). Many installers have dissolved, leaving victims without recourse.

Many also face tens of thousands in legal fees or charges on their homes after SSB Law went bust in January. They have been left liable for the defendants' legal costs. Some victims say the threat of the bailiffs left them distressed and terrified.

SSB Law took out an after-the event insurance policy to protect claimants if the case failed. But it seems: they did not follow the policy terms; the insurers have refused to pay as a result of policy breaches.

Many victims have now taken out professional negligence claims but have lost trust in the legal system. We believe that "no-win, no-fee" is a misleading term and should be banned.

The Law Society Gazette states that, after Pure Legal crumbled, around 13,500 no-win, no-fee claims cavity wall insulation cases were transferred to SSB Law.

Hugh James then inherited around 6,400 after SSB Law went bust.

As well as huge extraction costs, and legal fees, clients who began their claims with Pure Legal also have third-party litigation loans from Novitas Loans Limited hanging over their heads. These loans were taken out in the clients' names. The victims have been told these are non-recourse loans but they are still garnering interest and so they are worried about ultimately being pursued by Novitas to pay them back.

From the hundreds of CWI victims we support, we are not aware of any of these cases being won. Victims are burdened with mounting legal debts, with some facing bailiffs after the collapse of Pure Legal and SSB Law.

The Solicitors Regulation Authority has been investigating Pure Legal and SSB Law over their handling of the CWI claims. The regulator has placed indefinite conditions on four solicitors from SSB Law, including former director Jeremy Brooke. These conditions include banning them from managing no-win, no-fee claims.

Therefore, litigation funding has not enabled these claimants to access justice but has caused further distress in the form of further legal debts that have not yet been cleared and are growing.

Profit motive over justice

- **Commercial interests**: The primary goal of third-party funders is profit, not justice. Funders typically take a substantial percentage of any award or settlement, which can lead to skewed incentives. This can result in cases being pursued not because they are meritorious but because they are likely to yield a high return. This can undermine the pursuit of true justice, with decisions driven by financial considerations rather than the merits of the case.

  Case study 1:

- https://www.claimsjournal.com/news/national/2025/01/15/328427.htm
- Apple and Amazon v Riefa
- Apple and Amazon fought off a mass lawsuit in Britain over alleged collusion between the tech giants to remove resellers of new Apple products from Amazon's website, a tribunal ruled on Tuesday.
- The lawsuit was brought by consumer law academic Christine Riefa on behalf of around 36 million British consumers who had bought Apple or Beats products.
- Riefa's lawyers alleged that Apple and Amazon reached an agreement in 2018 to bar the vast majority of resellers of Apple and Beats-branded products from Amazon's marketplace in the United Kingdom, reducing competition for those products.
- Apple and Amazon said the case, valued at 494 million pounds ($602 million) plus interest, was without merit and asked the Competition Appeal Tribunal to refuse to let it proceed.
- The tribunal ruled that the case could not continue because Riefa had not demonstrated "sufficient independence or robustness" to represent the claimant class, in relation to third-party funding for the litigation.
- The Competition Appeal Tribunal's refusal to certify the case, an early step in such litigation, is unusual as the bar for certification is relatively low.

Example: CWI claims:

While we've spoken to numerous homeowners living with the devastation of failed insulation, some argue that not all CWI claims are being pursued by law firms on merit.

An Insurance Post article reveals cavity wall insulation claims exploded in 2017. The story, published in 2018, says Axa Insurance alone reported a dramatic increase from an average of around 100 to 1,800 in the space of seven months.

In the article, a Cavity Insurance Guarantee Agency (CIGA) spokesperson is quoted explaining that a piece of research - that problems were found to exist with one in two out of 250,000 properties and that there was a potential claims pot of three million - was “put together by a drive-by thermal imaging company and the information has no technical merit and unfortunately been used by claims companies to boost business.”

Andy Williams, technical strategy manager at Axa, says in the article that the main problem was the quality of the claims, with many following the same template and omitting important information.

The report said: “Williams cited one policyholder on its books [who] had seen 900 claims brought against it, where they had not installed CWI in 40% of the properties mentioned.”

Williams describes Axa contacting each claimant and the responses included “people saying they had not had CWI installed in their home; to people who did not know a claim was being presented; to those who did know a claim was being prepared but had told the claimant not to pursue it any further when they were asked to sign a funding agreement.”

On 15th June 2021, CIGA posted the following on its website:

“CIGA often comes across concerns from homeowners relating to claims lead generators and solicitors wanting to act on a homeowner’s behalf. One of these homeowners contacted the Solicitors Regulatory Authority (SRA) to complain about the conduct of a then SRA Regulated company: SSB Law Ltd and was more than happy for us to share their experience.

“Housing Triage Ltd first approached this homeowner and passed her details onto SSB Law who explained they would act on their behalf. After receiving a 43 page document, including a letter and instructing them to pursue a claim, SSB Law explained the homeowner would be contacted by a surveyor. After an inspection, the surveyor explained ‘no problems had been caused by the cavity wall insulation.’

“The homeowner clarified, ‘I was somewhat surprised therefore to receive a letter from SSB Law to say, again, that I had instructed them to pursue a claim for losses arising from the defective installation of cavity wall insulation. The letter enclosed a copy of the After the Event Insurance Policy and a Client Questionnaire requesting details of the property and the damage for which a claim was being made. I phoned them and asked why they thought the insulation was defective, as the surveyor had indicated that everything was fine. They admitted that they had yet to receive the report, but assured me they would chase it up and send me a copy. They said the letter should not have been issued, and said it was an admin error.’ This communication was then followed by a phone call from SSB Law stating the ‘Surveyor’s report confirmed that the Cavity Wall Insulation had not been properly installed.’ However, the author of the report was not the surveyor who inspected the homeowner’s property.

“The homeowner contacted CIGA and decided to cancel the ‘claim’ under the cooling off period. After much deliberation with SSB Law, the homeowner finally managed to close their file. We would advise homeowners to approach mass market claims lead generators and solicitors with a degree of caution and importantly not to be encouraged to enter into an over

inflated claim as should the claim proceed to be without merit, costs can be significant and unfortunately in some cases can expose the claimant to potential criminal charges."

SSB Law whistleblower:
Journalist Laura Longworth, and co-founder of our group, has spoken to a former employee of SSB Law. The whistleblower, who wishes to remain anonymous for fear of repercussions of speaking out, was hired in May 2022 and worked in the retention department with three other people for the CWI litigation team. Their job was to call cavity wall insulation clients and ask for them to send in signed documents for case workers in order to proceed with their claims. This included chasing up fee remission forms, generating and sending out ATE insurance agreement letters then phoning clients to convince them to sign them ASAP and giving a generic overview of no win, no fee and ATE Insurance.
The former employee said: "In terms of retention, we had to basically try to retain as many clients as possible. [The] majority of clients would phone in and express desire to renounce their cases of CWI with SSB Law as it had been years since their cases had been ongoing and we had to tell them that by dropping the case they may be liable for charges (emotional blackmail, to some degree), as they had exceeded their 14-day window for which they had to rescind the case. My job also included chasing land registry certificates and booking surveyors to go over to client houses using in-house database Proclaim CMS.
"I can honestly say that caseloads were dreadful, in a day between us individually we had to try getting through 60 cases and try retaining at least 35 realistically, which was never the case. Most of the time, we managed to retain them by scaring them with 'liable to pay fee' clause (this felt so wrong to me) and if they successfully rescinded, [director] Jeremy Brooke himself would be offended and send e-mails about us trying harder to retain clients.
"No win, no fee clause and ATE insurance explanation was a regular occurrence and it was my first law firm job hence I had to read from a script what to say with no actual understanding of the process & CWI department had more turnover than I can fathom.
"I had to describe ATE as insurance that covers the client if they lose the case, stating that in the case of loss, SSB Law for all their work would be compensated via ATE insurance. The no win, no fee clause, I was trained to describe as 'if you win the case, SSB will take 10 percent of their fees from your compensation and you can keep the rest'.
"It was odd to me because whenever I would ask colleagues why other firms don't use ATE insurance, my colleagues would change the subject and clients even thought 'it is too good to be true'. From my understanding, what went wrong with ATE insurance was that the SSB Law did not agree with the terms of conditions of the company per se, they used and presented ATE on their terms, which the company was oblivious to.
"With the amount of clients rescinding their claims with the retention team and the very few that we retained, it transpired that those were **low prospect cases**. The word soon spread that Jeremy Brooke and company director Wes Bowers were in talks of closing down that department, as people were either quitting or getting sacked and revenue generated in that department was poor. They had a somewhat biassed strategy in which they very carefully curated clients from Bradford of a certain age threshold for these claims to take advantage, to some degree. For the retention team, we had clients calling in crying because their kids had disabilities and the CWI was causing mould for years, which in turn was making them ill, and SSB Law was being complacent. Basically, those were branded **low prospect cases** by casehandlers.
"My biggest concern was health concerns for clients. I do not know too much about the prospect of the cases for kids with disabilities, but I did take a lot of phone calls with mothers

crying about their kid's health and all I could say was that they would get a phone call back from their case handler. Newly graduated young folks were joining CWI and leaving within four months of joining.
"**Litigators misled clients** all the time about the prospect of case compensation. It was cruel.
For the Cavity Wall Insulation department, they were **using underqualified surveyors who did a substandard job** while inspecting the homes of clients. Combined with the age of the house overtime, the cases became of **low value**. I was told this by the team leader for the retention team. I do not know about percentages but **very few cases of Cavity Wall Insulation were won** by SSB. I spoke to a litigator who said that since 2018, **they had won less than 150 cases**, which is horrific considering CWI and personal injury were the busiest departments for the longest time.
"At around November 2022, CWI cases became low prospect mainly because of **false estimates by surveyors** and the biggest issue, they targeted south east Asian families with little to no understanding of English. They essentially had no idea how to sign paperwork and understanding the T&C's which overtime caused the cases to stagnate with loss of value.
"I have reason to believe that SSB Law infringed the tenets of the Solicitors Regulation Authority through thinly veiled lies. The SRA principle states that anyone working in the legal sector must act with integrity towards clients and protect their interests. SSB Law infringed this as in many cases I have heard and seen litigators say that they are ignoring calls and correspondences mainly from elderly clients for CWI simply because the case has out-run its course and it became low prospect with the compensation. I've seen how case handlers have closed down the file on proclaim without client consent and simply sent a letter stating the case is now closed and they are liable for costs, while the retentions department would be on the receiving end quite literally explaining the situation to clients over the phone due to litigator and case handler cowardice."

Access and control issues

- **Unequal access**: While TPLF can help individuals and organisations with limited resources to pursue legal action, it's often available to high-value or high-profile cases. This means that less wealthy or less commercially viable litigants, including individuals in less prominent sectors or industries, might not benefit from TPLF. As a result, it may exacerbate the inequality in access to justice, favouring well-resourced parties or cases with the potential for high payouts.
- **Funders' control**: The funders may also exert significant control over the legal strategy, including settlement decisions, due to their financial stake in the case. This can conflict with the interests of the litigants, who may feel pressured to settle or accept a deal that benefits the funders more than it does them.

Case study:

Simons V Simons case, in which the lenders (Level, the business which Neil Purslow, director of the ALF, set up after selling Novitas) applied to the High Court to have a divorce which had been settled between the parties, reopened, with Level becoming a party to it

Control Over Litigation

- **Strategic decision-making**:
- The CWI scandal shows worrying trends where surveys of claimants' homes first showed extensive damage, some surpassing £100,000, rendering their homes worthless. They say SSB Law used this to scare them into remaining in claims. They say they had minimal contact from the firm about the progress of their claim. A second survey revealed a huge contrast, with the damage said to be tens of thousands of pounds lower than the first. Victims were later pressured to drop their claim by SSB Law. In these instances, maximising financial returns appears to have taken precedence over the client's pursuit of justice and their wellbeing.

  Case study:
- Rugby player brain injury claims.

Over-litigation: In some divorce cases, disputes have drawn out significantly longer than lawyers predicted to clients, increasing funders' return and solicitors' total fees, causing further distress to vulnerable parents and children, and pushing claimants into extreme debt. Any regulation ought to be made in conjunction with reforms around how lawyers use a client's loan facility and how transparently they communicate that to the client.

High interest rates: High interest rates e.g. 18% per annum for loans secured against marital properties see would-be divorcees trapped in debt as they struggle to sell their homes and experience long divorce proceedings, sometimes up to a decade.

Short repayment periods:
Claimants are put under significant financial pressure when repayment dates are short, such as 12 months from the date of the first drawdown, or seven days from the date any settlement was paid.

Ethical and Regulatory Concerns

- **Conflict of interest**: Funders are motivated by financial gain and may push for strategies or settlements that are more profitable rather than fair or just. This can create ethical dilemmas, particularly if the litigation's focus shifts away from the plaintiff's best interests.

  Case study 1:

- Uber v Australian taxi and hire car industry
- https://michaelwest.com.au/taxi-drivers-rail-against-token-uber-settlement/
- Uber agreed to pay over $270 million to Australian taxi and hire car industry members.
- It was hailed as "historic" and "world-first".
- But some of the 8,700 taxi owners, licensees and drivers who took part in Australia's fifth largest class action believe their cut is "woefully unfair".

- After subtracting Maurice Blackburn's legal costs ($38.6 million) and the litigation funder's commission, the plaintiffs get just a fraction of what they lost when Uber illegally entered Australia over a decade ago and proceeded to decimate the taxi industry.
- One plaintiff told the Victorian Supreme Court that most would be left with something "pretty close" to $15,000-$21,000.
- Queensland Taxi Licence Owner's Association boss Paul Scaini told the Supreme Court that such compensation was "woefully inadequate" given that Uber had directly caused his family damages of roughly $1 million.
- Scaini called it "a token settlement".
- In court, he claimed the decision to settle "boiled down to the litigation funder's desire to get their hands on $81,541,000 right now rather than have to wait for class members getting any fair and equitable results".
- The investor was Harbour, the largest privately owned litigation funder in the world.

Case study 2:

- **Pressure not to settle**: Funders may alternatively pressure plaintiffs not to settle cases for financial profit rather than justice-based considerations.

- https://www.lawgazette.co.uk/news/funder-to-challenge-premature-mastercard-case-settlement/5121721.article
- https://www.lawgazette.co.uk/news/mastercard-settlement-merricks-solicitor-condemns-funders-greed/5121729.article
- Mastercard v Merricks
- The claim, by former financial ombudsman Walter Merricks CBE as class representative of 46 million people, had sought £17bn. in compensation from payments company Mastercard for excessive transactional fees.
- However, a settlement was reached at a reported £200m. Merricks' legal representative, Willkie Farr & Gallagher partner Boris Bronfentrinker, said it would be worth £40 to £50 for every UK consumer coming forward.
- It took nearly nine years of litigation.
- High-value US-based funder Innsworth Capital immediately criticised the settlement. A spokesperson said: "We strongly oppose this reported settlement which was struck without our agreement. It is both too low and premature."
- Bronfentrinker responded: "Innsworth's opposition, and its desire that Mr Merricks continue with risky litigation that could result in UK consumers recovering significantly less, or even nothing - simply because Innsworth is unhappy that the settlement that has now been agreed may not allow it to recover the hundreds of millions it considers it should receive - has nothing to do with advancing the interests of UK consumers, and is all about funder greed."
- Innsworth Capital was accused of attempting to take control of the litigation after saying it would challenge the settlement agreement.
- Bronfentrinker said: "The decision to oppose the settlement and to go public with that, attacking Mr Merricks, is the latest in a sustained campaign it has engaged in to inappropriately pressure and seek to influence Mr Merricks' decision-making in order to take control of the litigation…The role of litigation funders, and their ability to seek

to influence and control litigation so as to advance their financial position over and above all other considerations, raises important public policy issues that go to the integrity of the collective action regime."

- Andrew Bartlett, partner at international firm Osborne Clarke, questioned if the nine-year litigation had "achieved anything of significance for the [44 million] consumers".
- Questions have arisen about the merits of class actions and the involvement of litigation funders enabling them, the huge amount of taxpayer money invested in running them through the civil court system for many years and whether the system is working in the best interest of consumers or the courts.
- Seema Kennedy, executive director of business-backed campaign Fair Civil Justice, said: "After almost nine years of litigation - including huge costs to the British taxpayer in funding countless hearings - we now know that affected consumers stand to gain just over £2 each in compensation, while the funder could be in line for a £100m payout.
- "This is the economics of a legal system in which lawyers and funders are prioritised over British business and consumers. This claim shows why reform is so badly needed, and we will continue to call on the government to introduce measures to improve transparency and accountability of the funding sector."

Lack of regulation: In many jurisdictions, third-party funding is poorly regulated. This lack of oversight can lead to exploitative practices, where funders charge excessively high interest rates or impose terms that are disadvantageous to the litigants. It can also lead to cases where funders prioritise their interests over a fair legal process.

Fragmentation of Legal Processes

- **Disjointed legal funding models**: TPLF can cause fragmentation in legal processes, as the involvement of multiple parties—each with their own interests—can complicate the resolution of cases. This may lead to delays, increasing the complexity and cost of litigation. It can also lead to cases being prolonged unnecessarily, as funders and plaintiffs may drag out cases to increase the financial return, rather than focusing on a swift and just resolution.

Costs and Risks

- **High costs of litigation**: Although TPLF can make litigation accessible, the costs associated with it can be very high. The fees or interest charged by funders can significantly erode the final award, leaving plaintiffs with far less than expected. This can disproportionately disadvantage the plaintiff, particularly in cases where the financial gain might be smaller than anticipated.

Case study 1:

Bates v Post Office

In 2016, 555 postmasters took the Post Office to court in a Group Litigation Order (GLO) case.
In December 2019, the Post Office and the sub-postmasters agreed to a settlement of

£42.5 million plus costs.
The postmasters had to pay £31m. of the settlement to the company that funded their action, leaving them little leftover to deal with the suffering they'd faced over the years.

Case study 2:

BARONESS LAWRENCE OF CLARENDON OBE (2) ELIZABETH HURLEY (3) SIR ELTON JOHN CH CBE (4) DAVID FURNISH (5) SIR SIMON HUGHES (6) PRINCE HARRY, THE DUKE OF SUSSEX (7) SADIE FROST LAW

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Associated Newspapers Limited

According to the High Court Judgment, in total, "the parties were proposing to spend just over £38.8 million on this litigation. The Judge and I had little difficulty concluding that such sums were manifestly excessive and therefore disproportionate."

Instead, the courts approved "total budgeted costs of £4,084,000 for the Claimants and £4,445,000 for the Defendant."

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Soaring solicitor fees:

https://www.ft.com/content/541f8b38-d657-4542-a7de-8c92a113db28

A Financial Times article reveals: "The top 10 UK law firms are charging clients almost 40 per cent more per hour than they were five years ago, a survey has found, as inflation and the growth of US firms in London pushed up fees."

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- **Risk of abuse**: Some funders might back cases with weak prospects, knowing they will still get a percentage if the case wins. This increases the risk of frivolous or speculative litigation, which might clog the legal system and divert resources away from more deserving cases.

Impact on the Justice System

- **Overburdened courts**: With the influx of commercial interests into the justice system, courts may face an increase in lawsuits, including speculative or lower-value

claims. This could overburden the courts and slow down the overall legal process, ultimately hindering access to justice for those who need it the most.

Cross sectoral issues - "Bulk litigation – not always working in consumers interests"

- **Solicitor Regulation Authority's thematic review:**

https://www.legalfutures.co.uk/blog/bulk-litigation-not-always-working-in-consumers-interests

- Paul Philip, chief executive of the Solicitors Regulation Authority, has said the SRA's review has wider sectoral concerns that need to be addressed.
- He said: "These [issues] range from unstable business models and poor supervision of work to inappropriate use of expert witnesses. Our visits to firms have also exposed issues such as 'cold calling', lack of due diligence on clients or claims, and failure to keep clients and ATE providers updated with matters that affect their claim."
- In 2023, the SRA fined a firm £45,000 for breaking its rules when handling mass bank refund claims. It introduced new rules to cap fees for this work.

Money laundering:
https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

The risk of money laundering in third-party litigation funding (TPLF) can be significant, though the extent varies depending on regulatory frameworks, transparency, and due diligence processes within the industry.

Russian oligarchs using TPLF to avoid sanctions:

https://news.bloomberglaw.com/business-and-practice/uk-judge-rules-funder-is-likely-owned-by-sanctioned-russians

https://news.bloomberglaw.com/business-and-practice/russian-use-of-litigation-finance-needs-scrutiny-treasury-says

Conclusion:

While third-party litigation funding has the potential to democratise access to the legal system by enabling litigants with limited financial resources to pursue justice, it has also introduced a series of issues that undermine the fairness and efficacy of the legal process. The focus on profit over justice, potential ethical concerns, unequal access, and risks to the integrity of the legal system all point to the ways in which TPLF can fail to secure true and effective access to justice. Effective regulation and oversight are crucial if TPLF is to fulfill its promise of enabling more equitable access to justice.

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?

Call to Action:

- **The cycle of trauma:** Litigation funding is not just about finances; it's about the emotional and psychological toll it takes on individuals who are already vulnerable, especially those facing domestic abuse and homelessness.
- **Regulatory oversight:** Third-party litigation funding needs regulation, particularly in cases involving vulnerable individuals like victims of domestic abuse, those with mental health issues, or children with SEND. There needs to be oversight to prevent profiteering from people's misfortune.
- **Financial support options that don't exploit:** We need alternative funding solutions that don't put individuals in the position of becoming victims of further exploitation. We also need measures to make legal processes more accessible to those who need them most.
- **The broader societal impact:** We've provided some personal stories to show how this is not just an isolated issue - it's a crisis affecting families, communities, and even society as a whole.
- In a Resolution survey, of the 459 people who responded, 90% said there was insufficient access to legal aid for victim-survivors in these proceedings.
- Legal aid is notionally available for victim-survivors of domestic abuse in financial remedy, Schedule 1 and TLATA cases. However, due to the victim-survivors requiring prescribed evidence of domestic abuse, needing to pass the merits test, and then having to have very limited means (capital and income) to pass the means test, it is rarely available in reality.
- The last government conducted a review of the means test and proposed a slight increase to both the capital and income limits.At the proposed new limits, a person would not pass the means test if they had over £11,000 'disposable capital' or £185,000 'non-disposable capital' (i.e. equity held in a property and therefore not accessible). The proposed new gross income limit was £34,950 per annum, irrespective of dependants, debt or other outgoings.
- Large numbers of victim-survivors have the required evidence of domestic abuse but do not pass the means test and cannot afford representation, so have no option but to represent themselves in court.
- At the Resolution National Conference in March 2024, Resolution asked a room of over 120 family lawyers if any of them still provided legal aid for financial remedy cases at their firms; just one solicitor raised their hand.
- Resolution believes the practice of requiring applicants potentially to damage their credit rating in this way before being able to apply for a LSPO should cease immediately;
- Here are other Resolution recommendations:
- Requiring an applicant to take on commercial loans and credit cards in the absence of full and frank disclosure is unreasonable because they cannot be advised of the risk of accepting such a loan;

- The court should direct that the respondent should be liable for the interest on the litigation loan, in circumstances where they had funds but declined to make them available, as per Rubin v Rubin43 at [13].
- If a litigation loan is offered at a very high rate of interest, it is not reasonable to expect the applicant to take it unless the respondent has undertaken to meet the loan interest, if the court later considers it just to make that order.
- When there is money to meet the financially weaker party's legal fees and the other side refuses to release the funds, the cost of the application should be borne by the party holding the funds. Instructing a solicitor to make full applications to specialist loan providers is time-consuming and expensive. It can cost between £5,000 to £10,000 depending on the firm;
- The court should recognise that specialist loan providers require disclosure from the other party to consider whether they will provide funding.
- "The issue of conduct has been considered by the High Court twice in the last year in Tsvetkov v Khayrova26 and N v J27 (both decisions of Peel J, the National Lead Judge of the Financial Remedies Court). Both cases state that in order to be a relevant consideration in the financial remedies application, the conduct complained of must: • Be at a high or exceptional level; and • Have an identifiable (even if not always easily measurable) negative financial impact caused by the act/omission.
- "The concerns expressed to Resolution's working party about where the law currently stands on this issue were that: • Practitioners are not clear at what point domestic abuse is sufficiently serious to be considered by the court to be relevant conduct; • The 'obvious and gross' hurdle is set too high if it does not capture those cases in which findings of serious domestic abuse have been made in other proceedings and/or the perpetrator has received a criminal conviction; • The apparent preponderant view of judges hearing financial remedy applications as to what domestic abuse crosses this threshold does not reflect the general view of society that all forms of domestic abuse are repugnant, and the better understanding we now have of the long-term impact on victims; • The requirement for there to be a causative link between the act/omission and an identifiable negative financial consequence is not contained within s25(2)(g), and there are examples of cases in which conduct has been taken into account by the court notwithstanding there was no adverse financial consequence; • Victim-survivors who experienced domestic abuse in their relationship may well have had less opportunity to accumulate assets or develop their earning capacity in an abusive relationship.• The requirement to evidence a causative link to an adverse financial consequence fails to recognise that there is international research that shows that a history of domestic abuse in the relationship is correlated with poorer short-term and long-term financial outcomes for women.
- A change to Matrimonial Causes Act 1973 s22ZA to make it compatible with the provisions of the Domestic Abuse Act 2021.
- Resolution's view is that: "Preventing a former partner from having representation in financial remedy proceedings by withholding available funds, especially those generated within the marriage; and • forcing the weaker financial party to take on high interest litigation loans or other commercial debts can fall within the definition of economic abuse set out in the Domestic Abuse Act 2021.
- "Securing unaffordable commercial loans and credit cards and failing to keep up with the repayments will impact a party's credit rating and have implications for their financial well-being. The practice of requiring applicants potentially to damage their

credit rating in this way before being able to apply for a LSPO should cease immediately;

- “Requiring an applicant to take on commercial loans and credit cards in the absence of full and frank disclosure is unreasonable because they cannot be advised of the risk of accepting such a loan. Vulnerable clients often require more extensive advice and support.”
- The Resolution National Conference in Manchester on 17 May 2024, the participants in a workshop (which included more than 120 family law barristers, solicitors and mediators:
- The main changes proposed were for victim-survivors to have access to funds for legal advice and representation either through legal aid, or through money generated during the marriage pursuant to a LSPO.

The Legal Negligence & Mismanagement Campaign Group calls for the following reforms:

- That it is made clear that ALL TPLF loan businesses are fully FCA authorised and regulated (interim authorisation is not good enough);
- That all solicitors and TPLF loans and providers are required to comply with the full provisions of CONC (the FCA Consumer Credit Sourcebook);
- That solicitors MUST NOT refer clients to their preferred lender;
- Lawyers must provide clients with a full list of all litigation funders operating in their area of law and clients should then get advice from an IFA. The IFA, NOT the lawyers, should administer the loans on the clients’ behalf - keeping admin costs to a minimum.
- Family lawyers garnering fees of £5-£10k for administering a loan when they aren't qualified in financial services is unacceptable. All costs of the loan should be included in the APR.
- The acceptance of benefits in kind, i.e. invitations to what family lawyers describe as ‘lavish’ parties at TPLF funders’ expense is unacceptable.
- An "airgap" in client best interest must exist between lawyer and lender.
- Such high interest lending should be a last resort. And if lawyers don't efficiently manage the case to a full conclusion, they should be liable for interest.