

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:	Matthew
Last name:	Maxwell Scott
Location:	Lancaster
Role:	Executive Director
Job title:	Executive Director
Organisation:	The Association of Consumer Support Organisations (ACSO)
Are you responding on behalf of your organisation?	Yes
Your email address:	<div style="background-color: black; width: 150px; height: 1.2em; display: inline-block;"></div>

**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.

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Ministry of Justice  
102 Petty France  
London SW1H 9AJ

[CJCLitigationFundingReview@judiciary.uk](mailto:CJCLitigationFundingReview@judiciary.uk)

3 March 2025

Dear Sir/Madam,

The Association of Consumer Support Organisations (ACSO) welcomes the opportunity to respond to the Civil Justice Council (CJC) Review of Litigation Funding Consultation (the Consultation). This letter constitutes our response.

ACSO represents the interests of consumers in the civil justice system and the reputable, diverse range of organisations who are united in providing the highest standards of service in support of those consumers. The ability to access justice is fundamental to uphold the rule of law; and the availability of appropriate funding alternatives where there exists an imbalance of arms or where the cost of litigation is simply prohibitive to the individual or business is fundamental to justice for all parties directly or indirectly involved. This consultation is therefore important to our work.

While we will not answer every question in the consultation because some fall outside of ours and our members' interests or expertise, the below considerations approximately follow the order of the questions in the consultation for ease and clarity.

As has been identified in the interim report and consultation paper, the answer to the challenge of litigation funding is dependent on the type of litigation being considered and the ability and viability of the parties to finance their case.

The Post Office-related case of *Bates*, some of the details of which are also noted in this Consultation paper, is a good example of where litigation funding can work to help a group of claimants who might not otherwise be able to afford representation and/or the litigation or be able to afford the risk connected with it, to achieve a successful outcome.

For group actions, for example, the cost for law firms of taking enquiries, considering the prospects of success of each case, onboarding individual clients and running the case through the pre-action and early litigation phases is very often prohibitively expensive even for a larger law firm, particularly on a conditional fee agreement (CFA) or damages-based agreement (DBA) basis, without substantial financial backing. Claimants are unlikely to be able to front the cost of such legal work either, even where each contributes to a central pot, and this would be detrimental to access to justice for the victims of some of the most high-impact civil injustices in the UK. Third-party funding (TPF), as a result, plays an important role.

Funding alternatives for law firms do exist to a limited extent, such as in the form of banking overdrafts or loans, but these are unlikely to reach the levels needed to support a group action and are, in themselves, risky and prohibitively expensive in what remains and is likely to remain a difficult economic landscape.

## **Legal Expenses Insurance**

It is our view that the best alternative to TPF would be Legal Expenses Insurance (LEI). By LEI we refer to both types of LEI, be it pre- (Before the Event or 'BTE') and post- (After the Event or 'ATE') actionable incident insurance.

Again, it is ACSO's view that LEI uptake as an add-on to other insurance products is in part undervalued and misunderstood, and as a result we consider that there could be a higher uptake than at present. This would have the potential to resolve some of the access to justice issues that TPF currently resolves.

## **Cost of Litigation**

Other factors play into the high cost of litigation and contribute to the reliance on TPF.

Court delays in the UK are a significant contributor to the cost of litigation. The latest Civil Justice Statistics Quarterly, published in December 2024, showed the average time taken for small claims to go to trial was 50.7 weeks, while for multi/fast track claims it was 76.8 weeks. In the equivalent final quarter before the pandemic, the waits were 31.1 weeks and 60.9 weeks respectively.<sup>1</sup>

ACSO successfully lobbied for the Justice Select Committee to open an inquiry (the Inquiry) into civil court delays which, since the general election, has now been reopened by the new committee.<sup>2</sup> It is hoped that the Inquiry, together with the progression of the digitisation project for the court system, will identify ways to reduce delays and waiting times and achieve faster, less costly justice.

## **Alternative Dispute Resolution**

As noted within the consultation, there are alternative dispute resolution (ADR) formats that can be utilised to circumvent the need to rely upon court adjudication, reduce the cost of litigation and, in some circumstances, bring an equivalent or better justice outcome for the parties. Our view is that, in most cases, negotiation should be the default first position for the parties, and that accessible and mandatory forms of pre-action portals and protocols provide opportunity for the parties to engaged in ADR. Usually, if a case reaches the point of litigation, it is because negotiation has not worked.

Other forms of ADR have proven very effective, and uptake on ADR formats such as mediation, arbitration and online dispute resolution is lower than it should be. ACSO has been pleased to see that the CPRC recently adjusted the CPR to mirror the Court of Appeal's interpretation of the law around stays for ADR in *Churchill v Merthyr Tydfil* and the success of the Small Claims Mediation Service, and hope that these each encourage a better uptake of ADR.

However, not all forms of ADR are suitable for all types of case. Larger group-action cases can often rest on a point of law or an appeal against a judicial decision that itself requires judicial intervention above all alternatives. ADR can be very effective where the law is established, and where a mediator, arbitrator or adviser can help to navigate the parties to an agreement or make a proposal or determination themselves. Where the law itself is unclear, or where there are other public interest reasons for court determination, or a decision that has already been made by a lower court is interpreted as unfair, or the interpretation of the law and/or perceptions of the conduct leading to a potential breaking of the law are diametrically opposed between the parties, ADR can be ineffective.

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<sup>1</sup> UK Parliament; [Civil Justice Statistics Quarterly July to September 2024](#); accessed 28 February 2025

<sup>2</sup> UK Parliament; [Justice Committee launches new inquiry on the work of the County Court](#); accessed 27 January 2025

Court litigation, rightly, still has an integral role in such circumstances and it is all the more relevant that the cost of bringing and conducting court litigation is increasing exponentially.

Overall, we are firmly of the view that TPF has its important place in access to justice and promoting an equality of arms between the parties.

## **Regulation**

However, some regulation in this area would be beneficial to ensure that any malpractice or poor behaviours are tackled. It should be noted that we do not have any feedback or direct experience of malpractice in the sector from third party funders, but a regulator should be able to promote good practice and seek out areas that require improvement. A regulator could focus on transparency of terms, best practice for disclosure, identify areas where TPF is useful, and perhaps organise forums to allow cross-market insights sharing and resolution seeking.

One area of specific concern for ACSO is the balance between access to justice and the tangible outcome of said justice. As explained in the consultation, in *Bates* a separate fund was required to boost the net damages for each individual claimant as the percentage recovery against the settlement for each claimant was low after deduction of the payment to the litigation funder. A similar story shared via the *Law Society Gazette* in January 2025<sup>3</sup> confirmed that a successful group action brought against Mastercard and settled for £200 million will result, if all eligible consumers were to come forward, in a net payment of £2.27 to each. The litigation funder, who backed the suit in the sum of £45.57 million, is touted to receive an additional £54.43 million as a return on the funds provided. This is a 50 per cent reduction to the compensatory pot, and when compared to the statutory limit on deductible sums of a success fee, is double the maximum of what a law firm is legally able to take from a claimant.

While ACSO is not providing any comment on the net damages outcome of either the *Bates* case or the Mastercard settlement, they are examples that could suggest interest/compensatory awards paid to litigation funders may need reconsideration to safeguard compensation for those who have been wronged.

ACSO continue to lobby for the establishment of a Civil Justice Commission, which could bring together experts from across the wider legal services and consumer sectors to recommend ideas to ensure that civil justice is affordable, accessible and sustainable. Such a body could also consider the appropriate regulatory oversight over TPF.

Other products, such as LEI, are already regulated by the Financial Conduct Authority and further regulation would be unnecessary. Any regulation of TPF should be implemented in such a way that it does not encroach on those areas already subject to controls.

## **Wider funding restructure**

ACSO is not of the view that a wholesale revamp of funding agreements, such as for CFAs, DBAs or ATE agreements, is necessary. We are aware that there may be some appetite for such a review as a result of topical and high-profile issues seen in some instances, but we would caution against the re-writing of a rulebook that appears to be working well for the most part. The civil justice sector has been the subject of largescale changes over the past two decades or more, and a long period of respite

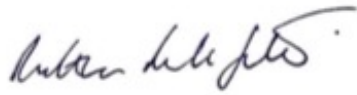
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<sup>3</sup> Law Society Gazette; [Mastercard litigation: £2 for each claimant, up to £100m for funder](#); accessed 28 February 2025

would benefit consumers and their representatives and prevent any further degradation of the sustainability of the sector.

ACSO would be happy to clarify any of the above points for the CJC, or to attend any follow up discussions related to the review.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Matthew J Maxwell Scott'.

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