

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:	Mia
Last name:	David-Biles
Location:	London, UK
Role:	Policy Associate
Job title:	Regulatory Policy Associate
Organisation:	Legal Services Board
Are you responding on behalf of your organisation?	Yes
Your email address:	

**Information provided to the Civil Justice Council:**

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

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

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

## Civil Justice Council's Consultation on Litigation Funding: Legal Services Board response

### Overview

1. The Legal Services Board (LSB) welcomes the Civil Justice Council's (CJC) review of litigation funding and the chance to respond to its interim report and consultation. Our response draws on a number of sources including the LSB's own literature review<sup>1</sup> of litigation funding, which was published in 2024, and the potential it identifies to improve access to justice. We note that this research has also been considered by the CJC as part of its review.

2. The legal services market is changing. The significant growth of third party litigation funding in recent years has enabled some individuals, SMEs and corporations to access legal advice and representation who would otherwise have been unable to do so. However, its expansion has brought with it new risks to consumers and has contributed to consumer harm in some cases<sup>2</sup>. In our view, it is not clear that the existing regulatory frameworks offer consumers sufficient awareness of, or protection, from such risks.

3. Based on our 2024 research and wider observations about changes in the legal services market, we consider that regulation of third party litigation funding (beyond current voluntary self-regulation) is necessary to protect consumers from harm and to further the public interest. The current voluntary framework has resulted in inconsistencies in the standards to which third party funders are held due to low participation by litigation funders, with only 36% of litigation funders being members of the Association of Litigation Funders of England & Wales across England and Wales in 2021<sup>3</sup>. This undermines trust and confidence in third party litigation funding, and consequently legal services, and is not sufficient to protect consumers in the context of its rapid expansion.

4. Effective regulation of third party litigation funding for the benefit of consumers will require action by both financial and legal services regulators. This can only be achieved if the litigation funders themselves are effectively regulated by financial services regulators, alongside legal services regulators managing the risks to potential litigants, such as through ensuring that the legal professionals they oversee properly advise litigants on funding options and their potential liability. By working together, financial and legal services regulators can ensure there is an effective regulatory framework that instils confidence in the litigation funding and legal services markets and protects consumers from harm whilst

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<sup>1</sup> [A-review-of-litigation-funding.pdf](#) (the research)

<sup>2</sup> <https://www.burnleyexpress.net/news/politics/sra-investigating-the-role-of-litigation-funding-in-scandal-leaving-burnley-and-pendle-homeowners-in-debt-following-ssb-laws-collapse-4750845>

<sup>3</sup> [CJC-Review-of-Litigation-Funding-Interim-Report.pdf](#)

ensuring that the commercial viability of third party litigation funding as a route to accessing justice is maintained.

5. The key points (set out in our responses to the consultation questions below) are as follows:

- The growth in third party litigation funding exposes consumers to increased risk of harm, such as funders exerting undue control over the litigation process and attempting to achieve excessively high financial returns<sup>4</sup>. Third party litigation funding should therefore be more formally regulated to manage the existing and growing number and types of risks posed to consumers.
- Third party litigation funding offers an important, albeit niche, means of accessing justice. Additional regulation is needed to protect consumers from harm and ensure consistent standards across third party litigation funders but must be targeted and proportionate so as to safeguard consumers and the public interest whilst balancing the need to maintain the commercial viability of this funding option, and avoid hampering growth or inadvertently shutting down a potential means of accessing justice for some.
- Financial and legal regulators both have an important role to play in ensuring an effective regulatory framework and should work collaboratively in the public interest to protect consumers from harm. In our view, this will require action from government to bring third party litigation funding within the remit of financial services regulators, with the clear purpose of protecting consumers from harm. Legal services regulators should ensure that law firms and legal professionals engaging with third party litigation funding comply with their obligations and maintain high standards of client care. This includes, for example, obtaining consent before acting on behalf of a client, undertaking effective due diligence during client onboarding, advising and keeping the client informed, and acting in the best interest of their client subject to their duty to the court and upholding the rule of law. The LSB will continue to work with the relevant frontline legal services regulators to ensure this is the case.
- A clear regulatory framework with a statutory underpinning will provide greater certainty and confidence for those utilising litigation funding to access justice, as well as for legal providers and funders in general. This will help create a stable and predictable regulatory environment that would support further investment and contribute to economic growth.

6. We will be exploring some of these issues as part of our own work on consumer protection during 2025/26. A key consideration will be how best to achieve an appropriate balance between adequate protections for consumers and awareness of the risks when making decisions, and ensuring avenues for access to justice remain in place. We look forward to working with wider sector stakeholders as our work develops, including convening further discussions with legal and financial services on these matters.

## **The Legal Services Board**

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<sup>4</sup> [ELI Principles Governing the Third Party Funding of Litigation.pdf](#) (page 10)

7. The LSB is the oversight regulator of legal services approved regulators in England and Wales including the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and Chartered Institute of Legal Executives (CILEX) - they in turn regulate those they authorise to provide legal services including solicitors, barristers and chartered legal executives. We are independent from both the legal profession and government, working in the public interest. We operate within a statutory framework set out in the Legal Services Act 2007<sup>5</sup> (the Act) which prescribes our functions, including duties and powers.

8. The Act sets out nine regulatory objectives<sup>6</sup> that we, along with the regulators we oversee, must promote. These are:

- protecting and promoting the public interest
- supporting the constitutional principle of the rule of law
- improving access to justice
- protecting and promoting the interests of consumers
- promoting competition in the provision of services
- encouraging an independent, strong, diverse and effective legal profession
- increasing public understanding of the citizen's legal rights and duties
- promoting and maintaining adherence to the professional principles
- promoting the prevention and detection of economic crime

The regulatory objectives underpin our work and have informed our 10-year strategy for the legal services sector<sup>7</sup>. The strategy identifies key strategic challenges and priority areas of focus for the sector, including lowering unmet legal need across large parts of society as well as closing gaps in consumer protection, and the role of regulation in doing so. It is in this context and with a focus on both consumer protection and access to justice that we respond to this review.

## Consultation Questions & Responses

### **Q1. To what extent, if any, does third party funding currently secure effective access to justice?**

9. Third party funding offers an opportunity for potential litigants, who would otherwise be unable or unwilling to self-fund legal costs, access to justice through the provision of

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<sup>5</sup> [Legal Services Act 2007](#)

<sup>6</sup> See Part 1, Section 1 of the Act

<sup>7</sup> [Reshaping Legal Services](#)

financial resources to access the courts. This funding covers both own-side costs and adverse costs, without which the potential litigants would be powerless to act<sup>8</sup>. This is particularly true of consumer class actions<sup>9</sup>, such as *Lloyd v Google LLC*<sup>10</sup> where the claimants alleged that Google had been tracking the online activity of Apple iPhone users for commercial purposes without the users' knowledge or consent<sup>11</sup>. Here, third party funding enabled litigation against the extensive financial and legal resources of a large corporation on behalf of 'several million' plaintiffs who would not have been able to pursue the case individually<sup>12</sup>. Highly publicised cases like this enhance the public's understanding of their rights and options for redress which in turn increases access to justice more generally, even where the case may ultimately be unsuccessful.

10. The uptake of legal professionals utilising litigation funding has increased dramatically over the past decade, with a recent report identifying a nine-fold increase in the use of legal finance since 2012<sup>13</sup>. However, third party litigation funders decide which cases are selected for funding and only a minority of cases, between 3% and 5% of funding opportunities<sup>14</sup>, are successful - excluding other potential litigants who could benefit. Funders predominately focus on profit when selecting cases to fund, and typically consider the following five factors to maximise their return on investment, which limits the number of cases they view as beneficial to take on<sup>15</sup>:

- Merits;
- the nature of the claimant;
- the ratio of costs to recovery;
- the claim value itself; and
- the enforceability of any judgment, settlement or arbitral award as against the defendant to the suit.

Funders can choose to fund litigation with the sole purpose of improving access to justice but these instances are notable exceptions outside of mainstream litigation funding and its usual application of the above considerations<sup>16</sup>. Consequently, third party funding contributes to securing effective access to justice for consumers only in a minority of cases.

11. Third party litigation funding also offers potential claimants an avenue of redress for their legal issues, should their case be successful in court. However, whilst this may arguably allow justice to be served in the sense of a court confirming that a litigant's legal rights were affected, the ultimate compensation available to the third party funded claimant(s) may be disproportionately small and, in some instances, inadequate to address the detriment which they have suffered. This means that in most instances, third party litigation funding cases are of more financial benefit to the funder than to the claimant(s).

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<sup>8</sup> See page 22 of the research

<sup>9</sup> See page 24 of the research

<sup>10</sup> [2019] EWCA Civ 1599

<sup>11</sup> [Lloyd -v- Google: a landmark decision | Hill Dickinson](#)

<sup>12</sup> See page 24 of the research

<sup>13</sup> [Research reveals what's fueling growth and what's next | Burford Capital](#) (page 4 of the report, *noting the report uses the terms 'legal finance' and 'litigation funding' interchangeably, with quotes specifically referencing litigation funding*)

<sup>14</sup> See page 10 of the research

<sup>15</sup> See page 35 of the research

<sup>16</sup> See page 35 of the research

12. Consequently, we consider that third party litigation funding is an enabler of access to justice in some cases, such as in collective action proceedings, rather than a tool for increasing access to justice across the board or where there is greatest need.

## **Q2. To what extent does third party funding promote equality of arms between parties to litigation?**

13. Third party funding does promote equality of arms, particularly in collective claims cases. This is because the aggregate of consumer or small and medium-sized enterprise (SME) claims into a class of represented persons requires substantial funding of legal costs, and there is no current alternative for sourcing this type of funding. Nearly all of the defendants in collective action cases are well resourced entities that consumers or SMEs would be powerless to take action against if third party funding did not provide them with the resource required for litigation. An example of this includes the currently ongoing case *Gormsen v Meta Platforms Inc*<sup>17</sup> where Facebook was taken to court for its use of personal data<sup>18</sup>.

14. Third party funding has also supported several other non-consumer related claims against well-resourced or powerful entities and corporations, such as the equal pay claims of Uber drivers<sup>19</sup> and of supermarket workers<sup>20</sup> as well as in *Bates v Post Office Ltd*<sup>21</sup>, which would likely not have been possible if not backed by a litigation funder<sup>22</sup>.

15. Although third party funding can promote equality of arms between opposing parties in a case, the relationship between the funder and funded is imbalanced. The asymmetrical power dynamic could allow funders to exert influence and control over litigation with their own best interests in mind, which may not align with advancing access to justice. This level of influence could also be a factor in defining the extent that funders choose to equalise the positions of opposing parties in a case.

## **Q3. Are there other benefits of third party funding? If so, what are they?**

16. Third party funding could help divert potential litigants from having to rely on the use of other funding sources such as legal aid and pro-bono services that are currently oversubscribed and/or not available consistently throughout England and Wales. This may have the effect of freeing up available and limited resource for cases that require funding support for their legal issue but would not attract third party funding.

17. Third party funding can also provide a means for collective legal grievances that may affect a significant proportion of the population to be tested in court. Testing the meaning of law, of legislative provisions, appealing convictions, and of common law precedent may be in the public interest and support access to justice in the broadest sense for the wider public. For example, *Bates v Post Office Ltd* quashed the convictions of over 900 sub-postmasters who had been wrongfully prosecuted for crimes that were proven to be errors caused by the defective Horizon IT system used by the Post Office<sup>23</sup>. The case has been described by the Criminal Cases Review Commission (CCRC) as the 'most widespread miscarriage of

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<sup>17</sup> [2024] CAT 11

<sup>18</sup> See page 157 of the research

<sup>19</sup> *Uber BV and others v Aslam and others* [2018] EWCA Civ 2748

<sup>20</sup> *Asda Stores Ltd v Brierley & Ors* [2019] EWCA Civ 44

<sup>21</sup> [2019] EWHC 3408

<sup>22</sup> See page 149 of the research

<sup>23</sup> [The Post Office Horizon scandal: why litigation funding really matters | Practical Law](#)

justice'<sup>24</sup> it has seen, exemplifying the significant impact that litigation funding can bring about.

**Q4. Does the current regulatory framework surrounding third party funding operate sufficiently to regulate third party funding? If not, what improvements could be made to it?**

18. The current voluntary self-regulation framework does consider some of the risks, including requirements around what litigation funding agreements should include and parameters to help ensure that funding is provided only for cases that are considered meritorious. However, as the number of third party funders increases there are risks to consumers that the current voluntary framework is not capable of addressing, such as capital adequacy requirements to protect litigants or law firms should a funder fail, particularly where funders make several varied or risky investments. This has already been seen in the rising prevalence of portfolio funding and the collapse of SSB Law, which has left many of its clients who were signed up on behalf of litigation funders to firms to pursue cavity wall insulation claims, liable for costs reportedly of several tens of thousands of pounds each – significant sums for individuals. The LSB is conducting an independent review of the SRA's regulatory actions in the lead-up to the collapse of SSB Group<sup>25</sup>.

19. Additionally, regulation of third party litigation funders is currently voluntary, so does not have universal reach. It is estimated that the majority of litigation funders operating in England and Wales are not members of the Association of Litigation Funders of England & Wales (ALF). They are consequently not subject to such voluntary regulation<sup>26</sup>, although this does not necessarily mean they do not comply with the code of conduct to at least some extent<sup>27</sup>. Non-ALF funders therefore are an active part of the market. Legal professionals make use of non-ALF funders and do so knowingly, undeterred by their status<sup>28</sup>. This has led to an inconsistency of standards, regulation and understanding of the market, creating an unlevel playing field for providers of litigation funding. Effective regulation of litigation funders as a financial service, as well as effective action from legal services regulators of legal professionals, would help address these concerns and ensure potential litigants have consistent access to reliable third party funders as well as supporting a stable and predictable regulatory environment that, in turn, would support further investment and contribute to growth.

20. In our view, action is required from both financial and legal services regulators in order to adequately address the nature and scale of the risks to consumers which to a large extent emerge from the third party funding entities themselves. Financial services regulation needs to be introduced to the litigation funding sector, replacing the existing self-regulation model and extending their current duties<sup>29</sup>. Legal services regulators also have an important role to play in protecting litigants through their existing powers, such as ensuring that law firms and legal professionals engaging with third party litigation funding comply with their obligations. This includes maintaining high standards of client care, not placing short term financial gain above the best interests of their client and their duty to the court, fulfilling their duty to act

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<sup>24</sup> [Post Office Cases - Challenging a Conviction - Criminal Cases Review Commission](#)

<sup>25</sup> [LSB to review SRA regulatory actions in the lead-up to the collapse of SSB Group - The Legal Services Board](#)

<sup>26</sup> [CJC-Review-of-Litigation-Funding-Interim-Report.pdf](#) (page 19)

<sup>27</sup> See page 52 of the research

<sup>28</sup> See page 53 of the research

<sup>29</sup> See page 51 of the research



with independence, honesty and integrity, and to uphold the rule of law and the proper administration of justice.

21. Furthermore, the provision of education and further guidance by legal services regulators to raise awareness of the realities, opportunities and risks of litigation funding as well as how to navigate the conflicts that can arise from such relationships would help ensure that legal professionals can meaningfully contribute to protecting consumers from harms that can arise from third party funding arrangements. Education and information sharing should also extend to consumers to empower them to make informed choices about third party litigation funding. By working together with the explicit interest and protection of the consumer at its core, financial and legal services regulators can provide effective regulation of litigation funding to manage the existing and growing risks posed to consumers, and support confidence and trust in the market. Financial and legal services regulators can also empower consumers to make informed decisions around using third party litigation funding in their litigation.

22. Finally, there should be more clarity for regulators and consumers on the regulation of jurisdictional overlaps and interactions, for example cases where international third party funders operate in England and Wales.

**Q5. Please state the major risks or harms that you consider may arise or have arisen with third party funding, and in relation to each state:**

**a. The nature and seriousness of the risk and harm that occurs or might occur;**

**b. The extent to which identified risks and harm are addressed or mitigated by the current self-regulatory framework and how such risks or harm might be prevented, controlled, or rectified;**

**c. For each of the possible mechanisms you have identified at (b) above, what are the advantages and disadvantages compared to other regulatory options/tools that might be applied? In answering this question, please consider how each of the possible mechanisms may affect the third party funding market.**

23(a). Funders may exercise undue influence over the outcome of cases. As funders are the source of payment for lawyers and litigants, this may lead to indirect coercive power where case decisions are made in alignment primarily with the funders' interest, rather than attaining a just outcome for the case.

23(b). There is no consistent regulation of this in the self-regulatory framework. However, the risk and harm to consumers exists in the nature of the imbalanced relationship between funder and funded party and can manifest in third party funding agreements as provisions that give grant funders the ability to make strategic decisions that overrule the wishes of the litigant, such as whether and when to settle<sup>30</sup>. Third party funders attempting to exercise undue influence has also been seen in cases like *Merricks v Mastercard*<sup>31</sup> where the litigation funder publicly criticised the settlement for being too low and premature, which was dismissed by the legal professionals for the claimants as being in the interest of the funders not the consumers<sup>32</sup>. As seen in this example, the provision of advice by legal professionals

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<sup>30</sup> [What You Need to Know About Third Party Litigation Funding - ILR](#)

<sup>31</sup> [2020] UKSC 51

<sup>32</sup> [Litigation funder Innsworth to challenge 'premature' settlement in Merricks v Mastercard | Law Gazette](#)



as a 'check and balance' to funder influence throughout the litigation process would help to address this risk.

24(a). There is a risk that the self-regulatory regime cannot effectively regulate a larger, and growing, third party funding market.

24(b). The self-regulatory regime (ALF) offers some relevant protections such as fair litigation funding agreements, the financial viability of funders, and ethical involvement in cases. However, a voluntary approach is inadequate as the litigation funding market grows, particularly where the quality and focus of funders engaging in third party litigation funding, may be driven primarily by a high risk/reward appetite. The risk is amplified where lawyers, law firms and litigants use non-ALF third party funders. Financial and legal services regulators should collaborate and coordinate to ensure regulation effectively mitigates the risks to consumers from the growing third party litigation funding market, and instils public confidence and trust in the market so it can continue to grow.

25(a). There has been a proliferation of cases that offer access to the court system and litigation, but not necessarily justice for litigants, particularly in opt-out class action cases. For example, in the Court of Appeal, *Lloyd v Google* was dismissed and the court found that damages could not be sought on a "uniform per capita" basis, without proof of individual circumstances for the millions of plaintiffs<sup>33</sup>.

25(b). Legal services regulators have an important role to play in ensuring that legal professionals comply with their professional obligations and protect consumers from harm arising from third party funding arrangements and uphold their professional and ethical duties. This includes advising their clients on funding options that would provide better access to justice and ensure they are aware of the risks that may arise from third party litigation funding. We believe that regulators need to meet this challenge more effectively to address this risk, and we are undertaking work to ensure legal services regulators support those they regulate to understand and uphold high standards of professional ethics<sup>34</sup>.

26(a). Third party litigation funding incentives contribute to high or increasing litigation costs and settlement amounts, impacting insurance premiums for both consumers and legal professionals, and working against a wider system focus on reducing civil litigation, which reduces the accessibility of litigation as a means to accessing justice.

26(b). This is an existing and growing problem as insurers have reported that litigation funding has driven a significant increase in loss costs due to high levels of litigation and expensive legal settlements that will likely result in higher premiums for their customers<sup>35</sup>. Third party funders often seek higher settlements to achieve not only redress for the litigant but substantial economic benefit for the funder which can drive up settlement amounts<sup>36</sup>.

27(a). There is a risk that litigation funding is sourced via capital derived from unlawful means, which could give rise to money-laundering or wider economic crime, particularly where a funder has no clear and transparent reportage of its funding sources or track record in the jurisdiction<sup>37</sup>.

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<sup>33</sup> [Case Comment: Lloyd v Google LLC \[2021\] UKSC 50 – UKSCBlog](#)

<sup>34</sup> [\\*BEUC-X-2024-091 Third Party Litigation Funding.pdf](#) (page 8)

<sup>35</sup> [Third-Party Litigation Funding is Forcing Commercial Insureds to Proactively Manage Their Legal Risk : Risk & Insurance](#)

<sup>36</sup> See page 104 of the research

<sup>37</sup> See page 75 of the research

27(b). At present the SRA provides no guidance to law firms on the anti-money laundering (AML) or know-your-client (KYC) checks that should be done with respect to litigation funders specifically<sup>38</sup>. While the concern that litigation funding has been derived from unlawful means may at present be theoretical, it is a risk that regulators must be alive to.

**Q7. What do you consider to be the best practices or principles that should underpin regulation, including self-regulation?**

28. The fundamental principles that should underpin the regulation of third party funding should be acting in the interests of consumers and protecting consumers from harm. Whilst existing regulatory frameworks provide some consumer protection and pathways to redress, as was seen in the case of Novitas Loans<sup>39</sup> where the Financial Ombudsman Service (FOS) found that third party litigation funder Novitas failed to manage conflicts of interest properly, we believe that litigation funding needs to be formally regulated as a financial service under financial regulation in order to effectively manage the range of risks to potential litigants posed by third party funders. This would help prevent harm from occurring in the first place, leading to fewer consumers needing to seek redress.

29. Legal services regulators also have a clear role to play in ensuring that law firms in receipt of third party funding act in the best interests of clients in upholding their professional and ethical duties to the court, the rule of law and in the proper administration of justice, and do not prioritise short-term commercial gains at the expense of advancing the best interests of their clients. In the decisions made by the FOS involving Novitas Loans, the FOS found that a solicitor had acted fraudulently which increased litigation costs and led to criminal proceedings. It is clear legal services regulators must do more to address risks to the public and consumers arising from the role of legal professionals in third party litigation funding scenarios. There is already precedent for financial and legal services regulation to work together, for example SRA-authorized firms involved in credit-related activities are dual regulated by the SRA and FCA for their relevant activities.

30. Establishing effective regulation from both financial and legal services regulators will require litigation funding to be recognised as a financial service and regulated accordingly alongside legal services regulators taking action to ensure law firms and legal professionals in receipt of third-party litigation funding comply with their obligations and maintain appropriately high standards of client care. This includes, for example, obtaining consent before acting on behalf of a client, undertaking effective due diligence during client onboarding, and acting promptly and adequately in response to client instructions.

31. Any future financial services regulatory regime should be proportionate and targeted so as not to undermine the commercial viability of this funding option and inadvertently shut down a potential means of accessing justice for some, or to hinder growth. Rather, it should provide a clear and predictable regulatory framework that inspires public confidence and trust balanced with ensuring consumers are aware of the risks when making the decision to enter a third party litigation agreement.

32. Where a formal regulatory regime is imposed, there should be a process for the oversight and monitoring of compliance, as well as tools for, and a credible threat of, enforcement where there is non-compliance. It should also help provide more transparency

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<sup>38</sup> See page 75 of the research

<sup>39</sup> ['Irresponsible' and 'unfair': Litigation funder Novitas Loans penalised after lending money to both parties in couple's dispute | Law Gazette](#)

and information for consumers as a means of controlling for quality and empowering consumers.

33. Regulation should also seek to address the risk identified at paragraph 29 above, that third party funding results in perversions to the court process and the proper administration of justice. Profits gained by third party funders should remain a by-product of meritorious court litigation and not the impetus for any case regardless of its merit to be taken to court.

**Q10. Should third party funders remain exposed to paying the costs of proceedings they have funded, and if so to what extent?**

34. When funding is withdrawn by the funder, it inevitably impedes the funded client's ability to proceed with their claim. Regulation should consider how to standardise and clarify the grounds on which litigation funding agreements may be terminated, specify that funders should remain responsible for any costs incurred up until the date of termination and seek to identify whether there are unique circumstances where funders should remain accountable for future or ongoing legal costs related to the case.

35. Regulation around ending litigation funding agreements should be established to protect claimants, and this may include, where it aligns with this purpose already, reflecting current self-regulation guidelines whereby litigation funding agreements may only be terminated due to concerns with the merits of the case, commercial viability of the claim, or breaches to the litigation funding agreement. Bringing third party litigation funding within the remit of the FCA would provide an opportunity to improve consumer protections, for example by specifying what would qualify as grounds for termination of an agreement under each of the aforementioned areas, that will establish a clearer and more consistent regulatory framework.

36. Funding agreements shouldn't provide funders with indirect power to influence the outcomes of a case, such as influencing decisions over settlement - funding agreements need to be in the interests of claimants. This is another risk that must be considered in reviewing the current regulatory framework's ability to protect consumers and manage harms.

**Q32. What provision (including provision for professional legal services regulation), if any, needs to be made for the protection of claimants whose litigation is funded by third party funding?**

37. Whilst we maintain that third party litigation funding should be regulated primarily as a financial service, there is also a role for legal services regulators to ensure law firms and legal professionals comply with their professional and ethical duties when engaging with third party funders and maintain high standards of client care. This includes ensuring that legal professionals are equipped to navigate the harms to consumers that arise from third party funding relationships through education and ongoing support in their use of and interactions with litigation funding. The legal services regulators must meet this challenge more effectively.

38. In addition, legal services regulators must provide a regulatory regime that supports legal professionals to understand and uphold high standards of professional standards and ethics within these complex funding and client relationships. Though legal professionals should act in accordance with their codes of conduct and other regulatory arrangements that apply to them, provisions that clarify that claimants, not funders, are a legal professional's client could be helpful to ensuring consumer protection – and further enable legal professionals to be

held accountable by their regulators for failing to meet these obligations. Additionally, further education and training for legal professionals specifically in identifying and managing actual or perceived conflicts of interests and duties arising in respect of litigation funding could support their navigation of such cases and their ability to act in the best interests of the client<sup>40</sup>. Finally, regulatory obligations on the funders could also reduce the likelihood of funders pressuring legal professionals to act contrary to or compromise their professional obligations.

The LSB will shortly be consulting on a proposed policy statement in respect of professional ethics and the rule of law which seeks to underline the professional ethical duties which sit at the heart of legal services.

**Q38. What steps, if any, could be taken to improve access to information concerning available options for litigation funding for individuals who may need it to pursue or defend claims?**

39. Public legal education (PLE) and transparency about the benefits and risks of litigation funding empower consumers to make informed decisions about exercising their legal rights, including whether to pursue third party litigation funding for their case. This could be publicly available information provided by government or could be facilitated by legal professionals, who are often the party that makes recommendations to their clients on the use of third party funding, and financial regulators could require funders to provide this information alongside information about the complaints process, as a prerequisite to entering into a litigation funding agreement with an individual or firm.

**Q39. Are there any other matters you wish to raise concerning litigation funding that have not been covered by the previous questions?**

40. We note the developing landscape around litigation funding following landmark decisions such as *Paccar*<sup>41</sup>, as well as more recently *Christine Riefa Class Representative Limited v Apple Inc. & Others*<sup>42</sup> which was the first judgment to refuse certification of a group claim outright based on the authorisation condition (whether the proposed class representative would fairly and adequately act in the interests of the class members)<sup>43</sup>. With the Court of Appeal due to rule on the validity of litigation funding agreements based on a multiple of the sum invested by the end of July<sup>44</sup> it is clear that this continues to be a rapidly evolving area. Some initial commentary suggests that this may be creating uncertainty that is having a detrimental effect on the litigation funding market<sup>45</sup>, and may lead to funders leaving the market. A clear regulatory framework with a statutory underpinning will provide greater certainty for funders as well as legal providers and those utilising litigation funding. This will help create a stable and predictable regulatory environment that, in turn, would foster public confidence in litigation funders, legal providers and consumers and support further investment and growth.

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<sup>40</sup> See page 145 of the research

<sup>41</sup> *Paccar Inc v Road Haulage Association* [2021] EWCA Civ 299

<sup>42</sup> [2025] CAT 5

<sup>43</sup> [Cleary, Freshfields secure major wins for Amazon and Apple as CAT strikes down class action - The Global Legal Post](#)

<sup>44</sup> [Court of Appeal to rule on litigation funding agreements based on 'multiple' of sum invested | Law Gazette](#)

<sup>45</sup> [Legal services in London harmed by inaction on litigation funding](#)

<sup>46</sup> [Legal funders warn UK government it is easier to 'invest elsewhere'](#)