CJC Review of Litigation Funding Consultation
31 October 2024 – 31 January 2025. The consultation closes on Friday 31 January 2025 at 23:59. Extension 3 March 2025 at 23.59
Consultees do not need to answer all questions if only some are of interest or relevance. Answers should be submitted by PDF or word document to CJCLitigationFundingReview@judiciary.uk. If you have any questions about the consultation or submission process, please contact CJC@judiciary.uk.
Please name your submission as follows: 'name/organisation - CJC Review of Litigation Funding'
You must fill in the following and submit this sheet with your response:

Your response is (public/anonymous/confidential):	PUBLIC
First name: MIRA	Last name: MAKAR
Location:	**City of London, London, UK**
Role:	COLLATION AND PRESENTATION OF EXPERIENCE OF MEMBERS IN SUPPORT OF WORK OF PARLIAMENT AND THE EXECUTIVE INCLUDING CONTRIBUTIONS TO RELEVANT GLOBAL BODIES AND EU COMMISSIONS
Job title:	CO-FOUNDER
Organisation:	**SME ALLIANCE LIMITED**
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.
· Please give reasons for your answers. Please do so by reference, where applicable, to the guidance given in the footnotes.
· All answers should be supported by evidence where possible to enable evidence-based conclusions to be drawn.
· It is not necessary to answer all the questions.
Please note that the Working Party is not considering civil legal aid

Questions concerning 'whether and how, and if required, by whom, third party funding should be regulated' and the relationship between third party funding and litigation costs.

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

Note 1: 1 When considering this question please bear in mind that access to justice encompasses access to a court, judgment and enforcement and access to non-court-based forms of dispute resolution, whether achieved through negotiation, mediation, complaints or regulatory redress schemes or Ombudsman schemes.
Note 2: This question includes consideration of the effectiveness of courts and tribunals assessing an appropriate price for litigation funding.
Note 3: Please give full details of each possible mechanism and explain how each would work (including who any potential 'regulator' or self-regulator might be). Such details may make reference to mechanisms used in other countries. Possible mechanisms may include, but are not limited to, various forms of formal regulation (including licensing and conditions, requirements, etc) self-regulation, co-regulation, standards, accreditation, guidance, no regulation, or any other relevant mechanism.
Note 4: Different forms of proceedings include, for instance: individual claims; group litigation; collective proceedings in the Competition Appeal Tribunal; representative proceedings before the civil courts.
Note 5: Examples of types of cases include, for instance: personal injury claims; consumer claims; financial services claims; commercial claims.
Note 6: Please explain your answer by reference to a specified regulatory mechanism or mechanisms.
Note 7: Please note that the Working Party is not considering civil legal aid.

1.1. Third party funding does not secure effective results. The answer is not at all.

1.2. There is no evidence that when it came about, that the (range of) product(s), such as could be ascertained (for example from high level marketing design available publicly such as Burford in 2007), that it had an objective, or, if it had, what that might be. Marketing literature advertised "handing over" a problem and being free to get on with one's business / life; insurers were referenced; underwriters were referenced; drawdowns were referenced. However the product design was not stated nor was identifying the investors. In court in the case of Signature Litigation for example, their identity came up very late on in the proceedings. The product did not reveal anyone who had an interest in efficiency.

1.3. Those who have a need to use the courts (generally a last resort after all else has been exhausted) are interested in law enforcement (rather than the term used here "access" to "justice"). They are also interested in provision of information (often mistaken for advice). This is so that they can find out the technical description of their complaint or cause of action. They need to know the relevant limitation dates and have a solicitor to manage service and deal with rules.

---

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

2.1. Third party funding does not promote anything nor does it set out to promote anything. It is an opportunity for anonymised third parties to take part in a form of gambling without downside.

2.2. The anonymity is heavily layered. The gamble may be leveraged. Security is in form of lawyers' letters, with no recourse to tangible assets in a country with provisions to enable recovery. Transaction manufacturers, wholesalers, retailers rely on financial recourse in any event not tangible asset recovery. Complex drawdowns arrangements lock one side in but not the gambler who "invests" on the back of no skin in the game and no risk to estate, reputation, tax reporting.

2.3. In parallel those registered as "solicitors" and "barristers" tell their clients that any family members supporting an unfortunate who has to request the court to issue to survive, that they will be viewed as "funding litigation" and their whole estate and reputation is at risk in a process they do not control. This leaves the unfortunate vulnerable as prey for the opportunists in the market.

2.4. There is no public protection since the Office of Fair Trading was shut in 2012, after referring those purporting to report as statutory auditors to the Competition Commission. These are the enables who certify balance sheets of intermediaries. This includes "claims management" platforms. Auditors know are ephemeral with no substance and can disappear once the prey is secured and has signed away their autonomy, having nominally been advised "independently".

2.5. "Equality of arms" does not exist in the gladiatorial court system in the UK. In the UK the CPS is willing to succeed in prosecuting innocents, displaying evidence of innocence whilst promoting a guilty plea, on the back of the fact the person has been "advised". "Advice" includes to enter a guilty plea to secure a 50% discount on tariff (time served) and avoid adverse costs.

There is no bonus or incentive to seeking to get things right or operate efficiently.

By way of example, some three years into the HBOS trial as Southwark Crown (which was drawn out torment for those attending as public (witnesses caught up with HBOS /LBG) from 2013 to 2017 inclusive, let alone torment for the defendants), the judge made a discovery. He discovered that the CPS barrister had not checked third party production required by the defendants (FSA's LBG email scrutiny using FSA's software product).

Defendants had to fund themselves, as the CPS, whose prosecution it was, on referral from Thames Valley police, had omitted to prepare the evidence of their side, despite being obliged.
The prosecutor must prepare the case (ie both sides) based on a gist statement of the defence early on, otherwise there is no defence, merely oppression exercised against the defendants. Moreover until the key evidence is available, it is not possible to decide how many trials there should be and whether all defendants have to sit through and pay for the lot.
There is a difference between getting things right and winning. The state should concern itsel with the first and guide everyone else.

The CPS's excuse was that they were distracted by the build of an evidence hub for all cases, that was designed to provide changed evidence links in documents when an argument changed. Those operating the system were not the prosecution team. Software engineers would call this build a white elephant that would be expected to "run like a dog" due to the volume of traffick (colloquialism based on an analogy of a poor performance car). This omission was not made good.

The trial nevertheless went ahead. LBG were given privileged access to all the documents available to the jury. An LBG stenographer was permitted to be right at the front of the courtroom in which the volume was so low that it was hard to hear from public areas unless at the closest part of the media area to the bench. Neither LBG nor its officers were the subject of indictment.

An admission was in the bag before much happened, details of which, and fact of which were kept from the world, save those scraping together resource to be able to get to the spun out case management sessions and sharing with others what they could elicit publicly. SME Alliance Limited founders are included in those attending. By trial end the evidence was with LBG.

2.6. From Autumn 2017 to May 2018, LBG had persuaded Andrew Bailey, CEO, FCA, to tell the world they (collectively) were starting the "Dobbs review" to establish what was or ought to have been in the knowledge of the LBG officers and board. Andrew Bailey obliged LBG with the promo. https://www.fca.org.uk/publication/correspondence/correspondence-sme-alliance.pdf

Whether the evidence technically made public in trial, provided to LBG, ever found its way to FCA or the LBG board, or its auditors, PwC, or the Dobbs review is not formally known. It can be said, that had it been shown, the Dobbs review would have been rendered redundant.

By the end of 2024, Dobbs review reported to LBG. Predictably no-one else has been let in. Those supporting LBG's Dobbs review, know their effort was futile. Barristers encouraging them, taking evidence, promising recordings will be provided, have reneged and not given copies of what they have taken. The concept of "shame" is not widely known or known but not practiced.

It can readily be concluded that the exercise had no purpose save to satisfy FCA that LBG was enquiring and add another six year hiatus under limitation. SMEA both encouraged members to co-operate and accompanied them as witnesses.

From: "SME Alliance Admin & tech" <office@smealliance.org>
Subject: Dobbs Review - Deadline for contact TODAY!
Date: 18 April 2019 12:28:01 GMT+01:00 To: undisclosed-recipients:; Bcc: [personal email for each member]
Dear Members,
You may remember a few weeks ago there was a last call for people to get in touch with the Dobbs Review, to give evidence relating to HBOS Reading.
http://www.dobbsreview.com/Home/Message
Today is the last day for anyone wishing to arrange a visit with the Dobbs Review in the future, to register their interest in doing so.

The Dobbs Team have met with many people linked to the events of HBOS Reading already and have many more people booked in.
If you wish to supply evidence to the Dobbs Review but have not got around to contacting them, all you need to do is drop a 1 line email ("I'd like to register my interest in attending a meeting with the Dobbs Review in the future") to info@dobbsreview.com by close of play today (18th April 2019).
If you are unsure about whether you'd like to go see the team, I would suggest dropping them an email, registering interest and if you change your mind down the line you can always cancel. However if you miss today's deadline you will not have the option in attending a meeting in the future.
Please find attached a piece written by one of our members who has attended a meeting with the Dobbs Team. It is a brilliant read, especially if you are on the fence about setting up a meeting with the Dobbs Team.
Kind regards,
XXXXXXXX XXXXXXXXXX Admin and Tech for SME Alliance
Tel: XXXXXXXXXX
www.smealliance.org
SME Alliance is a not for profit organisation

2.7. No progress has been made six years later from the point of view of those harmed (another limitation deadline). This includes those who filed and entered judgment (so records are public). Those individuals who have secured third party funding, gave up their autonomy, to be able to say to LBG "funding secured" and thereby bring them to the table. It was not intended to proceed to trial, since the claim form contained sufficient including expert damages evaluation. Deals included secrecy and silence. This creates what in economics jargon is called an "externality". There is no market to provide funding to compensate for the debris that becomes a cost to public.

---

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

3.1. There can be no benefit, since the exercise is purely one of privatising profit (turning human misery into a form of leverage, to the exclusion of the human and dependants including the public) and socialising cost. The public is not organised to respond. The system gets contaminated.

3.2. Beneficiaries, including those benefitting from blocking enforcement of judgment, will resort to crude tactics. There is no third party funding for resisting these. Examples include:

(i) blocking access to medical attention, so painful untimely death is inevitable / reasonably foreseeable and predicted (intent);

(ii) using publishers such as Oxford University Press (eight hundred million turnover per annum) to manufacture false law.

This includes that, under the Companies Act, those holding office as an auditor, owe duty to precisely no-one. This quotes a judgment with twenty-nine paragraphs attributable to a court of appeal judge at first instance, accompanied by a reference to a neutral citation number and judgment of another judge with only four paragraphs. An example as requested is from August 2013, with PwC as defendant, ISBN 978-0-19-9-67644-6, page 473;

(iii) having people's TWITTER account suspended then disappearing (as though the individual themselves had removed it), accompanied by a communication from TWITTER saying there was nothing wrong with it, December 2018 to December 2024, a six year block with no defence, those benefitting or used, being PwC customers, including TWITTER in the period; (iv) using barristers' chambers websites to peddle falsehoods and traffic or transact in risk shift;

(v) copyright assigned to embargo'ed materials not delivered that is retained and trafficked by powerful media companies to the exclusion of those interested;

(vi) publishing a response or acknowledgment of sorts on a platform in or out of the UK (such as YouTube) on date of limitation that is used to indicate an admission in sanitized form for indemnity cover if nothing else. An example is Jordan Peterson 17 May 2017, YouTube "Senate Hearing on Bill C16", limitation day (six years)in regard 18 May 2011 publications commissioned by MP, Mark Field City and Westminster, for use in raising questions to Ministers and in Parliament. This emboldens (potential) aggressors because they proceed opportunistically knowing they have indemnity. Limitation is crucial in the justice system;

(vii) sexual and other forms of harassment through malicious falsehood published on "solicitor's" website, in circumstances in which there is no issued and served claim form and no publicly available documents or identities of those named.

The damage that is done is irreparable and third party funding can do nothing to repair, even if they actually wanted to or were sufficiently interested in the substance of a case.

Shutting the platform down (solicitor's website) and bankrupting the promoters and striking them off the solicitors register (Master of the Roll job, to whom counsel may have already made referral but to no avail) does nothing at all to repair the situation let alone provide remedy, reparation, restitution (ie the basic right to be made whole). The Master of the Roll has no 24x7 facility for a mandatory injunction to bring down the whole of the website and facility for immediate issuing of claim form to deal with further repair, remedy, restitution and damages.

Until this is in place, the credibility of those charged with the administration of the justice system is in tatters since they are not reliable ie they lack the credibility to get insurance and/or underwriting for a shrunk wrapped product. An informed insurer would spot that their self interest prevails, not a desire to protect the insurer by being on their panel.

A public celebration of unfettered misogyny, public humiliation and degrading treatment of an innocent will inevitably result. It provides a useful (underwritten) bandwagon to join "risk-free".

The date this call closes, 3 March 2025, is limitation for the advertised publication date, 4 March 2019, within the one year for libel (malicious falsehood) since being spotted by those interested.

Being Harassed by a Disgruntled Ex-Employee? See a Lawyer Today!
Published on: March 4, 2019 Published in: Legal News

Ex-employees who have left in acrimonious circumstances can bear grudges, and social media gives them the opportunity to make a pest of themselves. As a High Court case showed, however, specialist lawyers are more than capable of protecting clients who are on the receiving end of harassment or abuse.

The case concerned the former CEO of an IT company whose departure was not harmonious. Subsequent Employment Tribunal proceedings were compromised and, as part of the settlement agreement, she agreed not to publish disparaging or derogatory statements about the company or any of its officers or employees.

That, however, did not prevent her from engaging in a prolonged campaign in which she aired a number of perceived grievances directly to the company and two of its directors and to third parties. She made frequently incoherent claims of dishonest and criminal conduct on Twitter and on an investment information website.

After proceedings were brought on behalf of the company and its directors, the woman failed to respond or put in a defence to the claim. The Court was, however satisfied that she had been properly served with all the required legal documents and permitted the hearing to go ahead in her absence.

In granting summary judgment on the claim, the Court was entirely satisfied that the woman's activities amounted to defamation, harassment, and breaches of the settlement agreement. The directors had suffered hurt and upset as a result of her campaign and feared continuing reputational damage.
An interim injunction was also issued against her, requiring her to cease her unlawful activities, and she was formally warned that breach of the order would be a contempt of court, punishable by up to two years' imprisonment. The amount of damages that she will be required to pay the directors has yet to be assessed. There was no separate damages claim by the company.

Such examples discredit the industry including in the eyes of funders.

---

4. Does the current regulatory framework surrounding third party funding operate sufficiently to regulate third party funding? Part 2: If not, what improvements could be made to it?

4.1. These do not exist. FCA has confirmed it is not provided with product spec or design and has no list of accredited distributors. Claims management companies operate as administrators on the surface. What they do in the background is anyone's guess.

4.2. What is known is that this funding area is huge business. There was a flurry of defensive research commissioned following the Jackson Reforms, that operated to expose fallacies in the industry. First, nobody had told funders, insurers, those indemnified to accept run-offs when insurers exited, that a notice of funding had to be filed on the day the contract is concluded. That blows the anonymity of the gamblers ab initio. Secondly "costs" are typically voluntary or for a purpose and do not qualify for recovery through the court. Care is needed that wholesale carve out of costs is part of an assessment if mandated not a step before.

---

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.

EXTRACT – SPONSORED WORK- Peter Watson Wolverhampton University April 2014.
The Likely Effect of the Jackson Reforms on Insolvency LitigationAn Empirical Investigation:
A Third Party Funding of Insolvency Litigation
Historically, the common law has taken a dim view of attempts to interfere in litigation by non- parties. The doctrines of barretry, maintenance and champerty were developed in mediaeval times to outlaw assignments of bare causes of action and agreements whereby a party supported or maintained another's action (whether or not in exchange for a percentage of the proceeds of such action). **55**
It was confirmed in the nineteenth century that IPs were permitted to assign bare causes of action vested in the insolvent estate for a sum or money or in exchange for a share in the eventual proceeds.**56** This "insolvency exception" survives today. It is also possible for a third party funder to maintain or support an IP in bringing an office holder action on behalf of the insolvent in exchange for a share in the eventual proceeds. Such agreements must not fetter the IP's discretionary powers in terms of which lawyers to use and how to conduct the action generally.**57** The distinction is therefore made between actions vested in the insolvent estate, such as those for breach of contract or breach of fiduciary duty, (which can be assigned under the insolvency exception) and office holder actions, such as wrongful trading under s214 or avoidance of transactions at an undervalue under ss 238 and 339, which are only capable of being brought by the IP (and which cannot be assigned but may be supported by third party funders).
The accusation aimed at third party funders **58** by some of the practitioners who were interviewed is that they take a large percentage of the proceeds of any successful action (up to 50% of the proceeds) and that they take on only a very small percentage of cases offered to them. They "cherry-pick" the actions where a quick solution may be negotiated which is most favourable to the funder and only take on cases where the potential value is very high (typically in excess of £3m). The counter argument from the funders is that without their support, such actions would not be brought at all and the creditors of the insolvent would lose out altogether.
The expertise of the funders is used to provide a tangible benefit to creditors which would not exist without their support.
The view of one of the main funders who was interviewed is that a solicitors' or accountants' firm is not the best way to finance big litigation. The business structure does not support big and expensive cases. That is where third party funders come in. They have the specific skills, the appropriate contacts with skilled and experienced lawyers and other professionals and the financial backing to make a success of such claims. They have the knowledge and experience to judge when to take a risk on litigation. Solicitors and barristers are less well equipped to deal with such risk taking and, although there are exceptions, are generally reluctant or unable to take on cases which require large amounts of work-in-progress if the outcome is uncertain. The use of a funder takes away the risk to the IP of any personal liability and avoids the IP running up a great deal of work-in-progress with no certainty of payment.
Based upon material available on various funders' websites (and other publically available material), it appears that, apart from Manolete Partners LLP, funders will only consider large claims. Manolete is the only funder which deals exclusively with insolvency claims. It would appear that the main competition for business is at the top end of the market. For example, Woodsford Litigation Funding Ltd and Harbour Litigation Funding Ltd both require a minimum value of £3m to take on a commercial claim whilst Juridica Investments Ltd focuses on claims exceeding $25m. Burford Capital LLC usually requires a damages to costs ratio or 4:1 and on average finances a claim to the amount of £1m. This suggests an average claim of £4m.
A practical problem faced by funders who consider taking on relatively small claims is that such claims will often require some investigatory work to be carried out by the funder which may lead to the potential claim soon becoming uneconomical. Often investigatory work will be carried out by a funder if a prima facie case is shown in terms of merits of the case and solvency of the defendant. Most, but not all, funders prefer to engage their legal team on CFAs (either full or partial) and will usually take out ATE insurance. At least one funder prefers to pay its legal team its normal rates and generally to avoid CFAs. All of the funders have the benefit of relatively large amounts of capital supporting the business.
From the point of view of the creditors of an insolvent company whose office holder decides to use the services of a funder, the downside is that the funder will take a percentage of the final proceeds of the action. Although each funder has a slightly different model for calculating this percentage, one funder typically pays a small amount for a claim and then splits the proceeds 50/50 with the IP. Other funders do not pay anything up front and provide a sliding scale percentage depending upon if and when the case settles.

.

The other common criticism of funders is that they only take on a very small fraction of the cases which are offered to them. Some IPs who were interviewed, expressed the view that funders take on only a small number of cases and only those where they believe a successful outcome is extremely likely. The answer to that suggestion might be that the funders are in business to make money themselves and so will wish to pick the strongest and most valuable cases. Unless competition expands significantly, most funders will continue to be able to "cherry-pick" the biggest and best cases. As the market currently stands there appears no appetite nor a need for funders to take on the smaller cases which are common in insolvency litigation.

55 For a clear explanation of the development of the law in this area, see Lord Neuberger, President of the Supreme Court, "From Barretry, Maintenance and Champerty to Litigation Funding" Harbour Litigation Funding First Annual Lecture at Gray's Inn 8 May 2013, found at: http://www.supremecourt.gov.uk/docs/speech-130508.pdf.

56 See e.g. Seear v Lawson (1880) 15 Ch D 426.

57 See e.g. Rawnsley v Weatherall Green & Smith North Ltd [2010] BCC 406.

58 Most but not all funders are members of the Association of Litigation Funders of England and Wales whereby they signed up to a voluntary Code of Conduct for Litigation Funders in November 2011. For the Code see: http://associationoflitigationfunders.com/wordpress/wpcontent/uploads/2012/05/CodeofConductforLitigationFundersNovember20111.pdf

This extract explains the state of the industry as at April 2014, when trying to revive itself after the Jackson Reforms, a herculean task.

---

6. Should the same regulatory mechanism apply to: (i) all types of litigation; and (ii) English-seated arbitration?

a. If not, why not?

b. If so, which types of dispute and/or form of proceedings 4 should be subject to a different regulatory approaches, and which approach should be applied to which type of dispute and/or form of proceedings? **5**

c. Are different approaches required where cases:

(i) involve different types of funding relationship between the third party funder and the funded party, and if so to what extent and why; and

(ii) involve different types of funded party, e.g., individual litigants, small and medium-sized businesses; sophisticated commercial litigants, and if so, why?

---

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

7.1. There is none outside operating a betting shop (investor and intermediary side) and re-opening the Office of Fair Trading to issue Public Health Warnings.

Trading Standards are disabled throughout the country including City of London by a hierarchy that stops them curtailing wrongdoers.

7.2. Bar Council has not helped. In 2013 it replied to a call for evidence on Tribunal fess. It omitted to say that Fee Remission is available (public purse funding) and that the public purse does not pay adverse costs, so there is no risk of such threats being used oppressively.

---

8. What is the relationship, if any, between third party funding and litigation costs? Further in this context:

a. What impact, if any, have the level of litigation costs had on the development of third party funding?

b. What impact, if any, does third party funding have on the level of litigation costs?

c. To what extent, if any, does the current self-regulatory regime impact on the relationship between litigation funding and litigation costs?

d. How might the introduction of a different regulatory mechanism or mechanisms affect that relationship?

e. Should the costs of litigation funding be recoverable as a litigation cost in court proceedings?

i. If so, why?

ii. If not, why not?

9. What impact, if any, does the recoverability of adverse costs and/or security of costs have on access to justice? What impact if, any, do they have on the availability third party funding and/or other forms of litigation funding.

9.1. They are not recoverable.

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

10.1. Third party funders are not the ones carrying the risk: they ultimately control the intermediaries (through insurers) and are protected by anonymity and drawdowns. The punter is the one at risk: they have invested their position and evidence as well as autonomy but face the drawdown being blocked; intermediate vehicles being pulled so no recourse; being bullied into settlement having agreed to follow advice ie sold by intermediaries to the opponents; depleted; diminuished; blocked into silence. In essence they are willing cannon fodder: their standing and humanity is exchanged for a solicitor's opinion, used to raise funds and obtain transaction underwriting. This loss of autonomy is not well understood especially for those locking into their insurer's panel solicitor, whom they are locked into, without being able to "change their mind".

Questions concerning 'whether and, if so to what extent a funder's return on any third party funding agreement should be subject to a cap.'

11. How do the courts and how does the third party funding market currently control the pricing of third party funding arrangements?

11.1. The courts are not informed. There should be a notice of funding filed on the day the agreement is concluded which may be pre requesting the court to issue.

11.2. Pricing is commercial. It is "take it or leave it".

11.3. It is not possible in the UK to trade in "litigation". In fact it would be simpler to avoid that noun, and simply refer to the standing of a natural or legal person. That cannot be priced.

11.4. Standing with sufficient cause to found recognisable proceedings cannot be separated or traded. It does not stop desperate or greedy people from selling rights under ERA (Employment).

---

12. Should a funder's return on any third party funding arrangement be subject to controls, such as a cap?

a. If so, why? b. If not, why not?

12.1. Yes, cap of zero. There is no known judicial apparatus for recognising a return on funding. The concept simply does not exist. A gift to help someone out does not have a "return".

---

13. If a cap should be applied to a funder's return:

a. What level should it be set at and why?

b. Should it be set by legislation? Should the court be given a power to set the cap and, if so, a power to revise the cap during the course of proceedings?

c. At which stage in proceedings should the cap be set?

d. Are there factors which should be taken into account in determining the appropriate level of cap; and if so, what should be the effect of the presence of each such factor?

e. Should there be differential caps and, if so, in what context and on what basis?

13.1. Cap is zero as concept of a return is not a flyer. Statute cannot help. Fee remission can.

Questions concerning how third party funding 'should best be deployed relative to other sources of funding, including but not limited to: legal expenses insurance; and crowd funding.'

14. What are the advantages or drawbacks of third party funding?

Please provide answers with reference to: claimants; defendants; the nature and/or type of litigation, e.g., consumer claims, commercial claims, group litigation, collective or representative proceedings; the legal profession; the operation of the civil courts.

Note 6: Please explain your answer by reference to a specified regulatory mechanism or mechanisms.

14.1. There is no identifiable mechanism for a third party to benefit from the standing of another and gain from it, even if the other thinks it is a good idea. The justice system has tried to block access by pernicious and unaffordable fees (spend money on food for family or pay issue fees); closing courts; restricting hours; removing counters; refusing to issue fee remission certificates; turning court officials into mindless robots; hiring staff to be "associates" to manufacture "court orders" under counsel secret instructions in order to give to Thomson Reuters to mount active harassment publicly and electronically as part of an organised terror campaign without respite using private communication channels, details of which are trafficked without knowledge or consent; maintaining an Official Transcriber list of those refusing to produce verbatim transcripts whilst blocking up anyone else doing it; and refusing to give receipts on request to issue or on JR.

14.2. This obstruction has been aided by Justice Select Committee with arrears in publishing written evidence received from at least January 2019 (six year block) leaving the public exposed. This includes insurers; underwriters; investors; intermediaries; justice staff; courts; those suffering.

15. What are the alternatives to third party funding?

a. How do the alternatives compare to each other? How do they compare to third party funding? What advantages or drawbacks do they have?

Please provide answers with reference to: claimants; defendants; the nature and/or type of litigation, e.g., consumer claims, commercial claims, group litigation, collective or representative proceedings; the legal profession; the operation of the civil courts.

15.1. Third party funding by definition has no alternatives to it. It involves a third party.

b. Can other forms of litigation funding complement third party funding?

Alternatives include: Trade Union funding; legal expenses insurance; conditional fee agreements; damages-based agreements; pure funding; crowd-funding. Please add any further alternatives you consider relevant.

15.2. No. The product takes over standing and autonomy for third party's benefit, together with the facilitators. None of the other suggestions do this, so they will be automatically prejudiced. However they can, and do, cause prejudice. Trade Unions, hearing a case is complex, eg potentially in the Employment Tribunals burst out laughing and declare "you have to be joking" if asked to attend a disciplinary before going to the ET; ACAS, which has been missed out from the above list, has become inert, most demonstrably since the Business Department walked out and left it to MoJ, having lost interest in employment; legal expenses insurance involves claims handlers turning down valid claims and kicking them into the long-grass via FOS which buries them and destroys the records; DBAs have been discredited due to solicitors of those entitled using them to essentially blackmail defendants to secure the highest damages under whistleblowing law (example Chancery HC04CO4003, whistleblower employed by Collins Stewart as analyst re Numerica and other stocks, who hired Dale Langley and Michael Duggan of counsel, Littleton); crowd-funding involves making representations to get funding which may not be true, and the solicitor receiving the funds staying mum. Friends family others interested all pitch in. There is no recourse. Carole Cadwalladr managed to damage the reputation of crowd funding by prematurely telling the world she had received a claim form, at that stage there were no public documents.

She filed under the 2013 defamation act which permits a judge to make up a "meaning of words" without jury and truth, which Saini J duly did, triggering the Court of Appeal involvement and truth eliminated as defence. The un-scrabbling took several years. Funders providing money without judging the prosecution path of a case, will fuel activity, not efficiency.

https://www.theguardian.com/uk-news/2022/jun/13/arron-banks-loses-libel-action-against-reporter-carole-cadwalladr-guardian-defamation-brexit-russia

c. If so, when and how?

15.3. Not so.

---

16. Are any of the alternatives to be encouraged in preference to third party funding? If so, which ones and why are they to be preferred? If so, what reforms might be necessary and why?

16.1. As stated, these are not comparable and the interests are commercial not with reference to standing eg of an intervenor or some body registering an interest.

---

17. Are there any reforms to conditional fee agreements or damages-based agreements that you consider are necessary to promote more certain and effective litigation funding? If so, what reforms might be necessary and why? Should the separate regulatory regimes for CFAs and DBAs be replaced by a single, regulatory regime applicable to all forms of contingent funding agreement?

17.1. CFAs have been discredited. Solicitors to the court are winning business as panel solicitors to insurers by stealing issued not served claim forms including against the insurer, and entering a CFA to annihilate the claimant. No notice of funding is filed otherwise they would be rumbled. There is evidence from April 2011 in proceedings still live due to this. These proceedings have survived the demise of those providing funding support by providing a letter of support for fee remission. By confirming such support they have identified themselves and automatically become a target in their own right. Those surviving have no quality of life to speak of until they finally pass.

17.2. Without registration on a timely basis, identifying those interested and insurance stacks, the FCA has no chance of devising regulation or a reactivated OFT protecting the public.

18. Are there any reforms to legal expenses insurance, whether before-the-event or after-the-event insurance, that you consider are necessary to promote effective litigation funding? Should, for instance, the promotion of a public mandatory legal expenses insurance scheme be considered?

18.1. There are known public arrears from February 2006. Legal expenses insurance must be under the control of the claimant and not subject to deals with suppliers to the exclusion of the insured. FOS advise that insurers must be sued before they act in utmost good faith.

18.2. There are no suppliers respecting utmost good faith to support any public scheme. Money is made by contraventions of utmost good faith and contraventions of law rather than its enforcement. No single operator can baulk the trend and expect to survive.

19. What is the relationship between after-the-event insurance and conditional fee agreements and the relationship between after-the-event insurance and third party funding? Is there a need for reform in either regard? If so, what reforms might be necessary and why?

19.1. None and none. These are transactions and facilitators: each has to be dissected separately.

20. Are there any reforms to crowd-funding that you consider necessary? If so, what are they and why?

20.1. Money raised should go to the person raising it, not a solicitor fronting an insurance stack who takes the money and refuses to give a bill or communicate. Contractors (consultants) to registered law firms are a particular problem, because their contracts of hire are not revealed.

21. Are there any reforms to portfolio that you consider necessary? If so, what are they and why?

21.1. We do not recognise the term.

22. Are there any reforms to other funding mechanisms (apart from civil legal aid) that you consider are necessary to promote effective litigation funding? How might the use of those mechanisms be encouraged?

22.1. The integrity of fee remission must be restored. Courts in the Rolls Building should not be allowed to simply say “we do not issue certificates any more”.

22.2. Letters of support should be certified as seen but copies not retained to protect the signatory from revenge and terror attacks.

22.3. Clerks should be trained that judiciary are debarred from the counter (confirmed by Master Victoria McCloud in chambers, February 2015) and cannot handle or see records which are not public, including claim forms which have not been issued.

22.4. Securing a receipt for records filed should not be hit and miss: each page should be put through a machine and come out receipted.

22.5. The delivery of judgment by hand down must be public in open court. BAILII and others are not insured and have no role to play.

22.6. Verbatim transcripts should be possible but are not. It should be possible to hear the recordings under supervision without the corruption of those on the official list.

22.7. “Accounts” for the anonymised paying of fees should be abolished for money laundering reasons.

22.8. Funds office should be prevented from moving monies outside public court proceedings and according to Saini J’s method of, “have a go and see what happens” February 2020 (public).

Questions concerning the role that should be played by 'rules of court, and the court itself . . . in controlling the conduct of litigation supported by third party funding or similar funding arrangements.'

23. Is there a need to amend the Civil Procedure Rules or Competition Appeal Tribunal rules, including the rules relating to representative and/or collective proceedings, to cater for the role that litigation funding plays in the conduct of litigation? If so in what respects are rule changes required and why?

23.1. Funds should not appear in CPR. The word litigation is unhelpful because it stops one from thinking what is really meant.

---

24. Is there a need to amend the Civil Procedure Rules or Competition Appeal Tribunal Rules to cater for other forms of funding such as pure funding, crowd funding or any of the alternative forms of funding you have referred to in answering question 16? If so in what respects are rule changes required and why?

24.1. Funds should not appear in CPR (outside fee remission registration). Fee remission authorisation should be handled by clerks and not judges who do not have the requisite expertise or people handling skills (including those traumatised or disabled in some way).

24.2. Chancery should be cleared of "free" barristers trawling the corridors who contaminate proceedings irreparably and work with no contract.

---

25. Is there a need to amend the Civil Procedure Rules in the light of the Rowe case? If so in what respects are rule changes required and why?

Neutral Citation Number: [2021] EWCA Civ 29 Case Nos: A3/2020/0483 & A3/2020/1165 &A3/2020/1166 & A3/2020/1167 &A3/2020/1168
IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE HIGH COURT OF JUSTICEBUSINESS AND PROPERTY COURTS OF ENGLAND ANDWALESBUSINESS LIST(ChD)MR JUSTICE NUGEE

LORD JUSTICE FLOYD LORD JUSTICE HENDERSON And LORD JUSTICE POPPLEWELLMR NIGELROWE & ORS Claimants/ Appellants-and -INGENIOUS MEDIA HOLDINGS PLC & ORS
Hearing date 1 December 2020. Not public until 15 January 2021.

25.1. No not at all. Film based tax product is as old as the hills, at least over four decades. Neither tax relief not court based costs relief apply. Security for costs is academic. Legal representation in the case are compromised and with interests and therefore debarred from appearing.

---

26. What role, if any, should the court play in controlling the pre-action conduct of litigation and/or conduct of litigation after proceedings have commenced where it is supported by third party funding?

26.1. Courts should validate certified evidence of damage mitigation as part of preaction. Justice Warby has already considered this with his media user group in devising pre action some years ago.

---

27. To what extent, if any, should the existence of funding arrangements or the terms of such funding be disclosed to the court and/or to the funded party's opponents in proceedings? What effect might disclosure have on parties' approaches to the conduct of litigation?

27.1. A notice of funding with full details must be filed when concluded.

Questions concerning provision to protect claimants.

28. To what extent, if at all, do third party funders or other providers of litigation funding exercise control over litigation? To what extent should they do so?

28.1. Absolute. They should have no control and no expectation of any return. They compete with the public purse and pro bono counsel (but not supplied by Bar Pro Bono).

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

29.1. They use self interested leverage predictably.

30. Should the court be required to approve the settlement of proceedings where they are funded by third party funders or other providers of litigation funding? If so, should this be required for all or for specific types of proceedings, and why?

30.1. No there is no judicial process called “approval”.

31. If the court is to approve the settlement of proceedings, what criteria should the court apply to determine whether to approve the settlement or not?

31.1. The courts should stop issuing judgments saying claim dismissed but retain the issues.

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

32.1. It is not possible: a reopened OFT should issue public warnings and advertise through Citizens Advice and Trading Standards.

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

33.1. They use same insurers and traffick the information in any event so it is one market.

34. To what extent, if any, do conflicts of interest arise between funded claimants, their legal representatives and/or third party funders where third party funding is provided?

34.1. There is no independence in the product construct. It is driven by self interest.

35. Is there a need to reform the current approach to conflicts of interest that may arise where litigation is funded via third party funding? If so, what reforms are necessary and why.

35.1. Once insurers realize costs are not recoverable the market will implode.

Questions concerning the encouragement of litigation.

36. To what extent, if any, does the availability of third party funding or other forms of litigation funding encourage specific forms of litigation? For instance:

a. Do they encourage individuals or businesses to litigate meritorious claims? If so, to what extent do they do so?

b. Do they encourage an increase in vexatious litigation or litigation that is without merit? Do they discourage such litigation? If so, to what extent do they do so?

c. Do they encourage group litigation, collective and/or representative actions? If so, to what extent do they do so?

When answering this question please specify which form of litigation funding mechanism your submission and evidence refers to.

36.1. They cause congestion in the courts because of the extent of interest in the process. SLAPPs and whistleblowing claims are particularly vulnerable, so are family court cases.

---

37. To the extent that third party funding or other forms of litigation funding encourage specific forms of litigation, what reforms, if any, are necessary? You may refer back to answers to earlier questions.

37.1. As above.

---

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

38.1. Public warnings to avoid and published product design, components and identities.

General Issues

39. Are there any other matters you wish to raise concerning litigation funding that have not been covered by the previous questions?7

Note 7: Please note that the Working Party is not considering civil legal aid.

39.1. Thank you. Please remind MoJ that they have not published replies to consultation on costs in defamation cases (September 2013) and the summary and partial list of names of respondents in late 2018 is hopelessly inadequate but would help the CJC now.
