

The consultation closes on **Friday 31 January 2025 at 23:59**.

Consultees do not need to answer all questions if only some are of interest or relevance.

Answers should be submitted by PDF or word document to CJCLitigationFundingReview@judiciary.uk. If you have any questions about the consultation or submission process, please contact CJC@judiciary.uk.

Please name your submission as follows: 'name/organisation - CJC Review of Litigation Funding'

You must fill in the following and submit this sheet with your response:

Your response is (public/anonymous/confidential):	Public
First name:	Nicky
Last name:	Williams
Location:	London
Role:	Policy
Job title:	Policy Manager
Organisation:	CBI
Are you responding on behalf of your organisation?	Yes
Your email address:	<div style="background-color: black; width: 150px; height: 1.2em; display: inline-block;"></div>

Information provided to the Civil Justice Council:

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

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

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

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



CBI Response to the CJC Review of Litigation Funding

Background

About the CBI: Founded 60 years ago and representing some of the biggest names in business, household brands and globally traded corporations that employ people in all sectors and across every region and nation of the UK, the CBI is the voice of business. The CBI represents 850 members who themselves comprise 1,100 separate registered companies and 150,000 trade association members. Find out more about some of the businesses in membership [here](#).

The CBI welcomes the opportunity to respond to the Civil Justice Council Review of Litigation Funding, Interim Report and Consultation. Litigation funding has become a highly profitable industry, with £120bn in total damages currently being claimed across all ongoing class action lawsuits in England and Wales, according to the CMS European Class Action Report 2024. Funders typically support the most promising cases, resulting in significant profit margins across their investment portfolios. This influx of capital has, in turn, increased the number of class action lawsuits supported by litigation funding in the UK.

However, litigation funding, where third-party funders provide financial backing for legal cases in exchange for a share of the proceeds, has sparked serious debate within the sector. The rapid expansion of this type of funding, with UK businesses reporting a dramatic increase over the past five years, has outpaced the existing regulatory framework. This has led to a lack of guidance and transparency needed to ensure a fair and just system.

While CBI Members advocate for a balanced regulatory environment that fosters innovation and growth, they recognize that certain sectors, such as litigation funding, require more stringent oversight to ensure fairness and transparency. Proportionate regulation in this space is essential to protect consumers and businesses by establishing a baseline that prevents exploitative practices without stifling legitimate claims or economic progress.

The Need for Regulatory Reform

Concerns about Third-Party Litigation Funding (TPLF) and broader regulatory accountability appear to reflect a more extensive regulatory issue. Amidst the increasing flow of new regulations, complex barriers, and regulatory divergence, many firms are concerned about the suboptimal outcomes of the UK's regulatory environment, which impacts investment and growth.

As part of this, firms have emphasised that the UK must address three key concerns in order to unlock investment and economic growth:

- **Accountability and Support for Risk-Taking in Regulation**

Firms stress the need for regulators to take calculated risks to foster innovation, rather than defaulting to overly cautious approaches aimed solely at avoiding failure. While protecting consumers is vital, regulation should actively encourage innovation and economic growth, with sponsoring departments providing political backing that supports risk-taking and aligns regulators with long-term goals. Similarly, in litigation funding, strong oversight and transparency are essential to prevent excessive or opportunistic lawsuits, ensuring that funders operate responsibly and prioritise fairness and growth over profit-driven motives.

- **Revise and Enhance Strategic Dialogue Among Government, Regulators, and Stakeholders**

A significant barrier to a fair and effective regulatory environment is the lack of strategic dialogue among regulators, government departments, and businesses. Departments often have limited oversight of regulators and the regulations they oversee, leading to duplication, conflicting policies, and burdensome, innovation-stifling red tape. Similarly, inadequate oversight of litigation funders and their practices, combined with poor coordination among stakeholders, has created policy gaps and unintended consequences. For instance, in the IT Horizon scandal, 80% of total damages were retained by law firms and third-party litigation funders, highlighting the need for stronger accountability and collaboration to ensure equitable outcomes.

- **Address Chronic Skills Shortages and Capacity Challenges within Regulatory Bodies**

Regulators face significant challenges due to reduced capacity and a critical shortage of technical expertise. CBI members report that resource constraints in key regulatory bodies cause substantial delays, placing the UK at a competitive disadvantage globally. Post-Brexit regulatory divergence has further exacerbated the problem, thereby weakening the UK's attractiveness as an investment destination. These issues must be carefully addressed if statutory regulation is introduced for TPLF. Such regulation must ensure that regulators have the resources and expertise to enforce fair and effective oversight without causing additional delays or burdens.

Advocating for Reform in Third-Party Litigation Funding

Currently, TPLF operates under a self-regulatory framework, with the Association of Litigation Funders (ALF) serving as a voluntary membership body. In 2009, Lord Justice Jackson cautiously endorsed a voluntary code for TPLF, recognising the industry's "nascent" status at the time. However, he also emphasised that if the sector expanded and the nature of funders, cases, and claimants evolved, statutory regulation should be introduced. Since then, all the conditions Jackson identified as triggers for regulation have been met, reinforcing the case for a more regulation.

This perspective is echoed by key stakeholders, including the Law Society, which as early as 2008/09, advocated for regulation to protect consumers, prevent excessive and often unjustified claims against businesses, and safeguard the UK's economic competitiveness. The UK now faces an increasingly opaque and predatory claims culture, where regulation

has struggled to keep pace. The current system, along with the ALF and its voluntary Code of Conduct, disproportionately benefits litigation funders and lawyers—often at the expense of consumers and the UK’s SME community, which plays a vital role in job creation and public service support.

Self-regulation has proven ineffective, and the voluntary nature of the ALF has failed to provide meaningful oversight. As a result, the CBI continues to advocate for the establishment of an independent regulator accountable to Parliament to ensure fairness, transparency, and the long-term sustainability of the UK’s litigation funding landscape.

What the CBI is Calling For

Alternatives to litigation

- Litigation should always be a last resort, with a stronger emphasis on mechanisms that provide faster, more cost-effective routes to redress. These include alternative dispute resolution (ADR) methods, such as mediation and ombudsman services. The CBI also supports the use of company complaints procedures, which are common in industries like aviation, where customers can resolve issues related to delayed or cancelled flights directly with the business. Proportionality is key—while litigation is appropriate when it is the only means for a consumer to achieve justice, it must not become the default option for resolving disputes.

Protection against profit-driven third party litigation

- Since 2015, competition class actions involving over 500 million class members have been filed in the UK—equivalent to more than 8.1 actions per person. This represents a sharp increase in a relatively short time. To illustrate further, a 2024 survey of UK firms revealed that three-quarters reported a rise in cases brought against their businesses over the past five years, with three in five expecting this trend to continue over the next year. This growing appetite for class action lawsuits is significantly impacting business confidence and investment. The rapid rise in such cases raises critical questions about the sources of funding, who controls these lawsuits, and what protections are in place for consumers involved. This all further compounds the need for statutory regulation.
- The CBI is therefore advocating for the introduction of caps on returns in TPLF. While this may deter some investment in high-risk cases, it is a necessary step to ensure fairness by preventing excessive funder profits. Additionally, capping returns can enhance access to justice by making litigation funding more predictable and affordable. However, it is equally important to safeguard access to justice for smaller businesses while mitigating the risks of profit-driven TPLF practices.

Transparency

- The British legal system emphasises that all parties in litigation should have access to fair and accurate information about the process. However, the absence of oversight in the litigation funding sector often leaves consumers uninformed about the risks they face, with many bound by confidentiality agreements that prevent them from discussing their cases. This lack of transparency has led to serious consequences, as seen in the cavity wall insulation (CWI) scandal, where thousands of homeowners were left with substantial legal bills after their law firm collapsed. To prevent such outcomes, the CBI calls for increased transparency in agreements between funders and clients, including clear rules to ensure funders cannot abandon claims and leave consumers to shoulder the burden.

Access to real justice

- Research by Fair Civil Justice reveals that while litigation offers a route for consumers to seek compensation, TPLF often leaves claimants with insufficient returns to address their suffering. Furthermore, funders retain the right to withdraw support at any point of the process, exposing consumers to significant financial and legal risks. Instead of benefiting claimants, permissive class actions primarily serve the interests of funders and legal representatives. This approach encourages litigation as a first resort, bypassing cost-effective alternatives like mediation, which duplicates regulatory processes, sidesteps consumer watchdogs, and places additional strain on businesses' resources and budgets.

Summary

To summarise, while litigation has an important role within the UK legal framework, it must always be considered a last resort. The UK has recently seen a surge in class actions, particularly under the Collective Proceedings Order regime in the Competition Appeal Tribunal, largely driven by the profitability of TPLF. However, TPLF is not the most effective means for consumers to achieve meaningful justice or fair compensation. Additionally, the profitability of TPLF has led to a rise in speculative and opportunistic claims, which drive up legal costs for businesses and divert resources away from investment, job creation, and innovation.

As highlighted, the criteria set out by Lord Justice Jackson for mandatory statutory regulation have now been met, making the case for regulation urgent. The current voluntary self-regulation of TPLF has consistently resulted in poor outcomes for both businesses and consumers. Statutory regulation is now necessary to address key risks, such as capital adequacy, money laundering, and transparency and would enhance the integrity and reputation of the industry.

CBI

February 2025