

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:	Tom
Last name:	Hayhoe
Location:	London
Role:	Advocate for consumers in legal services regulation
Job title:	Chair
Organisation:	Legal Services Consumer Panel
Are you responding on behalf of your organisation?	Yes
Your email address:	<div style="background-color: black; width: 100%; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 1.5em; height: 1.2em; display: inline-block; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div>

Information provided to the Civil Justice Council:

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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.



Civil Justice Council
CJC Room, E205, Royal Courts of Justice
London WC2A 2LL289-293

Sent by email only to CJCLitigationFundingReview@judiciary.uk

3 March 2025

Dear CJC Review of Litigation Funding Policy Team,

Re: Review of Litigation Funding Interim Report and Consultation

The Legal Services Consumer Panel (Panel) welcomes the opportunity to provide evidence and views on the Civil Justice Council's (CJC's) Review of Litigation Funding Interim Report and Consultation. The Panel is pleased that the CJC is considering how legal services users are faring under various litigation funding methods. The Panel advocates on behalf of legal services consumers and in the third party litigation funding landscape, this includes those directly engaging legal services, claimants engaging legal services in group litigation and those who benefit from a class representative engaging legal services on their behalf.

Access to Justice

The Panel believes that third party litigation funding is an important part of the menu of options that are needed to ensure people who could not otherwise bring litigation, or benefit from litigation, are able to do so. It is recognised though that commercial funding agreements only fund cases where there is a good prospect of winning an amount substantial enough to justify bringing the case. This means it is only useful in certain types of cases. Yet, in combination with after the event (ATE) insurance, it also allows people to overcome the barrier of the risk of having to pay a defendant's costs if the claim is unsuccessful. It can also enable the group litigation of smaller individual claims that would not be worth pursuing on their own, but when aggregated, can form large enough claims to hold corporations to account. This accountability can strongly incentivise businesses to act lawfully.

It would be useful to understand what specific types of cases are pursued with third party litigation funding and how successful they are to confirm whether these access to justice and accountability objectives are being met. The Panel suggests that large scale evidence of the experiences of those using third party litigation funding should be sought from users themselves, including individuals litigating on their own behalf, individuals litigating as class representatives and the beneficiaries to the claim. The only such evidence the Panel is aware of is the Class Representatives Network's research being carried out on class representative's experiences, but the full picture of consumer experiences is needed for a strong evidence base to inform litigation funding policy.

Possible Regulation of Third Party Litigation Funding

Beyond the better regulation principles, any third party litigation funding regulation must primarily serve the needs of those who employ this funding method. Accordingly, it must promote access to justice and prevent consumer harm. In addition, regulation should also be as straightforward and as easy to comprehend as possible. Consumers should understand and trust in any regulation (including self-regulation). Regulation should support the development of a fair funding market and be based on best practices agreed by all stakeholders. These include ensuring consumers are provided with adequate information to make an informed decision on what type of funding is appropriate. This will require more research to map the choices that are currently available and most often used for different types of cases. Any type of regulation should take consumer research and engagement into account in order to ensure consumer interests are adequately considered. Lastly, any third party litigation funding regulatory system would also need to be capable of monitoring and evaluating current and changing rules, tracking how they affect consumers and staying abreast of the rapidly changing landscape.

The Panel is disappointed that only about a third of litigation funders (16 out of 44) active in England and Wales are members of the Association of Litigation Funders (ALF) and its voluntary regulation. In addition, ALF's Code of Conduct neglects to provide important clarity on potential conflicts of interest and the information that needs to be made available to those using third party litigation funding. These types of protections are crucial in the legal services market where users face great information asymmetry¹ and where many consumers do not find client care letters to be easy to understand, particularly useful or effective communication². The Panel feels there are serious questions about whether self-regulation is sufficient to protect the rights of the users and beneficiaries of third party litigation funding. The risk of consumer harm centres on whether users can exercise their legal rights in a way that allows them to make informed decisions about their participation in litigation, recover appropriate levels of the proceeds of a claim and does not expose them to adverse cost consequences.

Because the cases that attract third party funding can involve very large amounts of money, poor conduct is a significant risk. In addition, the ALF guidance risks getting the balance wrong between insisting on significant legal advice for consumers and adequate consumer protection. Finally, self-regulation also risks diluting any penalties for misconduct to a point where they cease to be effective deterrents.

Putting a Cap on a Funder's Return

In principle, third party funding is a means to achieve an end, that is promoting access to justice and more just outcomes. The ALF currently allows funders to claim up to 100% of the proceeds of a dispute that it has funded (or more if the funded party has materially breached the Litigation Funding Agreement (LFA)).³ Such a rule does not appear to promote a just outcome where the claimant(s) could potentially take no benefit at all when the dispute was resolved in their favour, especially in cases where the claimant may have also suffered non-pecuniary harm. There should be a more consistent and transparent mechanism for ensuring just outcomes. Applying a cap to a third party funder's return could be one possible mechanism, as long as it is derived by balancing the need to protect just outcomes for claimants and ensure that funders remain profitable enough to support a varied third party funding market. Another option could be requiring a court to approve the distribution of damages. It should be noted, however, that in the interests of making the cost of third party funding easy to understand for all parties, rules that provide for more predictable outcomes are preferable.

¹ See CMA, [Legal Services Market Study: Final Report](#) (2016) at p. 25.

² See LSCP et al., [Research into Client Care Letters](#) at (2016) at pp. 4-5.

³ See clause 2.6 of the ALF's Code of Conduct for Funders.

Deploying Third Party Funding Relative to Other Sources

The CJC Review of Litigation Funding interim report considers multiple alternative funding options including: self-funding, legal aid, trade union funding, Legal Expenses Insurance (LEI), Conditional Fee Agreements and Damages-Based Agreements (last reformed in 2013), pure funding (unregulated altruistic litigation funding), crowdfunding (on a pure funding or third party funding basis) and portfolio funding (a type of third party litigation funding). Strategic litigation funds are also used, more so in other jurisdictions, to fund public interest litigation.

Although only 31% of consumers' legal issues involved a court of tribunal, the Panel's 2024 Tracker Survey⁴ showed that 73% of legal services consumers⁵ paid for their legal services themselves (or with the help of family or friends). 5% of these self-funders said their family or friends covered the costs. Self-funding drops to only 25% of consumers who used legal services for accident or injury claims, 29% dealing with employment disputes, 31% dealing with benefits, 35% dealing with problems with consumer services or goods, 40% dealing with neighbour disputes and 41% dealing with debt or hire purchase problems. 6% of all consumers paid for their legal services through legal aid, another 6% paid through insurance and 2% paid through a no win no fee arrangement. 5% used a free service that was not a no win no fee arrangement or legal aid. Only 1% of consumers paid for their legal services through a union.

Overall, 3% of legal services consumers were dissatisfied ("neither satisfied or dissatisfied" was an option) with the outcome of their legal matter, but outcome dissatisfaction rose to 7% for those who used insurance to pay for their legal services, 9% for those who used a free service (not a no win no free arrangement or legal aid) and to 13% for those who used a no win no free arrangement. Rates of dissatisfaction with the service level received from a provider were 6% overall but 10% for consumers who paid via legal aid or insurance.

Those using a no win no fee arrangement were much more likely (19% compared to 4% overall) to use a "one man band" provider and almost half as likely (38% compared to 71% overall) to use a small local firm. When asked whether their provider was regulated (after being provided with a definition), 93% of all legal services consumers said their provider was regulated, compared to only 87% of those paying through insurance and 84% of those using a free service (not a no win no free arrangement or legal aid).

Legal aid was used to fund significant portions of cases concerning criminal (43% of these types of cases), benefits (18%) and family matters (15%). Free services (not no win no fee or legal aid) were used for significant portions of cases regarding benefits (26% of these cases), problems with consumer goods and services (25%) and debt (22%). Insurance and no win no fee arrangements were used to pay for the highest proportion of cases in the same areas: accident and injury claims (33% paid by insurance, 13% paid by no win no fee arrangements), employment disputes (17% and 13% respectively) and problems with consumer goods or services (14% and 6% respectively).

These numbers show that LEI and no win no fee arrangements are being used for similar issues but that they differ from the types of disputes that benefit most from legal aid and otherwise free services. Consumers from a lower socio-economic background (C2DE) were significantly more likely to use legal aid, free legal services (not no win no fee or legal aid) and no win no fee arrangements, but not insurance. In addition, traditionally fewer LEI policies have covered areas of urgent legal need such as immigration, benefits, criminal or family matters. The Panel is particularly interested in analysing the evidence the CJC can gather on crowdfunding and portfolio funding and whether there is any consumer harm associated with them.

⁴ See LSCP, [Tracker Survey data tables \(2024\)](#). This survey of individual legal services consumers has been done every year since 2012 and the 2024 iteration canvassed 3633 users.

⁵ Those who used legal services in the last two years.

Role of the Court in Controlling Litigation Supported by Third Party Funding

It may be useful to interrogate the impact of the role of the court in controlling litigation supported by third party litigation funding on available court time, the predictability of the rules these types of cases and the ease of understanding this framework (especially by consumers using or benefiting from third party litigation funding).

Provision to Protect Claimants

Careful consideration of conflicts of interests is needed. Third party litigation funders should not take over control of the litigation they are funding because their interests will not always align with those that the litigation is benefitting. In fact, it is not surprising that commercial third party litigation funders are almost exclusively concerned with pursuing a profit on their funding activities. They need to focus on this to ensure they have a sustainable business model. The overarching objective of third party litigation funding, promoting access to justice and enforcing legal claims that may not be brought otherwise, should not be overtaken by the funder's interest even if it may have to be balanced against it.

Evidence is also needed as to whether a lawyer acting for a funded party can provide their client with independent advice on a LFA (as the ALF Code of Conduct currently allows) regardless of their own role in the litigation. A clear evidence base and best practice should be used to inform consistency around what "independent" advice is and how it is achieved. In addition, if Litigation Funding Agreements (LFAs) allow third party litigation funder input into decisions regarding the funded litigation, there should be consistency and clarity on how these arrangements will work in practice. However, because legal services consumers (or those who benefit from the litigation) are generally not able to negotiate such agreements freely, a consistently applied mechanism to ensure their interests are protected is needed.

The Panel also notes that a consistently large proportion of consumers who are not satisfied with the service they receive from their legal services providers do not complain at all (21% in 2024 not including those who intended to take action but had not yet⁶), therefore, it seems unlikely a simple complaint system can effectively ensure consumer needs are being met.

In the complex marketplace for litigation funding, competition should be encouraged to ensure there are different options available. If this is the case, there should be strong efforts to allow legal services consumers (and their representatives) to fully understand and compare funding options across different funders. Last year, only 68% of legal services consumers found prices of legal services easy to compare.⁷ The difficulty of understanding litigation funding options, including any possible liability from adverse costs findings, is arguably magnified and accordingly, a standard format for communicating funding options could be useful.

Encouragement of Litigation

The Panel does not have conclusive information as to whether litigation funding encourages litigation, but if it is used to predominantly fund successful claims, it has most likely enabled access to justice. Nevertheless, "evidence from the Netherlands showed no increase in meritless collective claims after the arrival of litigation funding, and no evidence of abusive practices has been documented in any EU member state."⁸

The Panel would like to see improved access to information about litigation funding options (including using third party litigation funders or other arrangements) for legal services consumers. It is important to provide this information at the point of need, which may mean that lawyers should

⁶ See LSCP, [Tracker Survey data tables \(2024\)](#).

⁷ See LSCP, [Tracker Survey data tables \(2024\)](#).

⁸ See BEUC, [Justice unchained | BEUC's view on third party litigation funding for collective redress \(2024\)](#) at p.8.

make it available to consumers (perhaps via their websites) before they engage a lawyer. Again, because third party litigation funding is even more complex than ordinary legal matters, which are already daunting for some consumers, clear user-tested language will help ensure understanding. For example, lawyer's websites could direct consumers to the Legal Choices website (a collaboration between all the frontline legal regulators) to ensure non-traditional funding options are explained effectively. Any information transparency guidelines pertaining to litigation funding should be mandatory based on the low levels of compliance seen when legal regulators' used voluntary transparency guidelines.

General Issues

12% of legal services consumers find lawyers difficult to understand because of their use of jargon. This highlights the legal profession's lack of skills to explain legal issues to their clients. In addition, most legal services consumers use legal services infrequently and usually when they are under stressful circumstances, therefore, any attempts to communicate the complex risks of third party funding must be done in a way that is suitable to these parties. In fact, those with an unmet legal need (who may require the assistance of third party funding) are more likely to have lower levels of legal confidence.⁹ Therefore, any regulation system must imbue trust and take user needs into account. Providing detailed positive minimum standards for clear communication (as opposed to "not misleading"¹⁰), using consumer-tested standardised language and/or ensuring legal professionals advising on these matters have the necessary skills and experience to do so effectively could help ensure that consumers make informed decisions about these risks.

While different stakeholders may purport to raise consumer issues, it is important that the consumer interest is determined only once comprehensive research on the experiences of different types of consumers using litigation funding is available.

We hope the CJC finds this input helpful. Should you have any questions pertaining to this consultation response, please contact Heidi Evelyn, Consumer Panel Manager, at Heidi.Evelyn@legalservicesconsumerpanel.org.uk, with any enquiries.

Yours sincerely,



Tom Hayhoe
Chair, Legal Services Consumer Panel

⁹ See LSB, [Legal Needs of Individuals in England and Wales: Summary Report](#) (2024).

¹⁰ See clause 6 of the ALF's Code of Conduct for Funders.