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:	Thomas
Last name:	Hughes
Location:	London
Role:	(Re)Insurance Trade Association
Job title:	Senior Underwriting & Claims Executive
Organisation:	International Underwriting Association
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.

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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.

Introduction

The IUA is the representative body for companies in London providing international and wholesale insurance and reinsurance coverage. Its mission statement is to secure an optimal trading environment for London (re)insurance companies.

The IUA's London Company Market Statistics Report shows that overall premium income for the company market in 2023 was £48.432bn. Gross premium written in London totalled £42.995bn while a further £5.437bn was identified as written in other locations but overseen by London operations.

Executive Summary

The IUA supports the work of the CJC in undertaking this comprehensive review of third party litigation funding and appreciates the opportunity to contribute. Our members, being many of the largest insurance and reinsurance companies active in the London market, have been monitoring the evolving third party funding environment in recent years. We acknowledge it has been more than 10 years since the last thorough review of third party litigation funding. Over that period the market has evolved significantly, as has the scale of litigation in England & Wales; this has rendered the current regulatory framework inappropriate and ineffective.

With knowledge of these developments and through this review we see the opportunity for robust, compulsory regulation of the third party funding industry to be developed. In our view this should take the form of co-regulation, with an independent regulator working alongside the courts to set out and then enforce rules. Ensuring that third party funders are regulated in a similar manner to the other parties involved in any litigation process, namely insurers, solicitors, barristers and law firms, will improve transparency and better mitigate the risk of harm to claimants discussed in our response.

We acknowledge that litigation funding has a role to play in securing access to justice and we support the CJC in ensuring that this access to justice is central to this review. We do however believe that litigation should be viewed as a last resort. Other existing and well established routes to justice must be maintained and encouraged, namely the use of ombudsman and redress schemes. We believe that all of these elements are key to ensuring a fair and balanced justice system that enables positive outcomes for both claimants and defendants.

Our recommendations discussed in this response are summarised as follows:

1. Third party funders should be overseen by an independent regulator with the power to issue and revoke licences to funders.
2. Transparency requirements should be applied to third party funding.
3. Capital adequacy requirements should be introduced to ensure that funders are sufficiently capitalised to handle costly large and complex claims.
4. Anti-Money Laundering obligations should apply to funders in the same manner as other finance providers, including insurers.

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?[1]
2. To what extent does third party funding promote equality of arms between parties to litigation?
3. Are there other benefits of third party funding? If so, what are they?

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

In our view, the current regulatory framework surrounding third party funding is insufficient.

The 2009 Jackson Costs Review and a subsequent Civil Justice Council Consultation reached the conclusion that if the litigation funding market in the UK continued to expand, full statutory regulation should be revisited[3]. We strongly agree with this conclusion and note that the CJC consultation paper helpfully references data collected by Mulheron, stating that "the TPF industry in England and Wales is now the second largest such market in the world" and that "UK third party funders' assets increase from £198 million in 2011/2012 to £2.2 billion in 2021"[4]. The paper highlights "that is a ten-fold increase since 2012, three years after the publication of the Jackson Costs Review". Considering this substantial growth and evolution of the market we would argue that a more appropriate regulatory framework is now required.

The Association of Litigation Funders (ALF) Code of Conduct was introduced in 2011 and remains the only regulatory framework in place for litigation funders. Although this may have been appropriate at the time of launch, we suggest there are a number of reasons why enhanced regulation of third party funding is now necessary. These are as follows:

1. The number of complex claims has grown exponentially since 2011. The value of such claims has also increased significantly. The CMS 2024 European Class Action Report[5] highlights that the UK had 540 million claimants in class actions in 2023, which is a 170% increase from 2022, and the total value of claims was more than €78.68 billion, with competition class actions accounting for more than half of the total value. Helpful data in the US states that the "average size of large awards in the US rose by 26% for general liability cases between 2010 and 2019" according to Swiss Re[6].

2. When the ALF Code of Conduct was developed, litigation funding was far less prevalent than it is today. The Review paper highlights that there are an estimated 44 litigation

[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.
[2] This question includes consideration of the effectiveness of courts and tribunals assessing an appropriate price for litigation funding.
[3] CJC Review of Litigation Funding Interim Report and Consultation – 2024
[4] The Third Party Litigation Funding Law Review 2022 (6th Edition) - Augusta | Litigation Funding | Litigation Finance | Arbitration Funding | Litigation Funder - 2022
[5] European Class Action Report - 2024
[6] Swiss Re US litigation funding and social inflation: the rising costs of legal liability - 2021

funders now operating in England & Wales. The ALF website states that "the litigation funding industry has grown rapidly in England and Wales, and around the world, in the past decade. Today there are a lot of businesses holding themselves out as providers of capital to back litigation claims, and as a result it has become increasingly difficult for first-time users to discern the differences between providers."[7]

3. The ALF Code of Conduct is voluntary. Only 16 funders are members of ALF at the time of writing this response. This is of particular note in light of Sir Rupert Jackson's recorded view on self-regulation, that it should be sufficient "provided that a satisfactory code is established and that all funders subscribe to that code", and with the anticipation that "solicitors will be advising their clients only to enter funding agreements with litigation funders who sign up to the Code and comply with its provisions"[8]. Whilst some non-ALF members purport to adhere to some features of the ALF Code of Conduct, they are not subject to evidential requirements to substantiate these statements.

4. We note the limited transparency in the third party funding market and the potential that additional unidentified parties could be participating in litigation funding. The transparency and disclosure requirements for collective proceedings in the Competition Appeal Tribunal (CAT) should be applied to all claims subject to third party litigation funding. Unless the court directs otherwise, this should include transparency of funding positions to all parties to the litigation and provision of Litigation Funding Agreements (LFAs) to the court.

5. In our view, there are deficiencies within the current ALF Code of Conduct. Two of specific note are in respect of capital adequacy requirements and the consequences of a breach of the code (namely the limited fines capped at £500 offering very little by way of deterrence). Stronger regulation would introduce a framework where capital adequacy requirements are enhanced and enforced, as well as bringing in obligations related to Anti-Money Laundering and transparency.

6. The regulatory abilities of ALF are inherently limited by i) its lack of independence, ii) its limited powers to legally compel disclosure of evidence to monitor compliance, and iii) the lack of a route to appeal a decision of the ALF to an independent third party.

7. We understand that the complaints process in the ALF Code is very rarely used. Research by Professor Mulheron shows that there have been only four instances of the ALF complaints process being invoked since its inception[9]. Our view is that this does not indicate a lack of problems surrounding third party funding, it instead simply illustrates an ineffective complaints procedure and tied to that limited sanctions against poor behaviour.

We strongly believe that third party litigation funders should be regulated by an independent regulator with the powers to authorise funders to engage in litigation funding. The role of funders is not dissimilar to After the event (ATE) insurers in that they cover legal fees associated with litigation, but insurers, like law firms, solicitors etc., are all regulated. As the third party funding market continues to grow, so does the scope for potential harms and risks (discussed further in our response to Question 5), and independent regulation would

[7] Association of Litigation Funders website
[8] Review of Civil Litigation Costs: Final Report - 2009
[9] The Third Party Litigation Funding Law Review 2022 (6th Edition) - Augusta | Litigation Funding | Litigation Finance | Arbitration Funding | Litigation Funder - 2022

be suitable for mitigating these. Our recommendation is that such regulation would be best performed by the Financial Conduct Authority (FCA) in an umbrella regulatory capacity, considering its knowledge of how other parties involved in third party funding matters would operate. Furthermore, the FCA has a clear focus on consumer protection and increasing standards, while maintaining positive competition, which makes them an ideal choice to meet the challenges faced by the third party litigation market. The FCA recently became the regulator for claims management companies, a useful case study to consider the potential benefits for customers[10]. The FCA would be well-positioned to act as a regulator on both sides of the litigation funding process with an overarching non-partisan position.

It is important that the courts work closely with the FCA in what could be described as a co-regulation process. The courts should be afforded greater case management powers, in place both at pre-litigation stage and throughout proceedings. This would offer the ability to scrutinise the funding agreement, control costs and, where appropriate, approve a proposed settlement. Broader changes to court proceedings where litigation funding is involved should be considered. Courts should be empowered to impose adverse costs on third party funders, without limitation. This would ensure that funders would not be able to leave proceedings without consequence, but the choice to leave proceedings would remain. This also amplifies the existing need for funders to select valid cases which are likely to progress, reducing the likelihood of spurious claims being supported. They key aim of this enforcement would be to protect claimants from the burden of adverse costs, which could be unexpected due to a decision made by a funder to leave.

While we would anticipate further discussion and consultation on the particulars of any future regulatory framework, there are several fundamental areas that require consideration. We set out here the benefits we perceive would arise from specific aspects of enhanced regulation:

Authorisation/Licencing: An independent regulator, such as the FCA, should be instilled with the power to issue authorisation for funders to engage in litigation funding. This would mean proper, ongoing checks are carried out and requirements met to ensure good practice amongst funders and to avoid harm to customers. A licensing regime would be an important part of enforcing the regulatory framework and would be in line with the standards other parties in the process are held to. The regulator would hold the power to revoke licences, acting as a strong incentive for firms to maintain good practice.

Transparency requirements: An external and independent regulator would afford greater scope for transparency surrounding funding agreements, with the provision of disclosure requirements introduced. There should be consideration of a mandatory requirement in all funded cases for the funded party to disclose the fact that the case is supported by third party funding. We would also encourage consideration of requirements aimed at ensuring claimants fully understand i) the terms of LFAs before they enter into them and ii) the effect of termination clauses permitting a funder to withdraw funding where it is no longer satisfied of the merits of the case. These would underpin the enforcement of fairness and transparency within the third party funding sphere. Transparency requirements will also limit the risk of funders to inhibit undue influence and control over litigation and settlements.

In addition to this, a defendant is currently unable to assess its potential exposure to costs and make considered decisions on how it manages the litigation accordingly. The

[10] FCA website - Claims Management Companies

introduction of standardised LFAs, or at least key areas of consistency, and guidance to support consumers entering LFAs will reduce the imbalance between the claimant and the third party funding provider, allowing the claimant to make a more informed decision. Standardised documents will also allow for easier regulation, management and approval of the LFA, making comparisons between third party funding providers a clearer process.

Capital adequacy: A key concern from a customer protection standpoint is capital adequacy. The implementation of capital adequacy requirements and regular checks would ensure access to justice for claimants who are relying on funding to support their case. More specifically, this would enable justice for defendants who would have no recourse if the third-party funding firm was insufficiently capitalised and failed. Any specific capital levels should be proportionate to the total liabilities of a third-party funder, including adverse costs. Again, an independent regulator would be best placed to put a calculation framework in place and ensure it remains up to date.

Anti-Money Laundering Obligations: The lack of regulatory obligations to prevent money laundering appears to be an obvious oversight in the current third party litigation process and one that we think should be addressed. Given our proposals that funders be subject to a regulatory regime, it would make sense that funders are subject to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which notably are supervised by the FCA. Applying these obligations to funders will help mitigate the well-known and significant harms that arise from money laundering activities.

There are additional measures that could be introduced to protect claimants that are private individuals or small and medium sized enterprises (SMEs), who may be less sophisticated than larger corporate claimants. Ensuring a fair return to claimants is key in protecting individuals and SMEs. Whilst proposals such as implementing caps or minimum returns warrant consideration, a potential solution to ensure fairness would be to establish a guideline of rates of return to a claimant. Alongside this, there should be a requirement for funders to seek court approval if they identify a good reason as to why these could not be met. To further protect claimants, there should be a requirement for them to be prioritised in the payment waterfalls in third party LFAs, with the claimant paid first in the event of a successful claim. The FCA would be an optimal independent regulator due to its prominent fair value considerations already in place within FCA rules.

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;

Our key concerns centre on the impact of third party funding on claimants. There may be instances where claimants do not fully understand the terms of the funding agreement. For example, claimants may be unaware of the impact of a funder failing. In the absence of adequate capital, there is always the risk that a funder may fail or otherwise be unable to meet its funding obligations, which would leave claimants exposed. Another example relates to the proportioning of settlements; we are aware of situations where claimants receive limited proportions of settlements due to the share taken by funders, highlighting where claimants may not receive adequate access to justice.

One of the major risks arising from third party funding is the potential for funders to seek excessive control over the litigation process and / or to attempt to gain excessively high returns. This pressure may have the overall impact of distorting or introducing imbalance to

the litigation process in England & Wales. We think challenges can also arise where courts or parties to litigation are unaware of the involvement of a funder.

It is also worth noting that the rise in availability of third party funding and its unregulated nature can lead to alternative forms of redress being discounted before given the opportunity to bring a resolution. These alternatives are consumer focussed and can often offer resolution efficiently, without any cost to the consumer and with means for the consumer to reject a decision it does not agree with, providing a clear route to access to justice and one that should be considered ahead of expensive and lengthy litigation.

Without knowledge of who is funding the litigation and what that funding looks like, decisions cannot be made around early settlement/alternative forms of redress. This can often lead to wasted costs and time in satellite litigation attempting to determine each party's costs position.

The European Law Institute (ELI) identified a number of "valid concerns about TPLF" in its recently published 'Principles Governing Funding of Litigation'[11]. Three of the four concerns are set out here with our own views on each:

1. **Conflicts of Interest:** Conflicts can arise when, for example, the funded or the funding party wishes to either advance or discontinue the litigation against the wishes of the other party to the funding arrangement. Other conflicts could involve common interests between funders and lawyers addressing particular types of funded claims; this is particularly prevalent with portfolio or law firm funding where the law firm is heavily reliant on funders to support its business. One pertinent example of the risk of conflicts of interest between class representatives and funders when seeking to reach a settlement is the public dispute between the funder and the class representative in the *Merricks v Mastercard*[12] collective proceedings.

   One of our members highlighted a potential conflict of interest being that many of the largest litigation funders do not operate solely in this arena, but are also involved in various other investment/finance operations, such as hedge funds. Decisions relating to running or support of cases could be influenced by other investment/financial services activities unless sufficiently regulated, and vice versa the funders are potentially in receipt of commercially sensitive information (e.g. through disclosure) in their role as a funder.

2. **Abusive litigation:** Abusive litigation or abuse of litigation is a potential harm that must be explored. We understand that where funders carefully select cases with a high chance of success, spurious claims activity is reduced. However, there may be instances where the financial incentives associated with large claims could risk speculative activities by funders. Our members highlighted a particular concern where those pursuing questionable varieties of claim do so in the hope of securing an offer in settlement (in the knowledge that defending the case will involve considerable cost). In such instances recipients of claims may feel compelled to settle, even if in possession of a sound defence.

   There also remains the risk of litigation being pursued for the benefit of the funder, rather than the litigant. We note examples of cases whereby claimants have ultimately

[11] European Law Institute Principles Governing the Third Party Funding of Litigation - 2024
[12] Walter Hugh Merricks CBE v Mastercard Incorporated and Others - 2024

been left with a small percentage of compensation awarded. One of our members noted that with the lack of regulation around third party funding, there is a corresponding lack of transparency in terms of case selection. Given that return on investment will be a key goal for funders, it would be possible for selection of cases to be based on broader company strategy (e.g. support/opposition of certain causes or client types including any broader investment or other interests) rather than solely the merits of an individual case. A potential regulator could look to introduce powers to review (in confidence) selection criteria to ensure it is acting in its goal of access to justice, alongside seeking a return on investment.

3. **High charges and driving up costs generally (premium):** Third party funding has a risk of leading to undesirable damages inflation, where it is necessary to ensure there is a sufficient share of the proceeds of an action between the claimant and funder. The impact on increased claims costs for insurers over time will be to place pressure on insurance premiums. We note there have been concerns expressed as to the affordability of certain classes of insurance and highlight increased litigation as a potential factor.

a) 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;[13]

The harms we have outlined are not adequately addressed or mitigated by the current self-regulatory framework. We refer back to the seven points set out in our response to Question 4 as to why enhanced regulation is necessary, summarised as follows:

1. The number of complex claims has grown exponentially
2. Litigation funding is far more prevalent now than ever before
3. The ALF Code of Conduct is voluntary and not all funders participate
4. There is a distinct lack of transparency surrounding LFAs
5. Capital adequacy requirements and the limited consequences of a breach are two key deficiencies with the current ALF code
6. The regulatory abilities of ALF are limited by i) its lack of independence and ii) its limited powers to legally compel disclosure of evidence to monitor compliance and iii) the lack of a route to appeal a decision of the ALF to an independent third party.
7. The ALF complaints procedure is seldom used.

b) 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.

Please see our response to Question 4 above.

[13] 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.

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[14] should be subject to a different regulatory approaches, and which approach should be applied to which type of dispute and/or form of proceedings?[15]

The same regulatory mechanism should be established for all funders with authorisation by the FCA to operate in England and Wales. There would be no reason for any variation, considering that the users of the product being offered would not benefit from any type of distinction; this model follows that applied to other providers of financial products. The only distinction we see as being potentially beneficial is the application of additional measures to protect consumers; we point here to the example of the provisions of the new Consumer Duty overseen by the FCA.

With a robust regulatory framework in place, it would be necessary for any type of group or collective action to require a careful and controlled approach to ensure that interests of all stakeholders would be appropriately balanced. There would need to be measures in place to ensure access to justice in cases where redress is sought in connection with a claimed widespread harm. Simultaneously, third party funding should not operate in a manner which could result in a negligible return for the claimants, if successful, particularly in the wake of the outcome in the *Bates and Others v The Post Office*[16] proceedings. Moreover, third party funding should not be permitted to encourage the pursuit of cases where the main consideration would be the solvency level of another party, which could be considered as necessary to reach a commercial settlement in order to see the end to the litigation, regardless of merits.

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?

As outlined in our response to Question 4, all funders should seek authorisation by an independent regulator, likely the FCA, to operate in England and Wales, irrespective of the types of disputes or forms of proceedings that they are funding. With this authorisation, funders should also be subject to specific rules, particularly those addressing capital adequacy standards, transparency requirements and disclosure of funding agreements, and measures to prevent undue influence and control over litigation and settlement. There may also be additional measures, separate to those listed, to be considered. There could be scope for distinction between individual claimants (and possibly SMEs), and larger corporate claimants. These distinctions are present in other regulatory contexts, notably financial services regulation where the Consumer Duty extends only to 'retail' customers, encompassing individuals and SMEs.

[14] Different forms of proceedings include, for instance: individual claims; group litigation; collective proceedings in the Competition Appeal Tribunal; representative proceedings before the civil courts.
[15] Examples of types of cases include, for instance: personal injury claims; consumer claims; financial services claims; commercial claims.
[16] Bates and Others v The Post Office - 2019

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

We encourage review of the FCA's existing Principles (PRIN 2.1)[17] [REF] which address the following key themes for regulated firms:

1. Integrity
2. Skill, care and diligence
3. Management and control
4. Financial prudence
5. Market conduct
6. Customers' interests
7. Communications with clients
8. Conflicts of interests
9. Customers: relationships of trust
10. Clients' assets
11. Relations with regulators
12. Consumer Duty

The application of these principles to third party funders would lay the foundations for the open, transparent and effective regulation of the third party funding sector.

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?[18]
    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.

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

Yes, third party funders should bear the costs of proceedings they have funded, however determining the extent would likely need to be assessed on a case-by-case basis.

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.'

[17] FCA PRIN 2.1 The Principles - 2023
[18] Please explain your answer by reference to a specified regulatory mechanism or mechanisms.

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

Financial services firms regulated by the FCA must conduct 'fair value' assessments as a way of demonstrating that the price the customer pays for a product or service is reasonable compared to the overall benefits the customer can expect to receive in return. A similar principle could apply to litigation funding.

Courts should have the power to review and approve caps to ensure they are proportionate to the case. We appreciate that there will be niche and specific cases that require consideration, but there should be a process in place to ensure there is an independent decision on whether this provides a fair outcome for the customer.

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.
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.
    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; crowdfunding. Please add any further alternatives you consider relevant.
    c. If so, when and how?
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?
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?

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

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?
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?
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?
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?
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?

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?**

    Our overarching view is that there should be greater transparency over funding and LFAs to ensure litigation can be managed effectively and all parties are protected. This should include mandatory disclosure of funding positions to all parties, and disclosure of LFAs to the Court.

    One of our members stated that not only will the introduction of mandatory disclosure mean enhanced consumer protection, with the court providing a reassuring oversight on LFAs and the third party funding relationship, but it will also drive balance and equality between the parties. The existence of third party funding remains a crucial factor for a

defendant to understand the nature and implications of the case against them. For instance, the financial interests of non-parties will inevitably influence a defendant's settlement strategy. As a result, the non-disclosure of funding is a major driver of costly and unnecessary satellite litigation. Defendants seeking to understand their opponent's financial position, to protect their own costs, are forced to apply for security for costs.

29. What effect do different funding mechanisms have on the settlement of proceedings?
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?
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?
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?
33. To what extent does the third party funding market enable claimants to compare funding options different funders provide effectively?
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?
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.

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.
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.
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?

General Issues

39. Are there any other matters you wish to raise concerning litigation funding that have not been covered by the previous questions?[19]

[19] Please note that the Working Party is not considering civil legal aid.