

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:	Will
Last name:	Atkinson
Location:	London
Role:	Trade Association
Job title:	Senior Policy Manager
Organisation:	Finance & Leasing Association
Are you responding on behalf of your organisation?	Yes
Your email address:	<div style="background-color: black; width: 150px; height: 1.2em;"></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.



Civil Justice Council Review of Litigation Funding consultation

Response by the Finance & Leasing Association

About the FLA

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. In 2023, FLA members provided £113 billion of consumer credit to consumers, to support purchases ranging from cars to household goods, accounting for over a third of total new consumer credit written in the UK.

Introduction

The FLA is a supporter of Fair Civil Justice (FCJ), the UK legal reform campaign group. We write in support of the comprehensive response FCJ is providing to the Civil Justice Council. In particular, we support the FCJ's view that independent regulation of third party litigation funding (TPLF) is necessary, and that their proposals for regulation provide a strong foundation for development of proportionate rules for the sector. As a trade association, we can provide a view on where voluntary self-regulation works – and where regulation needs to be established on a formal footing.

At its foundation, access to justice should not simply be entry to litigation. Regulation and ombudsmen processes should represent the first line of potential consumer redress. Litigation should be the last resort after alternative options are exhausted.

While not a perfect solution, regulation and ombudsmen can achieve outcomes for consumers quickly with less burden on the courts. In contrast, TPLF is an asset class. Access to justice will naturally be led by the expected return on investment. We believe that litigation funding can have its place, but independent oversight and clearer rules on TPLF are needed to achieve a proper balance between profit and good consumer outcomes.

Our response focuses on the questions most relevant to the issue of formal regulation for TPLF.

Response to relevant questions

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

The risk with forms of voluntary self-regulation, such as the Association of Litigation Funders Code, is that they are less effective if they do not cover the majority of funders operating in the sector and do not impose sufficiently steep consequences for non-compliance. On both counts the ALF Code is inadequate.

Self-regulatory schemes are most useful when they sit above a body of existing and separate regulation. In this respect, the self-regulatory scheme can marshal good practice guidance to help explain regulatory expectations, or to allow signatories to consider opportunities to offer a higher standard of protection. A particular opportunity exists where the outcomes and evidence generated through a voluntary scheme can be brought into dialogue with the

underlying regulatory regime to help shape and refine it – achieving a balance between consumer protection and minimising costs to business and regulators.

This model has functioned well for the FLA's industry code (the Lending Code), which has been in existence for over thirty years. The Lending Code has evolved to meet and exceed regulatory expectations over its existence, most notably since consumer credit came under regulation by the Financial Conduct Authority (FCA) in 2014. In that time, the FLA has worked with the FCA to introduce provisions under the Lending Code in advance of the Handbook – akin to a pilot – which has delivered consumer protection quickly and efficiently while allowing careful consideration of the regulatory approach.

Such an approach may be replicable for TPLF under the ALF Code. What should the underlying regulatory approach look like? We will not restate the detailed proposal that the FCJ makes for regulation of funding beyond saying that it is comprehensive, proportionate, and provides a strong basis for developing an appropriate regulatory regime. Our view is that the independent regulator be the Financial Conduct Authority (FCA), given that TPLF is an asset class rather than a legal service.

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

Please refer to our response to question 4.

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.

Unregulated TPLF is used primarily to generate mass claims with the funders' profit in mind. Quick and effective outcomes for the consumer become secondary considerations, which the nine-year class action against Mastercard, funded by Innsworth Capital, shows us.¹ Again, we believe that litigation funding can have its place, but independent oversight and clearer rules on TPLF are needed to achieve a proper balance between profit and good consumer outcomes.

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

We would be pleased to discuss this response with the CJC in detail.

**Finance & Leasing Association
20 February 2025**

¹ Extensively reported on in the press – for instance, Jonathan Ames, '[Litigation firm could get half of £200m Mastercard legal settlement](#)', *The Times*, Thursday January 2025.