

**The Association of Litigation Funders of
England and Wales**

Code of Conduct for Litigation Funders

**November
2011**

The code

1. This code (the Code) sets out standards of practice and behaviour to be observed by Funders who are Members of The Association of Litigation Funders of England & Wales.
2. A Funder has access to funds immediately within its control or acts as the exclusive investment advisor to an investment fund which has access to funds immediately within its control, such funds being invested pursuant to a Litigation Funding Agreement (LFA) to enable a Litigant to meet the costs of resolving disputes by litigation or arbitration (including pre-action costs) in return for the Funder:
 - (a) receiving a share of the proceeds if the claim is successful (as defined in the LFA); and
 - (b) not seeking any payment from the Litigant in excess of the amount of the proceeds of the dispute that is being funded, unless the Litigant is in material breach of the provisions of the LFA.
3. A Funder shall be deemed to have adopted the Code in respect of funding the resolution of disputes within England and Wales.
4. The promotional literature of a Funder must be clear and not misleading.
5. A Funder will observe the confidentiality of all information and documentation relating to the dispute to the extent that the law permits, and subject to the terms of any Confidentiality or Non-Disclosure Agreement agreed between the Funder and the Litigant.
6. A Litigation Funding Agreement is a contractually binding agreement entered into between a Funder and a Litigant relating to the resolution of disputes within England and Wales.
7. A Funder will:
 - (a) take reasonable steps to ensure that the Litigant shall have received independent advice on the terms of the LFA, which obligation shall be satisfied if the Litigant confirms in writing to the Funder that the Litigant has taken advice from the solicitor instructed in the dispute;
 - (b) not take any steps that cause or are likely to cause the Litigant's solicitor or barrister to act in breach of their professional duties;
 - (c) not seek to influence the Litigant's solicitor or barrister to cede control or conduct of the dispute to the Funder;
 - (d) maintain at all times adequate financial resources to meet its obligations to fund all of the disputes that it has agreed to fund, and in particular will maintain the capacity:
 - (i) to pay all debts when they become due and payable; and
 - (ii) to cover aggregate funding liabilities under all of its LFAs for a minimum period of 36 months.
8. The LFA shall state whether (and if so to what extent) the Funder is liable to the Litigant to:
 - (a) meet any liability for adverse costs;
 - (b) pay any premium (including insurance premium tax) to obtain costs insurance;

- (c) provide security for costs;
- (d) meet any other financial liability.

9. The LFA shall state whether (and if so how) the Funder may:

- (a) provide input to the Litigant's decisions in relation to settlements;
- (b) terminate the LFA in the event that the Funder:
 - (i) reasonably ceases to be satisfied about the merits of the dispute;
 - (ii) reasonably believes that the dispute is no longer commercially viable; or
 - (iii) reasonably believes that there has been a material breach of the LFA by the Litigant.

10. The LFA shall not establish a discretionary right for a Funder to terminate a LFA in the absence of the circumstances described in clause 9(b).

11. If the LFA does give the Funder any of the rights described in clause 9 the LFA shall provide that:

- (a) if the Funder terminates the LFA, the Funder shall remain liable for all funding obligations accrued to the date of termination unless the termination is due to a material breach under clause 9(b)(iii);
- (b) if there is a dispute between the Funder and the Litigant about settlement or about termination of the LFA, a binding opinion shall be obtained from a Queen's Counsel who shall be instructed jointly or nominated by the Chairman of the Bar Council.

This code is to be read in conjunction with the Articles and Rules of the Association of Litigation Funders of England & Wales, which are available for inspection at:

<http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc>