The Forum of Complex Injury Solicitors' (FOCIS)

Response to

The Civil Justice Council's Review of Litigation Funding Consultation

February 2025

About us

The Forum of Complex Injury Solicitors (**FOCIS**) are a group of pre-eminent solicitors who specialise in acting for seriously injured people in personal injury and clinical negligence claims. The objectives of FOCIS are to: -

- Promote the highest standards of representation for claimants with life-changing injuries;
- Increase understanding in the wider community of issues which arise for those who suffer serious injury;
- Use members' expertise to promote debate and improvements to the law and legal process; and
- Share knowledge and information among members of the Forum.

See further http://www.focis.org.uk/

Membership of FOCIS is intended to be at the most senior level of the profession. The only formal requirement is that members are recognised by their peers as having achieved a pre-eminence in one or more specialist types of serious injury claims. We currently have 24 members, including members from England, Scotland, Wales, and Northern Ireland. Nine of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold

Ashtons Legal

Balfour + Manson

Bolt Burdon Kemp LLP

Dean Wilson LLP

Digby Brown

Fieldfisher

Fletchers

Freeths

Hodge Jones & Allen

Hugh James

Irwin Mitchell

JMW Solicitors

Leigh Day

Moore Barlow

Osbornes Law

Slater and Gordon

Stewarts

Switalskis Solicitors

Thompsons Solicitors

Introduction

FOCIS is grateful for the opportunity to respond to the Civil Justice Council's (**CJC**) consultation reviewing litigation funding. In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices, and procedures relating to complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

In summary, third party funding (**TPF**) is very rarely available for complex injury claims, apart from a tiny number of large group actions. In these rare claims, TPF provides access to justice for claimants who cannot otherwise afford to fund such high-value and complex litigation. It can also promote equality of arms between the parties by enabling claimants to litigate with a similar level and quality of representation and resources as deep pocket defendants. However, the market rates for TPF mean that such funding comes at a high cost to the injured claimants and there is no current provision in the CPR to enable them to recover any of this cost from the wrongdoer.

The effectiveness of the current regulatory regime for TPF is limited in part due to the voluntary nature of the Association of Litigation Funders (**ALF**) membership. We broadly agree with the European Law Institute's approach to the reform of TPF, the Principles Governing the Third Party Funding of Litigation (**ELI Principles**), and we recommend the SRA publish guidance for the legal profession on their existing duties to clients in relation to *all* forms of funding/retainer options.

As part of the wider review of litigation funding, we detail in our response the issues which have arisen in relation to before-the-event (**BTE**) insurance and damages-based agreements (**DBAs**), the latter of which has particularly restricted the choice of funding options for injury clients through its draconian unenforceability provisions and caps on success fees. We broadly agree that the long overdue amendments to the DBA regime as set out in the DBA Regulations 2019 (**the 2019 DBA Reforms**) should take place without further delay. We detail in our response refinements to the proposed reforms to promote certainty in their implementation. We make a proposal for the limited recoverability of funding costs (including funder's/after-the-event (**ATE**) insurance premiums and DBA/ Conditional Fee Agreement (**CFA**) success fees) in the context of Part 36/ Calderbank offers and scenarios where the defendant's unreasonable litigation conduct has led to an increase in funding costs for the claimant.

We propose in our response below limited reforms to the CFA and DBA regime; to amend the cap on success fees for group claims relating to personal injury, such that there is a cap of 25% on all losses up to £500,000 and thereafter a cap of 2.5% applies.

Akin to the suggestion that there should be disclosure relating to litigation funding, we propose that provisions should be introduced to require disclosure of defendant liability/ indemnity insurance levels as that would be in accordance with the overriding objective. In cases where there is inadequate insurance such disclosure is likely to result in earlier settlement, enable more effective case management and take up less court resources.

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?**

In the context of complex injury claims, third party funding (**TPF**) is only available for the rare few high-value group actions in which there is a sufficient cost to damages ratio for the funder to be likely to secure a sufficient return whilst leaving the claimants with an adequate net recovery. Of the 54 reported cases involving litigation funding between 2019 and 2024, only two were related to injury claims, both of which were group actions against pharmaceutical companies.[1]

As detailed in our response to question 15, in respect of complex high-value litigation other forms of funding should not necessarily be viewed as an alternative to TPF. In consumer group actions TPF will typically be combined with CFAs and ATE insurance.

For these rare large group actions, TPF enables litigants to bring claims which they otherwise would not be able to afford. It also circumvents the almost impossible scenario of the instructed lawyer obtaining sufficient funds on account from all claimants in the group. It can be said that by supporting such claims, TPF indirectly promotes good corporate behaviour as it enables claimants to hold unlawful actions to account through settlement or court proceedings. However, the market rates for TPF mean that such funding comes at a high cost to the injured claimants and there is no current provision in the CPR to enable them to recover any of this cost from the wrongdoer.

The availability of TPF also assists in securing effective access to non-court-based forms of dispute resolution by providing a credible threat of enforcement without which claimants would likely not secure fair terms during any settlement negotiations.

2. **To what extent does third party funding promote equality of arms between parties to litigation?**

For the rare few injury claims TPF is available for, it promotes equality of arms to a significant extent. These are true David v Goliath disputes. The support of TPF enables financially weaker claimants to have similar levels of:

(i) legal representation with equivalent skill, expertise, and experience;
(ii) time dedicated to their case and to exploring additional workstreams (e.g. additional applications) which might not otherwise have been affordable; and
(iii) disbursements which can be incurred (such as expert evidence)

as a financially strong defendant, giving the claimants' case the best chance of succeeding.

[1] As identified by the data collected in Professor Rachael Mulheron KC's Legal Services Board report A review of litigation funding in England and Wales: A Legal Literature and Empirical Study (**the LSB report**) published on 28 March 2024, page 166.

Both cases, *Tongue v Bayer Public Ltd Co* [2023] EWHC 1792 (KB) the 'Essure Group Litigation' (consisting of around 200 claimants), and *Bailey v Glaxosmithkline (UK) Ltd* [2019] EWCA Civ 1924 the 'Seroxat Group Litigation' (consisting of more than 100 claimants) are in relation to defective product claims under the Consumer Protection Act 1987.

3. Are there other benefits of third party funding? If so, what are they?

In addition to the above benefits for claimants, TPF can also assist the legal team. Funders conduct detailed due diligence on the claim, the insights of which can assist in refining the merits and economics of the claim, and in implementing a case strategy.

In addition, we broadly agree with the benefits of TPF as detailed in the LSB report[2], namely:

(i) The promotion of public interest and the support of the rule of law;
(ii) The provision of financial resilience to law firms and financial protection for the other side in relation to adverse costs and security for costs;
(iii) The encouragement of effective costs-budgeting;
(iv) The furtherance of the court's overriding objective to ensure that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
(v) The assurance that the court is not used as a vehicle for inappropriate litigation through the funder's due diligence on the merits of the case and facilitating the prompt payment of legal fees; and
(vi) Enhancing the public's awareness of their legal rights by enabling large (and frequently highly publicised) consumer group actions to be brought.

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?

As TPF is rarely utilised in complex injury claims we defer to others to comment on any specific improvements to the current regulation of the TPF market. As a general comment, however, we note that the effectiveness of the current self-regulation regime through ALF is limited, partly due to the voluntary nature of the membership which leaves some funders operating in the market unregulated and the limited sanctions which can be imposed if an ALF member is found to have breached the ALF Code of Conduct. Furthermore, we note the limitation in the ALF Code of Conduct in relation to the funder's capital adequacy, conflicts of interest, and transparency on the source of funds which pose a risk to funded parties. We agree with the general approach towards regulation taken by the ELI Principles which could be reflected in the ALF Code of Conduct to provide better protection for funded parties.

Any improvements to the regulation of TPF should, in any case, be supported by guidance on solicitors' existing duties in relation to funding under the SRA Principles and Code of Conduct, in particular:

(i) Fully advising the client on the full range of funding/retainer options which might be in the client's best interest in the circumstances of the claim even if the particular firm does not offer all of the available options. This is to enable the client to make an informed decision about the funding of their claim[3];
(ii) Informing the client of any financial or other interest the solicitor has in referring the client to the funder or where the funder as an introducer refers the client to the solicitor[4];

[2] As detailed in Part II, Sections 4 – 6; executive summary; and pages 30, 32, 147, and 149.

[3] As encompassed by (i) SRA Principle 7, (ii) SRA Code of Conduct 3.4, (iii) SRA Code of Conduct 8.6, and (iv) SRA Code of Conduct 8.7.

[4] As encompassed by SRA Code of Conduct 5.1.

(iii) Cease acting where a conflict of interest (or significant risk thereof) arises between the solicitor's relationship with the funder and the retainer with the client[5]; and
(iv) Informing the client about their right to take independent legal advice on the proposed funding.

Additional guidance to the legal profession on existing duties in relation to funding would be particularly important in cases of complex injury claims where the client is more likely to be an unsophisticated user of legal services and will less likely be familiar with the available funding options and their associated advantages and disadvantages, including the pricing impact on any damages recovered. Such guidance would help address the varied approach taken towards advising clients on funding options.

In cases which could be supported by TPF the SRA may wish to consider implementing similar obligations as that is required where there is a provision of ATE insurance; producing a demands and needs statement, as well as providing an Insurance Product Information Document in cases of consumers, prior to the conclusion of the insurance contract.[6]

Funding agreements are complex and lengthy documents, and such obligations to include an explanation of the key terms of funding would assist in enabling the client to make an informed decision on the suitability of the proposed funding arrangement.

Where cases are suitable for TPF, the SRA may also wish to consider, in the above proposed guidance, requiring the solicitor/firm to confirm (i) whether they have a material connection with the funder (ii) their experience with advising on TPF and acting in cases funded by TPF, (iii) whether they will advise the client on all aspects of funding, and (iv) if not, to recommend that the client seeks independent legal advice from a specialist solicitor with TPF experience.

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;
   b. 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;
   c. 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.

We defer to others to comment on how any risks are currently addressed and how this could be improved. However, we consider that there are three main risks which any review into the regulation of TPF should bear in mind:

(i) a lack of transparency over the source of funds which is of significance when completing due diligence on the funder and assessing whether there are any conflicts of interest;
(ii) the high cost of TPF (which partly reflects the risk of the non-recourse nature of the funding) substantially reducing the claimants net recovery of damages; and
(iii) rare examples of funders exerting undue control on the litigation.

[5] As encompassed by SRA Code of Conduct 6.1.

[6] As encompassed by (i) SRA COB rules, Rule 12, and (ii) SRA COB rules, Rule 21.

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

We defer to others as to whether the same regulatory mechanisms should apply to other types of litigation and arbitration. In regard to the rare scenarios where TPF is available for group injury actions, we note that such claims are already difficult to fund and therefore further regulation on TPF will likely restrict access to justice for these claimants. There may, however, be merit in adopting similar obligations as is required in instances of ATE insurance (as detailed in our response to question 13) and imposing 'soft' caps on the level of the funder's premium in cases of consumers/ individuals.

Please refer to our response to question 21 regarding portfolio funding.

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

We defer to others as to the detail on the best practices or principles which should underpin regulation. However, as noted in our response to question 4, we broadly agree with the approach taken by the ELI Principles, which highlights and provides a practical solution for key issues with TPF.

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?**
    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?**

As mentioned in our above responses, TPF is only available for the rare few large group injury actions. The higher the value of the claim the greater need there is for TPF, as other funding options are unlikely to provide sufficient financial support (solely or in combination with each other) to bring and progress the claim to conclusion with equality of arms.

We contend that the level of litigation costs in these rare funded injury group actions are primarily a by-product of the scale and complexity of the case coupled with the huge resources that corporate defendants, like pharmaceutical companies, expend in disputing virtually every possible point that their large teams of lawyers can think up.

The Post Office Horizon claim has cast a light on the harsh reality that non-recourse litigation funding of group claims for consumers is expensive. To mitigate the impact on claimants who have acted reasonably and then succeed in such claims we are of the view that *some* litigation funding costs (of any type including CFA/DBA success fees, ATE premiums, and funders' premiums) should be recoverable to mitigate the impact of the funding costs losses they have necessarily incurred in connection with the claim. We accept that any such provision should be limited to truly meritorious scenarios, notably where the funded claimants have made an effective Part 36 or Calderbank offer which (i) was not accepted by the defendant and the funded party obtains an as advantageous or better outcome at trial, or (ii) was accepted by the defendant after expiry of the relevant period in the case of Part 36 offers or after the expiry of a reasonable period in the case of Calderbank offers. In each case, recoverability of litigation funding costs would be subject to the court's existing discretion, under both Part 36 and Part 44, to not award such costs if it considers it would be unjust to do so. In addition, the court should award such funding costs when considering making an indemnity costs order in which the defendant's conduct has resulted in the claimant incurring unreasonable or unnecessary costs, again unless it is unjust to do so.

Under the current recoverability regime, defendants can run a strategy of attrition in which they can pursue an unmeritorious defence and/or applications and generally be unnecessarily obstructive without reaching the threshold for an indemnity costs order to drive up the claimants' costs. This ultimately reduces the damages available to the claimant and can force the claimant to accept a suboptimal settlement offer to ensure they are left with sufficient compensation. The above proposal would encourage more parties to settle earlier, reducing the cost of funding on the funded party and easing the current burden on judicial time.

Taking into account the public policy reasons behind the Jackson reforms in moderating the defendant's cost liability (as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012), the proposed recoverable funding costs (in total and of whatever type or combination) could be capped to the recovery of 1x of the funded party's total recoverable (ordinary) costs. As part of the proposal there would need to be advance disclosure of the fact of funding, however the terms of funding should remain private and confidential. This could be achieved by a simple amendment to form N251. The funded party's eventual claim for costs could include a statement of truth to confirm that the actual funding costs exceeded this 1x cap, hence there would be adherence to the indemnity principle. We note the decision of the European Court of Human Rights in *Coventry v the United Kingdom* (6016/16), but the recoverability scheme proposed here is (i) limited in scope (ii) only applies in scenarios where the defendant has failed to accept a reasonable offer or their conduct has attracted an indemnity costs award and (iii) subject to judicial discretion rather than automatic application by statute and court rules. It is submitted that this proposed change would enhance access to justice, in meritorious scenarios, by redressing the balance rather than potentially causing injustice to "uninsured defendants as a class" which the court saw as the practical effect of the overall pre-Jackson recoverability regime.

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.

The Qualified One-Way Costs Shifting (**QOCS**) regime limits the impact of recoverability of adverse costs and/or security of costs has on injury claimants. Under the regime a successful defendant cannot enforce a costs order above the amount recovered by the claimant in damages, interest, and costs. A claimant could be ordered by the court to pay some of the defendant's costs in scenarios such as if the claimant failed in an application or failed to beat the defendant's Part 36 offer, or the defendant beat the claimant's Part 36 offer. The QOCS regime does not apply where the claim is found to be fundamentally dishonest, if the claimant does not disclose reasonable grounds for bringing the proceedings, if the proceedings are an

abuse of the court's process, or if the claimant's conduct is likely to obstruct the case being dealt with fairly. The QOCS regime enables access to justice for claimants who may not otherwise have sufficient funds to meet an adverse costs order/ security for costs. It remains common for ATE insurance to be taken out to provide cover for injury claimants against residual liability for their own disbursements and the risk of the claimant incurring liability to pay the defendant's costs of an effective Part 36 offer.

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

We contend that, in accordance with the common law, the court should retain discretion to make a non-party costs order against a funder.[7]

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.'

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

As TPF is rarely available for complex injury claims, we defer to others to comment on this.

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?**

We would draw a parallel with the caps under the DBA regime which have significantly restricted the number of law firms willing to offer DBA terms reducing options and therefore affecting access to justice for clients. In particular, DBA terms are very rarely offered to injury claimants. Such caps on TPF could result in many cases becoming entirely uneconomic for the funder to finance or may result in funders only willing to fund a portion of the litigation. The cap would ultimately suppress the claimant's budget limiting the costs they can incur, thereby affecting equality of arms between the parties. Furthermore, it could serve as a target for the defendant to use in order to 'break' the claimant's funding.

As in answer to the next question, there is in our view a place for limited court scrutiny of funder charges at the conclusion of a claim.

[7] See, for example, *Bailey v Glaxosmithkline (UK) Ltd* [2017] EWHC 3195 (QB) the 'Seroxat Group Litigation' in which the defendant obtained a security for costs order in excess of the *Arkin* cap against the claimant's litigation funder under CPR 25.14 (at [80]) in support of seeking a non-party costs order under section 51 of the Senior Courts Act 1981 on conclusion of the case.

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?**

We defer to others to comment on the specific practicalities of caps on funders' fees. As a general comment if lawmakers are minded to introduce caps for consumers/individuals, there is an argument in imposing 'soft' caps on the funder's return, which could only be exceeded if (i) the funded party applies without notice to seek court approval to enter into a funding agreement if the funders return would exceed the cap and (ii) the funded party retains the right to challenge the amount of the funder's premium in a suitable dispute resolution forum. The court hearing any such dispute can take into account the particular circumstances of the claim.

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?**
    a. **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.**

Please refer to our responses to questions 1-3 above regarding the benefits of TPF for the rare large group actions which it is available for and our response to question 5 regarding the risks of TPF.

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?**
        i. **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?**
        i. **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.**
        ii. **If so, when and how?**

As mentioned above, TPF is rarely available for injury claims, apart from a few rare large group actions. As noted above, without TPF many of these claims cannot get off the ground. Such claims may therefore utilise a combination of TPF with another funding option. However, for

the vast majority of injury claims it is common for funding to consist of a combination of CFAs and legal expenses insurance (BTE and/or ATE). Very few seriously injured claimants can afford to self-fund. Any changes in the space of TPF which would consequently endanger the successful use of CFAs and legal expense insurance to give access to justice for the vast majority of injured claimants must be avoided. Turning to other forms of funding in the broadest sense:-

Civil Legal Aid

Legal Aid is not available for personal injury claims and is only available for clinical negligence claims if the claim meets the limited criteria and if a CFA is unsuitable.[8] Even if a base-level scheme was introduced it is implausible that it would be able to provide equality of arms in high-value complex injury claims against well-funded corporates.

Conditional Fee Agreements

Solicitors most commonly act under a full (no win, no fee) CFA for complex injury claims. Acting in this manner ensures effective access to justice for claimants who are likely unable to privately finance the costs of high-value complex litigation. For this reason, it is also common for counsel to also act under a CFA with the law firm. Please refer to our response to question 17 regarding proposed minor reforms to the CFA regime.

ATE insurance is often used alongside CFAs due to the need for significant additional costs (disbursements) to be incurred alongside solicitor and counsel fees to progress the case. In complex injury claims that progress to the latter stages of court proceedings it is common for the disbursements to total a six figure sum.

It is important to stress that although the use of CFAs alongside ATE insurance is common for complex injury claims, there should be no expectation on law firms and/or counsel to take on the significant risk associated with offering CFA terms to clients, let alone bank-roll major disbursements. Many firms are premised on monthly billing and there is an overall expectation to limit the extent to which litigation departments can undertake contingent high costs and long running litigation which defer payment until the outcome of the case. Firms willing to risk wide-scale offerings of CFAs are also exposed to the complications which can arise from a client dis-instructing mid-claim. The recent failures of commercial disbursement funders (e.g. Novitas and VFS) demonstrate the risks.

Legal expenses insurance

BTE insurance is occasionally utilised in combination with both solicitors and counsel acting under CFA terms as well as ATE insurance, but it very rarely provides a complete funding solution for serious injury claims, due to the insufficiently comprehensive indemnity (usually including very low caps on liability quite often at just £25,000 and rarely exceeding £100,000 for all risks) and restrictive policy terms. Many BTE policies now only provide an indemnity in the event of a loss and do not provide the necessary funding of disbursements (with a heavy reliance on experts in serious injury claims) to enable claims to be pursued. Even those that do fund expert reports often impose restrictions that prevent the selection of the optimal experts even in claims of then utmost severity (and value). Restrictions in relation to hourly rates further hinder the use of BTE insurance in high-value complex claims. The CJC's own paper in 2017 that looked at BTE recognised with examples why it was unavailable and/or

[8] Regulation 39(b) The Civil Legal Aid (Merits Criteria) Regulations 2013: '*An individual may qualify for legal representation only if the Director is satisfied that the following criteria are met […] the case is unsuitable for a conditional fee agreement*.' Paragraphs 7.16-7.20, and paragraph 7.31, Lord Chancellor's guidance under section 4 of Legal Aid, Sentencing and Punishment of Offenders Act 2012.

unsuitable for complex, serious and collective actions.[9] Current experience of our members reveals tortuous language designed to avoid covering group actions (e.g. excluding cases where there may be more than one claimant; or where the case later becomes part of a group) and product liability (no gradually arising injuries-sudden injuries only etc).

We note that as part of the Final Report on the Review of Civil Litigation Costs, Lord Justice Jackson supported amendments to Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 to alleviate this issue by providing that the freedom to choose legal representation ought to arise when a letter of claim is sent to the opposing party.[10] However, we contend that from the outset of serious injury and fatal accident claims that are likely to fall into the multi-track, BTE insurers ought not to be allowed to restrict the claimant's freedom of choice of solicitor. The investigation of the claim pre-proceedings (including fundamental stages such as gathering evidence, framing the letter of claim, and pursuing alternative dispute resolution) is a crucial period that can make or break a claim. Requiring the use of a panel solicitor pre-proceedings may result in the entirety of the available indemnity under the insurance being used before the client can change representation at the point of proceedings to their preferred lawyers.

In addition, BTE panel lawyers ought to be under an obligation from the outset to inform the client where there is a risk that the indemnity under the policy is likely to be insufficient and to advise the client on the alternatives. This would enable the client to make an informed decision regarding whether alternative and/or additional costs cover will be required at the outset of the case rather than mid-way through once the BTE limit has been reached.

Damages-based Agreements

The draconian unenforceability provisions and caps on the DBA payment in the Damages-Based Agreements Regulations 2013 (**the DBA Regulations**) have significantly suppressed the provision of DBA terms particularly in regard to injury claims. Please refer to our response to question 17 regarding potential reforms to the DBA Regulations.

DBAs pose more risk to law firms than CFAs due to the requirement to price in the cost of counsel in the DBA payment. This is very difficult to predict in high value and complex litigation and can be significantly influenced by the actions of the defendant and the decisions of the court. Due to this risk, as well as the impact of the unenforceability provisions and caps on the DBA payment, very few law firms will offer DBA terms to seriously injured clients.

Crowdfunding

Crowdfunding can theoretically be used to finance injury claims but only if they attract sufficient public interest. It is highly unlikely to ever be the main source of funding for high-value complex injury claims as it is highly unlikely that sufficient funding could be attracted via this novel source of funding. Crowdfunding is often used for largely non-monetary claims which are perceived as being of sufficient public interest to attract the general public to financially contribute to the claim. In addition, in our experience many seriously injured claimants and their families prefer to maintain their privacy. They ought not to be expected to have to self-promote their claims via crowd funding to achieve access to justice.

[9] The Law and Practicalities of Before-the-Event (BTE) Insurance: An Information Study, published November 2017.

[10] (December 2009), pages 77-78.

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?

As noted above, for the large injury related group actions there is not a true alternative to TPF, but yet TPF is only available in a tiny number of such claims. Therefore, there is a major gap in providing access to justice for such claims, that would likely require public funding to close.

Please refer to our response to question 17 regarding proposed reforms to the CFA regime and the DBA Regulations, and question 8 regarding the limited recoverability of funding costs in the context of Part 36/Calderbank offers or indemnity costs orders.

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?

Conditional Fee Agreements

CFAs in personal injury claims are subject to two caps; the success fee must not amount to more than:-

a. 100% of the solicitors' hourly rate charges nor
b. 25%[11] of the client's general damages and past losses[12].

The combination of both CFA caps pose a significant barrier to access for justice for high risk claims, notably product liability group claims. It is excruciatingly rare for claims to settle with an agreed breakdown of damages and it is therefore inevitably uncertain how much of the agreed damages are attributable to general damages and past losses and therefore subject to the 25% cap. This creates a potential conflict between the solicitor and client. In addition, in most complex injury group claims future losses comprise the majority of the damages. There is a relationship between the level of costs and the total damages (largely comprising future losses) as it is inevitable that defendant insurers will put much greater legal resources to defending claims for which they have had to set much higher reserves. Consequently, in riskier claims this damages cap operates to suppress success fees to levels that do not properly reward the risk taken by solicitors and counsel. A by-product of this is that it has become common for counsel in injury claims to forego the success fee all together, which means they are faced with the stark choice of either (i) being improperly rewarded for the risk they are taking to facilitate access to justice or (iii) decline the CFA instruction.

We observe that damage related caps on success fees in Scotland do not make the practically impossible distinction between past and future losses, reflecting the fact that the vast majority of claims settle for a single damages sum that does not have any breakdown of the underlying components. Furthermore, we observe that the caps in Scotland are staged[13], reflecting that after £500,000 the majority of damages will be in respect to future losses. [14] We propose that

[11] The cap is set to 25% in the first instance and 100% in appeals.

[12] Sections 58(4), (4A), and (4B) of the Courts and Legal Services Act 1990, and section 4 and section 5 of The Conditional Fee Agreements Order 2013

[13] Section 2(3) The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Success Fee Agreements) Regulations 2020.

[14] Chapter 9 Damages Based Agreements in Taylor Review: Review of Expenses and Funding of Civil Litigation in Scotland at 104.

a similar approach is taken with injury related group claims in England and Wales such that there is a cap of 25% on all losses up to £500,000 and thereafter a cap of 2.5% applies.

We also observe that the maximum caps on CFA success fees for injury claims do not allow for the law firm to recoup the significant financial cost of financing disbursements over the lifetime of a case in combination with the postponed payment of their fees. We note that between 1996-2000, the period prior to the recoverability of success fees, law firms acting in very low value road traffic accident based personal injury claims would routinely recover 10-20% to recompense the delay in payment and the financing of the case.[15] The costs (consisting of the law firm's fees and disbursements) for these claims would amount to a few thousand pounds with the solicitor financing the claim for a matter of months before the case, in most instances, settled pre-proceedings.

This position is, however, contrasted with the vast majority of catastrophic injury claimants who would be unable to bring their high-value claims if required to finance any aspect of it due to the very significant financial losses they have occurred as a result of their life-changing injury. Disbursements in particular serve as an economic hurdle to claimants, with disbursements in catastrophic injury cases potentially amounting to hundreds of thousands of pounds. In order to ensure access to justice for these claimants, many FOCIS member firms have historically carried these significant costs for years while cases are ongoing alongside the postponement of their fees and the financing of overheads including salary.

Although it is permissible to reflect the cost of financing these disbursements as part of the CFA success fee uplift, the operation of the caps on the success fees has limited (and in some cases effectively eliminated) the law firm's ability to recoup these financing costs. If the client had instead obtained a litigation loan, they would have incurred interest rates equivalent to those charged for credit card debt. Alternatively, the point can be viewed in terms of what the law firm would have saved by not having to service their debt, which as a result of financing these disbursements will run into the millions.

In addition to the impact of postponed payment of fees and the financing of disbursements, solicitors face an additional economic hurdle and delay for claims involving children and Protected Parties when seeking a CPR 46.4 assessment for the deduction of any irrecoverable base costs and success fee from the claimant's damages. The courts do not allow solicitors to recover the costs associated with complying with this compulsory procedure.

Please also refer to our response to question 8 on the proposed limited recoverability of success fees in the context of Part 36/ Calderbank offers or indemnity costs orders.

Damages-based Agreements

Reform of the DBA Regulations is long overdue. These poorly worded and commercially unattractive regulations have severely suppressed the market and resulted in very few law firms ever offering DBA terms in relation to complex injury claims due to the draconian unenforceability provisions and restricted caps on the success fee. We broadly agree with the proposed approach to reform as set out by Professor Rachael Mulheron KC and Nicholas Bacon KC in the Damages-Based Agreements Regulations 2019 (**the 2019 DBA Reforms**), which we consider would promote more certain and effective litigation.

[15] See for example *Halloran v Delaney* [2002] 3 Costs L.R. 503 at [3] and *Callery v Gray* [2001] 1 W.L.R. 2112 at [119]

Implication of PACCAR

We agree that there should be an express exclusion of all funding agreements from the scope of the DBA Regulations to re-instate the position pre-*PACCAR*.

Caps on DBA success fees

The DBA caps have hindered the utilisation of DBAs. In catastrophic personal injury cases, the vast majority of damages are future losses. As referred to above in relation to CFAs, the exclusion of future losses from the amount attracting the DBA payment make the risk/reward ratio to law firms insufficient. This issue was acknowledged and avoided when the DBA regime in Scotland was drafted, with the hindsight of the DBA regime in England and Wales, and permitting future losses to be included within the DBA payment.[16] The current DBA regime in England is also unattractive to law firms, because whilst CFA success fees and DBA payments are subject to the same cap, CFA success fee are in addition to payment of (uncapped) base fees, capped DBA payments must include those base fees. In cases where the recovery of past losses and general damages was lower than initially expected the operation of the DBA cap could even limit the scope for inter party cost recovery. If caps are to be retained in respect of injury DBAs they ought to be on the same basis as CFAs and so only 'bite' after allowance for any inter party recovery of base costs. This was a key part of the recommendations of the 2019 DBA Reforms, to shift from the Ontario model to a success fee model.

Furthermore, the requirement to account for counsel fees within the DBA payment disincentivises many law firms from offering DBA terms in complex injury claims. For solicitors to be persuaded to take their chances on offering DBA terms to clients, they need to be confident that, despite all the uncertainties that arise in these claims, the fees of counsel will not end up rising to a number that would leave insufficient reward for the solicitors work and the risk of non-payment or under-payment. There should be the option for allowing counsel to be instructed as a disbursement, or via a separate CFA without success fee.

It is important to highlight that under the Solicitors Act 1974 any client can seek a court assessment of the charges from their solicitors including contingency agreement (CFA and DBA) success fees. Additionally, under CPR 46 there is a further layer of protection granted to children and protected parties in which the court is required to approve any cost deduction from their damages. Consequently, there is no need for overly restrictive caps because there are already court controls on the fees charged by solicitors and barristers. If caps on DBAs are retained then we contend that for group claims they should be similarly staged as noted above for CFAs, such that there is a cap of 25% on all losses up to £500,000 and thereafter a cap of 2.5% applies.

If caps are to be retained, they should be set at a level that, once VAT is accounted for, leaves sufficient reward for the risk both solicitors and counsel would be taking. They should also make allowance for the real cost of postponed payment, which in complex injury claims will on average be around 3 to 4 years, but in some cases, notably those involving children can take in excess of 10 years.

Early termination

We agree with the principle of the 2019 DBA Reforms in permitting law firms to recover payment of (i) representative costs, (ii) expenses, and (iii) counsel's fees in circumstances where there is early termination of the DBA. To promote certainty, the enforceability of DBAs with early termination clauses (as held in *Zuberi v Lexlaw Limited* [2021] EWCA Civ 16) should

[16] s.6(4)(a) Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

be codified into legislation. We suggest the below additional refinements to the 2019 DBA Reforms:

- Regulation 6(1) should be amended to expressly permit the legal team to terminate the DBA on economic grounds similar to scenarios in which an ordinary fee paying client would not risk their own funds to continue the claim;
- Regulation 6(2)(b) should be amended to remove scope for a client to avoid paying the DBA payment by terminating the DBA at a late stage when many of the risks of the case have been overcome and settlement is likely; and
- Regulation 6(2)(b) should also be amended to remove scope for the client to only be liable for time-based fees of the legal team. On termination by the client, the legal team ought to be entitled to choose at the point of termination either an immediate payment of their time-based fees or to maintain their entitlement to the DBA fee once a win has been obtained, similar to the approach taken for CFAs under the Law Society model agreement. The client should have the right to apply to court if to secure alternative representation it is necessary for the previous and new solicitors (and barristers) to pro-rate their DBA fees.

We consider there is benefit in creating a new single regulatory regime unencumbered from the current DBA Regulations or the Courts and Legal Services Act 1990 which is applicable to all forms of contingent funding agreement to address the issues highlighted above. Such a regime would bring clarity and reduce the risk of any unintended consequences. This proposal could be reviewed as part of the CJC's review of proposed reforms to the Solicitors Act 1974. However, such an approach would not be necessary to introduce many of the suggestions we make in the meantime.

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?

Please refer to our response to question 15 regarding the key issues with BTE insurance. We are of the view that a public mandatory legal expenses insurance scheme is unrealistic. Even if it was possible, it would likely be ineffective to deal with the problems of cases presently covered by TPF because of low levels of indemnity. We note it would likely be similar to Legal Aid (which as noted above is not available for personal injury or the vast majority of clinical negligence claims) and would likely have to be financed by an additional form of national insurance or tax. We are highly doubtful that the government would have any appetite nor available resources to administer and enforce such a scheme effectively.

We are of the view that it is not necessary to reform ATE insurance. ATE insurance is already heavily regulated, including the requirements for a demands and needs statement from the solicitor and Insurance Product Information Document from the insurer, which help to bring transparency of the insurance terms to the client.

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?

Please refer to our response to question 15 regarding the relationship between ATE insurance and CFAs. We do not consider there is a need for reform in this regard. We defer to others to comment in regard to the relationship between ATE insurance and TPF.

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

We do not consider there is a need to reform crowdfunding. It plays a very limited role and any regulation might stifle it altogether.

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

Although relatively rare the reliance on portfolio funding[17] is increasing and can pose a significant risk to clients, as seen with the collapse of SSB Law. It has created an environment in which an unscrupulous or poorly managed law firm may extract funds from the portfolio in ways that are not in the best interests of their clients, lead to adverse claims on professional indemnity insurance, and ultimately brings the legal profession into disrepute. If portfolio funding is not carefully managed it has the potential to jeopardise the financial stability of the law firm by them becoming over exposed to conditional/contingent litigation with an uncertain outcome and timescale.

Portfolio funding also poses risks in relation to conflicts of interest between the law firm and client. It will usually be in the law firm's own interest (or even a contractual requirement) to drive a certain number of cases through the portfolio. Consequently, cases under a portfolio do not necessarily undergo the same level of scrutiny and due diligence as cases which are individually funded. It also creates a risk of some clients being recommended to use the funding facility when there may have been other ways of funding their case that would have been better aligned to their best interests. Furthermore, in cases of cross-collateralised portfolio funding the law firm may see it as in the law firm's own interest to reduce the scope of the firm's work and the expenses it occurs on cases they see as 'risky', even if the merits of the case are still more than 50%, because if the claim fails they would have pay the funder back from the proceeds of future successful cases, thereby suppressing the profitability of those future cases.

We refer to principle 4(2) of the ELI Principles which highlights the requirement for independent legal advice if there is a material connection between a law firm and funder, such as a portfolio arrangement.

However, we acknowledge that there may also be benefits to some clients as without the existence of portfolio funding, that law firm may have felt unable to offer/arrange as advantageous or any TPF, CFA or DBA terms.

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?

Please refer to our responses to questions 16 - 18.

[17] In which funding is provided directly to a law firm to provide operational cash flow to cover overhead expenses.

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?

The only aspects of the Civil Procedure Rules that warrant amendment to cater for the role that litigation funding plays in the conduct of litigation in respect of injury claims are:-

a. The introduction of rules relating to the distribution of damages[18], similar to those in the Competition Appeal Tribunal (**CAT**) rules, in which the court could exercise discretion concerning distributions to funders in consumer actions (as noted in our response to question 30), and
b. Rules relating to awards relating to Part 36 offers or indemnity costs to enable claimants to recover their funding costs, capped at 1x (extra) of their base costs, from their opponent (as noted in our response to question 8).

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?

We do not consider there is a need to amend the Civil Procedure Rules to cater for other forms of funding in relation to injury claims. If the DBA Regulations are reformed, then we would support them continuing to be available in representative actions (not prohibited as in the CAT) as that would have the potential to enhance options for access to justice.

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?

Due to the operation of QOCS, security for costs is rarely applied for in injury claims. We defer to others to comment on whether there is a need to amend the Civil Procedure Rules in this regard.

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?

We do not consider there is a need for any reform to the pre-action protocols in regard to injury claims supported by TPF.

[18] There remains a question over the ability of the funder to recover their investment from damages before the claimants. There is a basis (In *Re Berkeley Applegate Ltd* [1989] 1 Ch 198) where one applies to the Chancery Division without notice for approval of this. The QBD Master queried it in *Smyth v British Airways and Easy Jet* [2024] EWHC 2173 (KB) but it had been granted by the Chancery Master. *Commission Recovery v Marks & Clerk* [2024] EWCA Civ 9 was expected to clarify this but has settled.

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?

As we note above, third party funding is rarely utilised in injury claims so our members have limited first-hand experience of this issued. However, we contend that similar issues arise in relation to disclosure of defendant liability/ indemnity insurance.

We contend that rules should be introduced to require the disclosure of defendant liability/ indemnity insurance levels both as to the availability in scope and the total amount (e.g. whether it is only for the sum claimed or costs as well), as part of the Letter of Response and again as part of the defence once proceedings are underway. Likewise, if there is a potentially applicable insurance policy but coverage has been declined the fact and reason for that ought to be confirmed. This would be in accordance with the overriding objective of enabling the court to deal with cases justly and at proportionate cost. Such disclosure including any limitations on indemnities, particularly at an early stage of the proceedings, is likely to result in earlier settlement, enable more effective case management, avoid the incurrence of additional costs for both parties (and therefore limit the reduction in any damages the claimant recovers), and take up less court resources.[19]

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?

As TPF is rarely available for complex injury claims, we defer to others to comment on the extent to which third party funders exercise control over litigation.

29. What effect do different funding mechanisms have on the settlement of proceedings?

In most litigation scenarios (not limited to TPF, but also including CFAs, DBAs, and ATE insurance), the longer a case goes on the more the associated costs become an issue which can make it harder to settle a claim closer to trial.

If caps are set too low (and if they continue to exclude future losses) then litigants who have DBA representation may have little commercial incentive to settle claims, as their potential cost liability may be capped out. In fact, as the DBA Regulations gives the claimant a full credit for inter partes costs recovery it could even be in their interest to continue to generate additional time based costs, to reduce or eliminate the differential between the DBA payment and the credit for inter partes costs recovery.

Caps on both CFAs and DBAs, by insufficiently rewarding the lawyers in riskier cases, may cause them to be more cautious in their advice than they would otherwise be.

BTE insurers imposing restrictions on choice of lawyers pre-proceedings act as an impediment to early settlement.

[19] See *XYZ v Various companies (PIP Breast Implant Litigation)* [2012] EWHC 3643 (QB) at [35] - [36] in which the court ordered the defendant to disclose whether it had adequate insurance to fund its participation in the litigation to trial and any subsequent appeal.

Please refer to our response to question 1 regarding TPF providing a credible threat of claimants being well resourced and hence promoting early settlement.

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?

In relation to representative actions under CPR 19.8 this could warrant the introduction of rules relating to distribution of damages, similar to those in the CAT rules, in which the court could exercise discretion concerning distributions to funders in consumer actions.

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?

In regard to the few large representative group actions which are funded by TPF, the court could consider whether the claimants are likely to make a better recovery by not accepting the settlement and proceeding to trial. This is similar to the role the court already performs in relation to protected parties and children; see CPR 21.

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?

Further guidance to the legal profession on their existing duties in relation to advising on and arranging funding and how best to comply with these duties (as noted in our response to question 4) as well as guidance on the regulatory risks posed by portfolio funding will provide further protection for funded claimants.

We also propose that anyone acting in the capacity of a funding broker take on fiduciary duties to the funded party and maintain effective indemnity insurance in the event of any claim relating to those duties.

33. To what extent does the third party funding market enable claimants to compare funding options different funders provide effectively?

We defer to others to comment on the extent to which the TPF market enables claimants to effectively compare funding options. As a general comment, we note the vast majority of claims seeking funding are rejected making it difficult and costly to receive one offer of funding, let alone multiple options.

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?

We agree with the authors of the ELI Principles that this only becomes a point of concern if there is a material connection between the funders and legal representatives, for instance related to a portfolio funding or finance arrangement.

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.

We believe the existing rules and regulations to conflicts are sufficiently clear.

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?
      i. When answering this question please specify which form of litigation funding mechanism your submission and evidence refers to.

The availability of litigation funding encourages individuals to litigate meritorious claims that they might not otherwise would have been able to afford.

Litigation funding does not in our experience encourage vexatious or unmeritorious litigation as funders, insurers, and law firms undertake an assessment on the merits and economics of the claim when considering whether to provide funding. Vexatious behaviour incurring unreasonable costs would likely breach the terms of any funding agreement (TPF, CFAs, or DBAs) and void any cover under ATE insurance.

As noted previously, without support from litigation funding group actions are difficult and sometimes even impossible to bring. As noted in our responses above, however, in regard to injury claims TPF is only available for a few rare large group actions.

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.

Please refer to our response to question 8 regarding the limited recoverability of funding costs in the context of Part 36/Calderbank offers and indemnity costs orders. Such reforms would enable funded claimants who were faced by defendants determined to oppose and delay every issue to offset some of their funding costs and hence retain a fairer share of the damages.

Please refer to our response to question 17 regarding the proposed reforms to CFA success fees, DBA Regulations and DBA success fees.

Please refer to our response to question 18 regarding key issues with BTE insurance.

We do not consider that any major reforms are necessary to ATE insurance.

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?

Please refer to our response to question 4 regarding the publication of additional guidance for the legal profession on their duties in relation to funding.

Complementary to this guidance, practical guidance for litigants on the different funding/retainer options could also be produced. Such guidance could provide a high-level overview of the available funding options and practical steps litigants could take in order to

determine whether the solicitor has the necessary knowledge and experience to properly advise on funding. We note the SRA has published similar guidance for litigants on understanding costs.[20]

General Issues

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

There are no further matters we wish to raise.

[20] SRA | Understanding costs | Solicitors Regulation Authority