SRA Consultation on Protecting Consumers When Solicitors and Law Firms Use and/or Arrange Third-Party Litigation Funding for Consumer Claims

RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION

Introduction

1. The London Solicitors Litigation Association (the "LSLA") was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has almost 4,000 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Civil Justice Council, the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change.

2. This document sets out the response of the LSLA to the consultation by the Solicitors Regulation Authority ("SRA") entitled "Protecting consumers when solicitors and law firms use and/or arrange third-party litigation funding for consumer claims", published in July 2026 (the "Consultation"). In this, we draw on the experience of our corporate member firms, the vast majority of which have either acted for clients bringing claims with the benefit of litigation funding, or have defended such claims, or both. The views expressed below accordingly reflect a range of perspectives.

3. We have organised our comments by reference to the main topics addressed in the Consultation, rather than responding to each question sequentially. Cross-references to the relevant consultation questions (Q1–Q17) are provided throughout. We address the topics under the following headings:

   Summary of the LSLA's position on this Consultation

   A – Definitions and Scope (Q1)

   B – Professional Conduct Requirements for All TPLF Matters (Q2–Q4)

   C – Funding Information Document (Q5–Q6)

   D – Notification to the SRA (Q7–Q8)

   E – Risk Assessment (Q9–Q10)

   F – Orderly Closure Plan (Q11–Q14)

   G – Regulatory and Equality Impact (Q15–Q17)

Summary of the LSLA's position on this Consultation

4. Below is a summary of the LSLA's position:

(a) Requiring solicitors on consumer claims to assess funder capital adequacy and liquidity raises real questions of proportionality and practicality, and risks an inappropriate shifting of the regulatory burden. prejudiced if a funder fails to meet its obligations), solicitors cannot reasonably be expected to act as de facto financial regulators of unregulated entities, particularly when working with partial information and no mechanism to compel funder disclosure. The SRA should consider alternatives which address that concern more directly, such as requiring ALF membership (or equivalent) for funders of consumer claims, pending the introduction of direct regulation of funding of consumer claims.

(b) We agree that emphasising professional conduct requirements for all third-party litigation funded matters is helpful, but have concerns regarding the limits of the SRA's jurisdiction over agreements to which solicitors are not party. Also the SRA does not engage with the tension between disclosure obligations to funders and client confidentiality. The SRA should be more explicit as to how confidentiality obligations interact with contractual reporting requirements, particularly where the solicitor is not a party to the funding agreement.

(c) We support the principle of orderly closure planning, recognising that a disorderly closure can leave consumer claimants without effective representation or recourse, but consider that the proposed thresholds are arbitrary and do not necessarily correlate with financial instability or disorderly closure risk. We advocate risk-based triggers rather than blanket numerical criteria and invite the SRA to consider whether a specialist authorisation regime is needed for firms conducting large-scale funded group litigation.

(d) We do not object in principle to the requirement to notify the SRA when using or arranging litigation funding for consumer claims, but invite the SRA to consider a de minimis threshold and to say more about what it will do with the information it receives.

(e) As to the funding information document, it seems a sensible consumer protection measure, subject to the need for guidance on how illustrations should be framed where outcomes are uncertain and whether the document should address a range of scenarios.

5. The LSLA recognises the need for consumer protection in the High-Volume Consumer Claims ("HVCC") sector, and also the important role that litigation funding can play in increasing access to justice and enabling consumers to pursue claims that might otherwise be out of reach.

6. The LSLA shares the SRA's underlying objective of protecting consumers, particularly given that it is consumers who may ultimately bear the consequences if a funder fails to meet its obligations. However, we have concerns about the scope, proportionality and practical workability of several of the SRA’s proposals. In particular, we are concerned that a number of the obligations placed on solicitors and law firms more properly belong within a broader regulatory framework for litigation funders themselves, and that the current proposals may not fully achieve the consumer-protection outcomes the SRA is seeking.

7. We would suggest that the right lessons from recent experience need to be carefully drawn. The risk appears to lie in the combination of:

(a) firms with business models which are financially dependent on a single funder or a small number of funders, with no material independent revenue stream;

(b) the absence of minimum standards of capital adequacy, governance and operational resilience for firms conducting large-scale funded litigation; and

(c) the absence of any regulatory framework for funders which would ensure adequate capital, transparency and responsible conduct.

8. Solicitors cannot provide a fix in isolation, in circumstances where there is a lack of a regulatory framework for third-party funders. Placing the burden of oversight solely on the regulated profession, whilst leaving funders unregulated, is neither fair nor effective and risks distorting the market to the ultimate detriment of consumers.

9. The LSLA notes that the SRA itself acknowledges this gap. The Consultation records that the SRA "*would welcome compulsory regulation of third-party litigation funding*" and that it intends to continue to engage with stakeholders involved in considering the CJC's recommendations. This is welcomed, but in the meantime the proposals in the Consultation risk creating a regulatory landscape in which solicitors bear quasi-regulatory responsibilities for the financial soundness of entities over which they have no control and about which they have limited information.

A – Definitions and Scope

Q1. Do you have comments on our proposals about what should be included and excluded in defining third-party litigation funding, and consumer claims?

10. The LSLA broadly agrees that the SRA's proposed definition of third-party litigation funding is workable.

11. We agree also with the decision to exclude regulated consumer credit agreements, business loans from banks and funding provided by SRA-authorised owners of law firms, which reflect the fact that adequate regulatory frameworks already exist for those arrangements.

12. The LSLA supports the principle of differentiated regulation as between consumer claims and commercial litigation. Commercial parties, insolvency office-holders, litigation trustees, assignees and sophisticated investors are not analogous to retail consumers and should not automatically be analysed through the same regulatory lens. For the London market (which is advanced in the use of funding) the need for a rigid regulatory overlay is less pressing than it is for consumer claims, particularly group claims.

13. We also note and agree with the exclusion of personal injury and clinical negligence claims, collective actions in the Competition Appeal Tribunal and defence work from the definition of "consumer claims", at this stage.

B – Professional Conduct Requirements for All TPLF Matters

Q2. Do you agree it is helpful to specify professional conduct requirements when solicitors use and arrange third party litigation funding for client matters?

Q3. Do you agree with the areas of professional conduct we have suggested? Are there any further areas of professional conduct that should be included, or areas of risk it would be appropriate to address?

Q4. Do you agree that these provisions should apply to all solicitors and law firms using and/or arranging third party litigation funding? If you would suggest restricting the scope, please explain why.

14. The proposals relating to professional conduct requirements are expressed to apply to *all* third-party funded matters, including commercial litigation and are not limited to consumer claims. In principle, we do not have any objection to this. However, there could be unintended consequences if the burden is too high on law firms.

15. SRA rules cannot regulate the terms of agreements between funder and client to which the law firm is not a party. The SRA should acknowledge this limitation and clarify how the proposed requirements would operate in relation to:

    (a) non-recourse agreements between funder, firm and client, where the firm is a party to the agreement;

    (b) direct client-funder agreements, which are negotiated directly between the client and the funder and to which the law firm is not a party; and

    (c) working capital funding arrangements between funder and firm, where the client may have no direct contractual relationship with the funder at all.

16. Where a non-recourse funding agreement involves the firm, funder and client as parties, it is difficult to see how the firm can properly advise the client on the terms of that agreement in circumstances where the firm has a clear commercial interest in the funding being in place. We would suggest that the duty on firms in this context should be informational rather than advisory, that is, the firm should be required to ensure the client understands the terms of the funding agreement and is directed to seek independent advice, rather than being expected itself to advise on terms in which it has a direct interest.

17. There is potential for tension between compliance with the terms of TPLF agreements (which typically require regular case updates to funders) and the duty to respect client confidentiality. The SRA needs to be considerably more transparent on this point. In particular:

    (a) In large-volume consumer claims, is it in the client's interest for confidential information to be widely disseminated? Should the SRA recognise the utility of steering groups (where practicable) as a mechanism for managing the flow of information to funders while preserving confidentiality, privilege and ensuring compliance with wider obligations (for example CPR 32.22)?

    (b) What is the position where (i) the funding agreement requires disclosure; (ii) the solicitor is not a party to that agreement; (iii) disclosure risks waiving privilege or undermining confidentiality; and (iv) the solicitor considers disclosure contrary to the client's interests? Which obligation prevails?

18. We agree with the emphasis on the core obligations of independence, acting in clients' best interests and protecting confidentiality, which apply to all solicitors and law firms using and/or arranging third-party litigation funding. However, the practical implications of these obligations may differ significantly as between, on the one hand, a large-scale consumer group action and, on the other, a bespoke commercial funding arrangement between sophisticated parties.

C – Funding Information Document

Q5. Do you agree with the proposal to mandate the provision of key information in relation to third-party litigation funding agreements? Are there alternatives you would recommend we consider?

Q6. Is there any other information it would be helpful for law firms to provide where a client's claim is funded by a third-party?

19. The LSLA broadly supports the proposal to mandate the provision of key information to clients before they sign a third-party litigation funding agreement for a consumer claim. A standardised, plain-language information document could serve as a useful checklist for firms to ensure compliance and as a meaningful aid to consumer understanding.

20. We offer the following observations on the detail of the proposed information document:

    (a) The requirement to provide an illustrated example showing the client's likely damages, all likely deductions and the net amount the client would receive is, in principle, a sensible one. However, it must be recognised that in many consumer claims, particularly at the early stages, the quantum of likely damages is inherently uncertain. The SRA should provide guidance on how illustrations should be framed where successful outcomes are subject to significant variability, to avoid the risk that firms provide misleading estimates (which may, in themselves, expose firms to claims under consumer law legislation or otherwise) or, conversely, such heavily caveated illustrations as to be of limited practical value.

    (b) Litigation funding does not guarantee a win or a recovery, therefore consideration should be given as to whether the proposed information document should include outcomes of various *unsuccessful* scenarios (i.e. in the event that there is a pyrrhic victory on liability and no recovery on quantum, or if the client loses on everything).

    (c) We welcome the SRA's acknowledgment that, where After-the-Event ("ATE") insurance is arranged, the information document should not duplicate information already required under the SRA Financial Services (Scope) Rules and SRA Financial Services (Conduct of Business) Rules. This principle of avoiding regulatory duplication should be applied consistently.

    (d) It would be helpful for the information document to include a clear explanation of the governance arrangements for the funded claim, for example, who will have day-to-day conduct of the matter, how key decisions will be made, the extent to which the funder may exercise control or influence over case strategy and the client's right to instruct and to terminate the solicitor's retainer irrespective of the funding arrangement.

D – Notification to the SRA

Q7. Do you agree with the proposal to require law firms to notify the SRA when using or arranging third-party funding for consumer claims?

Q8. What positive impacts would you anticipate from this change if implemented, and would you foresee any challenges for law firms in complying with this requirement?

21. The LSLA does not object in principle to a requirement that law firms notify the SRA when they use or arrange third-party funding for consumer claims. We recognise that notification supports the SRA's supervisory role and enables earlier identification of potential risks, including concentration risk where multiple firms are exposed to the same funder.

22. However, we note the following concerns:

(a) The SRA has decided not to set a minimum threshold below which notification would not be required. While we understand the SRA's rationale (that even a firm with limited exposure to a particular funder may form part of a wider picture of concentration risk) the absence of a de minimis threshold may impose a disproportionate administrative burden on smaller firms.

(b) The principal positive impact of notification is likely to be enhanced regulatory visibility, enabling the SRA to identify and act on risks at an earlier stage. Still, it may be helpful if the SRA is more explicit about what it would do with the information and what follow up actions may be likely.

E – Risk Assessment

Q9. Do you agree with the proposal to require firms to produce and retain a risk assessment when using third-party litigation funding for consumer claims?

Q10. Do you agree with the factors we have identified to be included within a third party litigation funding risk assessment and if not, please explain your reasons? Are there any additional factors we should also include?

23. The LSLA has reservations in relation to the proposed requirement for a prescribed risk assessment. While we accept that firms should undertake appropriate due diligence before entering into funding arrangements, the scope and nature of the risk assessment proposed in the Consultation goes considerably beyond what can reasonably be expected of solicitors' firms and, in certain respects, into territory which is properly the province of financial regulators rather than legal practitioners.

24. The proposed risk assessment requires firms to assess, among other things, the funder's financial position including capital adequacy and liquidity, the funder's wider financial exposure, the source of the funder's capital and the funder's prior experience in the TPLF sector. We recognise the concern the SRA is seeking to address, namely that consumers may be prejudiced if a funder becomes unable to meet its obligations (whether during proceedings or in the event of an unsuccessful outcome). However, we question whether it is appropriate to require solicitors to act as *de facto* financial regulators of entities which are themselves unregulated. Requiring solicitors to carry out due diligence into whether funders are maintaining sufficient levels of capital and liquidity goes well beyond the normal course of a solicitor's work, and a solicitor-led assessment is unlikely to provide the substantive protection the SRA has identified that consumers require.

25. A funder's ability to honour its commitments depends on its wider portfolio, not on the economics of a single case or even a single funding arrangement. A solicitor examining one funding agreement will not have visibility of the funder's overall exposure, the performance of its other investments, its leverage ratios or its cash flow position. Even if a firm engages external financial advisers to assist with the assessment, they will be working with partial information

unless the funder chooses to make full disclosure and there is no mechanism to compel such disclosure in the absence of funder regulation. The risk assessment may therefore give a misleading impression of rigour while in practice being of limited value.

26. As with the notification requirement, the SRA has decided not to set a de minimis threshold for the risk assessment. This means that a firm arranging a modest funding facility for a small number of consumer claims would be subject to the same prescribed risk assessment as a firm managing a large-scale group action requiring hundreds of millions of pounds in legal costs. This is potentially disproportionately burdensome for low-funding cases and for smaller firms; a tiered or risk-based approach would in our view better balance proportionality with the need to protect consumers in those claims that have a greater risk.

27. Litigation funders are unregulated save for the voluntary self-regulatory regime operated by the Association of Litigation Funders ("ALF"), which does not cover all funders active in the consumer market and has limitations as a means of consumer protection. As we have said, shifting the burden of supervision and regulation of litigation funders onto solicitors is unlikely to be either fair or fully effective in protecting consumers. If the SRA's concern is that some funders lack adequate capital, expertise or governance (a concern the LSLA shares in relation to the funding of consumer claims), that would suggest a need for direct regulation of funders, rather than to impose on solicitors quasi-regulatory obligations. We can see that there is also a role for auditors to play in this.

28. Rather than requiring each individual firm to conduct its own assessment of funder capital adequacy and financial stability, an exercise which, as noted above, is likely to be of limited value, the SRA might consider whether an alternative approach would be to require that, for consumer claims, the funder must be a member of the ALF or an equivalent body which imposes capital adequacy and conduct requirements on its members. While we recognise the ALF regime has limitations, this would in our view provide a more proportionate and effective interim safeguard for consumers than placing the burden on individual firms, pending a statutory regime for the funding of consumer claims.

29. Subject to the reservations expressed above, we agree that many of the factors identified by the SRA are relevant to a firm's assessment of a proposed funding arrangement.

30. While we accept that risk assessments should be kept under review, the SRA should consider whether a requirement to update upon the occurrence of specified trigger events (for example, a material change in the funder's financial position, a change in the terms of the funding arrangement or the commencement of significant new phases of the litigation) might be more proportionate and effective than a rigid six-monthly cycle.

F – Orderly Closure Plan

Q11. Do you agree with the proposal to require firms to produce and retain an orderly closure plan when using third-party litigation funding for consumer claims?

Q12. Do you agree that the factors we have proposed are the most relevant to firms effecting an orderly closure?

Q13. Are there additional factors it would be useful for an orderly closure plan to include?

Q14. Are there additional factors it would be helpful for us to consider in relation to the threshold at which the requirement to document an orderly closure plan will apply?

31. We agree, in principle, with the proposal that firms using and/or arranging TPLF for consumer claims should be required to produce and retain an orderly closure plan.

32. That said, firms whose business model is constructed primarily around the acquisition and funding of large-scale consumer claims, and which have no material cashflow other than funding, present a qualitatively different risk profile from firms which use TPLF as one element of a broader practice. The regulatory response should reflect this.

33. We have concerns about the thresholds proposed for triggering the orderly closure plan requirement. The three triggers: (i) 500 or more individual claimants; (ii) recourse funding equivalent to or greater than 30% of the firm's latest reported annual turnover; and (iii) the provision of security by an owner, manager or employee, appear to have been selected on the basis of the SRA's experience with particular firm closures. But the consultation does not adequately explain why these particular thresholds necessarily correlate with financial instability or disorderly closure risk.

34. A firm with 500 claimants in a well-funded, low-risk claim type with strong prospects may be far more stable than a firm with 200 claimants in a high-risk, highly leveraged position. Similarly, a firm for which TPLF represents 30% of turnover may nonetheless have strong reserves and diversified revenue streams. The focus should be on the substance of the financial risk and the diversity of work conducted by a firm in order to mitigate risk, not on arbitrary numerical criteria.

35. We question whether there should be a specialist SRA authorisation regime, or at least enhanced supervisory engagement, for firms conducting substantial funded group litigation above a particular size or level of funding. Almost any authorised firm can at present build a large claimant practice around funded claims. It may be that the combination of scale, complexity and financial dependence on third-party funding calls for minimum standards of capital adequacy, governance and operational resilience which go beyond the general requirements of the SRA's Standards and Regulations.

36. As with the risk assessment, we consider that the requirement to update the orderly closure plan every six months is rigid and may not capture the most pertinent risks. A requirement to update upon specified trigger events, including material changes in financial position, the loss of a significant funder, or a material change in the status or size of the funded claims portfolio, may be more effective.

G – Regulatory and Equality Impact

Q15. Do you agree with the assumptions about and assessment of potential regulatory impacts?

Q16. Do you agree with the assumptions about and assessment of potential equality, diversity and inclusion considerations in our initial impact assessment?

Q17. Are there any other factors or impacts on particular groups that we should consider or any other evidence sources that we should be considering?

37. Several aspects of the initial Regulatory and Equality Impact Assessment warrant further consideration before any new requirements are finalised. In particular, the cumulative burden

on firms, the evidential gaps in the equality analysis, and the potential effects on access to justice, competition and the wider litigation-funding market.

38. While the LSLA acknowledges the consumer-protection rationale, the SRA's assessment does not quantify the cumulative compliance burden on the law firm. The SRA recognises that additional costs may arise and be passed on to clients, and that smaller firms may be disproportionately affected, yet discounts this by observing that TPLF is predominantly used by medium-sized and large firms. That observation describes current participation, not the effect on firms that might otherwise enter the market. The absence of de minimis thresholds means a firm with a modest funding facility may bear obligations designed for the largest HVCC operations. The cumulative burden may therefore deter smaller firms, concentrating the market in larger providers, an unintended consequence the SRA itself contemplates. The assessment should weigh these costs and second order effects against the clear consumer detriment that can arise where the funding of consumer claims is inadequately supervised.

39. The Equality Assessment expressly acknowledges limitations, including an inability to assess the diversity characteristics of solicitors, firms or clients involved in TPLF. Given the particular importance of litigation funding in enabling access to justice, any measures restricting availability or increasing cost may disproportionately affect consumers from lower socio-economic backgrounds and groups more likely to experience financial exclusion. The SRA should monitor these impacts closely.

40. The proposals must also be considered alongside the wider regulatory landscape and any future framework for regulating funders. Engagement with the FCA and other regulators should be substantive and transparent to avoid overlapping or inconsistent requirements.

41. Before implementation, the LSLA suggests that the SRA should publish a final, comprehensive impact assessment and commit to a published timetable for monitoring and evaluation.

London Solicitors Litigation Association

17 September 2026