Written evidence submitted by International Legal Finance Association and the Association of Litigation Funders (ATJ0130)

Executive summary

- Since 2011, ALF has been charged by the Ministry of Justice with the self-regulation of litigation funding in England and Wales. ILFA is the independent, non-profit global association of commercial legal finance companies, engaging with political, regulatory, and judicial bodies to ensure that the role of legal finance is properly understood.

- Third-party litigation funding plays a vital role in ensuring access to justice in England and Wales, particularly given the shortage of legal aid provision in collective actions and consumer redress cases. Funding has become the successor to legal aid in certain cases, providing the only viable path to redress for victims of systemic wrongdoing and enabling consumers and SMEs to challenge misconduct they could never afford to litigate alone.

- However, since July 2023, the Supreme Court's PACCAR decision has introduced significant uncertainty into the litigation funding market, threatening to undermine access to justice for those who need it most. We urge the Committee to support the Civil Justice Council's recommendation for urgent legislative action to reverse the effects of PACCAR and restore certainty to the sector.

- As representatives of the industry, ILFA and ALF would be happy to support the Committee's ongoing inquiry, either by providing further information or oral evidence.

About ILFA and ALF

The International Legal Finance Association (ILFA) is an independent, non-profit global association of commercial legal finance companies. Its mission is to engage and educate political, regulatory, and judicial groups to ensure that the role of litigation funding and its members are properly understood. While ILFA is a global association, its members include many of the largest and most experienced funders active in England and Wales who have contributed to these responses.

The Association of Litigation Funders (ALF) is the self-regulatory body for litigation funders in England and Wales, whose members agree to comply with the ALF Code of Conduct in respect of third-party funding of litigation, in this jurisdiction. ALF members comprise the majority of the funders active in England and Wales, many of whom are also members of ILFA.

1. How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

- The current legal services market presents significant barriers to access to justice, with litigation costs creating an uneven playing field that favours well-resourced defendants over claimants with meritorious claims.

- The high cost of litigation represents a fundamental barrier to access to justice, particularly for small and medium enterprises (SMEs) and consumers. Well-funded repeat litigants can afford sophisticated and expensive law firms that strategically deploy multi-year discovery and procedural battles, creating an unfair advantage over smaller parties with meritorious claims.

- The gap in legal aid provision for collective actions and consumer redress means that consumers and SMEs facing corporate wrongdoing often have no viable path to justice without external funding support.

- Third-party litigation funding (TPLF) is a financial arrangement where an external party provides funding to support litigation in exchange for a share of any successful outcome. TPLF occupies a specific but crucial role within the legal services market: supporting collective actions and consumer redress cases where legal aid is not available.

- TPLF provides the resources necessary to level the playing field between consumers, small businesses, and larger, better-funded opponents. Importantly, this comes at no cost to the Government.

- ALF member data indicates that claimants in the vast majority of funded cases do not have the means to proceed without external funding. Whilst litigation funding alone cannot replace legal aid in every case, for many claimants it is a crucial, and often the only, route to securing access to justice by helping them take on the otherwise prohibitive costs of litigation.

- Without third-party litigation funding, many landmark cases could not have been pursued, including:

    - **The Post Office Horizon litigation**: In 2019, 555 victims obtained justice through funded litigation after being explicitly denied legal aid support. Without funding, this case could not have been pursued (link). Alan Bates, the lead claimant, has stated that the backing of litigation funders helped him and his colleagues 'secure justice, expose the truth, and clear our names and reputations' (link).

    - **Equal pay claims**: ILFA and ALF members are currently supporting several major claims seeking to enforce equal pay rights, including store workers at Tesco, Sainsbury's, Morrisons, and Next. Five equal pay claims for over 100,000 women could potentially secure as much as £8bn in backpay across the economy (link).

    - **Competition cases**: Without funding, truck cartel claims and other competition cases could not have been pursued, with the Road Haulage Association stating that its members ‘wouldn't have stood a chance’ against truck manufacturers without funding (link).

- **Environmental claims:** ILFA and ALF member Therium brought the largest Group Litigation Order in British legal history against Volkswagen in September 2015, relating to the sale and leasing of vehicles containing defeat device software in breach of emissions legislation designed to protect the environment. This claim was vital in securing £193m for claimants over the breaches of environmental protections, with similar lawsuits against other manufacturers following from other ILFA and ALF members (link).

- The importance of TPLF in securing access to justice is widely recognised, including by government, the general population, the business community, consumer associations, regulators, academics, and claimants:

  - Minister for Courts and Legal Services Sarah Sackman MP recognises that litigation funding plays a ‘critical role [...] in ensuring access to justice’ (link). This echoes comments from the previous Lord Chancellor – Alex Chalk – who stated that ‘for many claimants, litigation funding agreements are not just an important pathway to justice — they are the only route to redress’ (link).

  - The Class Representatives Network noted that ‘without litigation funding, most collective actions could not be pursued at all’ (link), and the European Law Institute recently stated that funding is a ‘vital driver of access to justice in a world where state-funded legal aid is often not available’ (link).

  - Sarah Cardell, CEO of the Competition and Markets Authority (CMA), stated that collective proceedings before the Competition Authority Tribunal (CAT) are 'to some extent made possible' by third-party litigation funders, who 'play a role in providing access to justice' (link).

  - Recent polling of UK adults found that less than half of consumers feel confident to challenge large companies alone, yet 76% are willing to consider litigation funding when facing corporate wrongdoing, showing that consumer sentiment towards TPLF is favourable (link).

  - Many consumer associations are supportive of TPLF, with the consumer association Which? stating ‘without access to third party litigation funding, consumers’ already limited ability to access justice and assert their legal rights will be curtailed, if not effectively extinguished in many cases’ (link). The European Consumer Organisation, BEUC, also recently commented that, across Europe, consumer organisations ‘face significant financial challenges when starting collective redress actions’, most notably that ‘initiating a collective action is complex, risky, and expensive, often involving lengthy proceedings that require significant resources'. They are clear that this burden 'creates a significant imbalance, making it difficult for consumer organisations to take on powerful, well-funded corporations' and so note that without 'robust funding mechanisms' such as those provided by third party funding, 'consumer organisations are unable to fulfil their critical role'(link).

    - Business leader polling found that 68% see litigation funding as positive for the business environment, compared to just 7% who view it negatively. Moreover, 79% of business leaders would consider using litigation funding themselves, with nearly half saying they would reinvest any saved legal costs in technology upgrades and new products rather than cost-cutting (link).

- The TPLF sector is also a crucial part of the legal services sector and an important contributor to the UK's economy. The sector is currently worth more than £13bn globally, and is projected to grow to £20bn (link). In the UK, opt-out cases in the CAT were set to be worth over £1bn in fee terms in 2023 (link). Assets under management from funders are predicted by PwC UK to grow by 8.7% per annum over 5 years, from £2.2bn in 2023 to £3.7bn by 2028 — representing a significant source of inward investment into the UK (link).

- The current legal services market creates significant barriers to access to justice through prohibitive costs and resource imbalances. TPLF has emerged as a mechanism to address these barriers without cost to the taxpayer, particularly in collective actions and consumer redress where legal aid gaps exist.

2. What is the role of supplementary advice services in supporting access to justice?

N/A

3. What is the impact of those acting without legal advice and / or representation having on access to justice?

N/A

4. Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

- In the absence of any remaining meaningful civil legal aid to pursue claims, claimants have very limited options to fund claims they can't afford because of the extremely high costs of litigation. TPLF plays an absolutely critical role in ensuring access to justice, and any threats to it will have a devastating effect on the ability of many to pursue good claims.

- TPLF provides the resources necessary to level the playing field by helping citizens and businesses with meritorious claims to not only access the justice system but also to seek legal redress to protect their rights against larger, better-funded opponents. It has already proven its value in enabling landmark cases that would otherwise, due to the size and resources of the opponents involved, have been impossible to pursue.

- However, the effectiveness of third-party funding could be significantly enhanced through improved case and cost management by the courts. Currently, litigation funding is only viable for a limited number of high-value cases due in part to the extremely high costs of litigation in England and Wales, as high damages outcomes are required in order to reimburse the costs of funding, whilst ensuring the funded claimants also receive sufficient recoveries. More effective judicial case and cost management, including better control of defence-side spending and procedural tactics designed to drive up costs, could make funding viable for a wider range of meritorious claims by reducing the amount of funding required to meet the costs of bringing the claim.

- Well-funded defendants can afford expensive law firms that strategically bury opposing parties in multi-year discovery, giving them an unfair advantage over small businesses and consumers. Evidence of this ‘lawfare’ approach was uncovered in the Post Office inquiry, in which the Post Office lawyers’ emails revealed they proposed to drive up costs, aiming to drive a wedge between the sub-postmasters and their funder.

- Funders are incentivised to support cases efficiently and proportionately, but they cannot control defendant conduct. When defendants deliberately adopt 'scorched earth' litigation strategies to drive up costs and exhaust claimant budgets — as seen in cases like Bates v Post Office — this squeezes the economics of funding and can force claimants to accept inadequate settlements. Enhanced judicial oversight of litigation costs and case management could help ensure that defendants cannot abuse the system by outspending claimants, thereby improving outcomes for funded claimants and making litigation funding viable for more cases.

- If courts could better manage the length and cost of proceedings, this would not only improve access to justice for currently funded cases but would also expand the range of meritorious claims that could be supported through third-party funding, ultimately benefiting more consumers and SMEs seeking redress.

- Beyond this, the Supreme Court's PACCAR decision in July 2023 has created significant uncertainty that threatens the third-party funding option for claimants. The PACCAR judgment reversed the long-accepted understanding that litigation funding agreements (LFAs) do not fall under the Compensation Act 2006's definition of a damages-based agreement (DBA).

- This decision has had the consequence of arguably making most existing LFAs unenforceable and, as the Civil Justice Council (CJC) recently outlined in June 2025 in their review of the sector, has led to a 'significant degree of confusion and uncertainty' (link).

- The impact on the funding market has been immediate, with internal data from advisers to the sector suggesting an immediate decline of anticipated funding activity of greater than 75% in the second half of 2023, following the PACCAR ruling (link).

- Key funders are reducing the number of cases they fund in the UK following the judgment, and instead are choosing to focus on other jurisdictions, such as Singapore, Paris, and New York (link) (link). Leading lawyers have said that ‘without permanent and retrospective solutions to the problems that this decision will cause, the UK’s position as a centre of international commercial litigation will be severely damaged’ (link).

- Without legislative action from the Government, every pre- and post-PACCAR funding agreement could be challenged. The uncertainty created by PACCAR applies equally to funding agreements entered into both before and after the July 2023 judgment, as defendants and bad faith claimants can now argue that any LFA constitutes a DBA regardless of when it was signed. This ongoing uncertainty is actively deterring funders from supporting new cases in the UK market. This not only risks wasting court time and moving investment away from the UK but also risks delaying existing cases and opening up challenges to funding arrangements, causing stress and uncertainty for claimants who believed they had already secured justice.

- The uncertainty throws ongoing litigation into limbo as judgments and appeal processes are delayed. This impacts not only funding arrangements, but also the indemnities and insurance agreements that claimants put in place to mitigate the risk of paying adverse costs.

- Ultimately, the PACCAR judgment risks unleashing a cascade of litigation into a court system already thrown into disarray by profound historic underinvestment as defendants challenge both historic and current funding arrangements and claimants attempt to reclaim funding returns. For example, this is currently happening in the Sony vs Neill case, where post-PACCAR funding arrangements are being challenged on the basis that they constitute unenforceable DBAs. This is allowing proven corporate wrongdoers to speculatively challenge judgments to claw back the compensation they were rightly made to pay. Such practices risk delaying and thus denying justice.

- Court backlogs mean that the average civil case now takes over a year to go to trial (link). This allows proven corporate wrongdoers to speculatively challenge judgments to claw back the compensation they were rightly made to pay. Such practices risk delaying and thus denying justice.

- The Civil Justice Council (CJC) established a review into litigation funding in April 2024 following a request by then-Lord Chancellor Alex Chalk, and recently reported on their findings in June 2025. The CJC has recommended that 'Legislation should be introduced to make clear that litigation funding is not a form of DBA and that it is a distinct form of funding than funding from that provided by a party's legal representative. This legislation should reverse the effect of PACCAR’ (link).

- There is clear cross-party recognition of the need for a legislative solution to address the issues caused by PACCAR. The previous Government's Litigation Funding Agreements

(Enforceability) Bill demonstrated this consensus, receiving strong support from senior legal figures including Lord Thomas (former Lord Chief Justice), Lord Carlile (former Chair of the Competition Appeals Tribunal), and Lord Sandhurst (former Chair of the General Council of the Bar) (link).

- However, while the UK delays action, competitors in other jurisdictions such as Singapore, Australia, and Dubai are capitalising on this uncertainty to attract investment that would otherwise come to the UK (link). Without swift legislative intervention, the UK risks losing its competitive advantage in legal services to these markets.

- Standalone legislation is needed as a priority to resolve the issues caused by the PACCAR judgment and ensure that consumers and small businesses can continue to access justice. We are urging the Government to bring forward a PACCAR solution in line with CJC recommendations, and would be grateful for the Committee's consideration of this issue.

- The Government itself has recognised the ‘critical role third-party litigation funding plays in ensuring access to justice’ and committed to taking a ‘comprehensive view of any legislation to address issues’ following the review (link), but, following the publication of the review, has said it will act ‘in due course’ (link). The decision to hold off on introducing legislation risks kicking the can down the road — to the detriment of consumers, small businesses, and the UK’s role as a global legal centre.

- Rather than requiring spending, the immediate priority should be for the Government to introduce standalone legislation to reverse the PACCAR judgment. This would preserve access to justice without impacting the public purse and free up further resources for the Government to prioritise funding needs across the wider justice system.

5. If limited funds were available, what would be the priority areas for spending?

N/A

6. How are the legal services regulators responding to their obligation to improve access to justice under the Legal Services Act 2007?

N/A

7. How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

N/A

8. How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

N/A

9. What role is there for digital innovation and data collection in supporting access to justice?

N/A

10. How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

N/A

11. What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?

N/A

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