BIRMINGHAM LAW SOCIETY

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Response to SRA Consultation on Protecting consumers when solicitors and law firms use, and/or arrange third party litigation funding for consumer claims

September 2026

Response of the Professional Regulation Committee of the Birmingham Law Society to SRA Consultation – Protecting consumers when solicitors and law firms use, and/or arrange third party litigation funding for consumer claims

This response has been prepared by the Professional Regulation Committee of the Birmingham Law Society. The Society is the largest local law society with some 9,000 members from all branches of the legal profession and practising in all aspects of law. The response represents the collective views of the Professional Regulation Committee whose members include specialists practising in all aspects of professional regulation and compliance for the legal profession.

Question 1
Do you have comments on our proposals about what should be included and excluded in defining third-party litigation funding, and consumer claims?

We consider that the definition of 'consumer' in the Consumer Rights Act 2015 is the appropriate definition.

We think that the definition of 'claim' requires further thought. It is unclear from the proposed definition whether this includes any activity undertaken in accordance with the Pre-Action Protocol. We suggest that the definition of claim is along the following lines "A formal demand made by a consumer to another person to provide a remedy for a breach of a right or in recompense for a harm". The SRA can make clear in guidance that this includes pre-action activities, formal claims before a Court as well any method of alternative dispute.

Whilst we do not disagree with the exclusions suggested by the SRA, we do consider that the exclusions may be difficult for consumers to understand. The SRA will need to support law firms with clear information that can be shared with consumers so that expectations are reasonably met.

Question 2
Do you agree it is helpful to specify professional conduct requirements when solicitors use and arrange third party litigation funding for client matters?

We consider that there is merit in the SRA introducing guidance to assist the profession in understanding professional conduct requirements when using or arranging third party litigation funding. We do not consider that new conduct rules are required as there are existing provisions that adequately address the professional conduct issues.

The SRA seeks to introduce new provisions for solicitors and law firms who have arrangements with a third party funder:

a) To maintain their independence from a third party funder. We consider that Principle 3 – the duty to act with independence – adequately addresses the issue.
b) Must act in the clients' best interests. We consider that Principle 7 – the duty to act in the clients' best interests – adequately addresses this issue.
c) To only disclose confidential information to any third party funder with informed client consent. We consider that rule 6.3 adequately addresses this issue.
d) To inform clients and funders of the obligations in respect of independence, acting in the client's best interests and confidentiality, as well as a further obligation that the funder is not regulated by the SRA, in writing. For the reasons set out above we do not consider that there is any need for a change to the provisions relating to independence, conflicts of interest and confidentiality. We consider that it is the obligation of the funder to make it clear to the consumer the regulatory arrangements applicable to that entity. A statement that the funder is not regulated by the SRA is not helpful as it leads to the obvious question: who is the funder regulated by? A statement by the funder as to its regulatory arrangements is more positive and is less likely to cause confusion.

The SRA proposes that these proposed new rules will apply for all solicitors and law firms using and/or arranging third-party litigation funding, rather than being limited to the consumer claims sector. Our position is that the proposed new rules are unnecessary as they are a restatement of existing provisions.

Given the SRA's intention to exclude certain types of activities (for example personal injury claims) it is likely that this proposal will cause confusion as to whether a statement is needed and in what circumstances.

Question 3

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?

We consider that the current codes of conduct are adequate to address the issues in relation to third party litigation funders. We think that there is merit in the SRA providing guidance to the profession, but there is no need for the rules to be amended.

In addition to the rules mentioned in respect to Question 2, we highlight the following provisions from the Code of Conduct that may apply. These provisions should be highlighted in any guidance to the profession.

Rule 2.6 – You do not waste the court's time. We have recently seen a high profile case where claimants brought a claim against a newspaper without any evidence to support the claim. We also understand that there has been an increase in wasted costs applications.

Rule 3.1 – You only act for clients on instructions from the client. The old saying "He who pays the piper, calls the tune" is apt where a consumer claim is funded by a third party. Third party funders should not be able to influence the proper conduct of a matter for a client and must not be the party providing instructions.

Rule 3.4 – You consider and take account of your client's attributes, needs and circumstances. Solicitors must consider the consumer's overall circumstances before arranging or using a third party litigation funder.

Rule 6.1 – You must not act if you have an own interest conflict. The solicitor may be influenced by the requests of a third party funder in one or more matters to act in his own best interests, rather than those of the client.

We also consider that rules 23 and 24 of the SRA Financial Services (Conduct of Business) Rules are likely to apply.

Question 4
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.

We consider that these provisions are unnecessary in their entirety and so the question of limiting scope falls away. The current rules are adequate and apply to all solicitors and law firms.

Question 5
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?

We consider that rule 3.4 of the Code of Conduct already provides the necessary level of protection for clients. It is incumbent on the profession to consider and take account of clients' attributes, needs and circumstances. In doing so the legal professional will explore funding arrangements that are appropriate for the client. Where the legal professional is unable to provide advice as to the appropriate means of funding, the client will need independent legal advice.

We consider that rules 8.6 – 8.8 in respect of the information given to clients also provides the necessary level of protection for clients.

We think that these rules have been inadequately enforced by the regulator to the extent that these provisions are not given adequate consideration.

We also consider that the SRA Financial Services (Conduct of Business) Rules apply in respect of these third party funding arrangements for consumers and firms must comply with the information requirements of those rules.

Question 6
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?

We consider that third party litigation funding arranged by a solicitor will be subject to the provisions of the SRA Financial Services (Conduct of Business) Rules. In particular, we consider that rules 23 and 24 apply in these circumstances.

Question 7

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

We do not agree with this proposal. We consider that compliant firms will notify the SRA and non-compliant firms will fail to notify. It is a better use of the SRA's resources to conduct targeted inspections of firms to determine compliance with the rules, rather than imposing a further regulatory burden on compliant firms.

Question 8

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?

We cannot see any positive impacts from these changes. We consider that the proposals impose a regulatory burden on compliant firms and that non-compliant firms will choose to ignore the requirements.

Question 9

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?

We do not agree with this proposal.

The proposals impose a significant burden on law firms to have an understanding of the funding arrangements of a financial services business. We consider that the Financial Conduct Authority is better placed to regulate litigation funding financial services businesses.

Funds received from a litigation funder are client money until such time as a bill is raised (Rule 2.1 of the SRA Accounts Rules). Such funds must therefore be placed in client bank account (Rule 2.3 of the Accounts Rules). Client money must be held separately from funds belonging to the firm (Rule 4 of the Accounts Rules). Once a bill is raised, the money belongs to the firm and must be transferred to the firm's business account (Rules 4.3 and 5 of the Accounts Rules).

The SRA proposes that firms should conduct a risk assessment to include "the financial position in relation to the proposed funding and the forecasted cost, duration and outcome of the relevant claim(s)". We consider that this proposal is unnecessary. Rule 2.4 of the Code of Conduct for Firms provides that firms must actively monitor their financial stability and business viability. We consider that this rule, together with the protections in the SRA Accounts Rules provide a sufficient level of protection for all clients.

We note the SRA's findings from thematic reviews that "shows that some solicitors and law firms are not effectively identifying, monitoring and managing the legal and financial risks that can arise when representing large volumes of clients bringing third-party funded consumer claims". We consider that the SRA should investigate and carry out enforcement action where these failings are identified. Applying a regulatory burden to the wider profession is not consistent with a targeted, risk-based approach.

Question 10

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?

We think that a third party litigation funding risk assessment is wholly unnecessary. Our view is that the regulator should take appropriate and proportionate enforcement action where it identifies evidence of failure to comply with the existing rules that are more than adequate to address the risks highlighted in this consultation.

Question 11

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?

We consider that the SRA Code of Conduct for Firms already includes adequate provision for the orderly closure of a firm. Rule 2.4 provides; "Once you are aware that you will cease to operate, you effect the orderly wind-down of your activities". Rule 2.5 provides "You identify, monitor and manage all material risks to your business". Rule 3.6 includes provisions for firms to notify the SRA in the event of serious financial difficulties, insolvency or other event leading to the business ceasing to operate.

In this consultation, the SRA noted "financial instability and disorderly closure may be more likely where a funder has security (and so can apply to have a firm wound up at short notice) and where the liability to a funder is significant as compared to the law firm's last reported turnover".

This demonstrates that SRA regulated firms have not been treating funding for client matters as client money. As mentioned above, funds from a third party litigation funder is client money until such time as the business raises a bill. The security for any funder should be that the funds are held in client bank account. There should be no circumstances where a third party litigation funder has security over the assets of the firm. This demonstrates a catastrophic failure of the regulator to enforce the most important rules to protect the public and the profession.

Question 12
Do you agree that the factors we have proposed are the most relevant to firms effecting an orderly closure?

No. We consider that the SRA has failed to properly take into account the protection of client money.

Question 13
Are there additional factors it would be useful for an orderly closure plan to include?

We consider that the current rules adequately address the factors affecting an orderly closure of a firm.

Question 14
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?

We consider that any threshold is unnecessary and that the current rules adequately address the factors affecting an orderly closure of a firm.