

Policy Proposal: Mandatory Disclosure of Third-Party Litigation Funding in Civil Cases

Executive Summary

This proposal establishes mandatory disclosure requirements for third-party litigation funding in civil court cases to enhance transparency, protect the integrity of the legal system, and ensure all parties have relevant information about the resources and interests involved in litigation. The policy applies uniformly regardless of the nature of the claims or the identity of funders.

Problem Statement

Current UK law provides limited transparency regarding third-party litigation funding arrangements. This creates several concerns:

- Courts and opposing parties may be unaware of external interests driving litigation
- Patterns of coordinated strategic litigation remain obscured
- Power imbalances are hidden when well-resourced funders pursue cases against individuals or organisations
- Foreign funding of domestic litigation operates without public scrutiny
- Potential conflicts of interest between claimants and funders are not visible
- The public interest in understanding who drives litigation on matters of public concern is not served

Policy Objectives

1. **Enhance transparency** in civil litigation without unduly restricting access to justice
2. **Enable informed decision-making** by courts, parties, and the public
3. **Maintain procedural fairness** through consistent application across all cases
4. **Protect against abuse** of the litigation system for strategic harassment
5. **Preserve legitimate uses** of third-party funding that enable access to justice

Proposed Requirements

Scope of Application

This policy applies to all civil proceedings in England, Wales, Scotland, and Northern Ireland where third-party litigation funding exists.

Third-party litigation funding is defined as any arrangement where a person or entity that is not a party to the proceedings provides financial support for the litigation in exchange for a share of proceeds or other consideration, or as part of a coordinated strategy involving multiple cases.

Disclosure Thresholds

Mandatory disclosure is required when:

1. **Monetary threshold:** Third-party funding exceeds £10,000 in total value, OR
2. **Strategic litigation:** The case is one of multiple related cases funded by the same source within a three-year period, OR
3. **Public interest:** The case involves matters of significant public interest, including but not limited to:
 - Cases likely to set legal precedent
 - Cases affecting protected characteristics under the Equality Act 2010
 - Cases involving public policy, public health, or environmental matters
 - Class actions or group litigation
 - Cases involving public bodies or publicly funded organisations

Information to be Disclosed

When disclosure is triggered, the funded party must provide:

1. **Identity of funder(s):** Full legal name and registration details
2. **Jurisdiction:** Country of registration and principal place of business
3. **Nature of arrangement:** Whether funding is conditional on outcome, grant-based, or otherwise structured
4. **Total funding amount:** Specific amount or bracket (e.g., £10,000-£50,000, £50,000-£250,000, over £250,000)
5. **Related cases:** Details of other cases funded by the same source that are factually or legally related
6. **Control provisions:** Whether the funder has any influence over litigation strategy, settlement decisions, or case conduct
7. **Ultimate beneficial owners:** For organisational funders, disclosure of individuals or entities with significant control

Timing and Procedure

- **Initial disclosure:** Within 14 days of funding arrangement being established or case being filed, whichever is later

- **Ongoing duty:** Parties must update disclosures within 14 days of any material change
- **Format:** Standardised disclosure form submitted to the court and served on all parties
- **Public access:** Disclosures become part of the public court record except where the court orders otherwise on specific grounds

Exceptions and Protections

The court may grant exemptions from disclosure in limited circumstances:

1. **Safety concerns:** Where disclosure would create genuine risk of harm to individuals
2. **Sensitive personal circumstances:** In family law or cases involving vulnerable persons, where privacy concerns are compelling
3. **National security:** Where disclosure would harm national security interests

Applications for exemption must be made on notice with supporting evidence. The presumption favours disclosure.

Enforcement and Sanctions

For failure to disclose:

- Court may strike out claims or defences
- Adverse cost orders
- Cases may be stayed until disclosure is provided
- Contempt proceedings in cases of deliberate concealment

For false or misleading disclosure:

- Contempt of court proceedings
- Referral to relevant professional bodies for solicitors or barristers involved
- Adverse cost orders on indemnity basis

Relationship to Other Funding

This policy complements existing requirements and does not replace:

- Legal aid disclosure requirements
- Conditional fee agreement regulations
- After-the-event insurance disclosure
- Professional conduct rules

Implementation

Phase 1 (Months 1-6): Legislative and Regulatory Framework

- Draft statutory instrument or amendment to Civil Procedure Rules
- Consultation with judiciary, legal profession, and civil society
- Develop standardised disclosure forms and guidance
- Establish court procedures for processing disclosures

Phase 2 (Months 7-12): Preparation

- Training for judiciary and court staff
- Guidance for legal practitioners
- Public information campaign
- Development of electronic filing systems

Phase 3 (Month 13+): Implementation

- Phased rollout beginning with High Court cases
- Extension to County Courts and Sheriff Courts
- Monitoring and evaluation
- Annual review and adjustment

Resource Implications

Courts: Additional administrative burden manageable through electronic filing systems and standardised forms. Estimated cost: £2-3 million for IT systems, £500,000 annually for ongoing administration.

Legal profession: Minimal burden as disclosure requires information already known to funded parties. Estimated compliance cost per case: £200-500.

Funders: No direct cost beyond providing information. Market impact should be minimal as legitimate funders benefit from transparent, well-regulated market.

Expected Outcomes

Positive outcomes:

- Greater transparency in strategic litigation campaigns
- Better-informed judicial decision-making on costs, case management, and abuse of process
- Enhanced public confidence in civil justice system
- Protection against harassment through serial litigation
- Maintained access to justice for those with meritorious claims

Risks to monitor:

- Potential chilling effect on litigation funding market
- Administrative burden on courts
- Unintended consequences for access to justice

Mitigation strategies:

- Threshold exempts small-value funding arrangements
- Streamlined disclosure process minimises burden
- Regular review allows adjustment if access to justice concerns emerge

Conclusion

Mandatory disclosure of third-party litigation funding serves fundamental principles of transparency, fairness, and open justice. By applying consistent standards across all cases regardless of subject matter or ideology, this policy strengthens the integrity of the civil justice system while preserving legitimate avenues for accessing justice.

The policy recognises that litigation funding serves important purposes in enabling people to pursue valid claims, while ensuring that courts, parties, and the public have the information necessary to understand the interests and resources involved in civil litigation.

Recommended Next Steps:

1. Ministerial approval to proceed with consultation
2. Formal consultation period (12 weeks)
3. Impact assessment and equality impact assessment
4. Legislative drafting
5. Parliamentary approval
6. Implementation as outlined above