CORLA

CORLA's Response to the SRA's Consultation: Protecting consumers when solicitors and large law firms use and/or arrange third-party litigation funding for consumer claims.

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

This response has been prepared by the Collective Redress Lawyers Association ("CORLA"), addressing these questions in the context of High Volume Consumer Claims ("HVCC").

CORLA broadly supports the SRA's proposed approach to defining third-party litigation funding ("TPLF") and consumer claims. The regulatory perimeter should be sufficiently clear and comprehensive to capture genuine third-party funding arrangements used in consumer claims, while avoiding unnecessary overlap with other established forms of financing and regulation.

CORLA agrees that it is sensible to adopt the definition of "consumer" in section 2(3) of the Consumer Rights Act 2015. We also agree in principle that the definition of a claim should extend to relevant pre-action work and alternative dispute resolution. Clients may require legal representation and funding before proceedings are issued, and the application of appropriate professional protections should not depend simply upon whether formal proceedings have commenced.

CORLA also broadly supports the proposed exclusions, including regulated consumer credit agreements, ordinary commercial credit provided by banks and other financial institutions, funding provided by an authorised owner of a law firm, personal injury and clinical negligence claims, and collective proceedings before the Competition Appeal Tribunal. Those exclusions reflect circumstances in which another regulatory or supervisory framework applies, or where the SRA has not identified the same pattern of risk which has informed the present proposals.

There are, however, areas where further clarification would assist.

First, the proposed definition of "consumer claims" is necessarily broad and is capable of capturing materially different forms of legal work and funding arrangements. Some high-volume models may involve significant client acquisition, reliance on working-capital funding and funding drawdowns linked to claim volumes. Other matters within the same definition may involve complex group litigation concerning common or related issues, significant expert evidence, substantial adverse-costs exposure and long-running court proceedings.

That distinction is important because claim volume is not, by itself, a reliable indicator of regulatory risk. A firm acting for a large number of consumers will plainly require appropriate systems, resources and supervision, but the number of clients does not necessarily determine the financial, governance or consumer-protection risks arising from the funding arrangement. Those risks depend upon the particular circumstances, including the structure of the funding, the firm's financial exposure and dependence upon it, the extent of recourse borrowing, the funder's financial position, the adequacy of due diligence and insurance arrangements, and the firm's operational capacity to service its clients.

Established complex group litigation is also very likely to have been subject to substantial independent scrutiny of its merits and economics before and during the life of a claim, including funder due diligence, detailed budgeting, ATE underwriting and advice from counsel and experts, alongside active judicial management of the proceedings. Those features do not remove the need for effective SRA regulation, but they may materially affect the nature and degree of risk presented by a particular funding arrangement.

It would therefore be helpful for the final rules and guidance to make clear that, for the consumer-claim-specific requirements, the definition of "consumer claims" identifies the scope of the regulatory regime rather than creating a presumption that all claims falling within that scope carry the same risk profile.

The SRA should also clarify the necessary connection between consumers where claims are said to be brought "against the same organisation, or in relation to the same issue". Firms should be able to determine objectively and with reasonable certainty whether a particular matter or portfolio falls within scope.

More generally, CORLA considers it important to distinguish the scope of the definitions from the proportionality of the obligations which follow from them. CORLA does not suggest a general exclusion for High Court group litigation or Group Litigation Orders. A broad and workable definition may be appropriate to provide regulatory clarity and avoid arbitrary distinctions between different forms of funded consumer claim.

It does not follow, however, that every matter falling within that definition presents the same regulatory risk or requires the same degree of intervention. The existence of TPLF and the number of clients involved identify features of a funding or litigation model; they do not, without more, establish the nature or degree of the regulatory risk which the SRA is seeking to address.

The SRA's own evidence illustrates why that distinction matters. The risks identified arise from a range of different factors, including the structure and scale of recourse funding relative to a firm's resources, dependence upon external funding, funder capital adequacy and liquidity, security arrangements, deficiencies in due diligence, insufficient operational capacity, threats to independence and clients' best interests, and inadequate provision of information to clients. Those factors will not necessarily be present, or present to the same degree, merely because a firm represents a large number of funded consumers.

Two firms may therefore each act for thousands of consumers using TPLF while presenting materially different regulatory risks because their funding structures, financial exposure, governance, insurance arrangements, resources and dependence upon the relevant claims are different.

CORLA accordingly considers that the appropriate approach is to define the regulatory perimeter clearly, but to calibrate the more onerous requirements which follow by reference to evidenced indicators of risk. This would enable the SRA to address the harms identified through its supervisory and investigatory work while avoiding unnecessary cost and regulatory burden in arrangements which do not exhibit those characteristics.

In CORLA's view, that approach best reconciles the objectives which CORLA and the SRA share: protecting consumers, maintaining high professional standards and public confidence, while preserving responsible funding arrangements which enable consumers to obtain access to redress that may otherwise be economically inaccessible.

CORLA's principal concern is not with the regulatory objective, but with ensuring that measures directed at risks identified in parts of the HVCC sector are not applied indiscriminately to materially different forms of funded group litigation.

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

Yes.

CORLA agrees that it is helpful for the SRA to specify the professional conduct requirements that apply when solicitors use and/or arrange third-party litigation funding ("**TPLF**") for client matters.

TPLF plays an essential role in securing access to justice, particularly in collective consumer claims and other claims where the cost of litigation would otherwise be prohibitive. CORLA's position is that without third-party funding, many collective and group actions would be unlikely to proceed at all. That is especially so where claims require substantial expenditure on disbursements, expert evidence, adverse costs protection and case administration. TPLF is therefore not merely a commercial funding mechanism - in many cases, it is an important means by which meritorious claims can be brought and legal rights can be vindicated and without which such claims would not be possible.

Against that background, CORLA supports regulatory clarification that assists solicitors, clients and funders to understand the professional obligations that apply in funded litigation. The areas identified by the SRA are fundamental obligations which solicitors should already be observing, namely maintaining independence from the funder, acting in the client's best interests, protecting confidentiality, and ensuring that confidential information is shared only with informed client consent.

CORLA considers that stating these obligations expressly in the context of TPLF is helpful for three reasons.

First, it provides a clear reference point for solicitors and law firms. The use of TPLF can involve complex arrangements, and the commercial interests of funders will not always be the same as those of clients. A specific provision in the Standards and Regulations should assist firms in identifying, managing and documenting the professional obligations that already apply in that context.

Secondly, it provides reassurance to clients. Clients should understand that, even where a third-party funder is involved, their solicitor's professional duties remain owed to them and are not diluted by the involvement of a funder. That is particularly important in considering how the funding arrangement may apply to settlement, confidentiality, termination rights or deductions from any recovery.

Thirdly, express requirements should also assist funders. Reputable funders will benefit from a clear and consistent statement of the regulatory boundaries within which solicitors and law firms must operate. This should reduce uncertainty, promote compliant behaviour and help support confidence in the funded litigation market.

CORLA therefore agrees with the SRA's view that specifying these requirements is a proportionate and useful step. It is understood that these requirements would reinforce existing core professional duties rather than impose a materially different regulatory standard and it would therefore be helpful to make this clear. The SRA's own impact assessment similarly identifies the proposal as largely a reinforcement of existing fundamental obligations, with any additional burden likely to be minimal and outweighed by the benefit of greater clarity

**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?**
CORLA agrees with the areas of professional conduct suggested by the SRA.

The proposed areas are appropriate and address the core professional risks that can arise in funded litigation. In particular, CORLA agrees that any regulatory provision should expressly require solicitors and law firms to:

- maintain independence from the funder;
- act in the best interests of the client;
- disclose confidential information to the funder only with the client's informed consent; and
- provide written confirmation to clients and funders of those obligations, and to clients that the funder is not regulated by the SRA.

Those areas are consistent with the principal risks that CORLA has identified in relation to TPLF, including appropriate boundaries to avoid funder influence over litigation strategy or settlement, conflicts between the funded party and the funder, and concerns around the circumstances in which funding may be withheld or terminated.

CORLA agrees that these issues are best addressed by encouraging and enforcing compliant behaviour by solicitors and law firms, rather than by creating unnecessary obstacles to the availability of funding. It is important that any regulatory response preserves the ability of claimants to obtain

funding for meritorious claims, particularly in consumer actions, while ensuring that solicitors remain firmly focused on their duties to clients.

CORLA does not consider that the SRA's proposed list omits any obvious core area of professional conduct for the purposes of Questions 2 to 4 of this consultation.

**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.**

Yes.

CORLA agrees that the proposed professional conduct provisions identified in Questions 2 and 3 should apply to all solicitors and law firms using and/or arranging TPLF. CORLA does not see a principled reason to restrict the scope of these core professional conduct requirements, which would apply in any event.

The obligations identified by the SRA are fundamental professional duties. A solicitor's independence, duty to act in the client's best interests, obligation to protect confidential information, and obligation to manage conflicts should apply consistently in all funded matters, irrespective of claim type, client type or litigation forum.

CORLA recognises that different forms of litigation may justify different levels of procedural, supervisory or regulatory intervention. For example, CORLA has previously noted that the CAT already has a significant supervisory role in collective proceedings, including scrutiny of funding arrangements, and that it would not necessarily be appropriate to impose identical regulatory mechanisms across all litigation contexts.

However, that distinction does not justify limiting the application of the core professional conduct requirements proposed here. The question here is not whether all TPLF arrangements should be subject to the same level of broader regulation, notification, risk assessment or court oversight (which we deal with below). Rather, it is whether solicitors and law firms should be subject to the same core duties when they act in matters involving TPLF. In CORLA's view, they should.

CORLA also agrees with the SRA that applying these requirements to all solicitors and firms using and/or arranging TPLF is unlikely to impose a disproportionate burden. The requirements largely restate duties that solicitors and firms should already be meeting. The additional requirement to confirm certain obligations in writing should be capable of being addressed through standard form client and funder communications, adapted as appropriate to the case.

Nor does CORLA consider that the breadth of the provisions is likely to place an undue burden on smaller firms. TPLF is most commonly used in larger or more complex claims, including collective, group or high-volume litigation, where the firms involved should already be devoting appropriate time and resource to funding, risk, compliance and client-care issues. The SRA's own assessment notes that only a small proportion of firms use and/or arrange TPLF for consumer claims and that available information suggests such funding is predominantly used by medium-sized and large firms, with no sole practitioners identified as using TPLF for consumer claims.

CORLA therefore supports the proposed scope. The requirements should apply to all solicitors and law firms using and/or arranging TPLF, while any more detailed or burdensome obligations, such as notification, prescribed risk assessments or orderly closure planning, may appropriately be targeted to the specific categories of claim or funding arrangement where the SRA has identified a greater risk of consumer harm.

**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?**

CORLA supports the aim that clients should be informed of critical issues before entering into any agreement relating to litigation. Much of this is already mandated e.g. information on methods of financing the litigation including a home insurance policy or information in relation to ATE products. With respect, since many information provisions are already prescribed under the professional conduct requirements, we believe the appropriate focus is one of policing rather than doubling down on those obligations by repetition.

CORLA supports transparency and ensuring clients understand what they are agreeing at the outset. When for instance clients enter into a Conditional Fee Agreement solicitors provide an explanation of the terms of the CFA. Good practice makes that as simple as possible since the CFA can be long and complex

CORLA's concern is that there are typically a number of documents which have to be provided to clients in relation to a funded matter (for example comprising the engagement letter, funding agreement, insurance policy and associated explanatory notes). Against that background, we are concerned that adding another, prescribed document over and above existing requirements will make it difficult to strike the balance in providing clients with a comprehensible explanation and the risk of confusing clients. CORLA questions the true benefit received by the consumer by simply adding another long document to the pack at the beginning and to what extent the provision of it will simply tick that box without actually benefitting the consumer. Given funding arrangements also vary in structure, we consider it better to leave discretion to the law firm as to how best to provide and explain the documents and key information.

There are important issues for consumers in relation to third party funding but in CORLA's view this should be as simple as possible so that it may be properly understood. By way of example the manner in which solicitors will charge, and the success fee element relates to the CFA/DBA and associated information which should be provided in relation to that. Similarly, an explanation of adverse costs and ATE should be provided in relation to the ATE policy and an explanation of it. The problem with the list proposed is that it covers a range of issues that are otherwise provided for. CORLA's view is that any list of prescribed information should be condensed to core essentials necessary for the potential client to make an informed decision with discretion to the solicitor as to how this and other required information is provided to best present this to the client.

CORLA also notes that there is a potential sequencing issue with the SRA's proposal. In large group litigation, it is common practice for law firms to arrange and secure funding for the litigation, where the firm deems that such funding may well be in the future clients' best interests, before any clients are onboarded. This is likely to arise where it is anticipated that consumers will want a funded/insured option given the scale and costs of the litigation and the ability for this to be explained to clients as part of the marketing campaign at the outset to increase awareness about the claim and invite consumers to check if they're eligible (and for which funding is often required). This means that often the litigation funding arrangements will already have been agreed between the law firm and the funder as to the terms which will be offered before a client signs up to join a group action. Where clients are interested in joining, they will typically receive further information about the funding and insurance arrangements before entering into the engagement letter and may need to individually join and agree to the funding and insurance agreements by way of adherence depending on the specific engagement and funding structure in place. CORLA notes that the clients have the benefit of the mandatory 14-day cooling-off period if they are unhappy with the arrangements or have second thoughts. The important point is that clients are provided with the critical information in respect of the proposed funding arrangements before they sign up to the litigation to allow them to make an informed decision as to whether to join the claim or not. As explained above, CORLA believes that this critical information is already otherwise mandated and is concerned that adding a further document to clients' already lengthy onboarding process, which repeats information already set out elsewhere, could serve to confuse clients and even potentially deter them from signing up and accessing justice.

**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?**

CORLA believes that the key information relating to the LFA and funder should be limited to the important information about third party funding as follows:

1. The client's duties to the funder and what happens if they breach them.

2. How the funder's return will be calculated in the event of a successful claim. It is vital for clients to understand what portion of the damages will be taken by the funder. This can be a real issue at the end of the process. As suggested, we agree that a worked example may assist.

3. What happens in the event of termination of the funding, by client or funder, whatever the cause.

4. What happens if the claim is not successful and how any adverse costs will be covered.

**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?**

CORLA recognises the value in the SRA having sufficient oversight as a regulator, and its objective of trying to better understand the emerging risks in the HVCC sector. There is a distinction to be drawn between those firms undertaking purely HVCC work, with limited sophistication in this area, and those firms who have experience in bringing large scale group litigation claims on behalf of consumers, and who do so by well-established practices.

In respect of the latter, the SRA already possesses extensive powers to investigate firms, request information and take regulatory action where required. Firms and solicitors are already regulated in respect of risk and governance arrangements, which apply irrespective of whether or how a case is funded. It is CORLA's view that the existing regulatory framework is sufficient in that regard and the consultation does not explain why it is not, nor why additional routine reporting is necessary where there is no evidence of elevated risk.

Drawing a distinction between the two, CORLA sees value in the SRA having appropriate visibility of third-party litigation funding arrangements, where this is necessary to enable it to identify and address genuine regulatory risks at an early stage. It is CORLA's view that such necessity is limited to certain arrangements in the HVCC sector and not more broadly. Consequently, the proposal in its current form is not sufficiently targeted or proportionate.

Third-party funding can, where properly structured and managed, play an important role in facilitating access to justice, particularly in group and collective proceedings where individual consumers and SMEs would otherwise be unable to vindicate relatively modest claims. Any regulation linked to third-party funding should therefore be proportionate, targeted and sensitive to the key role it plays. The SRA should avoid creating a framework that may inadvertently discourage the use of responsible funding arrangements.

A distinction should also be made between the existence of third-party funding and the existence of a regulatory risk arising from third party funding. CORLA does not consider that the use/existence of third-party funding should itself be considered an indication of consumer risk. The SRA's principal concerns relate to the risks arising in certain parts of the HVCC sector, including risks relating to firm financial stability, reliance on third parties and poor consumer outcomes. Those risks do not necessarily arise simply because a claim is funded by a third party. Third-party funding is used extensively in sophisticated group litigation where there are substantial safeguards, experienced claimant firms, professional funders and established governance arrangements in place. Any notification requirement should therefore be directed towards the risk that the SRA is seeking to identify and address, within the HVCC sector, rather than simply treating the existence of third-party

funding as itself an indicator of regulatory risk.

With that background, CORLA is in principle supportive of a proportionate notification in limited circumstances. The proposal in its current form is not sufficiently targeted or proportionate and as it stands imposes an unnecessarily burdensome notification requirement irrespective of the scale and sophistication of the consumer claim. It also gives no consideration to the nature of the funder or the extent to which the case accounts for a significant proportion of the law firm's work.

The SRA should consider limiting the proposal to funding arrangements which fall within the HVCC sector, and which involve particular characteristics which give rise to regulatory concern. Within that there should be clearly defined thresholds or criteria for notification, such as the scale of the funding arrangement, the number of consumers affected and the financial exposure of the firm based on the proportion of its work which the case and/or similar cases represent. Consideration could be given for example to differentiating between funders who have voluntarily joined the Code of Conduct for the Association of Litigation Funders, who are publicly listed and/or have a lengthy track record with law firms in the sector and those who do not. As regards law firms, thresholds could be created by reference to whether the case/funding constituted a minimum proportion of the firm's revenue and/or borrowing in any given year and/or whether the funding is non-recourse if the case does not succeed. The information required should be strictly limited to the information necessary for risk identification and supervision to provide the SRA with information they can meaningfully use to identify cause for concern. It should not require disclosure of privileged or confidential information concerning the substance or strategy of the litigation.

What is also critical, is that the SRA is not, as part of the notification, concerning itself in the mechanics of an arrangement and such notification would not involve approval or endorsement by the SRA. Indeed, any notification should not create any inference that the arrangement is inherently risky or that the firm requires enhanced supervision.

**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?**
**What positive impacts would you anticipate from this change, if implemented?**

A properly designed notification process could have some positive impacts.

The SRA would have high level oversight of the extent of third-party funding in the consumer claims market. This may assist the SRA in identifying emerging systemic risks, particularly where a particular funder has relationships with multiple firms or where funding arrangements create material risks to the financial stability of a firm. It is noted that the SRA has identified improved visibility of such risks as one of the principal reasons for the proposal.

Notification may facilitate early engagement by the SRA with firms undertaking HVCC work, and encourage early identification of potential risk areas, to enable those firms to address them before they result in consumer harm. Such instances are likely to be limited though – as has in practice proved to be the case to date. It would also be important that the SRA would request information that it would be able to interpret and use for its supervisory role. It would also be important that the SRA understands, for example, distinctions between size and resources of funders and their track record.

Appropriate regulatory oversight may help to maintain public confidence in third-party litigation funding. It is important, however, that the regulatory framework distinguishes between funding arrangements which create genuine consumer risks and those which provide an important and legitimate means of facilitating access to justice. It also needs to draw the right balance on the supervision of law firms and not seeking to regulate funders indirectly, which is the subject of separate CJC recommendations.

There are also potential unintended negative impacts which the SRA should consider.

A notification requirement which is perceived as applying because litigation funding is inherently problematic and/or which is overly onerous could discourage the use of funding in meritorious consumer and collective claims. This would be particularly undesirable where consumers would

otherwise have no realistic means of pursuing claims because of the prohibitive cost and complexity of litigation and in circumstances in which the vast majority of funded claims proceed without regulatory concerns arising.

There is also a risk that regulatory requirements could increase the cost and administrative burden associated with funded claims. Those costs may ultimately be borne by consumers, either directly or through the economics of the funding arrangement.

Any reporting regime should therefore be designed so that it improves regulatory intelligence without creating unnecessary barriers to legitimate funding or increasing the cost of access to justice.

**Would you foresee any challenges for law firms in complying with the notification requirement?**

CORLA considers that there would be a number of practical challenges. The proposal risks creating a disproportionate compliance burden for firms engaged in legitimate, well-regulated funding arrangements that facilitate access to justice. A desire of the SRA to have greater visibility alone is not sufficient to justify a continuing reporting obligation on already regulated firms. It also needs to be carefully calibrated in these circumstances as to what information is genuinely useful to the SRA in its supervisory function. It would also need to be designed so that any notification requirements did not delay the ability of firms to progress funding arrangements, particularly for example where limitation issues might be involved and/or to progress the case/meet case deadlines thereafter.

Proportionality

CORLA is particularly concerned by the proposal not to introduce any materiality threshold. This would require firms to notify the SRA of all funded consumer claims regardless of the scale of the arrangement, the level of financial exposure involved in terms of the firm's overall financial position (and whether the funding is recourse or non-recourse) and the proportion of the firm's case load that the case represents.

This approach risks generating substantial volumes of information of limited regulatory value/which may be difficult to interpret while increasing administrative costs for firms and the SRA alike. It may also make it more difficult for the regulator to identify genuinely problematic arrangements amongst a large volume of routine notifications. It may be worth considering cases or law firms where issues have arisen and reporting notifications could be tailored accordingly. For example, considering whether funding is non-recourse, whether there is separate insurance in place covering clients, the degree of exposure to a particular funder, whether that funder is listed, has agreed to the voluntary code under the Association of Litigation Funders and/or has a reliable track record in prior claims.

Changes to funding arrangements

Any proposal would need to clearly define the reporting requirements and there should be a distinction between the initial notification of a funding arrangement and subsequent amendments. A requirement to notify the SRA of every material amendment, change in funded population or adjustment to funding terms could create a substantial administrative burden without necessarily improving regulatory oversight so would need to be framed carefully.

Additionally, collective claims may involve more than one funder, different funding arrangements for different groups of claimants and changes in funding as litigation progresses. The notification process needs to accommodate such structures without requiring firms to make multiple overlapping notifications.

Confidentiality and privilege

The information required by the SRA must be carefully circumscribed. It is CORLA's view that firms should not be required to provide privileged material, information as to litigation strategy, confidential advice or commercially sensitive information beyond that which is genuinely necessary for regulatory

risk assessment. The SRA should also avoid trying to second guess commercial terms that have been agreed unless they appear contrary to regulatory obligations. In our experience law firms negotiate very hard with funders often through a lengthy process to obtain the best terms available for clients but which is ultimately subject to what a commercial funder is willing to agree, failing which claims could not be brought at all.

Duplication

Consideration should be given to any notification leading to a duplication of reporting by firms. Firms should not have to provide the same information repeatedly through separate notification and supervisory processes.

Timing

The requirement to notify should allow sufficient time for firms to complete internal governance processes. A "prompt" notification requirement should not operate in a manner which creates technical breaches as a result of administrative timing, particularly where funding arrangements are negotiated under significant time pressure.

There should be clearly defined parameters on when an arrangement becomes notifiable, clearly specifying at what stage of the funding process. This may be different for different claims and is particularly important in group litigation, where funding arrangements may develop over time and may involve staged funding, multiple funding agreements, portfolio arrangements or amendments to an existing facility. Where any notification requirement is introduced, it should be clear as to when the SRA considers the notification has been triggered.

Cost

Finally, the SRA should recognise that compliance costs are not trivial, particularly for firms conducting large-scale collective proceedings. A notification may appear straightforward in isolation, but the cumulative burden can become significant where a firm has numerous funded matters or where funding structures evolve during long-running litigation.

**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?**

CORLA agrees that there is a legitimate regulatory interest in understanding the extent to which law firms are reliant on third-party litigation funding and in ensuring that firms undertake appropriate due diligence before entering into funding arrangements. It is reasonable for the SRA to require firms to maintain records regarding the existence of funding arrangements, the identity of funders, the source of funding, any potential conflicts of interest and the steps taken to satisfy themselves that funding is available and lawful.

However, the proposal appears to be based primarily on concerns arising within the High Volume Consumer Claims (HVCC) sector and does not sufficiently distinguish between that sector and other forms of funded litigation, particularly large-scale group actions and GLO claims.

The characteristics of the HVCC sector identified by the SRA, including very high client volumes, standardised claims processes, funding linked to claim acquisition, and concerns regarding firms' operational capacity, are not necessarily present in group litigation. Large group actions are typically heavily scrutinised by funders, insurers, investors, counsel and experts before funding is committed. The economics, risk profile and governance of such claims are fundamentally different from those associated with mass-volume claims acquisition models.

The consultation repeatedly refers to concerns that some firms may have taken on excessive numbers of clients, become overly dependent on funding, or failed to undertake adequate due diligence. Those concerns may justify targeted intervention in the HVCC sector. However, they do not necessarily justify imposing the same requirements on all funded consumer litigation irrespective of the nature and structure of the claim. It is noteworthy that in large-scale group actions and GLO claims where a number of individuals are part of the same claim, a larger number of clients in fact reduces the risk for each client as costs and risks are spread across the group. This is reflected, for example, in the cost of After the Event insurance, which seeks to reflect the costs incurred by the Defendant. That cost spread amongst a larger number of clients reduces the cost for each client.

More fundamentally, the proposal risks requiring firms to perform assessments that fall outside the SRA's proper regulatory remit. The SRA's role is to regulate solicitors and law firms, not to assess the commercial merits of litigation investments or to regulate funders.

We do not consider it appropriate for the SRA to require firms to prepare assessments of matters such as the legal merits of claims portfolios, prospects of success, likely quantum, enforcement prospects and anticipated defence strategies for regulatory purposes. These issues are already analysed extensively by the parties that bear the financial risk of the litigation, namely funders, insurers and investors. In many cases, funding is only committed following extensive due diligence by funders, detailed advice from counsel, expert evidence and sophisticated financial modelling. There are also issues related to legal and litigation privilege that could arise if these were requirements.

The SRA is not a litigation funder, insurer or investment decision-maker and should not place itself in a position where it is effectively second-guessing commercial funding decisions. Nor should firms be required to prepare documents which could be interpreted as inviting the regulator to review or endorse assessments of litigation merits.

The more appropriate focus for regulatory oversight is on matters genuinely connected to the SRA's objectives, including:

- the lawfulness and provenance of funding;
- conflicts of interest;
- financial stability of the law firm;
- client protection;
- adequacy of governance arrangements;
- transparency with clients; and
- the existence of appropriate insurance and risk management measures.

In this regard, the consultation appears to overlook an important point. The examples of consumer harm cited by the SRA occurred in circumstances where the SRA already possessed significant regulatory powers and oversight.

**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?**

We agree with some of the proposed factors, but not all of them.

In particular, we support requirements for firms to consider:

- the identity of the funder;

- the source of funding;
- sanctions and anti-crime risks;
- potential conflicts of interest;
- the extent to which funding is committed and available;
- the impact of funding arrangements on the firm's financial stability (including whether they are non-recourse);
- the adequacy of any ATE insurance or alternative adverse cost arrangements; and
- funding concentration in a particular type of case.

These matters are closely aligned with the SRA's regulatory objectives and the protection of clients.

However, we do not agree that firms should be required to prepare regulatory risk assessments covering:

- prospects of success;
- quantum assessments;
- enforcement prospects;
- anticipated defence strategy;
- substantive legal analysis of the claims portfolio; or
- funding terms.

The latter issues are central components of the commercial funding process and are already scrutinised extensively by funders, insurers and investors who bear the economic consequences if those assessments prove wrong and typically with need for counsel advice on a number of these points.

Requiring firms to produce such analyses for regulatory purposes risks blurring the distinction between the role of a regulator and the role of a litigation funder. The SRA should be concerned with whether firms are acting competently, honestly and independently, not whether the regulator agrees with a firm's assessment of the underlying litigation. It could also discourage funders from funding group actions which would significantly limit the consumer's access to justice.

CORLA would also encourage the SRA to focus on the defendants' solicitors conduct. The Post Office litigation has shed light on bad behaviour on behalf of defendants which their solicitors would have been aware of. The defendants' ability to drag out unnecessary litigation and increase cost often with the aim of putting pressure on funding/insurance arrangements, particularly when there is clear evidence of wrongdoing, can have a terrible effect on the consumer's ability to get compensation as it drives up the cost of the litigation. This can of course also increase the regulatory risk.

If the SRA wishes to address the concerns identified in the consultation, a more targeted approach would focus on factors that appear genuinely connected to the examples of harm identified, namely:

- Adequacy of ATE insurance

The consultation identifies concerns regarding adverse costs exposure and what happens when claims do not proceed as expected. The existence and quality of ATE insurance is therefore likely to be a more significant client protection issue than detailed regulatory scrutiny of claim merits.

- Committed capital and funding certainty

A key risk identified by the SRA is that funders may fail to meet commitments or cease funding unexpectedly. The relevant question is therefore less whether the litigation has merit and more whether the funding is genuinely capable of supporting the litigation through its anticipated lifecycle and the funder track record does not create any concerns. The commitments given by funders for example under the ALF Code, use of funders who are publicly listed and/or with a meaningful record of funding in prior cases may all be relevant considerations.

- Verification of information provided to funders

Where harm arises, it may arise because funders, insurers or investors have made decisions based on inaccurate assumptions, overly optimistic projections or incomplete information. Consideration could therefore be given to whether firms have appropriate governance and verification processes in place regarding information supplied to funders and insurers and for example whether this is independently supported by an opinion from counsel in appropriate cases.

- Operational capacity

The consultation repeatedly refers to concerns about firms taking on large numbers of claims without adequate resources. This suggests that staffing, supervision, systems and operational capacity are likely to be more relevant regulatory concerns than requiring firms to prepare extensive analyses of litigation merits. Any consideration of operational capacity will require an understanding of resource needs at different stages of cases – for example at the outset whilst onboarding and obtaining information from clients, progressing the litigation and updating clients, and settlement/judgment.

In summary, the SRA's concerns appear to arise primarily from experiences in the HVCC sector. Those concerns should not automatically be extrapolated to sophisticated funded group litigation. The regulator's focus should be on client protection, financial stability, governance, transparency and funding integrity, rather than requiring firms to prepare detailed assessments of litigation merits and defence strategies that are already the subject of extensive scrutiny by professional funders and insurers.

**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?**

CORLA recognises the value of proportionate advance contingency planning where a firm's closure could materially affect consumers. Disorderly closure can cause significant disruption and detriment, particularly where large numbers of consumers are affected. CORLA understands that the SRA is proposing these requirements based on its experience of the closure of law firms in the High Volume Consumer Claims (HVCC) sector, which were using or arranging third-party litigation funding.

We are not, however, persuaded that this necessarily requires an extensive new standalone regulatory exercise in the form proposed. Any additional requirement should promote practical preparedness, not create a burdensome recurring compliance exercise.

As the consultation recognises, firms are already required to identify and manage material business risks, monitor financial stability and viability, notify the SRA of indicators of serious financial difficulty and, where they will cease to operate, effect an orderly wind-down. Any new closure-plan requirement would therefore be additional to existing substantive duties and given the limited number of incidents which have arisen across firms using third party funding arrangements, be disproportionate to the risk.

Whilst there may be value in documenting core arrangements in advance, there are in practice limits to what can usefully be specified before the cause and circumstances of a closure are known. Precise resourcing, the timing and mechanics of file transfers, and the availability of alternative representation may depend on the circumstances prevailing at the time.

If the proposal proceeds, CORLA recommends that the SRA provide a concise, standardised and non-exhaustive template identifying the core matters firms must address, while allowing the content to

remain proportionate to the firm's business and risk profile. It should not become an exhaustive checklist or require speculative planning for every conceivable cause of closure.

Firms should also be able to incorporate or cross-refer to relevant material already contained in existing risk assessments, business continuity arrangements and compliance documentation. This is particularly important because the proposed TPLF risk assessment already covers the firm's financial position, scenario analysis, claim prospects, costs, adverse costs, funding arrangements and conflicts. Requiring the same analysis twice would add burden without a corresponding consumer benefit.

The proportionality of the closure-plan requirement should also be assessed cumulatively with the separate notification and TPLF risk-assessment requirements proposed in the consultation. Its administrative impact should not be considered in isolation. Additional fixed compliance costs and demands on senior management time may affect the economics of pursuing modest-value consumer claims and should be weighed alongside the SRA's consumer-protection and access-to-justice objectives.

CORLA also has reservations about the proposed requirement that the orderly closure plan be updated every six months. In the ordinary course, the plan should be reviewed annually and following any material change to the firm's financial circumstances, funding arrangements, business model or other matters relevant to the plan. Where an annual review identifies no material change, a recorded confirmation that the plan remains current should suffice. Substantive amendment and renewed senior-level approval should be required where a material change has occurred, not simply because a fixed period has elapsed.

If implemented, the SRA's guidance should also make clear that the requirement is to take reasonable and proportionate steps, assessed by reference to the information reasonably available when the plan is prepared or reviewed; it is not a guarantee that an orderly closure will always be achievable. Events outside a firm's control, including unforeseeable acts or decisions of receiving firms, funders, insurers, office-holders or other third parties, should not, without more, be treated as evidence of regulatory non-compliance.

Where the SRA has reasonable concerns about a firm's financial position, business viability or operational resilience, it can address those concerns through its existing supervisory and information-gathering powers. The consultation itself envisages the SRA using notifications and other information to identify and respond to emerging risks.

CORLA therefore recognises the value of proportionate advance closure planning, but sees a risk that this becomes disproportionate and considers that any final requirement should be clearly defined, standardised, limited to matters capable of meaningful advance planning, proportionate to the firm's circumstances and designed to avoid duplication with existing regulatory obligations. Consideration should be given to limiting such obligations to firms and/or cases where third party funding constitutes more than an agreed percentage of a firm’s revenue/resource.

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

Broadly, yes, as categories of relevant consideration, although not all can be addressed to the same degree of detail in advance and without being able to foresee the particular circumstances in which any closure should prove necessary. This response draws on CORLA’s experience of HVCC firm closures involving third-party litigation funding.

The proposed factors cover the principal matters relevant to an orderly closure, including scenario planning, risk monitoring, financial and staffing resources, communications with clients and other parties, safeguarding client money, transfer of live files, storage of closed files, professional indemnity insurance run-off cover and other financial liabilities.

CORLA's principal concerns are the level of detail expected and the need to avoid duplication with the proposed TPLF risk assessment.

The two requirements should serve distinct purposes. The TPLF risk assessment should identify risks to the firm or funded claims and how they are monitored and managed. The orderly closure plan should focus on the practical arrangements needed to protect clients if the firm is nevertheless unable to continue operating.

The proposed TPLF risk assessment already requires extensive consideration of the firm's financial position, scenario analysis, legal assessment of claims, costs forecasts, adverse costs exposure, funding terms and potential conflicts. Reproducing substantially the same material in an orderly closure plan would increase regulatory burden without necessarily improving consumer protection.

The SRA should also distinguish between steps within the firm's control and outcomes dependent on third parties. A firm can, for example, plan a process for transferring live matters, but cannot necessarily identify in advance which firms will be willing and able to accept them, whether a funder or insurer will consent to particular arrangements, or what decisions an insolvency office-holder may take.

CORLA therefore recommends that the SRA's guidance:

- specifies the expected level of detail and makes clear that proportionality applies;
- permits appropriate cross-reference to the TPLF risk assessment and existing compliance documentation;
- makes clear that firms are not expected to predict every conceivable circumstance that could cause closure but that this be limited to those cases or funding arrangements which reach a certain threshold of a firm’s revenue and corresponding risk;
- distinguishes between steps a firm can reasonably plan and control and outcomes dependent on third-party consent, conduct or availability; and
- focuses the plan on practical arrangements that can usefully be established in advance.

This would produce a more effective and usable document while still addressing the consumer-protection concerns identified by the SRA.

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

CORLA does not consider that further mandatory factors are necessary.

The proposed factors already encompass the principal operational, financial and client-protection matters relevant to an orderly closure. Adding further prescribed factors would increase the length and complexity of the document without necessarily improving its practical effectiveness.

The objective should be a requirement for a  concise, operationally useful plan in appropriate circumstances, not an exhaustive document intended to anticipate every possible eventuality.

Rather than expanding the mandatory list, CORLA recommends that the SRA provide a concise standard template and practical guidance explaining how the existing headings should be addressed.

For example, under the existing headings of scenario planning and risk monitoring, the SRA could give illustrative, non-exhaustive examples of circumstances that may be relevant, such as material deterioration in liquidity, loss or withdrawal of material funding, threatened creditor enforcement or a material adverse development affecting a substantial claims portfolio.

This would help firms understand the SRA's expectations while preserving flexibility for different business models, types of claim and funding arrangements.

Firms should remain free to include additional matters material to their circumstances, but CORLA does not consider that further factors should be prescribed universally.

**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?**

CORLA supports the use of defined thresholds rather than applying the proposed requirement to all firms using or arranging third-party litigation funding.

CORLA does not express a firm view on the precise thresholds selected, but believes this should be calibrated by reference to the risk threshold of a failure in those arrangements requiring closure. CORLA would welcome a clearer explanation of the evidence and methodology underpinning any such analysis including how they were calibrated by reference to the risks and firm failures identified through the SRA's investigations and declaration exercise.

Greater transparency would help firms and stakeholders assess whether the thresholds are appropriate and proportionate. It would also assist if the SRA could indicate, using the declaration data available to it, approximately how many firms would currently be captured by each threshold, providing useful context on the likely reach of the proposal.

CORLA does not propose alternative thresholds at this stage. The extent to which a firm is dependent on a third party funding arrangement, whether it is recourse or non-recourse, what extent of a firm's work it covers and whether clients are separately covered by ATE arrangements are likely to be the key factors for consideration.

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

CORLA agrees with some, but not all, of the assumptions and conclusions in the Initial Regulatory and Equality Impact Assessment ('the impact assessment').

CORLA agrees that the proposed requirements concerning independence, clients' best interests and confidentiality largely reinforce fundamental professional obligations that solicitors and law firms should already observe. Expressly stating those obligations in the context of third-party litigation funding may provide useful clarity for firms, clients and funders, but should not itself impose a material additional burden.

However, CORLA does not agree that the remaining proposals can presently be assessed as having a significant net positive regulatory impact without further evidence and analysis. In particular, the impact assessment appears to consider each proposal substantially in isolation and does not adequately assess the cumulative effect of:

- a prescribed client information document;
- notification of every relevant funding arrangement, without any materiality threshold;
- the preparation, approval and six-monthly review of a prescribed TPLF risk assessment; and
- where the relevant threshold is met, the preparation, approval and six-monthly review of an orderly closure plan.

Taken together, those requirements may involve significant legal, compliance and senior management time, particularly for firms conducting multiple, complex or long-running group claims. The fact that fewer than one per cent of regulated firms may be directly affected does not establish that the burden on those firms is immaterial or proportionate. The relevant assessment is the nature and scale of the burden on affected firms and clients, and whether it is justified by evidence of risk in the particular category of work concerned.

The impact assessment also appears to proceed on the basis that many of the proposed activities are already undertaken by compliant firms and that the principal additional burden is documenting them. That assumption understates the scope of the proposals. A prescribed assessment of matters such as claim merits, quantum, enforcement prospects, anticipated defence strategy, funder finances and wider exposure goes beyond merely recording existing regulatory compliance. It may require firms to create, approve and repeatedly update substantial analyses, some of which are already addressed through funder, insurer, counsel and expert due diligence and some of which may involve privileged or commercially sensitive material.

CORLA is also concerned that the assessment insufficiently distinguishes between the use of TPLF and the existence of a regulatory risk arising from TPLF. The evidence cited by the SRA identifies concerns associated with particular business models and practices in parts of the HVCC sector, including excessive recourse borrowing relative to turnover, inadequate due diligence, insufficient operational capacity and disorderly firm closure. The SRA reports, for example, that 18 firms disclosed debt to a litigation funder exceeding their latest annual turnover. Those circumstances may justify targeted intervention, but they do not demonstrate that all funded consumer litigation presents an equivalent level or type of risk.

The assumptions concerning access to justice also require further examination. The impact assessment acknowledges the importance of TPLF to access to justice but assesses the likelihood of any significant adverse effect on the availability of funding as low, principally on the basis that many funders are committed to high standards. That does not adequately address whether the proposed requirements may increase transaction and compliance costs, delay the arrangement of funding, reduce funder appetite for certain claims, or make lower-value and more marginally economic consumer claims unviable.

In large-scale consumer and group litigation, third-party funding is often essential because individual claimants could not realistically pay their proportionate share of substantial legal costs, expert fees, disbursements and adverse costs protection as the case progresses. If increased regulatory cost or uncertainty causes responsible funders or law firms to withdraw from some claims, the practical result may not be that consumers select another funding model. It may be that the claims cannot be pursued at all.

The assessment should also recognise that law firms commonly negotiate robustly with funders to obtain the best reasonably available terms for clients. The ultimate terms available are, however, affected by the commercial risk that a funder is willing to assume and by market conditions. The SRA should not proceed on an assumption that the existence of a theoretically more favourable term means that the firm failed to act in clients' best interests. Nor should regulatory supervision become a process by which the SRA retrospectively second-guesses reasonable commercial negotiations, provided that the firm has acted independently, considered the available options, appropriately advised its clients and complied with its professional obligations.

CORLA therefore recommends that the final impact assessment:

- evaluates the proposals cumulatively and quantifies, so far as reasonably possible, implementation and recurring costs;
- differentiates between funding structures, claim types and firm business models according to evidenced risk and distinguishing between funding which is non-recourse/recourse;
- assesses the impact of notification and risk-assessment thresholds;
- considers the effect on the availability and commercial terms of funding for different categories and values of consumer claim;
- assesses possible duplication with existing regulatory duties and with due diligence undertaken by funders, insurers and other professional advisers;

- examines risks to privilege, confidentiality and commercially sensitive information;
- assesses the resources the SRA itself will require to process and use the information collected; and
- sets out measurable criteria by which the effect on consumer outcomes, competition and access to justice will be reviewed.

Subject to that further work, CORLA does not consider that the impact assessment yet demonstrates that proposals 2 to 5, in their current form, are targeted and proportionate or will necessarily produce the significant net positive impacts anticipated.

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

CORLA agrees that the proposals do not appear on their face to impose different requirements directly by reference to a protected characteristic. However, the initial equality assessment is necessarily incomplete and does not presently provide a sufficient basis for concluding that there will be no disproportionate adverse equality, diversity or inclusion impacts.

The SRA acknowledges that it has not been able to assess either the diversity characteristics of solicitors and firms using and/or arranging TPLF or the diversity characteristics of clients whose claims are funded through TPLF. It also acknowledges that this limits the extent to which it can make a substantive assessment of the effects on people with protected characteristics.

That evidential limitation is important. An absence of current evidence of disproportionate impact should not be treated as evidence that no such impact exists. Further analysis is required before final decisions are taken.

CORLA agrees that the proposals may have positive effects for consumers who require additional support to understand complex funding arrangements. The SRA's consumer research indicates that clients in vulnerable circumstances were more likely to report a lack of clarity in the information they received and insufficient support from their solicitor. Clear, prominent and accessible explanations of costs, deductions, risks, termination provisions and alternative routes may therefore improve informed decision-making.

However, the form in which information is prescribed is important. A longer or duplicative standard document will not necessarily improve understanding and may disadvantage consumers with limited literacy, limited English proficiency, disabilities affecting communication or information processing, or reduced digital confidence. The objective should be effective understanding, rather than the delivery of an additional document or the completion of a standardised process.

Any prescribed information requirements should therefore:

- use clear and concise language;
- avoid unnecessary duplication with the engagement letter, CFA or DBA, ATE documentation and other client-care materials;
- permit information to be provided in accessible and alternative formats;
- accommodate screen readers and other assistive technology;
- allow translated materials and interpretation support where appropriate;

- permit firms to supplement standard information with explanations tailored to the client's circumstances; and

- be subject to consumer testing, including testing with vulnerable and digitally excluded consumers.

The final assessment should also examine indirect effects on access to justice. Consumers who rely most heavily on funded models may include those who cannot afford to pay legal costs as a claim progresses, who have claims of modest individual value, or who would be unable to assume litigation and adverse costs risk. Compliance costs that reduce the availability of funding or make certain claims uneconomic may therefore affect financially disadvantaged consumers particularly strongly. That impact may also intersect with disability, age, race and other protected characteristics.

CORLA is also concerned that digital onboarding is treated principally as a source of risk rather than also as a means of widening access. Poorly designed digital processes may create confusion, but appropriately designed online systems can make legal services more accessible to consumers who face geographical, mobility, time or communication barriers. The SRA should therefore avoid requirements that unnecessarily restrict responsible digital innovation and should instead focus on whether onboarding produces informed and freely given decisions.

As regards law firms and solicitors, the assessment should consider whether fixed compliance costs could create disproportionate barriers for smaller firms and newer market entrants. Although the SRA's available information indicates that TPLF for consumer claims is predominantly used by medium-sized and large firms and that no sole practitioners have been identified, the SRA has not yet been able to analyse the diversity profile of affected firms or individuals. A regulatory framework that entrenches the position of the largest firms, or makes entry into funded consumer litigation prohibitively costly, could have longer-term implications for diversity, competition and innovation within the profession.

CORLA therefore supports the SRA undertaking a fuller equality impact assessment using claimant-level and firm-level data, appropriately anonymised and handled in accordance with data protection requirements. Pending that analysis, the conclusion should be expressed cautiously and should recognise the possibility of material indirect effects.

**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?**

Yes. CORLA considers that the SRA should examine the following additional factors and groups before finalising its proposals.

- Consumers who depend on funded arrangements to access justice

The SRA should assess the effect of the proposals on consumers who cannot pay legal costs or disbursements upfront, cannot accept adverse costs exposure and have claims that are not individually economic to pursue. Particular attention should be given to the risk that higher compliance and funding costs result in fewer claims being available on a funded basis or higher deductions from recoveries.

The analysis should distinguish between consumers who have a realistic free or paid alternative and those for whom TPLF is the only practical route to redress. The theoretical existence of an Ombudsman, redress scheme or self-representation option does not necessarily mean that it is an effective substitute for funded representation in a complex, disputed or high-value matter.

- Consumers in vulnerable circumstances

The SRA should undertake targeted analysis of consumers with disabilities, limited literacy or numeracy, limited English proficiency, mental health conditions, reduced digital confidence or limited access to digital services. It should also consider consumers experiencing financial hardship, because

such consumers may be particularly dependent on no-upfront-cost models and may be especially affected if the availability of funded representation contracts.

- Clients in existing and long-running proceedings

The SRA should consider transitional impacts on clients whose claims are already underway, particularly where funding arrangements, insurance and litigation strategy have been established on the basis of the current regulatory framework. Retrospective or poorly calibrated application could create uncertainty, require costly restructuring or disrupt ongoing claims without improving client protection.

- Smaller, specialist and diverse-led firms

The assessment should examine whether fixed and recurring compliance costs will affect smaller or specialist firms differently from larger firms with established compliance teams. It should also analyse whether any disproportionate impact arises for firms led or owned by people with protected characteristics. This information is presently missing from the initial assessment.

- Competition and market concentration

The proposals may unintentionally favour the largest law firms and funders, which are more able to absorb fixed compliance costs. This could increase concentration, reduce competition and make it harder for new or specialist firms and funders to enter the market. The SRA should assess whether the proposals might therefore reduce client choice or weaken, rather than strengthen, the resilience of the funded litigation market.

The same applies to notification. The involvement of one funder with several firms should not, without more, be regarded as evidence of excessive or inappropriate concentration. Relevant considerations may include the funder's capital base, portfolio diversification, jurisdictions, committed exposure, co-funding or insurance arrangements and the nature and correlation of the underlying claims. Funders and insurers will themselves ordinarily assess concentration risk. The SRA should explain what reliable conclusions it expects to draw from notification data and how it will avoid indirectly regulating funders through the supervision of law firms.

- The economics of lower-value consumer claims

The SRA should model the impact of additional costs on different claim values and success scenarios. An administrative cost that may be absorbed in a large claim can make a modest-value consumer claim uneconomic. Aggregate estimates should not obscure the possibility that the proposals will have different effects across claim types and claimant cohorts.

- Defendant conduct and litigation duration

The likelihood that a funded claim becomes more expensive or takes longer than anticipated is not determined solely by the claimant firm or funder. Defendant litigation conduct, interlocutory disputes, appeals, disclosure failures, changes in evidential position and court capacity can materially affect duration and cost. The regulatory assessment should avoid attributing all delay or increased expenditure to weaknesses in the claimant-side funding model.

The SRA should also consider whether prolonged or unnecessarily costly defence strategies may place pressure on funding and insurance arrangements and thereby affect consumers' practical ability to obtain redress. A balanced assessment should examine the wider litigation environment rather than considering claimant-side funding in isolation.

- Confidentiality, privilege and data security

The SRA should assess the risks created by requiring firms to record detailed legal merits, enforcement and anticipated defence analyses in a regulatory document available on request. These risks include disputes over privilege, the creation of sensitive documents that may be targeted in disclosure or cyber incidents, and the exposure of commercially sensitive funding information. Any

requirement should be confined to information necessary for the SRA's regulatory functions and should not require privileged substantive legal or strategic analysis.

- Relevant evidence sources

CORLA recommends that the SRA draw on:

- anonymised data from its HVCC declaration exercise, investigations, interventions and supervision pilot, grouped by funding model, claim type, firm size and the particular cause of harm;
- data on the number and profile of firms likely to be captured by each proposal and threshold;
- evidence from claimant law firms, including firms conducting established group litigation and GLO claims, not only firms operating high-volume claims-acquisition models;
- evidence from consumers and representative consumer organisations, including disability, financial inclusion and digital exclusion groups;
- evidence from professional funders, the Association of Litigation Funders, insurers, brokers, investors, counsel and costs specialists;
- judicial and court data concerning the duration, cost and management of funded group litigation;
- evidence from the Competition Appeal Tribunal and other jurisdictions or forums with experience of supervising funding arrangements;
- data on the availability, price and terms of funding before and after implementation;
- data on deductions from damages and net consumer outcomes across different funding structures;
- information on firm entry, exit, consolidation and market concentration; and
- post-implementation evidence concerning whether notifications and prescribed assessments have enabled the SRA to identify risks that would not have been identified through its existing supervisory and information-gathering powers.

The SRA's existing evidence base includes its interventions and investigations, thematic review, declaration exercise, stakeholder engagement, consumer research, Legal Services Board research and the Civil Justice Council's report. Those are relevant sources, but the final assessment should make clear which harms are associated with which funding models and business practices and should avoid extrapolating from a limited number of problematic firms to all funded consumer litigation.

Finally, CORLA recommends that any new requirements be potentially trialled on a test basis with a limited number of cases or firms first to consider whether the requirements and thresholds are clear and whether the information collected is useful. Any new requirements should also be subject to a defined post-implementation review. That review should measure not only compliance and consumer complaints, but also the availability and cost of TPLF, the number and type of funded consumer claims, net recoveries received by consumers, market concentration, firm closures, and impacts on vulnerable or otherwise disadvantaged consumers. The SRA currently proposes to monitor implementation and evaluate whether the requirements achieve their objectives without unintended consequences. CORLA supports that approach, but considers that the metrics, baseline data and review period should be published in advance.