

Is third party funding effectively regulated in the UK?

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The study says better transparency would protect the integrity of the dispute process.

A study shows that the market for litigation funding, otherwise known as third party funding, is firmly established for commercial disputes in the UK and is extending into cases involving ordinary citizens, such as personal injury and group actions.

Researchers from the Universities of Oxford and Lincoln warn that such developments mean that effective regulation is now needed to ensure clients have control in such disputes. They argue that more [transparency](#) would protect the integrity of the dispute process, as well as funders' interests.

The report concludes that claimants in England and Wales would have to

rely on ancient laws that protect a client's interest in dealings with a lawyer – the common law of 'champerty' and 'maintenance'. This was first invoked in medieval times to stop a third party from buying into someone else's lawsuit; but in the 21st century, the researchers argue it should be more widely interpreted to include third party litigation funders as well as lawyers.

There has been a significant increase in the last ten years in the number of suppliers of third party funding in England and Wales, says the report. Third party funders are companies that are capable of raising vast sums of money to allow claimants in civil litigation cases to take their case through the courts or arbitration. In return for their finance, the funders retain a share of any damages awarded.

Under forthcoming legislation, third party funders can include lawyers' firms that are the sole funders of litigation – where they are working with clients on the basis of a contingency fee, also known as 'damages-based agreements' or 'no win, no fee agreements'. Such arrangements are already common in the United States, are permitted in tribunals in England and Wales, and are due to be extended by the government under the Legal Aid, Sentencing and Punishment of Offenders Bill. The report concludes that this development in the UK should give cause for concern.

Co-author Professor Christopher Hodges, Head of the Centre for Socio-Legal Studies at Oxford University, and Erasmus Professor of the Fundamentals of Private Law at Erasmus University, the Netherlands, said: "A third party funder should be kept at arm's length in the litigation process. For instance, funders should not determine the terms of a settlement. There is the danger that funders might opt for a lower settlement than the client might want in order to resolve a case quickly.

"Similarly, we do not want to see a situation where the third party funder

and a lawyer's firm are in collusion against their client's best interests. This does not appear to have happened yet in the UK, but we want to ensure that any risk of it happening in the future is removed. Clients need more legal protection as otherwise there is potential for third party funders to control claimants' cases for their own advantage."

The report of over 150 pages, '*Litigation funding: Status and Issues*', examines third party funding in its many forms in different parts of the world.

The report shows that, to date, almost all of the claimants using third party funding have been commercial clients, usually small and medium sized companies, rather than private individuals. It suggests that full regulation would become essential if individual consumers start to engage third party funders to pursue their claims. The researchers conclude that there is less concern about the risks of third party funding for the business community.

Provided by Oxford University

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