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Consultation on a self regulatory code for third party funding

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Our members are mostly solicitors, who are all committed to serving the needs of people injured through the negligence of others. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues.

APIL welcomes the opportunity to provide written comment relating to the self regulatory code of conduct for third party funders, and the constitution of a self regulatory association.

As an organisation we understand that the self regulatory code for third party funding has been drafted predominantly with commercial enterprises in mind; however, we are also aware that a code of this kind will also impact on the area of personal injury law.

APIL believe that claimants should receive full and fair compensation. Damages have been carefully calculated by the courts and are purely compensatory¹. The polluter pays principle is fundamental to personal injury law as it allows an injured individual to pursue a claim against a well resourced defendant. It is not in the interests of justice or fairness, for costs which have arisen from the negligence of the wrongdoer to be paid by the innocent victim. The way in which third party funders operate means that a claimant will not keep 100 per cent of their damages as they will use some this to reimburse the third party funder. Access to justice is currently largely served by the healthy funding options that are available. However, we accept that

¹ *Livingstone v Rawyards Coal* [1880] 4 App Cas 25.

there are problems with funding options for certain claims, in particular multi party actions.

Third party funding could provide an option to claimants wishing to pursue a claim where there is no other funding available. Currently it would normally only be used in personal injury law for cases where other funding is not available, where prospects of success are under 50 per cent and when a waiver has been obtained from the SRA. APIL believes that third party funding can be beneficial to claimants where there is no other method of funding available, for example like a fund of last resort in the personal injury market provided they are fully regulated.

At the present time, it is difficult for APIL to make a clear statement about its opinion of the self regulatory code for third party funders as we are currently awaiting the outcome of the recommendations in Lord Justice Jackson's Review of Civil Litigation Costs, as well as Lord Young's Review of health and safety law and practice. Without knowing what the future holds in terms of the recommendations made in Lord Justice Jackson's report², published in January 2010, and in Lord Young's review it is difficult to see exactly how third party funding will take a more important role in personal injury law. For example, if there is a move towards non-recoverable success fees or after-the-event insurance then third party funding will be present in more personal injury cases and thus affect this area of law on a more regular basis. It could be that we would like to have more input in the drafting of the self regulatory code for third party funders post publication of the Ministry of Justices' consultation on Jackson LJ's recommendations and of Lord Young's Review.

We hope that our comments prove helpful to the committee and look forward to engaging with you further in the future.

Yours sincerely

A handwritten signature in blue ink that reads "Katherine Elliott". The signature is written in a cursive, flowing style.

Katherine Elliott
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² *Review of Civil Litigation Costs: Final Report*, Lord Justice Jackson, Published 2010.

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