

THIRD-PARTY FUNDING

THE LABEL DOESN'T FIT

Litigation Funders: The 'Loan Sharks' of Disputes?

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Why a catchy label doesn't survive contact with how third-party funding actually works, and where the real governance concerns lie.

It is a line repeated often enough in construction circles to have become something of a cliché: litigation funders, the argument goes, are loan sharks in pinstripes, circling parties in distress and taking an outsized cut of any recovery. It is a memorable image. It is not an accurate one.

WHERE THE COMPARISON COMES FROM

The analogy is not entirely without foundation. Litigation funders provide capital to claimants, often contractors or subcontractors, who might otherwise be unable to pursue a legitimate claim. Returns are calibrated to risk, and where a case settles quickly, the funder's share can look startlingly large in percentage terms. Critics point to instances where a funder has taken 40–50% or more of an award, leaving the claimant with a comparatively modest net recovery after years of pursuing a dispute. That headline arithmetic is where the 'loan shark' label finds its emotional purchase.

THE PROBLEM WITH THE LABEL

The comparison is rhetorically effective, but it collapses the moment you look at how the funding relationship is actually structured.

WHY THE LABEL DOESN'T HOLD UP

- **Non-recourse by design.** Reputable litigation funding is non-recourse. If a case is lost, the funder recovers nothing and the claimant owes nothing back. A loan shark, by contrast, expects repayment regardless of outcome, and enforces it by whatever means available. The funder, not the claimant, carries the downside risk in a funded construction dispute.
- **Regulated and diligenced.** In the UK, funders operating under the Association of Litigation Funders' Code of Conduct, and increasingly under scrutiny following the Supreme Court's decision in PACCAR, undertake rigorous due diligence before committing capital, typically

funding only claims with a reasonable prospect of success. This is a world away from the unregulated, often unlawful, activity the loan shark label implies.

- **An access-to-justice function.** Funders are commonly defended precisely because they enable parties, particularly contractors and subcontractors, to pursue legitimate claims against better-resourced main contractors, employers or insurers. Without funding, many meritorious claims in the construction sector would simply never be brought.
- **No coercion in the model.** There is no threat, intimidation or extra-legal enforcement involved. Disputes over funder returns are resolved through ordinary contractual and legal channels, not through pressure applied outside the law.

WHERE THE CRITICISM HAS MORE SUBSTANCE

The more defensible critique is not that funders behave like loan sharks, but that the industry raises genuine governance questions: the proportionality of returns to the capital and risk deployed, the transparency of funding terms, and, perhaps most importantly, **a funder's potential influence over a party's settlement decisions**. These are the concerns driving the Civil Justice Council's review of litigation funding and renewed calls for statutory regulation in England and Wales.

THE BOTTOM LINE

Litigation funding is a legitimate, increasingly important feature of the construction disputes landscape, not a predatory lending model. **The more useful conversation is about proportionate returns, transparency and settlement independence, not a label that misdescribes how the funding relationship actually works.**

This article forms part of Systech's ongoing commentary on construction claims and dispute resolution. For further insight or to discuss a live dispute, please get in touch with the Systech team.

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