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Litigation funding in the UK

updated on 29 April 2025



QUESTION

What's next for litigation funding in the UK?

Answer

Litigation funding (or finance) is where a third-party funder pays for all or part of a claimant's legal costs, in return for a share of the proceeds recovered by the claimant.

Third-party litigation funding has grown exponentially in recent

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litigation that may not otherwise be possible due to the impact on cashflow.

However, the entire litigation funding model was thrown into disarray by the July 2023 ruling of the UK Supreme Court in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others*. Since then, the industry has been through a tumultuous period, with further setbacks and developments changing and shaping the funding landscape, with more expected in the coming months.

Trucks applied the brakes

In *PACCAR*, which was heard as part of the well-known “trucks” litigation in the Competition Appeal Tribunal (CAT), the supreme court held that litigation funding agreements (LFAs) that entitle funders to be paid a portion of any damages recovered (as opposed to a multiple of the investment made by the litigation funder) are “damages-based agreements” (DBAs), as defined in the Courts and Legal Services Act 1990 (Courts and Legal Services Act). The result was that such LFAs, which were supporting various ongoing competition claims, were rendered unenforceable overnight, unless they complied with the relevant regulatory regime (DBA Regulations 2013).

The ruling in *PACCAR* was set to have significant ramifications for litigation funders, claimants and claimant law firms alike, potentially threatening the viability of ongoing funded cases and the future of the litigation funding industry. Typically, LFAs have been structured so that the funder is entitled to receive the greater of a multiple of the money it invested and a percentage of the damages recovered by the claimant. This “percentage of recovery” element is important,

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even across cases that win and lose, their business model may not be sustainable.

Indeed, in the months after *PACCAR*, several defendants to collective proceedings before the CAT sought to challenge the LFAs that had been entered into by their opposing class representatives. This resulted in frantic renegotiation and revision of existing funding agreements impacted by the ruling in *PACCAR* to ensure that such agreements complied with the DBA Regulations 2013.

Government intervention

Both the previous Conservative government and now the Labour government have sought to grapple with the uncertainty arising from *PACCAR* and to establish specific principles and guidance for the future of litigation funding in the UK, in order to maintain accessibility to third-party funding.

The previous Conservative government introduced the Litigation Funding Agreements (Enforceability) Bill to parliament, with the principle of access to justice at its core. In relation to the bill, former Lord Chancellor Alex Chalk KC said the following on 4 March 2024: “It’s crucial victims can access justice – but it can feel like a David and Goliath battle when they’re facing powerful corporations with deep pockets.

“This important change will mean more victims can secure vital third-party funding to level the playing field and support their fight for justice”.

If that bill had passed, it would have nullified the impact of the *PACCAR* decision and restored the position to that which existed

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amendment was to have retrospective effect and would have protected previous LFAs from challenges to their enforceability.

However, the progress of that bill came to a shuddering halt with the change in government in July 2024.

In its wake, on 31 October 2024, the Civil Justice Council (CJC) published its interim report on litigation funding, together with a consultation seeking views from stakeholders on a range of issues, including proposed regulation of third-party litigation funding, which is currently self-regulated under a voluntary Code of Conduct for Litigation Funders. That consultation closed on 3 March 2025, with the CJC expected to publish its full report by summer 2025.

Litigation funders will eagerly monitor how the government responds to the CJC report, including whether corrective legislation to reverse and end the uncertainty caused by *PACCAR* will be introduced, perhaps along the lines proposed in the Litigation Funding Agreements (Enforceability) Bill.

Further roadblocks, or just speed bumps?

In *Lloyd v Google* – the seminal data breach judgment from 2021 – judicial commentary highlighted the position of litigation funders as, arguably, the true beneficiaries of class actions, as opposed to justice. This view from parts of the judiciary seems to be reflected in the public psyche, with a poll [published](#) in November 2024 finding that: “Public belief in class actions yielding positive outcomes for claimants has significantly increased, but the largest majority still believe that lawyers and litigation funders stand to benefit most.”

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stage, the claim was valued at £14 billion. A settlement in principle of around £200 million was then reached in December last year, but that settlement was challenged by the claimant group's funder, Innsworth Capital, on the basis of it being too low and premature. The challenge failed, and the settlement was approved by the CAT, following which Innsworth Capital commenced arbitration proceedings against Merricks personally, alleging that he had not acted with best endeavours to secure its return. In a quite extraordinary turn of events, Mastercard has reportedly agreed to fund Merricks fees in relation to the arbitration, to the tune of up to £10 million.

The whole episode has fuelled concerns around third-party funders having undue influence over the outcome of litigation.

In a further blow to the litigation funding industry, on 14 January 2025, the CAT [refused](#) to certify a proposed collective action (without inviting the proposed class representative (PCR) to revise her application), on the basis of concerns that it was not "just and reasonable" for her to act as the class representative in the proceedings. The case concerned an application for certification of an opt-out collective action (also under section 47B of the Competition Act) against Apple and Amazon on behalf of end purchasers of Apple products for overcharges paid as a result of allegedly anticompetitive agreements. The CAT's decision to refuse certification was based heavily on the PCR's funding arrangements, with a number of concerns regarding the PCR's understanding of the funding arrangements, as well as the funding arrangements themselves, which the CAT considered didn't reasonably serve and protect the class that the PCR was hoping to represent. This included the fact that the LFA included wide-ranging confidentiality provisions that prevented the PCR from disclosing the terms to the

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Not all bad news for funders

However, it has not all been bad news for funders of late. On 16 April 2025, the Court of Appeal ruled that litigation funders backing an £853 million collective action against Apple over iPhone batteries could be paid in advance of class members, concluding that there was “nothing wrong” with a financing agreement which provides for this.

The panel of three justices unanimously ruled that the CAT has the power to find that litigation funders don’t have to wait until damages have been paid out to class members before they can take a fee. This judgment provides certainty that funders aren’t restricted from taking their payment out of undistributed damages, with the risk that there wouldn’t be enough “left in the pot” to meet their fees. That said, the judgment made clear that costs would still need to be signed off by the CAT on a case-by-case basis, with the CAT having wide powers to ensure that costs and expenses are dealt with “fairly and proportionately in accordance with the principles of justice”.

What next?

With the combination of the CJC’s final report and various issues concerning litigation funding becoming more prevalent before the courts, it’s inevitable that the litigation funding space will loom large over the legal sector throughout this year. It’s inevitable that there will be some form of legislative reform and/or regulatory intervention. The extent of that intervention (including any further adverse court judgments) will shape the future of the UK’s litigation funding market. However, notwithstanding concerns that the industry unnecessarily fuels litigation and results in outcomes, which disproportionately benefit the funders, it seems clear that litigation funding continues to be seen as an important pillar of facilitating

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balance is yet to be reached.

Jack Thorne is a partner and Harry Denlegh-Maxwell is a senior associate at [McDermott Will & Emery UK LLP](#).

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