Cooley

Civil Justice Council Proposes Significant Changes to UK Class Action Funding Regime

July 3, 2025

On 2 June 2025, the Civil Justice Council, a statutory body charged with advising on reform of the civil justice system in England and Wales, published its final report to the UK government on third-party litigation funding in the UK (final report). The final report recommends a series of reforms aimed at simplifying and liberalising the legal framework that applies to third-party litigation funding in England and Wales, with the objective of making it easier for class actions to be funded.

We summarise the recommendations from the final report below and set out what this means for class action risk in the UK.

Background: Third-party litigation funding in the UK

Historically, in the UK, tort law and various statutory offences prohibited third parties from funding litigation they were not otherwise involved with – for example, the common law rules against 'champerty and maintenance'. This was to prevent funders from distorting court proceedings for their own interests, as well as to prevent speculative or unmeritorious litigation.

Over time, the general prohibition has been diluted by a patchwork of legislation, regulation and court rulings, and third-party litigation funding became more commonplace in the UK over the past 25 years. The litigation funding market was able to develop whereby funders would agree to provide the capital to pay insurance and legal fees associated with the group action in return for a success fee. The funder's fee was generally expressed as a percentage of the damage award and/or a multiple of the sum invested (usually with the provision that the funder would be paid whichever was higher). The funding industry had escaped specific regulation and operated in the UK on a largely self-regulated basis, with funders joining voluntary regulatory bodies with codes of conduct covering issues such as capital adequacy, control of case strategy, approval of settlements and withdrawal from cases.

Recently, the role of third-party litigation funding has come under particular scrutiny in the context of class action claims brought under opt-out collective proceedings jurisdiction of the Competition Appeal Tribunal (CAT), where litigation funding has been used to bring a number of very substantial antitrust damages claims against some of the world's most successful technology companies and following on from high-profile cartel infringement decisions by European competition agencies.

PACCAR decision throws third-party funding regime into doubt

A ruling of the UK Supreme Court in July 2023 – in ***R (on the application of PACCAR Inc.) v. The Competition Appeal Tribunal*** (*PACCAR*) – sent shock waves through the funding industry by holding that certain arrangements whereby the funder would receive a share of damages achieved were unenforceable. Specifically, in *PACCAR*, the Supreme Court held that a damage percentage-based third-party funding agreement as described above constituted a so-called damages based agreement (DBA) and did not meet the strict formal and substantive criteria set out in the 2013 DBA Regulations – because the funder's role could be described as a 'claims management service' – and was therefore unenforceable. Until the decision in *PACCAR*, funders and claimants had operated on the understanding that class action litigation funding arrangements were not DBAs, and that therefore the 2013 DBA Regulations were not applicable to these claims.

As a consequence of the ruling, a majority of third-party funding agreements that applied to ongoing class actions before the CAT – which provided for the funder to receive a percentage of the damages recovered – arguably became unenforceable. What followed was a rush to restructure extant funding agreements with some of the workarounds subsequently being subject to ongoing legal challenge in the courts.

Civil Justice Council recommends reversing *PACCAR*

In April 2024, the UK government requested that the Civil Justice Council conduct a review of litigation funding in the UK and make recommendations concerning its regulation. Implicit within this was consideration of *PACCAR* which had become politically contentious and resulted in draft legislation by the outgoing Conservative government to reverse its effect – that draft legislation lapsed in May 2024. The **final report published on 2 June 2025** recommends important reforms to litigation funding in the UK, including:

- **Legislating to reverse the *PACCAR* decision** both on a prospective and retrospective basis, which will restore the ability of funders and class representatives in CAT collective proceedings to strike funding agreements whereby the funder takes a percentage share of damages.
- **Establishing a 'light-touch' regulatory scheme** for litigation funding, ending the current self-regulatory approach. The Civil Justice Council recommends that litigation funding regulations should, among others, include provisions on capital adequacy, anti-money laundering, control of case strategy and conflicts of interest.
- **Making funders subject to a regulatory 'consumer duty'** where the claimant is a consumer or in the context of collective proceedings.
- **Requiring pre-action approval of funding arrangements in collective proceedings,** including an assessment whether the funder's returns are 'fair, just and reasonable'.
- **Developing other standard terms for litigation funding agreements**.
- **Simplifying the law on contingency funding agreements and DBAs more generally**, regulating them in a single piece of legislation.
- **Replacing the existing patchwork set of rules on lawyers' contingency fees** with a single, simplified regime.

Next steps and potential impact on the UK class action landscape

The government is currently considering the recommendations in the final report and will have to prepare implementing legislation. In response to the publication of the report, a spokesperson for the Ministry of Justice said that, '[t]hird-party litigation funding plays a critical role in ensuring access to justice but concerns have been raised about the need for greater regulation and safeguards for claimants. We welcome the Civil Justice Council's review which will help inform our approach to potential reforms and we'll outline next steps in due course'. Timing of these next steps is uncertain.

Although any draft legislation will be subject to consultation and parliamentary scrutiny, the Civil Justice Council's recommendations, if implemented, will inevitably generate sustained interest in bringing class actions in the UK, in particular through the antitrust jurisdiction of the CAT. The funding industry already has considerable expectations from investments in UK antitrust class actions, with claims before the CAT valued earlier this year to **160 billion pounds** in total damages sought, up from the mere **4 billion pounds in 2021**, with class member numbers often in the millions. The money at stake illustrates that the UK is now a serious risk jurisdiction for opt-out class actions.

While funders and the claimant bar are likely to cheer proposals to reverse *PACCAR* and liberalise the UK litigation funding regime, it remains to be seen how the industry will react to the proposals for broader regulation. In this context, high-profile voices, including CAT Chairman Andrew Lenon, have previously warned that class actions should not be used as '**cash cows**' for funders and

lawyers with ‘minimal returns to class members’. Funders and the claimant bar can therefore expect that with greater leeway to agree on how the spoils will be shared will come more intrusive regulation and oversight.

Key Contacts

Mark Simpson London	msimpson@cooley.com + 44 20 7556 4256
James Flett London	jflett@cooley.com +44 20 7556 4394
Anna Caro London	acaro@cooley.com +44 20 7556 4329