

CJC review of litigation funding in England and Wales: Key findings and analysis

30 June 2025  James Busby

On 2 June 2025, the [Civil Justice Council \(CJC\)](#) published its long awaited final review and recommendations on the operation of litigation funding in the UK market.

The working party sets out in the report that the aim of the review is to "promote effective access to justice, the fair and proportionate regulation of third party litigation funding, and improvements to the provision and accessibility of other forms of litigation funding".

The stated aim of the working party was to allow the [litigation](#) funding market to continue to develop as an essential part of the overall litigation landscape, while providing appropriate and effective protection for funded parties and defendants.

The review acknowledged the positive role of litigation funding in widening access to justice, and it should reassure funders and other market stakeholders that a prompt legislative reversal of the troubling [PACCAR decision](#) was advised.

Instead of imposing heavy regulation on the sector (as many had feared), the review also suggested that government should introduce a 'light touch' regime. This framework would aim to provide clarity to key stakeholders and should be developed in consideration of the European Law Institutes' litigation funding principles (ELI Principles).

In the report, the working party has made 58 recommendations to government, including the following key findings:

1. Reversal of PACCAR

A controversial finding, the recommendation is for legislation to be introduced as soon as possible to make clear that litigation funding is not a form of damages-based agreement (and therefore potentially unenforceable) and that it is a distinct form of funding from that provided by a party's legal representative. Such legislative reform is recommended to act both retrospectively and prospectively.

2. Regulation

The introduction of 'light touch' regulation with additional protections, where funding is provided to consumers or in support of class action claims. A comprehensive regulatory regime is not at this stage recommended, however, it is suggested that this should be revisited in five years time - presumably on or after the time of the next general election.

3. Funder return caps

The report recommended that no cap on funder fees should be applied. A refreshingly commercial rationale has been cited by the working party, who have concluded that such caps could deter the provision of funding. That said, the recommendation should be tempered by an obligation on the courts to provide sufficient protection against excessive returns.

4. Baseline regulation

Notwithstanding that 'light touch' regulation has been recommended, the report does suggest that a set of 'baseline' regulatory requirements do apply to litigation funding generally replacing the current self-regulated approach, including:

- provision for case-specific capital adequacy requirements placed on funders to ensure sufficient standing to meet funding obligations (this also played a role in the review's rejection of a presumption of security for costs).
- codification of the requirement that litigation funders should not control funded litigation.
- conflict of interest provisions.
- the application of anti-money laundering requirements.
- disclosure at the earliest opportunity of the fact of funding, the name of the funder and the ultimate source of the funding.

The working party recommends that breach of the regulations would render any regulated funding agreement unenforceable, although the court should have power to waive regulatory breaches where just and reasonable to do so.

5. Additional regulation

Where funding is provided to a consumer or in respect of class actions the report recommends additional regulatory requirements including:

- subjecting funders to a new consumer duty should be introduced based on the FCA's Consumer Duty, requiring the provision of advance information about the funding in clear and transparent terms.
- independent legal advice from a King's Counsel (KC) on a proposed litigation funding agreement (LFA) should be provided to the funded party prior to entry into the LFA.
- the disclosure of the LFA to the court, on a without notice basis, for approval by the court of the funding arrangements, including and in particular whether the funder's return is fair, just and reasonable.
- certification by the funder and law firm that they did not approach the funded party in respect of the claim.
- the requirement for ATE with robust anti-avoidance endorsements.
- the development of standard terms for inclusion in LFAs, with the aim of introducing clarity, improving consumer protection and reducing funding cost.
- the inclusion of dispute resolution mechanisms for funders and funded parties in LFAs.

6. Standardisation

Standard terms for LFAs should be developed with the aim of introducing clarity in the market and improve consumer protection. There is a view that this would help to reduce the cost of litigation funding (ultimately borne by the consumer). There is also a view given as to establishing a dispute resolution mechanism between funders and funded parties in order to secure independent, low cost and binding resolution of disputes.

7. Portfolio funding

On the other hand, portfolio funding provided to law firms to support a range of cases is noted as an area that should be regulated by the FCA. The recommendation is that such regulation should require funders to comply with anti-money laundering regulation and to have sufficient capital adequacy in order to operate as a portfolio funder.

This is coupled with a further recommendation that government should investigate the impact of portfolio funding on the legal profession and consider whether issues concerning portfolio funding require regulatory reform of the legal profession.

In making this recommendation, consideration was given to 'portfolio funding' which featured in the high-profile collapse of a few law firms though there are many nuances to funding arrangements within the legal industry. These nuances should be considered and careful thought will need to be given to the implementation of this regulation, a fact alluded to in a footnote to the report that "portfolio funding should be distinguished from normal business loans to law firms."

Key recommendations

The report suggests that the government takes a twin-track approach to its recommendations:

- in the short term, to reverse PACCAR as soon as possible; and
- in respect of all other recommendations, in so far as they are accepted, they should be introduced via separate primary legislation during the course of this parliament.

The above is a selection of the key recommendations. Our specialist team can offer further guidance on the review and wider litigation funding queries.

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