

# U.K. Class Actions Appear Set For Resurgence In 2026

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Class actions in the U.K. appear poised for a resurgence in 2026, as recent regulatory and legal developments suggest boosted confidence in a space that had quietened overall in 2025.

The slowdown was likely due to the U.K. Supreme Court's 2023 decision in *R (on the application of PACCAR Inc.) v. Competition Appeal Tribunal*, which held that certain litigation funding arrangements were damages-based agreements and were unenforceable.<sup>[1]</sup>

Under English law, if an agreement is unenforceable, the court will not compel performance or award damages for a breach. This decision created significant uncertainty in the litigation funding market, exposed funders to the risk of being unable to recover their returns and likely dampened funders' interest in funding collective actions.

Signals of an uptick of activity in the space came in November, with the English High Court's landmark ruling in *BHP Group (UK) Ltd. v. PGMBM Law Ltd. (trading as Pogust Goodhead)*. The court held that BHP Group were liable for the collapse of the Fundão Dam in Brazil, which could be an important step toward a multibillion-dollar payout to collective action claimants.

Shortly after, litigation funder Innnsworth Capital publicly announced that it agreed to fund a new £1 billion (\$1.37 billion) opt-out competition class action against Rightmove PLC, the U.K.'s largest online property portal.

These developments were closely followed by the Labour government's announcement that it will deliver on the Sunak government's promise to legislatively reverse the PACCAR decision.

In light of this recent activity, this article considers some key legal developments in litigation funding of class actions post-PACCAR. Further changes in the availability and terms of funding are likely to significantly affect the frequency and scale of collective action litigation in this jurisdiction.

## ENFORCEABILITY OF LITIGATION FUNDING AGREEMENTS

The PACCAR ruling prompted a shift to alternative funding models based on multiples of committed funds, rather than as a percentage of any damages awarded. The multiples model came under regulatory focus and legal challenge in 2025.

The Civil Justice Council, or CJC, published its final report on litigation funding in June. The CJC recommended:

- Passing legislation to reverse the PACCAR decision with retrospective effect to clarify that LFAs are not damages-based agreements;
- Introducing a light-touch model of statutory regulation for litigation funding;
- Codifying the prohibition on funder control over litigation including settlement proceedings — with breach rendering the LFA unenforceable as against the funded party, subject to the court's power to waive regulatory breaches where it is just and reasonable to do so; and
- Mandating the disclosure of funding arrangements.

Should the CJC's proposals be implemented, defendants would see the benefit of enhanced protective measures including mandatory disclosure of funding and the funder's identity, improved court oversight of funding arrangements, and measures to deter unmeritorious or speculative litigation.

For claimants, proposals to expand the range of permissible funding models are expected to increase funding options and competition among funders for funding opportunities.

The current government recently confirmed that it will implement legislative changes to reverse the PACCAR decision, though there has been no indication of when these changes will be brought in, nor whether further changes will be introduced to reflect the CJC's other recommendations.

Whilst legislative reform in the immediate-term remains unlikely, two recent Court of Appeal of England and Wales decisions have confirmed the validity of the revised model of litigation funding in collective proceedings.

In April 2025, the Court of Appeal addressed two common challenges to funding agreements in collective actions in *Gutmann v Apple Inc.*<sup>[2]</sup> The court found that:

- The Competition Appeals Tribunal has the power to order that funders' returns be paid in priority to class members; and
- Such arrangements do not render a class representative unsuitable due to conflicts of interest.

The Court of Appeal later handed down its judgment in July on four conjoined appeals from the CAT concerning challenges against LFAs entered into by the claimant class representatives.<sup>[3]</sup>

The court held that LFAs providing for the calculation of funders' returns as multiples of funds committed do not constitute damages-based agreements falling within the scope of PACCAR, as the funder's fee is based on their investment, rather than as a share of damages.

Taken together, these decisions provide crucial reassurance for the enforceability of funds-committed LFAs for both funders and class representatives.

## **SETTLEMENT OF COLLECTIVE PROCEEDINGS**

A recent decision in the long-running Mastercard proceedings has provided important guidance on the CAT's approach to the treatment of litigation funding returns in collective settlements. In *Merrick v. Mastercard Inc.*, the CAT approved a £200 million collective settlement which had the support of both the class representative and Mastercard.<sup>[4]</sup>

The tribunal found the settlement amount to be within a reasonable range, highlighting that the prospects of a higher recovery at trial were low given its prior adverse findings on causation.

The CAT closely scrutinized both the settlement amount and the proposed distributions to ascertain the benefit for class members, whose interests, it ruled, must take precedence over those of all other stakeholders.

The tribunal rejected the funder's claim that it should give effect to the terms of the funding arrangement which purportedly entitled the funder to a minimum return of £179 million, as opposed to the £22.5 million profit that it would receive pursuant to the settlement.

In its decision, the CAT provided guidance on the assessment of funder returns, confirming that such returns should be proportionate to the risks assumed and the outcome achieved. In this case, where the claimants' recovery represented only a small fraction of the original claim value, a return on investment of 1.5 times was appropriate.

The funder has since initiated a judicial review of the CAT's judgment with a hearing scheduled for early this year, where it will seek changes to the allocation of the settlement, though not to the settlement amount.

This decision highlights that the CAT retains broad discretion to assess the reasonableness of funder returns, prioritizing the interests of class members above all else, regardless of the specific terms agreed between funders and claimants.

## IMPLICATIONS FOR LEGAL PROFESSIONALS

The reversal of PACCAR is expected to refocus the attention of claimants, practitioners and funders back to collective action litigation.

In announcing the reforms, the government highlighted the importance of enhancing the competitiveness of England and Wales as a leading center for commercial litigation and arbitration, while improving access to justice for litigants, including those pursuing complex cross-border mass claims.

After the marked slowdown in 2025, any increase in funding options for class actions in this jurisdiction is likely to be welcomed by legal advisers to parties bringing such claims in the UK.

This development may also prompt reconsideration of high-profile decisions by leading funders such as Burford Capital LLC, which announced in May that it would no longer use London as an arbitral seat or specify English law in its international financing agreements, citing concerns about predictability and stability in the U.K. market.<sup>[5]</sup>

That said, there remains a real possibility that funders will adopt a wait-and-see approach pending the promised shift from voluntary self-regulation to a new model of proportionate regulation before redeploying significant capital to litigation in this jurisdiction.

## SUMMARY

The U.K. collective action funding landscape has undergone significant transformation following PACCAR. Against this background, recent court decisions have provided much-needed reassurance for the enforceability of funds-committed LFAs, while the CAT has shown willingness to exercise its broad discretion in approving settlement offers to maximize the interests of class members over those of all other stakeholders.

As the government legislates for the reversal of PACCAR and considers the CJC's other recommendations, all parties involved in collective actions should remain attentive to further developments that will shape the future of group litigation funding in this jurisdiction.

*Trainee Solicitor Christopher Hull also contributed to this article.*

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[1] R (PACCAR) v. Competition Appeal Tribunal [2023] UKSC 28.

[2] [2025] EWCA Civ 459.

[3] Sony Interactive Entertainment Europe Ltd v Alex Neill Class Representative Ltd [2025] EWCA Civ 841.

[4] [2025] CAT 28.

[5] <https://www.lawgazette.co.uk/news/fewer-dollars-for-uk-economy-as-top-lit-funder-spurns-english-law/5123346.article>.

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