Litigation Nation: The growth of a class action claims culture

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Danna Brown

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Note

This report is published by Civitas as a contribution to public debate on legal culture, third-party litigation funding, collective proceedings and regulatory reform in England and Wales.

The case studies, market participants and proceedings referenced in this report are cited solely for the purpose of structural and analytical illustration. No company, law firm, litigation funder, claims management company or individual named in this report is accused or suspected of any wrongdoing, breach of law, regulatory rule or professional standard. All entities discussed are understood to conduct their activities lawfully and in accordance with current regulations.

The report's analysis addresses structural gaps in the existing regulatory framework, specifically the absence of mandatory beneficial ownership disclosure and proactive sanctions screening. Identifying those gaps does not constitute, and should not be read as, an allegation of misconduct against any specific party. All references to cases, transactions and market participants are drawn from publicly available sources, including court judgments, regulatory publications and established journalism. No confidential information has been relied upon. This report does not constitute legal advice.

Foreword by Seema Kennedy OBE

The English legal system has long been regarded as a gold standard: predictable, commercially sophisticated, and underpinned by judicial independence. Ensuring that we protect the civil justice system, ensure effective access to justice and uphold the highest standards of ethics is at the heart of my organisation, Fair Civil Justice's mission.

This report should unsettle anyone who assumes that UK courts always know who is standing in front of them. It shows that, in one of the fastest-growing corners of our legal system, that assumption no longer holds.

Litigation funding assets in England and Wales have grown from roughly £198 million in 2011 to £2.2 billion by 2022. They are projected to pass £3.7 billion within the next two years. But the true scale is unknown. There is an almost complete lack of transparency. Including, as to where the funds come from and where they go once defendants pay out.

Growth on that scale, in almost any other financial service, would come with a licensing regime, a fitness test, and a regulator asking tough questions about where the money originates. But unlike many financial services activities, litigation funding is not currently regulated through a mandatory authorisation regime.

Fair Civil Justice believes that litigation funding can improve access to justice, but a market that profits from the justice system must be transparent, accountable, and subject to proportionate oversight.

The Civil Justice Council was right to call for disclosure of the ultimate source of funds. This report insists that disclosure requirements be given teeth. At a minimum, funders should be required to identify ultimate beneficial owners and certify that relevant sanctions checks have been carried out. None of that is radical. It is the minimum a mature financial market would already expect of itself.

Lady Justice is traditionally depicted blindfolded to demonstrate the impartiality that justice requires. Defendants, courts and sometimes even claimants may be unable to identify the ultimate source of the capital financing a claim. Naming the fund is treated as the end of the inquiry, when it is barely the beginning. Justice may be blind to status and power; it should not be blind to who is financing litigation.

The lack of transparency affects consumers and businesses alike. The same structural gap sits behind the transnational claims now reshaping liability for UK-incorporated multinationals. Nor is there sufficient public visibility over how returns are structured, where profits are booked, or what tax treatment applies.

Fair Civil Justice argues for a legal system that is fair to claimants and defendants alike. We want to see consumers receiving fair redress when there has been wrongdoing. Used properly and disclosed honestly, litigation funding can improve access to justice.

The Government has recognised that legislation is needed, but the scope of that legislation remains crucial. This report should leave no one in doubt that what we need to see is more transparency.

Seema Kennedy OBE, Executive Director, Fair Civil Justice

Executive Summary

Class action claims are legal claims brought by a large group of people who have each suffered the same or similar harm from the same defendant, allowing them to seek compensation together. Third-party litigation funding is the practice in which an external commercial investor pays the claimant's legal costs. If the claim succeeds, the funder thereby receives a share of the damages or settlements.

Historically, in the English legal system, third parties were kept at a distance from civil proceedings, as the common law doctrines of *champerty* and *maintenance* ensured courts were prevented from becoming instruments of enrichment for commercially motivated third parties with no direct stake in the dispute, and guarded against the corruption of proceedings by financially interested outsiders whose priorities might diverge from those of the actual litigants. But the current state of the class action and third-party litigation funding market is the result of the market and legislative changes over several decades.

The Criminal Law Act 1967 abolished criminal and tortious liability under both doctrines, while preserving the rule that champertous agreements remained unenforceable as contrary to public policy. Subsequently, commercial third-party litigation funding remained legally marginal until 2005, when in *Arkin v Borchard Lines Ltd* it was recognised that a commercial funder could lawfully finance a claimant's costs in return for a share of any recovery. It also established the 'Arkin cap', limiting funder adverse costs exposure, and imposed no obligation of disclosure on the parties to any funding arrangement.

The market's structural transformation was finalised in the 2010s. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 redirected capital flows into an unregulated external funding market that lacked a parallel governance mechanism. And in 2015, the Consumer Rights Act introduced an opt-out collective proceedings regime, whereby all eligible class members were automatically enrolled in competition law claims unless they chose to withdraw.

Consequently, the third-party litigation market has grown substantially and is expected to continue to grow. Industry estimates claim that while the third-party litigation funding assets in England and Wales stood at approximately £198 million in 2011, it rose to £2.2 billion in 2022. By 2028, one estimate expects the value of the market to reach over £3.7 billion.

Moreover, since the Consumer Rights Act 2015 introduced the Competition Appeal Tribunal's opt-out collective proceedings mechanism, the Competition Appeal Tribunal has received a growing number of applications for collective proceedings orders, while a smaller number have been certified. Between 2018 and 2022, one study found the UK was the largest jurisdiction for collective litigation by filing volume in Europe, accounting for 48 per cent of all class action filings. As of early 2025, the combined alleged damages value of active claims across courts in the UK has been cited as approaching £130 billion.

The market, this report argues, now operates without the transparency obligations commensurate with its scale. The Association of Litigation Funders' Code, which governs the market, is voluntary and administered by its own members. There is no requirement for funded litigants to identify the ultimate beneficial owner of the capital financing their claims.

This, combined with the size of the market, creates structural risks that affect claimants, defendants, courts and the integrity of the legal system itself:

- Funder control and conflicts of interest: funders are often able to veto settlements below a specified return threshold; they may be able to terminate if the claim's prospects fall below a defined threshold; and waterfall structures may benefit the funder more than the claimant. This can be seen in cases such as *Bates v Post Office*, where funders and lawyers combined reportedly received approximately 80 per cent of the settlement fund.
- Foreign capital, sanctions and national security: there is no requirement for litigants to disclose to the court the ultimate beneficial ownership of capital used to finance their claims, nor to trace the funder's capital to natural persons or disclose any subsequent change in beneficial ownership. In the *Vneshprombank LLC v Bedzhamov* case, for instance, there was reasonable cause to suspect the funder (A1 LLC) was likely owned or controlled, directly or indirectly, by sanctioned Russian individuals.
- Claimant protection and distribution gap: whilst without funded litigation it can be argued that claimants can recover compensation they would otherwise forgo, we have seen low distribution in cases such as *Merricks v Mastercard*, and there is a lack of opportunity for claimants to scrutinise the financial arrangements agreed between funders and law firms before proceedings were constituted.

The BHP Mariana dam litigation provides a well-documented case study of firm-level litigation funding and its structural consequences in English proceedings. The litigation relates to the 2015 Fundão dam collapse in Minas Gerais, seeking redress for extensive environmental and economic damage. Public reporting on the litigation describes a very large group of 600,000–700,000 Brazilian claimants, with pleaded claim values of up to approximately £36 billion under Brazilian law. Hedge fund Gramercy Funds Management committed US$552.5 million to law firm Pogust Goodhead in October 2023, backing claims against BHP in what was described as the largest single litigation funding deal in UK history. The hedge fund provided an additional US$65 million credit facility in 2025; a funding facility of US$150 million specifically for the Mariana dam litigation was also announced in June 2026. BHP's solicitors raised concerns, in adversarial correspondence, about the extent of Gramercy's influence over Pogust Goodhead's conduct of the BHP Mariana dam litigation, a question that, if resolved in BHP's favour, would have engaged the rule that litigation strategy must remain under the control of lawyers rather than third-party funders.

For UK businesses, the current state and size of the class action and third-party litigation funding market produce three measurable categories of consequences:

1. Claims which are governed by foreign law can be brought against UK parent companies: this is particularly relevant in environmental, social and governance litigation. In *Vedanta Resources Plc v Lungowe,* for example, over 1,000 Zambians brought a claim against the UK-listed Vedanta Resources and its Zambian subsidiary, Konkola Copper Mines, alleging personal injury and environmental damage caused by pollution from the Nchanga copper mine.
2. Mass data privacy claims against consumer-facing UK businesses: *Lloyd v Google LLC*, for example, saw representative action brought on behalf of millions of iPhone users, alleging unlawful tracking of browser activity via the 'Safari workaround' and seeking damages for breaches of data protection rights.

3. The aggregate effect of both on legal spend, insurance pricing and the cost of capital for UK PLC as a whole.

In the context of the legal ecosystem, mass litigation in the UK is now driven by three structurally distinct but commercially integrated actors: group action law firms, who aggregate and prosecute claims; litigation funders, who deploy capital in exchange for a priority return; and claims management companies, who originate and aggregate claimant volume. Together, these three actors form a commercial system operating without mandatory disclosure of its financial structure to the courts, the claimants or the public, a gap of regulatory origin rather than inherent to the legal profession itself.

In June 2025, the Civil Justice Council published its review of the market. It was the most comprehensive public examination of the market since it reached its present scale. It produced 58 recommendations for reform, yet, at the time of writing, the Starmer government only committed to two of the recommendations: that forthcoming legislation will clarify that litigation funding agreements are not damages-based agreements, and that there will be 'proportionate regulation' of litigation funding agreements. Most recently, under the previous Starmer government, the Department for Business and Trade published a consultation on reforming the opt-out collective proceedings regime.[1]

Both the Civil Justice Council's reform recommendations and the Starmer government's position were, in their broad direction, correct. Ultimately, though, this report contends that there are three specific gaps in the reform package that need to be resolved before it can be assessed as adequate to address the structural risks this report documents. Any forthcoming bill should address these gaps:

- The beneficial ownership disclosure obligation: the Civil Justice Council's recommendation to disclose the 'ultimate source of the funding' lacks specificity regarding the tracing standard. Sufficient disclosure requires tracing to the natural persons with ultimate ownership or control, applying a standard equivalent to that set out in the Economic Crime (Transparency and Enforcement) Act 2022.
- Sanctions screening: the Office of Financial Sanctions Implementation unit should screen funders and their beneficial owners against the consolidated sanctions list as a procedural prerequisite to funded proceedings. This should be done on an ongoing basis throughout those proceedings.
- Regulatory architecture: a statutory regime that establishes baseline conduct standards, with no adequate provision for assessing funders' financial fitness, only reproduces, in statutory form, the substantive limitations of the voluntary regime it replaces. It is notable that Baroness Bowles' recent legislative amendment in the House of Lords in June/July 2026 to the Financial Services and Market Bill substantially sets out 'Litigation funding as a regulated activity' (after Clause 22, inserting a new Clause) which brings third-party litigation funding within the Financial Conduct Authority regulatory perimeter by creating a new category of regulated activity under the terms of the Financial Services and Markets Act 2000.[2]

[1] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[2] House of Lords. Financial Services and Markets Bill [HL] – amendments to be moved in Grand Committee, https://bills.parliament.uk/publications/66985/documents/8519

The government should redesign the statutory disclosure framework that the Civil Justice Council recommended but left operationally unspecified. This will not restrict the third-party litigation funding market. Rather, it will provide it with the institutional legitimacy on which the rule of law depends.

1. Introduction

The current state of the UK class action and third-party litigation funding market is the result of years of incremental legal and legislative change. A class action is a legal claim brought by a large group of people who have each suffered the same or similar harm from the same defendant, allowing them to seek compensation together rather than through separate individual lawsuits. The term is used interchangeably with 'collective proceedings' in public and media debate, though in England and Wales, ‘collective proceedings’ is the precise legal term, carrying its own statutory rules and procedural requirements. Third-party litigation funding is the practice by which an external commercial investor pays a claimant’s legal costs, in exchange for a share of any damages or settlement recovered if the case succeeds. Generally, if the claim fails, the funder absorbs the financial loss, and the claimant owes nothing back to the funder.

These changes dismantled the doctrinal constraints that had historically kept commercial third parties at a distance from civil proceedings, without instituting equivalent new restraints. The common law doctrines of *champerty* and *maintenance* were among the oldest checks on third-party involvement in litigation. *Maintenance* is the offence of supporting another person’s litigation without lawful justification; *champerty* is doing so in exchange for a share of the proceeds. They existed to prevent the courts from becoming instruments of enrichment for commercially motivated third parties with no direct stake in the dispute, and to guard against the corruption of proceedings by financially interested outsiders whose priorities might diverge from those of the actual litigants.

The Criminal Law Act 1967 then abolished criminal and tortious liability for both, while preserving the rule that champertous agreements remained unenforceable as contrary to public policy. For several decades thereafter, commercial third-party litigation funding remained legally marginal. This changed in 2005, when in *Arkin v Borchard Lines Ltd* it was recognised that a commercial funder could lawfully finance a claimant’s costs in return for a share of any recovery. The case established the ‘Arkin cap’, limiting funder adverse costs exposure, and imposed no obligation of disclosure on the parties to any funding arrangement. The doctrinal prohibition was lifted, but its underlying rationale was not replaced.

Two subsequent legislative interventions in 2012 and 2015 finalised the market's structural transformation. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 rendered success fees irrecoverable from losing parties, thereby altering the commercial viability of conditional fee agreements for high-value, capital-intensive litigation. This legislative change redirected capital flows into an unregulated external funding market that lacked a parallel governance mechanism.

Collective proceedings are the formal legal mechanism through which a single appointed representative pursues a claim on behalf of a large group of people who have all suffered harm from the same unlawful conduct. Any damages recovered are distributed among the group members, and the proceedings are governed by rules that determine how the group is defined, how the claim is run and how any money recovered is divided at the end.

Under an opt-out mechanism, every eligible person is automatically included in collective proceedings unless they take active steps to withdraw, meaning a claim can be brought on behalf of millions of people without requiring each individual to sign up. This produces far larger claimant groups and aggregate damages figures than any opt-in regime could generate and makes external financing structurally necessary for proceedings of that scale and duration. Under an opt-in mechanism, a person is included in a legal claim only if they take a deliberate step to register and join the proceedings. This produces smaller claimant groups but ensures that every participant has actively chosen to be involved and is aware that a claim is being brought in their name.

The Consumer Rights Act 2015 introduced an opt-out collective proceedings regime, administered by the Competition Appeal Tribunal, which automatically enrolled all eligible class members in competition law claims unless they chose to withdraw. This regime generated class sizes and aggregate claim values that would be unattainable under any opt-in mechanism. As a result, external capital became a structural precondition of such proceedings rather than an incidental feature.

Consequently, the market has expanded substantially and now operates without the transparency obligations commensurate with its scale. It is governed by a voluntary code administered by its own members, and there is no requirement for funded litigants to identify the ultimate beneficial owner of the capital financing their claims.

The rule of law requires more than legally sound outcomes. It requires that the parties to proceedings and those who finance them be known to the courts resolving disputes. When capital of unknown origin finances litigation at scale, courts manage claims without knowing who controls the financing, claimants are bound by terms agreed before they were approached, and defendants cannot determine whether the interests behind the claim would be permissible if disclosed. Parliament created the opt-out collective proceedings regime to provide access to justice where individual losses are too small to litigate alone, not to create a vehicle through which undisclosed commercial interests direct proceedings for financial return. Transparency in the financing of litigation is a precondition for proceedings that the rule of law can sustain.

The principal unresolved structural deficit in the UK litigation funding market is the absence of mandatory beneficial ownership disclosure and sanctions screening. The Civil Justice Council's June 2025 review, which constituted the most comprehensive public examination of the market since it reached institutional scale, produced 58 recommendations for reform. The Starmer government's written ministerial statement of 17th December 2025 accepted only two of these recommendations. The divergence between these positions is substantive rather than procedural; it raises the question of whether forthcoming legislation will address the structural risks identified in this report or merely restore commercial certainty to a market whose ownership and conduct remain, in critical respects, opaque to the courts that oversee it.

Three specific gaps in the current reform trajectory require legislative resolution:

- The first pertains to the depth of the beneficial ownership disclosure obligation. While the Civil Justice Council's recommendation to disclose the 'ultimate source of the funding' is directionally correct, it lacks specificity regarding the tracing standard. An obligation that identifies only the immediate legal entity holding the funding agreement fails to address the intermediate holding structures through which sanctioned capital may be deployed, as illustrated by *Vneshprombank LLC v Bedzhamov*. Sufficient disclosure requires tracing to the natural persons with ultimate ownership or control, applying a standard equivalent to that set out in the Economic Crime (Transparency and Enforcement) Act 2022.

- The second gap relates to sanctions screening. Neither the Starmer government's statement nor the Civil Justice Council report specifies a verification mechanism. The Office of Financial Sanctions Implementation should screen funders and their beneficial owners against the consolidated sanctions list as a procedural prerequisite to funded proceedings and on an ongoing basis throughout those proceedings.
- The third gap involves regulatory architecture. A statutory regime that establishes baseline conduct standards without adequate provision for assessing funders' financial fitness merely reproduces, in statutory form, the substantive limitations of the voluntary regime it replaces.

In the context of the legal ecosystem, it is worth considering the types of firms that exist and what they do. Group action law firms are claimant-side legal practices that specialise in assembling and running legal claims on behalf of large numbers of people against the same defendant. Unlike conventional law firms acting for individual paying clients, they operate at volume. Such firms could be owned by external investors whose commercial interests are tied to the scale and financial outcome of the claims the firm manages. Claims management companies are commercial businesses that identify and recruit potential claimants, typically through targeted digital advertising, and refer them to law firms in exchange for a fee. They do not provide legal advice or represent clients in court; their function is to generate claimant volume, and their revenue depends on how many people they channel into a claim rather than on whether those people ultimately receive compensation.

So, Section 2 will proceed to document the scale, mechanics and business model of the third-party litigation funding market, as well as the commercial ecosystem generated by mass claims.

Section 3 analyses the structural risks through documented case studies, focusing on funder control and conflicts of interest, foreign capital and sanctions exposure, and the disparity between headline claim values and actual claimant recovery.

Section 4 traces the doctrinal and legislative developments that shaped the current market.

Section 5 assesses the macroeconomic consequences for UK-incorporated businesses, including environmental, social and governance (ESG) litigation; data privacy claims; and aggregate legal and insurance expenditures.

Section 6 evaluates the regulatory response to date, including the Civil Justice Council report and the Starmer government's December 2025 statement, and identifies the three specific gaps that forthcoming legislation must address.

2. The phenomenon and its mechanics

2.1. The figures

Industry estimates suggest that third-party litigation funding assets in England and Wales were around £198 million in 2011. By 2022, this had reached approximately £2.2 billion.[3] International litigation

[3] Rees, G. in Dechert (2025) 'Funders Keepers: Growth in Litigation Funding in England Continues Despite Legal Challenges', 16 May. Available at: https://www.dechert.com/knowledge/onpoint/2025/5/litigation-funding-in-england--legal-challenges-are-no-match-for.html

funder Deminor, drawing on PricewaterhouseCoopers' 2022 UK Legal Services Market Report, projects that the third-party litigation funding market will exceed £3.7 billion by 2028, implying a compound annual growth rate of 8.7 per cent.[4] The UK has moved, over this period, from a jurisdiction where the champerty doctrine constrained commercial third-party funding to one of the principal European venues for large-scale collective and mass claims.[5]

The growth of collective proceedings in Britain has been comparable in pace and scale. Since the Consumer Rights Act 2015 introduced an opt-out mechanism for competition claims, over 50 such actions have been filed with the Competition Appeal Tribunal.[6,7] By early 2025, the combined alleged damages value of active claims across courts in the United Kingdom had been cited as approaching £130 billion.[8] A finding in the law firm CMS' *European Class Action Report 2025* highlights that 'UK competition class actions involved more than 655 million class members by the end of 2024'.[9] Between 2018 and 2022, one study found that the UK accounted for 48 per cent of all class action filings across Europe, making it the largest single jurisdiction for collective litigation by filing volume.[10]

2.2. The new ecosystem: Group action law firms, litigation funders and claims management companies

Mass litigation in the United Kingdom is now driven by three structurally distinct but commercially integrated actors: group action law firms, third-party litigation funders, and claims management companies. Each class of actor occupies a defined role: law firms aggregate and prosecute claims, funders deploy capital in exchange for a priority return, and claims management companies originate and aggregate claimant volume. Together, they form a commercial system operating without mandatory disclosure of its financial structure to the courts, the claimants, or the public, a gap of regulatory origin rather than inherent to the legal profession itself.

Group action law firms

Claimant-side group action law firms increasingly operate outside the traditional partnership model, under ownership arrangements that introduce external investors with commercial interests distinct from those of the lawyers conducting the proceedings. The pace of this structural change is reflected in capital flows: private equity deployed £534 million into the UK legal sector in 2024 alone, 42 per cent more than in 2023, bringing cumulative 5-year investment above £1.2 billion.[11] Firms backed by

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[4] O'Neill, E. 'Litigation Funding Overview - United Kingdom', on Deminor. Available at: https://www.deminor.com/en/litigation-funding/global-landscape/united-kingdom/; and Strategy& (2022) *UK Legal Services Market Report 2022*, PwC. Available at: https://www.pwc.co.uk/industries/assets/uk-legal-services-market-report-2022.pdf The 8.7 per cent compound annual growth rate is derived from PwC's projection model.

[5] Slaughter and May (2025) *Class Actions*. Available at: https://www.slaughterandmay.com/media/5zznkb0u/in-depth-class-actions-9th-edition-england-and-wales.pdf

[6] Legislation.gov.uk. *Consumer Rights Act 2015*, s 81 and Schedule 8. Available at: https://www.legislation.gov.uk/ukpga/2015/15/contents and Legislation.gov.uk. *The Competition Appeal Tribunal Rules 2015*, SI 2015/1648. Available at: https://www.legislation.gov.uk/uksi/2015/1648/contents

[7] Simmons & Simmons (2026) 'Law Commission to consider consumer class action regime', 23 April. Available at: https://www.simmons-simmons.com/en/publications/cmobphy1m0152us3gdz3o1csw/law-commission-to-consider-consumer-class-action-regime

[88] Rigby, B. (2025) 'Value of UK class actions rises to €155bn even as number of filings falls, study finds', on Global Legal Post, 13 August. Available at: https://www.globallegalpost.com/news/value-of-uk-class-actions-rises-to-eur155bn-even-as-number-of-filings-falls-study-finds-1127768666 The £160 billion figure encompasses proceedings across all UK courts, including the Competition Appeal Tribunal, and represents the aggregate of amounts alleged by claimants. It is not a reliable guide to expected outcomes or likely recoveries.

[9] Henderson, K. *et al*. (2025) *CMS European Class Action Report 2025*. Available at: https://cms.law/en/int/publication/cms-european-class-action-report-2025

[10] Bird & Bird (2023) 'Class Actions in the UK: Part One - What's the latest?', 21 September. Available at: https://www.twobirds.com/en/insights/2023/uk/class-actions-in-the-uk-whats-the-latest

[11] Rose, N. (2025) 'Private equity invests £1.2bn in the law in just five years', on Legal Futures, 27 February. Available at: https://www.legalfutures.co.uk/latest-news/private-equity-invests-1-2bn-in-the-law-in-just-five-years

private equity recorded revenue growth of approximately 30 per cent over 2 years, roughly double the 15 per cent recorded by the top 50 UK law firms.[12]

The 2021 acquisition of Fletchers Solicitors by Sun European Partners, the European advisory arm of Sun Capital Partners, a Florida-based private equity firm, represents an example of a US private equity firm securing direct ownership of a UK legal practice.[13,14] Sun Capital characterised the acquisition as a project to consolidate the consumer law market.[15,16] The commercial rationale is consistent with the private equity consolidation model applied to other fragmented professional services sectors, in which acquiring and integrating multiple practices generates economies of scale, pricing discipline and improved financial returns across a combined client base.

The principal structural driver of US private equity interest in UK law firms is a regulatory asymmetry: the UK permits external ownership of legal practices, whereas most US states do not.[17] England and Wales permit external ownership of legal practices through alternative business structures authorised by the Solicitors Regulation Authority under the Legal Services Act 2007, a licensing mechanism that has been open to applicants since October 2012.[18] A sector generating over £40 billion annually and dispersed across more than 9,000 firms presents consolidation opportunities of a kind that US private equity cannot pursue in its own market. The UK, in that respect, functions as a structural substitute.[19]

Third-party litigation funding[20]

The high-value end of the third-party litigation funding market in England and Wales is concentrated among dedicated funding firms with US ownership or US capital backing. Burford Capital, one of the world's largest litigation funders by assets under management, reported US$3.5 billion in legal finance assets at the close of 2024 and has maintained a UK market presence since 2009.[21] Innsworth Capital is a wholly owned vehicle of New York hedge fund Elliott Investment Management.[22] In 2019, Fortress Investment Group acquired the UK-based litigation funder Vannin Capital, integrating it into Fortress Legal Assets and establishing an additional channel of US investment management control over UK funding capacity.[23] In October 2023, Gramercy Funds Management agreed to back Pogust Goodhead with US$552.5 million in funding, then the largest single litigation-finance deal recorded in the UK market. In terms of regulatory oversight, mandatory beneficial ownership disclosure does not currently

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[12] Edwards, B. (2025) 'PE-backed law firms outpace UK top 50 revenue growth, study shows', on Global Legal Post, 15 April. Available at: https://www.globallegalpost.com/news/pe-backed-law-firms-outpace-uk-top-50-revenue-growth-study-shows-1879461748

[13] The following is cited for illustrative purposes only. No finding of wrongdoing against any party is alleged or implied.

[14] Houghton, T. (2021) 'Fletchers Solicitors acquired by Sun European Partners as firm to be taken to "next level" ', in *Business Live*, 27 October. Available at: https://www.business-live.co.uk/leads-deals/fletchers-solicitors-acquired-sun-european-21984240

[15] Hyde, J. (2021) 'US private equity moves in to snap up biggest PI firm', in *The Law Society Legal Gazette*, 27 October. Available at: https://www.lawgazette.co.uk/news/us-private-equity-moves-in-to-snap-up-biggest-pi-firm/5110290.article

[16] Rose, N. (2021) 'Exclusive: Major private equity house buys top-100 law firm', on Legal Futures, 27 October. Available at: https://www.legalfutures.co.uk/latest-news/exclusive-major-private-equity-house-buys-top-100-law-firm

[17] Dentons (2025) 'Nonlawyer Ownership in Law Firms', 25 August. Available at: https://www.dentons.com/en/insights/newsletters/2025/august/25/practice-tips-for-lawyers/nonlawyer-ownership-in-law-firms

[18] Legislation.gov.uk. *Legal Services Act 2007*, Part 5; Solicitors Regulation Authority, 'Alternative Business Structures', licensing of ABS firms commenced October 2012. Available at: https://www.legislation.gov.uk/ukpga/2007/29/contents

[19] Joyce, P. (2025) 'How law firms can capitalise on interest from US private equity', on Legal Futures, 17 November. Available at: https://www.legalfutures.co.uk/blog/how-law-firms-can-capitalise-on-interest-from-us-private-equity and Strategy& (2025) *UK Legal Services Market Report*, PwC. Available at: https://www.strategyand.pwc.com/uk/en/reports/uk-legal-services-market-report-2025.pdf The sector revenue figure of over £40 billion is drawn from the latter source.

[20] The following examples are cited for illustrative purposes only. No finding of wrongdoing against any party is alleged or implied.

[21] Burford Capital (2025) 'Form 10-K', year ending 31 December 2024. Available at: https://www.rns-pdf.londonstockexchange.com/rns/1851Z_1-2025-3-3.pdf

[22] Innsworth Capital. Available at www.innsworth.com.

[23] Strom, R. (2019) 'Litigation Funder Vannin Sold to Fortress Investment Group', on Bloomberg Law, 6 September. Available at: https://news.bloomberglaw.com/us-law-week/litigation-funder-vannin-sold-to-fortress-investment-group

exist in the UK; as a result, the figures above represent only the visible portion of US capital active in the UK litigation market. The four named funders together illustrate a defining characteristic of the UK third-party litigation funding market at scale: capital in the upper tier is US-concentrated, sourced from investment vehicles whose returns are governed by commercial fund structures rather than the procedural obligations that bind lawyers and courts.

Whatever their ownership structure, litigation funders in the UK operate on a common commercial logic. A Queen Mary University study commissioned by the Legal Services Board found that funders back between three and five per cent of cases pitched to them.[24,25] Case selection is commercial, not philanthropic, as capital concentrates at the high-value end of any class action claim distribution, where funder returns are largest.

Claims management companies

In the mass litigation market, claims management companies identify potential claimants through digital and social media campaigns, channelling them to group action firms and their litigation funding partners in exchange for referral fees. The incentive is volume. Since 1st April 2019, claims management companies have been regulated by the Financial Conduct Authority rather than the predecessor Claims Management Regulator, under a permissions framework spanning financial services, personal injury, housing disrepair, and four further sectors.[26,27] The Financial Conduct Authority oversight reduced documented conduct failures in claims solicitation. What the Financial Conduct Authority regulation did not alter was the economic structure governing claims management companies' behaviour. Volume acquisition funded by referral fees paid by group action firms remains the business model.

Legislative configuration: The Consumer Rights Act 2015 and the opt-out regime

Under the Consumer Rights Act 2015, the opt-out framework automatically enrols all class members domiciled in the UK in collective proceedings unless they actively withdraw, producing class sizes and aggregate damages that no opt-in regime could generate. The opt-out regime was not enacted as a litigation funding mechanism, but in practice, it functions as one. Proceedings of this scale and duration cannot be financed by claimants or by law firms operating on conventional retainers. External capital is not incidental to the model; it is structurally required. The relationship between the two is mutually constitutive: the opt-out regime generated the institutional demand for external capital that the third-party litigation funding market moved to supply, while the availability of that capital made proceedings of that scale and duration viable for the first time.

The regime is not static. In *Evans v Barclays Bank Plc*, the Supreme Court held unanimously that when deciding whether to allow collective proceedings, courts must consider the strength of the case and whether opt-out or opt-in is appropriate,[28] overturning the Court of Appeal's view that the strength of

[24] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

[25] Queen Mary University of London (2024) 'New research shows litigation funding improves access to justice for some, but is difficult to scale up', 20 June. Available at: https://www.qmul.ac.uk/law/news/2024/items/new-research-shows-litigation-funding-improves-access-to-justice-for-some-but-is-difficult-to-scale-up.html

[26] The Claims Management Ombudsman (2021) *Who we are*. Available at: https://cmc.financial-ombudsman.org.uk/who-we-are

[27] The Financial Conduct Authority. 'Claims Management Companies: Supervisory Framework', regulation commenced 1 April 2019.

[28] Opt-out, which is the system under which people are automatically included in a group lawsuit unless they actively choose to leave.

the claim was irrelevant to that choice.[29,30] *Evans* strengthens the Competition Appeal Tribunal's certification[31] gatekeeping role and signals judicial resistance to the use of opt-out mechanisms as a pressure tool in claims where the causal link between the defendant's conduct and the claimant's loss is weak. The judgment does not create a general merits threshold at certification.

In *Merricks v Mastercard* it was held (in paragraphs 59, 70 and 74) that the Competition Appeal Tribunal should apply a relative suitability test to claims, asking itself only if a claim is suitable to be brought as a collective rather than individual proceeding; that a claim should not fail because of difficulties in quantifying harm; and that, save for choosing between opt-in and opt-out proceedings, 'the certification process is not about, and does not involve, a merits test.'[32]

The minority expressed the concern that this approach risked 'significantly diminishing the role and utility of the certification safeguard', noting that collective actions 'confer substantial legal advantages on claimants and burdens on defendants.' That minority view has since become government policy. The government's July 2026 consultation cites the minority opinion directly as the basis for its proposed reform: the bar for certification is, in the government's own assessment, too low, and the absolute suitability test it proposes is designed to restore the filter function which the majority's relative suitability test left insufficiently defended.[33]

Its effect is narrower and more precise than that reading would suggest. What *Evans* recalibrates is the certification choice between opt-in and opt-out, making opt-out harder to obtain precisely where it has most frequently been sought: cases in which speculative causation supports aggregate claim values large enough to generate settlement pressure. *Evans* is a meaningful corrective. The judgment's reach is procedural. It does not address, and was not designed to address, the structural transparency deficits in funder disclosure, regulatory oversight and sanctions compliance that this report identifies as the primary uncorrected gaps in the current framework.

Evans v Barclays Bank Plc

Evans v Barclays Bank Plc concerns a proposed opt-out collective action in the Competition Appeal Tribunal by a class of foreign exchange traders and institutional investors against a group of major banks (including Barclays) alleged to have breached competition law through foreign exchange spot trading collusion in online 'chat rooms'. The central question before the Supreme Court was how the Tribunal should exercise its certification discretion when determining whether collective proceedings should be authorised on an opt-out rather than an opt-in basis. It specifically asked what weight to assign to the relative strength of the proposed class case and the practical availability of opt-in proceedings for the same claimants. The Supreme Court confirmed that weak merits and the

[29] Supreme Court (2025) *Evans (Respondent) v Barclays Bank Plc and others (Appellants).* Available at: https://supremecourt.uk/cases/press-summary/uksc-2023-0174 The Court's recalibration concerns the opt-in or opt-out discretion at certification; it does not retreat from the *Merricks* standard on merits and should not be read as introducing a general merits threshold.
[30] Competition Appeal Tribunal (2019) *Mr Phillip Evans v Barclays Bank PLC and Others*. Available at: https://www.catribunal.org.uk/cases/13367719-mr-phillip-evans
[31] Certification stage is the formal court hearing at which a judge decides whether a proposed group claim can officially proceed as a collective case.
[32] Competition Appeal Tribunal (2020) *Judgment: Mastercard Incorporated and others (Appellants) v Walter Hugh Merricks CBE (Respondent)*. Available at: https://www.catribunal.org.uk/sites/cat/files/2020-12/Merricks%20Supreme%20Court%20judgment%20uksc-2019-0118.pdf
[33] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

practicability of opt-in proceedings can weigh decisively against granting a collective proceedings order in opt-out form.

2.3. What third-party litigation funding does: Business model and incentive structure

In its basic form, a litigation funding agreement commits a funder to covering the litigation costs of a claimant, or claimant class, in exchange for a predetermined return, typically a share of damages or a multiple of the capital deployed, payable only on success. If the claim fails, the funder absorbs the loss. The non-recourse structure distinguishes third-party litigation funding from conventional lending and forms the basis of its access-to-justice rationale. The funder enables claims that the claimant cannot finance from their own resources, bearing the cost of failure in exchange for a share of any recovery.

The third-party litigation funding model is not, in principle, objectionable, as it performs a legitimate and socially useful function by enabling claimants with genuine claims to access proceedings that they could not otherwise finance. The report does not dispute this. The problems are structural and arise under specific conditions. They arise when the funder's financial exposure becomes large enough to generate strong incentives to influence proceedings; when claimants have no meaningful ability to negotiate the terms on which they participate; when the funder's identity and interests are undisclosed to the court; and when the capital behind the funder originates with persons whose involvement in UK proceedings would be impermissible if known. The existing framework permits each of these conditions. The case studies in Section 3 document instances in which each of these conditions has arisen.

Investment return structures

Litigation funders typically structure their returns on one of two bases. Under the first, the funder takes a percentage of the damages award, ordinarily falling within the range of 20 to 40 per cent and calibrated to the claim's risk profile. Under the second, the funder negotiates a fixed multiple of invested capital, which is typically two to three times the sum deployed, without reference to the monetary damages recovered.

R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal

R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal arose from truck cartel damages claims where the Road Haulage Association and UK Trucking Companies had entered litigation funding agreements under which funders received a percentage share of any damages recovered. The core legal question was whether such percentage-based litigation funding agreements are 'damages-based agreements' (within section 58AA of the Courts and Legal Services Act 1990 and the Damages-Based Agreements Regulations) and therefore subject to, and largely non-compliant with, that regime.

The *PACCAR* decision reshaped how funders structure their returns. The Supreme Court held in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal* that litigation funding agreements calculated as a share of damages qualified as damages-based agreements under the Courts and Legal Services Act 1990, making non-compliant agreements unenforceable.[34] Funders

[34] Supreme Court (2023) *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents).* Available at: https://www.supremecourt.uk/cases/uksc-2021-0078

moved to multiple of capital structures in response, removing any reference to the damages ultimately recovered.

In *Alex Neill Class Representative Ltd v Sony Interactive Entertainment Europe Ltd*, the Court of Appeal upheld this revised model, approving a litigation funding agreement structured as the greater of a fixed capital multiple or a percentage of damages.[35] The Legal Services Board commissioned Professor Rachael Mulheron KC of Queen Mary University of London to produce an empirical review of the terms of actual litigation funding agreements in England and Wales, published in March 2024.[36] The Mulheron review reports that multiples have risen from a previous norm of around three times to figures as high as approximately 14 times in some agreements. It gives one example in which the funder's return is defined as the aggregate of 0.5 times committed capital and 2.5 times drawn capital, reflecting how structures vary with case duration, risk and complexity.[37]

Alex Neill Class Representative Ltd v Sony Interactive Entertainment Europe Ltd

Alex Neill Class Representative Ltd v Sony Interactive Entertainment Europe Ltd concerns a collective consumer claim before the Competition Appeal Tribunal alleging that Sony abused a dominant position in digital game distribution via the PlayStation Store, leading to inflated prices for UK consumers. After *PACCAR*, Sony challenged the claimant's funding arrangements on the basis that they were unlawful damages-based agreements, raising questions (under section 58AA) about whether litigation funding agreements with a capped return could still fall within the damages-based agreements regime.

The distribution waterfall

The distribution of recovered proceeds follows a contractually prescribed priority sequence that subordinates the claimant's recovery to the funder's financial entitlements. Proceeds are applied in the following order: first, reimbursement of capital deployed by the funder; second, payment of the funder's contractual return; third, satisfaction of outstanding legal costs; and fourth, the residual passes to the claimant. The consequence is that even in nominally successful proceedings, the compensation received by the claimant may be substantially lower than the damages formally recovered on the claim.

Two resolved cases illustrate the structural consequence of waterfall sequencing in practice. In *Merricks v Mastercard*, the settlement reached in February 2025 for £200 million against a claim originally valued at around £14 billion saw Innsworth Capital assert a contractual minimum of £179 million before any funds reached the 44 million class members.[38] The Competition Appeal Tribunal approved the distribution over Innsworth's objection.[39] In *Bates v Post Office*, the combined share of the proceeds absorbed by funder returns and legal costs was reported to be approximately 80 per

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[35] 'Alex Neill Class Representative Ltd v Sony Interactive Entertainment Europe Ltd [2025] EWCA Civ 841 (4 July 2025)'. Available at: https://www.judiciary.uk/wp-content/uploads/2025/07/Sony-Interactive-v-Alex-Neill-Visa-v-Commercial-and-Interregional-Mastercard-v-Commercial-and-Interregional-and-Apple-v-Rachael-Kent-and-Apple-v-Justin-Gutmann.pdf

[36] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf Summarising empirical findings on funder selectivity and the implications for the access-to-justice rationale.

[37] Norton Rose Fulbright (2026) 'Litigation funding: Key updates from 2025 and what's on the horizon for 2026', January. Available at: https://www.nortonrosefulbright.com/en/knowledge/publications/00ba6bea/litigation-funding-key-updates-from-2025-and-whats-on-the-horizon-for-2026

[38] Brodies (2025) 'Group proceedings – the numbers behind the Merricks v Mastercard settlement', 25 March. Available at: https://brodies.com/insights/class-actions/group-proceedings-the-numbers-behind-the-merricks-v-mastercard-settlement/

[39] Slaughter and May (2025) 'Merricks v Mastercard (settlement approval decision)', 12 July. Available at: https://www.slaughterandmay.com/insights/new-insights/merricks-v-mastercard-settlement-approval-decision/ and Innsworth. Available at: https://innsworth.com/

cent.[40] The breakdown between those two categories was never publicly disclosed. In both cases, the claimant's recovery was determined not by the damages formally awarded but by what remained in the waterfall after the funder's priority claims were met.

Merricks v Mastercard

Merricks v Mastercard is an opt-out collective action in the Competition Appeal Tribunal brought by Walter Merricks CBE on behalf of around 44 million UK consumers, alleging that multilateral interchange fees set by Mastercard led to inflated retail prices paid by anyone buying goods or services from UK merchants that accepted Mastercard cards between 1992 and 2008, regardless of whether they themselves used a Mastercard. The core legal issues were the threshold for certifying competition damages claims as 'eligible' for collective proceedings (under section 47B of the Competition Act 1998), and whether difficulties in quantifying and distributing an aggregate award should prevent certification.

Bates and Others v Post Office Ltd

Bates and Others v Post Office Ltd was a case of group litigation (under CPR Part 19) brought by 555 sub-postmasters and sub-postmistresses against Post Office Ltd, alleging they had been wrongly held liable and in many cases prosecuted for shortfalls and discrepancies caused by defects in the Horizon IT accounting system rather than by dishonesty or error on their part.

The settlement conflict

The Mulheron review finds that certain contractual provisions may create misaligned incentives in relation to settlement.[41] A funder with capital at risk may push for early settlement at the level needed to secure its contractual return, even where the claimant would benefit from pressing further. Equally, a funder may block a settlement the claimant wishes to accept, where doing so serves a broader portfolio objective. The Association of Litigation Funders' Code of Conduct prohibits this kind of funder control over settlement decisions. The review found that actual contractual practice departs from Code standards in a significant number of agreements. Whether funders comply cannot be assessed without access to litigation funding agreement terms, and the current framework requires no such disclosure.

The case of *Merricks v Mastercard* illustrates what the structural sequencing of funder rights makes available in consent terms.[42] As the preceding discussion establishes, Innsworth Capital contested the settlement, and the Competition Appeal Tribunal approved it regardless. Whether Innsworth's assessment of value was correct is not the issue this analysis addresses. What this case demonstrates is that a funder whose contractual consent is required can contest a settlement the class representative has accepted, on grounds that reflect the funder's own return calculus rather than the compensation interests of the class members whose claims constitute the proceedings.

[40] Institute for Legal Reform (2024) 'Mr. Bates vs. The Post Office Sheds Light on Secretive Third-Party Litigation Funding', 16 April. Available at: https://instituteforlegalreform.com/blog/mr-bates-vs-the-post-office-sheds-light-on-secretive-third-party-litigation-funding/

[41] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

[42] Slaughter and May (2025) 'Merricks v Mastercard (settlement approval decision)', 12 July. Available at: https://www.slaughterandmay.com/insights/new-insights/merricks-v-mastercard-settlement-approval-decision/

The non-recourse structure and case selection effects

The non-recourse character of third-party litigation funding generates both the access-to-justice benefit and the principal conflict risk. Because funders bear total loss on failed claims, they invest rationally only in cases with strong commercial upside. The Civil Justice Council's October 2024 Interim Report explicitly identified the resulting systemic risks: third-party litigation funding could result in under-compensation for funded parties, encourage commercially motivated rather than legally meritorious claims, create incentives for funders to direct proceedings and settlements, and discourage resolution on terms they have not approved.[43]

The Mulheron review is unambiguous about the access-to-justice implications of this selection discipline. Funders back between three and five per cent of all cases pitched to them. The review concludes that third-party litigation funding cannot be scaled up to provide access to justice across a wide range of claim types, grievances and values.[44] The capital deployed focuses on high-value, high-volume collective actions where the return-on-investment calculation is most favourable. Third-party litigation funding, therefore, simultaneously fails the access-to-justice test at the broad population level and drives the expansion of mass claims at the high-value end. These are not contradictory observations. They describe the two extremes of the same selection distribution.

The government's July 2026 consultation provides official corroboration of this analysis. Call for evidence responses confirmed that a claim must now have a quantum of approximately £500 million or more to attract funder backing, and gave a specific example of a viable follow-on action with a lower-end quantum of approximately £230 million that the claimants could not bring because the value was considered insufficient to attract funding.[45] The consultation acknowledges that the original rationale for prohibiting damages-based agreements in the opt-out regime, that such arrangements would cause lawyers to focus only on the largest cases, is now redundant, because funders' focus is on the largest cases in any event. The selectivity this report identifies through Mulheron's case acceptance rate findings is therefore the government's own diagnosis of the market as it currently operates.

Novel structures: Equity stakes in law firms

Funders have begun deploying capital at the firm level rather than the case level, acquiring equity stakes in law firms or providing large-scale capital facilities against a firm's overall caseload. The analysis by the multinational American law firm Dechert and the legal research company Chambers' article both document this development.[46,47] The incentive effects differ from those in conventionally funded litigation. A funder whose return depends on a firm's commercial performance has no direct interest in the outcome of individual claims. The pressure this creates is toward high-volume case selection: the firm is incentivised to maximise throughput because throughput, not case quality, determines the funder's return. The Chambers article examines how the UK litigation funding market

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[43] Civil Justice Council (2024) *Review of Litigation Funding: Interim Report and Consultation*. Available at: https://www.judiciary.uk/wp-content/uploads/2024/10/CJC-Review-of-Litigation-Funding-Interim-Report.pdf

[44] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

[45] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[46] Dechert (2025) 'Funders Keepers: Growth in Litigation Funding in England Continues Despite Legal Challenges', 16 May. Available at: https://www.dechert.com/knowledge/onpoint/2025/5/litigation-funding-in-england--legal-challenges-are-no-match-for.html.

[47] Mhiri, I. (2025) 'How litigation funding is reshaping the UK market', on Chambers, 3 November. Available at: https://chambers.com/topics/litigation-funding-uk-legal-trends

is structurally changing in response to the *PACCAR* ruling and rising interest rates, with funders shifting toward portfolio funding and direct investment in law firms, and considers what those shifts mean for conflicts of interest, client protection and the adequacy of the current light-touch regulatory framework.[48] This illustrates that the post-*PACCAR* shift toward portfolio funding and firm-level equity positions has steered funder incentives away from individual case quality and toward aggregate throughput, with implications for conflict-of-interest management that the current regulatory framework does not address. The Dechert article surveys the growth of the litigation funding market in England and Wales over the past decade, tracing the industry's response to the *PACCAR* decision and the legislative and judicial developments that have followed it.[49]

In examining recent and novel structures, Burford Capital's minority investment in legal advisory firm Kindleworth, and Burford's stated intention to use that relationship to identify equity stakes in law firms within Kindleworth's network, illustrate how funders are beginning to deploy capital at the firm level rather than solely on a case-by-case basis.[50] The Solicitors Regulation Authority's authorisation framework presupposes a market in which funders, firm owners and legal advisers occupy structurally distinct roles. The current market relationships do not consistently observe those distinctions, and the framework has not been updated to address the convergence. Section 6 of this report considers whether the regulatory framework is equipped to address a market that has functionally reorganised itself along lines the current architecture did not anticipate.

3. Case studies: Funders and litigation

3.1. Funder control and conflict of interest

The rule that funders may not direct litigation strategy is unenforceable without disclosure requirements that allow courts to scrutinise funding arrangements. English procedural rules place strategic control in the hands of legally qualified practitioners, not in the hands of the parties financing the litigation. In practice, that requirement cannot be verified where the terms of the funding agreement are not before the court. A funder with a financial stake in the outcome of proceedings has an incentive to influence decisions on evidence, strategy and settlement that determine whether its return threshold is met. The current framework requires little disclosure of those arrangements, and the prohibition on funder control therefore operates without sufficient enforcement mechanism.

The Mulheron review provides a detailed empirical analysis of litigation funding agreement terms in the English and Welsh market.[51] Professor Rachael Mulheron KC of Queen Mary University of London examined the contractual terms of actual funding agreements rather than the Code of Conduct provisions that those agreements are drafted to reflect. The review found that many settlement

[48] Mhiri, I. (2025) 'How litigation funding is reshaping the UK market', on Chambers, 3 November. Available at: https://chambers.com/topics/litigation-funding-uk-legal-trends

[49] Dechert (2025) 'Funders Keepers: Growth in Litigation Funding in England Continues Despite Legal Challenges', 16 May. Available at: https://www.dechert.com/knowledge/onpoint/2025/5/litigation-funding-in-england--legal-challenges-are-no-match-for.html.

[50] Rose, N. (2025) 'Burford invests in consultancy as it eyes stakes in large law firms', on Legal Futures, 10 September. Available at: https://www.legalfutures.co.uk/latest-news/burford-invests-in-consultancy-as-it-eyes-stakes-in-large-law-firms

[51] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

clauses depart from the Association of Litigation Funders' Code model by giving funders defined approval or consent rights over settlement, and that termination provisions in some agreements are broader than the grounds contemplated in Clause 9(b) of that code. Some litigation funding agreements grant funders an explicit veto over settlement below a specified return threshold. Others grant the funder the right to terminate if the claim's prospects fall below a defined threshold, which, in practice, compels settlement or abandonment regardless of the claimant's preference. The current framework does not require the funder to disclose the commercial basis for that decision to the court or to the funded party. Taken together, these features mean that funding could be made conditional on meeting return or merits thresholds in ways that, in practice, can create strong pressure to settle or discontinue once those thresholds are no longer met, even if the claimant wishes to proceed.

The priority waterfall incorporated in standard litigation funding agreement structures intensifies the settlement conflict. Where the funder's commercial position prevails over the claimant's preference, the waterfall further reduces what the claimant recovers: capital repayment and the funder's contractual return are satisfied before net proceeds reach the funded party.

Drawing on Mulheron's empirical report, three types of contractual provision appear capable of giving funders practical influence over litigation proceedings without necessarily breaching the Association of Litigation Funders' Code's formal prohibition on taking control.[52] First, termination clauses frequently allow a funder to withdraw where it ceases to be satisfied with the claim's merits or commercial prospects, on grounds that extend beyond the illustrative bases in Clause 9(b) of the Code. Second, some agreements confer approval rights over the appointment or replacement of solicitors, a feature that English champerty case law treats as a potential marker of impermissible funder control. Third, staged or tranche funding provisions make further capital releases conditional on the funder's approval of progress against specified milestones. Each of these clauses is drafted to comply with the letter of current rules, yet none is automatically disclosed or scrutinised under existing enforcement mechanisms.[53]

3.2. Case studies[54]

The BHP Mariana dam litigation provides a thoroughly documented case study of firm-level litigation funding and its structural consequences available in English proceedings.[55,56] Public reporting on the BHP Mariana dam litigation describes a very large group of Brazilian claimants, commonly estimated at around 600,000–700,000 people, with pleaded claim values of up to approximately £36 billion under Brazilian law.[57] In October 2023, Pogust Goodhead announced that Gramercy Funds Management had

[52] Mulheron, R. (2024) *A Review of Litigation Funding in England and Wales: A Legal Literature and Empirical Study*. Legal Services Board, pp.87-112. Available at: https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf

[53] Civil Justice Council (2024) *Review of Litigation Funding – Interim Report and Consultation*. Available at: https://www.judiciary.uk/wp-content/uploads/2024/10/CJC-Review-of-Litigation-Funding-Interim-Report.pdf

[54] The analysis of control in this section proceeds from documented public ownership facts and constitutes a reasoned inference from those facts; it does not assert an established finding of control.

[55] Rigby, B. (2025) 'Big win for Pogust Goodhead as UK's High Court rules BHP liable for Brazil dam collapse', on The Global Legal Post, 14 November. Available at: https://www.globallegalpost.com/news/big-win-for-pogust-goodhead-as-uks-high-court-rules-bhp-liable-for-brazil-dam-collapse-1724774346

[56] Pogust Goodhead (2026) 'Court of Appeal shuts down BHP's attempt to overturn Mariana liability judgment', 6 May. Available at: https://pogustgoodhead.com/court-of-appeal-shuts-down-bhps-attempt-to-overturn-mariana-liability-judgment/

[57] Rigby, B. (2025) 'Big win for Pogust Goodhead as UK's High Court rules BHP liable for Brazil dam collapse', on The Global Legal Post, 14 November. Available at: https://www.globallegalpost.com/news/big-win-for-pogust-goodhead-as-uks-high-court-rules-bhp-liable-for-brazil-dam-collapse-1724774346

committed £450 million in funding to the firm and described the commitment as the largest single litigation funding deal in legal history.[58,59,60]

Município De Mariana v BHP Group

Município De Mariana v BHP Group is mass tort litigation brought in the Technology and Construction Court by Brazilian municipalities and other claimants against BHP Group (UK) Limited and BHP Group Limited in relation to the 2015 Fundão dam collapse in Minas Gerais, seeking redress for extensive environmental and economic damage. One of the legal issues, among others, included the appropriateness of English jurisdiction to hear claims by foreign public entities and individuals.

Following the High Court's liability ruling against BHP in the Mariana dam proceedings, coverage of Pogust Goodhead's wider funding relationships has included the *Financial Times* reporting of alleged Gramercy involvement in the firm's operations that went beyond external capital provision, and in the context of the law firm's work.[61,62] BHP's solicitors raised concerns, in adversarial correspondence that was not the subject of judicial determination, about the extent of Gramercy's influence over Pogust Goodhead's conduct of the BHP Mariana dam litigation; a question that, if resolved in BHP's favour, would have engaged the rule that litigation strategy must remain under the control of lawyers rather than third-party funders.[63,64] Gramercy has denied such allegations and the court did not make any finding on that allegation. This case is used to illustrate that the channels that raised the scrutiny of Gramercy's role included high-profile reporting by the *Financial Times* of an upheaval in leadership over concerns that the hedge fund had allegedly attempted to interfere in the law firm and its cases,[65] combined with a well-resourced defendant willing to raise the issue in contested proceedings.

The episode points to a structural problem that goes beyond the facts of the BHP litigation. The larger a funder's financial exposure, the stronger its commercial incentive to influence the conduct of the claim it finances. Existing procedural rules prohibit that influence from crossing into *de facto* control. Still, they cannot assess whether it has done so without access to the terms and scale of the funding relationship. That access currently depends on a defendant raising the concern in contested proceedings or the media having reported it. This mechanism requires both the resources to investigate a complex funding arrangement and the incentive to challenge it.

In claims where no such defendant exists, or others have been unable to scrutinise such detailed arrangements, the concern goes unexamined, not because it is absent but because nothing in the current framework requires it to be examined. Even where a funder is voluntarily disclosed – including

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[58] Slaughter and May (2025) 'Merricks v Mastercard (settlement approval decision)', 22 July. Available at: https://www.slaughterandmay.com/insights/new-insights/merricks-v-mastercard-settlement-approval-decision/

[59] Pogust Goodhead (2023) 'Pogust Goodhead receives £450M in largest litigation funding deal in legal history', 4 October. Available at: https://pogustgoodhead.com/largest-litigation-funding-deal-in-history/

[60] Thomson, B. (2025) '£65m Lifeline or Financial Casket? Pogust Goodhead's Hedge-Driven Drama Unfolds', on LawFuel, 24 August. Available at: https://www.lawfuel.com/65m-lifeline-or-financial-casket-pogust-goodheads-hedge-driven-drama-unfolds/

[61] *Financial Times* (2025) 'Lawyer revolt disrupts multibillion-pound diesel lawsuit in London', 6 October. Available at: https://www.ft.com/content/6e00b51b-79e8-4250-9d3c-8e2029fcd7a3

[62] Cross, M. (2025) 'Mastercard: Merricks demands apology from funder as £200m settlement approved', on The Law Society Gazette, 20 May. Available at: https://www.lawgazette.co.uk/news/mastercard-merricks-demands-apology-from-funder-as-200m-settlement-approved/5123342.article

[63] *Financial Times* (2025) 'Pogust Goodhead suffers lawyer revolt over alleged hedge fund meddling', 10 September. Available at: https://www.ft.com/content/be3e0374-bac9-4af6-a413-1727a89a7a2e

[64] LawFuel (2025) '£65m Lifeline or Financial Casket? Pogust Goodhead's Hedge-Driven Drama Unfolds', Available at: https://www.lawfuel.com/65m-lifeline-or-financial-casket-pogust-goodheads-hedge-driven-drama-unfolds/

[65] *Financial Times* (2025) 'Pogust Goodhead suffers lawyer revolt over alleged hedge fund meddling', 10 September. Available at: https://www.ft.com/content/be3e0374-bac9-4af6-a413-1727a89a7a2e

in the case of Gramercy transparently financing the claim brought by law firm Pogust Goodhead – some detailed analysis of the case suggests that there may be a myriad of institutional investors behind the capital, including special purpose vehicles or fund managers.[66] So, the requirement to identify an ultimate beneficial owner rests not on mere disclosure of the funder, but on understanding who ultimately owns the capital behind a funded claim, in which the *who* is identified as the natural person at the end of the funding chain. A structurally distinct yet analytically related model of functional integration appears in the other corporate structures.

Some law firm corporate structures present models of closer functional integration among funders, claimant firms, after-the-event insurers and claimant-acquisition businesses within single groups. In some cases, a litigation funder can be consolidated with a claimant law firm, an after-the-event insurer and a dedicated claimant acquisition vehicle.[67] Where such structures exist, they can place claim identification, class assembly, funding decisions, litigation conduct and insurance coverage under a single ownership interest with a single financial objective. In such configurations, a single ownership interest can direct each stage of the claim lifecycle, including: the identification of commercially viable claims, the assembly and management of the claimant class, the decision to fund and the determination of the return multiple on which funding proceeds, the conduct of the litigation through the group's own solicitors and the calibration of after-the-event insurance coverage through the group's own insurer. [68] Each function, in isolation, is lawful. While the Solicitors Regulation Authority and the Financial Conduct Authority frameworks regulate aspects of such groups, there is currently no regime to assess the combined effect of common ownership across all these functions.[69,70]

In *Christine Riefa Class Representative Limited v Apple Inc. & Others*, the Competition Appeal Tribunal refused to certify the collective proceedings in part because it found that the proposed class representative's relationship with her funder meant she could not demonstrate the independence required to act solely in the class' interests. The Tribunal concluded that the degree of dependence on the funder was incompatible with the representative role envisaged in the collective proceedings regime.[71]

The statutory authority governing that assessment (section 47B(8) of the Competition Act 1998) requires the Competition Appeal Tribunal to be satisfied that it is 'just and reasonable' for a person to act as class representative.[72] Under the rules, the class representative must be able to represent the class fairly and adequately, must hold no material conflict with the class' interests, must be able to meet any adverse costs order, and must have a satisfactory plan for the collective proceedings (rule

[66] Hess, M. (2026) '(More) Lessons from the Pogust Goodhead Gramercy Litigation case(s)', on Conflict & Credit, 22 June. Available at: https://conflictandcredit.substack.com/p/more-lessons-from-the-pogust-goodhead; Hollingsworth, M. (2025) 'Investors clash with lawyers over BHP class action', in *The Observer,* 10 August. Available at: https://observer.co.uk/news/business/article/investors-clash-with-lawyers-over-bhp-class-action

[67] Bloomberg Law (2025) 'UK Funder Joins with Law Firm, Insurer to Form Legal Behemoth', 10 January. Available at: https://news.bloomberglaw.com/business-and-practice/uk-funder-joins-with-law-firm-insurer-to-form-legal-behemoth

[68] Cross, M. (2024) 'US firm's UK branch creates new collective redress force', in *The Law Society Gazette*, 5 March. Available at: https://www.lawgazette.co.uk/practice/us-firms-uk-branch-creates-new-collective-redress-force/5118960.article and Rose, N. (2025) 'Group brings together law firm, funder, insurer and client builder', on Legal Futures, 12 January. Available at: https://www.legalfutures.co.uk/latest-news/group-brings-together-law-firm-funder-insurer-and-client-builder

[69] Burbridge, T. (2025) 'Litigation Funder Forms New Biz To Oversee Group Claims', on Law360, 10 January. Available at: https://www.law360.com/pulse/articles/2282316/litigation-funder-forms-new-biz-to-oversee-group-claims

[70] Rose, N. (2025) 'Group brings together law firm, funder, insurer and client builder', on Legal Futures, 12 January. Available at: https://www.legalfutures.co.uk/latest-news/group-brings-together-law-firm-funder-insurer-and-client-builder

[71] Competition Appeal Tribunal (2023) *Christine Riefa Class Representative Limited v Apple Inc. & Others*. Available at: https://www.catribunal.org.uk/cases/16027723-christine-riefa-class-representative-limited

[72] Legislation.gov.uk. *Competition Act 1998*. Available at: https://www.legislation.gov.uk/ukpga/1998/41/section/47B

78(2) and (3) of the Competition Appeal Tribunal Rules 2015 specify those conditions).[73] In *Riefa*, the court found the proposed class representative had failed the independence condition on its own terms: the judgment records that she did not demonstrate 'a strong understanding of the arrangements they had entered into' or 'sufficient independence', having relied excessively on her legal representatives in negotiating and scrutinising the funding terms agreed on behalf of the class.

The statutory conditions that Riefa failed to satisfy are the same conditions this report identifies as structurally unenforceable where funding disclosure is absent: independence cannot be assessed without knowledge of the terms that create the dependency. In *Riefa*, that dependence arose from a contractual relationship between separate entities, one whose terms could, in principle, be brought before a court in proceedings. The functionally integrated model produces the same dependence through ownership rather than contract. Existing procedural tools at certification, including the Competition Appeal Tribunal scrutiny of litigation funding agreement terms, are premised on the existence of a separate contractual document between distinct parties. Where the funder and law firm sit inside the same corporate group, no external funding agreement is required, no document is available for review, and the court's standard mechanism for detecting and policing funder influence has nothing to engage.

Christine Riefa Class Representative Limited v Apple Inc. & Others

Christine Riefa Class Representative Limited v Apple Inc. & Others is an opt-out collective action in the Competition Appeal Tribunal brought by a special purpose vehicle acting as proposed class representative against Apple and Amazon entities, alleging that unlawful agreements between them restricted marketplace access for independent resellers and distorted online prices for Apple products, in breach of the Chapter I prohibition in section 2 of the Competition Act 1998 and, pre-Brexit, Article 101 TFEU. The central legal questions at the certification stage were whether the proposed proceedings met the statutory 'authorisation condition' and other requirements for a collective proceedings order under section 47B, including whether it was 'just and reasonable' for Professor Riefa to act as class representative, given concerns about her independence, understanding of the funding arrangements and ability to safeguard the class' interests.

The mechanism this analysis identifies is structural rather than contractual. A claimant law firm's solicitors can depend on a litigation funder for both their employment and their access to the claims the group generates.[74] This type of structure would mean that decisions about claim generation, funding and litigation could be closely co-ordinated within the group and could give the group's owners influence over such a law firm's commercial priorities, potentially aligning remuneration and case selection with the group's mass-claim, return-seeking business model. No formal contractual provision is required for that influence to operate, and no existing oversight mechanism is designed to assess it. The Association of Litigation Funders' Code governs litigation funding agreement terms. The Solicitors Regulation Authority's framework governs professional conduct. Neither addresses the exercise of strategic influence through the ownership structure of an alternative business structure, a regulatory gap that the functional integration documented in this section makes structurally significant.

[73] Legislation.gov.uk (2015) The Competition Appeal Tribunal Rules 2015. Available at: https://www.legislation.gov.uk/uksi/2015/1648/data.html

[74] Rigby, B. (2024) 'UK arms of rival US class action firms unveil merger', on The Global Legal Post, 5 March. Available at: https://www.globallegalpost.com/news/uk-arms-of-rival-us-class-action-firms-unveil-merger-1555614590

Between 2023 and 2025, the Competition Appeal Tribunal's case law on collective proceedings was shaped by the Supreme Court's decision in *PACCAR*, leading to closer scrutiny of litigation funding arrangements and the enforceability of litigation funding agreements at the certification stage, particularly in opt-out, funded claims.[75,76] The Tribunal has required that the proceedings principally benefit class members rather than the commercial interests of funders and lawyers, and that class representatives demonstrate genuine independence from their funders and an adequate understanding of the funding terms. That certification scrutiny extends to the ratio of funding costs to claimant benefit and the funder's priority over settlement proceeds. Each of these requirements bears directly on the more novel functionally integrated model, in which funder, law firm, insurer, and claimant acquisition vehicle operate under common ownership and a shared financial objective. The Competition Appeal Tribunal has not yet had to apply these standards to a structure of that kind. The volume of collective proceedings work concentrated in a small number of claimant law firms makes it probable that the Competition Appeal Tribunal will eventually certify proceedings involving a functionally integrated structure. When it does, the analytical gap between its existing certification tools and the absence of a separable external funding document will require resolution.[77]

3.3. Foreign capital, sanctions and national security

The control and conflict risks documented above share a common dependency: the disclosure that would allow courts, regulators and opposing parties to identify and assess them. That dependency is compounded when the capital financing proceedings originate with foreign investors whose beneficial ownership is unknown to the jurisdiction. There is no general procedural rule in England and Wales requiring litigants to disclose to the court the ultimate beneficial ownership of capital used to finance their claims. In the absence of such a litigation-specific obligation, capital owned or controlled by designated persons can enter funding structures without that ownership automatically being revealed in the proceedings themselves; any disclosure duty instead arises under sanctions and financial regulation when regulated firms know or have reasonable cause to suspect that designated-person ownership or control exists.[78] A funded litigant is required neither to identify the funder nor to trace the funder's capital to natural persons nor to disclose any subsequent change in beneficial ownership. This is compounded by the absence of regulatory oversight at the funder level: litigation funders in England and Wales fall entirely outside the Financial Conduct Authority regulation and are subject only to the voluntary Association of Litigation Funders' Code, which is silent on beneficial ownership disclosure.

The UK sanctions regime is premised on excluding designated persons from the UK financial system across the full range of their economic activity. A litigation funding market that is opaque by default constitutes a structural gap within that enforcement framework. A designated person who retains effective control of a funding vehicle, whether through formal ownership or through arrangements that fall short of legal title, may deploy capital in these proceedings without triggering any disclosure

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[75] Brown, A. and Milucky, S. (2025) 'UK Collective Proceedings: Mid-2025 Review', on Arnold & Porter, 16 July. Available at: https://www.arnoldporter.com/en/perspectives/advisories/2025/07/uk-collective-proceedings-mid-2025-review

[76] RPC (2024) *UK CAT Collective Proceedings: Spring 2024 Update*. Available at: https://www.rpclegal.com/-/media/rpc/files/perspectives/regulatory/cat-cpo-spring-update-042024.pdf

[77] Competition Appeal Tribunal. Christine Riefa Class Representative Limited v Apple Inc. & Others. Available at: https://www.catribunal.org.uk/cases/16027723-christine-riefa-class-representative-limited; See also: Civil Justice Council (2025) *Review of Litigation Funding: Final Report.* Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf

[78] Debevoise & Plimpton (2024) 'English High Court Clarifies UK Sanctions "Reasonable Cause to Suspect" Standard', 14 May. Available at: https://www.debevoise.com/insights/publications/2024/05/high-court-clarifies-uk-sanctions-reasonable-cause

obligation. Should beneficial ownership change while proceedings are underway, there is no duty to notify the court. The gap does not arise from regulatory failure in the conventional sense. It arises from the absence of any applicable obligation. The *Vneshprombank* litigation is the case through which the risk has reached a UK court, and its analysis follows in Section 3.4.

3.4 Case study:[79] A1 LLC, Alfa Group and Vneshprombank

In May 2024, the High Court in *Vneshprombank LLC v Bedzhamov* held that the asset-freeze prohibitions in the Russia (Sanctions) (EU Exit) Regulations 2019 are engaged only where the relevant funds are in fact owned or controlled by a designated person, and that ‘reasonable cause to suspect’ refers to the state of mind of the person dealing with the funds rather than creating liability where ownership or control is merely suspected.[80,81] On that basis, the court held it unnecessary to resolve whether sanctioned individuals continued to control A1 LLC. The judge examined the question in any event in the part of the judgment that does not bind future courts, known as *obiter*. Although the court ultimately declined to make a binding finding on ownership or control, the court stated in *obiter* that, on the evidence before the court, there was reasonable cause to suspect that A1 LLC was owned or controlled, directly or indirectly, by designated individuals during the period it funded the fraud recovery claim, a claim brought by Vneshprombank against its former president, alleging misappropriation of approximately US$1.34 billion.[82] A1 is part of the Alfa Group, described at trial as one of the largest privately held financial and investment conglomerates in Russia.[83]

Until March 2022, A1 was owned through a Luxembourg holding company whose major shareholders included three individuals who were designated under the Russia (Sanctions) (EU Exit) Regulations 2019 on 15th March 2022.[84] The court stated in obiter that, based on the evidence before it, there was reasonable cause to suspect that A1's beneficial ownership had not changed in substance.[85] However, the decision also held that even where there is a ‘reasonable cause to suspect’, an offence would only occur if the relevant entity is in fact owned or controlled by a designated person (a person whose assets were frozen in the UK).[86] Mrs Justice Cockerill characterised the €1,000 sale price (about £714) that was paid for the entire share capital of A1 as ‘surprising on its face’, and found that the financial

[79] The following case study is cited for illustrative purposes only. No finding of wrongdoing against any party is alleged or implied.
[80] Courts and Tribunals Judiciary. *Vneshprombank LLC v Bedzhamov EWHC 1048 (Ch).* Available at: https://www.judiciary.uk/wp-content/uploads/2024/05/Vneshprombank-v-Bedzhamov-Judgement.pdf
[81] Herbert Smith Feehills Kramer (2024) ‘High Court confirms actual ownership of funds must be established before offence can be made out under Russian sanctions prohibitions’, 13 June. Available at: https://www.hsfkramer.com/notes/litigation/2024-06/high-court-confirms-actual-ownership-of-funds-must-be-established-before-offence-can-be-made-out-under-russian-sanctions-prohibitions?__cf_chl_f_tk=oVqr2_zEYp6O1Mlqh.BtTbldyy4z7acqwRiqKJBtWIE-1782995290-1.0.1.1-iECVcwuOM9d.uhRdRwBkGf88gdqmVDfciWGxdwIfNM0
[82] Courts and Tribunals Judiciary. *Vneshprombank LLC v Bedzhamov EWHC 1048 (Ch).* Available at: https://www.judiciary.uk/wp-content/uploads/2024/05/Vneshprombank-v-Bedzhamov-Judgement.pdf
[83] Rose, N. (2024) ‘High Court: Sanctioned Russians “probably owned” litigation funder’, on Legal Futures, 14 May. Available at: https://www.legalfutures.co.uk/latest-news/high-court-sanctioned-russians-probably-owned-litigation-funder
[84] Rose, N. (2024) ‘High Court: Sanctioned Russians “probably owned” litigation funder’, on Legal Futures, 14 May. Available at: https://www.legalfutures.co.uk/latest-news/high-court-sanctioned-russians-probably-owned-litigation-funder and Siegel, E.R. (2024) ‘UK Judge Rules Funder Is Likely Owned by Sanctioned Russians’, on Bloomberg Law, 7 May. Available at: https://news.bloomberglaw.com/business-and-practice/uk-judge-rules-funder-is-likely-owned-by-sanctioned-russians
[85] Debevoise & Plimpton (2024) ‘English High Court Clarifies UK Sanctions “Reasonable Cause to Suspect” Standard’, 14 May. Available at: https://www.debevoise.com/insights/publications/2024/05/high-court-clarifies-uk-sanctions-reasonable-cause
[86] Debevoise & Plimpton (2024) ‘English High Court Clarifies UK Sanctions “Reasonable Cause to Suspect” Standard’, 14 May. Available at: https://www.debevoise.com/insights/publications/2024/05/high-court-clarifies-uk-sanctions-reasonable-cause

documentation produced in support of that figure did not withstand scrutiny, and the evidence put before the court, as the court assessed it, appeared to contain material omissions.[87,88]

Vneshprombank LLC v Bedzhamov

Vneshprombank LLC v Bedzhamov is a High Court litigation brought by the Russian bank Vneshprombank against its former president, seeking recovery of approximately US$1.34 billion, which was alleged to have been misappropriated through large-scale fraud, including enforcement against London property and other UK assets. A central legal issue was the interpretation of the UK's Russia asset-freeze sanctions regime, particularly what amounts to 'reasonable cause to suspect' that a company (A1 LLC, funding Vneshprombank's litigation) is owned or controlled by a designated person, and how actual ownership or control must be established before sanctions offences arise.

A further finding, originating earlier in the same litigation, carries comparable analytical significance. In an earlier judgment in 2020, the court considered an arrangement under which A1 had taken assignment of insolvency officeholder claims and pursued them directly, observing that its role 'appears to go well beyond that of a conventional litigation funder', given that A1 had been authorised to manage the proceedings on the liquidator's behalf.[89,90] This case is relevant to two gaps identified in this report: the absence of ultimate beneficial ownership disclosure and the absence of regulatory oversight of funder control over proceedings. In this case, both gaps persisted until the court itself raised them through the adversarial process.

This case provides a publicly documented instance in which an English court has scrutinised the sanctions status of a litigation funder's beneficial owners and examined the funder's structural and operational role. To present it as evidence of a broader pattern would be analytically unsound. What the case does provide insight into is that the risk of sanctions non-compliance at the level of a funder's beneficial ownership is not theoretical. It is a risk that can be brought before a court. When detection occurs, it depends on the adversarial process, not on any proactive disclosure or regulatory oversight requirement.

3.5. Foreign capital and the independence of the courts

The concern raised by undisclosed foreign financing of litigation in UK courts is not confined to the risk of sanctions processing. A distinct institutional concern is the perceived independence of the courts from commercial and political interests, which carries no obligation to be publicly accountable.

The English legal system's international standing rests in part on its reputation for procedural independence. Foreign governments, multinational businesses and international arbitral parties choose English law because the courts are seen as operating free from commercial or political pressure originating outside the jurisdiction. When a significant share of major proceedings is financed by foreign investors whose identities, beneficial ownership structures, and obligations to their own capital

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87 Court and Tribunals Judiciary (2024) 'Neutral Citation Number: [2024] EWHC 1048 (Ch)'. Available at: https://www.judiciary.uk/wp-content/uploads/2024/05/Vneshprombank-v-Bedzhamov-Judgement.pdf

88 Rose, N. (2024) 'High Court: Sanctioned Russians "probably owned" litigation funder', on Legal Futures, 14 May. Available at: https://www.legalfutures.co.uk/latest-news/high-court-sanctioned-russians-probably-owned-litigation-funder

89 Courts and Tribunals Judiciary. *Vneshprombank LLC v Bedzhamov EWHC 1048 (Ch).* Available at: https://www.judiciary.uk/wp-content/uploads/2024/05/Vneshprombank-v-Bedzhamov-Judgement.pdf

90 Rose, N. (2024) 'High Court: Sanctioned Russians "probably owned" litigation funder', on Legal Futures, 14 May. Available at: https://www.legalfutures.co.uk/latest-news/high-court-sanctioned-russians-probably-owned-litigation-funder

providers are not disclosed to the court or opposing parties, that reputation becomes structurally vulnerable, independent of any specific instance of misconduct.

The argument is not that foreign-funded litigation is *per se* compromised. The access-to-justice case for third-party litigation funding, including its international varieties, is real. The concern is narrower: the credibility of that institutional independence, for foreign counterparties who choose English jurisdiction precisely because of it, is harder to sustain and verify when the ultimate financial interests behind major proceedings are opaque as a matter of course. A litigant on the opposing side of a substantial English claim cannot currently determine whether the capital financing the action originates with a state-affiliated entity, a sovereign wealth fund or an investor potentially subject to sanctions in any of the relevant jurisdictions. That inability does not establish that any given claim is improperly financed. It establishes that neither the court nor the opposing party can rule out the possibility.

3.6. Claimant protection and the distribution gap

The access-to-justice rationale underpinning judicial and legislative acceptance of third-party litigation funding rests on the premise that funding enables claimants to recover compensation they would otherwise forgo. The distribution record in major English collective proceedings puts that premise to an empirical test, which it does not straightforwardly pass.

In *Merricks v Mastercard*, a collective claim initially valued at around £14 billion settled for £200 million.[91] The Competition Appeal Tribunal judgment ring-fenced £100 million of that sum for distribution to the estimated 44 million class members, with modelling based on an expected 5 per cent take-up, producing indicative payments of £45 per claiming member, capped at £70 if fewer members make a claim. For illustrative purposes, full take-up would yield an average of around £2.20 per person.[92,93] Innsworth Capital's total award amounted to approximately £68 million, comprising cost recovery of approximately £45.5 million and a profit return at a multiple of 0.5 on that outlay, representing approximately 34 per cent of the settlement fund.[94] Innsworth challenged aspects of that distribution in judicial review proceedings. Still, on 10th June 2026, the Divisional Court dismissed the challenge. It held that the Competition Appeal Tribunal had acted within its broad discretion as a specialist tribunal when approving both the settlement and the allocation of the £200 million.[95]

In *Bates v Post Office*, funders and lawyers combined received approximately 80 per cent of the settlement fund. The precise allocation between Therium's return as funder and legal costs has not

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[91] Competition Tribunal Appeal (2026) 'Neutral Citation Number: [2026] EWHC 1393 (Admin)'. Available at: https://www.catribunal.org.uk/sites/cat/files/2026-06/12667716%20Walter%20Hugh%20Merricks%20CBE%20v%20Mastercard%20Incorporated%20and%20Others%20-%20Divisional%20Court%20judgment%20%2010%20Jun%202026.pdf

[92] Slaughter and May (2025) 'Merricks v Mastercard (settlement approval decision)', 12 July. Available at: https://www.slaughterandmay.com/insights/new-insights/merricks-v-mastercard-settlement-approval-decision/

[93] Day, S. and Carter, R. (2025) 'Merricks v Mastercard settlement: A landmark judgment and its implications for funders', on Macfarlanes, 17 July. Available at: https://www.macfarlanes.com/insights/102ktdb/merricks-v-mastercard-settlement-a-landmark-judgment-and-its-implications-for-fu/

[94] Slaughter and May (2025) 'Merricks v Mastercard (settlement approval decision)', 12 July. Available at: https://www.slaughterandmay.com/insights/new-insights/merricks-v-mastercard-settlement-approval-decision/

[95] Competition Tribunal Appeal (2026) 'Neutral Citation Number: [2026] EWHC 1393 (Admin)'. Available at: https://www.catribunal.org.uk/sites/cat/files/2026-06/12667716%20Walter%20Hugh%20Merricks%20CBE%20v%20Mastercard%20Incorporated%20and%20Others%20-%20Divisional%20Court%20judgment%20%2010%20Jun%202026.pdf

been publicly disclosed.[96] This report treats the 80 per cent figure as evidence of low net claimant recovery rather than as evidence of funder predation specifically. Whether the proportion absorbed before claimants recovered anything is attributable to the funder's return, legal costs, or some combination does not alter the claimant outcome.

In the government's July 2026 consultation, it also notes that greater weight should be given to the cost/benefits consideration for certification as 'This will guard against claims being brought that risk primarily benefitting stakeholders of the claim (such as lawyers and litigation funders) rather than the class.'[97]

Evidence of distribution failure comes from a case in which completed distribution to class members has occurred under the opt-out regime. In *Gutmann v SSWT*, approximately £216,000 reached the underlying class out of a potential £25 million available for distribution, which is a take-up rate of under one per cent, while over £10 million was paid to other stakeholders in the claim.[98] The Competition Appeal Tribunal, in assessing that outcome, drew on comparative data from North American opt-out regimes and noted that even in jurisdictions where the regime has operated for decades, class member take-up rates have rarely exceeded 10 per cent.

That observation converts the *Gutmann* outcome from an argument about English regime immaturity into a structural feature of the opt-out model that more experienced markets have not resolved. The government's July 2026 consultation acknowledges this record and proposes that the Competition Appeal Tribunal give greater weight to the likely take-up rate when assessing the cost/benefit ratio of proceedings at certification. That proposal does not address the prior question: whether the Competition Appeal Tribunal can conduct that assessment without disclosure of the funding terms that determine the cost side of the ratio.

The counterargument is that without funded litigation, the *Merricks* and *Bates* claimants would have recovered nothing. The dispersed, small-value character of many opt-out class harms makes per capita distribution inherently low; that is a product of claim economics, not extraction. The argument carries genuine weight as a defence of the third-party litigation funding market taken as a whole. It does not, however, resolve the specific problem this report identifies: that the disclosure framework governing who finances that litigation contains no mechanism for verifying who ultimately controls the capital or whether they are potentially subject to sanctions.

The access-to-justice case for third-party litigation funding justifies the existence of funded litigation. It does not justify the opacity of funding terms or the structural subordination of claimant interests in the priority waterfall. Claimants in opt-out proceedings are included automatically, without any meaningful opportunity to scrutinise the financial arrangements agreed between funders and law firms before proceedings were constituted. The Civil Justice Council's 2025 review recorded directly that funded claimants often have limited ability to negotiate funding terms, some of which are agreed

[96] Maxwell, F. (2024) 'Mr Bates vs the Post Office sparks bitter fight over UK legal funding', in *Politico*, 15 April. Available at: https://www.politico.eu/article/alan-bates-v-post-office-case-inspires-attempted-crackdown-on-uk-legal-funding/

[97] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[98] Lo, M. (2026) 'Waterside: Is the CAT's Cost-Benefit Approach Squeezing the Life Out of Smaller Collective Actions?', on Kluwer Competition Law Blog, 4 May. Available at: https://legalblogs.wolterskluwer.com/competition-blog/waterside-is-the-cats-cost-benefit-approach-squeezing-the-life-out-of-smaller-collective-actions/

before claimants are approached.[99] Both informed consent and effective class member protection require disclosure of ultimate funding sources as a procedural prerequisite, not as a post-certification refinement.

The reforms discussed in this report target the absence of mandatory disclosure, not the distribution gap as such. That absence compounds each of the distributional dysfunctions identified above by making funding arrangements invisible to courts, claimants and regulators. Transparency is the precondition for meaningful claimant protection. It is also the basis on which the access-to-justice rationale can be tested against actual outcomes rather than asserted as a justification for opacity.

4. How the legal system was built

4.1. Doctrinal origins: Champerty, maintenance and the absent safeguards

The common law doctrines of champerty and maintenance stand among the oldest constraints in English civil procedure. Maintenance is the offence of supporting another person's litigation without lawful justification; champerty is doing so in exchange for a share of the proceeds. Both were criminal offences and actionable torts. Their purpose was consistent: to prevent the courts from becoming instruments of enrichment for commercially motivated third parties with no direct stake in the dispute, and to guard against the corruption of proceedings by financially interested outsiders whose priorities might diverge from those of the actual litigants.

The Criminal Law Act 1967 abolished criminal and tortious liability for maintenance and champerty in England and Wales, while section 14 preserved the existing common law rules under which champertous agreements could still be treated as illegal or contrary to public policy.[100] It preserved the rule that agreements tainted by champerty remained unenforceable as contrary to public policy. The abolition was not accompanied by any statutory scheme to regulate third-party litigation funding. Criminal and tortious prohibitions disappeared, but the protective rationale behind restrictions on champertous arrangements persisted in public policy rules. The Civil Justice Council's June 2025 review describes the present position as a combination of self-regulation and limited damages-based agreements-based oversight and recommends a formal regulatory framework, indicating that the absence of such a framework has been longstanding rather than a recent oversight.[101]

For nearly four decades after the 1967 Act, commercial third-party litigation funding remained without a settled legal foundation, constrained by residual public policy unenforceability and the absence of any judicial framework governing the operation of third-party funding arrangements. The market lacked the certainty it needed to attract institutional capital at scale. That changed in 2005.

[99] Civil Justice Council (2025) *Review of Litigation Funding: Final Report.* Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf
[100] Legislation.gov.uk. *Criminal Law Act 1967*, ss. 13-14. Available at: https://www.legislation.gov.uk/ukpga/1967/58/contents
[101] Civil Justice Council (2025) *Review of Litigation Funding: Final Report.* Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf

4.2. The judicial turn: *Arkin* and the permissive framework

The case of *Arkin v Borchard Lines Ltd* established the legal permissibility of commercial third-party litigation funding in England and Wales.[102] In that case, the Court of Appeal accepted that a professional funder could lawfully finance part of a claimant's costs in return for a share of any recovery and held that such arrangements are not inherently champertous where they facilitate access to justice and are 'not otherwise objectionable'. This is a principle later understood to require that funders not exercise excessive control over litigation or interfere with the proper administration of justice. Its primary holding concerned adverse costs: in *Arkin*, a funder's liability for the defendant's costs was limited to the amount of funding it had actually provided, a principle that became known as the 'Arkin cap'. That limitation reduced the perceived downside financial risk of investing in litigation, even though subsequent case law has confirmed that the cap operates as guidance rather than a binding rule.[103]

Arkin v Borchard Lines Ltd

Arkin v Borchard Lines Ltd involved a claim by Mr Arkin against shipping companies over alleged competition law infringements in the liner shipping market, with the claimant seeking damages from a number of shipping companies. It was partly financed by a professional litigation funder in exchange for a share of any proceeds recovered. The Court of Appeal held that a commercial funder providing finance in return for a share of litigation proceeds was not engaged in champerty and did not act contrary to public policy, provided it refrained from controlling the conduct of proceedings or interfering with the course of justice.

Arkin confirmed that a professional funder may have a commercial interest in the outcome of proceedings and that such interest, in itself, does not render the arrangement unlawful, provided the funding does not give the funder objectionable control over the conduct of the case or undermine the proper administration of justice. The tension between those two requirements is structural rather than incidental. A large financial exposure may create incentives that justify independent scrutiny of decision-making and settlement provisions. Its commercial interest creates powerful incentives to influence the precise variables the funder controls, which prohibition is designed to protect from the funder's direction: the timing of settlement, the amount of compensation accepted and the choice of litigation strategy. That tension cannot be policed without transparency about the funder's identity and the terms of its financial exposure. *Arkin* imposed no such transparency obligation.

Following *Arkin*, the UK third-party litigation funding market expanded at the pace the growth figures in Section 2 suggest. Those industry briefings indicate that assets under management rose from £198 million in 2011 to around £2.2 billion by 2022. It is an approximate trajectory that reflects, at minimum, the commercial confidence which followed the judgment linking institutional capital allocation to funded litigation.[104,105] Following Lord Justice Jackson's costs review, which recommended a voluntary self-regulatory scheme for litigation funders, the Association of Litigation Funders adopted and

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[102] *Arkin v Borchard Lines Ltd* [2005] EWCA Civ 655.

[103] Hodge Jones & Allen Solicitors (2020) 'The Arkin cap and liability for costs', 16 March. Available at: https://www.hja.net/expert-comments/opinion/dispute-resolution/the-arkin-cap-and-liability-for-costs/

[104] Calunius Capital (2012) *Litigation Funding and Access to Justice: A Parliamentary Briefing from the Association of Litigation Funders of England & Wales*. Available at: https://www.calunius.com/media/2996/parliamentary%20briefing%20final%20270112.pdf

[105] Friel, S. and Barnes, J. (2022) *Litigation Funding 2022*. Woodsford. Available at: https://woodsford.com/wp-content/uploads/2022/01/2022_Litigation-Funding_england-and-wales.pdf

administered its Code of Conduct for Litigation Funders.[106,107] The Code is voluntary, binding only on funders who choose to join the association, and does not require disclosure of the ultimate source or beneficial owner of the capital deployed. The Civil Justice Council's 2025 recommendations would introduce such disclosure through future regulation, but these proposals have not yet been implemented.

In *ChapelGate Credit Opportunity Master Fund Ltd v Money*, the Court of Appeal held that courts retain broad discretion over costs orders against funders and are not confined to limiting liability to the amount of funding provided.[108] The decision formalised cost uncertainty for the funding market without addressing the transparency deficit *Arkin* had left untouched.

ChapelGate Credit Opportunity Master Fund Ltd v Money

ChapelGate Credit Opportunity Master Fund Ltd v Money concerned a substantial Companies Court claim financed by ChapelGate Credit Opportunity Master Fund Ltd, which ultimately failed in circumstances the trial judge characterised as 'out of the norm'. The defendant sought a non-party costs order against ChapelGate extending beyond the sum it had actually contributed, raising the question of whether the costs protection established in *Arkin* operated as a binding rule or as a judicial guideline subject to discretion.

4.3. The structural shift: The Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the funding gap

The case of *Arkin* created the legal space for commercial third-party litigation funding. The Legal Aid Sentencing and Punishment of Offenders Act provided the commercial imperative to fill it. Lord Justice Jackson's 2009 costs review found that the recoverable success fee model had generated disproportionate costs and distorted litigation incentives.[109] The Act implemented those recommendations by making success fees irrecoverable from losing parties and removing the commercial viability of conditional fee agreements for high-value cases in which third-party litigation funding was best positioned to deploy capital.

That legislation did not create the third-party litigation funding market, but it accelerated its growth, legitimised by *Arkin*, by reducing the recoverability of the success fee. At this stage of the expansion, formal statutory regulation of funding was limited, with funder conduct primarily constrained by general public policy principles, the courts' costs jurisdiction, consumer law and the voluntary Association of Litigation Funders' Code, rather than by a dedicated regulatory regime. The lack of transparency the Civil Justice Council subsequently identified is therefore not merely the product of insufficient regulatory attention applied after the fact. It is the structural consequence of a legislative intervention that directed capital flows towards an unregulated funding market without a parallel governance mechanism to manage those flows once the market reached institutional scale.

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[106] Association of Litigation Funders (2018) 'Code of Conduct for Litigation Funders'. Available at: https://associationoflitigationfunders.com/wp-content/uploads/2018/03/Code-Of-Conduct-for-Litigation-Funders-at-Jan-2018-FINAL.pdf

[107] Jackson, R. (2009) *Review of Civil Litigation Costs: Final Report*. Courts and Tribunals Judiciary. Available at: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf

[108] ChapelGate Credit Opportunity Master Fund Ltd v Money and Ors [2020] EWCA Civ 246. Available at: https://www.bailii.org/ew/cases/EWCA/Civ/2020/246.html

[109] Jackson, R. (2009) *Review of Civil Litigation Costs: Final Report*. Courts and Tribunals Judiciary. Available at: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf

4.4. The legislative leap: Consumer Rights Act 2015 and the opt-out regime

The Consumer Rights Act 2015 introduced the opt-out collective proceedings regime administered by the Competition Appeal Tribunal, enabling a class representative to bring competition law claims on behalf of all eligible class members without requiring their active participation.[110] The opt-out mechanism automatically enrols all eligible class members unless they actively withdraw, generating class sizes and aggregate claim values that no opt-in regime could produce. Proceedings of that scale and duration may be difficult to finance without external capital, particularly where costs, duration and adverse-costs exposure are high.

The opt-out regime, whether by design or consequence, created the structural need for outside funding that third-party litigation funding then moved to fill. By the end of 2024, research by multinational law firm CMS estimated that collective proceedings in the Competition Appeal Tribunal alone had a cumulative claimed value of around £95 billion, while the total claimed value of class actions across the UK (including Competition Appeal Tribunal proceedings, group litigation orders, representative actions and others) had risen to approximately £134–135 billion. [111,112]

The regime was designed to enable large-scale recovery for diffuse consumer harm, and the access-to-justice rationale for that design has genuine force: collective opt-out proceedings have produced recoveries that individual litigation could not have generated. What the Consumer Rights Act 2015 did not include, and for which no contemporaneous provision was made, was any governance framework to ensure that the financial interests directing those proceedings were transparent, accountable or free from conflicts of interest. The legislative mechanism created the market opportunity; the regulatory framework to govern that market was not created alongside it.

The statutory architecture governing certification reflected Parliament's original intent. The Competition Act 1998 defines eligibility for collective proceedings as requiring claims that raise 'the same, similar or related issues of fact or law' and are 'suitable to be brought in collective proceedings' (Section 47B (6)).[113] The rules specify what the Tribunal may consider in assessing suitability: costs and benefits of the claim, whether a similar claim has already been brought, and the size and nature of the class (Rule 79 of the Competition Appeal Tribunal Rules 2015). The former government's 2013 response to the consultation that established the regime stated that there should be 'a strong process of judicial certification, including a preliminary merits test, an assessment of the adequacy of the representative and a requirement that a collective action must be the best way of bringing the case.' The question that the government's July 2026 consultation addresses is whether legislation can restore what judicial interpretation has eroded.

[110] Department for Business and Trade (2025) *Opt-out collective actions regime review: call for evidence*. Available at: https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence

[111] CMS (2024) *European Class Action Report*. Available at https://cms.law/en/content/download/689404/file/(S)2405-0186695(V8)%20BROC%20European%20Class%20Action%20Report%20September%20Final%202024.pdf?v=4 Note: claim values at the CAT and total UK courts are drawn from different datasets and should be treated as approximations.

[112] Legal Futures (2025) 'Ten competition class actions for every person in the UK', 12 August. Available at: https://www.legalfutures.co.uk/latest-news/ten-competition-class-actions-for-every-person-in-the-uk

[113] Legislation.gov.uk. *Competition Act 1998*. Available at: https://www.legislation.gov.uk/ukpga/1998/41/section/47B

4.5. External capital

The growth of UK class action litigation has coincided with a substantial inflow of US private capital into the English legal system, taking two related forms: direct litigation funding by US investment vehicles and the acquisition of UK law firms by US private equity firms. The structural driver is regulatory arbitrage: most US states prohibit non-lawyer ownership of law firms, constraining US private equity investment in domestic legal practices, whereas England and Wales permit external ownership of law firms through alternative business structures licensed under the Legal Services Act 2007.[114] That asymmetry has made the UK legal market accessible to US capital that cannot be deployed at home.

The US capital presence, though not comprehensively quantifiable in the absence of mandatory disclosure, is documented at scale.[115] Gramercy Funds Management committed US$552.5 million to Pogust Goodhead in October 2023, backing claims against BHP in what was described as the largest single litigation funding deal in UK history.[116] The hedge fund provided an additional US$65 million credit facility in 2025;[117] a funding facility of US$150 million specifically for the Mariana dam litigation was also announced in June 2026.[118] Innsworth Capital, owned and funded by US hedge fund Elliott Investment Management, financed the first opt-out claim under the Competition Appeal Tribunal regime on behalf of over 40 million consumers, and Burford Capital, founded by American lawyers, operates as the world's largest litigation funder, with US$3.5 billion under management as of the end of 2024.[119,120] Private equity investment in the UK legal sector reached a record £534 million in 2024, a 42 per cent increase on 2023, with total investment over the preceding 5 years exceeding £1.2 billion.[121]

Critics who say Britain is copying America's lawsuit culture overlook material structural differences. In England and Wales, civil damages are rarely assessed by juries; there is no general treble-damages rule, and while 'no win, no fee' conditional fee agreements are widely used, they operate within a costs regime where unsuccessful parties typically face an adverse costs order. The default 'loser pays' rule, combined with the Competition Appeal Tribunal's specialist certification of collective proceedings, creates checks on weak claims that are not present in many US jurisdictions. The neutral fact of foreign capital entering the UK legal market is not, of itself, a legal wrong or a policy problem. The specific concern this report targets is narrower: whether the source of funding is domestic or international; the identity of the ultimate beneficial owner of a claim's financing is not presently

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[114] Legislation.gov.uk. *Legal Services Act 2007*. Available at: https://www.legislation.gov.uk/ukpga/2007/29/contents

[115] The following is cited for illustrative purposes only. No finding of wrongdoing against any party is alleged or implied.

[116] Gramercy (2023) 'Pogust Goodhead and Gramercy Funds Management LLC Announce $552.5 Million Investment Partnership', 1 October. Available at: https://www.gramercy.com/2023/10/pogust-goodhead-and-gramercy-funds-management-llc-announce-552-5-million-investment-partnership/ By mid-2025, drawdowns from Gramercy had exceeded $1.7 billion including accumulated interest.

[117] Ward-Brennan, M. (2025) 'Funding fears and departures rock law firm behind £36bn BHP lawsuit', in *City AM,* 11 September. Available at: https://www.cityam.com/funding-fears-and-departures-rock-law-firm-behind-36bn-bhp-lawsuit/

[118] Rose, N. (2026) 'Pogust Goodhead scoops financial and legal support for dam case', on Legal Futures, 25 June. Available at: https://www.legalfutures.co.uk/latest-news/pogust-goodhead-scoops-financial-and-legal-support-for-dam-case

[119] Slingo, J. (2019) 'US funder to back £14bn group action against Mastercard', in *The Law Society Gazette*, 24 June. Available at: https://www.lawgazette.co.uk/news/us-funder-to-back-14bn-group-action-against-mastercard/5070717.article

[120] Burford Capital (2025) 'Form 10-K', year ending 31 December 2024. Available at https://s206.q4cdn.com/737820215/files/doc_financials/2024/q4/2025-03-03-Burford-Capital-2024-Annual-Report-on-Form-10-K-FINAL.pdf.

[121] Rose, N. (2025) 'Private equity invests £1.2bn in the law in just five years', on Legal Futures, 27 February. Available at: https://www.legalfutures.co.uk/latest-news/private-equity-invests-1-2bn-in-the-law-in-just-five-years

disclosable to courts, defendants or class members, and the Americanisation framing does not substitute for that more precise and targeted argument about transparency.

4.6. The recent recalibration: What the courts have already corrected

Between 2023 and 2025, a sequence of judicial decisions substantially reconfigured the legal framework governing third-party litigation funding and opt-out collective proceedings. In *PACCAR*, the Supreme Court held that litigation funding agreements calculated as a percentage of damages recovered were damages-based agreements and unenforceable unless they complied with the Damages-Based Agreements Regulations 2013. [122] The Court of Appeal in *Neill v Sony* confirmed that agreements structured as a multiple of capital invested, rather than as a percentage of damages, were not damages-based agreements and remained enforceable, thereby providing the market's post-*PACCAR* workaround with judicial authorisation.[123]

The case of *Evans v Barclays*[124] confirms that weak merits and the practical availability of opt-in or other mechanics can weigh against granting a collective proceedings order, reinforcing the Competition Appeal Tribunal's certification discretion without creating a new general merits threshold or retreating from *Merricks v Mastercard*.[125] Taken together, *PACCAR*, *Neill* and *Evans* have reshaped aspects of the funding and certification environment, but none address the separate question of identifying the ultimate beneficial owner of the capital behind funded claims. What judicial recalibration cannot do is reach the evidential question of who ultimately owns the capital behind a funded claim; no certification test, costs discretion or enforceability ruling can compel identification of the natural person at the end of the funding chain or require screening against the UK sanctions register.

5. The macro consequence for UK PLC

The growth documented in the earlier part of this report produces three measurable categories of consequence for UK incorporated businesses: claims governed by foreign law brought against UK parent companies, mass data privacy claims against UK consumer-facing businesses, and the aggregate effect of both on legal spend, insurance pricing and the cost of capital for UK PLC as a whole. Each category connects to the disclosure deficit this report addresses, though in different ways and to different degrees.

5.1. Environmental, social and governance litigation and the rise of UK class actions

Vedanta Resources Plc v Lungowe established that English courts may hear claims against a UK parent company for harm caused by a foreign subsidiary where the claimants advance an arguable case that

[122] Supreme Court (2023) *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents).* Available at: https://www.supremecourt.uk/cases/uksc-2021-0078
[123] Courts and Tribunals Judiciary (2025) *Sony Interactive -v- Alex Neill; Visa -v- Commercial and Interregional; Mastercard -v- Commercial and Interregional; Apple -v- Rachael Kent; and Apple -v- Justin Gutmann*. Available at: https://www.judiciary.uk/judgments/sony-interactive-v-alex-neill-visa-v-commercial-and-interregional-mastercard-v-commercial-and-interregional-and-apple-v-rachael-kent-and-apple-v-justin-gutmann/
[124] Supreme Court (2025) *Evans (Respondent) v Barclays Bank Plc and others (Appellants).* Available at: https://supremecourt.uk/cases/press-summary/uksc-2023-0174
[125] Supreme Court. *Mastercard Incorporated and others (Appellants) v Walter Hugh Merricks CBE (Respondent).* Available at: https://www.supremecourt.uk/cases/uksc-2019-0118 The Supreme Court held that the certification stage does not require a prima facie case on the merits.

the parent owed them a duty of care by reason of its intervention in the subsidiary's operations. It was a threshold sufficient to ground jurisdiction without requiring the duty to be established at that stage.[126] The Supreme Court's ruling in *Vedanta*[127] held that England was not clearly an inappropriate forum, in part because substantial justice could not be obtained in Zambia. The Court noted the absence of legal aid, the practical unavailability of conditional fee agreements or similar funding, and the lack of Zambian lawyers with the resources and experience to conduct litigation of that scale and complexity.[128,129] The status of a UK-incorporated business, not the location of the harm, the governing law or the nationality of the claimants, became the jurisdictional basis that subsequent claims have followed.

Vedanta Resources Plc v Lungowe

Vedanta Resources Plc v Lungowe involved claims by nearly 1,800 Zambian residents against the UK-listed Vedanta Resources and its Zambian subsidiary, Konkola Copper Mines, alleging personal injury and environmental damage caused by pollution from the Nchanga copper mine. The principal legal questions were whether the English courts had jurisdiction over the UK parent, if there was a real triable issue in which Vedanta owed a duty of care in respect of the subsidiary's operations, and whether England was the proper forum for the claims.

The Mariana dam litigation shows the scale to which it now extends. Approximately 600,000 Brazilian claimants pursue claims valued at up to £36 billion against BHP in the English High Court under Brazilian law, financed by a US$552.5 million funding facility from Gramercy Funds Management.[130,131] Mrs Justice O'Farrell found BHP liable in *Município De Mariana v BHP Group* on 14th November 2025, and the funder's identity is known only because Gramercy chose to publicise its commitment to the market; no disclosure obligation required it.[132]

In December 2025, more than 100 Filipino nationals, survivors of Super Typhoon Odette, filed a claim against Shell Plc at the High Court, brought by the law firm Hausfeld under Philippine law, relying on attribution science to link Shell's historical emissions to the typhoon's severity.[133] None of the three cases, *Vedanta*, *Mariana* or *Shell*, was subject at the point of filing to any requirement to disclose the identity or beneficial ownership of the capital financing it. The transparency deficit this report targets, therefore, applies from the moment when such claims are assembled, often years before any civil

[126] Slaughter and May. *Parent Company Liability Back in the Supreme Court*. Available at: https://www.slaughterandmay.com/media/5hmhlpo1/parent_company_liability_back_in_the_supreme_court_2295pdf.pdf

[127] On a *forum non conveniens* challenge.

[128] Green, L. and Hamer, D. (2019) 'Corporate Responsibility for Human Rights Violations: UK Supreme Court Allows Zambian Communities to Pursue Civil Suit Against UK Domiciled Parent Company', on EJIL:Talk!, 24 April. Available at: https://www.ejiltalk.org/corporate-responsibility-for-human-rights-violations-uk-supreme-court-allows-zambian-communities-to-pursue-civil-suit-against-uk-domiciled-parent-company/

[129] Mayer Brown (2019) *Cross-border disputes*, Available at: https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2019/07/0597ldrcrossborderupdate.pdf

[130] Rigby, B. (2025) 'Big win for Pogust Goodhead as UK's High Court rules BHP liable for Brazil dam collapse', on The Global Legal Post, 14 November. Available at: https://www.globallegalpost.com/news/big-win-for-pogust-goodhead-as-uks-high-court-rules-bhp-liable-for-brazil-dam-collapse-1724774346;Gramercy (2023) 'Pogust Goodhead and Gramercy Funds Management LLC Announce $552.5 Million Investment Partnership', 1 October. Available at: https://www.gramercy.com/2023/10/pogust-goodhead-and-gramercy-funds-management-llc-announce-552-5-million-investment-partnership/ and Shahid, M. (2024) 'Climate litigation: A change in the weather', in *The Law Society Gazette*, 5 November. Available at: https://www.lawgazette.co.uk/features/climate-litigation-a-change-in-the-weather/5121427.article

[131] Sidley (2025) 'English High Court Finds BHP Liable in Landmark £36 Billion Fundao Dam Litigation' 10 December 2025. Available at: https://www.sidley.com/en/insights/newsupdates/2025/12/english-high-court-finds-bhp-liable-in-landmark

[132] Ball, B. *et al*. (2025) 'English High Court rules in claimants' favour in Brazilian dam liability judgment', on Linklaters, 14 November. Available at: https://sustainablefutures.linklaters.com/post/102lunr/english-high-court-rules-in-claimants-favour-in-brazilian-dam-liability-judgment

[133] Travers Smith (2026) 'Super Typhoon Odette and Shell: How Climate Science is Shaping Litigation Risk', 18 February. Available at: https://www.traverssmith.com/knowledge/knowledge-container/super-typhoon-odette-and-shell-how-climate-science-is-shaping-litigation-risk/

procedure rules disclosure obligation would apply. This happens in circumstances where the claimant class, dispersed across Zambia, Brazil or the Philippines, has no realistic means of scrutinising who stands behind litigation conducted in their name.

The counterargument requires direct acknowledgement: Vedanta jurisdiction is not a loophole; a company that accepts the advantages of UK incorporation accepts the corresponding exposure to English courts for the conduct of the group it controls, and the deterrent function such claims serve is precisely the function domestic regulation in the originating jurisdictions has failed to provide. This report does not dispute any of that. A claim can be meritorious, the jurisdiction sound and the underlying harm real, while the financing arrangements remain invisible to the court, the defendant and the claimants themselves, and that structural opacity is a property of the financing framework, not of the claim it funds.

5.2. Data and privacy litigation and the rise of UK class actions

The UK General Data Protection Regulation and the Data Protection Act 2018 provide a statutory right to seek compensation where unlawful processing of personal data causes material damage or distress. Article 33 of the UK General Data Protection Regulation requires controllers to notify the Information Commissioner's Office within 72 hours of becoming aware of any personal data breach that is likely to result in a risk to individuals' rights and freedoms.[134] That notification duty was viewed as a consumer-protection measure; it now appears to operate more as a trigger for such firms.

In that context, claims management companies and specialist law firms monitor Information Commissioner's Office publications, corporate disclosures and media coverage for breach announcements and, within days of disclosure, deploy targeted advertising using the breached company's name as a paid search term, directing affected individuals to an eligibility checker and a conditional fee agreement. Those firms then aggregate registered claimants into portfolios and refer them to a solicitor for a referral fee. The feature that makes this process work, individually modest harm scaled across a very large class, is the same feature the Supreme Court has spent the past five years constraining in *Lloyd v. Google* and the case law that has followed it. [135]

In November 2021, the Supreme Court held in *Lloyd v Google LLC* that damages for loss of control of personal data are not available without proof of material damage or distress, and that a representative action under Civil Procedure Rules (19.6) cannot proceed without assessing those damages, which requires individualised evidence from each class member. The Court of Appeal applied that reasoning in December 2024 in *Prismall v Google* to strike out a representative claim on behalf of approximately 1.6 million NHS patients, concluding that even the 'lowest common denominator' minimum harm a class shared could not be established without individual assessment.[136] The Court's reasoning in *Prismall* indicates that representative claims for misuse of private information face a structural difficulty in satisfying the same interest requirement that is unlikely to be resolved by case management adjustments.

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[134] Intersoft Consulting. 'Art. 33 GDPR: Notification of a personal data breach to the supervisory authority'. Available at: https://gdpr-info.eu/art-33-gdpr/

[135] Supreme Court. *Lloyd (Respondent) v Google LLC (Appellant).* Available at: https://www.supremecourt.uk/cases/uksc-2019-0213

[136] Courts and Tribunals Judiciary (2024) 'Neutral Citation Number: [2024] EWCA Civ 1516'. Available at: https://www.judiciary.uk/wp-content/uploads/2024/12/Prismall-v-Google-UK-Ltd-Approved-judgment-11.12.24.pdf

Lloyd v Google LLC

Lloyd v Google LLC was a representative action brought on behalf of millions of iPhone users, alleging unlawful tracking of browser activity via the 'Safari workaround' and seeking damages for breaches of data protection rights. The central legal questions were whether 'loss of control' of personal data constituted compensable damage in the absence of proof specifying material harm or distress to individual class members, and if a representative action (under Civil Procedure Rule 19.6) could proceed where the assessment of damages would require evidence specific to each individual claimant.

Together, *Lloyd* and *Prismall* have substantially constrained the representative opt-out route for mass data claims. However, neither case closed off the group litigation order, which operates on a separate opt-in basis; the same-interest test that defeated both claims does not apply to it. The 2018 British Airways breach produced a group litigation order under which between 16,000 and 22,230 claimants registered, and British Airways settled on confidential terms before any judicial ruling on compensation.[137]

Prismall v Google UK Ltd

Prismall v Google UK Ltd concerned a representative action brought by Andrew Prismall on behalf of about 1.6 million patients of the Royal Free London NHS Foundation Trust, alleging misuse of private information arising from the transfer and use of identifiable medical records by Google UK and DeepMind in connection with the Streams app. The central legal question was whether a representative claim (under Civil Procedure Rule 19.8) seeking 'loss of control' damages for misuse of private information could satisfy the same-interest requirement and have a real prospect of success, given the need to show a reasonable expectation of privacy and more than trivial damage for each class member, in light of *Lloyd v Google*.

The group litigation order route is now deployed at scale against British retailers Marks & Spencer and the Co-op, and the speed of that deployment illustrates the commercial model that has been created. The retailer M&S confirmed in spring 2025 that a DragonForce ransomware attack had compromised customer names, addresses, email addresses, phone numbers, dates of birth, order history, and household information, while explicitly stating that no usable card or payment details or passwords had been taken.[138] The Co-op's chief executive confirmed in July 2025 that the breach had reached the data of all its 6.5 million members, comprising names, contact details and addresses, again excluding financial, transactional or password data.[139] Within weeks of each disclosure, dedicated sign-up platforms launched for both breaches. The breadth of the concurrent portfolio spanning JD Sports, the Metropolitan Police, Capita, Southern Water, Arnold Clark, the Legal Aid Agency, Paddy Power and Betfair, and Renault UK, reflect the commercial incentive structure the statutory pipeline has produced: each significant breach announcement generates an addressable claimant population, and

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[137] Beale & Co. (2021) 'British Airways Settles Data Breach Class Action – What Now?', July. Available at: https://beale-law.com/article/british-airways-settles-data-breach-class-action-what-now/; Broadley, A. (2021) 'British Airways Negotiates the Settlement of Mass Data Claim', on The Lens (Slaughter and May), 19 July. Available at: https://thelens.slaughterandmay.com/post/102h39u/british-airways-negotiates-the-settlement-of-mass-data-claim and BBC News (2021) 'British Airways data-breach compensation claim settled', 6 July. Available at: https://www.bbc.co.uk/news/technology-57734946

[138] Race, M. and Tidy, J. (2025) 'M&S says customer data stolen in cyber attack', on BBC News, 13 May. Available at: https://www.bbc.co.uk/news/articles/c62v34zv828o

[139] Tidy, J. and Rahman-Jones, I. (2025) 'Co-op boss confirms all 6.5m members had data stolen', on BBC News, 16 July. Available at: https://www.bbc.co.uk/news/articles/cql0ple066po

the fixed costs of rapid mobilisation are low relative to the aggregate referral fee income a large class generates.[140]

One central question on which those claims rest remains substantially untested: what a court will award for a breach of this kind, given that almost every major UK data-breach group litigation order to date has settled confidentially before any judgment on compensation. The October 2025 Court of Appeal decision in *Farley v Paymaster*[141] narrowed this gap only partially, confirming that an infringement of the UK General Data Protection Regulation does not require proof that a third party accessed misdirected data. It says nothing about *Lloyd*'s separate holding that compensation still requires proof of damage or distress above a trivial threshold, nor about what level of distress a breach limited to contact details and dates of birth can support.

The structural analysis of vertically integrated claim ownership in Section 3 applies with particular force to the group litigation order. Proceedings assembled through claims management companies' referral networks and conducted by law firms operating within a common ownership structure that encompasses the funder, the insurer and the claimant acquisition function do not produce an external funding agreement for a court to examine at certification. The funding economics that govern each claim, such as the ratio of costs to expected recovery, the identity of the capital provider and the terms on which the capital is deployed, are internal to the ownership structure rather than documented in a separable contractual instrument. The judicial oversight mechanisms that *Lloyd* and *Prismall* have reinforced for representative actions have no equivalent application to this category of proceedings.

Millions of individuals whose personal data has been processed unlawfully by companies hold a statutory right of action that, without aggregation, they lack the information or resources to exercise, and the access-to-justice case for this model carries genuine weight. *Lloyd* and *Prismall* demonstrate active judicial policing of the boundary between trivial and compensable harm. A reform agenda focused solely on the representative action procedures that *Lloyd* and *Prismall* have narrowed would miss this growing segment of the market.

5.3. Systemic impact on UK PLC

The most direct evidence of class action growth affecting UK corporate expenditure comes not from the headline macro-economic estimates but from the insurance and legal spend data that companies and their advisers report annually. Thomson Reuters' 2024 *State of the UK Legal Market* survey found that nearly half of UK corporate counsel anticipated higher legal spend in the year ahead, a figure consistent with resources being diverted from productive investment, research, capital expenditure and employment to litigation defence.[142]

Global advisory company WTW's 2025 GB directors' and officers' market update notes that European underwriters have begun to track collective actions and rising defence costs when assessing directors' and officers' risk, and London market commentary, including Price Forbes' 2025 update, identifies intensifying regulatory scrutiny of environmental, social and governance and AI-related disclosures as

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[140] KP Law. *Our Cases*. Available at: https://www.kpl.co.uk/claims/ (accessed: 25/06/26).
[141] Supreme Court. *Michael Farley and 431 others (Respondents) v Paymaster (1836) Limited (trading as Equiniti) (Appellant)*. Available at: https://www.supremecourt.uk/cases/uksc-2025-0185
[142] Thomson Reuters (2024) *2024 Report on the State of the UK Legal Market*. Available at: https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2024/04/State-of-UK-Legal-Market-2024.pdf

a contributor to emerging pricing pressure.[143,144] WTW found that insurers are starting to view group lawsuits as a risk worth tracking, not yet a reason to raise prices, which points to a real issue that is not yet showing up in the cost of raising money for UK companies. The European Centre for International Political Economy headline estimate of £11.2 billion in lost share value rests on a 2020 American academic study rather than on direct empirical data from UK corporate litigation experience; the WTW assessment, grounded in current underwriter pricing behaviour, provides a more proximate and direct indicator of how the market is currently pricing collective action risk. The government's 2026 consultation states that 'claimants' budgets are now £20 million or more and the cost of litigating means that the regime is virtually reliant on support offered by third-party litigation funders'.[145]

The European Centre for International Political Economy dataset does establish one undisputed empirical point: between 2008 and 2023, the UK recorded 156 mass litigation cases, more than any other European jurisdiction, a volume that establishes England and Wales as a dominant European jurisdiction by mass litigation case count, regardless of how the economic cost of that position is calculated.[146]

The costs documented above reflect claims that have already been filed. Future exposure for UK-incorporated companies is wider and less predictable. The *Vedanta* principle has extended, through Mrs Justice O'Farrell's liability finding against BHP in November 2025 and the Shell attribution claim filed the following month, into categories of liability that did not exist in UK courts 5 years ago. This increases the exposure every UK-listed multinational must now model.[147]

The October 2024 House of Lords Select Committee recommendation that the UK should legislate for mandatory supply chain due diligence in line with German, French and Norwegian legislation and the incoming EU Corporate Sustainability Due Diligence Directive would, if implemented, then create a statutory liability running alongside the common law duty recognised in *Vedanta*.[148] The pattern is consistent: UK-incorporated companies face an expanding range of circumstances in which their overseas operations and supply chains attract litigation in England, financed by capital whose ownership the court need not know.

UK businesses accordingly face two structurally distinct categories of growing litigation exposure: mass data claims, which settle confidentially before any judicial determination of compensable harm at the relevant scale; and transnational tort claims, which are expanding in scope and number following the BHP liability finding. Both categories largely resolve without producing judicial guidance on outcomes that would allow defendants or funders to price risk with confidence.

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[143] Price Forbes (2025) 'D&O Liability Insurance Market Update 2025', 6 October. Available at: https://www.priceforbes.com/insights-and-event-articles/do-liability-insurance-market-update-2025/

[144] WTW (2025) 'GB D&O Market Update', 16 October. Available at: https://www.wtwco.com/en-gb/insights/2025/10/gb-d-and-o-market-update

[145] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[146] Guinea, O. *et al*. (2025) *The Impact of Increased Mass Litigation in the UK*, ECIPE. Available at: https://ecipe.org/wp-content/uploads/2025/06/ECI_OccasionalPaper_06-2025_LY02.pdf

[147] Travers Smith (2026) 'Super Typhoon Odette and Shell: How Climate Science is Shaping Litigation Risk', 18 February. Available at: https://www.traverssmith.com/knowledge/knowledge-container/super-typhoon-odette-and-shell-how-climate-science-is-shaping-litigation-risk/

[148] House of Lords Select Committee on the Modern Slavery Act 2015 (2024) *The Modern Slavery Act 2015: becoming world-leading again*. Available at: https://publications.parliament.uk/pa/ld5901/ldselect/ldmodslav/8/8.pdf

The confidential settlement of almost every major UK data breach group litigation order to date, including the British Airways claim, means that the central question for the current wave of M&S and Co-op claims – what a court will award for a breach confined to contact details and dates of birth, where no financial or password data was taken – remains unanswered at the volumes now being assembled. For UK multinationals navigating transnational tort exposure, the equivalent uncertainty concerns the outer boundary of parent company liability under the *Vedanta* principle. This is a question that the BHP damages trial, currently listed to begin in late 2026, will start to address but is unlikely to resolve conclusively. The structural element common to both categories is the one this report returns to throughout: neither the companies being sued, nor the courts managing the proceedings, nor the claimants in whose name those proceedings are brought, can currently determine who ultimately owns the capital financing the claims against them.

6. Regulatory response and recommendations

6.1. The Litigation Funding Agreements (Enforceability) Bill

The Supreme Court's decision in *R (PACCAR Inc and others) v Competition Appeal Tribunal* held, by a majority of four to one, that a litigation funding agreement under which the funder's return is calculated as a percentage of any damages recovered constitutes a damages-based agreement within the meaning of the Courts and Legal Services Act 1990 (section 58AA) and the Damages-Based Agreements Regulations 2013.[149] Parliament introduced the 2013 Regulations to govern contingency-fee, damages-based arrangements between lawyers and clients; once that statutory definition was applied to commercial third-party litigation funding, the decision in *PACCAR* rendered many of the market's existing percentage-of-damages litigation funding agreements unenforceable as presently drafted.[150,151,152] The market's response was for funders and law firms to revise existing litigation funding agreements and structure new ones so that the funder's return was calculated by reference to a multiple of capital deployed or committed rather than as a percentage of damages.[153]

The then-Conservative government introduced the Litigation Funding Agreements (Enforceability) Bill in the 2023 to 2024 parliamentary session. Its content amounted to a single provision: a statutory declaration that litigation funding agreements are not damages-based agreements for section 58AA, with retrospective effect extending to agreements entered into before the *PACCAR* judgment.[154] The Bill contained no definition of a qualifying litigation funder, no disclosure requirements, no governance framework, no conduct standards, no capital adequacy requirements and no procedure for court

[149] Supreme Court (2023) *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)*. Available at: https://supremecourt.uk/uploads/uksc_2021_0078_judgment_ea84838f1b.pdf?outputType=chromeless
[150] McGuiness, T. (2016) *No win, no fee funding arrangements*, House of Commons Library. Available at: https://researchbriefings.files.parliament.uk/documents/CBP-7607/CBP-7607.pdf
[151] Legislation.gov.uk. *The Damages-Based Agreements Regulation 2013*. Available at: https://www.legislation.gov.uk/ukdsi/2013/9780111533444
[152] Hogan Lovells (2025) 'The aftermath of PACCAR – Court of Appeal to hear challenge to the enforceability of widely-used funding agreements', 3 March. Available at: https://www.hoganlovells.com/en/publications/the-aftermath-of-paccar
[153] Osborne Clarke (2026) 'King's Speech prolongs uncertainty on reform of litigation funding in England and Wales', 28 May. Available at: https://www.osborneclarke.com/insights/kings-speech-prolongs-uncertainty-reform-litigation-funding-england-and-wales
[154] Ministry of Justice (2024) *Litigation Funding Agreements (Enforceability) Bill – Fact Sheet*. Available at: https://assets.publishing.service.gov.uk/media/65faac9e703c42001158eff9/lfa-bill-fact-sheet.pdf and UK Parliament (2024) *Litigation Funding Agreements (Enforceability) Bill [HL].* Available at: https://bills.parliament.uk/publications/55290/documents/4762

scrutiny of funding terms. Its ambition was market certainty, not market accountability. The Bill lapsed on prorogation in May 2024 and was not reintroduced by the incoming Labour administration.[155]

The Bill's significance for the present reform debate is primarily diagnostic. Confronted with evidence that litigation funding agreements lacked an adequate contractual basis, the previous government corrected that specific defect while leaving the market's structural conditions unchanged.

6.2. The Civil Justice Council report

The Civil Justice Council's final report on litigation funding in England and Wales, published on 2nd June 2025, is the most wide-ranging review of the third-party litigation funding market produced by a UK public body since the sector reached its current scale, setting out 58 recommendations for reform. These recommendations address different structural aspects of the third-party litigation funding market.[156]

The report's most consequential recommendation requires funded litigants to disclose at the outset of proceedings the existence of funding, the identity of the funder and the ultimate source of the funds.[157] Its adequacy turns on the tracing standard applied to 'ultimate source of funds': a regime identifying only the immediate legal entity holding the litigation funding agreement does not reach the structure demonstrated in *Vneshprombank LLC v Bedzhamov*, where the relevant opacity arose not from concealment of A1 LLC's identity as funder but from the restructuring of A1's beneficial ownership chain in the days immediately surrounding the designation of its controlling shareholders under the Russia (Sanctions) (EU Exit) Regulations 2019.

On the regulatory framework, the Civil Justice Council recommends replacing the voluntary Association of Litigation Funders' Code of Conduct with a statutory 'light touch' regime under which litigation funding agreements would be regulated as a distinct category separate from damages-based agreements and conditional fee arrangements, without identifying the Financial Conduct Authority authorisation as the preferred regulatory vehicle.[158] The case against the existing code rests on more than its voluntary character. A body whose membership comprises the commercial entities subject to its rules cannot adjudicate the three-way conflicts between funders, law firms and claimants with the institutional independence that effective oversight demands.

The Civil Justice Council separately recommends a statutory prohibition on direct or indirect funder control over litigation, including settlement decisions, with sanctions for avoiding litigation funding agreements and adverse costs liability.[159] That prohibition is sound in principle, but its enforcement depends on a prior condition that the report does not fully resolve: a funder-control prohibition cannot operate effectively where the funder's beneficial ownership and the material terms of the funding arrangement remain undisclosed to the court.

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[155] UK Parliament (2024) *Litigation Funding Agreements (Enforceability) Bill [HL].* Available at: https://bills.parliament.uk/bills/3702 and Wheal, R. *et al*. (2026) 'UK moves to reverse PACCAR decision and regulate third-party litigation funding', on White & Case, 12 January. Available at: https://www.whitecase.com/insight-alert/uk-moves-reverse-paccar-decision-and-regulate-third-party-litigation-funding

[156] Civil Justice Council (2025) *Review of Litigation Funding: Final Report*. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

[157] Civil Justice Council (2025) *Review of Litigation Funding: Final Report,* Recommendation 13. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

[158] Civil Justice Council (2025) *Review of Litigation Funding: Final Report*. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

[159] Civil Justice Council (2025) *Review of Litigation Funding: Final Report,* Recommendation 12. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

In collective proceedings, the Civil Justice Council recommends that the court approve funding arrangements before certification. It requires the court to assess whether the proposed funder returns are fair, just and reasonable, having regard to the interests of unrepresented class members.[160] The *Merricks v Mastercard* litigation illustrates why such scrutiny matters: the terms under which Innsworth Capital funded what was ultimately a £200 million settlement, generating a return to Innsworth of approximately £68 million on a case settled at around 1.4 per cent of the original £14 billion claim value. The funding terms were originally agreed between Innsworth and the class representative without prior court scrutiny on behalf of the over 40 million unrepresented consumers who were class members.[161] The Competition Appeal Tribunal approved those terms retrospectively in February 2025 over Innsworth's objection that the approved sum was insufficient. An approval requirement applied before certification, implemented with adequate information and genuine independence on behalf of class members, represents a material improvement on the retrospective model. Its effectiveness, as with the control prohibition, depends on the quality of disclosure that precedes it.

The Civil Justice Council does not recommend statutory caps on funder returns because returns at market rates are necessary to attract capital, and court scrutiny in individual proceedings is a more proportionate instrument than blanket restriction.[162] That position is defensible as a matter of market design: caps set without reference to the commercial realities of individual cases risk pricing actions of high complexity and long duration out of the funded market. This could cause disproportionate harm to claimants in precisely those proceedings where third-party capital is most essential to the claim's practical viability. The no-cap position does not reduce the importance of the disclosure obligation. Returns cannot be assessed for commercial reasonableness if the ownership structure and valuation methodology of the funding arrangement remain opaque to the court.

The Civil Justice Council's approach makes disclosure more consequential, not less, by using it as the mechanism for supervising returns and control. The report's conclusion that the voluntary Association of Litigation Funders' Code had failed to keep pace with the scale and complexity of modern funding arrangements is unambiguous and fully supported by the documented case studies in Sections 3 and 4 of this report; the question it leaves open is whether the statutory regime it recommends is adequate to the structural risks that drove the inquiry.

6.3. The Starmer government's response

On 17th December 2025, the Minister for Courts and Legal Services, Sarah Sackman KC, issued a written ministerial statement confirming that the Starmer government intended to legislate on third-party litigation funding. The statement endorsed two of the Civil Justice Council's 58 recommendations by announcing that the forthcoming legislation will clarify that litigation funding agreements are not

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[160] Civil Justice Council (2025) *Review of Litigation Funding: Final Report*. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

[161] Brodies (2025) 'Group proceedings – the numbers behind the Merricks v Mastercard settlement' 25 March. Available at: https://brodies.com/insights/class-actions/group-proceedings-the-numbers-behind-the-merricks-v-mastercard-settlement/

[162] Civil Justice Council (2025) *Review of Litigation Funding: Final Report*. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

damages-based agreements.[163,164] The statement advanced no legislative timetable, produced no draft bill and offered no regulatory framework for consultation.

The statement contained no reference to mandatory disclosure of ultimate beneficial ownership, sanctions screening, the Financial Conduct Authority authorisation, capital adequacy requirements or the protective mechanisms applicable to unrepresented class members in opt-out collective proceedings before certification. Whether 'proportionate regulation' encompasses those measures or constitutes a statement of general legislative intent without commitment to specific content cannot be determined from the text as issued. Two recommendations adopted from 58 do not permit a reliable inference about the scope or ambition of forthcoming legislation. The distance between the ministerial statement and the Civil Justice Council's own assessment of what the market's structural deficits require is considerable, and the statement provides no analytical basis for closing it.

The Minister's statement of policy rationale identifies two distinct justifications for legislation: that third-party litigation funding 'plays a vital role in ensuring access to justice' and that regulatory uncertainty 'risks undermining the competitiveness of England and Wales as a global hub for commercial litigation and arbitration, both of which bring significant benefit to the UK economy.'[165] Neither claim is unsound. England and Wales sustain a commercially productive and internationally significant litigation market, and legal certainty about the enforceability of funding agreements is a legitimate precondition for its effective functioning. An unresolved *PACCAR* position generates persistent legal uncertainty that disadvantages parties in funded proceedings and depresses funder capital deployment into the English market. The following analysis addresses what the policy rationale omits, and what that omission signals about the scope of the government's intended intervention.

A reform agenda framed principally by market confidence and competitiveness does not, without further specification, generate the legislative outputs required to address the ownership and accountability deficits this report documents. Restoring enforceability resolves the legal uncertainty *PACCAR* created; it does not require, and does not logically entail, mandatory beneficial ownership disclosure to a natural person tracing standard, proactive sanctions screening, or the Financial Conduct Authority authorisation with capital adequacy requirements.

A government whose primary objective is to preserve England and Wales as an attractive seat for commercial litigation will resist disclosure obligations that defendants may deploy to generate satellite proceedings, resist the Financial Conduct Authority requirements that raise the cost of market entry and constrain funder supply, and resist sanctions screening obligations that introduce procedural complexity into proceedings the Minister has already characterised as economically beneficial. A regime designed to restore market confidence and a regime designed to close the beneficial ownership gap are not the same instrument. The two objectives are compatible in principle; however, they do not yield identical legislative outputs, and the Minister's framing indicates that, where they diverge,

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[163] UK Parliament (2025) *Third-Party Litigation Funding: Statement made on 17 December 2025*, Statement UIN HCWS1192, made by Sarah Sackman MP. Available at: https://questions-statements.parliament.uk/written-statements/detail/2025-12-17/hcws1192

[164] Ministry of Justice and Sackman, S. (2025) 'Increased access to justice for claimants to take on powerful organisations in court', on Gov.uk, 19 December. Available at: https://www.gov.uk/government/news/increased-access-to-justice-for-claimants-to-take-on-powerful-organisations-in-court

[165] UK Parliament (2025) *Third-Party Litigation Funding: Statement made on 17 December 2025*, Statement UIN HCWS1192, made by Sarah Sackman MP. Available at: https://questions-statements.parliament.uk/written-statements/detail/2025-12-17/hcws1192

competitiveness and access to justice will take precedence over ownership transparency and accountability.

The government's July 2026 consultation on the opt-out collective proceedings regime confirms this pattern with particular clarity. That consultation proposes to incorporate into the Competition Appeal Tribunal Rules a statutory presumption that funders receive their return at the point of a damages award or settlement approval, ahead of class distribution. The consultation frames this as a market-stability measure: without certainty on when they will receive payment, funders withdraw from the regime, and the regime cannot function without them.[166] That reasoning is commercially sound.

Its legislative consequence, however, is to encode the priority waterfall in statute rather than leave it as a contractual arrangement subject to case-by-case judicial scrutiny. A statutory waterfall is less susceptible to challenge than a contractual one: where the court must by rule pay funders first, the waterfall determines what class members receive, not judicial assessment of what is proportionate in the circumstances of the claim. Each statutory reinforcement of funder priority enacted outside an accountability and disclosure framework makes the three gaps this report identifies more consequential, not less.

The same consultation proposes a further measure analytically distinct from the payment presumption: a requirement that the Competition Appeal Tribunal give an indication of the reasonableness of the funder's return and order of payment at the point of certification, based on the expected damages award or settlement sum at the time of filing.[167] This early indication creates a reference point for funder returns before proceedings advance, reducing uncertainty about what the Tribunal will later approve and providing funders with greater certainty at the point of commercial decision.

The proposal interacts directly with the absolute suitability test proposed in the same consultation: where the Competition Appeal Tribunal is simultaneously asked to assess whether proceedings are proportionate and to indicate what return the funder may expect, the certification hearing becomes the point at which both the substantive merits of the claim and the financial architecture backing it are ratified in a single proceeding. Both assessments depend on disclosure that neither reform provides: who finances the claim, on what terms, and whether the capital's identity and ownership are consistent with the rule of law obligations the courts are bound to uphold.

The tension between the government's stated rationale and the transparency objectives this report addresses is substantive, and its resolution will be determined by the content of the legislation rather than by the terms of the ministerial statement. A bill that addresses litigation funding agreement enforceability and establishes baseline conduct standards, while deferring beneficial ownership disclosure and sanctions screening to secondary legislation, ministerial guidance or further review, has prioritised commercial certainty over structural accountability. The decisive test of the government's commitment to the full scope of reform is whether the disclosure obligation in the resulting legislation

[166] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement
[167] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

requires tracing natural persons through intermediate ownership structures or merely identifying the immediate funder entity.

The counterargument to mandatory beneficial ownership disclosure holds that defendants can exploit such obligations to generate satellite proceedings, delay resolution and impose disproportionate compliance costs on funded claimants, thereby achieving indirectly what could not be achieved on the merits. That risk is real. It does not, however, support abandoning the disclosure requirement. A court-facing regime under which beneficial ownership information is provided to the court and subject to proportionate confidentiality protections, rather than served on adverse parties as a matter of procedural course, meets the transparency objective without creating the procedural instrument the counterargument contemplates. The design question is not whether to disclose but how to do so in a manner which is resistant to tactical misuse; the government must engage publicly with that question, and the access-to-justice framing adopted by ministers gives the government limited incentive to engage with that question absent active parliamentary pressure.

On 17th July 2026, the Department for Business and Trade opened a consultation – 'Swifter and simpler competition redress, regulatory appeals and competition enforcement'. This consultation includes proposals to make opt-out collective actions, regulatory appeals and competition enforcement swifter and simpler. The government's consultation addresses the procedural efficiency and commercial viability of the opt-out regime. The consultation states that the government's view is that the certification bar is 'too low' and proposes to legislate an absolute suitability test that incorporates a proportionality assessment and a mandatory cost-benefit analysis.[168]

The distinction between absolute and relative suitability is operative, not semantic. The existing relative suitability test asks only whether a claim is better suited to collective rather than individual proceedings; it does not ask whether the claim should proceed as a collective action at all. An absolute suitability test asks that second question directly, incorporating a proportionality assessment and merits consideration at the level of statute rather than leaving their weight to judicial evolution through case law.

The reform would require the Competition Appeal Tribunal, when deciding whether to certify, to give explicit statutory weight to the cost/benefit ratio of proceedings, including the likely rate of take-up by the class, as a condition of certification rather than as one discretionary factor among many. The *Gutmann v SSWT* outcome meant that less than one per cent of the class took up their entitlement, and just over £200,000 reached consumers from a potential £25 million.[169] It is an illustration of what an insufficiently weighted cost/benefit filter produces at the distribution stage. The absolute suitability reform addresses the certification condition that produced that outcome. Whether it can address it without disclosing the funding terms that determine the cost side of that analysis is a question the consultation does not engage with. This government consultation on the opt-out regime has not addressed the structural transparency deficits that this report identifies.

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[168] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[169] Brown, A. and Milucky, S. (2025) 'The CAT's Thinking on Settlement Fund Distribution: The Trains Class Action', on Arnold and Porter, 29 September. Available at: https://www.arnoldporter.com/en/perspectives/advisories/2025/09/the-cats-thinking-on-settlement-fund-distribution

The government is separately consulting on lifting the existing prohibition on damages-based agreements in opt-out collective proceedings, a model under which the law firm rather than a third-party funder bears the financial risk of a claim in exchange for a share of any damages recovered.[170] Although currently most opt-out collective claims are financed by third-party litigation funders, usually through litigation funding agreements, the government is consulting on whether to allow damages-based agreements for opt-out collective actions.

Whether that change reduces the structural risks this report documents depends on a question the consultation does not address, which is whether forthcoming legislation that imposes beneficial ownership disclosure requirements on litigation funding agreements, without extending equivalent obligations to damages-based arrangements, would leave market participants with a structural incentive to substitute one for the other, leaving the transparency deficit this report identifies intact.

6.4. Comparative approaches

The proposition that mandatory disclosure and statutory oversight of third-party litigation funding are incompatible with a commercially viable funding market is refutable by reference to the regulatory trajectories of jurisdictions that have adopted both. Australia, Germany and the United States have each developed distinct regulatory responses to third-party litigation funding at different stages of market maturity. Their experience collectively demonstrates that accountability and a functioning funding market are not inherently in tension; each of the major third-party litigation funding jurisdictions has moved toward greater regulation over time without measurable market contraction.

Australia developed a commercial third-party litigation funding market earlier than England and Wales and has pursued statutory oversight across a longer period of regulatory development. Australian courts established the doctrine of common fund orders, which enabled all class members to participate in funded recoveries on equitable terms fixed by the court rather than on terms negotiated bilaterally between funders and class representatives without class member input.[171] The Australian Securities and Investments Commission subsequently moved to regulate certain litigation funding arrangements as managed investment schemes under the Corporations Act 2001, with a regulatory instrument introduced in 2020 imposing financial services licensing requirements and product disclosure obligations on funders whose arrangements met the statutory definition.[172] This pattern, in which market growth outpaces the existing regulatory framework, closely parallels the trajectory now observable in England and Wales, though the English market has not yet produced an equivalent regulatory response. The third-party litigation funding sector in Australia is competitive, with regulatory intervention focused on increasing transparency and managing conflicts.[173,174,175]

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[170] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

[171] Clyde & Co. (2016) 'Common fund orders: are they part of the Australian class action landscape?', 15 November. Available at: https://www.clydeco.com/en/insights/2016/11/common-fund-orders-are-they-part-of-the-austra-1

[172] Jones Day (2020) 'Australia Increases Scrutiny for Litigation Funders', August. Available at: https://www.jonesday.com/en/insights/2020/08/australia-increases-scrutiny-for-litigation-funders

[173] Geisker, J. *et al*. (2026) 'Australia', on Chambers and Partners, 3 March. Available at: https://practiceguides.chambers.com/practice-guides/litigation-funding-2026/australia/trends-and-developments

[174] Victorian Law Reform Commission (2018) *Access to Justice – Litigation Funding and Group Proceedings*. Available at: https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRC_Litigation_Funding_and_Group_Proceedings_Report_forweb.pdf

[175] Robbie, G. (2026) 'Australia's litigation boom: Why the nation is seeing more claims than ever', in *Lawyers Weekly*, 30 April. Available at: https://www.lawyersweekly.com.au/corporate-counsel/44206-australia-s-litigation-boom-why-the-nation-is-seeing-more-claims-than-ever

Germany does not treat third-party litigation funding as a distinct regulated sector. Third-party litigation funding is generally permitted, and funders are not subject to a dedicated licensing regime. Still, they must comply with general civil law principles and the professional conduct rules that constrain how lawyers can work with funders.[176,177] Funding agreements are instead assessed under general doctrines such as section 138 of the *Bürgerliches Gesetzbuch*, which renders void legal transactions that are contrary to good morals or exploitative, enabling German courts to invalidate or adjust arrangements that offer funders excessive advantages or conflict with accepted standards of commercial dealing and fairness towards claimants.[178,179] Those constraints were not designed with the funding sector in contemplation, yet their consistent application to funding relationships imposes substantive accountability on both funders and the legal practitioners they engage. The German experience demonstrates that the systematic application of pre-existing legal standards to funding arrangements can constrain the most significant structural risks without dedicated sector-specific legislation.

In the United States, federal courts and state legislatures have increasingly moved towards mandatory disclosure of third-party litigation funding arrangements. Since 2021, New Jersey has adopted a local civil rule requiring parties in civil cases to disclose the existence and key terms of any third-party funding. In 2022, Delaware introduced a standing order imposing similar disclosure obligations.[180,181,182] At the state level, multiple legislatures have introduced or enacted provisions requiring disclosure of litigation funding.[183,184] The United States provides the closest common-law parallel to the English debates on disclosure of third-party litigation funding. Certain US federal and state courts have developed a patchwork of disclosure rules, while a substantial commercial third-party litigation funding market continues to operate.

Two analytical implications follow for the reform debate being discussed in this report. First, the international evidence shows that mandatory disclosure and statutory oversight have been introduced in major third-party litigation funding jurisdictions without eliminating market activity. The Australian experience, where statutory regulation followed commercial development, indicates that disclosure and oversight reforms can coexist with sustained funding activity. Second, England and Wales currently have one of the least formalised regulatory frameworks among major third-party litigation funding jurisdictions. International developments in jurisdictions such as Australia and parts of the United

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176 Lein, A. *et al*. (2025) *Mapping Third Party Litigation Funding in the European Union*. Available at: https://commission.europa.eu/document/download/65adb710-1a36-4550-a4c6-a606adbff061_en?filename=Final%20Report%20EC%20Mapping%20TPLF%20in%20the%20EU.pdf

177 Stübinger, M. and Willing, T. 'Litigation Funding Overview – Germany', on Deminor. Available at: https://www.deminor.com/en/litigation-funding/global-landscape/germany/

178 Clarkin, C. *et al*. (2025) 'EU Perspectives on Third Party Litigation Funding: Legal Landscape and Scope for Reform', on DLA Piper, 20 August. Available at: https://www.dlapiper.com/en-gb/insights/publications/2025/08/eu-perspectives-on-third-party-litigation-funding

179 Barnes, J. and Friel, S. (eds) (2022) *Litigation Funding: Germany*. Omni Bridgeway. Available at: https://omnibridgeway.com/docs/default-source/insights/publications/lexology-getting-the-deal-through---germany-2023.pdf?sfvrsn=80579a0c_6

180 Institute for Legal Reform (2022) 'Delaware Wants to Take a Closer Look at the TPLF Industry', 21 July. Available at: https://instituteforlegalreform.com/blog/delaware-wants-to-take-a-closer-look-at-the-tplf-industry/

181 Merken, S. Reuters (2021) 'Litigation funders howl as N.J. adopts disclosure requirement', on Reuters, 22 June Available at: https://www.reuters.com/legal/litigation/litigation-funders-howl-nj-adopts-disclosure-requirement-2021-06-22/

182 Sams, J. (2022) 'Federal Court in Delaware Requiring Disclosure of Litigation Funding Agreements', on Claims Journal, 21 April. Available at: https://www.claimsjournal.com/news/national/2022/04/21/310002.htm

183 Institute for Legal Reform (2024) 'Tackling Foreign Manipulation: The Urgent Need for Reform in Third Party Litigation Funding', 1 April. Available at: https://instituteforlegalreform.com/blog/tackling-foreign-manipulation-the-urgent-need-for-reform-in-third-party-litigation-funding/

184 Sarah (2026) 'Eight States Enact Litigation Funding Disclosure Rules, Reshaping P&C Claims Economics', on Actuary, May. Available at: https://actuary.info/insights/litigation-funding-disclosure-rules-states-pc-claims

States point towards greater transparency and structural accountability for funders. At the same time, the English market has, so far, relied primarily on self-regulation and case-by-case judicial control.

6.5. Evaluation and recommendations

The reform trajectory established by the Civil Justice Council report and the Starmer government's December 2025 statement is, in its broad direction, correct. Mandatory disclosure, statutory oversight and enhanced claimant protection in collective proceedings are defensible objectives, supported by the structural evidence set out in Sections 2 and 3 of this report. The Civil Justice Council's analysis of the market's deficits is detailed, and its disclosure recommendation, which requires identification of the funder and the ultimate source of funds, addresses the transparency deficit in principle, subject to the operational specifications that the report does not provide. Three specific gaps in the reform package, however, must be resolved before it can be assessed as adequate to the structural risks this report has documented. Each gap corresponds directly to a documented risk. Each is absent from the government's current legislative commitment.

The first gap is the depth of the beneficial ownership disclosure obligation. The Civil Justice Council's recommendation requires identification of the 'ultimate source of the funding', a formulation correct in direction but unspecified as to tracing standard.[185] That specification is not a technical detail; it is the mechanism that determines whether the disclosure obligation reaches the structural problem or merely describes it. A requirement to identify the immediate legal entity holding the litigation funding agreement does not extend to the ownership structure that was required to be reconstructed in *Vneshprombank LLC v Bedzhamov*. The relevant opacity in that case arose not from concealment of A1's status as litigation funder (A1's identity was known to the proceedings) but from the restructuring of A1's beneficial ownership chain in the days immediately surrounding the designation of three individuals under the Russia (Sanctions) (EU Exit) Regulations 2019. A disclosure regime that identifies only the first legal entity in the funding chain does not reach that structure and does not address the risk the case demonstrates.

The kind of disclosure necessary to close this gap requires a tracing standard equivalent to that applied under the Economic Crime (Transparency and Enforcement) Act 2022 and the Register of Overseas Entities: natural person tracing through intermediate holding structures to identify the individuals with ultimate ownership or control, rather than identification of the immediate legal counterparty to the funding arrangement. The distinction between those two standards is substantive, not technical. One produces a disclosure regime that addresses the documented risk; the other creates the appearance of doing so while leaving the structural mechanism of concealment intact. The legislation must specify the tracing standard in terms equivalent to the beneficial ownership register standard. A general obligation to identify the 'ultimate source of the funding', unaccompanied by that specification, will be interpreted in the manner most convenient to the market and least demanding of disclosure. This should include a rule requiring litigation funders to disclose their own upstream investors.

The second gap is the regulatory architecture. The Civil Justice Council's light-touch statutory regime, absent the Financial Conduct Authority authorisation and capital adequacy requirements, leaves the risk of funder insolvency during proceedings unaddressed. The third-party litigation funding market is

[185] Civil Justice Council (2025) *Review of Litigation Funding: Final Report*, Recommendation 13. Available at: https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf

not uniform. Burford Capital reported US$3.5 billion in assets under management at the end of 2024 and manages risk across a diversified international portfolio of funded claims. Innsworth Capital, backed by Elliott Investment Management, has access to the capital resources of one of the world's largest hedge funds. Firms operating at this scale are more likely to absorb an adverse outcome in any single claim without threatening overall solvency. Smaller companies in this market may not have the equivalent financial resilience.

The existing Association of Litigation Funders' Code requires members to maintain capital sufficient to meet all present and reasonably foreseeable future liabilities. Still, enforcement against a fund in financial difficulty is illusory: the Code's voluntary character deprives it of any coercive mechanism at precisely the moment one is needed. A funder approaching insolvency faces the strongest incentive to breach conduct standards, and no regulatory mechanism currently exists to detect deteriorating financial fitness before the consequences fall on the claimants being funded. The *PACCAR* disruption was not itself a solvency event; nonetheless, it demonstrated that the sector was structurally ill-equipped to withstand disruptions to its contractual basis. A genuine solvency event would generate the same structural exposure, with materially worse consequences for funded claimants.

The Financial Conduct Authority's existing supervisory architecture covers investment management conduct, capital adequacy assessment and conflict-of-interest management in markets of comparable complexity and scale. It is the appropriate regulatory authority for the third-party litigation funding sector. Authorisation by a body without that institutional expertise reproduces, in statutory form, the substantive limitations of the voluntary regime it is designed to replace.

Writing in *the Times*, Baroness Bowles has argued that prior interventions from peers in the House of Lords reflect sustained pressure to bring third-party litigation funding within the scope of financial regulation.[186] Bowles has stated that the funds for litigation funding come from a wide range of sources, including crypto-related structures, sovereign wealth funds, obscure private vehicles, and U.S. hedge funds.[187] To respond to demands for proportionate regulation in this area, the proposal is that the Financial Conduct Authority step in, given that funders are market actors. The issues raised include capital adequacy, governance, disclosure, conflicts of interest, transparency, source of funds, anti-money laundering, and conduct risk, all of which the FCA fully understands and regulates.

The Telegraph has reported that in June 2025, Bitfinex Securities, a platform regulated by Kazakhstan's Astana Financial Services Authority, listed a £100 million tokenised instrument, TITAN2, allegedly said to offer investors a 50 per cent share of net recovery proceeds from a motor finance mis-selling claim.[188] The law firm named in the report denied any role in issuing the tokens or any entitlement to their proceeds, and no independent confirmation of the claim, including how much capital, if any, was raised, has been identified beyond the original report.

The third gap is sanctions screening. Neither the Starmer government's December 2025 statement, the Civil Justice Council report nor the July 2026 Department for Business and Trade consultation

[186] Sharon Bowles, 'Let the Financial Conduct Authority regulate third-party funders', *The Times*, https://www.thetimes.com/uk/law/article/let-financial-conduct-authority-regulate-third-party-funders-lvhcr8tcm
[187] Sharon Bowles, 'Let the Financial Conduct Authority regulate third-party funders', *The Times*, https://www.thetimes.com/uk/law/article/let-financial-conduct-authority-regulate-third-party-funders-lvhcr8tcm
[188] Tom Saunders, 'Crypto investors offered slice of car finance scandal payouts', *The Telegraph*, https://www.telegraph.co.uk/business/2026/07/19/crypto-investors-offered-slice-of-car-finance-scandal-payou/

specifies any mechanism for verifying, at the commencement of proceedings and on a continuing basis throughout their duration, that no funder or beneficial owner of funder capital is a designated person under the UK sanctions regime, or is owned or controlled by a designated person within the meaning of the applicable sanctions instruments. The *Vneshprombank* judgment records judicial concern that A1 LLC may have remained owned or controlled by three sanctioned individuals despite a low-value share transfer executed around the time of their designation, and notes A1's intensive involvement in managing the proceedings. The court found that A1's involvement in those proceedings extended well beyond that of a conventional litigation funder to active management of the proceedings on the liquidator's behalf. The reform agenda, as currently framed, would not have detected the A1 arrangement at the point of initial engagement. No disclosure obligation then in force required identification of A1's beneficial owners at the outset of its involvement, and no procedural mechanism existed to require referral to the Office of Financial Sanctions Implementation.

The Office of Financial Sanctions Implementation, which administers the UK's financial sanctions regime and maintains the consolidated list of designated persons and entities, is the appropriate body to verify the sanctions status of funders and their beneficial owners as a procedural prerequisite to funded proceedings. The A1 case illustrates why: ownership changes material to sanctions liability can occur in the course of active proceedings, and a static initial screen would not have identified the restructuring the judge was required to investigate. The absence of any verification mechanism in the current reform agenda leaves the most precisely documented structural risk in this report unaddressed.

The three gaps in beneficial ownership relating to the depth of disclosure, regulatory capital fitness and sanctions screening are not peripheral to the reform framework. They correspond directly to the structural risks established by the case studies in Section 3 and to the systemic exposure confirmed by the comparative and market-scale evidence in Sections 2 and 5. Closing each gap requires a specification that neither the Civil Justice Council report nor the Starmer government's statement has provided.

The reform process remains, at the time of writing, a statement of legislative intent: the accountability framework it will produce cannot be assessed until the legislation specifies the tracing standard, the regulatory authority and the verification mechanism that the three gaps require. That legislation will determine whether the government's competitiveness framing has displaced the Civil Justice Council's transparency recommendations or whether those recommendations have been absorbed into the bill's substantive content. On that determination rests the practical value of the most rigorous public examination of third-party litigation funding regulation that England and Wales have undertaken.

Conclusion

The Starmer government's December 2025 statement and the July 2026 consultation are committed to legislation. Any forthcoming bill should address the enforceability of litigation funding agreements, baseline conduct standards, beneficial ownership disclosure, and sanctions screening.

A third-party litigation funding market without mandatory beneficial ownership disclosure remains structurally open to capital from sanctioned entities and state-affiliated investors whose presence in UK proceedings neither courts nor claimants can detect. The only mechanism that exposed the A1 LLC arrangement in *Vneshprombank LLC v Bedzhamov* was a resourced defendant prepared to litigate the point in contested proceedings. The conditions that produced that case apply across every funded claim in the UK courts.

The government has committed to legislation and launched the public consultation this report has analysed.[189] What neither has addressed is the statutory disclosure framework that the Civil Justice Council recommended. The government has additionally commissioned the Law Commission to examine the case for extending opt-out collective proceedings to consumer claims beyond competition law. The structural transparency risks this report identifies in the current competition-only regime would apply with equal or greater force to a broader consumer class actions mechanism. Any extension of the opt-out model is also an extension of the opaque funding market that finances it.

There still needs to be a focus on designing the statutory disclosure framework that the Civil Justice Council recommended but left operationally unspecified. Three questions must sit at its centre.

The first question is the tracing standard for beneficial ownership disclosure. A requirement to identify the 'ultimate source of the funding' that reaches only the immediate legal entity does not address the ownership structures, which *Vneshprombank LLC v Bedzhamov* demonstrates. The statutory standard must require natural person tracing through intermediate holding structures, equivalent to the Register of Overseas Entities obligation under the Economic Crime (Transparency and Enforcement) Act 2022, with language precise enough to resist interpretation in the least demanding direction.

The second question is the statutory boundary on the funder's control of litigation strategy. The Association of Litigation Funders' Code's prohibition departs, as the Mulheron review established, from actual litigation funding agreement terms in a significant number of agreements. A statutory prohibition must address termination rights, settlement consent clauses, tranche capital conditions and the functionally integrated ownership structures in which no external litigation funding agreement document exists for a court to examine.

The third question is the mechanism for managing conflicts of interest in opt-out collective proceedings. Court approval of funding arrangements before certification, with disclosure of the funder's identity, beneficial ownership chain, and return structure, is the minimum that the Civil Justice Council's own analysis supports. The consultation must specify how that approval applies where the funder and law firm share common ownership and no separable contractual instrument is available for scrutiny.

Britain has built a legal culture that international parties trust since it makes its legal framework legible: courts whose reasoning is transparent, obligations whose enforcement does not depend on a well-resourced defendant choosing to raise them. A disclosure framework that traces beneficial ownership to natural persons, screens funders against the consolidated sanctions list and subjects funding arrangements to proportionate scrutiny before class members are bound does not restrict the third-

[189] Department for Business, Innovation, Science and Trade, and Department for Business and Trade (2026) 'Swifter and simpler competition redress, regulatory appeals and competition enforcement', on Gov.uk, 17 July. Available at: https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

party litigation funding market. It provides that market with the institutional legitimacy on which its long-term growth depends. Claimants with genuine claims, backed by capital whose origins courts can verify, litigating under terms assessed as fair, achieve what the access-to-justice rationale has always promised and, in the cases documented in this report, has not always delivered. Whether forthcoming legislation produces that outcome will be determined by its statutory content, not its ministerial framing.

Author

Danna Brown is a researcher for Civitas. She is a former corporate lawyer, practising in both London and her home city of New York.

CIVITAS

55 Tufton Street, London SW1P 3QL

T: 020 7799 6677

E: info@civitas.org.uk

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