UK Court of Appeal Restores Clarity to Litigation Funding in Landmark Ruling

AUTHOR / KEY CONTACT

Ben Kerley
Senior Associate

Benjamin.Kerley@LA-Law.com
01202 786239

The Background: PACCAR Fallout

In R (on the application of PACCAR Inc) v The Competition Appeal Tribunal (PACCAR), the Supreme Court held that a Litigation Funding Agreement (LFA) under which funders receive a share of damages is a Damages Based Agreements (DBA), rendering them unenforceable in many group actions, particularly in opt-out collective proceedings in the Competition Appeal Tribunal (CAT).

The decision sent shockwaves through the litigation finance industry and left a string of high-profile group claims, including those against Mastercard, Visa, Apple and Sony, in procedural limbo.

In response, funders introduced revised LFAs. These new models typically use:

- A capped multiple of costs approach (e.g. 3x the funding provided); or
- A conditional percentage of proceeds, structured carefully to avoid DBA classification.

These updated funding structures received provisional approval from the CAT, but were promptly challenged by defendants, setting the stage for appellate review.

Court of Appeal: New LFAs Are Lawful

In a much-anticipated judgment issued on 4 July 2025, the Court of Appeal (led by Sir Julian Flaux) ruled that the revised LFAs are not DBAs and are therefore enforceable.

The court considered consolidated appeals in Commercial and Interregional Card Claims v Mastercard and Others and found that:

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge

- LFAs using a costs multiple or non-contingent percentage models fall outside the statutory definition of DBAs.
- There is no legal barrier to funders being paid out of recoveries before class members receive distributions, provided the arrangement is authorised by the CAT.

The judgment emphasised the supervisory role of the CAT and its discretion in approving fair and proportionate funding arrangements.

Key Takeaways

1. Legal clarity restored: The revised LFAs are lawful, resolving doubts raised by PACCAR.
2. CAT discretion upheld: The Tribunal has authority to approve and enforce these funding models.
3. Industry relief: Funders and claimants can proceed with ongoing and new class actions, confident in their financial backing.

Legislative Reform Still Needed

While the Court of Appeal upheld the enforceability of the revised LFAs, it also acknowledged the complexity and unsatisfactory state of the current legislative framework governing DBAs. In particular, the judgment noted the lack of clarity in the statutory language and the need for coherence between funding arrangements and regulatory provisions, particularly in light of the Supreme Court's earlier decision in PACCAR.

The Court's concerns echo the recent Civil Justice Council (CJC) report published in June 2025, which called for legislation to exclude LFAs from the DBA regime and introduce clearer rules for litigation funding.

What This Means for the Future

With this ruling, group litigation, particularly in the CAT, can continue to play a central role in access to justice. While claimants and funders await legislative reform, the Court of Appeal has reaffirmed the enforceability of carefully drafted LFAs and re-established judicial support for responsible third-party funding.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge

The decision will be welcomed not only by funders, but by class members, lawyers, and the wider legal industry looking to navigate an increasingly complex collective actions environment with greater certainty.

Contact

At Lester Aldridge, our experienced litigation team can advise on the implications of this ruling and assist in structuring compliant and enforceable funding arrangements. For tailored advice on group litigation or third-party funding, please contact us at online.enquiries@LA-law.com or call 01202 786226.

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

Lester Aldridge LLP is authorised and regulated by the Solicitors Regulation Authority (SRA ID: 463177). It is a limited liability partnership registered in England and Wales under number OC321318. Managing Partner: Tom Alder; Compliance Officer for Finance and Administration: Dan Baker-Mist (Financial Controller); Compliance Officer for Legal Practice: Joanne Clarke (Partner) - See more on the Lester Aldridge Privacy Policy

© 2026 Lester Aldridge