

# UK Government Announces Intention To Reverse *PACCAR* Supreme Court Ruling – Access to Litigation Funding and Group Actions Against Corporate Defendants Likely To Increase

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The Government's recent announcement confirming plans to legislate in response to the Supreme Court's decision in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others (PACCAR)*<sup>1</sup> marks a significant shift in the landscape for collective and group litigation in England and Wales. While framed as a measure to improve "access to justice" for claimants, the proposed reforms will also have far-reaching implications for corporates, insurers, public bodies and other well-resourced defendants facing collective proceedings.

Parties at risk of facing these claims should be preparing now for an environment in which group actions are likely to increase in both number and complexity.

## Background: *PACCAR* and Its Impact

In July 2023, the Supreme Court held in *PACCAR* that third-party litigation funding agreements (LFAs) which allowed the funder to recover a fee calculated by reference to the damages awarded would fall within the statutory definition of damages-based agreements (DBAs). This meant that such funding arrangements were subject to strict regulatory requirements and, in some types of collective proceedings, rendered unenforceable altogether.

The decision created immediate uncertainty in the litigation funding market. Some funders paused new investments, existing arrangements were challenged, and a noticeable decline in new collective actions followed – particularly in competition and consumer claims.

## The Government's Proposed Reforms

The Ministry of Justice (MoJ) has now announced its [intention to propose legislation](#) to reverse the practical effects of *PACCAR* by clarifying that litigation funding agreements are not damages-based agreements.

The stated aims of the reforms include:

- Restoring access to third-party funding for claimants in collective and group actions

- Enabling more claims against "powerful organisations" to proceed
- Bringing stability and confidence back to the litigation funding sector
- Preserving the UK's position as a leading forum for dispute resolution

The MoJ has also indicated that safeguards will be introduced to ensure funding arrangements are fair and transparent, drawing on recommendations from the Civil Justice Council's [recent review](#).

## What This Means for Prospective Defendants

If implemented, the proposed legislation is likely to result in:

### An Increase in Group and Collective Actions

The removal of funding barriers will make it easier for claimant firms to pursue large-scale claims, including opt-out competition actions, consumer redress claims, ESG-related litigation and data or privacy claims.

Defendants should expect renewed momentum in claims that were previously delayed or abandoned following *PACCAR*, as well as a wave of new claims.

### Greater Financial Firepower for Claimants

Third-party funding enables claimants to pursue long, complex and expensive litigation with reduced financial risk. For defendants, this often translates into more aggressively litigated cases, higher settlement expectations and fewer claims falling away due to costs pressure.

### Reduced Leverage From Costs Risk Alone

While costs remain a critical strategic factor, the availability of funding may blunt the deterrent effect of adverse costs exposure for claimant groups. Defendants may need to rely more heavily on early merits challenges, jurisdictional arguments and procedural defences (*Municipio de Mariana v. BHP Group* is an example of such an approach; see our recent [update on that case](#)).

### Increased Importance of Early Case Strategy

With better-funded claimant groups, defendants will need to focus on early assessment, proactive evidence preservation, and strategic use of strike-out applications, summary judgment and case management tools.

<sup>1</sup> [2023] UKSC 28

## Safeguards and Unresolved Questions

Although the MoJ has indicated there will be a framework aimed at ensuring fairness and transparency, the detail of the proposed safeguards remains unclear. Key questions include:

- How funding arrangements will be regulated or supervised
- Whether claimants will be under an obligation to disclose the fact that a claim is funded, and, if so, the details of the funding arrangement
- The extent to which courts will scrutinise funding terms
- How the reforms will interact with existing collective action regimes

Until draft legislation is published, uncertainty remains – particularly for ongoing proceedings where funding arrangements may be challenged.

## Preparing for the Next Phase of Collective Litigation

For organisations exposed to group action risk, now is the time to:

- Review litigation risk profiles and potential claimant cohorts
- Stress-test existing compliance, governance and disclosure frameworks
- Revisit dispute resolution strategies, including early settlement options and remediation schemes (where appropriate)
- Engage early with legal advisers experienced in defending complex collective claims

While the proposed reforms are positioned as enhancing access to justice, they also reinforce the reality that group litigation will continue to be a prominent feature of the English legal landscape.

## Conclusion

The proposed legislative response to *PACCAR* signals a clear policy direction: collective claims backed by third-party funding are here to stay. For defendants, the challenge will be to adapt swiftly – deploying robust defence strategies, managing reputational risk, and responding effectively to well-resourced claimant groups in an increasingly active collective actions market.

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