



Mr Justice Simon Picken
Co-Chair of the CJC Review of Litigation Funding
Oxford Consultation Event (26th February 2025)

1. It is a pleasure to welcome so many people both in-person and online to today's discussion concerning Litigation Funding.
2. As you will all know, the Civil Justice Council (CJC) was commissioned by the Lord Chancellor in Spring 2024 to provide advice on litigation funding. This followed the Supreme Court's decision in *R (PACCAR) v Competition Appeal Tribunal* [2023] UKSC 28. As we all know, that called into question the validity of a large number of third party litigation funding agreements, particularly those that funded collective proceedings in the Competition Appeals Tribunal. When the CJC was commissioned, the Government intended to legislate through the Litigation Funding Agreements (Enforceability) Bill 2024 to return the legal position concerning such funding to what it had been believed to be prior to the Supreme Court's decision.
3. As we all know, the General Election intervened and the new Government decided that, rather than legislate at that time, it would wait until the CJC had reported and would then consider what legislation might be necessary.
4. Some questions have arisen about the scope of the CJC's terms of reference in so far as it relates to the PACCAR decision. The terms of reference require the CJC to '*explore whether the current arrangements for TPF deliver effective access to justice and identify possible alternatives and limitations.*'¹ This requires us to consider the nature of third party litigation funding. Necessarily, this requires us to consider if it is a form of damages-based agreement or should be regulated as such. Thus, one of the consultation questions specifically asks for views on whether the current regulatory framework operates sufficiently to regulate third party litigation funding. That current regulatory framework is not just the current self-regulatory approach, but also that which is set by PACCAR, that is to say the damages-based regulation framework.
5. If the 2024 Bill had been enacted, we would have had to consider exactly the same issues. It also requires us to consider whether, for instance, third party litigation funding should be regulated as a form of conditional fee agreement; whether it should continue to be subject to self-regulation; whether it should be made subject to statutory regulation and, if so, how and by whom should it be regulated. As the terms of reference put it, we are

¹ [Terms of Reference for CJC Review of Litigation Funding.](#)

required to provide advice '*as to whether and how and, if required by whom, TPF should be regulated.*' We are asked to look at the issue broadly.

6. In doing so, there are several conclusions we might reach. We might conclude that the position post-PACCAR requires no legislation or rule changes.
7. We might conclude that there are several other different possibilities.
8. We might conclude that third party litigation funding should be viewed as a damages-based agreement, but that that position should only apply to post-PACCAR agreements and that any agreements entered into pre-PACCAR should not be understood to be damages-based agreements.
9. We might conclude that third party litigation funding ought not be understood as a form of damages-based agreement. We might then conclude that it should continue to be subject to self-regulation or that it needs to be subject to a form of statutory regulation, and so on.
10. We will consider all consultation responses when forming any recommendations and we are grateful to those who have already, or are planning to respond to, our open consultation before it closes at 11:59PM on Monday 3rd March.
11. The essential point is that the CJC is to consider the issues raised in the terms of reference broadly so that the Government can, as it has indicated '*take a more comprehensive view of any legislation to address issues in the round once the [CJC's] review is concluded.*'²
12. The Lord Chancellor did not just seek advice on third party litigation funding. Our terms of reference also require us to provide advice on how third party litigation funding should '*best be deployed relative to other sources of funding*'. Advice was and is also sought on a range of other private forms of litigation funding, not least those that form the focus of today's discussion: legal expenses insurance; conditional fee agreements; and damages-based agreements.
13. We are particularly interested in considering views on whether any reforms are needed to these funding mechanisms to improve access to justice. Do, for instance, we need to reform our approach to legal expenses insurance to promote its use or to make it mandatory for some or all types of civil dispute? Do we need to reform the regulatory regime for conditional or damages-based agreements so as to make them more effective a means of securing access to justice? And, if so, how and in what ways? Should the

² [Written questions and answers - Written questions, answers and statements - UK Parliament](#)

separate regulatory regimes for CFAs and DBAs be replaced by a single, regulatory regime, applicable to all forms of contingent funding agreement? And what is the optimum relationship between these forms of funding and third party litigation funding?

14. In all of this, we are concerned to ensure that our recommendations are best able to promote effective access to justice for both claimants and defendants.

15. I look forward to today's discussion.