

The consultation closes on **Friday 31 January 2025 at 23:59**.

Consultees do not need to answer all questions if only some are of interest or relevance.

Answers should be submitted by PDF or word document to CJCLitigationFundingReview@judiciary.uk. If you have any questions about the consultation or submission process, please contact CJC@judiciary.uk.

Please name your submission as follows: 'name/organisation - CJC Review of Litigation Funding'

You must fill in the following and submit this sheet with your response:

Your response is (public/anonymous/confidential):	Public
First name:	Christopher
Last name:	Bogart
Location:	New York, NY
Role:	Litigation Funder
Job title:	Chief Executive Officer
Organisation:	Burford Capital
Are you responding on behalf of your organisation?	Yes
Your email address:	

Information provided to the Civil Justice Council:

We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation and the Data Protection Act 2018.

Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If your response is anonymous, we will not include your name in the list unless you have given us permission to do so. Please let us know if you wish your response to be anonymous or confidential.



CIVIL JUSTICE COUNCIL REVIEW OF LITIGATION FUNDING INTERIM REPORT AND CONSULTATION RESPONSE FROM BURFORD CAPITAL

Burford Capital is the largest litigation funding provider in the world by a significant margin. Publicly listed on both the London and New York Stock Exchanges, Burford has a portfolio of active litigation funding investments of around US\$8 billion and does more than a billion dollars a year in new business worldwide.

Burford has long been active in the English market - indeed, Burford started life in 2009 by raising its first capital in London - and is a founding member of both the International Legal Finance Association (ILFA) and the Association of Litigation Funders of England and Wales (ALF) and serves on the board of both organisations. Burford has been involved in the creation of the ILFA/ALF submission and endorses that submission. However, Burford also writes separately to share its global perspective on the issues raised by the Civil Justice Council (CJC).

Burford operates globally and is engaged in capital allocation decisions based on the characteristics of each litigation market it serves, which include all of the industrialised world and a number of further countries.

Even before the *Paccar* decision and the government's subsequent lack of decisive action, Burford was under-allocating capital to the English legal market judged on a proportional basis according to litigation activity. That allocation decision was a function of the high cost of litigation in the English courts relative to the size of the underlying litigation claims and also the congestion in the London commercial court which impairs the ability to move significant matters forward with any speed.

Paccar and the subsequent governmental response, including explicitly the tenor of this review, have caused us to reduce further our willingness to allocate capital to English matters. This is a rational economic decision when faced with a world full of opportunities. The situation in England is uncertain following *Paccar*; adding that overlay of uncertainty onto what is already a high-risk asset class is untenable in most cases. These issues have meant that we have also stopped using English-seated arbitration, the English courts and English law for dispute resolution in our own commercial affairs, shifting that activity to Paris, Singapore and New York.

While doubtless the CJC has embarked on its review in good faith, when government bodies begin asking market participants questions about things like price caps and intrusive regulation, the inevitable result is to spook the market, and that is what has occurred here. That is especially so coming after the adverse impact of the *Paccar* decision. Funding volumes overall are down sharply in England, and we would be hard pressed to increase our relative allocation of capital here until the situation stabilises.

We suspect that other funders not otherwise wedded to the English market are taking the same approach. Moreover, when there appears to be serious consideration of at least discussing price caps - an unwise, counterproductive and reckless approach for the many reasons enumerated in the ILFA/ALF submission that shows a fundamental lack of understanding of litigation funding and its economics - that does damage to the stability of the market even if they are not pursued. This is, of course, the goal of opponents of litigation funding, who dislike the leveling of the economic playing field in civil litigation that litigation funding has created. Is it surprising that insurance companies are the most fervent opponents of litigation funding?

England was already a difficult market in which to provide litigation funding. Litigation is slow and expensive; the risk of adverse costs decreases further the market's appeal. But Burford still did business here because of the high quality of the judiciary and counsel, and the friendliness of the English courts to global enforcement, notwithstanding that England was never our most profitable market. For similar reasons, England was a favoured seat for arbitration, but *Paccar* and its fallout has put paid to that.

If the result of this review is to recommend the addition of burdensome regulation, interference with our economic negotiations with our private counterparties or any other mischief of the kind urged by defense-focused advocacy groups, that will lead to our abandonment of the English market. Were that to happen, we would not be the last company or industry to call England quits. Rather, litigation finance, operating as it does at the intersection of the English legal and financial systems, would be a canary in the coalmine and a harbinger of things to come. It is not in England's interest to be an outlier globally on this front, with the ensuing economic harm to its legal and financial sectors. The country is already under enough economic pressure without adding self-inflicted and entirely avoidable wounds.