

# Exton Advisors



## Director, Matt Lo, reflects on the CJC’s much anticipated Review of Litigation Funding

Lucy Glyn · Wednesday, June 4th, 2025

*“The Working Party concludes that litigation funding is an essential means to secure effective access to justice, and that for some types of dispute it is the only viable means by which dispute resolution can be funded... it was clear that the availability of litigation funding helped to promote equality of arms, helps to promote the wider public interest and the other benefits identified.”*

A few reflections as the dust settles on the CJC’s much-anticipated Review of Litigation Funding released on Monday 2<sup>nd</sup> June.

The CJC has recommended as the first priority a reversal of PACCAR and then the implementation of a series of “light-touch” regulatory recommendations consistent with the approach taken in the European Law Institute’s recently published

Principles. It is envisaged that this will be overseen through primary legislation and secondary legislation (issued by the Lord Chancellor), with the possibility of responsibility being handed over to the FCA after a period of 5 years. The CJC's recommendations are broadly to be welcomed as providing, if implemented, an opportunity for greater certainty, stability, transparency and accountability for the market as a whole.

That being said, certain of the recommendations jumped out as being particularly interesting and (potentially) disruptive in terms of how the market has operated to-date. For example:

1. Funders and lawyers should jointly certify to the court and other parties that the funder has and maintains sufficient capital adequacy on a case-specific basis. This will place a heavy burden upon the funded lawyers to satisfy themselves that the funder is good for the money.
2. Disclosure of the fact of funding and the name of funding should become mandatory across the board, including details of the "ultimate source of funding", which may require some funders to be more transparent regarding their sources of capital than they have been previously.
3. Court approval of LFAs and funder returns, already a requirement in the CAT, should become mandatory for consumer/group claims, extending the court's supervisory jurisdiction over funding arrangements and thereby increasing the level of uncertainty for a funder that it will be permitted to take its contractual return.
4. The funder and lawyer will be required to certify to the court as part of the approval process that they did not approach either directly or indirectly the funded party to seek their agreement to pursue proceedings but rather the party sought funding and representation for their claim. If implemented, this recommendation would upend the manner in which the vast majority of collective actions and group claims have been developed in the past.
5. Sensibly, a broad distinction is proposed between commercial parties on the one hand and consumer parties and parties engaged in collective/group actions on the other. However, there are circumstances in which group claims are pursued by sophisticated commercial parties (consider certain opt-in groups in securities claims, for example) and it remains to be seen whether and how any new regulations deal with this.

6. Recoverability of funding costs should be allowed, but only in exceptional circumstances. Where permitted, recovery of funding costs can fundamentally alter the commercial dynamic between the funder, claimant and defendant.
7. “Portfolio funding” is seen as particularly concerning and, as such, should be regulated by the FCA as a form of loan. Whilst clearly there have been issues around the financing of certain law firms running mass claim models which ultimately failed, there may be a risk of the various different forms of law firm/portfolio funding being lumped together in a manner which may ultimately hinder aspects of litigation financing which were not necessarily the target of the CJC’s concern.
8. The idea of a percentage (however small) of profits recovered by funders/lawyers being paid to a new dedicated Access to Justice Fund may be controversial in circumstances where making profits in this industry is a risky business and one that is predicated on the possibility of achieving out-sized (uncorrelated) returns.
9. The collection of funding data from lawyers, funders and the courts may be commercially sensitive particularly with respect to the funder’s return and the legal costs incurred, albeit there is a reference to information being appropriately anonymised where necessary.

Of course, they key will be whether and how these recommendations are in fact implemented. Certain details notwithstanding, I suspect many in the market will be relieved by the contents of Report overall, which stopped well short of recommending hard regulation including (for example) a cap on funder returns and made a series of suggestions which in general appear to be balanced and sensible.

The CJC Review of Litigation Funding can be read [here](#).

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