

# Exton Advisors



## The Key Questions Shaping the Future of Litigation Funding in 2024

Lucy Glyn · Wednesday, December 11th, 2024

With the collective actions regime in England and Wales reaching new levels of maturity, the interplay between litigation funding, legal frameworks, and market pressures is shaping the future of competition claims.

Below, we summarize the big questions and trends shaping litigation funding today and offer insights into what lies ahead in 2025.

### The Current Landscape of Competition Litigation Funding

Since the advent of the collective actions regime, 54 opt-out claims have been initiated, with between £850 million and £1 billion in funding committed to supporting these cases. Many claims have reached certification, providing clearer insights into how tribunals assess funding and insurance arrangements. However, we are now entering a pivotal phase:

- **Resolution Bottleneck:** While funding continues to enable new claims, the market is

experiencing a slowdown due to concentration risks. This year, half as many collective claims have been issued compared to 2022 or 2023.

- **Approaching a Crunch Point:** Several trials, as well as key judgments and settlements, are on the horizon. These milestones will bring fresh challenges and opportunities for funders, lawyers, and claimants.

## Key Questions Shaping the Future of Litigation Funding

### 1. Timing of Funder Payments

Should funder payments come solely from undistributed damages, or can funders be paid—at least in part—before proceeds are distributed to class members?

This question, which arises in current cases, is critical in determining the viability of certain claims. What is the position where there is the potential for non-cash outcomes to cases as well as where there is the potential for perfect distribution? If funders cannot receive early payments, some cases may struggle to secure funding altogether. A resolution on this issue could expand or constrain the range of claims that funders are willing to back.

### 2. Scrutiny of Funder Returns

How far should the CAT go in evaluating funder returns, and will they adopt a forensic or broad-brush approach?

The [Dr. Liza Gormsen v Meta](#) case highlighted the importance of this question, with the tribunal postponing an assessment of funding terms to later stages by expressly stating that they would “not want there to be any suggestion in the Tribunal’s certification of these collective proceedings that we are in any way approving or endorsing or expressing any kind of approval of the terms on which these proceedings are funded. It is simply that of the two choices we have – to certify or not to certify”.

As funding terms and potential success fees vary widely across certified claims, concerns about fairness and conflicts of interest are becoming more pronounced. The broader implications were underscored by [CAT Chairman Andrew Lennon KC’s warning](#) that whilst it is accepted funders must be profitable, collective proceedings must not become “cash cows” .

It is therefore going to be interesting to see how this broad question plays out and the sorts of issues that will arise, bearing in mind the amount of money potentially at stake, the conflicts of interest that can arise, and the fact that the tribunal may not hear all sides of the argument.

### 3. Implications of PACCAR

The PACCAR decision continues to reverberate through the funding landscape. With several challenges to litigation funding agreements pending before the Court of Appeal, key issues include:

- Whether multiple-based success fees which are capped by reference to the amount of claim proceeds qualify as Damages-Based Agreements (DBAs) and are thus impermissible.
- How the ongoing Civil Justice Council (CJC) review might intersect with these debates, despite PACCAR not falling explicitly within its remit.

The uncertainty stemming from PACCAR underscores the need for clarity to restore confidence in the funding market.

### **What Lies Ahead in 2025?**

The coming year will be pivotal for competition litigation funding. Key trials, appeals, and regulatory reviews promise to reshape the landscape. Stakeholders must remain agile, anticipating changes that could affect funding structures, risk appetite, and claim viability.

### **How Exton Can Help**

At Exton, we are closely monitoring these developments and are well-positioned to help you navigate them. Whether you need advice on structuring funding agreements, insights into market trends, or strategies to optimise your funding arrangements, Exton is committed to supporting clients through these complex challenges. If you have questions about funding competition claims or are looking for tailored solutions, please [contact](#) a member of the Exton team.

This entry was posted on Wednesday, December 11th, 2024 at 11:25 am and is filed under [INSIGHT](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.