LITIGATION FUNDING · INVESTIGATIVE DUE DILIGENCE

The Claim Is Only Part of the Investment

A sourced briefing on litigation funding risk, regulation, case economics and recoverability, drawing on major funded disputes and current UK regulatory material.

CARRATU INTERNATIONAL / 23 AUGUST 2026

MERITS	QUANTUM	DURATION	RECOVERY

Third-party litigation funding now sits at the intersection of legal merits, capital allocation, regulatory scrutiny and enforcement risk. The funder's return depends on a legal asset, but the quality of that asset is affected by facts that may sit outside counsel's merits opinion: the parties behind the claim, the durability of the claimant and legal team, the economics of a long-running case, the defendant's position, and the practical route from judgment to recovery.

The public record is unusually instructive. Major funded disputes show that claim value, legal success, settlement value and recoverability are separate variables. Recent regulatory work also shows that the funding relationship itself is receiving closer scrutiny.

A substantial and increasingly scrutinised market

The Civil Justice Council's 2025 final review described third-party funding as an established feature of civil justice in England and Wales and considered access to justice, regulation, capital adequacy, transparency and funder returns. The review followed the Supreme Court's decision in *PACCAR*, which disrupted percentage-based litigation funding agreements by treating relevant arrangements as damages-based agreements for statutory purposes. [1] [2]

Government policy has subsequently moved toward restoring enforceability while considering a proportionate regulatory framework. The significance for the market is not simply technical: funding structure, enforceability and regulatory treatment can affect the economics of an investment independently of the underlying merits. [3]

Merits Whether the legal claim is sufficiently strong to justify capital exposure.	**Quantum** The realistic value of the claim after evidential, procedural and settlement risk.
Duration How long capital may remain deployed and how costs may develop before an outcome.	**Recovery** Whether a favourable judgment or settlement is likely to translate into realised value.

Petersen/YPF: a legal asset can change dramatically in value

Burford Capital financed the Petersen and Eton Park claims arising from Argentina's 2012 nationalisation of YPF. In 2023 the US District Court entered judgments totalling approximately US$16.1 billion. In March 2026, however, a majority of the US Court of Appeals for the Second Circuit reversed the District Court's judgment. Burford publicly acknowledged the significance of the appellate decision while continuing to analyse its implications. [4]

The case is a clear illustration of duration and appellate risk. A funded claim may acquire an enormous judgment value and still remain exposed to later legal developments. It also demonstrates why a judgment figure should not be treated as cash: sovereign enforcement, settlement dynamics and the location and legal character of assets are distinct questions.

Merricks v Mastercard: headline quantum and realised outcome can diverge

The Mastercard collective proceedings were originally advanced at about £14 billion and concerned tens of millions of consumers. The litigation ran for years through certification proceedings and ultimately settled for £200 million. In approving the settlement, the Competition Appeal Tribunal described the outcome as very far from a success for the class and recorded that Innsworth had incurred more than £41 million in lawyers' and experts' costs. [5] [6]

For the funding market, the important point is not hindsight criticism. It is that assumptions about class size, recoverable loss, evidential proof, procedure, duration and settlement can evolve materially over the life of a case. Portfolio economics exist precisely because individual cases can produce outcomes far removed from their starting valuation.

UK Trucks and PACCAR: funding terms can become part of the litigation risk

The competing Road Haulage Association and UK Trucks collective proceedings arose from the European Commission's trucks cartel decision. The Supreme Court recorded Therium funding of £27 million for the RHA claim and £24 million for UK Trucks Claim Limited. The same proceedings produced the *PACCAR* decision on the statutory treatment of certain LFAs. [2] [7]

This matters beyond competition litigation. The funding agreement is not merely an administrative wrapper around the claim. Its enforceability, termination rights, economics, control provisions and interaction with professional duties can become material to the viability of the funded proposition.

The SRA has made funder due diligence a live professional issue

In July 2026 the Solicitors Regulation Authority published guidance on using or arranging third-party litigation funding. It emphasises client interests, solicitor independence, financial resilience, conflicts, confidentiality, privilege and financial-crime risk. The guidance specifically notes that due diligence on funders may provide insight into funding sources, financial status and funding history. [8]

The SRA's high-volume consumer claims review provides useful market evidence. Thirty firms reported around £200 million of litigation funding. Those firms had arrangements with approximately 42 different funders; seven appeared to be members of the Association of Litigation Funders. The review also identified weaknesses at some firms in checks concerning funder source of funds, sanctions and anti-money-laundering risk. [9]

£200m litigation funding reported across 30 firms in the SRA thematic review [9]	**42** different funders used by those firms [9]
£27m funding recorded for the RHA Trucks claim [7]	**US$16.1bn** 2023 YPF judgments later reversed on appeal in 2026 [4]

Capital adequacy is part of counterparty risk

A litigation funder is not simply a source of cash at the start of proceedings. Funding commitments may need to be met for years, through interlocutory applications, expert evidence, trial, appeal and adverse-cost exposure. The Association of Litigation Funders' Code reflects that duration by imposing capital-adequacy requirements on its members, including resources sufficient to cover aggregate funding liabilities for a minimum period of 36 months. [10]

The point has become more prominent in the SRA's 2026 work. Its consultation records examples of funders informing firms at short notice that they could not meet commitments and of funders entering administration while active commitments remained. The SRA's proposed risk-assessment factors include funder capital and liquidity, funding history, source of funds, adverse-cost exposure, ATE insurance and the forecast duration and outcome of claims. [11]

For a funded case, this creates a second layer of counterparty risk. The claimant may have a strong case against a solvent defendant while still being exposed to the resilience, governance and funding structure of the capital provider. That is one reason due diligence can run in both directions: funders assess claims and counterparties, while solicitors and claimants may need assurance about the funder itself.

Distinct variables in funding analysis

Several propositions can be true at the same time: a claim may have strong merits but weak recoverability; a defendant may appear asset-rich while relevant value is legally insulated; a claimant may be credible while its corporate or insolvency history introduces execution or standing issues; and a high headline quantum may still support a much lower commercial settlement.

That is why factual intelligence is most useful when treated as a distinct input alongside legal, quantum and financial analysis. It can test material assumptions about parties, ownership and control, commercial relationships, corporate events, litigation history, asset context and jurisdictional exposure without purporting to decide legal merits.

Funding economics are sensitive to duration and outcome

Funding returns are usually shaped by more than the nominal damages figure. Deployed capital, time, legal spend, adverse-cost risk, insurance, priority in the distribution waterfall and settlement timing can all alter the economics. Merricks is an unusually visible example: the CAT recorded a total commitment amount of £60.1 million under the 2023 funding agreement, more than £40 million of project costs and adverse costs incurred by the funder, and a contractual return that could not be satisfied from the £200 million settlement. [6]

This does not make the case representative of the market, but it shows why headline claim value is a poor proxy for funding value. A case can remain legally arguable while its risk-adjusted economics deteriorate because the recoverable class, evidence, timetable or likely settlement changes. The reverse can also occur where liability becomes clearer, recovery prospects improve or procedural uncertainty falls.

The Civil Justice Council's 2025 review treated these questions as part of a wider market structure, including portfolio funding, consumer protection, regulation and capital adequacy. It recommended regulation of portfolio funding and greater attention to the interaction between funding and the legal profession. [12]

Recoverability is an investment question, not an afterthought

The economics of funding ultimately depend on realised proceeds. Asset ownership, security interests, insolvency ranking, sovereign immunity, competing creditors, corporate separateness and cross-border enforcement can all affect the distance between judgment and recovery. Public litigation repeatedly demonstrates that identifying apparent wealth is not the same as establishing assets available to satisfy a particular claim.

For an investment committee, the relevant issue is therefore not simply whether value appears to exist, but how much uncertainty surrounds the path to it. That distinction becomes more important as claim size, duration and jurisdictional complexity increase.

A defined place for independent factual assurance

Litigation funding has matured into a specialist capital market with its own legal, regulatory and portfolio disciplines. Counsel's merits analysis, expert quantum evidence and financial modelling answer essential questions; none necessarily resolves factual uncertainty about the people, entities and economic circumstances surrounding the dispute.

Carratu International supports litigation funders, law firms and claimants where independent investigation or intelligence is required in relation to those factual uncertainties. The scope is determined by the matter and the decision to be supported.

Portfolio logic does not remove case-specific risk

Litigation finance is frequently discussed at portfolio level because diversification can reduce dependence on the outcome of a single matter. That changes the investor's exposure but does not remove the need to understand individual cases. A portfolio can still become concentrated by defendant, legal issue, claimant type, jurisdiction, law firm, enforcement route or a common factual assumption across multiple claims.

The Civil Justice Council's treatment of portfolio funding reflects that distinction. Portfolio capital can support access to justice and smooth cashflow for firms, but it also creates questions about leverage, capital adequacy and the incentives created when a law firm or claims business depends heavily on one funding source. For the underlying funded matter, the relevant factual questions remain case-specific even where the capital allocation decision is made across a book of claims.

This is also why public information about a funder's headline assets under management or capital raised should be interpreted carefully. The ability and obligation to fund a particular matter depends on the structure through which capital is committed, existing liabilities, investment mandate and contractual terms. General financial strength and case-specific funding capacity are related but not identical propositions.

Sources and further reading

1. Civil Justice Council, Review of Litigation Funding - Final Report (June 2025).

2. UK Supreme Court, R (PACCAR Inc and others) v Competition Appeal Tribunal [2023] UKSC 28.

3. Ministry of Justice, litigation funding policy announcement (17 December 2025).

4. Burford Capital, statement on YPF appeal decision (27 March 2026).

5. UK Supreme Court, Mastercard v Merricks [2020] UKSC 51.

6. Competition Appeal Tribunal, Merricks v Mastercard - CSAO judgment (20 May 2025).

7. UK Supreme Court judgment recording RHA and UKTC funding arrangements.

8. Solicitors Regulation Authority, Using or arranging Third-Party Litigation Funding (9 July 2026).

9. Solicitors Regulation Authority, High-volume consumer claims thematic review (2025).

10. Association of Litigation Funders, Code of Conduct (accessed 23 August 2026).

11. Solicitors Regulation Authority, Consultation: protecting consumers when solicitors use or arrange third-party litigation funding (9 July 2026).

12. Civil Justice Council, Review of Litigation Funding - Final Report (2 June 2025).

Scope note