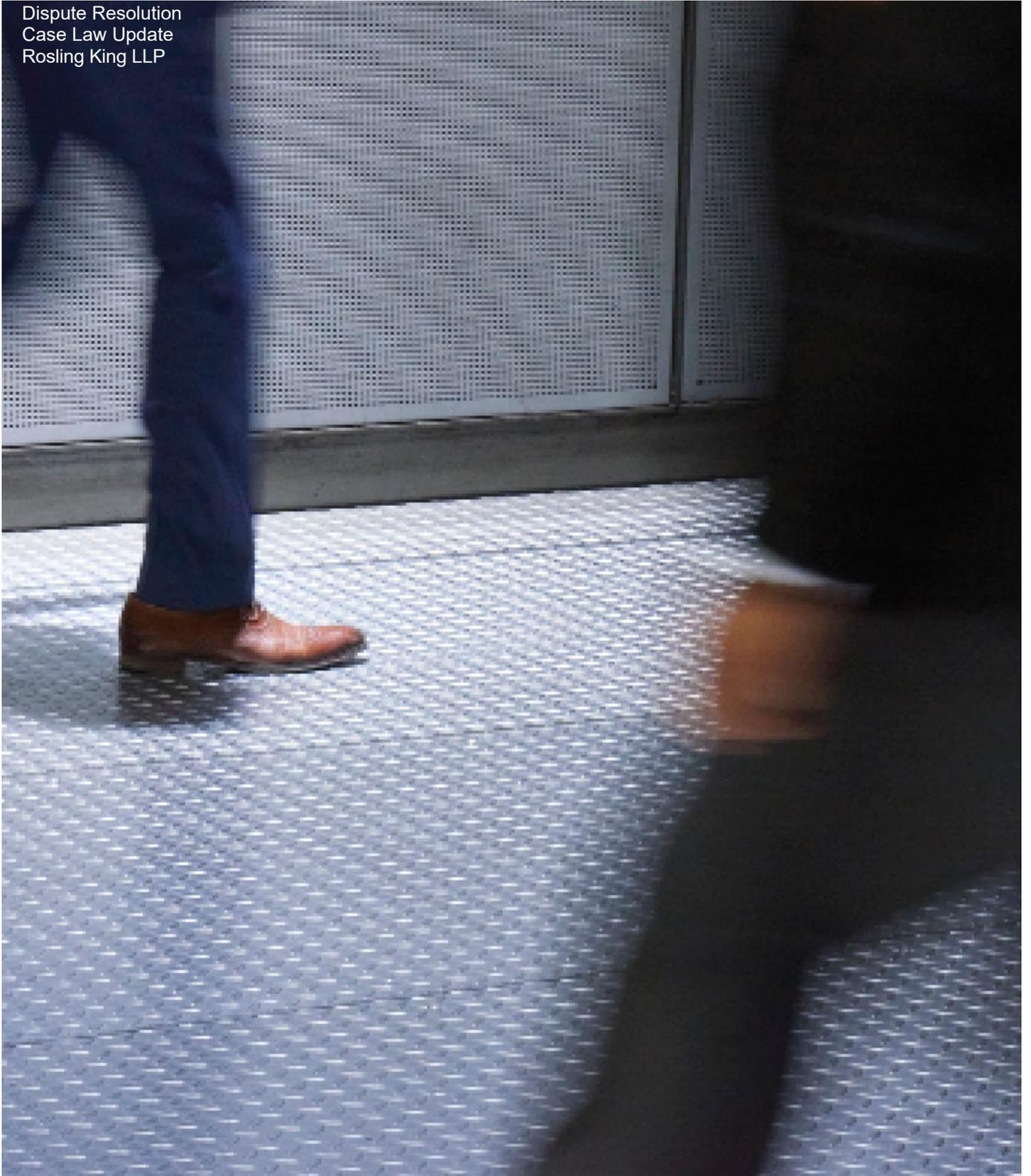


Dispute Resolution
Case Law Update
Rosling King LLP



Case Summary

In July 2023, the UK Supreme Court handed down a decision in *R (PACCAR) v Competition Appeal Tribunal* [2023] UKSC 28 (“**PACCAR**”) that sent shockwaves through the legal industry and generated a significant degree of uncertainty and concern in relation to litigation funding agreements (“**LFAs**”). In simple terms, LFAs are designed to provide litigation funding in return for a percentage of recovered damages.

In PACCAR, the Supreme Court held that LFAs were a form of damages-based agreements (“**DBA**”). Pursuant to Section 58AA(3) of the Courts and Legal Services Act 1990, a DBA is:

“an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that -

- (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and*
- (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained”.*

The Supreme Court’s decision concluded that “*claims management services*” included services provided pursuant to LFAs. This meant that LFAs fell within the scope of DBAs, and their enforceability was subject to the satisfaction of formal regulatory requirements. In the case of PACCAR, these specific requirements were not met, which meant that the LFAs were not enforceable.

Importance of this Decision

As a matter of industry practice, the majority of LFAs traditionally operated on the assumption that they would be enforceable as ordinary contractual arrangements. Consequent to the PACCAR ruling, many LFAs were technically unenforceable, as they did not satisfy the formal regulatory requirements.

UK Civil Justice Council (“**CJC**”)

In June 2025, the CJC published its ‘Final Report on the Regulation and Future of Litigation Funding’. The report specifically noted that there was “*an urgent need to reverse the effect of the PACCAR decision*”. This was amplified by the suggestion that “*such legislative reform should not wait for further consideration of any wider reforms that the CJC may recommend*”. In addition to this primary recommendation, further recommendations were also made in respect of litigation funding.

Conclusion Looking Ahead – Government Intervention

On 17 December 2025, Sarah Sackman KC MP (Minister of State for Justice) made a statement regarding the impact of PACCAR (“**Sackman Statement**”). The Sackman Statement acknowledged that litigation funding plays a pivotal role in “*ensuring access to justice*” and how the priority for legislative action will be to remove the “*uncertainty introduced by PACCAR*” to

ensure that “*the litigation funding sector works fairly and efficiently*”.

The Statement highlights some important issues in relation to litigation funding and the role it plays in ensuring access to justice and specifically references the fact that Sir Alan Bates has spoken openly about how he could not have brought his claim against the Post Office without litigation funding.

In the first instance, the Sackman Statement confirms that the Government intends to accept the CJC’s two primary recommendations which are:

- (1) Legislation clarifying that LFAs are not DBAs, with prospective effect (it should be noted that the CJC did request for there to be retrospective effect); and
- (2) Introduction of proportionate LFA regulation. This will help ensure there is greater “*transparency and fairness*” for claimants.

The Statement also confirms that the CJC’s wider litigation funding recommendations will be considered in due course, with the “*crucial*” priority being mitigation of the uncertainty caused by PACCAR.

Conclusion

The Sackman Statement confirms that the Government intends to introduce legislation to address the issues created by the PACCAR decision provides much-needed clarity and relief to funders, claimants and industry professionals alike.

The Government’s decision to “*take action to mitigate the impact*” of PACCAR will play a positive role in (1) helping the UK retain its place as a competitive “*global hub for commercial litigation and arbitration*”, (2) encouraging and boosting investor confidence in an already over leveraged economy and (3) ensuring access to justice.

For further information, please contact [Lauren Pardoe](#) or [Hassan Siddique](#).