

Visa Inc. and others (Appellants) v Commercial and Interregional Card Claims I Limited and another (Respondents)

 supremecourt.uk/cases/uksc-2025-0158

UKSC/2025/0158

COURT PROCEDURE

Permission to Appeal refused

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Case summary

Case ID

UKSC/2025/0158

Parties

Appellant(s)

Visa Inc., Visa International Service Association, Visa Europe Limited, Visa Europe Services LLC and Visa UK Limited

Respondent(s)

Commercial and Interregional Card Claims I Limited and Commercial and Interregional Card Claims II Limited

Issue

Did the Court of Appeal err in its construction of s58AA(3)(a) of the Courts and Legal Services Act 1990 (the “1990 Act”), by holding that the respondents’ revised litigation funding agreements and related agreements did not provide for an amount payable to the funder that “is to be determined by reference to the financial benefit obtained”?

Facts

The two linked appeals concern a matter of statutory interpretation in the context of litigation funding. Litigation funding involves the agreement of a third party (with no prior connection to the litigation) to finance all or part of the legal costs of certain litigation, in return for a percentage of any damages recovered should the funded litigant be successful. Agreements to provide this funding are known as litigation funding agreements (“LFAs”). Whether or not an LFA is lawful and enforceable is related to whether the agreement constitutes a “damages-based agreement” (“DBA”), a term given a specific definition by section 58AA of the 1990 Act. 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 the recipient will pay the provider if they obtain a related financial benefit, and that the amount of payment is determined according to the financial benefit obtained. In order to be lawful and enforceable, a DBA has to satisfy certain conditions set out in section 58AA. If LFAs have been entered into without satisfying those conditions, then the question whether they constitute DBAs becomes critical for their enforceability. The linked appeals concern the correct construction of section 58AA. The appellants in both cases are the defendants in ongoing proceedings before the Competition Appeal Tribunal (the “CAT”) brought by the respondents under section 47B of the Competition Act 1998 (the “1998 Act”). To fund the proceedings, the respondents, who are class representatives, each entered into LFAs and related agreements with various third-party funders. After the CAT proceedings had begun, the Supreme Court handed down its judgment in *R (PACCAR) v CAT* [2023] 1 WLR 2594 (“PACCAR”). PACCAR

was a significant judgment in relation to services provided under LFAs. A majority of the Supreme Court held that an LFA where the funder is to receive a percentage of any damages recovered by the funded party is a “damages-based agreement” within the meaning of section 58AA of the 1990 Act. Following PACCAR, the respondents accepted that their LFAs were DBAs for the purposes of section 58AA. If a DBA does not satisfy the conditions required in section 58AA, then under the 1990 Act it is unenforceable. The respondents accepted that the LFAs were therefore unenforceable for one of two reasons. Either the LFAs were unenforceable because DBAs are prohibited in “opt-out” collective proceedings by section 47C(8) of the 1998 Act, or they were unenforceable because they did not comply with the conditions for enforceability for “opt-in” collective proceedings under section 58AA of the 1990 Act. Opt-out proceedings are where a representative brings an action on behalf of a specified class of persons who would have the ability to opt out if they did not wish to be represented. In opt-in collective proceedings, persons wishing to participate in any award have to opt in to the class represented. Seeking to cure the problem of having unenforceable funding arrangements, the respondents entered into revised LFAs (“the revised LFAs”). This appeal concerns the enforceability of the revised LFAs.

Date of issue

1 September 2025

Case origin

PTA

Linked cases

[UKSC/2025/0159 Apple Inc and others \(Appellants\) v Gutmann \(Respondent\) No 2](#)

Legal Issue

Permission to Appeal

Justices



[Lord Lloyd-Jones](#)



[Lord Sales](#)



Permission to Appeal decision date

6 November 2025

Permission to Appeal decision

Refused

The application does not raise an arguable point of law.

Previous proceedings

Change log

Last updated 10 November 2025