LITIGATION FUNDING IN THE CHANNEL ISLANDS

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Litigation funding was once suspected of being a form of champerty and unlawful as such, but times and public policy change. This article examines the status of litigation funding in Channel Island law, whether any issues remain and possible pitfalls.

1 For a long time litigation funding was looked upon by the legal profession with suspicion that it was somehow wrong. Lawyers were often conditioned to think this way by the professional obligations of whatever jurisdiction they happened to be practising in. For example, in Guernsey the articles of a Guernsey advocate include the obligation: "Qu'ils ne feront marché avec leurs parties, ou leurs attournes, d'aucune quantité de la cause, ou d'avoir aucune part ou portion de la cause contentieuse".[1] Rule 38 of the Guernsey advocate's rules of professional conduct provides that—

> "An Advocate who is retained or employed to prosecute any action, or other contentious proceeding shall not enter into any arrangement to receive a contingency fee in respect of that proceeding."[2]

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[1] Which translates: "That they will not make any bargain with their clients or their attorneys for any amount of the cause, or have any share or portion of a contentious matter". The Jersey advocate's oath includes the following in very similar terms (both deriving from Terrien and earlier expressions of the oath, notably the 1515 *Grand Coutumier* identified by Richard Falle in his article "The Advocate's Oath" (1999) 3 *Jersey Law Review* 88): "*Vous ne ferez aucun marché ni contrat avec vos clients d'aucune cause ou affaire contentieuse, ni de partie d'icelle*." But goes on to provide: "*Vous vous contenterez de gages et salaires raisonnables* . . .", "You will content yourselves with reasonable fees and recompense", see Schedule 1 to the Advocates and Solicitors (Jersey) Law 1997. The Guernsey Oath and Articles contain no equivalent provision, although the Jersey Bar seems not to have suffered unduly by it.

[2] Curiously there is nothing said about defending an action, but a contingent fee for the successful defence of an action (assuming counterclaims would also be covered by the bar) is less likely.

2 There was a fear also that litigation funding amounted either to maintenance or, more likely, champerty. Maintenance and champerty were criminal offences under English law until abolished by s 13 of the Criminal Law Act 1967. They were also abolished as torts by s 14(1) but s 14(2) provided that—

> "The abolition of criminal and civil liability under the law of England and Wales for maintenance and champerty shall not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal."

3 Maintenance and champerty were defined succinctly by Marshall, LB in the Guernsey case of *In re Providence Investment Funds PCC Ltd*[3] where liquidators sought the court's approval to enter into a litigation funding agreement in order to bring proceedings against the auditors of an insolvent fund—

> "'Maintenance' is the perceived vice of a third party funding or lending assistance to the pursuit of a cause of action in which he himself has no interest. 'Champerty' is the perceived vice of funding or maintaining a cause of action belonging to another person in return for a share of the proceeds."[4]

4 The leading Jersey case on the subject remains *In re Valetta Trust.*[5] Trustees had brought a *Beddoe* application seeking the court's approval to enter into a funding agreement with a litigation funder. The court requested that it be addressed on whether such an agreement was permissible under Jersey law.

5 The court found that there was no material difference between the law of Jersey and the law of England as to what maintenance and champerty were, there being no Jersey case law found.[6] The court cited English authority[7] and the approval of the following definitions—

> "A person is guilty of maintenance if he supports litigation in which he has no legitimate concern without just cause or excuse.
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> Champerty occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit."[8]

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[3] 2017 GLR 400.
[4] *Ibid* at para 15.
[5] 2012 (1) JLR 1, Birt, B, sitting with Jurats Morgan and Fisher.
[6] *Ibid* at para 10.
[7] *R (Factortame Ltd) v Secy of State for Transport, Local Government and the Regions (No 8)* [2002] 3 WLR 1104.
[8] *Ibid* at para 32, *per* Lord Phillips, MR.

6 The court cited earlier English authority as to the history and nature of the mischief which led to the outlawing of maintenance and champerty—

> ". . . one of the abuses which afflicted the medieval administration of justice was the practice of the assigning of doubtful or fraudulent claims to royal officials, nobles or other persons of wealth and influence who could in those times be expected to receive a very sympathetic hearing in the courts. The agreement was often that the assignee would maintain the action at his own expense and share the proceeds of a favourable outcome with the assignor. It was in those circumstances that the courts developed the doctrines of maintenance and champerty to prevent such abuses."[9]

7 The court held—

> ". . . we have no doubt that Jersey law is to like effect as English law and an agreement which provides for a share of the proceeds of litigation may be held to be unenforceable on the ground of champerty if contrary to public policy",

but went on to hold that the reasons for the "sea change" in judicial attitude to litigation funding in England (and Australia) applied also to Jersey.[10]

8 In *Providence* it was likewise accepted that maintenance and champerty formed a part of Guernsey "common law"[11] and were founded upon public policy considerations referring to—

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[9] *In re Valetta* at para 13.

[10] And not all jurisdictions have gone the same way. Commercial litigation funding of the kind with which this article is concerned remains prohibited under Irish law. See the Irish Supreme Court case of *Persona Digital Technology Ltd v Minister for Public Enterprise* [2017] IESC 27 and its application of the Maintenance and Embracery (Ireland) Act 1634. Although the Chief Justice of Ireland, Frank Clarke, called for the legislature to address the issue urgently in order to promote access to justice in the later case of *SPV Osus Ltd v HSBC Institutional Trust Servs (Ireland) Ltd* [2018] IESC 44.

[11] Paragraph 15: "Both are prohibited as a matter of public policy at common law. Advocate Newman accepts that this would apply in the common law of Guernsey". This begs the question of whether there is such a thing as Guernsey common law. It could be seen as useful concept to distinguish Guernsey application of common law principles in those areas of law where common law is looked to, as opposed to customary law.

> ". . . the law's distaste for incentivising litigation as a source of profit rather than confining it to its proper purpose of the redress of wrongs. Agreements involving maintenance or champerty are unlawful and void at common law. However, in the modern world, these doctrines have been scrutinised, narrowed and subjected to exceptions in pursuit of another tenet of public policy, namely that of improving or facilitating access to justice."[12]

9 A key moment in the history of litigation funding was the Review of Civil Litigation Costs or Jackson Review, led by Lord Justice Rupert Jackson. This concluded with the *Review of Civil Litigation Costs: Final Report, December 2009*.[13] The report referred to litigation funding as "third party funding"[14] and defined it as follows—

> "The funding of litigation by a party who has no pre-existing interest in the litigation, usually on the basis that (i) the funder will be paid out of the proceeds of any amounts recovered as a consequence of the litigation, often as a percentage of the recovery sum; and (ii) the funder is not entitled to payment should the claim fail."[15]

10 The *Final Report* came out strongly in favour of litigation funding, identifying, *inter alia*, the following benefits[16]—

(i) It provided an additional means of funding litigation, and for some, the only means of funding litigation. Litigation funding promoted access to justice;

(ii) While a successful claimant with litigation funding would forego a percentage of his damages, it was better to recover a substantial part of his damages than to recover nothing at all;

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[12] At para 16.

[13] Published by TSO (The Stationery Office), 2010.

[14] In a speech given at the Royal Courts of Justice on 23 November 2011 entitled "Third Party Funding or Litigation Funding", Jackson, LJ stated: "The title of this lecture is somewhat longwinded, because the nomenclature has recently changed. What used to be called 'third party funding' is now more commonly called 'litigation funding'".

[15] Known as "non-recourse funding".

[16] At ch 11, para 1.2. The other benefits are not relevant in a Channel Island context where conditional fee agreements are not permitted and success fees have never arisen, let alone be recoverable from an opposing party. Note though that conditional fee agreements would be permitted in Jersey if the proposals set out in the draft Access to Justice (Jersey) Law 201- are enacted. See art 11.

(iii) The use of litigation funding imposed no additional financial burden upon opposing parties;

(iv) Litigation funding tended to filter out unmeritorious cases, because funders would not take on the risk of such cases. This benefited opposing parties.

11 The court in *Valetta* relied heavily on both the preliminary and final Jackson reports along with English and Australian case law in reaching its conclusion authorising trustees to become party to the litigation funding agreement under consideration. That agreement was fairly typical, at least in the lines that it took, even if the precise figures vary from funder to funder and case to case. The funder agreed to provide the plaintiffs' legal costs. It agreed to meet any adverse costs orders made against the plaintiff. In return any damages recovered would be applied first to reimburse the funder for all the costs incurred. Beyond that, the proceeds would be split between the funder and the plaintiffs with the greater of 25% of the proceeds or twice the plaintiffs' legal costs going to the funder. The percentage or multiple increased according to the time the proceedings took, up to a maximum of 50% of the proceeds or three times the plaintiffs' legal cost, whichever the greater.[17]

12 The decision in *Valetta* was confirmed in the later case of *Barclays Wealth Trustees (Jersey) Ltd v Equity Trust (Jersey) Ltd.*[18] The current trustee and manager of unit trusts had brought proceedings against the former trustee and manager. After bringing proceedings the plaintiffs had entered into a litigation funding agreement with the same funder as in *Valetta* and, it is implicit, upon similar terms. The defendants raised the objection that the agreement was contrary to a 1635 Jersey Ordinance forbidding buying or contracting for any debt or other "thinge in Action", itself re-enacted/confirmed by the Code of 1771[19]

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[17] Para 8. It is a common alternative to see after the event (ATE) insurance used to cover adverse costs orders.

[18] 2013 (2) JLR 22. A judgment of Sir Michael Birt, Bailiff, sitting alone.

[19] There was no equivalent attempt at codification/collation in Guernsey law. The closest comparison is an Order in Council of 1583 giving the force of law to a document known as *L'Approbation des Lois* compiled by the then Governor, Bailiff, Jurats and Procureur, in effect saying what was and was not Guernsey law by reference to Guillaume Terrien's 1574 *Commentaires du Droict Civil tant public que privé, observé au pays & Duché de Normandie*. This was produced in response to complaints made to Queen Elizabeth I that the Guernsey court was, in effect, making it up as it went along, see an Order in Council of 9 October 1580 to this effect. Jersey had no *Approbation* moment.

which provided that nobody could contract for "*choses ou matières en litige*". The court distinguished between "a prohibition on contracting for a matter in litigation" and a "contract which deals with the funding of that litigation by a third party".[20] And while the court had power to declare unenforceable agreements which were contrary to public policy on the grounds of champerty or maintenance, the funding agreement before the court was not contrary to public policy. There was—

> ". . . nothing in the funding agreement in this case which would harm the purity of justice and that, on the contrary, it facilitates the important objective of access to justice."

13 Accordingly the court held that it would not be an abuse of process for the litigation to continue on the basis of the agreement.

14 The Guernsey Royal Court likewise approved of the litigation funding agreement before it in the *Providence* case. But the scope of that blessing was very narrow as opposed to being any kind of more general endorsement of litigation funding.

15 The Guernsey context was that of insolvency and the approval likewise restricted. The Lieutenant Bailiff held that—

> ". . . I conclude that, in principle, the law of Guernsey will permit the assignment of a cause of action for value by a liquidator, and will also permit the entering into of a litigation funding agreement by a liquidator on appropriate terms, notwithstanding that the doctrines of maintenance and champerty are part of Guernsey law. *The well-established justification for this is the limited one that it is to be interpreted as authorised as part of the statutory powers of a liquidator* to sell the company's assets, and any right of action vested in the company is such an asset." [Emphasis added]

16 The court went on to extend the same reasoning to administration. While the scope of the statement is narrow, it is suggested that Guernsey law would follow Jersey case law in the context of a trustee bringing proceedings. The court cited *Valetta* and the circumstances of that case (*i.e.* proceedings to be brought by a trustee) and clearly approved its reasoning. It is suggested that the reasoning in both cases

[20] At para 26.

can be extended more generally and that, *prima facie*, commercial litigation funding is permissible in both jurisdictions.[21]

17 There are caveats though. It is likely that Jersey and Guernsey courts would attach significance to issues of the kind identified by Jackson, LJ. As matters stand, litigation funders in England and Wales continue to be self-regulated. The relevant body is the Association of Litigation Funders[22] which was set up under the auspices of the Civil Justice Council in 2011. The Association has adopted a code of conduct. Its key elements provide for the capital adequacy of funders, limiting the circumstances in which a funder may withdraw from a funding agreement and limiting the control funders may exercise over either litigation or settlement negotiations.[23]

18 The issue of control was a key factor for both the Jersey and Guernsey courts and the express disavowal of control contributed significantly to the respective courts' findings that the agreements under consideration were not contrary to public policy.

19 This is not to say though that a funder cannot have considerable influence on the course of litigation, even to the point of providing for agreement as to the firm of advocates to be appointed.[24]

20 The question of the proper limits of the role of a litigation funder was considered by the English Court of Appeal in *Excalibur Ventures llc v Texas Keystone Inc (No 2)*.[25] Excalibur claimed an interest in a number of oil fields in Kurdistan. There were four groups of funders, but none were members of the Association of Litigation Funders. Between November 2010 and March 2013 the funders advanced

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[21] The author has personal experience of having the conduct of a funded piece of commercial litigation where the opponent was fully aware of the funding and raised the issue without ever taking the point in the proceedings.

[22] The association is a private company, limited by guarantee and has a helpful website at: http://associationoflitigationfunders.com/. Present funder members comprise Augusta Ventures Ltd, Balance Legal Capital LLP, Burford Capital LLC, Calunius Capital LLP, Harbour Litigation Funding Ltd, Redress Solutions PLC, Therium Capital Management Ltd, Vannin Capital PCC and Woodsford Litigation Funding Ltd. Note though that there is no obligation to be a member of the Association.

[23] The current version of the Code is here: http://associationoflitigationfunders.com/wp-content/uploads/2018/03/Code-Of-Conduct-for-Litigation-Funders-at-Jan-2018-FINAL.pdf

[24] For such a provision and the court finding it to be appropriate see paras 36 and 39 of *Providence*.

[25] [2016] EWCA Civ 1144, [2017] 1WLR 2221.

£31.75m to Excalibur to enable the claim to be pursued to the conclusion of the trial. This broke down as to £14.25m to cover Excalibur's own lawyers' fees and disbursements and £17.5m to allow Excalibur to comply with orders to pay security for costs. The trial judge (the future Christopher Clarke, LJ) held that the case failed on every claim, describing the litigation as having met with "a resounding, indeed catastrophic, defeat".[26] It was found to have been "speculative and opportunistic"[27] and Excalibur was ordered to pay the defendants' costs on the indemnity basis. The costs judgment was excoriating to the point of evisceration. The consequence of ordering indemnity costs was that the sum paid into court by way of security for costs was inadequate. The issue arose as to whether the funders should be ordered to pay the excess of indemnity costs over the secured costs with the funders being joined to the case by the defendant seeking third party costs orders against them.

21 The Association of Litigation Funders was given leave to intervene and took the point that—

> "to avoid being fixed with the conduct of the funded party, the funder would have to exercise greater control over the conduct of the litigation throughout and that this runs the risk that the funding agreement would be champertous."

The court dismissed this concern, holding that—

> "champerty involves behaviour likely to interfere with the due administration of justice. Litigation funding is an accepted and judicially sanctioned activity perceived to be in the public interest. What the judge characterised as 'rigorous analysis of law, facts and witnesses, consideration of proportionality and review at appropriate intervals' is what is to be expected of a responsible funder . . . and cannot of itself be champertous . . . rather than interfering with the due administration of justice, if anything such activities promote the due administration of justice . . ."[28]

22 The case can be seen both as an endorsement of membership of the Association of Litigation Funders and a more hands on approach by funders, falling short of control.

23 The central issue in Excalibur was whether the so-called "*Arkin* cap" should extend to funded sums provided by way of security for

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[26] See para 7 of the Court of Appeal judgment.
[27] See para 8.
[28] At para 31.

costs. The cap takes its name from the case *Arkin v Borchard Lines Ltd (No 2)*[29] where the issue arose as to the liability of a funder of a failed case to pay the opposing party's costs. In *Excalibur* Tomlinson, LJ summarised the effect of *Arkin* in this way—

> ". . . the rationale for imposing a costs liability upon a non-party funder is that he has funded proceedings substantially for his own financial benefit and has thereby become 'a real party' to the litigation. It is ordinarily just that he should be liable for costs if the claim fails. The pragmatic solution reached in Arkin's case, and accepted by the funding community, is that the funder who finances part of a claimant's costs of litigation should be potentially liable for the costs of the opponent party to the extent of the funding provided, ie invest one in the pursuit of the common enterprise, and bear the risk of liability in that same amount in the event of failure . . ."

24 Turning to the question of monies put up as security for costs Tomlinson, LJ saw—

> ". . . no basis upon which a funder who advances money to enable security for costs to be provided by a litigant should be treated any differently from a funder who advances money to enable that litigant to meet the fees of its own lawyers or expert witnesses."[30]

25 There is no Channel Island case law on such issues, or indeed many other of the finer points which arise in litigation funding, and it remains to be seen whether, in each case, a Channel Island court will follow the English lead. They are, of course, not bound by English case law.

26 Take the example of the *Arkin* cap itself. Jackson, LJ was strongly against it, finding that the criticisms of *Arkin* were sound—

> "In my view, it is wrong in principle that a litigation funder, which stands to recover a share of damages in the event of success, should be able to escape part of the liability for costs in the event of defeat. This is unjust not only to the opposing party (who may be left with unrecovered costs) but also to the client (who may be exposed to costs liabilities which it cannot meet)."[31]

27 It would be open to Channel Island courts to adopt Jackson, LJ's viewpoint and make full third party costs orders against a funder.

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[29] [2005] EWCA Civ 655; [2005] 1 WLR 3055.
[30] At para 39.
[31] Review of Civil Litigation Costs: Final Report, ch 11, para 4.6, at 123.

Indeed the power to do so was expressly referred to by the Bailiff in *Barclays Wealth Trustees*—

> ". . . one can readily envisage the Court using its power to order a third party to pay the costs of the successful defendant where that party has acted as third party funder to the plaintiffs on a commercial basis . . ."[32]

28 It is important to note also that the existence of litigation funding in no way affects the professional obligations of the lawyers with conduct of the funded case, nor indeed the professional obligations of the lawyers working within the litigation funder itself. All continue to be obliged to respect their respective professional and ethical rules, which would include, in the case of an English solicitor working for a litigation funder, the obligation to advise litigants on all reasonable funding options.[33]

29 Issues which remain to be decided in Channel Island law include whether a litigation funder could be ordered directly to provide security for costs, in England the answer would appear to be yes.[34] Another possible issue is whether, and to what extent, an unsuccessful party can be ordered to pay the cost to the successful party of litigation funding. In the case of *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd*[35] the English High Court held that litigation funding costs fell within the definition of "other costs" for the purposes of s.59 of the Arbitration Act 1996 and dismissed a challenge to the award. The arbitrator had taken a particularly dim view of *Essar's* conduct.

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[32] At para 62, albeit the context was the risk of a funding agreement proving to be unenforceable for being champertous, but the general statement holds good. See now the recent decision of Snowden J in *Davey v Money* [2019] EWHC 997 (Ch), 17 April 2019 declining to apply the *Arkin* cap and making an order that the funder pay all of the successful party's indemnity costs incurred after the date of the funding agreement. Snowden J held that the imposition of a third party costs order was a matter of discretion and that the *Arkin* cap was an approach which should be considered in cases involving a commercial funder as a means of achieving a just result, but was not a rule to be applied automatically.

[33] Paragraph 9.2 of the ALF Code of Conduct requires litigation funders not to take any steps which cause or are likely to cause the funded party's lawyers to act in breach of their professional duties.

[34] See CPR 25.14(2)(b).

[35] [2016] EWHC 2361 (Comm).

30 While there is no obligation for a party to disclose voluntarily that it is funded, it may choose to do so on the basis that the opposing party is more likely to settle if it realises that it now faces an opponent with the resources to take the matter to its final conclusion combined with the fact that a litigation funder has, self-evidently, taken a positive view of the merits of that case. It seems likely though that a Channel Island court would follow English courts in ordering, when appropriate, the disclosure of whether a case is funded and the identity of the funder in order to permit the opposing party to join and make applications against that funder.[36]

31 Concerns are raised periodically as to the effect of litigation funding on privilege given the need to exchange information with a prospective funder in order to persuade the funder of the merits (and economics) of the case. In practice a combination of confidentiality agreements and common interest privilege appear to be sufficient to protect the position of the litigant seeking funding, the precondition being that the material being disclosed itself attracts legal advice or litigation privilege.

32 Liquidators and trustees[37] are amongst those most likely to consider litigation funding. Both are likely (liquidators more so) to find themselves in the position of having potentially valuable claims without the funds to bring litigation, very often because of the events underlying the claim. Both liquidators and trustees will wish to seek the approval of the court to enter into funding arrangements, the trustee as part of a *Beddoe* application. The court will expect to see that the liquidator/trustee has tested the market to ensure that it is obtaining funding on reasonable terms (few funders these days demand exclusivity when considering a claim). The court will also be concerned to ensure that the funder is of good standing.[38]

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[36] See *Wall v Royal Bank of Scotland plc* [2016] EWHC 2460 (Comm), 7 October 2016. Mr Wall's reliance on art 8 of the ECHR failed. The court held it had power to order Mr Wall to say whether he was funded, whether the funder would benefit from a share of any proceeds of the litigation and to identify the funder. However, such an application was not to be used as a fishing expedition. The applicant had to have good reason to believe that the claimant was in receipt of funding. Quite why this should be a requirement is not clear.

[37] And it is increasingly common to see beneficiaries resorting to litigation funding.

[38] Funder membership of the Association of Litigation Funders is likely to go some way to satisfying this concern.

33 Litigation funding is of interest to banks and other businesses who may not wish the cost of litigation to appear on their balance sheets or where they have taken a view that they do not wish to risk their own funds. There is also such a thing as portfolio litigation funding where groups or categories of cases are taken on with the proceeds of earlier cases funding later cases. Funding particularly lends itself to use in class actions by parties who could not otherwise afford access to justice. For example, the claims which the United Kingdom Supreme Court recently permitted 1,826 Zambian citizens, described as very poor members of rural farming communities, to bring against a UK domiciled parent company in relation to alleged discharges of toxins from a copper mine into watercourses. Indeed the availability of litigation funding was a factor in the reasoning of the court, see *Vedanta Resources plc v Lungowe*.[39] Other possible uses would extend to funding clinical negligence and product liability claims.

34 From a fundee's perspective, a priority concern is to ensure the capital adequacy of a funder. It is essential that the funder is good for the money at all stages of the future litigation. It is another powerful reason only to use a professional funder of substance and a proven track record. The Association's Code of Conduct requires funders to maintain at all times access to adequate financial resources to meet the funder's obligations with a requirement for annual audit.[40]

35 From the funder's perspective the concerns are fourfold: how will it get paid? what is the value of the claim? what is the budget? what are the merits? In other words the funder wishes to be satisfied that the (prospective) defendant is itself good for the money and/or that there are assets to be recovered. In principle it is possible for a defendant to obtain litigation funding based upon the value of what is preserved, but in reality litigation funding of defendants is restricted to defendants with counterclaims. As to value, litigation funders very often (but not always) have a minimum value of claim which they will fund, typically measured in millions of pounds. They are concerned to know the likely sum they will be required to put up in terms of lawyers' fees, expert witness costs, other disbursements and security for costs. The question of merit speaks for itself. A funder will form its own view about the merits of a claim and typically has experienced litigation lawyers working in-house and an investment committee (to consider funding

[39] [2019] UKSC 20. Note though the possible pitfalls for litigation funders in terms of making sure that all members of the action group or groups are signed up to the funding agreement, see *Vannin Capital PCC v RBOS Shareholders Action Group Ltd* [2018] EWHC 2821 (Ch).
[40] Paragraph 9.4.

proposals) which will itself include very experienced and even eminent lawyers. Litigation funders will often seek specialist advice from counsel.

36 The additional oversight of the claim by the funder is often a benefit to both the legal team running the litigation and the client, particularly when it comes to settlement; although there is a different dynamic in settlement because of the effect of the funding agreement. The value to the client of additional sums of money is reduced by the extent to which those sums will go to the funder. The funder might take a different view of the level at which a claim should settle and might be more eager to settle than the client. The Code of Conduct requires the funding agreement to state whether, and if so, how, the funder may provide input into the funded party's decisions in relation to settlements.[41] Ultimately however, the funder must not have control of the litigation in order to avoid the charge of champerty.

37 Litigation funding is big business and set to take an ever increasing role in higher value litigation. For example, one litigation funder announced in December 2018 that it had secured funding for $1.6 bn in new litigation investments, which included backing from a sovereign wealth fund.[42] From the perspective of litigation lawyers and their claimant clients, this is all good news, obviously. It is less so for those on the other end of a funded claim. Funders may bring cases to firms or, more often, firms bring cases to funders. Lawyers may also be retained for opinion work by funders as to the merits of a claim brought to them, particularly from Channel Island jurisdictions, given the specificity of Guernsey and Jersey law and the knowledge required to advise.

38 Like it or not, litigation funding is an increasingly prominent feature of the Channel Island litigation landscape.

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[41] Para 11.1.

[42] http://www.burfordcapital.com/newsroom/burford-secures-funding-new-litigation-investments/. The same litigation funder, Burford, is listed on AIM with a market capitalisation of c. $5.bn.