

Please note that I am making this submission in a personal capacity. [REDACTED]

If Ireland is serious about improving access to justice then it must enact legislation to legalise third party funding of litigation, i.e., litigation finance.

Champerty and maintenance are ancient doctrines in common law jurisdictions that aimed to preclude frivolous or vexatious litigation. "Maintenance" is the intermeddling of a disinterested party to encourage a [lawsuit](#). It is "A taking in hand, a bearing up or upholding of quarrels or sides, to the disturbance of the common right. "Champerty" (from [Old French champart](#), a feudal lord's share of produce) is the "maintenance" of a person in a lawsuit on condition that the subject matter of the action is to be shared with the maintainer.

In Ireland champerty and maintenance were outlawed by the Maintenance and Embracery Act of 1634 and this Act is still in force. In England and Wales maintenance and champerty have not been crimes or torts since the passing of the [Criminal Law Act 1967](#). This reflects the position in most other common law jurisdictions such as Australia (most jurisdictions) and the USA. In New Zealand and some jurisdictions in Australia and Canada, champerty and maintenance remain a tort but not a crime.

In 2015, the Persona consortium, which lost to [Esat Digifone](#) in the 1997 telecoms bidding process that was [criticised by the Moriarty Tribunal](#), applied to launch a lawsuit against those involved in the 1997 bidding process (including Ireland) to be funded by a UK company, Harbour Litigation Funding, in return for part of any damages awarded.

However, the Supreme Court ruled that, as the law currently stands in Ireland, such litigation funding is illegal. The Supreme Court indicated that changing the law on litigation funding would be a matter for the legislature.

For illustration, in a recent high profile UK case the entertainer [Noel Edmonds](#) has secured financial backing for a legal claim of up to £60m against Lloyds Banking Group over its alleged role in the collapse of his entertainment company. Mr Edmonds has secured support from litigation funders Therium Capital Management, understood to be worth at least £1m, for his civil case.

Clearly, justice is not served if a potential litigant is denied access to justice simply because of lack of funds. In many cases the reason for the potential litigant's lack of funds may arise from the cause of action that he or she wishes to bring against another party. Therefore, as things stand in Ireland, having being impoverished by the actions of another party, the potential litigant is prevented from seeking access to justice because of lack of funds! In England and Wales, and other common law jurisdictions, safeguards are built in to the relevant legislation to avoid abuse of process, frivolous or vexatious litigation. Better access to justice means less corruption, with the result that, for example, State contracts are more likely to be awarded based on what is most economically beneficial for the country rather than on other factors.

Better access to justice will, for example, force the State to take more steps to ensure that State contracts are awarded in a fair and transparent matter and to ensure that 'State Capture' by private parties is avoided.

Better access to justice will improve Ireland's image internationally, improve our rating on the Transparency International Corruption Perceptions index, resulting in material benefits for Ireland in the form of more foreign direct investment, as international investors will have a greater propensity to invest in Ireland.