FLAC Submission to the Law Reform Commission regarding Third Party Litigation Funding

November 2025

Background

FLAC met with the Law Reform Commission ('LRC') in October 2025 to discuss its work "*formulating a framework to legalise and regulate third-party litigation funding (TPLF) in Ireland for defined categories of litigation*."

Before finalising its report and recommendations in this area, the LRC sought to consult with organisations such as FLAC which are concerned with the areas of access to justice and public interest law. In a 2019 Submission to the Joint Oireachtas Committee on Justice and Equality, FLAC called for the introduction of "*legislation permitting the use of third-party litigation funding and abolishing the rules of champerty and maintenance*."

Preliminary Concern re Impact on Independent Law Centres

At the outset, FLAC would highlight our concern that any 'regulation' (particularly the limited regulation currently envisioned by the LRC) of Third Party Litigation Funding could implicitly suggest that other forms of litigation funding are not permitted by law. For example, FLAC receives donations, grants and State funding which support the work of our Independent Law Centre and the litigation it undertakes.

Independent Law Centres operate pursuant to a specific statutory instrument signed by the Law Society under the Solicitors Acts: The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations 2006 (S.I. No. 103/2006). Those regulations provide for Law Centres' "*independence from those who provide funds to it or from any interests unrelated to its charitable purposes*."

Recommendation

Any law reform proposals made by the LRC concerning Third Party Litigation Funding should specifically maintain the existing position regarding the funding of Independent Law Centres and provide that they may continue to fund their work through donations, grants and State funding.

Narrow Definition of Third Party Funding & Narrow Scope of Proposals

FLAC is concerned about the narrow scope of the LRC's work in relation to Third Party Litigation Funding and we cannot see the justification for the limited nature of this project.

The LRC's working definition of Third Party Litigation Funding is confined to profit-motivated funding: "*Third Party Litigation Funding (TPLF) refers to a third party, unconnected to a dispute, which funds part of or all litigation costs. If the case succeeds (either by judgment or settlement), the funder recoups the investment and a return (often a percentage of recovery)*". As opposed to proposing the abolition of the outdated and unclear common law offences of maintenance and champerty, the LRC is proposing to create limited exceptions for "*commercial proceedings and Representative Actions under the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (2023 Act)*." The paper circulated to FLAC suggests that the LRC will recommend against the introduction of Third Party Litigation in a range of other areas, including:

- Family law claims
- Landlord and tenant claims
- Personal injury and medical negligence claims
- Public law litigation, including judicial review and constitutional challenges.
- Historic abuse claims when not advanced via representative action or an appropriate redress scheme
- Employment disputes (especially WRC/Labour Court/contractual mediation contexts)
- Defamation

The proposed exclusions appear to be linked to the LRC's exclusive focus on profit-motivated Third Party Litigation Funding. However, there are other forms of third party and alternative models of litigation funding that may be appropriate for other forms of litigation, including public interest litigation. Such models, which have been introduced in other jurisdictions, include crowdfunding[1] and State-run or philanthropic public interest litigation funds[2]. Unlike profit-motivated Third Party Litigation Funding, the existing rules of champerty and maintenance should not prevent the introduction of these models.

Recommendation

The LRC's report concerning Third Party Litigation Funding should clarify that the potential introduction of a broader range of third party and alternative models of litigation funding (including crowdfunding and State or philanthropic public interest litigation funds) in Ireland is not precluded by the existing rules of champerty and

[1] See: https://www.crowdjustice.com/
[2] See: https://www.gratafund.org.au/

maintenance. Further, the introduction of these models should not be predicated on the outcome of any review of the operation of profit-motivated litigation funding (or delayed by any such review).

Public Interest Law Reform

Finally, FLAC has more general concerns about the LRC's emphasis on profit-motivated funding for commercial cases. There is a growing perception that reform initiatives in the Irish justice sector are disproportionally focussed on commercial litigation rather than access to justice. In this regard, we would highlight the significant degree of investment and innovation in the Commercial Court in recent years and the Ireland for Law initiative "*to promote Ireland as a leading global centre for international legal services*."[3] The reforms proposed by the LRC could heighten concerns about the emergence of a two-tier legal system. The report on Third Party Litigation Funding seems set to make concrete law reform recommendations regarding commercial litigation while only 'signposting' potential reforms concerning public interest litigation, access to justice and legal aid.

There is a significant need for further research and law reform concerning public interest litigation in Ireland. Ireland's submission to the Oireachtas Justice Committee in 2019 made a range of recommendation in this area (in addition to our call for the introduction of third-party funding and the abolition of the rules of champerty and maintenance):

- Amend Section 169 of the Legal Services Regulation Act 2015 to expressly include cases taken in the public interest [as an exception to the general rule providing that 'costs follow the event'].
- Legislate to place protective costs orders on a legislative basis.
- Enact legislation to properly provide for Multi-Party Actions/class actions.
- Liberalise the rules on standing, placing them on a legislative basis if necessary.
- The doctrine of mootness should be relaxed particularly in cases of public interest.
- The State should not use strict confidentiality clauses which require parties to keep confidential the fact of the settlement.
- Introduce a public procurement model for public legal services requiring all legal services to sign up to a target of *pro bono* hours per year.

Recommendation

As part of its next programme of law reform, the LRC should examine the barriers to public interest litigation in Ireland.

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[3] See: https://www.irelandforlaw.com/