# Business-focused legal analysis and insight in the most significant jurisdictions worldwide

- **Interested in contributing?**

## The Third Party Litigation Funding Law Review - Edition 2

**England and Wales**

Published: December 2018

# Author

[Leslie Perrin]

[Calunius Capital LLP]

# i Market Overview

During the past 12 months in England and Wales there has been no decided case to rival the influence on third party funding (TPF) of the November 2016 Court of Appeal decision in the costs appeal in Excalibur Ventures LLC v. Texas Keystone Inc [2017] 1 WLR 2221 (CA), in which Lord Justice Tomlinson said: 'Litigation Funding is an accepted and judicially sanctioned activity perceived to be in the public interest.'

However, the significance of TPF on legal markets has continued to grow. The 2018 Litigation Funding Research by Burford Capital[2] states that three-quarters of UK lawyers said litigation finance was now a 'key marketing tool'. Furthermore, the UK Snapshot taken from the Burford Report states that:

- *More than six in ten (63%) UK respondents say their organization's use of legal finance has increased in the past two years;*
- *Four in ten (40%) UK in-house respondents say their companies are very likely to use litigation finance in the next two years;*
- *Compared to other geographies, UK respondents are most likely to agree that litigation finance can help turn in-house legal departments into profit centres (79%); and*
- *Two thirds (65%) of UK lawyers say they are very familiar with litigation finance.*

This is, of course, against the background that England and Wales, which is effectively London for these purposes, is the most expensive and the riskiest litigation market in the world. The sheer expense of London High Court proceedings is driven for the largest cases by the combined effect of exhaustive pre-action procedures, exacting requirements for written pleadings, the ever-increasing demands of disclosure during discovery, the fervent belief of the judiciary in lengthy oral evidence and cross-examination, and in the excellent value for money represented by the £1,000 per hour QC. All this complexity drives eye-watering expense, and is made worse the absence of a functioning contingent fee regime and by the absence of court-driven budgeting from the largest cases, which could be said to need it most.

Then there are the risks contained within the adverse costs implications of losing a case, which can more than double the cost for claimants and funders of a case that is unsuccessful. This was graphically illustrated by the Excalibur case, where Excalibur's various inexperienced funders were found to be jointly and severally liable for adverse costs of nearly £32 million, quite apart from the money they lost in funding the defeated claimant.

Needless to say, these risks are invariably priced into the decision of whether to proceed at the outset, both by the claimants who wish to manage and hedge the expense and costs risks and the litigation funders who are being asked to provide the capital to enable the management and hedging of the risks to occur.

No wonder then that, in Burford's 2018 research, the need to manage the sheer financial risk of litigation was a such a significant factor behind in-house interest in litigation finance, with 81 per cent of UK in-house lawyers identifying costs management as an urgent issue for them, while 72 per cent were willing to admit that their company had chosen to forgo claims due to the impact of the associated legal costs on the bottom line.

What Burford's absorbing research does not say, is that litigation funders are increasingly looking askance at the inherent and sometimes disproportionate financial risk involved in funding the very same London litigation that in-house lawyers are so keen to hedge. Hence the growing appeal to London-based funders of international arbitration, both commercial and treaty based, plus the growing interest in litigation and arbitration opportunities in other jurisdictions, which have seen many UK-based litigation funders forsake

UK investments in favour of opportunities that, while unfolding in jurisdictions that are perhaps less well known, are more predictable and manageable on the downside.

On the subject of research, it is impossible to ignore the publication in April 2018 of the monumental Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration.[3]

# II LEGAL AND REGULATORY FRAMEWORK

## i The London TPF market

The market for the funding of litigation in England and Wales is still dominated by the nine funder members of the Association of Litigation Funders of England and Wales (ALF). At the time of writing, the identities of those funder members have remained unchanged over the course of the past 12 months. They are Augusta Ventures, Balance Legal Capital, Burford Capital, Calunius Capital, Harbour Litigation Funding, Redress Solutions, Therium Capital, Vannin Capital and Woodsford Litigation Funding.

Several other funders are active in England and Wales, including global hedge funds and family offices, mostly on an opportunistic basis.

In any review of the TPF market in England and Wales, it is worth pointing out at the outset that the overwhelming majority of investments by funders in England and Wales are still in the context of commercial litigation and arbitration, and that the overwhelming majority of funded litigants are either commercial entities or experienced professionals or business people. By way of example of this proposition, no funder member of the ALF transacts with personal injury claimants.

## ii A historical perspective

The TPF industry aimed at the funding of litigation in England and Wales has developed within the context of the underlying common law on maintenance and champerty and the associated risks to which funders of litigation are exposed in delivering TPF to clients.

Until the Criminal Law Act 1967, the funding of litigation, as we now know it, would have been a crime. Even now, litigation funding agreements (LFAs) are at risk of being found to be unenforceable for illegality if their terms are found to be in breach of the rules against maintenance and champerty, especially if funders exert any material amount of control over the case.

Maintenance and champerty were originally rules of the common law that were aimed at preventing the rich and powerful from interfering in court proceedings, to the detriment of the administration of justice. However, by the nineteenth century, it had become apparent that, far from protecting justice, the inability of the claimant to fund his of her claim other than with his own money, was a bar to access to justice and exceptions to maintenance and champerty were then created in insolvency cases.

There is an authoritative and comprehensive account of the history of maintenance and champerty and the gradual escape of TPF from its prohibitions in the 2013 Harbour Litigation Funding Annual Keynote Address[4] by Lord Neuberger of Abbotsbury, the then president of the UK Supreme Court.

In brief, the modern history of this process lies in various Court of Appeal decisions from around 2002 until 2005,[5] which made it clear that, within certain boundaries, the provision of funding by third parties for litigation in England and Wales would not necessarily offend against maintenance and champerty and could be permissible. However, following these decisions, but prior to publication in January 2010 of Lord Justice Jackson's immensely influential Review of Civil Litigation Costs[6] and the formation of the ALF that followed, it was still necessary for a funder of litigation in England and Wales to look to the

common law to determine what was permissible. This landscape of cases, especially Arkin, still delineates the business model for litigation funders in England and Wales as it is operated now.

## iii Regulation in England and Wales

Today, in England and Wales, the ALF is the instrument by which the funding of litigation through TPF is subject to voluntary regulation. Voluntary regulation is a mechanism that is widely recognised by government and others as providing a viable regulatory framework as an alternative to statutory regulation, especially when, as in the case of TPF, no statutory body has ever put itself forward or been nominated for the purpose by government. The classical model for voluntary regulation is that industry professionals, with sponsorship from government entities, develop voluntary standards and codes of conduct to regulate standards, subjecting themselves to a complaints procedure of demonstrable independence. Voluntary regulation provides a strong alternative to statutory regulation, being flexible to introduce and update, but requiring a high degree of commitment from those involved.

An account of the history and constitution of the ALF can be found on its website.[7] In brief, in November 2011, the creation of the ALF and the Code of Conduct were welcomed by the Civil Justice Council of England and Wales (the CJC), the Master of the Rolls, Lord Neuberger of Abbotsbury, and by Lord Justice Jackson. The CJC is an advisory public body that has a statutory role in advising government and the judiciary on civil justice in England &Wales. It was established by the Lord Chancellor under the Civil Procedure Act 1997 (CPA) with responsibility, *inter alia*, for to keeping the civil justice system under review, for considering how to make the civil justice system more accessible, fair and efficient, and for advising the Lord Chancellor and the judiciary on the development of the civil justice system. The CJC summarises these duties on its website as, 'responsibility for overseeing and coordinating the modernisation of the civil justice system'.[8] The CJC's members must include UK judges, civil servants, senior practitioners and academics, representatives of various interest groups, representatives of the UK government and others specified in the CPA. For the first six years of the life of the ALF, the CJC played an invaluable role as a 'critical friend' of the ALF.

The subject of TPF had taken up just eight pages of the Jackson Report in January 2010. However, that was plenty of time for Sir Rupert to bestow a generous blessing on litigation funding, which he saw as 'beneficial', because, to summarise what he said, it promoted access to justice without imposing financial burdens on defendants, and filtered out unmeritorious cases.

The ALF was then charged with delivery of voluntary regulation of the TPF industry in England and Wales. Voluntary regulation by the ALF was to be achieved by means of the ALF Code of Conduct (the Code)[9] with an independent complaints procedure that is available to any person or entity who has entered into an LFA with a funder member of the ALF.

The Code, which sets out standards of best practice and behaviour for litigation funders in England and Wales, was essentially the product of a working party established under the auspices of the CJC, which produced a draft code of conduct in the form which was adopted by the board of the CJC in November 2011. This version of the Code was then revised in 2014 to introduce strengthened capital adequacy requirements for ALF members as well as a fresh, detailed complaints procedure.

It should be noted that funder members have their standard draft LFAs confidentially examined by an independent barrister to confirm compliance with the fairness provisions of the ALF's Code of Conduct. Each funder member of the ALF agrees to adhere to the terms of the Code and submits to the ALF Complaints Procedure thereby assuring and promoting best practice in TPF.

## iv The Code

The Code provides various protections to litigants who contract with the ALF's funder members and

develops and codifies the model that had developed within the parameters of the common law. The Jackson Report spoke of the desirability of 'a fair balance between the interests of funder and client' and the Code delivers on this by requiring funders to behave reasonably. It does so by providing that funders must:

a. take reasonable steps to ensure that the funded party shall have received independent advice on the terms of the LFA (para 9.1);
b. not take any steps that cause or are likely to cause the funded party's lawyers to act in breach of their professional duties (para 9.2);
c. not seek to influence the funded party's lawyers to cede control or conduct of the dispute to the funder (para 9.3);
d. maintain adequate financial resources to meet their funding obligations (para 9.4);
e. not include in any LFAs a right to terminate the LFA at the pure discretion of the funder (para 12). The right for a funder to terminate an LFA as and when it pleases is seen as a potential short cut to control of the claim, control by the funder being the principal of the vestigial elements of maintenance and champerty that can still void an LFA;
f. behave reasonably in exercising rights to terminate for material breach of the LFA by the funded party or because the claim is no longer viable, if such rights are included in the LFA. This is achieved by requiring funders to give litigants the contractual option of going to an independent QC for a binding opinion if the reasonableness of the funder's behaviour comes into question in the context of such terminations (paragraphs 11–13); and
g. in relation to approval of settlements, the LFA must state whether (and if so how) the funder may provide input to the funded party's decisions in relation to settlements. In practice, all funders will insert into their LFAs a right to be consulted about any settlement opportunities that may arise during a funded case. This is part of the funder's need to ensure that funded claims are always conducted in an economically rational manner. In the event that there is a dispute about a settlement, either party may take the dispute to an independent QC for an opinion that would bind both funder and funded party.

## iii Structuring the agreement

The essence of a typical LFA is a clear promise in writing by the funder to pay the claimant's legal costs of its claim in return for a share of the proceeds, provided the case is successful. Each side gives undertakings to the other; the claimant gives warranties (e.g., that independent legal advice has been taken, that all material facts have been disclosed) and undertakes duties, such as to pursue the claims 'with the due care and diligence of a prudent business person' and to produce, for example, monthly reports to the funder. The funder promises to pay the claimant's legal costs up to the amount specified in the LFA and as particularised in a legal costs budget, which is usually scheduled to the LFA.

The funder may also promise to indemnify the claimant against any order for adverse costs to which the claimant may become subject. However, it is important to recognise that, as already mentioned, in England and Wales, a funder may be liable for the adverse costs of a failed claim whatever the LFA may say.

LFAs should provide a fair, transparent and independent dispute resolution process.

The LFA will often contain a period of exclusivity during which the funder can conduct its initial due diligence before exercising its rights contained in the LFA to elect to proceed with funding of the case or to withdraw.

A conventional LFA will be supported by a trust deed, sometimes called a priorities agreement, which creates a cash waterfall governing the order in which parties to the transaction are entitled to be paid. The parties will include the funder and the claimant and, perhaps, an ATE insurer, if such insurance was taken to deal with the adverse costs risk, and the lawyers if they were on some form of contingent fee.

There may be a need for further collateral documents. If the funded party is corporate, then the funder might wish to take security, but only over the proceeds of the claim, bearing in mind that the transaction is non-recourse other than to the proceeds. The circumstances of some LFA transactions may also require a creditors' and shareholders' standstill agreement, at which point the transactional documents begin to have a corporate finance feel to them.

## iv Disclosure

A funder's evaluation of a claim for funding will invariably involve comprehensive disclosure to the funder by the claimant's legal team of the evidence in the case, including documents protected from disclosure to the defendants by legal advice or litigation privilege. From the points of view of both the funded party and the funder, it is essential to ensure that disclosure to the funder does not cause the loss of the protection from disclosure to the defendants that is conferred by the privileged status of the evidence.

There are a number of generally accepted principles at work in this difficult area that apply equally to litigation and arbitration. In the context of arbitration Chapter 5 of the ICCA-Queen Mary Report on Privilege and Professional Secrecy is very useful.

First, it is absolutely essential for the funder and claimant to enter into a comprehensive non-disclosure agreement (NDA) at the outset of their discussions.

Second, the fact of the existence of an LFA and the identity of the funder will never in themselves be privileged information, although the detailed terms of the LFA will almost certainly include much content that is privileged.

Third, the principle that a common interest exists between an insurer and its insured has been usefully imported to the world of TPF. If privileged evidence is disclosed to a third party, the evidence might cease to be confidential, and, if so, any privilege in it would normally be regarded as waived. However, where the person entitled to the privilege and the person to whom the evidence is disclosed have a common interest so that the sharing of the evidence is entirely consistent with its confidentiality, then privilege is unlikely to be regarded as having been waived. Establishment of the common interest in writing is one of the vital functions of the NDA between the claimant and the funder.

In England and Wales, there is little in the way of legal precedent on privilege specific to TPF but the law is widely regarded as well established, in accepting that claimants should be able to share evidence with funders, under an NDA that establishes a common interest, without waiving legal advice or litigation privilege.

Another aspect of confidentiality relevant here is disclosure of the fact that a claimant is funded, which is an area where practice differs in England and Wales between arbitration and litigation.

The principal (perhaps, only) reason for the vigour of the debate in the arbitration community about disclosure of the existence of funding is the potential in arbitration for conflicts of interest between third party funders and arbitrators, particularly if an arbitrator has sat in a number of cases where the claimant has been funded by the same funder or if the funder is funding another case in which the funded claimant is represented by that arbitrator's law firm. Funders are very much alive to the destructive potential of these conflicts and will normally do their utmost to avoid taking on cases where such conflicts might exist. Chapter 4 of the ICCA-Queen Mary Report is of great interest here.

Such issues could never arise in litigation in the civil justice system in England and Wales, so the controversy is confined to arbitration where existing rules of the ICC, LCIA, SCC, ICSID, UNCITRAL and many others make up an alphabet soup of procedural requirements through which funders and funded parties alike must navigate most carefully.

# v Costs

This is a preliminary word on the interrelationship between the principles relating to a funder's direct liability for adverse costs and the courts' practice when deciding security for costs applications.

There are two particular complications of the law in this area; the first is that, while the question of the nature and extent of liabilities of litigation funders for adverse costs is strictly applicable only at the stage when costs are ordered to be paid, its effect is often considered at a security for costs stage. Then in the context of funders' involvement in security for costs, there is further complication involved in the interrelationship between, on the one hand, the statutory costs scheme under Section 51(3) of the Senior Courts Act 1981 and the related provisions of the Civil Procedure Rules and, on the other hand, the contractual arrangements on the claimant's side between the funder and the claimant in the LFA itself and, in turn, their contractual relationship with any adverse costs insurer.

## i The funder's liability for adverse costs

In England and Wales, Section 51 of the Senior Courts Act 1981 provides that: 'The court shall have full power to determine by whom and to what extent the costs are to be paid.' This enables a court to order costs against a provider of TPF where it has funded litigation on behalf of the losing party. The early authorities established that the ultimate question is whether in all the circumstances it is just to make a non-party costs order.

In Excalibur, Lord Justice Tomlinson expressed the principle thus: 'justice will usually require that, if the funded proceedings fail, the funder or funders must pay the successful party's costs.'

When considering whether there were any limits or caps on the extent of a funder's adverse costs liability, funders have hitherto relied on Arkin (as cited above) in which the claimant was only able to pursue his claim to judgment because a litigation funder supported the case, albeit solely for the disbursements in respect of expert evidence, to the tune of £1.3 million. The defendants, having successfully defended the claim, sought an order that the funder should pay the entirety of their costs (which amounted in total to nearly £6 million).

In that case, Lord Phillips MR held that such commercial funders should only be liable to pay the costs of opposing parties to the extent of the funding that they had provided; the Arkin cap. However, the part of his judgment that funders have (perhaps conveniently) forgotten went on to say that the Arkin cap would only apply where a commercial funder was just financing a part of the costs of the litigation.

In Excalibur, Lord Justice Tomlinson said of the Arkin decision: 'I understand that some consider the solution thus adopted to be over-generous to commercial funders, but that is a debate for another day upon which I express no view.' Others including Sir Rupert Jackson in his report have also voiced such criticism of the Arkin cap. So the current meaning of the Arkin cap might be no more than that, when a funder invests in a case that goes all the way in the High Court in London, the financial risk of loss will be at least twice the investment in claimant costs, because of adverse costs.

In Excalibur, Lord Justice Tomlinson also ruled that payments to the claimants towards their security for costs liability were a relevant expense when considering the extent of a non-party costs order. He declined, however, to rule on whether the adverse costs consequences of any funder's insurance arrangements for security for costs should be measured by their value (e.g., the limit of indemnity under an adverse costs insurance policy) or by their costs, (e.g., the amount of the premium paid for such insurance).

The Court of Appeal judgment in Excalibur is also authority for two important further propositions in this area:

a. that a commercial funder will ordinarily be required to contribute to the defendants' costs on the same basis as the funded claimant. Therefore, if a claimant has been ordered to pay costs on the indemnity rather than standard basis, the funder will be liable to indemnity costs irrespective of its own conduct, but, possibly, subject to the Arkin cap; and
b. that an order for adverse costs may be made not only against the funder named in the LFA but also against a third party that provided those funds and stood to benefit in the event of success, in that case the funder's parent company, thus comprehensively piercing any funder's corporate veil.

In arbitration, on the other hand, it is generally taken that an arbitral tribunal lacks jurisdiction to issue a costs order against a funder of the arbitration.[10] This is because only the parties to the dispute being arbitrated are within the jurisdiction of the tribunal, normally by virtue of their being parties to a contract or through the terms of a treaty. This leads many respondents to arbitration to make applications for security for costs, as to which see below.

## ii The question of security for costs

In the High Court, security can be ordered against a claimant if, in all the circumstances, it is just to make such an order, the claimant is resident out of the jurisdiction or there is any other reason to believe that the claimant, wherever situated, will be unable to pay the defendant's costs if ordered to do so.

In funded cases where the claimant is insolvent, an adverse costs insurance policy with a sufficient level of indemnity is often advanced by claimants and their funders, whereupon defendants will often challenge the insurance policy as inadequate. The governing principle taken from Premier Motorauctions v. PwC and another [2017] EWCA Civ 1872 is that resolution of these issues is fact sensitive. Currently, however, a pattern is emerging from the decisions subsequent to Premier Motorauctions as to two particular categories of objection to such insurance policies. First, there is the question of the extent of the rights of the insurer to avoid or otherwise to terminate the policy as a consequence of misrepresentation or non-disclosure, which has led to a general requirement for the insurance to contain suitable anti-avoidance provisions. Secondly the defendant may wish the court to assess the risk to the defendant of not actually receiving the money, due, for example, to insolvency or exclusion of the Contracts (Rights of Third Parties) Act 1999, considerations that may require assignments to be undertaken between the claimant, the funder, the insurer and the defendant.

An application may also be made for security for costs directly against a professional TPF provider as it was recently in the RBS Right Issue Litigation [2017] EWHC 1217 (Ch).

In the RBS case, the judge listed various factors that should be taken into account when deciding on whether security for costs should be ordered against a funder, such as whether its motivations were commercial or altruistic and whether there is a real risk of non-payment by the funder, such as that perceived by the judge as 'deliberate reticence' by one of the funders in that case, Hunnewell BVI. In the event, Hunnewell BVI was ordered to provide security for costs.

The judge also ordered RBS to give a cross-undertaking to pay the claimants' costs of posting security in accordance with the order, saying, 'though not common-place or inevitable, I do not think it should be considered particularly exceptional for the court to require a cross-undertaking as the price of an order for security.'

In arbitration, applications for security for costs are generally decided on the basis of the party's impecuniosity or its inability to pay if costs were to be awarded against it at the conclusion of the proceedings.[11]

The impecunious claimant may then produce evidence of funding and submit to redacted disclosure of the LFA under which the TPF arrangements have been made. The attention of the tribunal and the respondent will be focused on the LFA's provisions on the funder's termination rights and the funder's obligation to

cover adverse costs. Disclosure orders are normally limited to those parts of the LFA.

If an arbitral tribunal decides that a security for costs order is warranted, it can order security for costs in various ways; by production of a funder indemnity or ATE insurance, or, in exceptional circumstances by way of a bank guarantee. The tribunal will normally order a defendant for whose benefit the security for costs is granted, to pay the costs reasonably incurred by the funded claimant in complying with the order for security in the event that the claimant eventually prevails.

# vi The Year in Review – recent cases

## i Excalibur on TPF and due diligence

Quite apart from its clarification of the position relating to adverse costs, security for costs and the Arkin cap, the Excalibur judgment Tomlinson recognised the ALF's role as the voluntary regulator of 'professional funders', and also the important distinction drawn by the Court between professional funders and 'the funders [in the Excalibur case] [who] were inexperienced and did not adopt what the ALF membership would regard as a professional approach to the task of assessing the merits of the case.'

Perhaps the most interesting remaining aspect of this remarkable judgment for the TPF market is the clarification of funders' ongoing role in relation to review of the cases in which they have invested. Tomlinson LJ said:

> By funding, the funder takes a risk, a risk as to the nature of which he has the opportunity to inform himself both before offering funding and during the course of the litigation which he funds.'

Also:

> 'when conducted responsibly, as by the members of the ALF I am sure it would be, there is no danger of such review being characterised as champertous'.

Tomlinson LJ had earlier defined champerty to mean 'behaviour likely to interfere with the due administration of justice'.

Funder members of the ALF have always known that claims evolve over time and have recognised the legal and commercial importance of maintaining an active oversight of cases throughout. Their aim is to ensure, to the extent possible, that they are only ever funding meritorious claims being conducted properly by all concerned. No sensible, experienced funder has any interest in funding speculative claims that do not have good chances of success.

## ii Collective proceedings under the Consumer Rights Act 2015 and the Rules of the Competition Appeal Tribunal

On 1 October 2015, a class action regime was introduced to facilitate private actions against for anticompetitive conduct, through a combination of the Consumer Rights Act 2015 and supporting court rules of the Competition Appeal Tribunal (CAT). The regime enables a representative claimant to act on behalf of a class of persons whose grievances share common issues of fact or law with the representative claimant.

Since 2015, only two applications have been made for certification of claims by virtue of collective proceeding orders (CPOs) in the CAT under the new procedures. Both applications were for opt-out CPOs in follow-on damages claims – the first in relation to mobility scooters, and the second in relation to interchange fees on Mastercard credit cards. Each application was (in May and July 2017 respectively)

refused, in each case on the basis that the CAT was not persuaded that the claims were suitable to be brought in collective proceedings. Although the specific reasons were different in each case, the CAT's essential objection on both occasions was that the methodology suggested by the applicants' economic experts for calculating the losses incurred by members of the group was not appropriate. In other words, the applicant was unable to satisfy the CAT that it had a robust method for estimating (even broadly) the aggregate amount of damages owed by the defendants to the members of the class.

In the Mastercard case, there was some debate as to whether there was a direct right of appeal to the Court of Appeal from the decision of the CAT, or whether an application was needed to the Administrative Court for a judicial review. In any event, the Court of Appeal is, at the time of writing, preparing to hear the claimant's legal team's appeal.

Furthermore, in the context of the Truck cartel, two applications to the CAT for CPOs have been made; one each on an opt-out and an opt-in basis. The case management conference for both applications will be heard before Christmas 2018.

The role of TPF in these collective proceedings has been expressly recognised and the results of the appeals and fresh applications on both bases are eagerly awaited by all litigation funders active in England and Wales.

## vii Conclusions and outlook

The obvious conclusion from this chapter is that expansion of TPF in England and Wales is likely to continue, fuelled by more capital, growing awareness and greater uptake of the opportunities.

In general, the expansion prospects for TPF seem assured. There is certainly no shortage of well-resourced would-be investors, seeking access to experienced investment managers with a TPF track record. The investment class is non-correlated, with an increasingly convincing record of high returns for investors who are willing to tolerate its illiquid character.

The future of TPF in England and Wales still seems assured.

---

### Footnotes

[1] Leslie Perrin is chairman of Calunius Capital LLP.

[2] www.burfordcapital.com/wp-content/uploads/2018/10/Burford-Capital-2018-Litigation-Finance-Survey.pdf.

[3] To which reference will be made throughout this chapter, where it will be referred to as the ICCA-Queen Mary Report – https://www.arbitration-icca.org/media/10/40280243154551/icca_reports_4_tpf_final_for_print_5_april.pdf.

[4] 'From Barretry, Maintenance & Champerty to Litigation Funding' https://www.supremecourt.uk/docs/speech-130508.pdf.

[5] Including R (on the application of Factortame and others) v. Secretary of State for Transport, Environment and the Regions (No. 2) [2002] EWCA Civ 932 and Arkin v. Borchard Lines Ltd & Others [2005] EWCA Civ 655) (Arkin).

[6] https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf (the Jackson Report).

[7] http://associationoflitigationfunders.com.

[8] https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/.

[9] A copy of the Code in its current form at the time of writing can be found at http://associationoflitigationfunders.com/wp-content/uploads/2018/03/Code-Of-Conduct-for-Litigation-Funders-at-Jan-2018-FINAL.pdf.

[10] See Chapter 6, Principle C.4 of the ICCA-Queen Mary Report.

[11] See the ICCA-Queen Mary Report, Chapter 6, Principles D.1 to D.3.

# Author


## Leslie Perrin

### Calunius Capital LLP


---




---

# The Third Party Litigation Funding Law Review

**Contents**

## Overviews



## Countries

---

***Other chapters on England & Wales***

All titles on England & Wales

## What do we cover?

Explore our titles

## Receive monthly updates

Sign up to email alerts

## Interested in contributing?

Get in touch

---

### Follow The Law Reviews for the latest updates on law and regulation worldwide

Follow us on LinkedIn

---

Law
Business
Research

ABA Section of International Law
*Your Gateway to International Practice*
Strategic Research Sponsor of the ABA Section of International Law

---


- Privacy
- Terms and conditions
- Contact Us



- Company Number: 03281866 VAT: GB 160 7529 10

## Explore our content

Search keywords...

---

Close