

• ROYAL COURT'S APPROVAL OF THIRD PARTY FUNDING IMPROVES ACCESS TO JUSTICE

The Royal Court's approval of third party funding has given businesses and individuals improved access to justice in the Jersey Courts.

In a recent judgment (In the Matter of the Valetta Trust), the Royal Court has given its approval, in principle, to third party funding arrangements, facilitating access to justice in the Jersey courts by plaintiffs (claimants) who would not otherwise be able to bring a claim. This development takes on added importance in these times of recession where the legal costs associated with pursuing litigation can often be prohibitive.

So what is third party funding? It is where someone who has no connection with the dispute provides financial support for litigation on the basis that they receive a percentage of the sums recovered if the action succeeds, but nothing if the action fails. Historically such arrangements were considered unlawful in the UK but in recent years the English courts have taken the view that third party funding is acceptable in the interests of access to justice, particularly where the prospective claimant is unable to fund their claim by any other means. It has been said that although a claimant funded by a third party forgoes a percentage of his damages, it is better for him to recover a substantial part of his damages than to recover nothing at all.

Litigation funders will likely consider most types of litigation, apart from personal injury. Third party funding could be used, for example, for breach of contract and professional negligence claims, insolvency matters and trust litigation. Cases considered for funding are likely to be commercial litigation of some value, however, the funders consider their part in it an investment and want to ensure that the return justifies their involvement.

In the Valetta case, the Royal Court concluded that Jersey law ought to mirror English in this area. It said access to justice was extremely important and the public policy reasons leading to jurisdictions such as England and Australia allowing third party funding were equally applicable here, although whether any third party funding agreement is acceptable will depend on its particular terms. In the Valetta case, the Court was satisfied that the funding agreement could not "be said in any way to corrupt the purity of justice". The arrangement allowed the plaintiffs to bring proceedings where they would otherwise have been unable to do so due to a lack of resources. There were two important aspects of the arrangement from the court's perspective: the plaintiffs (not the funder) would be in control of the proceedings and the funder would meet any adverse costs order in the event that the claim was unsuccessful or withdrawn, thereby protecting the defendants to the claim.

Whether the court's judgment prompts a flood of claims in Jersey funded by third parties remains to be seen but there is certainly interest from third party funders in the Channel Islands litigation market. It is perhaps an unwelcome development for the likes of trustees and other professionals who may find themselves on the end of claims brought with the backing of the resources available to a litigation funder.

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