



# Litigation Funding in Jersey

Woodsford Litigation Funding Insight

# Litigation funding in Jersey

Litigation funding has been rightly hailed as a solution to the barriers facing claimants with meritorious claims but who lack the resources or the risk appetite to pursue them. Even sophisticated and deep-pocketed claimants are increasingly using litigation funding, as they appreciate the significant financial benefits of doing so. This short whitepaper will provide an overview of litigation funding in Jersey.

For those unfamiliar with the practicalities of litigation funding, it is ordinarily provided on a non-recourse basis. This means that if a claimant is not successful, the funder loses its investment and does not generate any return. If the case is won, the funder will receive an agreed share of the proceeds of the claim.

Until the decision of the Royal Court in Jersey in the case of *Re Valetta Trust* [2011] JRC 227, the legality and enforceability of litigation funding agreements in the Channel Islands had not been considered by the Jersey Courts. In *Re Valetta Trust*, the Royal Court was required to consider the medieval doctrine of champerty under the law of Jersey.

The case involved a dispute arising out of the sale of shares, the sole asset of the Valetta Trust. The beneficiaries of the Valetta Trust and the (new) Valetta Trust trustee alleged that the former trustee had sold the shares at a gross undervalue and wished to issue proceedings against the former trustee and certain other individuals who were knowingly involved in the transactions. The beneficiaries and the new trustee could not afford to bring proceedings and the latter sought the approval of the Court to enter into a litigation funding agreement (to which the beneficiaries were already a party). The application was unopposed (meaning that the Court did

not hear any argument that the funding agreement was unenforceable).

The Court considered that there was no material difference between the law of Jersey and the law of England on the topic on maintenance and champerty. Under English law, maintenance and champerty were criminal offences and torts until abolished by the Criminal Law Act 1967. The abolishment, however, preserved the public policy behind the rule against maintenance and champerty. As a result, a contract contrary to public policy or otherwise illegal may therefore be impugned by the court. The Royal Court considered that the underlying public policy in relation to the purity of justice was identical to that of England.

The Court concluded that the litigation funding agreement could not be said to corrupt or adversely affect the purity of justice. The control of the proceedings remained with the plaintiffs and they still retained a substantial proportion of the damages upon success, whilst the defendants had costs protection if the claim failed. The funding agreement facilitated access to justice for the plaintiffs who would not have otherwise been able to bring the litigation and for these reasons the Court permitted the new trustee to become party to the agreement.

A couple of years later, *Barclays Wealth Trustees (Jersey) Limited & Anor v Equity Trust (Jersey) Limited & Anor* [2013] JRC 094 provided further clarification on the position of litigation funding in Jersey.

The then current trustee and manager of the relevant funds (“Barclays”) commenced a claim against the former trustee and manager (“Equity”) for breach of trust, breach of contract, and breach of fiduciary

duty. After the commencement of proceedings, Barclays entered into a litigation funding agreement.

Equity initially sought to strike out or stay the proceedings as an abuse of process on the basis that Barclays' continuance with the funding agreement was contrary to the Jersey Code of 1771 (no person may contract for things or matters in litigation). The Master dismissed Equity's summons and Equity appealed to the Royal Court arguing the matter should be stayed (rather than struck out). This resulted in the first challenge to a litigation funding agreement before the Royal Court, which had the benefit of full argument from both sides.

The Royal Court held that the Code was designed to avoid maintenance and champerty by prohibiting the trafficking of claims, i.e. the sale, purchase, and

assignment of claims, but it did not have the effect of expressly prohibiting a litigation funding agreement. The Court reviewed the terms of the funding agreement and, following the precedent in *Re Valetta Trust*, concluded that there was nothing in the agreement that could adversely affect the purity of justice. The appeal was therefore dismissed.

In addition to finding that the appeal was dismissed, the Court went on to consider what the position would have been had it held that the funding agreement infringed the Code. On this point, the Court concluded that even in those circumstances Equity would not have been able to stay or strike out the proceedings as an abuse of process. The Court stated that the mere fact a funding agreement is contrary to the Code does not result, by itself, in the proceedings becoming an abuse of process.



## Conclusion

Through the cases of *Re Valetta Trust* and *Barclays v Equity*, the Jersey Courts have made a clear statement that litigation funding is an accepted part of its litigation landscape. Litigation funding agreements will be recognised and encouraged by the courts, provided that they are properly structured. Such agreements will be upheld as being in the interest of justice,

particularly for those plaintiffs who would otherwise be unable to afford to bring the action, but also for those who wish to share the cost of litigation with a funder.

Jersey has a well-established litigation market and these decisions have cleared the way for the greater use of litigation funding in the jurisdiction. This sea change in Jersey will be welcomed by litigants who lack the resources or risk appetite to pursue a claim.

## About Woodsford Litigation Funding

Founded in 2010, with offices in London, Philadelphia and Singapore Woodsford Litigation Funding provides tailored litigation financing solutions for businesses, individuals, and law firms. This includes both single case and portfolio litigation funding and arbitration funding. Woodsford's Executive team blends extensive business experience with world-class legal expertise. Woodsford Litigation Funding is a founder member of the Association of Litigation Funders of England and Wales.

Woodsford's role in supporting claimants in *David versus Goliath* litigation was highlighted in a landmark ruling of the English High Court: *Essar Oilfields Services Limited v Norscott Rig Management PVT Limited* [2016] EWHC 2361 (Comm)

For further information, visit [www.woodsfordlitigationfunding.com](http://www.woodsfordlitigationfunding.com) or email **Steven Savage** at [ssavage@woodsfordlf.com](mailto:ssavage@woodsfordlf.com)