Essex CHAMBERS

3+9=Costs

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Introduction

Shaman Kapoor
Call 1999

EDITOR

Welcome to the 12th Edition of 3 + 9 = Costs.

We are grateful for extremely busy times! No less than four of our members have been heavily involved in the Emissions litigation on behalf of three separate car manufacturers, dealing with the second costs management hearing and anticipated applications for security for costs, examining disclosure, ATE and AAE provisions. Four of our members are getting ready to prepare the editorial work for the new edition of the White Book Costs & Funding supplement. And of course, we each continue to develop and extend our expertise – we love it!

This edition rounds up a number of topics:

Mazur. Confident you will not have heard enough, following up from our fully attended in-person seminar in Chambers, **Vikram Sachdeva KC** walks you through his careful analysis bringing you up to speed on what more is to come.

Dollars or pounds? Does it matter what currency the bills are charged in and paid? **Daniel Kozelko** examines a recent judgment of the Supreme Court in *Process and Industrial Developments Ltd v Nigeria*.

Just when you may have thought that Part 36 had stopped giving, a very recent case causes **Daniel Laking** to explore the circumstances in which the Court may (or may not) permit the withdrawal of a Part 36 where acceptance was attempted in time.

If you have been wondering how A.I. might impact your practice, **Nyasha Weinberg** shares her blue-skies thinking in a thought-provoking article, noting recent troubles and sharing new terminology such as "AI Slop". Well, new to me, anyway.

Finally, rounding up the newsletter with a lengthy article (sorry), I analyse the Litigation Funding arena, pick up some lessons from *Merricks*, and looking to the future through the CJC review.

That should get you to a happy finish line at the end of 2025. Onward and upward and see you all in the New Year.

Mazur – the answer may not be simple

Vikram Sachdeva KC
Call 1998 | Silk 2015

Introduction

The headnote to the recent High Court judgment in states as follows:

> "On a proper construction of the Legal Services Act 2007, mere employment by a person who was authorised to conduct litigation was not sufficient for the employee to conduct litigation themselves, even under supervision. The person conducting litigation had to be authorised to do so or had to fall within one of the exempt categories. Accordingly, a non-authorised employee could not conduct litigation, even under the supervision of an authorised person."

On its facts it might be a surprising conclusion, given that it is hard to see what rational objection there could be to the conduct of litigation by a non-authorised person, if supervised by an authorised person.

Background

The context was a claim for unpaid fees of £54,263.50 for legal work performed, the Particulars of Claim having been signed by Peter Middleton "Head of Commercial Litigation" at Goldsmith Bowers Solicitors. His website entry states as follows: "Pete is a key member of our contested team, specialising in resolving complex disputes in professional services. With over 25 years of experience in debt recovery, including niche areas like asset finance, and over 10 years at GB, Pete brings a wealth of expertise. "

Legal Arguments

However, Mr. Middleton did not have a current Practising Certificate. Deputy District Judge Campbell ordered a stay of the proceedings on the basis that there was evidence that Mr. Middleton was taking part in "reserved activity" within Legal Services Act 2007 in conducting litigation and there was no indication that anybody else at Goldsmith Bowers was involved.

By 2 October 2024 a qualified solicitor with a practising certificate had taken over conduct of the claim.

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An application was made to lift the stay. It was submitted by the Respondent that Mr. Middleton had been entitled to perform the work because s21(3)(b) LSA meant that he was deemed to be an authorised person to conduct litigation. The Appellant submitted that an employee of an authorised person was not entitled to carry out reserved legal activities (including conducing litigation) unless they were also authorised. Section 21(3) merely dealt with the remit of regulation; it did not give persons the entitlement to conduct litigation.

The evidence was that Mr. Middleton was not entitled to conduct any reserved activity under the LSA, but his work had been performed under the supervision of an authorised person.

HHJ Simpkiss decided to lift the stay on the basis that there was no question of any breach of the LSA following the changes set out in the evidence (an authorised person now conducting the litigation); and secondly that the SRA had confirmed that Mr. Middleton had authority to conduct litigation under the supervision of an authorised person. In fact, the SRA had stated that Goldsmith Bowers' employees were permitted to undertake "reserved activities" due to s21(3) LSA, and that they would not be taking action.

On appeal it was submitted that the LSA made no provision for unauthorised people to carry on litigation under supervision; and that people who are not authorised to conduct litigation can only support authorised individuals to conduct litigation. They cannot conduct litigation themselves under the supervision of an authorised individual.

Indeed, the SRA had issued guidance to solicitor stating this.

The Respondent submitted that s21(3) LSA authorised Mr. Middleton, as an employee of an authorised person, to carry out reserved legal activity under the authorised entity's supervision. It was also averred that the conduct of litigation under supervision had been permitted before the LSA came into force and the LSA did not purport to change the existing law.

Cordery on Legal Services had observed that there was no exemption for persons conducting litigation under the supervision of an authorised person, and that such an omission was "curious". The editors speculated that it may be that those drafting the LSA 2007 did not consider such an exemption was necessary because the conduct of litigation under supervision was always permitted and the LSA 2007 did not purport to change the pre-existing law. That would reflect the practical reality.

It was also pointed out that CPR 2.3 contemplated that employees of solicitors can have a role in the conduct of litigation for the definition of "legal representative" included a "solicitor's employee who has been instructed to act for a party in relation to proceedings".

Both the Law Society and the SRA submitted that unless exempt under s19 a person must be "authorised" under s18 in order to perform reserved legal activities. Section 21(3) dealt with arrangements for regulation of various persons, not whether they were authorised to conduct litigation. The SRA submitted that the non-authorised employee does not conduct litigation when assisting an authorised solicitor for it is the latter who exercises the final professional judgment for the work and takes responsibility for it.

Section 21(3) states as follows:

> "21 Regulatory arrangements
> … (3) In this section "regulated persons", in relation to a body, means any class of persons which consists of or includes –
>
> a) persons who are authorised by the body to carry on an activity which is a reserved legal activity;
>
> b) persons who are not so authorised but are employees of a person who is so authorised."

Judgment

Sheldon J held:

> "61. Section 21(3), on its face, is not extending the definition or scope of who is "authorised" to carry out reserved legal activities but is saying that for the purposes of regulation there are two categories: persons who are authorised to carry out reserved legal activities and their employees. In other words, employees of an authorised person can be regulated.
> 62. **The natural reading of section 21(3) of the LSA** – that it is defining who is subject to the regulatory authority of a body such as the SRA, and **does not extend the scope of who is authorised to carry out reserved legal activities** (as argued for by Mr Bennett) -- fits clearly with the other provisions of the LSA that I have set out above. Those other provisions make a clear distinction between persons who are entitled to carry out reserved legal activities and those who are not. An employer, even if authorised to carry out a reserved legal activity, can commit a criminal offence if one of their employees carries on a reserved legal activity without being entitled to (and therefore commits an offence)."

The judge therefore held that Mr. Middleton had not been entitled to conduct litigation.

No order was made in relation to the costs incurred by the Appellants at earlier stages of the proceedings, being a matter for the County Court.

Commentary and Practical Implications

The practical effects of this judgment have been dramatic. Many firms have a business model which involves non-authorised employees conducting litigation under the supervision of an authorised person.

It is clearly causing confusion at the moment. On 20 October 2025 the Chairman of the Justice Committee wrote to the Minister for Courts and Legal Services pointing out that the Law Society considered that the SRA appeared to consider that the SRA needed to update its guidance.

The SRA has stated that the judgment does not change the position in law, which reflected their guidance on effective supervision dated November 2022. That guidance pointed out that people who were not authorised to conduct litigation can only support litigation rather than conducting litigation under supervision. However, it did give erroneous advice in the case itself.

The Legal Services Board has said it will conduct a review to examine how approved regulators and regulatory bodies ensured that information on conducting litigation was accurate and reliable, to help lessons to be learnt and maintain confidence in the regulatory framework.

The Bar Standards Board has said that the judgment does not change the law in this area, but that it is considering whether any further guidance would be helpful, in consultation with other legal regulators and the Bar Council.

CILEX has applied for permission to appeal, and permission was granted on 24 November 2025. Although not party to the High Court decision, there is no requirement for an Appellant to have been a party to the proceedings in the court below: *George Wimpey UK Ltd v Tewkesbury BC* [2008] EWCA Civ 12 [2008] 1 WLR 1649.

As to the merits of an appeal, it is a basic principle of statutory interpretation that the court must ascertain the meaning of the actual words used, placed in their context.

It is not disputed that, unless exempt, one must be an authorised person to conduct reserved activities such as the conduct of litigation.

The words of section 21(3) are not reasonably capable of extending the category of authorised persons. It would be surprising if the definition of authorised persons were contained other than in the section defining Authorised persons (s18); and the words of s21(3)(b) do not even purport to extend the class of "authorised persons" (as opposed to regulated persons).

That failing to create an exception for employees supervised by authorised persons was a mistake in the legislation, it having been lawful before the LSA came into force, is a possible argument, but the requirements prescribed by *Inco Europe v First Choice Distribution (a firm)* [2000] 1 WLR 586 are onerous:

1) the intended purpose of the statute or provision in question;
2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and
3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.

It might be thought that costs incurred by a person who was not entitled to conduct litigation would create potential problems in costs recovery. Whether that is so remains to be decided; during previous episodes of the costs war the courts have tried to reduce wholesale challenges to Bills which would result in windfalls to the paying party. It is notable that in *Ndole Assets Ltd v the Court of Appeal* said took the view that "nullity is not to be taken as the statutorily intended consequence" for service of a claim form by a person who was not authorised to conduct reserved legal activities. The court continued:

> "As [counsel] pointed out, there is no reason why so draconian a consequence should be intended to be visited on the client or principal, who ordinarily will have been entirely ignorant of the point. As she also pointed out, there could be grave implications for other reserved legal activities if it were otherwise: for example, probate activities and reserved instrument activities. In argument, we put to Mr Darling the example of a sole solicitor practitioner who, through oversight and pressure of work, omitted to renew his practising certificate in time. Would all proceedings served by him in the ensuing period before the position was rectified thereby become entirely null and of no effect?"

Conclusion

The legal position remains unsettled, and further clarification is needed. Law firms should review their practices to ensure compliance with the LSA and seek guidance from professional bodies as to who is authorised to conduct litigation.

Key Takeaways:

- Only authorised persons (or those exempt) may conduct reserved legal activities, including litigation.
- Supervision by an authorised person does not confer authorisation on non-authorised employees.
- Law firms should review their business models and seek updated guidance from regulatory bodies.

Process & Industrial Developments Ltd v The Federal Republic of Nigeria [2025] UKSC 36

Daniel Kozelko
Call 2018

Introduction

This case is an important one for costs practitioners. While it addressed a relatively narrow point about the proper currency for the payment of costs, the Supreme Court provided an updated summary of principles going to the heart of the cost's jurisdiction. It also emphasised the distinction in assessing the proportionality of costs incurred resolving the substantive issue in the proceedings versus the proportionality of investigating the costs of the proceedings.

Facts

The case itself concerned an award of costs arising out of The Federal Republic of Nigeria's ("Nigeria") successful application to set aside two arbitration awards made in favour of Process

& Industrial Developments Ltd ("Process") for fraud. The arbitration awards were, at the time they were set aside, worth in excess of $11 billion. In its action, Nigeria incurred £44.217 million in unassessed costs, which were billed by Nigeria's solicitors and paid by Nigeria in pounds sterling. The question for the Supreme Court was whether the costs should properly have been paid in sterling, or instead naira (the national currency of Nigeria).

This mattered because, as a result of significant changes in exchange rates, the sums which Nigeria paid its solicitors at the time were worth around 25 billion naira but were now equivalent to around 95 billion naira. Process' position was that, in principle, awards of costs should be made in the currency which most accurately reflects the loss of that party in funding its litigation. They asserted that an award of costs in sterling would occasion Nigeria a substantial windfall.

General principles

In their leading judgment with which the remainder of the Court agreed, Lord Hodge and Lady Simler rejected Process' argument and dismissed the appeal. They began by noting the following key points:

1. An award of costs is not intended to compensate for loss in the same way as an award of damages in tort or for breach of contract.
2. Damages in tort or for breach of contract is giving effect to a legal right. Costs are discretionary.
3. Thus, while an award of costs might be seen as a statutory indemnity, "such an award is not an attempt to restore a party to the position it would have been in if it had not had to litigate to assert its rights" (para 15).
4. Rather, the indemnity principle is a constraint. It stops the receiving party from recovering more than its liability to its own lawyers.
5. Put another way, an award of costs is a "statutorily authorised award of a *contribution* toward the costs incurred in litigating in the courts of England and Wales" (para 16, emphasis in original).
6. Given the above, "nobody has an entitlement to an award of costs as of right… [t]he court is not addressing loss" (para 17).

Investigations into costs

Having stated those important points of principle, the Supreme Court went on to address the context of investigating costs incurred in foreign currency. The court noted that there is no distinction between someone who converts currency to pay its legal fees, or someone who sells property to do the same. The court does not investigate those arrangements. To dig into the background of how funding has been achieved risks "collateral disputes of fact which might necessitate a separate trial" (para 20). The court must not encourage satellite litigation.

Indeed, the satellite litigation that could arise was apparent in this case. First, Process disputed Nigeria's position that it held pounds sterling which it could draw upon without conversion. Second, Nigeria pointed out that there were 116 invoices which, if payment were required in naira, would each attract their own exchange rate. The Supreme Court, importantly, drew a distinction between what is a proportionate investigation into the substantive claim in proceedings versus a proportionate investigation into costs:

> *23. What is seen as proportionate in the ascertainment of a party's loss in a trial which determines the parties' substantive rights is not an indication of what is appropriate or proportionate in the making of an order for costs.*

The currency issue

The court also referred to *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 715 (Ch). Process relied on this case as, there, Lufthansa had been awarded its costs in euros. However, the Supreme Court pointed out that this case was one

where the solicitors expressed invoices in euros, and Lufthansa paid in euros. It accepted an award in euros was appropriate, albeit disagreeing with any suggestion by the judge in that case that there should be an inquiry into which currency truly reflected the loss.

Finally, Lord Hodge and Lady Simler noted the following principles related to currency of costs going forwards:

1. The general rule is that an order for costs "should be made in sterling or in the currency in which the solicitor has billed the client and in which the client has paid or there is a liability to pay" (para 25).
2. There may be circumstances in which the court does not award costs in the currency in which the receiving party paid its representatives.
3. For example, it may be suitable to change the currency if the currency chosen is "abusive or otherwise inappropriate". For example, "if a party were to use a currency with which neither it nor its lawyers had a real connection, to speculate on making a profit" (para 25).
4. If this issue were to become common "it might be necessary to develop practice directions to make sure that a party is aware that another party is using foreign currency to meet its lawyers' invoices" (para 26).

On the facts, Nigeria's solicitors billed in sterling and were paid in sterling. There was no reason not to award costs in sterling.

Chinda v Cardiff & Vale University Health Board – A Useful Reminder of the rules governing the circumstances in which a Part 36 offer can be withdrawn

Daniel Laking
Call 2015

Master Cook's recent judgment in *Chinda v Cardiff & Value University Health Board* [2025] EWHC 2696 (KB) provides a useful reminder of the rules governing when a Part 36 offer can be withdrawn and is a salutary tale for those advising claimants during negotiations.

Facts

The Claimant suffered a serious neurological injury (rendering him essentially paraplegic) following a negligent delay in diagnosing spinal tuberculosis by the Defendant. The Defendant admitted breach of duty and causation of some injury in failing to arrange an MRI scan when the Claimant attended A&E in August 2020. Judgment was entered in favour of the Claimant on liability and the claim proceeded towards a trial on quantum alone.

On 1 July 2025 the Claimant and Defendant met for a Round Table Meeting (RTM). At the RTM, the Claimant indicated he wished to settle on a provisional damages basis. The Defendant did not have authority to settle on that basis and so it was agreed that the Claimant would propose terms on which he would be prepared to settle the claim.

The day after the RTM (2 July 2025), the Claimant's solicitors made a Part 36 offer which included a retained lump sum, variable periodical payments and provisional damages. This was based on the Claimant's instructions at the RTM.

On 8 July 2025 the Claimant's solicitor wrote to the Defendant putting it on notice that the Claimant wished to withdraw the offer. However, the offer

was accepted by the Defendant on 22 July 2025.

The Claimant applied to the court for permission to withdraw the offer and change its terms to one that included a lump sum damages award and an order for provisional damages (but no periodical payments).

Law

CPR 36.10 reads as follows:

1) Subject to rule 36.9(1), this rule applies where the offeror serves notice before expiry of the relevant period of withdrawal of the offer or change of its terms to be less advantageous to the offeree.

2) Where this rule applies—

a) if the offeree has not served notice of acceptance of the original offer by the expiry of the relevant period, the offeror's notice has effect on the expiry of that period; and

b) if the offeree serves notice of acceptance of the original offer ***before the expiry of the relevant period, that acceptance has effect unless the offeror applies to the court for permission to withdraw the offer or to change its terms—***

i) within 7 days of the offeree's notice of acceptance; or

ii) if earlier, before the first day of trial.

(3) On an application under paragraph (2)(b), the court may give permission for the original ***offer to be withdrawn or its terms changed if satisfied that there has been a change of circumstances since the making of the original offer and that it is in the interests of justice to give permission.***

In this case, the Defendant had served notice of acceptance prior to the expiry of the relevant period (CPR 31.10(2)(b)) and so the Claimant required the permission of the court to withdraw or amend the offer. In order to do so the Claimant was required to show a change of circumstances and that it was in the interests of justice for the court to give permission.

Submissions

The Claimant submitted:

1. The RTM day had been overwhelming and exhausting and he was unable to think clearly and consider the instructions provided to his solicitors on the day.
2. He had met with the author of the Periodical Payment Suitability Report and an Independent Financial Advisor who had given him useful advice.
3. He wanted to speak with his family members about the appropriate course of action, and it was not possible to do that on the day of the RTM.
4. He was concerned that the periodical payment timeframe was too long and he wanted to put the claim behind him instead of dragging it out.
5. He wanted the ability to invest the entirety of the sum rather than a portion of it.

As to whether these matters constituted a change of circumstances, the Claimant submitted that Part 36 did not define what a 'change of circumstances' could comprise. There was no injustice in permitting a seriously injured Claimant to change his mind about the form of award he wished to accept (especially where the Defendant had previously made lump sum offers).

As to whether the interests of justice favoured the grant of permission, the Claimant submitted:

1. He had notified the Defendant promptly and well before the acceptance.
2. The lump sum offer now sought by the Claimant was identical to that made by the Defendant at the RTM on 1 July 2025.
3. On the Defendant's own assessment the lump sum offer represented a fair fully capitalised valuation of the previous periodical payments offer.
4. The revised offer was more generous to the

Defendant than the previous offer made on 2 July 2025 in respect of provisional damages.

5. There was no suggestion from the Defendant that it would not be willing to settle on the terms that were previously offered.
6. The Claimant was vulnerable by reference to the definition in CPR Part 1.

The Defendant submitted this was not a change of circumstances but simply a change of mind. The Claimant had had ample time to reflect on the consequences of the RTM in the 24 hours between it concluding and the original Part 36 offer being made. The Defendant had considered the periodical payments offer was more advantageous than the lump sum offer as the Claimant had a limited life expectancy.

Overall, if the Claimant was permitted to withdraw the offer on the basis of a change of mind, it would undermine the certainty and predictability of the Part 36 regime.

Court's Decision

Master Cook refused the Claimant's application to withdrawn / amend the offer. The Court found there had not been a sufficient change of circumstances to merit giving permission.

The court relied upon the fact that, although the Claimant was a vulnerable party, there was no suggestion that his vulnerability impacted his ability to instruct his representatives (who were themselves specialist personal injury solicitors who could be presumed to be aware of the Claimant's difficulties).

The court accepted the Defendant's characterisation that this amounted to a "change of mind" rather than a "change of circumstances". The Master found, *"to hold otherwise would be to introduce an unacceptable degree of uncertainty into what should be a certain process."*

It was not correct that there was no difference between the Claimant's original and revised Part 36 offer. The Defendant concluded that the periodical payments order would be more advantageous than the lump sum offer made in the RTM. That provided financial certainty and predictability for both parties.

Key Reflections

This case underlines the limited circumstances in which a court will give permission for the withdrawal of a Part 36 offer where the offer has been accepted within the relevant period. Even where a Claimant is a vulnerable party he or she must point to a genuine change of circumstances in order to be given permission. A change in circumstances tends to require new evidence, a change in the law or some shift in the factual/ evidential position. A change of mind is not enough.

For those advising claimants, this case provides a salutary tale of the dangers of settlement negotiations in JSMs, RTMs or mediations. Representatives should be aware of a client's potential vulnerabilities and how that might impact their decision-making during a lengthy day. Claimants should be advised that any offer they make is final, and they will not have an opportunity to revise or reconsider it once it is made. When getting to 'final offer' stage, Claimant representatives might want to give thought to requesting further time to consider an offer overnight, and Defendant representatives would be well advised to accede to such requests, particularly in circumstances where the Claimant may be vulnerable. To do so avoids applications such as this one having to be made in the first place!

From Efficiency to "AI Slop" and "Phantom Authorities": Can Costs Law Keep Up with AI?

Nyasha Weinberg
Call 2020

The legal profession in England has recently witnessed a spate of cases in which practitioners — including barristers — have misused artificial intelligence tools. In one leading example, *Ayinde, R v The London Borough of Haringey,* solicitors and barristers were described as having demonstrated *"appalling professional misbehaviour"* for putting forward five non-existent authorities. As reported in the Law Society Gazette the High Court found that a pupil barrister had cited phantom decisions and was unable to explain to the court how they came to be included. Although the court did not make a formal finding that she had used an AI (large language model) it observed that *"it would have been negligent"* if she had done so and failed to verify the authenticity of the cases presented (see judgment at [65]).

In a joined case, Hamad Al Haroun v Qatar National Bank Q.P.S.C. a solicitor admitted that eighteen of the cited authorities were fictitious, apparently generated by publicly available AI tools, and submitted without verification. Delivering judgment, Dame Victoria Sharp P emphasised that the use of AI by lawyers does not absolve them of their fundamental professional responsibilities: to ensure the provenance of all authorities, the accuracy of all quotations, and personal accountability for every document filed in court. A failure to observe their professional duties, or misleading the court, exposes lawyers to committing contempt, being referred to their regulator or incurring a wasted costs orders [para 26 / 28 / 30 / 31]. In response to these incidents, the Civil Justice Council now has to working group to consider whether existing procedural rules need updating to reflect AI's growing presence in legal drafting and litigation practice.

The most immediate consequence for costs lawyers will be the Wasted Costs orders likely to follow the citation of fictitious authorities, as judges apply the Divisional Court's guidance in *Ayinde*. Yet the implications for costs lawyers extend beyond sanctions for individuals who misapply technology. As the legal industry undergoes rapid transformation through the integration of AI into everyday practice, there will be profound effects on pricing models, costs budgeting, and access to justice. This article considers the coming storm for costs lawyers — and the challenges and opportunities that the rapid adoption of artificial intelligence will bring to the assessment, management, and recovery of legal costs.

Before turning to specifics, it is worth considering the broader backdrop: the continuing importance of ensuring that costs incurred by solicitors are both reasonable and proportionate. The penalties for excessive costs are well illustrated by recent decisions such as *Worcester v Hopley* [2024] EWHC 2181 (KB) and *Jenkins v Thurrock Council* [2024] EWHC 2248 (KB).

In *Worcester*, a clinical-negligence claim, the claimant's budget was reduced by more than 53% down from approximately £342,263. Thornett criticised the claimant's reliance on partner-level fee earners to be unrealistic and unreasonable throughout the phases. In *Jenkins*, the claimant sought compensation of £200,000 after an injury at work. The scale of the claimant's original budget was even more alarming: an initial budget of approximately £1.195 million (later reduced to about £945,000) compared with the defendant's budget of £383,417. Master Thornett found the claimant had presented and maintained an unrealistic and disproportionate approach to estimated costs in the context of the demands and requirements of the case [**18**].

The emphasis on proportionality and reasonableness comes at a time of mounting

pressure across the civil justice system — marked by the growing backlogs in civil cases, and also noted in the NHS Resolution annual report. A further factor which will impact how the AI revolution unfolds in the contexts of legal costs is the sheer volume of data in many proceedings, and the correspondent necessary use of automation by legal practitioners to help manage the caseload.

The courts will soon be asked to navigate difficult and finely balanced issues as AI becomes embedded in litigation practice and the assessment of costs. While AI promises efficiency and consistency, it also introduces new risks – of error, opacity, and imbalance - that the established principles of costs law will need to accommodate.

1. Post Ayinde: Will Courts prioritise Efficiency or Reliability?

One primary tension lies in the trade-off between efficiency and reliability. Generative AI tools are already capable of automating substantial parts of the litigation process — from document review and disclosure to the preparation of costs schedules alongside budgets, bills and points of dispute. Properly used, these tools could reduce overall costs to both parties and free up human lawyers for work requiring human judgement. Yet over-reliance carries evident risks. As is well reported, AI models can *"hallucinate"*, reproduce bias in their training data (i.e. only report particular events), or produce outputs whose reasoning cannot be explained. Where such material finds its way into court proceedings, courts may have to decide whether reliance on AI constitutes reasonable professional practice — or negligence. The *Ayinde* line of authority suggests the judiciary will not hesitate to sanction the latter.

2. Access to Justice and the Rise of "AI Slop"

A second area concerns access to justice, and sanctions for wasted costs placed on litigants in person, for their conduct when employing AI. AI has the potential to empower litigants in person by enabling them to prepare documents, understand procedure, and assess potential costs exposure. Yet there is a growing risk of what some commentators have termed *"AI slop"*. Courts are increasingly being subject to vast quantities of poorly generated, irrelevant, or erroneous material generated by litigants in person without legal training keen to win their cases (and sometimes generated by qualified lawyers) that opponents and the court must spend time and money sifting through.

Litigants who are relying on unverified AI output could inadvertently mislead the court, get procedures wrong, or cause unnecessary or wasted hearings; all of which will need to be considered by the courts. On the flip side, litigants in person who avoid AI altogether may find themselves wasting the courts' time in circumstances where a quick use of Google AI to interpret a CPR provision, or to summarise a particular piece of case law, would have been prudent.

As Courts have to deal with the slop onslaught, and the flip side – the failure to use technology to avoid totally without merit legal argument – there will be difficult lines for courts to tread about where litigants in person should be penalised for AI misuse.

3. AI in Costs Budgeting and Detailed Assessment

A third area of impact will be the use of AI in costs budgeting and detailed assessment under the CPR. Predictive cost-estimation tools can model likely expenditure based on historic data, which can help to improve accuracy and realism in budgets. Real-time monitoring of case progress can highlight potential overspend or under-budgeting, and AI analytics could assist judges by comparing budgets across similar matters to promote consistency.

However, these benefits come with dangers. Proportionality remains a nuanced, context-sensitive judgment under CPR 44.3(5), and AI systems may oversimplify historical patterns into mechanical outputs. If a black-box inscrutable AI

model proposes a *"reasonable"* figure for budgets going forward, courts will need to determine how to interrogate the AI's reasoning – for example about the complexity of the litigation.

The risk of over-reliance on models is huge: predictive systems depend on the quality of their training data, and atypical or complex cases may not fit established patterns. Nor indeed does the randomness or caprice of the fates – human affairs often shape how litigation unfolds and unexpected contingencies mean that cases do not proceed along a perfectly predictable trajectory. Procedural fairness is another concern which will need to be fully taken into consideration by the courts – if one party deploys sophisticated AI cost analytics and the other does not, equality of arms may be compromised.

4. The Indemnity Principle in the Age of Algorithms

AI also has implications for the indemnity principle. Automated billing platforms can cross-check fee notes, identify duplication, and ensure that claimed costs reflect actual client charges. Properly designed, they could enhance transparency and compliance. Yet, there is a difficulty in actually looking inside the black box of an automated billing platform (and indeed having the judicial expertise to be able to properly understand the relevant technologies). If AI-generated bills are inaccurate, or include miscalculations, or there is *"phantom time"* that has been logged – claims may breach the indemnity principle. A difficult question then arises: who bears responsibility for an overstated or erroneous claim — the lawyer or the software developer? Perhaps both.

5. Costs, Efficiency, and the Value of Human Input

The integration of AI into the courts and legal practice will also disrupt traditional pricing models. If a paralegal's £150-per-hour task can be completed in minutes by a reliable AI system such as Co-Counsel, how will that affect what is considered a *"reasonable"* or *"recoverable"* cost? The courts may soon face arguments that certain categories of work should be charged — and therefore recoverable — at lower effective rates, reflecting the availability of cheaper automated alternatives. The concept of proportionality may thus begin to incorporate technological efficiency as a factor in determining reasonable recoverable costs – arguments that it will be interesting to see play out in practice.

Conclusion

Ultimately, the challenge for the courts – and for costs lawyers making submissions – will be to understand and monitor the shifting balance between technological efficiency and the enduring principles of costs law. That will require costs lawyers to keep abreast of the transforming technological capabilities of AI, how they affect legal practice, and how technology will continue to transform the reasonableness and proportionality of incurred costs.

Litigation Funding – Regulation?

Shaman Kapoor
Call 1999

The Competition Appeal Tribunal has been an excellent resource for the investments of litigation funders, but so too for lawyers who are interested to see how litigation funding is making huge waves in high value and important litigation with wide-ranging ramifications. This article unpicks the way in which largescale litigation tends to arrive in the Competition Appeal Tribunal, illustrating by case example how things can go wrong, and explores the current thinking of the Civil Justice Council for the way ahead. It is based on a talk first given at the Costs Law Reports Conference on 26 September 2025.

Background

A Collective Proceedings Order (CPO) is a legal order issued by the Competition Appeal Tribunal (CAT) in the UK that authorises a collective (or

"class") action against a company for breaching competition law. The order grants a class representative permission to act on behalf of a large group of individuals or businesses who have suffered harm from the anti-competitive behaviour, allowing them to seek compensation collectively without each individual having to bring a separate, costly lawsuit. The CPO defines the group (the "class"), the remedy sought, and specifies whether the action is "opt-in" (people must actively join) or "opt-out" (people are included unless they actively leave).

Aspect	Opt-in proceedings	Opt-out proceedings
How to join	A claimant must take a specific action, such as filing a claim form or authorizing a representative, to become part of the legal action.	All individuals who meet the criteria of the defined class are automatically included in the claim.
Membership	The class size is limited to only those who have affirmatively joined, resulting in a more limited pool of participants.	The class can be very large, including anyone who is eligible and does not take action to leave.
Class awareness	Class members are aware of the proceedings because they have taken a step to participate.	Individuals may be included without even knowing about the lawsuit, though courts often require some form of notification.
Case management	Requires firms to manage thousands of individual claimant forms, which can be costly and burdensome.	The case can be litigated by a single representative on behalf of the entire class, potentially saving on initial costs.
Costs and risks	The risk of adverse legal costs is generally borne directly by the individual claimants who opt-in.	The adverse cost risk is borne primarily by the class representative, protecting the individual class members.
Relevance (UK)	Traditionally the most common form of mass action in England and Wales. The Group Litigation Order (GLO) process is opt-in.	Primarily used for collective proceedings in competition law infringements, heard by the Competition Appeal Tribunal (CAT).
Benefits for claimants	Provides a more engaged claimant base, as participants have explicitly chosen to be part of the process.	Offers greater access to justice, as it allows a large number of affected people to receive compensation without individually suing.
Potential downsides	Can result in a smaller class size and limit the total amount of compensation if many people do not actively join.	Can be less advantageous if an individual's claim is more valuable than the class's damages, as the individual may lose the right to pursue a separate claim.

A case example

Credit to Macfarlanes (Simon Day and Rachel Carter) for their excellent summary which I have reproduced extensively below with their permission.

Walter Merricks CBE launched his class action against Mastercard in 2016. The claim was brought on behalf of a class of around 44 million people – anyone who purchased goods or services from any business accepting Mastercard payments between 1992 and 2008. Mr Merricks brought these (purely follow-on) proceedings on the back of a European Commission decision which found Mastercard's European interchange credit card fees (MIFs) breached competition laws.

The Competition Appeal Tribunal (the Tribunal) initially refused to certify the claim as "suitable" for the regime. However, following reviews by the Court of Appeal in 2019 and the Supreme Court in 2020, and a remittal hearing before the Tribunal in 2021, Mr Merricks eventually successfully obtained a collective proceedings order (CPO), albeit for a somewhat-reduced claim, worth approximately 65% of the original claim value (i.e. circa £9-10bn).

Approximately four years after the start of the substantive proceedings, and after many preliminary issue hearings, Mr Merricks and Mastercard agreed to settle the claim for £200m and signed a settlement agreement on 3 December 2024. However, under the UK collective proceedings regime, settlements agreed between parties to opt-out **collective proceedings must be approved by the Tribunal in the form of a collective settlement approval order (CSAO)** before they bind the class members. A hearing took place before the Tribunal in January 2025, very shortly before a hearing concerning pass-on was due to commence before the Tribunal. As such, there was significant urgency for the settlement approval hearing to take place.

Despite the fact that the settlement reached in these proceedings was under 1.5% of the value of the claim originally advanced, the Tribunal ultimately approved the settlement at the January hearing. However, the judgment setting out the reasoning behind the Tribunal's decision that the settlement was "just and reasonable" was not handed down until May 2025.

Given this is by far the biggest settlement reached in collective proceedings to date, and only the fifth settlement reached under the regime so far, the commentary provided by the Tribunal in this case amounts to important guidance.

Challenge by funders

Aside from its size, this settlement has made headlines because the class representative's funder expressed significant discontent with it. The funder, Innsworth Capital Ltd (Innsworth), intervened in the CSAO hearing challenging the approval of the settlement – arguing before the Tribunal that the agreement significantly undervalued the claim and failed sufficiently to compensate the class. It was also concerned about its own return given the low settlement amount. The total return expected by Innsworth under the litigation funding agreement was over £520m, which also provided for a so-called "agreed minimum return" of £179m.

The Tribunal did not accept the funder's position. It is perhaps interesting to note that the Tribunal did not agree with Innsworth's interpretation that the statutory test requiring collective settlements to be "just and reasonable" meant just and reasonable to all **stakeholders involved,** including the funder. Instead, the Tribunal stated that the focus of this test was on whether the settlement was just and reasonable from the perspective of the class members. The Tribunal considered the history of the case in some detail and agreed with the arguments of the settling parties, confirming that it was "entirely satisfied" that the terms of the settlement were just and reasonable. This was not least given a judgment handed down in early 2024 in relation to a preliminary issue primarily concerning causation arguments, in which the Tribunal found that "over 90% of the claim failed

factually", thereby reducing the realistic claim value from circa £10bn to, at a maximum, circa £1bn.

Potential conflict of interest

In addition to contesting the CSAO at the January hearing, Innsworth initiated arbitration proceedings for unquantified damages personally against Mr Merricks pursuant to the litigation funding agreement. Somewhat unusually, in light of the threat from Innsworth to sue Mr Merricks, Mastercard agreed to provide an indemnity to Mr Merricks of £10m to cover any contractual exposure that he would face for accepting the settlement offer. The Tribunal considered that this indemnity put Mr Merricks in a difficult position – it is not clear that Mr Merricks would have accepted the settlement offer without this indemnity (given his personally vulnerable position) – and went on to consider the question of a potential conflict of interest between Mr Merricks and the class members. The Tribunal sympathised with Mr Merricks' position in this regard and ultimately concluded that the existence of the personal indemnity did not change their view on the terms of the settlement in the circumstances of the case.

Differing priorities between stakeholders

In considering the arguments made by Innsworth against the settlement, the Tribunal explored the potential differences in perspective between funders and class representatives. By way of example, the Tribunal explained that a funder might wish to continue a case with a 30% chance of achieving a £500m return rather than settling for £200m, given its broader portfolio of cases, but a class representative might wish to settle the same case, even if there was only a small chance that it would fail, as such failure would result in class members receiving nothing at all.

Settlement mechanics and distribution plan

The distribution plan proposed by the settling parties saw the £200m settlement amount split into three pots:

- **Pot 1:** £100m ringfenced for the class members, with the amount for each class member to be determined by the number of class members that come forward to collect their damages entitlement, subject to a cap (proposed to be £70 per person by Mr Merricks and £45 per person by Mastercard).
- **Pot 2:** £45,567,946.28 ringfenced to provide Innsworth with 100% recovery of all costs, fees and disbursements paid by it to the end of November 2024 plus anticipated costs.
- **Pot 3:** the use of the remaining sum of £54,432,053.72 was left to the discretion of the Tribunal, with the settling parties suggesting it could be used to;
  i) give Innsworth its return;
  ii) top up any shortfall in Pot 1; or
  iii) pay non-participating class members via a charity.

The Tribunal confirmed that, in its view, it was implicit in the Competition Appeal Tribunal Rules 2015 that it is not only the terms of the settlement but also the distribution of the settlement that requires its approval, so it proceeded to analyse and set out its views on these proposed arrangements. Although still splitting the damages into three pots, the Tribunal exercised its discretion when approaching distribution (particularly for Pot 3):

- **Pot 1:** The Tribunal largely followed the settling parties' proposal for £100m to be distributed to the eligible class members that come forward. Should all 44 million class members collect their damages, each class member will receive circa £2.20. However, typically, not all class members do come forward in such claims (indeed the settling parties calculated the £45 sum on the basis that circa 5% of the 44 million class members come forward). In the event that fewer than 5% of the class members claim their damages, the Tribunal applied a cap on the total damages any one class member can receive of £70 (i.e. following the proposed cap suggested by Mr Merricks), and in the event that more than 5% of the class members come forward, there is scope for this pot to be topped

up to an extent by Pot 3 (see further below).

- **Pot 2:** The Tribunal also largely followed the settling parties' proposal as regards the incurred and anticipated costs that make up Pot 2. The Tribunal approved the recovery of all costs incurred by Innsworth on behalf of the class representative (circa £40.7m) but required that some of the other costs to be paid from this pot (namely costs incurred by Innsworth on its own behalf (circa £450,000) and anticipated costs (circa £4.4 - 5.7m)) be referred for independent assessment as to their reasonableness before approval. The total value of Pot 2 was not stated in the judgment, although it is expected to be circa £45.5m.
- **Pot 3:** The Tribunal expressed that Pot 3, comprising the remainder of the £200m settlement anticipated to be (circa £54.5m), should be used for:

  First, Innsworth's profit at a level that was not excessive. When deciding the level of the profit return, the Tribunal considered (i) Innsworth's funding of the proceedings prior to the proposed settlement and the risks involved with providing such funding, (ii) the "success" of settlement reached, and (iii) case law from overseas jurisdictions including Australia and Canada. The Tribunal concluded that a return on investment of x1.5 was appropriate – on the assumption that the costs and expenses incurred by Innsworth would amount to circa £45.5m (covered by Pot 2), the total return for Innsworth would be approximately £68m (with the profit element of circa £22.5m coming from Pot 3).

  Second, other costs including the costs of a specific documents application made by Mr Merricks, the fees of the independent costs assessor and Mr Merricks' solicitors' costs of participating in the independent assessment process, and the costs of any appeal of the Tribunal's judgment.

  Third, to the extent that sums remain in Pot 3 after the above monies have been paid, the Tribunal determined that such sums should first be used to supplement Pot 1 in the event that more than 5% of eligible class members come forward, such that each class member can receive £45 (or a lesser sum as Pot 3 permits), with the remainder to be paid to the Access to Justice Foundation charity proposed by the class representative.

A significant factor relied upon by the Tribunal when deciding upon Innsworth's profit return was that in the Tribunal's view the case achieved "a very poor result" as the settlement sum constituted under 1.5% of the original claim value and a vast sum of money had been spent on the proceedings (meaning that a 1.5 multiple of spend was still a large return). Whilst this judgment therefore does not mean that the Tribunal in other settlements will award a similar level of return to funders, it highlights the risk of putting forward figures which may turn out to be an overestimate of the claim value at the certification stage.

Judicial review application

Innsworth remains unhappy about the outcome of this case and has brought an application for judicial review of the decision to issue a CSAO (as Innsworth was not a party to the CSAO application, it cannot appeal the judgment). Despite its comments during the hearing, Innsworth is not expressly challenging the "very low" value of the settlement in its application for judicial review.

Instead, it has brought its judicial review application alleging that:

- in applying the *Australian case of Street v State of Western Australia* [2024] FCA 1368, the Tribunal conflated the return on investment (which Innsworth considers to be the profit to be earned by a funder) with the concept of a multiple of invested capital (which it considers to be the total amount to be returned to the funder including recovery of the capital spent). As the Tribunal expressly noted that it was awarding Innsworth a return on investment of x1.5, Innsworth argues that it should be paid circa £68m as a profit element on top of the return

of its costs of circa £45.5m; and

- the Access to Justice Foundation (which Innsworth estimates could receive more than £30m from Pot 3) should not stand to gain more by way of windfall of the net proceeds than Innsworth (who currently stand to receive a circa £22.5m profit), in circumstances where it was Innsworth who took all the financial risks.

Observations

It is also worth noting that other recent judgments have been more positive for funders in 2025, particularly the Court of Appeal's judgments in *Gutmann v Apple* (which allowed for funders to be paid ahead of class members; and *Sony v Neill* (which confirmed that litigation funding agreements in which the funder's return is calculated as a multiple of the funder's expenditure on the proceedings are not damages-based agreements and are therefore enforceable.

It is worth stressing that these proceedings are unique, and the judgment highlights on a number of occasions that the Tribunal focused on the particular circumstances of this case (including the urgency to make a decision ahead of imminent future hearings in the case) when reaching its decision on the reasonableness of the settlement.

Interestingly, the judicial review does not challenge "Pot 2" directly. Since the judicial review proceedings have been issued, Innsworth has had to return to the Tribunal to answer for adverse costs in relation to the challenge they took on the settlement sum. The liability for those costs (50% for Mr. Merricks, and 33.3% for Mastercard) is said to run to in excess of £700,000 and is understood to be the subject of assessment by former Senior Costs Judge Gordon-Saker. Innsworth are also prevented from deducting their own costs from the Settlement Sum. On the same occasion, Innsworth sought draw-down on Pot 2 in any event. In a yet further blow, the Tribunal rejected the request for draw-down on the basis that the judicial review extends to the distribution of the proceeds of which Pot 2 is obviously a part.

Innsworth consider that this case means that funders will be extremely reluctant to challenge settlements in the future and thereby increase the risk of under-settlement. In the meantime, the challenge in Arbitration is understood to continue.

How, if at all, are litigation funders regulated, and what more, if anything, is required?

Not all litigation funders are regulated. Those that are concerned for 'regulation' consider themselves to be self-regulated typically through the Association of Litigation Funders [of which Innsworth is a member]. ALF was founded in 2011 and declares its establishment as a result of research conducted then by a working party of the CJC and upon the recommendation of Lord Justice Jackson. Membership depends on full compliance with the Code of Conduct (last updated in 2018). Some noteworthy points include:

- Have and maintain sufficient capital for investment (maintaining access to a minimum of £5m).
- Undertake annual auditing.
- The return is contingent on success.
- Payment in excess of the proceeds of the dispute shall not be sought.
- Promotional material must be clear and not misleading.
- A funder will not take any steps that cause or are likely to cause the Funded Party's solicitor or barrister to act in breach of their professional duties.
- A funder will not seek to influence the Funded Party's solicitor or barrister to cede control or conduct of the dispute to the Funder;
- Any dispute about settlement or termination of the LFA shall be resolved by *"a binding opinion obtained from a Queen's Counsel who shall be jointly instructed"*.

In July 2023, the UK Supreme Court in ***R (PACCAR)***

v Competition Appeal Tribunal **[2023] UKSC 28; [2023] WLR 2594 (PACCAR)**, by a majority, held that certain types of third-party litigation funding agreements, or litigation funding agreements (LFAs), were a form of damages-based agreement (DBA). Consequently, the validity of a significant number of such agreements, not least those which had been used to fund litigation in collective proceedings in the CAT, were called into question.

The Government's response was to quickly introduce legislation to regularise the position. Sadly, although a draft bill began its passage through Parliament, it seems to have died a death after the general election. The Government also requested advice from the Civil Justice Council (CJC). The CJC published the second of two reports on 2 June 2025.

CJC recommendations

The Report recommends a series of reforms to litigation funding, the aim of which is to promote effective access to justice, the fair and proportionate regulation of third-party litigation funding, and improvements to the provision and accessibility of other forms of litigation funding.

The Report makes a series of recommendations for the introduction of **light-touch regulation** of litigation funding. This is intended to be consistent with the approach taken in the ELI *[European Law Institute]* Principles.

Its initial recommendation concerns *PACCAR*. It recommends the effect of the Supreme Court's decision be reversed by legislation, which should be both retrospective and prospective in effect. It should make clear that there is a categorical difference between **contingency fee funding,** i.e., funding provided to a party to a dispute by their **legal representative** (through a CFA or DBA) and **litigation funding,** i.e., funding provided by an individual or a business who is not a party's legal representative (**litigation funders**) for the purposes of dispute resolution. The two are separate and should be subject to separate regulatory regimes.

The CJC suggests a minimum, baseline, set of regulatory requirements should therefore apply to litigation funding generally. These should include provision for: case-specific capital adequacy requirements; codification of the requirement that litigation funders should not control funded litigation; conflict of interest provisions; the application of anti-money laundering requirements; and disclosure at the earliest opportunity of the fact of funding, the name of the funder, and the ultimate source of the funding. The terms of LFAs should not, generally, be subject to disclosure.

The Report recommends requirements where litigation funding is provided to consumers and where it is provided to parties engaged in collective proceedings, representative actions or group litigation. These should include, for instance, the application of a regulatory Consumer Duty; and the requirement for funded parties to be provided with independent legal advice concerning proposed LFAs. They should also include, where for instance collective proceedings are concerned, court approval on a without-notice basis, the terms of the agreement and, particularly whether the litigation funder's return is fair, just and reasonable. Provision should also be made for enhanced notice of the litigation funder's return to class members during the opt-out period in collective proceedings to enable them to make an informed decision whether to opt-out. The Working Party **rejected** the introduction of **caps on litigation funder's returns**.

The CJC encourages the development of standard terms for LFAs, promotion of consensual dispute resolution and stated consequences of regulatory breaches.

The CJC recommends a statutory power to enable the civil courts and CAT to manage and budget the costs of funding claims and for CPR r.19 to be revised to be consistent with the CAT Rules where provision for litigation funding is concerned.

Portfolio funding should be regulated as a form of loan. It should be regulated by the FCA. The

Government should investigate the impact such funding has had on the legal profession, its regulation, and whether reform of legal services regulation is, as a consequence, necessary.

Crowdfunding, where it is provided on the basis of a financial return to the crowdfunders, should be regulated as a form of litigation funding. Where, however, it is provided on the basis that the donor is not to receive a financial benefit in the event the crowdfunded litigation is successful it should be subject to minimum regulatory requirements. The aim of those requirements should be to protect donors, minimise the potential for money-laundering, and ensure that the funds are used only for the purpose for which they were donated. They should also ensure that, should the funds not be used for the purpose on which they were provided, they should be returned to the donors. The approach to pure funding should be codified in the CPR.

Turning to the provision of **contingency fee funding**, recommendations are made to improve the operation of both CFAs and DBAs. There should be a single regulatory, contingency fee regime, which gives effect to the Mulheron-Bacon reforms to DBAs in so far as they are consistent with other recommendations in the Report. Legislation should clarify that hybrid arrangements are lawful. DBAs should be permitted in opt-out collective proceedings in the CAT, on the same basis that litigation funding is permitted. Where commercial parties enter into such funding arrangements there should be no cap on the lawyer's return. Responsibility for the new regime should be transferred from the Ministry of Justice to the Civil Procedure Rule Committee (CPRC).

Significantly, where both litigation funding and contingency fee funding are concerned, **the indemnity principle** should be abrogated.

CJC recommendations – my Top 22

A huge amount of work has clearly gone into the CJC review. There are numerous and detailed recommendations made, and Part 3 of the Report sets out 58 separately identified recommendations. Of particular note are these [recommendation number]:

- [1] Primary legislation to declare litigation funding is not a form of DBA, reversing the effect of PACCAR.
- [3] Establish a standing committee on Litigation Funding of the CPRC [for ongoing review] and a process of data collection should be undertaken.
- [4] A formal comprehensive regulatory regime should replace the current self-regulatory approach.
- [6] Arbitration proceedings should not be subject to formal regulation – leaving the matter to arbitral centres to determine for themselves.
- [10] ATE should be in place.
- [12] regulation should codify prohibition on funder controlling the litigation, breach of which should render the LFA unenforceable as against the funded party and render the funder liable for the funded party's costs and adverse costs.
- [15] there should be an independent, binding dispute resolution process.
- [18] independent advice from a King's Counsel should be given to the funded party prior to entering into the funding agreement.
- [20] In collective proceedings, the LFA should be disclosed to the Court on a without notice basis for approval – after an inquisitorial approach.
- [21] The funder **and the funded party's lawyer** should certify to the court, as part of the without notice approval process, that they did not approach either directly or indirectly the funded party to seek their agreement to pursue proceedings.
- [26] CPR r.19 should be revised for consistency with the CAT Rules applicable to LFAs, not least as to approval of LFAs and settlements.

- [32] Crowdfunding should be regulated.
- [33] where there is financial reward for crowd funders that should be treated as a form of litigation funding.
- [34] where there is no financial reward for crowd funders, funds to be held on trust; unused funds to be returned or donated to Access to Justice Foundation.
- [36] Current case law position on pure funding to be codified.
- [38] costs budgeting and costs management **should be mandatory for all funded collective proceedings, representative actions and group actions.**
- [40] Costs managing judges to have undergone training for special authorisation.
- [41] Current approach to Arkin cap to be codified.
- [43] No presumption of security for costs against a litigation funder or funded party (save where no ATE in place).
- [45] Single piece of legislation to deal with CFAs and DBAs [endorsing Mulheron-Bacon 2019].
- [48] Court to have a discretion to make non-compliant CFAs or DBAs to be enforceable.
- [52] Hybrid funding arrangements to be lawful.

Conclusion

Litigation funding has evolved over the years and has become an intrinsic part of the litigation landscape. It has proved itself to be the market's answer to filling part of the access to justice hole, but it comes at a significant cost, and the landscape is catching up to adjust its own operation to accommodate consumer protection and the overriding objective. It rightly occupies an important place and its continued development merits careful analysis.

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Vikram is a leading silk in six practice areas in the legal directories including Costs and Litigation Funding, and has a wide-ranging, including frequent appearances in the Appellate courts. Vikram is often instructed when a case is particularly high profile, or involves complex points of principle, such as *Aintree v James* (the leading Supreme Court case on futile medical treatment), the *Denton* test cases which overturned the controversial *Mitchell* decision, The *Skripal* case which sought permission to test the patients' blood to send to the Organisation for The Prohibition of Chemical Weapons, and Sheikh Mohammed bin Rashid Al Maktoum's divorce. In costs he has recently acted in *Bushby v Galazi* [2022] Costs LR 519 concerning non-party costs orders against litigation friends, and in *R (Raqeeb) v Barts Health NHS Trust* [2022] 1 WLUK 212, concerning whether common costs can be recovered for a judicial review (for which there is a costs order) where a best interests case was being run concurrently. He was a member of Sir Rupert Jackson's Review of Fixed Recoverable Costs, and was also a member of the six person expert panel constituting the Independent Review of Administrative Law. He is a Deputy High Court Judge (King's Bench). Recent directory comments include: *"Vikram is meticulous in his preparation, commercially astute, supremely intelligent and charming with clients and judges alike."* (Chambers and Partners) *"Vikram Sachdeva is an outstanding advocate."* (Chambers and Partners) *"Vikram is extremely intelligent and supremely confident on his feet. He always has a plan to approach any situation thrown at him and is well-liked by the judiciary."* (Legal 500) *"A superb advocate. Has excellent tactical awareness and is able to spot the key points of a case at an early stage."* (Legal 500)

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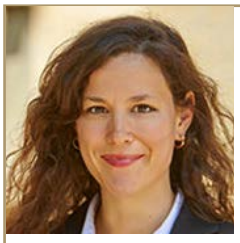

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