

Group Briefing

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Litigation funding in Ireland to be considered by the Irish Supreme Court

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The Supreme Court is to hear an appeal which may have significant implications for professional third party litigation funding in Ireland.

The Supreme Court recently determined that it would hear an appeal of the High Court decision in Persona Digital Telephony Ltd v The Minister for Public Enterprise, delivered in April of this year, which confirmed that, by reason of the doctrines of maintenance and champerty, professional third party litigation funding is currently prohibited in Ireland (see our previous article [here](#)). The applicants in the case, who say they require litigation funding to progress a claim against various parties, including the State, sought to appeal the High Court decision directly to the Supreme Court, bypassing the Court of Appeal. The Supreme Court has granted them permission to do so.

LEAPFROG APPEAL

The decision of the Supreme Court to allow a direct appeal to it is significant as it demonstrates that the Court is satisfied that the case raises an issue of general public importance, namely the application of the doctrines of maintenance and champerty. This in turn raises issues of access to the courts and access to justice.

Since the establishment of the Court of Appeal in 2014, appeals from High Court decisions must generally be brought to the Court of Appeal, with the possibility of a further appeal to the Supreme Court in limited circumstances. Direct appeals from the High Court to the Supreme Court, also known as leapfrog appeals, are only allowed in very exceptional circumstances. Indeed, the Persona case is only the seventh case since the establishment of the new appeal structure in which permission to bring a leapfrog appeal has been granted.

The Supreme Court can only grant permission to bring a leapfrog appeal where it is satisfied that there are exceptional circumstances warranting a direct appeal to it. This can only arise where the decision sought to be appealed involves a matter of general public importance and/or it is in the interests of justice that there be an appeal to the Supreme Court.

THE PERSONA APPEAL

In the appeal, the Supreme Court will consider whether, by reason of the rules of maintenance and champerty which apply in Ireland, it is unlawful for third party litigation funding to be provided to a plaintiff:

- » during the course of proceedings

(rather than at the outset);

- » where the plaintiff cannot otherwise afford to fund the proceedings; and
- » where the proceedings concern a matter of immense public importance.

No date has yet been set for the hearing of the appeal, but we expect that it will be heard in early 2017.

In the High Court, the judge suggested that a decision of an appellate court may be necessary to determine whether public policy considerations support a move away from the traditional prohibition on professional third party litigation funding in Ireland. When this suggestion is coupled with the Supreme Court's recent determination that this is an issue of such general public importance as to warrant a direct appeal to it, it is certainly possible (if not likely) that the decision of the Supreme Court will bring about a further liberalisation of the law in respect of professional third party litigation funding in Ireland.

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