

Clean House or Bleak Future

Strange birds a' tweeting

Part II

One in every four legal firms in England and Wales are encountering financial difficulties according to a recent analysis by Begbies Traynor, the professional services consultancy.

Last month, I referenced the influence that the changes that have come about as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Conditional Fee Order 2013. In relation to practices with large volumes of personal injury cases, the abolition of legal aid in this sector has made the situation particularly acute.

LASPO has had its many vociferous supporters and detractors. The latter would argue that the reduction of Legal Aid has resulted in many litigants of unimpeachable character being denied access to justice. The supporters claim that the second provision of LASPO, regarding litigation funding, diminishes or even negates the argument in favour of the retention of legal aid. It is no longer materially significant, however, whether we like the regulatory changes or not, as its structure is that within which the legal profession must now operate.

There are additional changes that have occurred within the legal world that are less obvious, but are so significant that they should be addressed by each practitioner and the profession as a whole. Indeed the legal profession is not isolated in the poor reputational perception that it has among the public at large as the reputation of banking and finance fares abysmally also. It is for this reason that I would like to address this sometimes but not always deserved perception; as third party litigation funding relies on quality practitioners within both the legal profession and its own industry.

The deterioration in the reputation of bankers is hardly difficult to explain, but if you are one of those lawyers whose integrity is beyond reproach, you may wonder at this generalisation. However, it is no secret that lawyers are seen as being both self-serving and elitist, which clearly is not always a valid accusation. What is even more apparent however, is that the legal profession does not make a virtue of the fact that it is central to the cohesion of society and any diminution of its role would have a catastrophic societal repercussion.

During very recent years, media commentary has changed to incorporate social media, which has endless exponential interactive opportunities for amateur, often anonymous, commentary on the experiences that clients or customers have experienced with their service provider. Most senior or managing partners of legal firms are ill equipped to deal with this, resulting in uncontrolled negative publicity. Thus the challenge for the legal profession as a whole is to counter the effects of this frequently unwarranted cynical perception. It is ironic that the profession that is so often employed to communicate on behalf of clients is so mediocre at communicating its own virtues.

Third Party Litigation Funders who specialise in low and medium value claims are sometimes associated with claims management companies or tarred with the undeserved brush of being ambulance chasing leeches by those who do not understand the very important role that TPLFs play in ensuring access to justice for so many people whose integrity is beyond reproach. Those of us involved have a strong sense that one of the primary purposes of Third Party Litigation Funding is as a privately funded substitute for publicly funded legal aid. Its advantages include cost efficiency and less abuse of court time in dealing with unmeritorious cases, which in the long run are in everybody's interest except the immoral. It provides funding for meritorious cases being brought by quality lawyers on behalf of honest litigants, who would otherwise have been abandoned when access to justice become unavailable.

It is a matter of ensuring that society understands the benefits of what both the legal profession and third party litigation funders do as providers of very necessary linked services to society. A parallel initiative should be developed to further the connection between our two businesses and the man on the street, so that there is a clear understanding of how we jointly can be of benefit to him. I would like to invite interested parties to contact me with a view to addressing this issue.

Gearóid Ó Ceallaigh is Managing Director of Trusted Litigation Capital, a third party litigation fund that will open for business in the near future.