Gaye Dalton,
[redacted]

Dear Helen McEntee,

Roderic O'Gorman advised me that the equality/integration functions have not yet passed to him and asked me to send this on to you. Please be aware that there are references in the attached documentation that you might find personally distressing.

In response to recent reports that Ruhama are about to be state funded to run an accommodation centre within the system of direct provision Ruhama are unfit to have total residential control over any vulnerable human being.

In Ireland the crowdfunding of litigation is widely believed to be unlawful (see attached article 1. "Surfing the crowd" from Law Society Gazette October 2017 – Josepha Madigan knows a great deal about this topic and tabled a private members' bill that has not passed through the Dail and would be best placed to advise you in this matter).

On 7 April 2018 a person launched a crowdfunding appeal aimed at suing me. Before 9:05 on 9 April Ruhama promoted this appeal on twitter (see attached screenshot 2.).

At 10:45 on 9 April 2018 I sent an email to Minister for Justice, Charlie Flanagan and Ruhama and also cc'ed to Amnesty International and the Samaritans to cover myself against misrepresentation of the contents.

This email was first referred to in a notice of motion sent to me dated 13 November 2018 but not produced.

On 18 February I asked all 4 recipients of this email if they had passed it to the person in question. The replies from Minister's Office, Amnesty UK and the Samaritans were wholly satisfactory, I attach the deeply concerning reply from Ruhama as (see attached 3.).

The email was finally produced by the party in question as an exhibit to an affidavit on 6 June 2019 (see attached 4).

On 21 October 2019 the record of Circuit Court Case 7167/2018 will show that Mr Andrew Walker Counsel, very properly conceded that all matters originally referred to were out of statute except for the email in question.

During this case I had no recourse to any form of legal aid, by statute, or advice due to a network of conflicts of interest involving Ruhama through every possible source of advice I could discover.

All items attached have been "opened in court" and, as such, are in the public domain and available

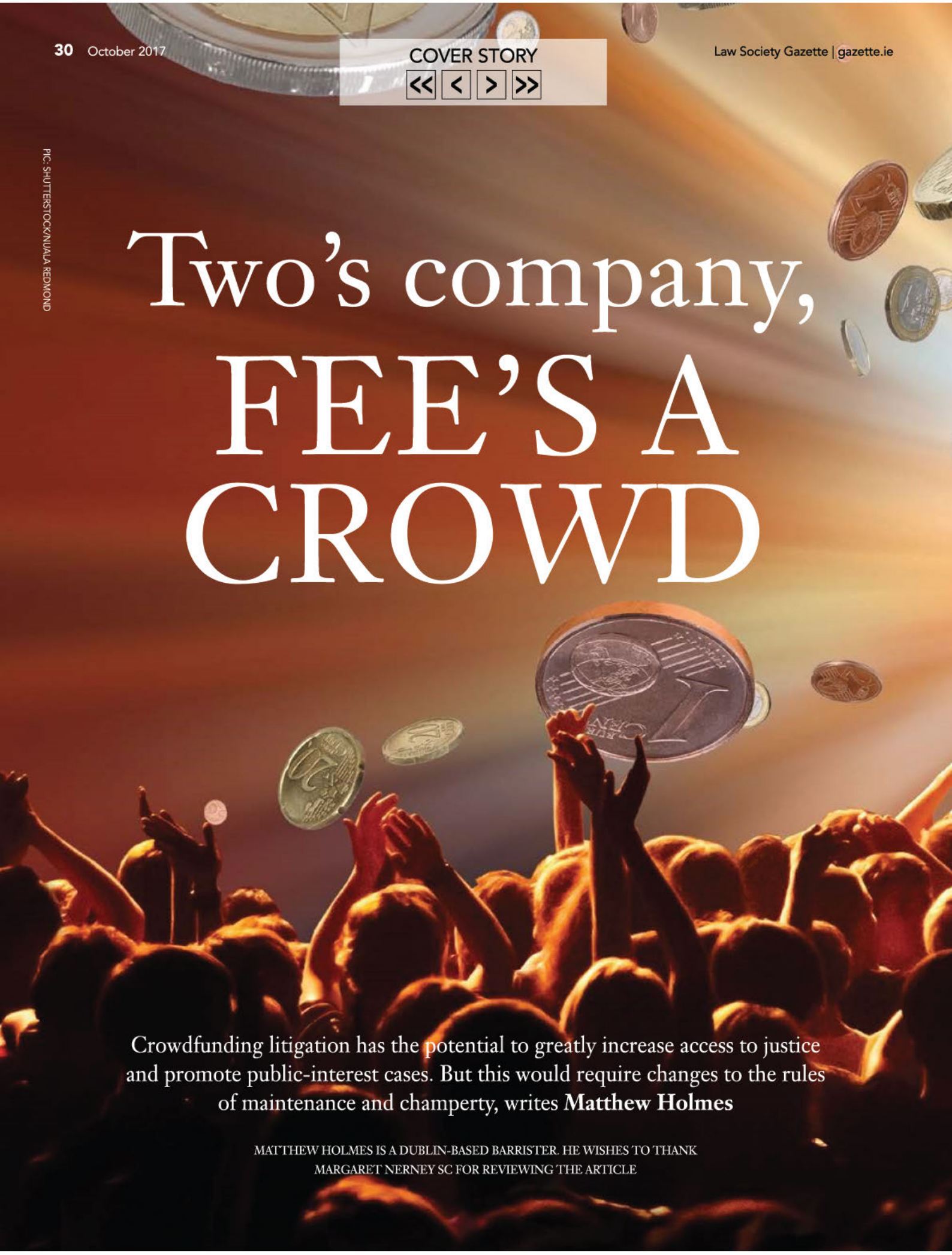
to anyone. I can support everything I say here with further evidence on request but have tried to keep the attachments to a minimum at this point.

I am not going to make subjective comment, the facts should speak for themselves independent of opinion, ideology, the specifics of the law suit or any other factor. What is important here is that no human being should have every aspect of their life, including food and accommodation in a direct provision centre, under the control of an organisation that is prepared to behave that way.

I am going to attach one last piece on the issues of a disabled person negotiating the courts unaided that has a far broader scope, I hope this will also be given consideration, particularly as I have recently found someone else left in a similar position, [redacted] and feel helpless in the face of my concerns about the outcome.

Yours Faithfully,

Gaye Dalton



PIC: SHUTTERSTOCK/NUALA REDMOND

Two's company, FEE'S A CROWD

Crowdfunding litigation has the potential to greatly increase access to justice and promote public-interest cases. But this would require changes to the rules of maintenance and champerty, writes **Matthew Holmes**

MATTHEW HOLMES IS A DUBLIN-BASED BARRISTER. HE WISHES TO THANK MARGARET NERNEY SC FOR REVIEWING THE ARTICLE

Maintenance and champerty are ancient concepts – and they are preventing lawyers from moving into the future. These two old legal doctrines on the funding of cases are stopping us from adopting one of the big social changes of our times: crowdfunding and the new 'sharing economy'. Crowdfunding has huge potential to affect how cases and – in particular – public-interest cases are paid for. However, these rules restrict the way cases are funded and prevent this new innovation from benefiting litigation.

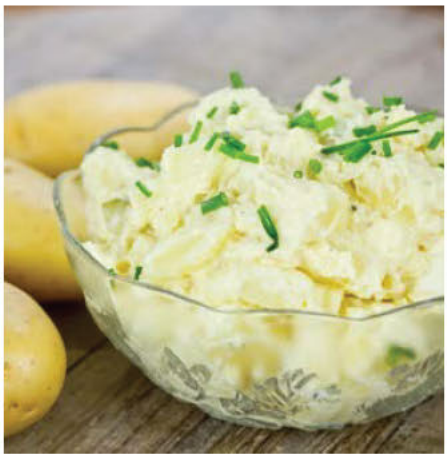
AT A GLANCE

- Crowdfunding is particularly popular with charitable causes and with people who cannot fund their ideas through conventional means
- Maintenance and champerty are rules on the funding of cases, which are designed to filter out frivolous and vexatious cases by stopping third-party funding
- The concepts of maintenance and champerty should be revisited in order to move litigation into the 21st century, while continuing to ensure that frivolous or vexatious cases do not proliferate

What is crowdfunding?

Crowdfunding does exactly what it says on the tin – funding by a crowd. This has been revolutionised by the internet. People seeking investments or donations can put themselves forward on websites like Kickstarter, Patreon or GoFundMe. These websites allow backers to pick a cause, product, or idea they like and to back it financially in exchange for a small commission. Individuals can choose to contribute as much or as little as they like to the project being funded. Fundraisers can offer rewards to their backers, depending on the website they choose. These rewards are usually linked to the amount contributed and can vary from a simple thank you, a copy of the final product or, for high-end contributors, unique opportunities such as appearing in the final product or meeting a celebrity.

Crowdfunding has been used to great success by all kinds of inventors, artists, and innovators. This type of funding is particularly popular with charitable causes and with people who cannot fund their ideas through conventional means. In April this year, the computer game *Star Citizen* raised over $140 million, beating the previous record of over $10 million set by the Pebble 'smartwatch', a watch that promised to connect to phones. In June 2015, *Forbes* magazine reported that crowdfunding would amount to $34 billion in investments, which is around $4 billion more than that invested by venture capitalists. It also said that the amount of money raised by crowdfunding would double every year. This is a huge chunk of change, which is being raised from the public. There are even crowdfunding websites that specialise in funding litigation: CrowdJustice, TrialFunder, and LexShares. These websites give investors the opportunity to invest in legal cases – they can search cases by cause of action, lawyer, or plaintiff. In exchange, they may get a share of the proceeds if the case is successful or settles, or they may just get to feel good because they have donated towards a worthwhile cause.



PIC: SHUTTERSTOCK

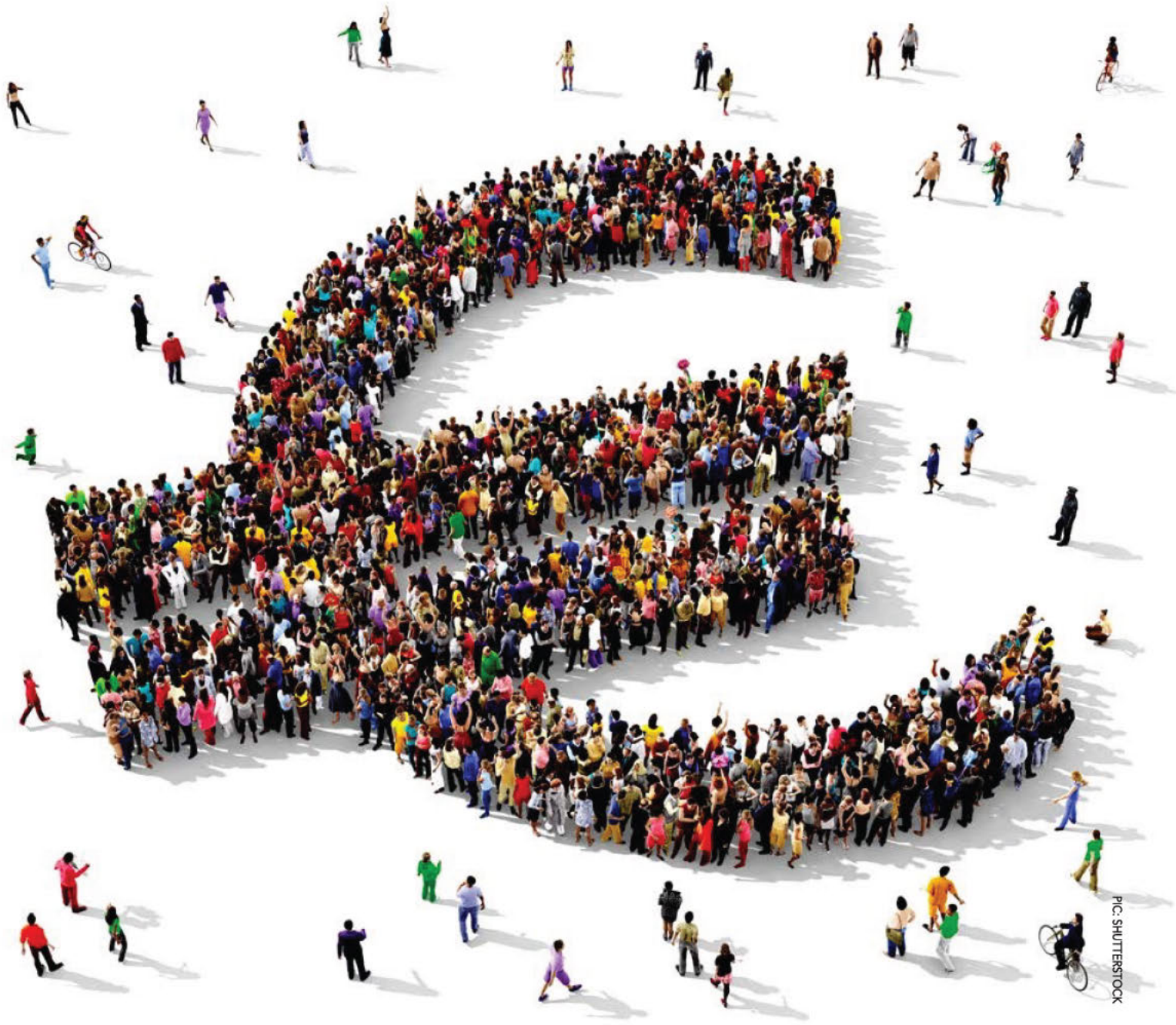
> ONE MAN IN OHIO SEEKING $10 TO MAKE A BOWL OF POTATO SALAD ENDED UP RAISING $55,492 AFTER HIS APPEAL WENT VIRAL

Crowdfunding is taking off with lawyers in our neighbouring jurisdiction. The largest funder there, Harbour Litigation Funding, has raised over £400 million and is so successful that it is looking for new claims, not new investors. The challenge to article 50 and Brexit in our High Court by the British tax barrister Jolyon Maugham QC raised over £70,000 on the CrowdJustice website in less than 48 hours. Over 1,800 people contributed, and almost £145,000 was raised in the end. Why hasn't crowdfunding taken off with Irish lawyers in the same way it has with their British counterparts? The answer lies in the rules against maintenance and champerty.

What are maintenance and champerty?

Maintenance and champerty are old rules on the funding of cases, which are designed to filter out frivolous and vexatious cases by stopping third-party funding. Maintenance is funding a court case in which you have no interest. Champerty is maintenance in exchange for a share of the proceeds. Maintenance and champerty are both torts and criminal offences in Ireland. The *Statute Law Revision Act 2007*, which repealed over 3,000 pre-1922 statutes, preserved statutes from 1634, 1540, and earlier, that criminalised maintenance and champerty.

The rules of maintenance and champerty are rarely discussed. McMahon and Binchy's *Law of Torts* only devotes five lines to them



PIC: SHUTTERSTOCK

in the third edition, and none at all in the fourth. However, they have recently become more prominent for two reasons.

The first is the Supreme Court decision from May of this year in *Persona Digital Telephony Ltd and another v Minister for Public Enterprise*. This is the first case directly concerning the acceptability of professional third-party litigation funding in Ireland. The plaintiffs in this case were seeking damages against the State and Denis O'Brien, but were unable to fund their case without outside help. Their funder had previously reviewed over 1,900 cases since 2007 and had funded cases in numerous other jurisdictions, including Britain and the USA. They claimed in the High Court that third-party funding should be allowed for public-interest litigation, but this was rejected by Donnelly J. The Supreme Court, in a leapfrog appeal, dismissed their appeal and emphasised that maintenance and champerty still remain crimes and torts in this jurisdiction. It did not rule on the constitutionality of these doctrines, as no constitutional challenge had been taken, noting instead that the constitutional issues were "perhaps for another day". It did express the opinion that the policy issues were so complex that they would be better addressed by legislation than by the courts.

The second reason maintenance and champerty have become more prominent is because of recent publicity concerning contempt of court in the aftermath of the Jobstown trial. In an article written by Josepha Madigan TD in the *Irish Independent* on 8 July 2017, she suggested that, in addition to the need for legislation in the area of contempt of court to limit what could be put on social media during the course of a criminal trial, other rules – such as those

> THE RULES OF MAINTENANCE AND CHAMPERTY ARE RARELY DISCUSSED. MCMAHON AND BINCHY'S *LAW OF TORTS* ONLY DEVOTES FIVE LINES TO THEM IN THE THIRD EDITION, AND NONE AT ALL IN THE FOURTH

relating to the funding of cases – might need to be re-examined in the light of the internet and crowdfunding.

Maintenance and champerty were abolished in Britain in 1967. Litigation funding is now a thriving industry there. According to the *Wall Street Journal*, American funders have invested more than a billion dollars into litigation funding in the USA. If the rules against maintenance and champerty are abolished or amended in Ireland, then Irish cases may benefit from this as well.

Possible problems

One of the biggest risks with third-party funding is that the third party may seek to influence the case. On the one hand, people seeking funding for litigation might be tempted to exaggerate the strengths of their case, with the result that their backers may be less inclined towards settlement. On the other, large funding companies may exert undue pressure on plaintiffs to settle, in order to recoup their investment, and therefore be somewhat less concerned with achieving justice by seeing litigation through to finality. The American websites specifically refer to a payout for investors when a case is settled. Members of the public funding a case may have difficulty assessing how strong or weak a case is, to say nothing of the unexpected twists and turns that every case takes as it progresses. One way of meeting this difficulty would be by making it a condition of all funding agreements that backers cannot influence the progress of the litigation or the decision to settle by, for example, making it an offence to do either. Another concern is that investors might scoop up too much of the award, leaving the deserving plaintiff with little for their trouble. This could also be met with limits to payouts in fee arrangements.

Benefits

It is axiomatic that, for want of funding, there have been many good but unlitigated cases. Crowdfunding provides an alternative to other possible previous methods of funding these cases, such as, for example, after-the-event insurance, 'no foal no fee' arrangements, seeking a contribution towards costs, or even having a number of backers coming together to form a company to litigate a case. All of these methods have their own difficulties and problems.

Crowdfunding has proven itself to be a fast and effective way of raising a lot of money in a short period of time. It allows a large number of people to contribute towards a cause they believe in. Small contributions can quickly amount to a large figure if made by many people. Public-interest litigation is likely to receive a large boost, as are cases with deserving and sympathetic parties.

The rules against maintenance and champerty were introduced to stop worthless cases being taken. It should be noted that large litigation funders have no interest in backing such cases. If they did, they'd only stand to lose their investment. This is admittedly more of a risk with public crowdfunding (one man in Ohio seeking $10 to make a bowl of potato salad ended up raising $55,492 after his appeal went viral). However, the usual remedies against frivolous or vexatious cases should be more than enough to deal with these situations.

Possible compromise?

There is a possible compromise between those who want maintenance and champerty abolished, and those who do not. The American sites specialise in investing in commercial litigation in exchange for a share of the outcome, whereas the British sites specialise in funding for public-interest litigation without the prospect of any reward. This latter approach of allowing only maintenance may be a possible compromise. There is much more scope for difficulty if champerty is also permitted than if maintenance alone is allowed. If funders are acting altruistically, rather than expecting a return on investment, this is much less likely to cause problems. Even non-financial rewards, such as a commemorative certificate, T-shirt, or mug are much less likely to be problematic than a share in the proceeds.

There is case law that shows that charity is an exception to the rules against maintenance and champerty (see *Thema International Fund v HSBC Institutional Trust Services (Ireland)*). It is probably permissible to set up a crowdfunding account to fund a case taken for charitable reasons, particularly if no reward is offered. This could prove to be a very successful tactic with human-rights lawyers seeking to advance a client's claim. Charities and pressure groups may find themselves better able to take cases within their areas of interest. It has traditionally been easier to establish *locus standi* in public-interest cases on issues of general importance. Now such cases may also be easier to fund. This, I believe, will ultimately have benefits for society as a whole.

The rules of maintenance and champerty have been done away with in a number of jurisdictions. Third-party funding and crowdfunding litigation have the potential to greatly increase access to justice and to promote and progress deserving public-interest cases. In my opinion, the medieval concepts of maintenance and champerty are outmoded and need to be revisited in order to move litigation into the 21st century while, at the same time, continuing to ensure that frivolous or vexatious cases do not proliferate in a new and more liberal litigation-funding landscape. g

LOOK IT UP

- *Persona Digital Telephony Ltd and another v Minister for Public Enterprise* [2011] 3 IR 654
- *Thema International Fund v HSBC Institutional Trust Services (Ireland)* [2011] 3 IR 654

My MythBuster

Death by Due Process

All I knew about Caroline Flack was that her dancing had mesmerised me, I couldn't even remember her name, but I could never forget her dancing, and I will never know why it was not her career, it should have been.

Her death was a huge trigger because over the past 18 months I came so close to the same end, several times, in similar circumstances and each time I had to save myself, not because there weren't people who would have helped if they could (for a 24 carat recluse there were surprisingly many) but I had to hide the depth of my desperation from all of them, because there was literally nothing they could have done.

The worst thing you can do to anyone is tell them you are desperate enough to have no option but
- our life if there is nothing of benefit they can do. In my case that is a little worse for others,
- se all the "usual options" would have the opposite effect and make things far worse. Imagine if someone who cares about me had taken my word for that, kept the "usual options" away from me and I couldn't save myself anyway? What was that going to do to them going forward?

I am not going into the whole story. I am not going to tell you about every time I came close to ending my life throughout it. I am going to tell you about the time that is most relevant to Caroline Flack or any vulnerable adult in the court system in future, because it has no obvious villains, except for alarming flaws in due process itself.

I am autistic with severe compounded CPTSD. It is also my nature to get things over with as fast as possible, but over the first few months in the courts I came to realise that I needed at least 5 weeks between brief mentions in court to recover and avoid the stress compounding going in to the next mention. A mention in court is significantly more stressful for me than for most people simply because to get into the court itself just to file a paper (dealing with some of the nicest, most helpful people you will ever meet at every step of the way) takes days to prepare for and days of recovery.

At mention on 26 June 2019 the date for a full hearing was set for 23 July, only one month away, and not even enough time to recover and prepare for a brief mention. I objected to this, explaining why, and asked for more time. I was refused. As far as I can tell the Judge in question was genuinely confused as to why I would need more time, and felt it would even be better for me to get it over with, in a very sincere way. I had already stated my case was complete and I was ready to move to hearing, so all the usual strategic reasons why a case might be dragged out did not apply.

Usually I would agree with the Judge, given a choice between tackling a difficult issue tomorrow or in April I would always opt for tomorrow. But the cumulative nature of stress in me changed this dramatically. I literally need time to get myself under control and stop constantly revisiting the previous stress to be able to concentrate and maintain my self control as the new stress builds up.

A full hearing in a month's time meant I would be incapable of sustained coherence, let alone controlling myself. There is no doubt I would have melted down completely in court, way outside my own control. As far as I could ascertain the most likely result would be jail for contempt of court. As a result I could not imagine being able to force myself to attend the hearing, which, to the best of my knowledge, would mean either arrest on bench warrant or a ruling I could not comply with, against me by default or even both.

I was advised by the court registry on how to make an ex parte application in the Master's Court to get a later date. So I did so, armed with a letter from my GP who consulted a solicitor about the best form of words to use for the specific purpose.

I made ex parte application. The Master of the circuit court at that time seemed a very kind and empathetic man, but even confronted by a note from my GP STATING I would be unfit to present my case on the set date he could not understand why that would be, and again, genuinely believed it would be better for me to get it over with sooner rather than later. He explained his reasoning to me in a way that was intended to be comforting.

Just as an afterthought before leaving the house I had stuffed all the medical notes I had presented to the court 6 months earlier requesting reasonable accommodation for the needs of my disability that should have been in the case file in front of him. I do not know whether they had become separated from the file or were just hard to find, but those notes decided him to grant the adjournment I needed.

□ ıd not put those notes in my bag as an afterthought, there is no doubt in my mind that I would taken my own life at some time between 7 July 2019 and 23 July 2019, not because of any aspect of the case itself, not because of negligent or abusive behaviour by any person involved, but simply because due process had nowhere to go in terms of accomodating my disability so that I could function sufficiently at hearing to avoid jail for contempt of court, let alone to conduct my case, and all the willpower and/or support in the world could not have changed that.

I would imagine Caroline Flack found herself in a similar trap specific to her own vulnerability (in her own words (https://www.theguardian.com/tv-and-radio/2020/feb/19/caroline-flack-family-releases-unpublished-instagram-post)). I would imagine a lot of people do.

It isn't up to a Judge to evaluate the the vulnerability of persons before the courts, how could they possibly have the expertise to deal with and, if needs be, accommodate, all vulnerability equally while judging the case impartially?

The needs to be a court service, independent of the courts themselves, available to any person before the courts with exceptional mental health needs or disability.

I can assure you, in Ireland, there is no such thing. I know, I spent days on the phone trying to find one.

□