

Northern Ireland Court Service

Consultation Paper

Increasing the Jurisdictional Limit of the County Courts of Northern Ireland



A response by the Association of Personal Injury Lawyers

May 2010

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 90 members in Northern Ireland and around 4,900 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Given the experience of our members, we have sought comment from our Northern Ireland members before preparing this response. In addition, we consulted with the following members and would like to acknowledge their assistance:

Stephen Gray – APIL Executive Committee Member;

Oonagh McClure – Co-ordinator – APIL Northern Ireland Regional Group;

Lois Sullivan – Secretary – APIL Northern Ireland Regional Group;

Frank MacElhatton – APIL member; and

Peter Jack – APIL member.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL's remit relates only to personal injury law (including medical negligence) and our response is limited to this area of law and practice.

Executive Summary

APIL welcomes the opportunity to respond to the Northern Ireland Court Service's (NICS) consultation regarding the proposed increases to the jurisdictional limit of the county courts.

- On the basis of what our members have proposed as an adequate figure for the financial jurisdiction limit of the county courts, we would suggest that an increase to £25,000 would be sufficient for the present time and for years to come.
- If there is to be an increase of the financial limit of the jurisdiction of the county courts there will need to be a greater degree of specialisation of the judges. Judges who are familiar with a particular area of law can deal with cases more efficiently than those who are not. Personal injury cases make up a large proportion of civil cases in Northern Ireland and represent a complex area of law. We believe it makes good economic sense to have specialist judges in this area, and that this would result in better quality, and more consistent, decision making.
- Clinical negligence cases should be excluded from the county court because by their very nature they are complex. However, we remain concerned that there are many other types of claims, such as disease cases, that are relatively low in value but that are extremely complex in the issues involved. To ensure that such cases are dealt with efficiently, we would suggest that dedicated judges with a suitable specialism hear these cases.
- In Northern Ireland, retaining the current county court procedures but raising the jurisdictional limit would, for example, mean there would be no disclosure of a defence which could be seriously detrimental to a plaintiff's submissions and case preparation. The current rules in the county court in Northern Ireland should be

changed, if an increase in the jurisdiction limit of the county court is introduced, to address this imbalance.

- Specialist practitioners favour the High Court over the county court due to a higher level of judicial specialisation. The High Court delivers high quality and consistent decisions and is also more reliable in terms of timings of hearings, which is important if expert witnesses are expected to attend court.
- We believe that even if the financial limit of the county court is increased, the financial jurisdiction limit of the District Judges' courts should not be increased. District judges are often put under immense pressure from listing departments to deal with cases in the shortest amount of time.
- Personal injury law is unlike any other. Most defendants are covered by insurance and claims made against them are dealt with by major multi-national enterprises which are massively resourced. The claimant is an individual. There is a David and Goliath struggle between the injured person and the commercial enterprises of modern insurers. It is essential that those who are injured should not be treated as commodities or commercial transactions.
- There are inherent costs in all litigation. These are unavoidable if cases are to be properly prepared. Levels of expenses are dependent on the way that a case is conducted. Plaintiffs' costs are, though, an inherent part of a fault based system which requires plaintiffs to prove their claim, especially where liability is routinely denied.

Our Submission

Section One

Jurisdiction of the County Court

As an organisation we recognise the desire for reform of the court system in Northern Ireland. It is essential that any such reform develops a robust court structure to ensure a fair outcome in those cases where litigation is necessary. No further work should be transferred to the county court until some of the rules of the High Court are replicated. For example, there would need to be the provision for a proper defence to be filed.

What needs to be addressed before the financial limit is increased

Specialisations within the County Court

If there is to be an increase of the financial limit of the jurisdiction of the county courts there will need to be a greater degree of specialisation of the judges. Judges who are familiar with a particular area of law can deal with cases more efficiently than those who are not. Personal injury cases make up a large proportion of civil cases in Northern Ireland and represent a complex area of law. We believe it makes good economic sense to have specialist judges in this area, and that this would result in better quality, and more consistent, decision making.

One member stated that,

"I believe that once injuries attract an amount over £15,000, they are serious enough, and the action is significant enough to the injured person, that they deserve an experienced judge with specialised knowledge".

Specialist judges are far better placed to manage personal injury cases. At the moment it is possible to come before a judge who has never conducted a personal injury case while practising law, having spent their entire career specialising in a different area. This is because of the way the legal profession has developed over recent decades, with solicitors and barristers increasingly specialising in a particular area of law from an early stage in their career. This same trend means, however, that it should be easier than ever to recruit experienced specialist lawyers in to the judiciary. We believe that introducing specialist judges to deal with personal injury claims where possible would be a sensible and cost effective measure. APIL firmly believes that appropriate training should be provided to all those appointed to judicial positions. Training and performance monitoring should then be conducted on a continuing basis during service to ensure the specialist's skills, and experience, remain relevant. We believe there should be initial and ongoing training for judges and that this should be endorsed by the introduction of a "ticketing" system, whereby judges who have undertaken such specialised training are allocated cases which

reflect their specialism through certification. This system is already in place within family law and criminal law in England and Wales and we believe it should be extended to personal injury in Northern Ireland. A further benefit of such a system is that having specialist, or ticketed, judges' means that there will be specialist court lists, and so the courts' time will be used more effectively and efficiently.

Clinical negligence should be excluded

We agree with the proposal that clinical negligence cases should be excluded from the county court because by their very nature they are complex. However, we remain concerned that there are many other types of claims, such as disease cases, that are relatively low in value but that are extremely complex in the issues involved. To ensure that such cases are dealt with efficiently we would suggest that, if the financial jurisdiction limit of the county courts is increased, dedicated judges, with the specialism suggested above, are in place to deal specifically with these types of complex cases; who have a sound knowledge of this area of law, and who have the knowledge to award appropriate damages or costs. Only after this has been done should complex cases such as disease claims be heard within the county courts.

Availability of Judges

In addition to the specialisation of judges, we believe there should be less reliance on temporary judges who may have to hear complex evidence on medical issues and quantum.

Procedural Rules

The civil courts in England and Wales are used within the consultation paper as a comparison, and as an example of why the financial limit of the county courts should be increased. However, in England and Wales the working methods are different to Northern Ireland as the practitioners adhere to the Civil Procedure Rules (CPR). In Northern Ireland there is no such system or provision. There is a high risk that if the county court jurisdictional limit is increased and no additional rules are put in place, access to justice will be impeded. The CPR system in England and Wales allows for early disclosure of

documents and encourages good practice between solicitors; however, in Northern Ireland, retaining the current county court procedures but raising the jurisdictional limit would, for example, mean there would be no disclosure of a defence which could be seriously detrimental to a plaintiff's submissions and case preparation. The current rules in the county court in Northern Ireland should be changed, if an increase in the jurisdiction limit of the county court is introduced, to address this imbalance.

We would welcome the introduction of a single set of rules across all of the courts to counteract these potential problems when dealing with higher value cases. We recommend that a practical solution to this problem could be to restructure the pleadings system of the county court by developing an early "cards on the table" approach as exists in the High Court. A single set of rules for both courts could solve this problem.

Why practitioners favour the High Court

We understand that the NICS has conducted research which suggests that many cases issued in the High Court do not need to be heard in the High Court in terms of quantum and complexity¹. We also understand that the evidence of this research suggests that 60% of cases issued within the High Court settle for less than £15,000, which implies they could have been issued in the county court.

Specialist practitioners favour the High Court over the county court due to a higher level of judicial specialisation. The High Court delivers high quality and consistent decisions and is also more reliable in terms of timings of hearings, which is important if expert witnesses are expected to attend court. We would also submit that from the outset it may appear that the case is worth more than £15,000 and so it is issued in the High Court, but as the case progresses issues such as contributory negligence and causation may be raised and so the case may eventually settle for less. This does not necessarily mean that the current financial jurisdiction limit of the courts is unsuitable, but merely highlights the nature of personal injury law and the complexities that exist within it.

¹ *Northern Ireland Court Service Consultation Paper Increasing the Jurisdictional Limit of the County Courts in Northern Ireland – Consultation Paper*, March 2010, Page 18 paragraph 4.

If there was specialisation within the county courts through a ticketing system, our members would feel more confident with an increase in the jurisdictional limit of the county courts.

Same problem, different limit

Continuing from the section above, we believe that the problem identified by the NICS that the evidence of their research suggests that 60% of cases issued within the High Court settle for less than £15,000, which implies they could have been issued in the county court² is one that will continue if the jurisdictional limit is increased. Practitioners that have borderline cases will still question which court to issue to in, and if they feel that case is worth more than whatever the jurisdictional limit of the county court is increased to, they will issue in the High Court; however, a percentage of these will settle for less than whatever the jurisdictional limit of the county court is increased to due to issues which have risen, such as contributory negligence and causation, as the case has progressed. This problem raised by the NICS in their consultation paper will still be there, whatever the limit. We believe that an increase in the financial jurisdictional limit will not remove this problem, but merely continue it at a higher financial level. We would recommend that the only way this problem can be removed is to introduce a ticketing system of the judges so that practitioners will have confidence in the judiciary's grasp of the appropriate law as well as current caselaw.

Automatic right of appeal

Our members are keen to keep, within the county court, the provision for the automatic right of appeal on quantum and liability.

The county court limit

We believe an immediate increase to £50,000 would overwhelm the county courts, and sufficient safeguards need to be considered in conjunction with the financial limits.

² Northern Ireland Court Service Consultation Paper Increasing the Jurisdictional Limit of the County Courts in Northern Ireland – Consultation Paper, March 2010, Page 18 paragraph 4.

Additionally, adequate resources need to be made available for such reforms, details of which are not included within the Impact Assessment.

Our members have also expressed concern that there is insufficient detail on how an increase in the jurisdiction of the county courts will be managed through the following questions:

- How will the county courts be managed to accommodate the vast increase in workload?
- How will court listing work given the proposed increase in the volume of cases within the county courts jurisdiction?
- Will the length of time to getting a case heard increase?
- Will legally-aided plaintiffs lose the benefit of senior counsel's representation in many cases?
- Medical consultants, who would normally only attend the High Court in Belfast, would be expected to travel to county courts across the country. Medical consultants are not likely to want to do this as they prefer to attend Belfast, and agree only to do this on certain days as it is. It is also likely to increase costs as travel expenses for the consultant will be expected to be covered by the plaintiff.
- How many additional judges will be appointed, and at what cost, to deal with the increased workload?
- Specialist judges, a "ticketing" system, would need to be appointed to deal with personal injury.
- How will these changes be funded?

We, therefore, believe that there should be an increase in the financial jurisdictional limit of the county courts to no more than £25,000. £25,000 takes into consideration past inflation and future inflation, however, we would stress that such an increase should not be made without the above measures being put in place first.

Our members have also suggested that further reform of the court system in Northern Ireland could be achieved through the expansion of modern technology. Our members have stated that some hearings could be conducted via telephone conferences. This method of operating could save court time and expenses.

Section Two

Personal injury claims in the District Judges Court

We believe that even if the financial limit of the county court is increased, the financial jurisdiction limit of the District Judges' courts should not be increased. District judges are often put under immense pressure from listing departments to deal with cases in the shortest amount of time. Personal injury cases, even those of a lower value, are not necessarily legally straightforward as they often involve complex arguments on apportionment or causation, and medical evidence can often involve exacerbation injuries or pre-existing conditions. We would therefore suggest that only specialist judges who have been ticketed, and hold a certificate, should hear personal injury cases.

Section Three

Why Personal injury should continue to be excluded from the Small Claims Court

Full and just compensation without litigation?

In the consultation paper³ it states that many cases heard in the High Court do not appear to require the needs of the High Court in terms of value. The paper goes on to say that, a proportion of cases in the Queen's Bench Division are disposed of for sums below the county courts' upper financial limit of £15,000. This is repeated later on in the Impact Assessment⁴ where it states that there is evidence to suggest that due to the relatively low limit of the present jurisdiction of the county court, large numbers of cases in the High Court are disposed of for sums below the county courts financial limit. We would argue that at the point of issue, it is not always known what the financial outcome of a case will be. Initially it might be thought that the case is worth £25,000 and so is issued in the High

³ Northern Ireland Court Service Consultation Paper Increasing the Jurisdictional Limit of the County Courts in Northern Ireland – Consultation Paper, March 2010, Page 18 paragraph 4.

⁴ Northern Ireland Court Service Consultation Paper Increasing the Jurisdictional Limit of the County Courts in Northern Ireland – Equality Screening Exercise/Impact Assessments, March 2010, Page 22 paragraph 1.

Court. However, due to issues over liability it may be that this then decreases, which means that presently it could have been heard in the County Court but at the outset that was not known. We would also suggest that the evidence which the NICS has used for this only takes into consideration the cases which go to trial, and not those which are settled prior to this. In order to gauge a full picture of the market, we would suggest that all cases should be taken into consideration.

Achieving fair and just compensation without litigation is the best outcome for plaintiffs and society as a whole, but this is not currently realised because of the way in which insurers handle claims. Plaintiffs are often forced to raise proceedings because defendants or their insurers do not make realistic offers to settle cases.

The relative positions of the parties

Personal injury law is unlike any other. Most defendants are covered by insurance and claims made against them are dealt with by major multi-national enterprises which are massively resourced. The claimant is an individual. There is a David and Goliath struggle between the injured person and the commercial enterprises of modern insurers. It is essential that those who are injured should not be treated as commodities or commercial transactions. The aims of the insurance industry are at odds with this. They are absolutely committed to reducing this debate to an issue about cost and process with little or no consideration for the fact that the system should be about delivering access to justice for injured people. Their professional duty and responsibility is to their shareholders whilst claimant lawyers have a professional duty to act in the best interests of their clients. The insurers' over-riding duty to their shareholders explains their ceaseless efforts to inhibit the right of injured people to obtain full and proper redress through effective legal representation. Insurers will not stop until they have stripped the injured person of access to independent legal representation.

It is often overlooked that an injured person can only succeed in recovering damages if they can establish that another person is legally liable. It is noteworthy though that the insurance industry seek to advance the cause of wrongdoers, the defendants, in a way

that would not be acceptable in the criminal field. It is fundamentally wrong to suggest that there should be an even-handed approach to the interests of the victim and the “interests” of the defendant.

Section Four

Why scale costs should be increased

Legal expenses in litigation

Professor Dame Hazel Genn, who is a leading authority on civil justice in England and Wales, has recognised that the vast majority of personal injury claims involve lower damages and these claims have an irreducible minimum amount of cost, which means that at the very lowest levels of damages, costs will be more than the damages recovered. This is due to the burden of proof and the need for claimants to prove their case, and of securing the most basic evidence. She said every case regardless of value would incur a certain unavoidable cost.

There are inherent costs in all litigation. These are unavoidable if cases are to be properly prepared. Levels of expenses are dependent on the way that a case is conducted. Plaintiffs’ costs are, though, an inherent part of a fault based system which requires plaintiffs to prove their claim, especially where liability is routinely denied.

If the financial jurisdiction limit of the county courts was increased, this would also affect the level of costs which solicitors currently receive, as some of their cases would now be issued in the county court instead of the High Court. The majority of our members feel that the current scale costs for the county court barely reflect the amount of time that is required to prepare the case adequately for a hearing. Scale costs should, therefore, be increased to reflect the work conducted by a solicitor no matter which court the case proceeds in and be commensurate with the added value and complexities of each case.

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