

6 May 2011

Access to Justice Review Team
Mays Chambers
73 May Street
Belfast
BT 1 3JL
By e mail reviewteam@courtsni.gov.uk

Dear Sirs

Access to Justice Review

We are grateful for the opportunity to submit further evidence to the Access to Justice Review Group. APIL have over 100 members in Northern Ireland 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.

Mediation

Whilst formal mediation conducted by trained mediation is an essential part of every personal injury practitioner's 'toolkit', it should not become compulsory. APIL has an ongoing commitment to ensuring claimant solicitors are aware of mediation and how it may be used to benefit injured people. It can, however, be expensive and under no circumstances should it be forced upon unwilling parties by the courts.

Alternative dispute resolution (ADR) is a more cost effective process that all skilled solicitors adopt in every case. It allows the solicitor the freedom to decide which method of resolving the issues within a case is most appropriate for their client. ADR includes negotiation and discussion with opponents throughout the life of the case in an attempt to define and narrow the issues involved. More formal 'round table' conferences, early neutral evaluation; mediation; and arbitration is also included in this definition. The object with ADR is to try to reduce the number of cases settled 'at the door of the Court', which are wasteful both of costs and judicial time.

Funding

APIL remain concerned about access to justice in Northern Ireland. There is already a funding gap for those not eligible for legal aid. Any reduction in the amount of legal aid

available for personal injury law would have a further significant and detrimental effect on access to justice for injured people. Civil legal aid exists to ensure that ordinary people can access justice; reducing the fund further will mean that many people will not be able to access the justice system because there is no suitable alternative. Whilst we recognise the need and drive for efficiencies in these difficult financial times, reform must not be to the detriment of the injured person.

We understand that the review team are assessing the benefits of access to justice through conditional fee arrangements (CFAs) and After the Event Insurance (ATE) as they operate in England and Wales¹. The recent announcement by the Ministry of Justice in England and Wales to end the recoverability of success fees and ATE will mean that access to justice is limited for those with the more complex cases. We do not support a system where damages that have been carefully calculated are reduced to pay for legal costs. In addition capping success fees to a percentage of damages where recoverability is abolished is going to prevent the more difficult cases being taken on and may lead to solicitors 'cherry picking' only the cases that are most obviously going to be successful. Certain types of case that are by their very nature difficult to pursue, such as horse riding accidents, stress claims and slip and trip cases are going to become impossible to pursue if the risks outweigh the success fee that can be claimed. This could lead to a hierarchy of desirable cases, with RTA passenger claims being most desirable and the least desirable cases being those such as stress at work. Our full concerns about such reform and the implications for the injured person are included in our response to the Ministry's consultation a copy of which is attached. Our view remains that in Northern Ireland an alternative method of funding needs to be sought.

Accreditation

NHS treatment and care is a cornerstone of society. Prevention of negligence and higher standards of care are in the interests of everyone. Our members are there to assist people when care turns into medical error and substandard treatment. We note that the review team have acknowledged that the funding a clinical negligence cases can be particularly difficult and that it might be possible to retain legal aid for these cases. Clinical negligence cases require substantial investment at the outset of the claim; considerable time is spent investigating breach of duty and causation. It is not unusual for disbursements to amount to £50,000 to £100,000 in birth injury cases and other cases of a serious nature. It is essential that access to justice is retained for these members of society.

¹ *Access to Justice Review Northern Ireland, The Discussion Paper*, Northern Ireland Courts and Tribunals Service, November 2010, Para 4.25-4.27 pages 20-21.

Further details on the suggestion that, legal aid funding for clinical negligence cases will only be granted where practitioners are accredited, would be welcome. APIL support accreditation, we have our own accreditation scheme which was established in 1999 by the College of Personal Injury Law (CPIL). In 2005 the successful activities of the College were integrated into the APIL membership structure in order to provide a clear single identifiable kitemark to members of the public seeking a suitably qualified lawyer to handle their case. We may therefore be able to assist the review panel in the further development of this idea. What does need to be borne in mind is that personal injury market is not the same in Northern Ireland as it is in England and Wales. There are a limited number of practitioners in this sphere of litigation who firms practice only in this area. Any such scheme must not prevent smaller firms dealing with all types of personal injury claims from being able to become accredited.

We appreciate this final opportunity to put forward our views to you for your consideration. We would be happy to offer further comment if necessary.

Yours faithfully

Abigail Jennings
Head of Legal Affairs
Association of Personal Injury Lawyers
Unit 3
Alder Court
Rennie Hogg Road
Nottingham
NG2 1RX
DX: 716208 Nottingham 42