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Dear Sirs

Consultation on Reform of Publicly Funded Legal Representation in the Civil and Family Courts

The Association of Personal Injury Lawyers (APIL) was formed by claimants' lawyers with a view to representing the interests of personal injury victims. It is a not-for-profit organisation with over 20 years history working to help injured people gain access to justice they need and deserve. APIL currently has over 4,400 members, 81 of which are in Northern Ireland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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;
- To provide a communication network for members

APIL welcomes the opportunity to comment on the proposed reform of publicly funded legal representation in the Civil and Family Courts. Our remit relates only to personal injury including clinical negligence cases our response only deals with the same.

1. We are concerned that the proposed reforms will hinder the injured person's right to compensation. The proposals indicate that prior authority would be required, or a certain set of criteria would need to be satisfied before senior counsel could be instructed in a publicly funded case. There would also need to be prior authority for junior counsel to be instructed in a case where authorisation for senior counsel has already been granted. Senior counsel is vital in all High Court personal injury cases, and also in the more complex cases in the County Court, where the upper limit of the jurisdiction is to be raised from £15,000 to £30,000 from February 25th 2013. To attempt to remove legal aid funding for counsel in these cases is illogical, and will have dangerous consequences for access to justice for vulnerable injured people. There should not be the need for prior authorisation, or a set of criteria that need to be met before authority for counsel can be granted.
2. It is essential that there must be equality of arms between the individual claimant who is often a one-time user of the court system, and the well-resourced defendant. This fundamental principle must not be jeopardised by the proposals. The injured claimant will be up against insurers who will not need to ask for prior authority or meet a certain set of criteria in order to obtain senior counsel. It is necessary that the claimant has the opportunity to be represented by counsel with the same level of expertise and experience as the defendant, to ensure equality of arms and therefore access to justice. There should not be any need for the claimant to satisfy extra requirements to obtain the same level of representation as the defendant.
3. The consultation document suggests that senior counsel should not be authorised in the County Court. Senior counsel will be vital in the County Court once the jurisdiction increases from £15,000 to £30,000. This will mean that potentially very complex cases, which were previously dealt with in the High Court, will be heard in the County Court, and senior counsel will be required to represent the claimant to ensure that there is access to justice and the claimant can obtain the amount of compensation that they require and deserve. Therefore we recommend that senior counsel should be present in clinical negligence, and other complex cases in the County Court. County Court judges will not have dealt with clinical negligence cases before (as previously, they were always issued in the High Court), and so will be inexperienced and this may hinder a claimant's access to justice. Senior counsel must be present to ensure that the claimant has access to the compensation that they deserve, especially as they will be against an insurance company who will be freely available to instruct Senior Counsel in any case, if they so wish.

4. One of the proposed reforms is that where senior counsel is funded, the applicant must set out the reasons why the support of junior counsel is required, and to what extent. This suggests that where senior counsel are instructed, it is likely that junior counsel will not be needed. This is not true for complex personal injury cases. Senior and junior counsel have very different roles in a case. Once engaged, senior counsel will usually do most of the advocacy in court. Research, preparation and legal submissions are often drafted by junior counsel after taking instructions and guidance from senior counsel who will approve the final drafts. Therefore having both senior and junior counsel in more cases would be cost effective, as junior counsel would do the majority of the drafting, with senior counsel coming in at the end to present the case in court. Junior counsel are vital in cases where senior counsel are retained, as they will liaise with the client and offer vital support to the injured person, whilst senior counsel will focus on the advocacy.

5. Whilst we appreciate that cuts do need to be made to ensure the longevity of the legal aid scheme, we do not believe that removing funding for senior counsel (and in some cases junior counsel) in personal injury cases, would be the correct approach. Costs must be kept down, but figures show that the majority of publicly funded personal injury cases actually succeed and therefore claimants make no claim on the legal aid fund. In 2011/2012, 75% of medical negligence cases and 81% of road traffic accident cases that were legally aided were won and settled¹. In at least three quarters of the cases therefore, there was no cost to the legal aid fund. In addition to successful legal aid cases saving money, they are also used as a lever to ensure that insurance companies are paying the CRU back to the government, and that the Hospital Authorities are receiving due payment for the costs when someone is injured, for example the treatment received in A & E, and for the calling out of ambulances and so forth.

6. Aside from the need for equality of arms and requiring junior counsel for the support the vulnerable injured party, having senior counsel (especially when against a defendant who has instructed senior counsel to represent them), will vastly increase a case's chances of success. In the majority of cases where a certificate is granted in respect of a money damages case, there will be no cost to the fund as only lost cases are paid out of the legal aid fund. It is obviously, therefore, in the interests of the Department of Justice and the Legal Services Commission to ensure that as many legally aided cases as possible succeed. Civil Certificates will be issued, but they will not be claimed on, meaning no money will need to be paid out. If senior counsel is no longer funded, then the number of cases succeeding against

¹ Northern Ireland Legal Services Commission Statistics

the funded resources of the insurer - who will have no difficulty instructing senior counsel - will fall.

We hope that our above comments prove useful to you. If you have any other queries, please do not hesitate to get in contact.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Warren', with a stylized, cursive script.

Alice Warren
Legal Policy Officer