

**Department of Justice for Northern Ireland
Safeguards to Protect the Individual Decisions on the Granting of
Civil Legal Aid**



A response by the Association of Personal Injury Lawyers

May 2013

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,700 members, 84 of those in Northern Ireland, committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

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.

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

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Introduction

1. APIL welcomes the opportunity to comment on the latest Department of Justice of Northern Ireland (DOJNI) consultation concerning legal aid. It is extremely important to safeguard legal aid, as it is the lynchpin in ensuring that vulnerable people can obtain access to justice. It ensures equality of arms and a level playing field between the defendant and claimant. We note that some of the proposals in the consultation document are only in early stages of development. We find it difficult to pass comment on these, but will gladly do so once they are provided in full.

Q1 Do you agree that the proposals in this paper provide adequate safeguards over the award of civil legal aid by an agency of the Department of Justice?

Proposal 1: Decisions on individual cases are to be taken by a Statutory Office Holder

2. We have concerns that as the Statutory Office Holder will be a civil servant, they will not be legally trained. If the person in charge of making decisions on individual cases is legally trained, then they will be more experienced, and this will reduce the need to appeal, so will reduce the Agency's workload.

Proposal 2: Ministers are to provide general guidance and direction on legal aid policy

Proposal 3: A requirement of any guidance and direction given by the Minister to be published

Proposal 4: Ministers will be specifically prevented from issuing guidance on or direction about the discharge of the SOH functions in relation to individual cases

3. These proposals are in the early stages of development. We agree in principle with these proposals, as they will provide openness and transparency in the decision making process, yet the final decision on individual cases will be solely up to the statutory office holder. As we have not seen the guidance in full, however, we cannot comment properly on how effective these proposals will be in practice.

Proposal 5: A robust and independent appeals mechanism will be established to consider appeals against individual decisions

4. Paragraph 3.7 of the consultation paper mentions that there will be an "independent panel of suitably qualified individuals appointed...through the public appointments process". We are concerned that this kind of appointment process will favour those people who interview well, but who may not necessarily have the relevant skills or experience for the role. We suggest that only those who can show that they are legally qualified and have experience dealing with legally aided cases, gained in a professional or voluntary capacity.

5. Paragraph 3.8 refers to paper based appeals. We are supportive of paper based appeals, as they would be much more efficient than the current system, which requires solicitors to go to panel hearings, only not to be heard by the panel and granted legal aid anyway. We do have concerns however, that paper based appeals may not be robust or effective enough. A paper based system could mean that some appeals that require a hearing will not be given one and instead legal aid will be denied where it should have been granted. Therefore we suggest that there should be several safeguards to ensure efficiency with a paper based system, but also that hearings take place where necessary. The appeals should not be considered by only one member of the panel, as suggested in paragraph 3.8. We suggest that three members, all of whom have relevant competence in the area, should consider the appeal so as to eliminate any bias in decision making.
6. We are also unhappy with the reference to oral representation by the appellant or Agency only being required in “exceptional cases”. Instead we suggest that the system should be paper based, but there should be a filter in place to ensure that those appeals that require a hearing will get one. There should be a right to a hearing if the case is complex or borderline. Anecdotal evidence suggests that a hearing will be required in around 50% of cases – this is therefore far from an “exceptional” occurrence.
7. We are pleased with the proposal at paragraph 3.9, which states that there will now be a monitor of decisions to identify any apparent diversity of approach or contradictory decisions. Cases with the same facts should be treated consistently, but at the moment this is not the case, and this leads to unnecessary uncertainty. The decision as to whether a case is granted legal aid very much depends on the panel that hears the case at the time. There is very little consistency of approach in decision making. Therefore we are pleased that there will now be a monitor of decisions, and we would also suggest that there should be a set of criteria for certain types of case (for example, falling accidents) that must be satisfied for the case to be granted legal aid.

Q2 If not, what additional/alternative safeguards do you consider are necessary and proportionate?

8. Safeguards to legal aid are vital, as legal aid is extremely important in achieving access to justice for vulnerable people. Legal aid helps to even out the playing field between the individual who may have no previous experience of the justice system and corporate parties with greater experience to their advantage. Importantly, legal aid ensures that the claimant has the resources that are necessary to bring a claim against a powerful defendant.

9. In creating safeguards, it is important to remember that the vast majority of legal aid certificates do not result in a payment out of the legal aid fund. 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, and so there was no cost to the legal aid fund. On the contrary, legal aid ensures that, amongst other things, Hospital Authorities are receiving due payment for when someone is injured, for example the treatment received in A & E, and for the calling out of ambulances and so forth. It is therefore important to preserve legal aid, as it provides access to justice for the vulnerable whilst not being a drain on the public purse.

- Ends -

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¹ Northern Ireland Legal Services Commission Statistics