

**Department of Justice for Northern Ireland
Proposals for the Reform of Financial Eligibility for Civil and
Criminal Legal Aid**



A response by the Association of Personal Injury Lawyers

June 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 4,000 members, 70 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

APIL welcomes the opportunity to comment on the proposed reform of financial eligibility for civil and criminal legal aid. Legal aid is incredibly important in ensuring that those who are vulnerable have access to justice. We are happy with proposals to harmonise the means testing, and the aim to reduce complexity. However, this harmonisation must take place without reducing the scope of application of the legal aid. This should not be taken as an opportunity for the government to erode the provision of civil legal aid in Northern Ireland.

Q1 Do you agree with the proposals to harmonise civil legal aid threshold limits for the new schemes to be introduced under Civil Legal Services?

We welcome any harmonising measures as they will ensure that the rules are not too complex, and are easily accessible to both the victim and their legal representative. But it is important that any harmonising measures do not compromise access to justice. We are concerned that the same number of people who are eligible for legal aid now may not be eligible for legal aid after harmonisation.

Q2 Do you agree with the broad principles that will be applied to civil legal aid means assessment?

We are happy with the broad principles that will be applied to civil legal aid means assessment. The aims to remove complexity and target those who are unlikely to be able to meet their own legal costs are welcomed by APIL. Removing complexity is key to providing access to justice, and having a test that ensures that all of those who are vulnerable and unable to meet their own legal costs are catered for is extremely important. The new eligibility criteria should be as easy as possible to understand.

Q3 Do you think the introduction of a revised means test for civil legal aid will have a positive impact on access to justice?

Harmonisation could go some way to improving access to justice, as it will remove the complexity of different legal aid tests.

However, it is important that legal aid is retained for civil cases in order for there to be access to justice. As mentioned above, it is important that harmonisation and a revised means test does not result in a reduction in eligibility for those who are in need of legal aid. We note that the upper income limit is to be harmonised at £10,682. This is an increase from the current upper threshold for civil legal aid excluding personal injury, which currently stands at £9,937, but it is a decrease from the current income thresholds for: civil legal aid

including personal injury (£10,955); Advice By Way Of Representation (£12,168); and Legal Advice and Assistance (£12,168).

It is likely therefore, that there will be a reduction in the number of people who are eligible for legal aid and this will cause problems for access to justice.

Q4 Do you agree that the introduction of Universal Credit (UC) in Northern Ireland in 2014 provides a good opportunity to reform financial eligibility for civil legal aid?

We are concerned that introducing a revised means test at the same time as introducing Universal Credit will leave some vulnerable people without help. It is important to wait and see what the effects of the new system of benefits are before implementing a reformed test for financial eligibility. This will ensure that no one who is vulnerable and in need of legal aid falls through the gap and is left without funding help and thus unable to bring their case.

Q5 Do you agree with the proposals to remove passporting on capital?

In principle, it might be that an applicant not in receipt of a passported benefit may fall below the lower disposable income limit, but fail to become eligible for legal aid on the capital test by having assessed capital in excess of the current upper capital limit for legal aid (£6,750).

We do not agree that removing passporting on capital is the correct way to iron out this (mostly academic) anomaly. If passporting on capital is removed, anyone with capital between £8,000 and £16,000 will be deemed ineligible for civil legal aid even when they are in receipt of income support. If the Government considers a person with savings up to £16,000 to possess a level of financial means low enough to warrant income support, then it is unlikely that such a person will be able to fund his own legal representation. This will simply bar vulnerable people from access to justice. This will lead to a system where there will be a social security system that supports people to live, but not to enforce their civil and legal rights in the courts. This is unacceptable.

We suggest that the correct way to resolve this anomaly is that for those people who fall below the lower disposable income limit for legal aid, but do not qualify for income support, the upper capital limit should be harmonised with that of income support, at £16,000.

Q6 Do you think that a housing equity disregard of £100,000 should be included as part of the civil legal aid means test?

Whilst an equity disregard of £100,000 is a step in the right direction, we believe that housing equity should not be taken into account at all as part of the means test. We have previously stated our concerns that the inclusion of housing equity will impose unnecessary

additional hurdles for legal aid applicants and may disrupt eligibility for those most in need of legal aid. One hurdle would be having to disclose the value of one's home in order to even be considered for legal aid. This is not likely to be something that most homeowners accurately know unless a recent valuation has taken place. Claimants would then have to order a valuation and pay for it themselves.

We believe that in the interests of fairness, the granting of legal aid should rest upon the applicant's actual ability to pay for his own legal costs, not the size of their mortgage. The housing equity inclusion could lead to highly unjust consequences if a person was forced to re-mortgage their home in order to pay for legal costs.

The elderly in particular would be disadvantaged by this proposal, because they may have low income but live in a large family home with equity over £100,000. They would not be able to afford to re-mortgage their home in order to pay for legal costs, due to their low income, and so would be denied access to justice.

Q7 Can you estimate the cost, including training costs, of altering your systems to accommodate the new proposals?

We are not able to provide estimates on this.

Q8 Do you have any empirical evidence to suggest that the proposals would have any adverse impact on any of the section 75 groups?

We do not have any empirical evidence to suggest that the proposals would have adverse impacts on the section 75 groups. However, we would like to make the general comment that the effects of these proposals would be adverse on most groups of people, not just those in section 75. The elderly and those on middle incomes will be penalised by the failure to remove housing equity from the means test, in particular. These people may be forced to re-mortgage their houses in order to pay for legal costs, and re-mortgaging may not be feasible.

Q9 Do you have any views on the proposals for Minors' Eligibility?

We are very concerned about the implications of the proposals surrounding Minors' Eligibility. It is important that the current proposals for Minors' Eligibility are retained. We believe that assessing a minor applicant's financial eligibility by aggregating their means with the financial resources of their providing parent/guardian would result in removal of the child's right to justice. For example, if the parents work, they will not qualify for legal aid as their financial resources will be aggregated with the child's means. The parents may then

decide not to pursue the case (and thus the child's right to justice) as they will not be able to afford to do so. This will create a stark reality in which a baby born with cerebral palsy caused by medical negligence may be denied access to justice based on the circumstances of the family that they are born into.

General Comment on Legal Advice and Assistance (The Green Form Scheme)

We do not believe that change is required to the current Green Form Scheme. The Scheme should continue to function as normal. We do not believe that the proposals put forward will have a positive impact on access to justice.

- Ends -

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