

**Department of Justice for Northern Ireland
Civil Legal Aid Remuneration**



A response by the Association of Personal Injury Lawyers

November 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

APIL welcomes the opportunity to comment on the Department of Justice for Northern Ireland consultation on civil legal aid remuneration. APIL has responded to numerous consultations on civil legal aid, and reiterates that it is an extremely important safeguard to ensure access to justice for the vulnerable, in particular children and the elderly. Civil legal aid cases should continue to be remunerated to reflect the amount of time spent on the case by the solicitor. The introduction of standard fees would lead to access to justice being impeded, as solicitors would have to select more carefully which legally aided cases they took on. Fewer legally aided cases being taken on would result in less recoupment of NHS costs and benefits from the losing side. Effectively, the money “saved” from the legal aid budget would be spent elsewhere, in paying un-recouped NHS costs and benefits.

General comments

As mentioned in our previous responses, personal injury cases which are legally aided actually result in very little claim on the legal aid budget, as successful cases’ costs are paid by the other side. In 2011/2012, 75 per cent of medical negligence cases and 81 per cent 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, in successful claims, costs are recovered from the other side through the “polluter pays” principle. The Compensation Recovery Unit (CRU) has a legal right to recover social security benefits and NHS costs from compensators in cases where a personal injury claim has been successful, for example, following a road traffic accident or injury at work. In 2009-2010 the CRU recovered £13.6 million, comprising £5.4m of benefit payments and £8.2m of NHS costs, relating to approximately 20,300 cases. The monies recovered in these cases far exceed the £2 million cost to the legal aid fund as stated by the Access to Justice Review team in its November 2010 Discussion Document².

Q1 Do you agree with the proposed approach to introduce standard fees for all civil cases?

We do not agree with the proposed approach to introduce standard fees for civil cases. If standard fees were introduced, the time spent on cases by solicitors, and as such, the quality of service in these cases, may be reduced which will endanger access to justice to those who rely on civil legal aid. These people tend to already be the most vulnerable in society, for example children and the elderly. Firms will have to make a business decision as to whether or not they continue to run these cases. Those that do decide to continue to take these cases on will have to consider if they use the same levels of fee earners as they do currently, but reduce the time spent dealing with these cases to ensure that they remain profitable; or whether to reduce the level of fee earner that carries out this work to a more junior level, to ensure these cases remain viable. In all cases solicitors will have to be more careful in selecting the cases they do take on. Those cases that are a bigger risk will not be taken on at all, as the solicitor could simply not afford to do so.

¹ Northern Ireland Legal Services Commission Statistics

² Paragraph 4.21 http://www.courtsni.gov.uk/sitecollectiondocuments/northern_per_cent20ireland_per_cent20courts_per_cent20gallery/a2j/p_a2j_discussion_paper.html

There are no alternative funding arrangements, such as conditional fee agreements with After the Event insurance, available in Northern Ireland currently. The lack of funding options will result in the more difficult but viable cases not being pursued as injured people are unable to find lawyers to pursue a case on their behalf.

As above, less cases being taken on overall will mean that the money recouped back for NHS services and benefits in successful cases, will also decrease. Recent figures show that the majority of benefits recovered in 2012/2013 were in cases where a solicitor represented the injured person. The total amount of benefits recovered was £5, 975, 374.30, with the total benefits recovered where a solicitor represented the injured person amounting to £5, 863, 877.90. Similarly, for Accident and Emergency charges in the same year, £6,071,754 was recovered in total, with £5, 646, 789.40 recovered in cases where a solicitor represented the injured person. By introducing standard fees and removing the solicitors' ability to represent people in these cases, the government will simply be transferring the cost from one government department to another. Cutting back on legal aid will mean that people will not be able to obtain rightful compensation, and care costs and benefits will not be recouped back from the defendant – whose negligence caused the accident.

Q2 Do you agree that it is appropriate to seek to compare criminal and civil fees?

It is not appropriate to seek to compare criminal and civil fees. The only reason that a client would apply for legal aid in a civil case is because liability is not straight forward. The process to get legal aid for civil cases is much more cumbersome and lengthy than in a criminal case. For example, in a civil case four or five documents must be supplied to the Northern Ireland Legal Services Commission in order to apply for legal aid, yet in criminal cases, only the Statement of Means Criminal Legal Aid Form along with proof of benefit or income must be submitted. To compare civil and criminal fees in this way is irrational, as the cases are run completely differently.

Q3 Are there any cases which should not be remunerated on a standard fee basis? If so, how should they be remunerated?

We believe that cases should continue to be remunerated as they are now, on a time basis. This will ensure that vulnerable, legally aided clients have access to justice. If standard fees were introduced against our advice, medical negligence cases should be excluded due to their complexity.

Q4 Do you agree with our proposal to reduce the fees payable for all existing High Court cases, which there is an existing certificate but the case is not yet complete?

It is highly unreasonable to change the rate of remuneration for the solicitor, halfway through the case. The solicitor has decided to take on the case, and has calculated the costs and risks to do so on the basis that they will be remunerated at a certain rate. It cannot be correct that the fees are allowed to change whilst the case is incomplete. Further, the Taxing Master, who currently sets the hourly rate for remuneration, is independent and experienced on these matters. The Taxing Master sets a fair rate for the work done, and there should not be outside interference with their decision.

Q5 Do you agree with the proposed new hourly rate for existing cases?

As above, we do not believe that the hourly rates for existing cases should be changed.

Q6 Do you agree that it is appropriate to increase the statutory discount rate to 10%?

An increase in the statutory discount rate to 10 per cent will result in fewer legally aided cases being taken on, as the solicitor would simply not be able to afford to run those cases. This will lead to denial of access to justice for the vulnerable who currently rely on legal aid to obtain the compensation that they rightfully deserve. Further, the 10 per cent increase is extremely arbitrary and is not based on any statistical analysis, nor does it pay any heed to the recommendations of any Costs Drawer.

Q7 If you do not agree with these proposals to achieve the necessary savings, have you alternative suggestions?

As set out in our earlier responses, civil legal aid should remain in its current format, as it ensures that there is recoupment of NHS and benefit costs, and as the majority of these cases are successful, there is very little overall cost to the civil legal aid fund.

If, despite our concerns, civil legal aid is to be removed, there must be alternative measures in place to protect the vulnerable. We suggest that conditional fee agreements should be adopted – as detailed in our earlier response to *Alternative methods of funding money damages cases*. The current system, however, already ensures recoupment on care costs and benefits, and access to justice for the vulnerable, without any significant cost to the legal aid fund. Legal aid for these cases should remain, and solicitors should be remunerated correctly for the work that they carry out.

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