

Department of Justice

Introduction of a Statutory Registration Scheme for all providers of Publicly Funded Legal Services in Northern Ireland



**A response by the Association of Personal Injury Lawyers
April 2017**

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 over 3,500 members committed to supporting the association's aims and all of which 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 respond to the Department of Justice's consultation on a statutory registration scheme for all providers of publicly funded legal services in Northern Ireland. We support the aim of ensuring that those who receive public funding for the delivery of legal services provide the appropriate level and quality of service to their clients and the public purse. We are doubtful, however, that the requirements for registration as currently set out will meet this aim, given that the registration requirements are largely administrative, rather than competency based.

APIL believes:

- The vast majority of the information required in the Code of Practice will already have been provided by firms to the Law Society of Northern Ireland. This information is required by the Law Society so that solicitors can obtain their practising certificates. The Department of Justice and the Law Society of Northern Ireland must liaise to ensure that solicitors do not have to provide the same information twice.
- The registration scheme should focus on competency based accreditation. In England and Wales, clinical negligence legal aid providers must employ a supervisor who holds either the APIL clinical negligence specialist accreditation, is a member of the AvMA clinical negligence panel or the Law Society clinical negligence accreditation scheme. We suggest that a similar requirement be introduced for provision of legal aid in Northern Ireland, with personal injury legal aid providers having to be accredited to Senior Litigator status or higher.
- We are concerned that if the registration scheme is self-financing, with solicitors paying fees equating to the costs of running the scheme, the Department of Justice will have no incentive to keep these costs to an efficient level.
- The review panel must include at least one lawyer and one quality standards specialist, and there must be recourse to a judge if the firm is unhappy with the review panel's decision.

Code of Practice will not ensure quality service

The requirements within the Code of Practice are not burdensome. A well-run solicitors' firm will already be complying with the vast majority of the requirements within the Code of Practice. Indeed, most of the information will already have been provided by the solicitor to the Law Society of Northern Ireland, in order to be granted their practising certificate. The Law Society already fulfils the role of compliance manager within the Code of Practice – ensuring that the firm's registered solicitors hold a practising certificate and that they act in accordance with any conditions or limitations specified. Firms are audited by the Law Society every three years to ensure that they are providing accurate information. The consultation document suggests that there should be information sharing protocols to minimise duplication. We agree that there is no need for firms to provide the information twice, and suggest that the Department of Justice should be able to obtain most if not all of the information they require to assess whether a firm complies with the Code of Practice by liaising with the Law Society.

In any event, we do not believe that the requirements in the Code of Practice will achieve the aim of ensuring an appropriate level and quality of service. In order to ensure that a quality

service is being provided, the focus should be on ensuring that those who provide publicly funded legal services are competent to provide those services in their chosen specialist area. In England and Wales, in order to be eligible to tender for legal aid contracts in certain areas (for example, clinical negligence), practitioners must demonstrate that they are accredited in that area. The Legal Aid Agency requires firms who undertake legal aid in clinical negligence cases to employ a supervisor who is either an APIL accredited clinical negligence specialist, a member of the Action Against Medical Accidents (AvMA) clinical negligence panel, or a member of the Law Society's clinical negligence accreditation scheme. This is required alongside the firm holding either Lexcel or the Legal Aid Agency's Specialist Quality Mark accreditation which, like the proposed Code of Practice, focuses on practice management and procedures rather than competence. We believe that in Northern Ireland firms wishing to provide legal aid must be required to employ at least one person who holds competency based accreditation in their area of specialism – in personal injury, this would include the solicitor being accredited to at least APIL Senior Litigator status.

Competency based accreditation is extremely important, and allows practitioners to continually improve, and ensure that they are up to date with the law in their area of specialism. APIL accreditation, for example, focuses on work based learning and continuing professional development. APIL's standards measure knowledge (substantive law), know-how (procedural law), understanding (how to apply the law), skills and behaviour.

Comments on Code of Practice

We are also concerned about the vagueness of some areas of the Code of Practice:

Code of Practice paragraph 2.4.1 requires that “a solicitor applying for registration shall attend or present, in the current practising year of application, one or more courses relevant to the provision of publicly funded criminal and civil legal services. These courses shall amount to three or more hours' duration in total and must be pre-accredited by the Agency”.

A requirement for solicitors to undertake 3 hours of CPD on legal aid practice is unrealistic and unnecessary. Solicitors must already undertake 12 hours of CPD each year in their practice area in order to be granted their practising certificate. We suggest that one hour focusing on legal aid would be sufficient, and that this should focus on bringing legal aid practitioners up to date on the law in this area.

Paragraph 2.9.4 point 10 includes the responsibility of the Compliance Manager to “inform the Agency of the possibility of fraud and/or unethical behaviour by personnel and/or third parties in receipt of publicly funded criminal and civil legal services and/or registered to provide publicly funded criminal and civil legal services.” We are concerned that this burden is far too vague and wide, and may be unworkable. We appreciate that where a client is claiming legal aid but shouldn't be, then the Legal Aid Agency needs to be informed. The current provision including “third parties” appears to extend beyond the requirement to report to the Legal Aid Agency if the client should not be in receipt of legal aid, however, to a requirement on the solicitor to report to the agency if there is any unethical behaviour by doctors, barristers and anyone else involved in the claims process. It appears that the burden always rests with the solicitor.

Paragraph 3.7.1 requires that “no person shall be given advice and assistance for the same matter by more than one solicitor without the prior authority of the Agency. Such authority

may be given on such terms and conditions as the Agency may in its discretion see fit to impose". We are concerned that this is too vague, and could be unfairly applied to reduce the freedom of the client to choose their solicitor. If interpreted too broadly, it could reduce access to justice.

Paragraph 3.8.2 sets out that "in exceptional circumstances a solicitor may consult with an assisted party at a location other than those referred to above, for example, where an assisted party is unable to attend the solicitor's office due to illness, infirmity or age, at the home of the client or a hospital". Our members report that they often consult with clients at their home, because it is that particular client's preferred choice to do so. The proposed requirement in the Code of Practice is unnecessarily restrictive – clients may choose to see a solicitor in their own home for reasons other than illness or infirmity – they may simply feel more comfortable in familiar surroundings.

At 4.1.2 paragraph 7, the Code of Practice provides that the solicitor is under a duty "at the outset and on a regular basis throughout the case to consider and record the continued financial eligibility entitlement to funding (where applicable) from the Agency." This requirement is extremely wide and vague, and must be tightened up in order to be workable.

There should also be clarification at paragraph 4.1.2 point 25 of the Code of Practice on instruction to barristers, as to what is meant by "the firm's declared policy", and "general template agreed with the Law Society".

Fees

We query why solicitors have the burden of essentially setting up the scheme, with suppliers and compliance managers being required to input registration details on to the Agency's IT system, but then also have the burden of paying a first year registration fee. The cost of the first year of registration should not fall on the firms, if they are required to get the scheme up and running themselves. Additionally, those who provide publicly funded legal services will be required to register on a compulsory basis. We are concerned that there will be no incentive for the Department to keep costs down and run the scheme efficiently, if the entirety of the cost must come from the fees of those who have no choice but to sign up if they wish to provide publicly funded services.

If the focus of the registration scheme remains on practice management rather than competence, we suggest that where a person holds accreditation with APIL, or the relevant competency based accreditation for their practice area, those people should qualify for a discount on registration fees. There should be an incentive to carry out competency based training, as this will ensure that those people who provide publicly funded legal services provide a quality service.

Audit

It is suggested at paragraph 5.4.9 that a list providing details of the solicitors and firms who will be audited will be published on a quarterly or monthly basis. We are concerned that making the list of firms being audited publicly available may cause reputational issues for those firms. The general public may be confused by this information and be of the impression that those firms that have been audited have done something wrong.

Review Panel and Appeals Process

The review panel should not consist entirely of civil servants. There must be at least one lawyer and one person from a quality standards background on the panel to ensure that there is the correct expertise to make the right decisions.

It is stated at paragraph 5.4.23 that the panel should consider each report and any written or oral representations, and decide whether to affirm, amend or substitute the decision of the Administrator, and that the decision of the Panel will be final. We believe that there should be a right to appeal before a judge if the firm is unhappy with the review panel's decision. We believe that there should be a right to appeal before a judge if the firm is unhappy.

