

Northern Ireland Department of Justice

A consultation on increasing the general civil jurisdiction of the county courts in Northern Ireland



A response by the Association of Personal Injury Lawyers

April 2021

Introduction

APIL welcomes the opportunity to respond to the Northern Ireland Department of Justice (DoJ) consultation on increasing the general civil jurisdiction of the county courts. Ultimately, the suggested changes to the Northern Irish court jurisdictions outlined within the consultation document will fail to meet the consultation aims, namely to ensure appropriate access to justice and deliver a system which supports court users in the early and proportionate resolution of civil cases.

Since the previous increase to the general civil jurisdiction in 2013, efficiency in the county court system has not improved. Unfortunately, the DoJ fails to recognise that the value of a claim does not determine the complexity. Simply increasing the jurisdiction of the county court, district judges and small claims court will not make for a more efficient process and it may have the opposite effect. APIL argues that increasing the civil jurisdiction to either £60,000 or £100,000 will overwhelm the county court. The increase in cases being processed in the county court in addition to the complex nature of higher value personal injury claims, will create additional delays for injured and vulnerable plaintiffs. Furthermore, these claims require vital expert evidence and appropriate senior counsel due to the complexity of the issues. Injured people will therefore be significantly disadvantaged if the jurisdiction is increased. These issues will be discussed further in our response to the consultation questions.

APIL is disappointed that the recommendations in the Gillen review have not been implemented. In the county courts, plaintiffs continue to be 'ambushed' by the defence because they fail to comply with the pre-action protocols and sanctions are not imposed for non-compliance. If the jurisdiction of the county court is to be increased again, this will add to the problem. Therefore, in order to make the civil court system more efficient and fairer, procedural changes are required to ensure cases are being dealt with appropriately and justly, in line with the overriding objective. In addition, a ticketing system must be implemented to ensure that judges have the required knowledge to deal with cases appropriately.

APIL has responded to the questions in relation to personal injury and clinical negligence cases.

Q1. Which of the following options do you believe would help to create the most effective and efficient system for civil proceedings:

- 1. Increase in county court jurisdiction to £60,000, with an increase in the jurisdiction of district judges to £20,000; or,**
- 2. Increase in county court jurisdiction to £100,000, with an increase in the jurisdiction of district judges to £35,000.**

Both of these options will have a negative impact on access to justice. As stated in the consultation document at paragraph 50 and 51, the county court is less efficient now than it was ten years ago prior to the previous jurisdictional increase in 2013 because the time taken to deal with cases has increased¹. In light of this, there is no justification for increasing the jurisdiction further without fundamental changes to the procedural foundations in Northern Ireland. Simply increasing the jurisdiction in the county court will be insufficient and unsuccessful in achieving the DoJ's aims.

In order for one of these options to be successful in achieving the DoJ's aims, significant changes are required to the foundations of the civil justice system before increasing the general civil jurisdiction, such as procedural reforms, improvement to venues and more training for the judiciary to ensure they have sufficient expertise to deal with cases appropriately.

As mentioned within our response to the Gillen Review in 2017, regardless of whether the general civil jurisdiction increases, fundamental changes are required to underpin the civil justice process in the county courts. In addition to investment in court infrastructure and the judiciary, introduction of new pre-action protocols and practice directions for personal injury claims are fundamental in ensuring a level playing field between plaintiff and defendant and to ensure that claims are progressed efficiently. Standard disclosure should be implemented and applied consistently by the judiciary in all county courts and there should be sanctions for non-compliance with the protocols. If the introduction of the new protocols is to be fair, a review of the costs associated with work undertaken pre-proceedings should be undertaken to ensure that the plaintiffs right to legal representation is protected. Implementing these fundamental reforms will ensure that plaintiffs are not 'ambushed' by the defendant raising late issues and give the opportunity for settlements outside of court, therefore freeing up court time for other cases.

If the county court jurisdiction is to be increased, the jurisdiction of district judges should not follow suit. Increasing the district judge jurisdiction will add to the increasing pressure to deal with cases in the shortest amount of time. Personal injury and clinical negligence cases are not straightforward when proving liability and causation and require a great deal of consideration of the evidence, regardless of the value of the claim. Unless they specialise in personal injury law, district judges should not hear personal injury cases.

A greater degree of specialism is required of judges if the financial limit of the county court is increased because there are a lack of designated civil county court judges. A judge should be allocated a case which coincides with their experience and specialism. In personal injury and clinical negligence cases in particular, it is crucial that judges have the required knowledge to ensure better quality and more consistent decision making due to the complexity of the issues. Initial and ongoing training is vital and should be endorsed by a ticketing system as in England and Wales. Despite discussions around implementing a ticketing system in Northern Ireland to certify specialism, there has been no progress with this. This system would ensure that judges with appropriate expertise are allocated to cases depending on their certification. This system would also specifically further the overriding objective of dealing with cases justly and ensure the DoJ's aim of ensuring cases are being dealt with appropriately, is met.

¹ Northern Ireland DoJ: A consultation on increasing the general civil jurisdiction of the County Courts in Northern Ireland paragraph 50 and 51 "Cases in the county courts have taken longer to be disposed since the last increase in 2013." "The increasing length of time for disposals of civil bills in the county courts has largely coincided with the increase in jurisdiction from £15,000 to £30,000 in 2013."

Q2. Given that clinical negligence cases tend to be more complex than other tort actions, should the Department either:

- 1. Reserve clinical negligence as a High Court only actions; or,**
- 2. Maintain the current county court jurisdiction of £30,000 for clinical negligence claims only.**

The DoJ should reserve clinical negligence cases as high court only actions regardless of whether the county court jurisdiction is increased. There are various issues with clinical negligence cases being heard in the county court. For example, experts are unlikely to attend hearings at the county court. Medical expert evidence is critical in establishing liability and causation in a clinical negligence case as well as confirming diagnosis and prognosis, however experts are unlikely to travel to different venues on multiple days of the week. This may cause logistical challenges as well as issues with listings, resulting in further delays. In addition, senior counsel is unlikely to be authorised by the Legal Services Commission to represent a plaintiff in the county court, yet defendants will undoubtedly continue to fund senior counsel. It is crucial to ensure that appropriately experienced counsel is instructed for clinical negligence claims due to the complexity of the issues. These two issues create significant disadvantages for plaintiffs pursuing their claims, including an unlevel playing field in the county courts where individual plaintiffs face well-resourced defendants.

In addition, parties are not held to pleadings in the county court to the same extent they are in the high court, which creates a real issue when dealing with a case efficiently and appropriately. It is unjust for a plaintiff in a clinical negligence claim to arrive on the day of the county court hearing to face a defence which they are unaware of due to the inadequate reply to the claim from the defendant, especially when the issues in clinical negligence claims are complex. Clinical negligence claims should therefore be reserved as high court only actions to ensure that defendants are held to their pleadings.

Alternatively, APIL suggests that a specific clinical negligence county court could be established with specialist judges to solely deal with clinical negligence cases. It can then be decided on a case-by-case basis as to whether the county court judges have sufficient expertise to deal with the case appropriately or whether it should be heard by the high court. In addition, this would be the only way to facilitate medical experts travelling to Northern Ireland to attend a county court clinical negligence hearing. This suggestion would ensure the DoJ's aims are met through the judiciary dealing with cases justly, efficiently and appropriately.

Q3. Should the county court judges have a statutory power to remove cases from the county courts to the High Court?

County court judges should have a statutory power to remove cases from the county court to the high court. Complex cases should not be within the county court's remit if the judges do not have the required expertise and knowledge to deal with complex cases appropriately and consistently. In order for the statutory power to be effective, county court judges should be encouraged to remove a case to the high court where it would be more appropriate for a high court judge to deal with the complex issues. Alternatively, a better system for appropriate allocation at the outset of a claim is required together with initial and continuing judicial training, supplemented by a civil ticketing system such as the one in England and Wales.

Q4. Should the jurisdiction of the small claims court be increased to £5,000?

Although personal injury claims are not heard in the small claims court, APIL disagrees with increasing the jurisdiction of the small claims court to £5,000 due to the knock-on effect this will have on the workload of the district judges. This increase would add even further pressure on district judges in addition to the impact the increase in jurisdiction will have on them. APIL reiterates that the process is being oversimplified by focusing on the value of claims rather than the complexity of the issues. Procedural reforms and training for the judiciary are required to ensure that increase in court jurisdiction is effective.

Do you have any comments to make on any of the draft impact assessments?

The human rights impact assessment clearly outlines an Article 6 issue with regard to the lack of authorisation for senior counsel in the county courts. Plaintiffs whom are pursuing personal injury and clinical negligence claims require fair and effective representation. Therefore, if the county court jurisdiction is raised to £60,000 or £100,000, plaintiffs will be significantly disadvantaged because they will be unable to use appropriate counsel who are experienced in these types of claim, which may have a knock-on effect to the outcome of their case. This highlights an unlevel playing field considering defendants are likely to continue to use senior counsel in the county courts. This clearly raises an access to justice issue based on resources available to the parties to proceedings.

Other comments

APIL is concerned that many venues in Northern Ireland are old buildings which do not have adequate facilities to accommodate those with mobility issues such as injured and vulnerable people, therefore impeding access to justice. Investment in infrastructure is required to ensure that facilities are sufficient for all members of society. In order to overcome this access to justice issue, newer venues should be used which have more appropriate facilities such as accessible toilets and conference rooms. Alternatively, funding should be made available to make current buildings more accessible by ensuring wheelchair access. This will create a more accessible civil justice system and ensure that it does not discriminate against those who are vulnerable and/or injured. The Covid 19 pandemic has changed the way cases are presented and heard in the county court. It is important that the DoJ invests in technology to support changes which are seen to be beneficial for all those using the court system such as remote call overs and reviews.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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