

Enabling Access to Justice Division

Department of Justice

Massey House

Stormont Estate

Belfast BT4 3SX

By email only: eajdconsultations@justice-ni.gov.uk

17 June 2021

Dear Sirs,

**Consultation: Legal Aid for mediation in non-family civil cases**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for over 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. Northern Ireland plaintiff practitioners are represented on our executive committee and our Northern Irish members help support our consultation responses and campaign work. APIL has an ongoing commitment to ensuring that its members are aware of all forms of dispute resolution and how they may be used to benefit injured people. An injured person should, following advice from their lawyer, be able to decide the best option of dispute resolution for themselves.

APIL welcomes the opportunity to respond to the Northern Ireland Department of Justice (DoJ) consultation on Legal Aid for mediation in non-family civil cases.Access to justice is a cornerstone of our society, individuals should be able to access an independent lawyer to provide advice on how best to resolve their claims. We were pleased to see that the government recognises that it is for the parties in the case to determine whether mediation is appropriate for a case and for the parties to enter into the process voluntarily.

Personal injury claims are already dealt with in a proportionate manner through the system of scale costs in the County Court in Northern Ireland. There is already a great deal of work undertaken by Northern Irish practitioners before and after issue, to ensure that claims do not go to court unnecessarily. The process of regular dialogue between solicitors and counsel and case reviews ensure that the vast majority of cases resolve without judicial decision. It is common for practitioners in Northern Ireland to have pre-trial consultations to facilitate negotiations and settlement. There may on occasions be some circumstances in Northern Ireland where alternatives to judicial determination maybe suitable but these alternatives should be for the parties involved to explore. Mediation should never be compulsory or a tick box exercise, to do this will simply increase costs and will not provide any progress towards settlement. If mediation is considered by all the parties to be a way of resolving a case it is essential that the process is conducted by trained mediators with experience in personal injury litigation.

We understand that the rates being proposed in this consultation are the Law Society approved rates. However, it is important to recognise that not all non-family civil litigation is the same. Personal injury litigation is not straightforward, plaintiffs are often vulnerable, they are one-time users of the court system and face a well-resourced defendant. It necessary to distinguish personal injury cases from other forms of civil litigation. In personal injury claims the value of the case does not necessarily reflect the level of complexity involved in the case is question. Cases of modest value often involve complexities including liability disputes, complex disclosure, issues of causation, requests for defendant experts, arguments on contributory negligence and pre-existing medical conditions.

Plaintiff lawyers are seen as more than legal advisors to those who instruct them, the relationship is involved and multifaceted. Not only will a lawyer advise and guide the claimant through the process of bringing a claim, providing advice on prospects of success, rehabilitation and quantification of the claim, but they also often provide much needed emotional support to the injured person at a time when their life has been turned upside down and the future can seem uncertain. It is essential that the plaintiff is not disadvantaged in any part of the process by having their lawyer removed from the discussions. The paper proposes that there will be no additional costs for the individual to have their legal advisor represented at a mediation hearing. Denying a plaintiff, the option to have their legal advisor present puts them at a significant disadvantage to the represented defendant. It should be for the individual to decide if they require their lawyer present. Whilst we respect the need to protect the financial impact on the public purse, in real terms personal injury cases result in very little money taken from the legal aid fund. Legal aid itself ensures that there is a level playing field between the plaintiff and well-resourced defendant. One of the core principles of legal aid is that it safeguards access to justice. We have made representations on previous occasions about the low cost to the Northern Ireland Legal Services Commission of personal injury claims. In successful claims, costs are recovered from the other side through the “polluter pays” principle, and we understand that there is around a 95 per cent success rate for legally aided personal injury cases. It is important that these core principles are retained.

We hope our comments prove useful to you.

Yours faithfully,

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