

LORD CHANCELLOR'S DEPARTMENT CONSULTATION

**FINANCIAL CONDITIONS FOR FUNDING BY THE LEGAL SERVICES
COMMISSION: REVISED ELIGIBILITY LIMITS**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

30 APRIL 2001

The executive committee would like to acknowledge the assistance of Patrick Allen, Vice-President of APIL, for assisting with the preparation of this response:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.
2. APIL welcomes the opportunity to respond to this second consultation paper concerning financial conditions for funding by the Legal Services Commission. Our response addresses those issues that affect the victims of personal injury only and in this context their entitlement to Legal Help, Help at Court and Legal Representation.
3. We are extremely pleased to note that the Government does not intend to seek contributions from the equity value of an applicant's home. This was the proposal that caused APIL members most concern.

Q1 Do you agree that the revised income eligibility limits for Legal Help, Help at Court ...are set at an appropriate level?

4. In our initial response, we welcomed the proposal to set the disposable income limit for all levels of service funded from the Community Legal Service Fund and to increase the current limit for Legal Help and Help at Court to match

that for other Legal Representation, which it was proposed would remain at the same level of £8067. It is presumed that the proposed income eligibility limit of £7212 accounts for the fact that it has been adjusted to allow for the new means testing rules.

5. APIL still believes that the capital eligibility limit for Legal Help and Help at Court should be increased to £8000 as suggested in the first consultation on this issue. Funding through Legal Help provides funding for initial assistance with a legal problem and, therefore, provides a client with initial access to justice. This would, therefore, be a desirable use of resources and would allow complicated eligibility rules to be more easily explained to clients.

Q2 Do you agree with the upper and lower income eligibility limits for the other levels of service?

3. It is noted that the current lower income limit for Legal Representation is £2767 and the upper income limit is £8167. The proposed lower limit is £3060 and it is proposed that the upper income limit should remain at £8196. On page 5 of the consultation paper it is noted that there is to be an “increase in the lower income limits for Legal Representation” but it should be noted that this will be a modest increase of £293 only.
4. APIL remains concerned that the eligibility limits are extremely low, as it is believed that they impede access to justice, now a basic human right in the United Kingdom. Community Legal Service funding, in the field of personal injury, is only available for clinical negligence claims and multi-party / public interest claims. Anecdotal evidence available from APIL members suggests that victims of clinical negligence may be unable to pursue claims for compensation to which they may be entitled because of restrictions on funding eligibility. This is because they do not qualify for CLS funding but are also unable to secure legal assistance through a conditional fee agreement as clinical negligence claims are in their nature difficult and after the event

insurance premiums are extremely high. Sufficient access to justice for such people, through CLS funding, is, therefore, imperative.

5. In addition to the above, the acceptability of the lower and upper income limits is further called into question because of the way in which disposable income is calculated. APIL maintains that disregarding a capped sum of £10 a week employment expenses is insufficient, especially in London where travel-to-work costs are high. In addition, the calculation of disposable income wrongly fails to take into account compulsory outgoings such as council tax and bills for amenities.

Q3 Is the gross income cap set at an appropriate level?

6. APIL is extremely pleased to see that the proposed gross income cap has increased from the £20,000 suggested in the consultation paper, to £24,000. We still, believe, however, that a gross income cap will cause unfair regional variance in eligibility. A client in the north of England earning £23,000 would initially pass the initial eligibility filter, whereas a client earning £24,500 in the south-east would not. This is despite the fact that the client in the south-east may actually have a lower disposable income than the client in the north, because his essential outgoings, such as rent are more expensive in that region.