

Northern Ireland Legal Services Commission

**Financial Eligibility for Civil Legal Aid in Northern Ireland:
A Consultation Paper on Proposals for Reform**



A response by the Association of Personal Injury Lawyers

February 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises 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 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.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Robert Martin – APIL Executive Committee Member

Stephen Gray – Regional co-ordinator, APIL Northern Ireland

Lois Sullivan – Secretary, APIL Northern Ireland

Peter Jack – APIL Member

Oonagh McClure – APIL Member

Any enquiries in respect of this response should be addressed, in the first instance, to:

Antony Blackburn-Starza

Researcher – Legal Policy

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 958 0585; Fax: 0115 958 0885

e-mail: antony@apil.org.uk

Executive Summary

- APIL submits that for those applicants on income support, the upper capital limit for financial eligibility for civil legal aid should be harmonised with that for income support at £16,000. To not do so, we believe, will deny legal aid to those who require it most and may exclude many who are already eligible through passport benefits.
- APIL submits that the housing equity inclusion is irrelevant and unfair. Housing equity does not accurately reflect a home-owner's wealth and it may impose unnecessary financial and administrative hurdles on applicants. In addition, we believe that the proposal is vague and imprecise and the inclusion is entirely unnecessary.
- APIL is concerned that this is the latest in a long line of measures eroding the provision of civil legal aid in Northern Ireland, most notably in personal injury cases, for those who are most in need of support.
- APIL believes that the proposed means test will adversely affect current levels of eligibility, denying access to justice for many victims of personal injury.

Introduction

1. Thank you for inviting APIL to respond to the consultation on financial eligibility for access to civil legal aid in Northern Ireland.
2. We believe the provision of legal aid is absolutely essential to ensure injured people on low incomes have the opportunity to seek redress and obtain full and just compensation. This compensation will enable them, as far as money can do so, to return to the position they enjoyed in life prior to the incident.
3. APIL acknowledges the Commission's drive to simplify the legal aid procedure, making it fairer and easier to administer, but we feel that the proposed means test will not achieve its said purpose. We submit that the new test will make the process more complicated, increasing the administration costs and will disrupt current levels of eligibility. It is a major concern of ours that those who might be excluded under the new test will not have the sufficient means to fund a legal action themselves, and will ultimately be barred from obtaining compensation.

Income support

4. APIL submits that the new means test will result in a large proportion of people on income support being denied legal aid.
5. The current upper capital limit for income support stands at £16,000, a rise from £8,000 implemented by the Government in April 2006. The upper capital limit for legal aid is set at £6,750. The proposed means test will increase the upper capital limit for civil legal aid to £8,000 but it will also, essentially, remove the exception made for applicants on income support.

6. Under the current system anyone who is entitled to civil legal aid through passport benefits – that is, automatically entitled to legal aid by means of another benefit entitlement, such as income support – is permitted to hold capital in excess of the upper limit and remain eligible. Essentially, for applicants on income support, the upper capital limit for legal aid is harmonised with that for income support at £16,000.
7. Under the proposed test, however, anyone with capital in excess of £8,000 will be deemed ineligible for civil legal aid even when they are in receipt of income support. APIL asserts that this is fundamentally unfair. Where claimants cannot meet their legal costs alone, and if their financial position remains the same, they should not be then denied support as a result of a reform that does not, in fact, intend to reduce levels of eligibility.
8. If the Government considers a person with capital up to £16,000 to possess a level of financial means low enough to warrant income support then it is unlikely, we submit, that such a person will be able to fund his own legal representation. This will simply bar many injured people, and other claimants, from access to justice, adversely affecting current levels of eligibility – a consequence the Commission has explicitly stated it seeks to avoid.
9. The need for legal aid may be especially pronounced in Northern Ireland where wages are on average lower than in many other parts of the UK. The Department of Enterprise, Trade and Investment, Northern Ireland (DTINI) has reported that Northern Ireland's private sector wages continue to be approximately 20 per cent less than that earned in other Great Britain jurisdictions. Yet passported persons currently only constitute 15% of all those

eligible for legal aid.¹ This is an alarmingly low proportion and this figure may fall should the new means test be implemented as it stands.

10. We are very concerned that the increase in civil court costs introduced by the Commission will mean court users on low incomes who fall just above the threshold for assistance with fees will face higher court costs. To illustrate this point, the stamp on a certificate of readiness has increased by 762 per cent from £29 to £250. This places an additional obstacle in the way of access to justice for those who would otherwise be eligible for legal aid on income support.
11. It is inconsistent that if the Government sees fit to raise the upper capital limit for income support to £16,000, this should not extend to legal aid. The very fact that a person is in receipt of income support, by definition, denotes financial hardship, and would be unlikely to possess sufficient financial means to fund his own legal costs. Someone on income support with capital in excess of £8,000 will have a similar low level of disposable income than someone on income support with capital under £8,000. Removing the current flexibility actually introduces inequity in the system as the former group would be barred from legal aid whilst the latter would continue to be eligible.
12. APIL is extremely concerned that as a consequence of the Commission's proposals, Northern Ireland will have a social security system that supports people to live, but not to enforce their civil and legal rights in the courts. This unacceptable scenario, we submit, is not one that could have been intended by the Commission in their considerations.

¹ NILSC, *Financial Eligibility for Access to Civil Legal Aid: Draft Equality Impact Assessment*, p. 16.

13. The upper capital limit should be harmonised with that for income support at £16,000, in cases where the applicant is in receipt of income support. Only this approach is consistent with the Commission's own definition of legal aid "to help the people who need it most to address the issues that affect them most."²

Housing equity

14. APIL objects to the inclusion of housing equity as a criterion for eligibility. It will impose unnecessary addition hurdles for legal aid applicants and may disrupt eligibility for those most in need of legal aid. We believe that the housing equity criterion will be wholly unfair in practice.

15. APIL submits that the housing equity inclusion will place a greater financial burden on people coming from a low-income background. In order to be considered for legal aid, an applicant would be required to disclose the cost of his home. If a recent evaluation had not been carried out, then the cost of this would fall upon the applicant. Such an obstacle may be greater for those on a low income and may impede their ability to obtain legal representation.

16. Essentially, we contend that the cost of a person's home is not an accurate reflection of his financial situation. House prices may include an array of social factors, such as being in close proximity to a good school - for example, that are nothing to do with a resident's disposable income. An illustration of this concern is highlighted in the draft Equality Impact Assessment report. In the report, the point was made that the housing equity criterion may adversely affect those who have held their property for long periods, such as older homeowners. We would go further, however, and propose that the housing equity

² NILSC, 'Financial Eligibility for Civil Legal Aid in Northern Ireland: A Consultation Paper on Proposals for Reform', p. 2; para. 2.

criterion will have a potential negative impact on *anyone* with a large equitable holding in their home.

17. APIL believes that in the interests of fairness the granting of legal aid should rest upon the applicants' actual (dis)ability to pay for his own legal costs, not the size of their mortgage. The housing equity inclusion could lead to very unjust consequences if claimants were forced to re-mortgage their homes, for example, in order to pay for legal actions to redress wrongs committed to them. It is entirely wrong to put claimants in such an unfair position.
18. The requirement to take into account housing equity when assessing financial eligibility for civil legal aid will also add to the administration of the assessment process. An efficient legal aid process is a priority not just for the Commission, but also for all those involved. APIL welcomes one of the objectives for reform being to establish a means test that is "easier to administer". Given that simplification is a key priority for the Commission, however, we find it surprising that it is considering introducing a component to the means test that serves no practical purpose, but may well lengthen the administrative process.
19. It is unclear how effective the housing equity criterion will be in practice and we feel that the case for its inclusion has not been made out by the Commission.
20. The Commission's statement that housing equity is to be introduced "for reasons to do with screening and 'aura of wealth' and not as a source of funding" is extremely unhelpful. There needs to be further explanation on how the housing equity disregard will operate in practice. If it is the intention of the Legal Services Commission to avoid disruption by keeping the housing equity

component of the test sufficiently flexible, then, we submit, there is no reason for the criterion to be included in the first place.

21. APIL also contends that the figures used in the housing equity criterion are inaccurate. The housing market is notoriously volatile and with some predicting a house price recession, the proposed figure of £200,000 may soon become out of date. Indeed, this figure is based upon house prices in Northern Ireland in 2005 and may already be inaccurate. It is of absolute importance that decisions which affect a person's entitlement to legal redress are made using accurate and up-to-date information.

22. Given our above considerations over the effect a housing equity inclusion may have on legal aid applicants, we call for the housing equity criterion to be removed from the proposed means test.

The commitment to funding personal injury actions

23. APIL is extremely concerned that the proposed new means test is evidence of a lack of commitment to legal aid funding for personal injury actions and a move away from the principle of the provision of legal aid as a benefit entitlement itself.

24. It is one of our fundamental messages that, in terms of social justice, the 'polluter pays' principle dictates that it is the person who causes injury to another through their negligence, for example, that should compensate the victim, and the cost should not fall upon the victim nor society in general. Personal injury litigation benefits society because it operates as a deterrent, upholding standards of health and safety. It also encourages responsibility through the allocation of duty.

25. According to the Commission's own statistics, personal injury actions account for 40 per cent of civil legal aid certificates issued between 2002/03 to 2004/05.³ This is a huge proportion, and a surprising one at that considering that family law cases dominate the legal aid markets elsewhere in the United Kingdom. It seems incredulous that current reform proposals do not reflect the level of personal injury work that is funded by legal aid by recognising it as a priority area.
26. Personal injury litigation also takes pressure off state services and it does not represent a significant cost burden to the Government. Legal aid is a secured Compensation Recovery Unit recoupment, meaning that money paid by the state to fund an action is recoverable in damages. NHS costs associated with victims' injuries can also be recovered. Money obtained in damages resulting from legal aid funded actions is therefore money saved for the Government and the cost of funding these actions is often off-set.
27. Despite that the significant proportion of legal aid certificates issued are for personal injury actions, these actions remain low cost at roughly less than 8 per cent of the total civil legal aid bill. Personal injury cases cost between £1.3 million and £3 million a year- less than £2 per head of the population in Northern Ireland.⁴ The average cost of each personal injury case in 2005-06 was £2,078. This is over £1,000 less than divorce/nullity cases which average £3,128 per case, and children's order cases which on average cost £7,296.⁵

³NILSC, *Financial Eligibility for Civil Legal Aid in Northern Ireland: A Consultation Paper on Proposals for Reform*, p. 5; para. 2.

⁴ These figures were calculated using NILSC statistics: *Civil Legal Aid bills paid by case type 2005-06*

⁵ Ibid.

28. APIL submits that the legal aid scheme for personal injury in Northern Ireland works effectively and efficiently. In the light of the achievements of the current system, we therefore oppose any reforms that have the potential to disturb levels of eligibility and reduce the provision of legal aid. In fact, we see no reason why eligibility should not be extended beyond the current 44 per cent level.