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Jackson recommendations “could be against the law”

Plans to restrict ‘no win, no fee’ could be against the law for personal injury cases, according to leading counsel’s opinion obtained by the Association of Personal Injury Lawyers (APIL) and the Personal Injuries Bar Association (PIBA).

The Ministry of Justice (MoJ) is consulting on recommendations to make personal injury claimants pay some of their legal fees out of their compensation. But, if implemented, leading counsel’s opinion suggests that the changes may restrict access to justice for claimants who have suffered serious or catastrophic injury.

APIL president Muiris Lyons said: “This opinion shows clearly that the proposals are not only to the detriment of injured people, but that they could also be against the law.”

The proposals may be unlawful because, in the counsel’s opinion, they could be contrary to Articles 6 and 14 of the European Convention on Human Rights, as disabled people could be denied access to justice.

The opinion, written by Nigel Pleming QC and Colin Thomann of 39 Essex Street Chambers, says: “The proposed funding reforms to civil litigation remain at a consultation stage. As presently drafted, however, they seem to us to place claimants who have suffered the most complex personal injury at a particular disadvantage as regards their prospects of securing adequate legal representation, financial protection from adverse costs consequences, and adequate compensation to permit a return to active daily life.”

The opinion later adds: “It follows that there are real prospects of a Convention based challenge to the funding reform proposals as they impact upon catastrophic claims succeeding.”

A copy of the counsel’s opinion has been sent to the Secretary of State for Justice, Ken Clarke. The MoJ’s consultation, which follows recommendations made by Lord Justice Jackson in his review of civil litigation costs, is open until February 14.



Mr Lyons said: "These proposals could prevent a seriously injured person from being able to bring about a claim which has real merit, but which could ultimately be expensive, complicated and carry a greater risk. The Secretary of State needs to give serious consideration to the implications of what is proposed, as the weakest will be hit the hardest.

"The only party to benefit from these proposals is the person who caused the injury, and through him his insurer, who will have collected a premium to cover such claims. The interests of insurance companies and negligent defendants must not outweigh the rights of injured people.

"Nevertheless, it is still difficult to see the point of Lord Justice Jackson's proposals when we already have a system, imposed by the Government last year, for dealing with road traffic accident claims which is designed to cut costs and improve efficiency in 75 per cent of all personal injury cases. It is only common sense to test this system and allow it to get up and running before making any more changes."

Charles Cory-Wright, vice chair of PIBA, an organisation which represents both claimant and defendant personal injury barristers, said: "It is clear that the proposed measures will deny access to justice for many seriously injured people, especially where the NHS has been at fault, who will no longer be able to bring valid claims for lack of funding.

"It is also clear that, for those who are able to bring their claims, the measures will make inroads into the "reasonable compensation" assessed by the Court: there will be some costs no longer paid by the loser of the case, which will have to be paid out of, and will therefore reduce, the damages awarded for disability.

"As well as all this, it is now clear from this Opinion that because these measures are likely to have a disproportionate effect on the more seriously disabled, compared with those having only minor injury, they are likely to conflict with the wider legal principles set out in the Opinion and may well be unlawful."

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Note to editors:

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- APIL (Association of Personal Injury Lawyers) is a not-for-profit organisation, whose members are dedicated to campaigning for improvements in the law to help people who are injured or become ill through no fault of their own
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