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'Perfect storm' to deny access to justice for most seriously injured

Cutting legal aid and restricting CFAs would create a "perfect storm", denying proper access to justice for some of the most seriously injured people, says a not-for-profit campaign group.

The Association of Personal Injury Lawyers (APIL) has issued in-depth responses to the Government's consultations on legal aid and civil litigation funding and costs, which both close today (Monday 14 February).

APIL president Muiris Lyons said: "We do not support the primary recommendation on CFAs (conditional fee agreements) made by Lord Justice Jackson in his report and included in the Government consultation. It was a product of its time and ignores the new process for dealing with road traffic accident (RTA) claims."

There are two main problems with the Government's primary proposal on CFAs. Firstly, solicitors will be less able to offer a CFA to someone whose claim is complex, meritorious, and difficult to win. Secondly, those who are most seriously injured, and have no choice but to claim, are likely to lose money from their damages as they may be forced to pay a percentage of their compensation towards their legal costs. ↪

Mr Lyons said: "Some of the most seriously injured victims of negligence, such as babies born with brain damage because of medical errors, could be stopped from getting justice because they won't have access to legal aid and the CFA regime won't serve them properly either. It isn't fair and it isn't just.

"Furthermore, it isn't even necessary. Last year there was a seismic shift with the introduction of the new RTA claims process which was designed to cut costs and improve efficiency in 75 per cent of all personal injury cases. And there are other new initiatives to help streamline the remaining 25 per cent of cases which the Government is aware of, such as APIL's proposals for clinical negligence claims."



APIL has proposed a five-point plan which demonstrates how it is possible to cut the cost of clinical negligence claims without restricting access to justice.

These five recommendations are:

- Introduce regulated, staged success fees for clinical negligence claims.
- Adapt the personal injury multi-track code voluntary pilot for higher value clinical negligence claims*.
- Introduce the industry-agreed revised draft of the pre-action protocol for the Resolution of Clinical Disputes*.
- Develop a best practice guide with the NHSLA and other relevant parties for clinical negligence claims.
- Develop a streamlined process for straightforward, lower value clinical negligence claims.

Mr Lyons said: "There is a huge focus at the moment on the costs of bringing a claim, but very little on the rights of the injured person whose life may have been shattered by negligence. These are strong, fundamental ideas for reform which will cut costs without hitting the weakest in our society.

"The current drive to make injured people liable for some of their legal costs is unfair. How can it be fair and just for someone who is suffering because of another person's negligence to have to pay towards putting things right?

"Those hurt the most are likely to lose out the most, as their cases are likely to be more complex and the risks higher. So how can the Government justify pushing ahead with reforms which risk stopping the most seriously injured people from obtaining justice?"

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Note to editors:

*The personal injury multi-track code pilot for higher value claims was developed following discussions between FOIL, APIL, the MIB and insurers RBSI, AXA, Zurich and NUI. It is a code of practice which aims to help resolve claims exceeding a value of £250,000. It encourages a more effective exchange of information between defendant insurer and claimant solicitor; the resolution of liability as quickly as possible; to agree a care regime at the earliest opportunity for an injured claimant; openness in relation to costs issues and more.

*The revised draft of the pre-action protocol for the Resolution of Clinical Disputes is a plan of how to streamline the process of clinical negligence claims, reduce areas for potential dispute and cut costs. Among the most significant changes is the introduction of a new intermediate stage involving an early notification letter to give defendants more time to investigate claims and a greater opportunity to admit liability at an earlier stage, to help save costs. Other changes seek to resolve areas of dispute over the disclosure of medical records and other documents by clarifying what the duties of all parties are to reduce duplication, cut costs and save time.

- 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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- Visit the association's website at www.apil.org.uk
- APIL's responses to the MoJ consultations on proposals for civil litigation funding, costs and legal aid can be found here: <http://www.apil.org.uk/consultations-and-apil-responses>