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COURT OF APPEAL JUDGMENT MAKES PERSONAL INJURY LAW 'UNWORKABLE'

The Court of Appeal judgment in *Halloran v Delaney* is a major setback to the cause of access to justice, according to leading personal injury lawyers.

After the Court of Appeal case of *Callery v Gray* introduced certainty into the funding of straightforward personal injury claims for traffic accidents, the recent *Halloran* judgment ignores all the detailed technical deliberations of *Callery* to announce a new approach to funding which will make the current system unworkable.

"Access to justice is achieved through a workable funding system," said Patrick Allen, president of the Association of Personal Injury Lawyers (APIL).

"Since the Government saw fit to abolish legal aid for personal injury two years ago, we have bent over backwards to try to make the new conditional fee regime work, in a climate of judicial misunderstanding and antagonism from insurers.

"Last year, the Court of Appeal in *Callery*, after detailed and lengthy submissions from all interested parties, suggested that a success fee of 20 per cent would be appropriate for straightforward traffic accident cases.

"The Court of Appeal in *Halloran* disregarded all the detailed work done by the previous Court and suggested, completely arbitrarily, that a five per cent success fee would be appropriate in such cases, if the case is settled before the issue of proceedings," he said.

Conditional ('no win, no fee') agreements were introduced by the Government as a replacement for legal aid. The Government's intention was that, whenever a case is won by the claimant, the claimant's solicitor is entitled to a 'success fee', which is a proportion of the basic fee charged.

The aim of the success fee system is to enable personal injury solicitors to build up enough funds to enable them to bear the cost of losing cases, for which they receive no payment. Without such funds in place, only the simplest cases will be brought, leaving difficult, but equally valid cases out in the cold.

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While, last year, the Court of Appeal in Callery did consider introducing a two-stage success fee with the lower stage set at five per cent, the Court decided that such a move would be premature without further data to assess how the system was working. No such data has since become available.

“By imposing a five per cent success fee, the Court of Appeal has not only defied all logic and commonsense, but has single-handedly overturned the Government’s principle objective of making conditional fee agreements work for all personal injury cases across the board,” said Allen.

“Traffic accidents account for many personal injury cases and a success fee of five per cent is not enough to build up the funds needed to bear the cost of losing cases,” he went on.

Huge problems are also anticipated because the Halloran judgment has said that this lower success fee should be backdated to include all claims undertaken since August 2001, which effectively means that business incomes predicted on an average success fee of 20 per cent will fall far short of expectations.

“After the Callery decision, claimant solicitors were careful to follow the guidelines set by the Court,” said Allen. “Yet, just one year later, the Court in Halloran has effectively torn up those guidelines which brought certainty to this system.

“No business on earth can balance its books in this way and stay in business,” said Allen. “While there will undoubtedly be those that applaud the fact that personal injury lawyers will inevitably go out of business as a result of this judgment, responsible commentators will realise the hard cold fact that injured people will have recourse to fewer qualified solicitors to deal with their claims, and that many legitimate claims will fall by the wayside.

“The answer is for lawyers to argue that the Callery decision still takes precedence, or to argue on a case-by-case basis that a five per cent success fee is too low, and this will inevitably lead to delays and extra costs.”

APIL will now seek meetings with the Government and the Master of the Rolls, Lord Phillips to seek to address the problem.

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