

THE **LAW SOCIETY**  
OF NORTHERN IRELAND



## **Department of Justice**

### **Consultation**

**COURT APPROVAL OF MINOR SETTLEMENTS  
(COMPENSATION SETTLEMENTS AGREED FOR  
PERSONAL INJURIES IN RESPECT OF CHILDREN  
WHERE LEGAL PROCEEDINGS HAVE NOT ISSUED)**

**Response of the Law Society of  
Northern Ireland**

**September 2021**

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## **ABOUT THE LAW SOCIETY**

The Law Society of Northern Ireland (the Society) is a professional body for the solicitor profession in Northern Ireland.

The Society represents over 2,800 solicitors working in approximately 470 firms throughout Northern Ireland, in the public sector and in business. Members of the Society thus represent private clients, Government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

The Society plays an important role in helping to shape the legal system in Northern Ireland.

**September 2021**

## CONSULTATION QUESTIONS

**1. Should Government legislate to compel court approval of settlements of compensation for children in cases in which legal proceedings have not issued? Please answer 'yes' or 'no'. Please give reasons.**

Yes.

The Society fully supports legislation to compel the requirement for court approval of cases involving a settlement or award of damages to minors (under 18).

The Gillen Review of Civil Justice in 2017 noted with grave concern that a sizeable number of claims by minors involved in road traffic accidents had been resolved without legal representation. Thus, there was no court approval of the settlement figures nor investment of the sums. Information provided to the Review team from the Association of British Insurers (ABI) suggested the majority of such cases were generally of 'low value'. ABI also offered examples of parents insisting that the settlement monies be paid out without approval even though the sum was sizeable – £15000 settlement being paid direct to parent as the minor was 3 months away from becoming an adult. The Society believe that it is inappropriate to be dismissive of 'low value' settlements. What may be considered a small amount to some may in fact be of significance to others, particularly as they reach adulthood. Such settlements must be protected at all costs.

The Society suggests that there appears to be some misunderstandings within the consultation document, particularly in relation to the misuse of references to proportionality, and these are misleading. The focus should not be on the level of settlements or the number of cases involving minors, but the fact that children are one of the most vulnerable groups in society. Children are unable to represent themselves and are relying on both adults and the law to represent their best interests and protect their rights. The consultation document gives the impression that the parent is the focus, whereas it is the child who is the victim.

The overriding recommendation on this issue by Sir John following his Review, was that legislation be brought forward to *compel court approval for all settlements and awards to minors of damages* (CJ34). The Society supported this recommendation then, and still does.

With this in mind the Law Society have reminded its members that minor settlements achieved in advance of proceedings being issued should be presented to the Court for approval by way of a Minor Petition. If proceedings have issued and a settlement is reached on behalf of a minor, the Society have reminded its members that they must follow the Court Rules. Order 44 Rule 1 (1) (a) of the County Court Rules clearly states that 'no settlement or compromise or acceptance of money paid into court, before or at a hearing shall be valid without approval of the judge ...' Rule 1 (1) (b) states that no settlement, compromise or payment into court before or after hearing shall be paid to any party or party's solicitor unless the judge so directs. Similar directions are available for High Court cases under the Rules of the Supreme Court. The Court Rules are crystal clear in meaning and obligation.

Should a minor's personal injury case be settled without proceedings have been issued, it is possible that the minor had no legal representation, although that may not always be the case. A parent or guardian acting without legal representation when dealing with an Insurer might be easily influenced or led. They may well not have any concept of the true value of the injury to their child as there will be no medical report or valuation of the injury by a legal representative. The consequences of under settling a claim for an injured minor is obvious. The future risk due to under valuation of the claim may not be a feature for a parent/guardian when negotiating a settlement with an insurer. In addition, if a settlement is made direct to the parent/guardian for the benefit of the child there is no certainty that the monies will actually be applied for the benefit of the child. The risks of undervaluing a claim and mis-spending the monies is clear and leads to an obvious disadvantage to the injured minor. Legislation is the only way to manage these risks effectively.

Furthermore, it is necessary to point out that human rights obligations are not forgotten, particularly Article 4 UNCRC committing a state to take measures to ensure that the rights of children are realised in practice. This also impacts on the economic rights of children. These rights are fundamental and are protected by the Convention.

In addition, the Society would like to suggest that is also an access to justice issue. If medical evidence is not obtained and legal advice given, the child/parent/guardian may be unaware of the extent of the injuries and future repercussions. As a consequence, they may not be properly compensated and denied full compensation as they did not access independent legal advice on the settlement and obtain judicial oversight.

**2. (a) Should legislation place a duty to obtain court approval (in cases in which legal proceedings have not issued) on one of the parties (a compensator or a parent) and invalidate compensation paid to a child without court approval? Please give reasons, including which of the parties and why.**

The Society believe that the sanction of invalidation if approval is not sought for minor's settlements reached without the issuing of proceedings, is fair and proportionate as it will protect the minor's interests. Which party should take this additional step is not the important issue. The important issue is the protection of the minor's interests. If a statutory obligation exists for pre-proceedings settlements to bring them into a court for judicial approval, then a simplified scheme which does not increase the costs to the party at fault needs to be explored. Such a procedure will offer certainty for all involved. Insurers should welcome such a step as it will result in a binding settlement which cannot be revisited at a later date.

**2(b) How could or should such a duty be enforced?**

It is evident to the Society that enforceability will be a difficult issue, however with a statutory duty, insurers will have to amend their voluntary code for members. In addition, non-members of the ABI will have to comply with a statutory requirement. Non-compliance will have to be addressed in the legislation.

**2(c) Should such legislation apply to all such settlements or only those above a financial threshold? Please give reasons for your answer.**

The Society supports legislation to cover all settlements involving minors regardless of whether proceedings have issued, or the value of the settlement. There should not be a financial threshold put in place as this may be open to abuse.

**2(d) If there were to be a financial threshold, at what level should it be set?**

Please see 2(c).

**2(e) Would a new paper-based procedure for seeking court approval for settlements encourage more court approvals? Should such a procedure be introduced?**

Paper based approvals have worked very effectively during the current Covid 19 pandemic. The process has been timely and almost seamless.

The Society believe that this type of procedure has a permanent place in the justice system going forward. Judicial oversight and approval of minor settlements is important to protect interests and the process can be streamlined for standard cases.

The Consultation paper refers to the ‘hassle factor’ of obtaining a medical report, engaging a solicitor and attending court. The Society disagrees with such a position. When a child has suffered an injury and a third party is at fault, it is relatively straight forward to engage a solicitor who will arrange the appropriate medical examination, engage with the third party’s insurer and take a settlement to court for the approval of a judge, and investment thereafter. Such cases are dealt with in a particular way by the justice system and will, if possible, be conducted ‘on the papers’ with only legal representatives present. Should the child be required to attend court in person then this is dealt with sensitively, by closing the court room so that all those not involved in the case are excluded – not in open court as the Consultation paper suggests. The vulnerability of the child is observed and protected at all stages. A paper-based procedure is favoured, but it should not be predicated on a monetary threshold. There could be a presumption that the process would be conducted on the papers only unless the judge decides to the contrary due to specific circumstances of individual cases. In addition, a legal representative could have the option to indicate reasons why a case requires an oral hearing. It would then be a judicial decision if the case can proceed on the papers or require a face to face hearing. Ultimately a judge will have the final say if a settlement can proceed on the papers or not. There may be a need for guidance from the OLCJ in this area due to the element of judicial discretion that would be involved.

**2(f) If so, what should be the parameters of such a procedure (e.g. should it be restricted to cases where liability is admitted, cases below a financial threshold, cases involving only certain types of injury, etc.)?**

See above.

**3. If not: (a) Are you content with the status quo, which includes voluntary regulation?**

It is clear that voluntary regulation permits settlements to take place without approval and protection of the funds for minors.

There appears to be a justification of the current practice based on the small number of cases in this area. However, as outlined above, there are human rights issues at stake. The law and the courts need to protect minors, and it is a failure if they cannot. Legislation is required.

**3(b) Would a new paper-based procedure for lower-value settlements encourage greater uptake of voluntary court approval? Should such a procedure be introduced?**

See above.

**3(c) If so, what should be the parameters of such a procedure (e.g. should it be restricted to cases where liability is uncontested, cases involving only certain types of injury, etc.)?**

See above.

**3(d) What other means of requiring or encouraging court approval of settlements of compensation to children arrived at outside court proceedings can you identify?**

There should be an obligation on insurers to make it clear to parents that they should engage a legal representative to ensure that legal advice is obtained and the proper procedure is followed. Once legislation is introduced to make court approvals compulsory, insurers will be unable to conclude negotiations with a binding settlement unless the victim's parent/guardian agrees to abide by the legislative requirements. To do otherwise will result in invalidation of the settlement.

**4. Do you agree with the outcome of the screening exercises? If not, please provide comments.**

In respect to the points made within the equality screening exercise in relation to disability, the Society feels it is important to point out that disability issues will also arise if, for example, a child who already suffers from a disability is subsequently involved in car accident resulting in an injury, it is erroneous to assume that the disabled child will automatically have legal representation. The quantum of the disabled child's injuries may fall under the suggested threshold and these particular victims especially require protection.

In relation to the rural needs impact assessment, it is important to note that settlement approvals could be dealt with on the papers, and therefore, there would be no need to physically attend court for approval, except for in exceptional cases. This will be of great assistance for those who do not live close to a court house or have transportation issues.

**5. Do you agree with the outcome of the initial regulatory impact assessment? If not, please provide comments.**

Within the regulatory impact assessment, it is unclear how the financial calculations have been made. Moreover, the Society suggests that there are some erroneous statements made in relation to the position in other jurisdictions as Part 21 of the Ministry of Justice's procedural rules covers this area in England and Wales. In addition, there was also a review of Civil Justice conducted in the Republic of Ireland (the Kelly Review), which recommended that 'court approval should be required on settlement of a claim made on behalf of or against a child where no proceedings have been issued; and no settlement, compromise or payment in respect of a claim made on behalf of or against a child should be valid in the absence of court approval'.

**6. Please provide any other comments you have in relation to this consultation.**

The legislation should include a requirement that compensation money must be paid to the court on foot of a court order. It should be noted that insurers are not subject to Order 44 of the County Court Rules. Damages should only be paid into the court's funds office, not to the parents, and the settlement should not be capable of being actioned unless it goes through the courts. Whilst the legislation should be focused on protecting children, it will also protect insurers against issues that may arise in the future.

The Society notes some contradictions within the consultation document, including, para 2.7 which suggests that that "An approval hearing takes place in open court or in chambers" which is incorrect – approval hearings never take place in open court and since the pandemic some are dealt with via written submissions. Also, paragraph 3.7 seems to suggest the process does not necessarily involve a medical examination of the child. This contradicts what is stated in other paragraphs and the reality that a report would be required in most cases particularly if there has been a neck/back injury. Also, this does not chime with the 2019 Judicial Studies Board Guidelines for the Assessment of Personal

Injury quantum in Northern Ireland. This important guidance emphasises the importance of expert medical evidence in the assessment of personal injuries and in the prevention of fraud.

Further, the figures provided in the Consultation paper used to illustrate the extent of the problem in this jurisdiction show in essence a 30% discrepancy between 2017 – 2019 ie cases concluded and approvals made. The Society would have liked to have seen this discrepancy explained in the detail provided. The data relied upon seems to have emanated from the ABI which does not represent all insurers.

## **CONCLUSION**

The Society welcomes the opportunity to submit a response in respect of the Consultation on the court approval of minor settlements.

We trust our contribution is constructive and we would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.