



**Advice NI response to the Northern Ireland Legal Services Commission (NILSC)
consultation on**

(1) guidance in respect of the principles of merits, costs and damages

(2) guidance in respect of judicial review proceedings

(3) guidance in respect of public law children's cases

Deadline: Friday 19th January 2007

Advice NI is a membership organisation that exists to provide leadership, representation and support for independent advice organisations to facilitate the delivery of high quality, sustainable advice services. Advice NI exists to provide its members with the capacity and tools to ensure effective advice services delivery. This includes: advice and information management systems, funding and planning, quality assurance support, NVQs in advice and guidance, social policy co-ordination and ICT development.

Membership of Advice NI is normally for organisations that provide significant advice and information services to the public. Advice NI has over 70 member organisations operating throughout Northern Ireland and providing information and advocacy services to over 100,000 people each year dealing with over 225,000 enquiries on an extensive range of matters including: social security, housing, debt, consumer and employment issues. For further information, please visit www.adviceni.net.

(1) guidance in respect of the principles of merits, costs and damages

Advice NI understands the thinking behind the merits, costs and damages guidance and that in a restricted funding environment some method has to be found to decide on what

cases should be supported. Advice NI would refer back to submissions made in June 2006 in response to consultations on the Development of the Funding Code and the Development of a Registration Scheme. We would in particular draw attention to these responses in terms of the concern expressed that “need may become a victim of financial expediency – with vulnerable people potentially becoming lost and forgotten”. As the Commission moves towards producing detailed guidance Advice NI would urge caution for a number of reasons.

Firstly, the guidance itself highlights that “estimating prospects of success can never be an exact science, especially at the early stages of litigation ... predictions of chances of success often vary during a case as new information comes to light”. As ultimately decision makers will be making decisions about excluding people from legal aid, and thereby preventing access to protection under the law / through the courts, such decisions should not be taken lightly. Given the fact that this is not an exact science the Commission should recognise this and have inbuilt flexibility within the system. As previously highlighted in an Advice NI response “Advice NI would be cautious in commenting on the “strict cost-benefit ratios” mentioned in paragraph 3.3. This approach could lead to a quite rigid and inflexible framework which may not lend itself towards being responsive to needs on an individual case by case basis.”

Secondly, guidance influencing these decisions needs to be as clear, understandable and justifiable as possible to the person affected. The guidance in its current format highlights that the ‘prospects of success’ criteria is “an objective legal test” (that which is real, not influenced by outside factors or personal feelings). Given the references in previous consultation documents to “capped budgets” and “within the resources made available” Advice NI would have concerns that the objective legal test may be subjected to outside non-legal influences.

The document does highlight the issue of “overwhelming importance to the client” and describes strict cost benefit ratios. Advice NI would highlight that support to challenge particular benefit decisions by the Social Security Agency could lead to an individual’s

weekly income rising by over 100% and we would assert that such a potential change to a person's income would be overwhelmingly important. An example would be support to challenge a Disability Living Allowance decision to appeal, Commissioner level or beyond. The ultimate award of benefit would lead to additional income, plus there would be DLA-passported premiums which become payable within other social security benefits.

On a more general level, but linked to this point, Advice NI would urge the Commission to expedite developments in relation to introducing a mixed economy model of NILSC supported legal advice services. Advice NI members deal with over 237, 000 enquiries per year and 53% are social security related; 13% are housing related and 2% are debt related. We welcome the ongoing engagement between Advice NI and the NILSC on a number of levels, but feel that given the expressed desire of NILSC to fund services based on TSN principles and given the Legal Need research reports produced by Tony Dignan in July 2006 it is fair to expect more movement towards a mixed model of service provision.

(2) guidance in respect of judicial review proceedings

This is not a particular area of expertise for Advice NI. Our only comment would be that the spirit and ethos of this and previous consultation responses be applied to this particular piece of guidance.

(3) guidance in respect of public law children's cases

This is not a particular area of expertise for Advice NI. Our only comment would be that the spirit and ethos of this and previous consultation responses be applied to this particular piece of guidance.

Finally Advice NI would make comment on the consultation process. Not only is it very important that this process is rigorous but that people have had every chance to feed in

and express their views. Regarding the latter point, Advice NI believes that more could be done (workshops, information sessions etc) to actively engage with a wider range of stakeholders– most importantly the general public who will be most affected by these deliberations. We have offered the eConsultation service as one of a range of potential tools for maximising participation – and are disappointed that this has not proven to be acceptable at this time. We would ask NILSC to keep this situation and this offer under review.

Advice NI welcomes the opportunity to input into this consultation and would be keen to be kept informed of developments.

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