



Response to DoJ Consultation on Court approval of minor settlements (Compensation settlements agreed for personal injuries in respect of children where legal proceedings have not issued)

**Children's Law Centre
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Children's Law Centre
2nd Floor
127 – 131 Ormeau Road
Belfast
BT7 1SH

Tel: 028 90 245704
Website: www.childrenslawcentre.org

For further information contact:
Eamonn McNally eamonnmcnally@childrenslawcentre.org

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a free legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY as well as a Live Chat service for young people through an on line chatbot, "REE Rights Responder" and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health needs and complex physical health needs and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children and young people, CLC is grateful for the opportunity to make a submission to the DoJ consultation on the Court approval of minor settlements (Compensation

settlements agreed for personal injuries in respect of children where legal proceedings have not issued).

The consultation document examines whether or not and if so how Government should legislate to require court approval of compensation settlements to children for personal injuries (minor settlements) in cases in which legal proceedings have not issued. The matter arises from Lord Justice Gillen's Review of Civil Justice in Northern Ireland (the 'Gillen Review'), which proposed legislation 'to compel a requirement for court approval for all legal cases involving a settlement or award of damages to minors'.

The consultation document states that claims for the compensation of children who have suffered a personal injury most often arise as a result of road-traffic accidents, however there are other incidents in which children receive personal injuries and so the consultation outcomes should not focus solely upon road traffic accidents.

In some cases, the insurance company representing the at-fault party will offer a sum of compensation to the person with parental responsibility for the injured child, and this will be accepted without obtaining court approval and sometimes without seeking legal advice. This is in contrast to the current legal position in respect of awards of compensation to children in Northern Ireland is that any settlement of compensation for a child as part of legal proceedings must be approved by the court. The court will then, in most cases, order that the approved sum be managed under the direction of the court until the child reaches the age of eighteen.

In respect of settlements reached without legal proceedings being issued, there is a voluntary procedure whereby the injured party can seek court approval and a court direction about the management of the award. If a settlement is not approved by a court, it is subject to the law of contract and generally not binding on the child. This sometimes results in insurers entering into a discharge agreement with the child's parents, whereby the parents agree that they will indemnify the insured and the insurer against the possibility of future legal action by the minor. For the most part these arrangements are suitable however there are circumstances where it would be preferable for the child to have legal representation and for the award of damages to

be paid into the Court Funds Office rather than to the person with parental responsibility. These are detailed below.

When the court directs that the sum of compensation should be managed by the court, the money is paid to the Court Funds Office which in turn makes recommendations to the court on how the monies placed under its protection ought to be invested, based on the size of the award, the length of time for which it needs to be managed, and the needs and circumstances of the child. A 'guardian' (usually a parent) is appointed by the court to act on the child's behalf and may apply to make payments out of the fund for the benefit of the child, but this requires court approval. This system puts in place a series of checks and balances whereby the young person is protected, has their award for damages invested at a reasonable rate and can access monies through the court if necessary before the age of 18.

The consultation document sets out three possible concerns that may give rise to the need for legislation: the absence of legal representation for children; the absence of court approval of the sum of compensation; and the absence of court protection of the sum. There are two other scenarios which may require to be legislated for, firstly the case of Looked After Children and secondly where the injured child does not reside with those who have parental responsibility for them.

The consultation adopts the position that it would not be feasible to require parents to obtain legal advice on behalf of their children, or to prohibit compensators from paying compensation where parents have not obtained legal advice. Whilst there is nothing set out in statute that requires this there are a number of situations which should be given special consideration. Firstly the case of Looked After Children. It would be a more appropriate situation if someone who was acting as a corporate parent was required to obtain legal advice on behalf of minors in their care who have suffered a personal injury. The second of these incidences is in the case of absentee parents e.g. where the child does not live with anyone who has parental responsibility for them such as a grandparent. Decisions about compensation and about who this compensation is paid to may more appropriately be made by the person the child resides with. Therefore legal advice and representation would act as a check and balance. It may also be more appropriate for such awards to be paid into the court

fund office rather than to an absentee parent. There is no guarantee that the award would be preserved or invested for the minor.

The consultation documents recognise that the absence of court approval of an award of damages could give rise to the concern that the sum of compensation awarded may not be as much as a court would approve resulting in some children may be under-compensated; while the absence of court protection of the sum creates the possibility that awards may not be used for the child's benefit, or in the child's best interests. Legislation could be passed to ensure that an award of damages must be approved by the court and that funds must be invested in the Court Funds Office. This approach would also help to mitigate against a detriment to a child where legal advice and representation is not sought by the parent. The consultation further considers if the process of court approvals could be streamlined into a paper-based exercise rather than requiring a hearing. This could have benefits but there needs to be carefully drawn parameters around how this process operates.

In summary we believe that there should be:

1. Special consideration for Looked After Children with a specific responsibility upon the corporate parent to seek independent legal advice and any award of damages to be approved by the court and invested in the Court Fund Office.
2. Special consideration for children who reside with persons who do not hold parental responsibility for them (e.g. grandparents) with a requirement that legal advice is obtained, any award is subject to approval by the court and funds are invested in the Court Funds Office.

CLC is grateful for the opportunity to respond to the Department of Justice's consultation on the Court approval of minor settlements (Compensation settlements agreed for personal injuries in respect of children where legal proceedings have not issued). We hope you find our comments constructive and we look forward to further engaging with Departmental officials in relation to the issues raised in this response.