



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Court approval of minor settlements

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

A consultation

July 2021

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1. Introduction

- 1.1 This consultation seeks views on whether or not, and if so how, Government ought to legislate to require court approval of compensation settlements to children for personal injuries (minor settlements) in cases in which legal proceedings have not issued. Children are deemed to be under the age of eighteen years.
- 1.2 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'.¹
- 1.3 The Gillen Review referred to information provided to it about awards of compensation to legally unrepresented children, which indicated that *prima facie* there had been 'no court approval of the figures agreed or the sums invested for these minors'; and suggested that there ought to be further investigation of this by Government.²
- 1.4 A number of related concerns occur: the absence of legal representation for children; the absence of court approval of the sum agreed between the parties; and the absence of court protection and supervision of the award until the child reaches adulthood. The combination of these factors creates risks that children may be under-compensated and that awards may not in all cases be used for the benefit of the child, or in the child's best interests.
- 1.5 This paper explores the nature and extent of the issue, whether or not legislation is appropriate; and the options for, or alternatives to, legislation.

¹ Recommendation CJ34, Review of Civil and Family Justice in Northern Ireland, *Review Group's Report on Civil Justice* (Office of the Lord Chief Justice, 2017), p. 98. Available at <https://judiciaryni.uk/publications/review-groups-report-civil-justice>.

² *Ibid.*, para. 7.56, p. 96.

2. Settlements of compensation to children

- 2.1 Claims for the compensation of children who have suffered a personal injury most often arise as a result of road-traffic accidents. In many cases, the child's parent or guardian will engage a solicitor, perhaps via an insurance company, to pursue a claim against the insurance company representing the party that caused the injury (the 'at-fault party'). Often, the claim will be settled as part of legal proceedings, but sometimes the parties will agree a sum of compensation without legal proceedings being issued.
- 2.2 In some cases, the insurance company representing the at-fault party will offer a sum of compensation to the parents of the injured child, and this will be accepted without obtaining court approval and sometimes without seeking legal advice. In such cases, the parent may prefer to reach a quick settlement without the 'hassle factor' of obtaining a medical examination of the child, attending court and perhaps engaging a solicitor; and may also prefer to have the money paid directly and immediately to them, rather than have it placed under the protection of the court until the child reaches adulthood. We expect that these types of settlements are most likely to be for relatively small sums of compensation for relatively minor injuries, and that the more serious the injury the more likely that a claim will be pursued with the benefit of legal advice and via the courts.
- 2.3 It is possible, of course, that claims for the compensation of children are made in respect of situations other than road-traffic accidents, and directly from at-fault parties rather than via insurance companies.

The current legal position in Northern Ireland

- 2.4 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.³ The court will then, in most

³ Rule 8 of Order 80 of the Rules of the Court of Judicature (Northern Ireland) 1980; and rule 1(1) of Order 44 of the County Court Rules (Northern Ireland) 1981: see Appendix.

cases, order that the approved sum be managed under the direction of the court until the child reaches the age of eighteen.⁴

2.5 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.⁵ 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.

2.6 The relevant court rules are in the Appendix of this paper.

2.7 Court approval is usually sought by way of a petition by the injured party. An approval hearing takes place in open court or in chambers. The facts of the case are stated by the injured party's legal representative and relevant documents (such as medical reports) are provided. The child and his or her parent or guardian will usually be in attendance. The compensator's legal representatives do not attend. The judge either approves the settlement (and usually orders that the funds are placed under court protection) or adjourns the hearing so that either the compensator can make a higher offer or the action goes to trial. The costs of the application are paid by the compensator. An alternative to the petition is a 'friendly action' by way of a civil bill. (In response to the coronavirus pandemic, and as a temporary measure, many court approvals have been proceeding since 2020 where possible 'on the papers' and without the need for a hearing.)⁶

2.8 When the court directs that the sum of compensation should be managed by the court, the money is paid to the Court Funds Office (CFO), which is the

⁴ Rule 10 of Order 80 of the Rules of the Court of Judicature; and rule 1(2) and (3) of Order 44 of the County Court Rules: see Appendix.

⁵ Rule 9 of Order 80 of the Rules of the Court of Judicature: see Appendix. Form 36 (under Order 5, rule 5(1)) of the County Court Rules provides for a petition by a minor for approval of a settlement in a claim for damages, appointment of guardian and application of funds. Form 141 (under Order 33, rule 7(3)) of the County Court Rules provides for an order on petition appointing guardians of minors and approving settlement of claims.

⁶ This is the position for settlements within the county court jurisdiction. In the High Court, approval is sought by issue of originating summons or a 'friendly action' or writ.

office of the Accountant General of the Court of Judicature of Northern Ireland. The CFO 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. At the end of the financial year 2018–19, the CFO was managing children’s funds to the value of about £91m.

Other jurisdictions

England and Wales

- 2.9 The situation in England and Wales is similar to that in Northern Ireland. In legal proceedings, any compensation in relation to a child must be approved by the court, and the management of court-approved sums is subject to the direction of the court, which usually means being placed under the protection of the Office of the Accountant General, which invests the money until the child reaches 18. There is also a voluntary procedure for settlements agreed without the issue of legal proceedings to be brought into court for approval.⁷

Scotland

- 2.10 In Scotland, the situation is governed by primary legislation. Section 13 of the Children (Scotland) Act 1995 (‘Awards of damages to children’) provides that where, in any court proceedings, a sum of money becomes payable to, or for the benefit of, a child, the court may appoint a judicial factor to look after the money; pay the money to the sheriff clerk, the Accountant in Court or the child’s parent to be looked after; or pay the money directly to the child.⁸ We understand that payments to a judicial factor are only made infrequently (usually only in complex cases or where the sum of money is substantial); the facility to make payments to a sheriff clerk is, in practice, not used; and that payments to the Accountant in Court are ordered only in a minority of cases. In most cases, therefore, the court orders the money to be paid to the child’s

⁷ See rules 21.10 and 21.11 of the Civil Procedure Rules.

⁸ A sheriff clerk is a court clerk in a sheriff’s court. A judicial factor is an agent – often a solicitor or accountant – appointed to administer a person’s estate or look after their affairs.

parents. In doing so, the court may attach conditions to such an order, in relation to how the money may be managed and spent.

2.11 The situation in Scotland, then, appears to be quite different to that in Northern Ireland, in that there is no facility to seek court approval of a compensation settlement for a child and, in practice, where compensation is payable to a child as a result of court proceedings, the money tends not to be placed under the protection of the court. Another difference is that a child is defined under the above legislation as being under sixteen years of age.

2.12 In 2019, the Scottish Government published a consultation paper on judicial factors, which included a question on damages to children outside court proceedings. It noted that:

Damages actions on behalf of children are often settled outside of court. Therefore, if the matter is not formalised by means of a joint minute of agreement or subsequent court decree section 13 of the 1995 Act ... does not apply. In these circumstances it is common for the agreed sum to be paid directly to the pursuer's solicitor. The solicitor then has the option of retaining the funds until the child is 16, passing the funds to the child's parents/guardians or applying to the Accountant of Court for a direction. There may be benefit in specifying the procedure where no joint minute or subsequent decree has taken place.⁹

2.13 It then suggested the possibility of requiring the person receiving the money (in cases where there is no joint minute or decree) to apply to the court for a judicial factor to be appointed, pass the money to be dealt with by the Accountant of Court, or pass the money to be dealt with by the child's parents or guardians subject to direction by the Accountant of Court. Five of nine respondents to the consultation said that there was a need to specify a procedure for allowing section 13 of the 1995 Act to be available for settlements of damages reached outside of court.¹⁰

⁹ *Judicial Factors: Consultation* (Scottish Government, 2019), pp. 21–22. Available at <https://www.gov.scot/publications/judicial-factors-consultation/>.

¹⁰ *Judicial Factors: Analysis of responses to Scottish Government Consultation* (Scottish Government, 2020), p. 6, 12. Available at *Judicial Factors: Consultation* (Scottish Government, 2019), pp. 21–22. Available at <https://www.gov.scot/publications/judicial-factors-consultation/>.

2.14 We understand, however, that the Scottish Government has no current plans to bring forward legislation, although a report by the Scottish Law Commission is pending.

Republic of Ireland

2.15 We understand that, in the Republic of Ireland, there are similar arrangements to those in Northern Ireland in place in relation to awards to children arising in court proceedings: a court order is made and funds lodged with the Accountant of the Courts of Justice; but that there is no mechanism to manage funds in circumstances where no court order is in place.

2.16 A Review Group commissioned by the Department of Justice, however, recommended in 2020 the introduction of:

(a) a requirement, to be introduced in primary legislation, for the approval by the court at the jurisdictional instance appropriate to the claim value, of a settlement of a claim made on behalf of or against a child where no proceedings have been issued; and

(b) provision that in the absence of court approval, no settlement, compromise or payment in respect of a claim made on behalf of or against a child shall be valid.¹¹

Unrepresented children and unprotected awards

Unrepresented children

2.17 The Gillen Review referred to between 174 and 213 legally unrepresented children receiving compensation annually during the period 2011–14. This was based on information supplied in 2015 by the Department for Communities (DfC) about resolved claims for compensation in respect of road-traffic accidents. (It is assumed that claims in which there is no legal representation are not brought into court for approval.)

2.18 DfC's Compensation Recovery Unit manages the Compensation Recovery Scheme (CRS), the purpose of which is to recover from compensators the cost of social-security benefits and health-service costs that have been paid or incurred as a result of an injury or illness for which compensation is due.

¹¹ *Review of the Administration of Civil Justice: Report* (Department of Justice (Republic of Ireland), 2020), p. 369. Available at http://www.justice.ie/en/JELR/Pages/Review_of_the_Administration_of_Civil_Justice_-_Review_Group_Report.

The scheme is based on the principle that a person should not be compensated twice for the same accident or injury. Under the scheme, compensators must pay to DfC the value of any benefits already paid or health-service costs already incurred, and then deduct this amount from the total award of compensation. Compensators are required to notify DfC within fourteen days of receiving a claim for compensation by submitting a form setting out details of the injured person and the claim. There is a section in the form for the details of the ‘injured person’s representative’ to be included. The data is then entered into a database. The information supplied to the Gillen Review was extracted from this database.

2.19 The figures published in the Gillen Review, however, related only to compensation claims that had been registered on the system and resolved within the same calendar year (and only to claims arising out of road-traffic accidents). Table 1 shows figures for the last five calendar years for:

- all resolved cases (regardless of when registered) in all types of compensation claims;
- all such cases in which no legal representative is recorded;
- all such cases in which no legal representative is recorded and the claim is recorded as settled.

Table 1: Compensation claims involving children resolved in each calendar year, 2017–19.

	2017	2018	2019	Total
All resolved claims	2410	2187	2294	6891
All settled claims	1863	1595	1711	5169
No recorded legal representative: all resolved claims	363	234	350	947
No recorded legal representative: settled claims only	307	198	289	794

2.20 The data have been obtained from the database used by the Compensation Recovery Unit to record all compensation claims in Northern Ireland. Note that the database records claims as either ‘live’ or ‘resolved’, and that ‘resolved’ includes claims that are either settled (i.e. paid) or withdrawn or refused (i.e.

unpaid). The table includes figures for all resolved cases as well as those resolved cases that were recorded as settled.¹²

- 2.21 The Gillen Review published the response of the Association of British Insurers (ABI) to the quoted information about unrepresented children. The ABI is the trade association for the UK insurance industry, and thus represents most of the insurance companies paying out compensation awards in Northern Ireland. Based on information provided by its members (and some non-members), the ABI stated that only 25% of cases recorded on the database as unrepresented had actually been settled with an unrepresented child. The ABI's explanation for the discrepancy between its data and that provided from the database was that many of the records in the database were incomplete, owing to the insurance company not submitting details of the 'injured person's representative'. The ABI also provided an analysis of the value of unrepresented claims, which indicated that the majority of settlements in unrepresented cases were for relatively low sums (96.5% were under £3,000).¹³
- 2.22 A similar analysis has been carried out in respect of the cases recorded in Table 1 above. Of the 794 cases settled without legal representation being recorded, 784 (99%) were made against insurance companies (754 of which were against ABI members), 3 against public bodies, and 7 against other organisations.
- 2.23 We asked the ABI to provide an analysis of the claims made against its member organisations, in terms of an interrogation of their own records of claimants' legal representation and the value of the claims settled without legal representation. We also wrote directly to non-ABI members and to the public bodies and other organisations. We received analyses of 647 (81%) of the 794 claims.¹⁴ The result of this analysis is presented in Table 2.

¹² A claimant is defined as being a child if he or she was under the age of 18 on the date the claim was registered (not the date of the injury or the date of resolution).

¹³ One sum of £15,000 was identified as involving a claimant who was three months away from his eighteenth birthday and who insisted that he did not want to use a solicitor.

¹⁴ Note that the ABI advised that 30 of the claims attributed to its members were either outside the 2017–19 period or attributed to the wrong insurer. These claims were among those not analysed.

Table 2: Analysis of compensators' records of claims involving children recorded as legally unrepresented, 2017–19.

	Insurance companies		Public bodies	Others	Total
	ABI	Non-ABI			
Total claims recorded on CRS database	714	62	3	15	794
Total claims analysed	639	-	3	5	647
Legal representation	577	-	3	2	582
No legal representation confirmed (total)	62	-	-	3 ¹⁵	65
No legal representative (percentage)	10%	-	0%	60% ¹⁵	10%

- 2.24 This analysis indicates that the large majority of claims recorded on the CRS database as having been settled without legal representation are incorrectly recorded. The reason for this is likely to be the failure of compensators either to record the legal representative on the system when registering a case for the first time, or to add the details of a legal representative who has been appointed subsequent to the initial registration. Assuming the 647 returns received were broadly representative of the 794 cases, the analysis indicates that only around 10% of these were settled in reality without legal representation: this would represent around 26 cases per year (about 1% of all compensation claims involving children).
- 2.25 An analysis of the value of the 65 cases identified in compensators' records as having been settled with legally unrepresented children indicated that all of those claims were of relatively low value, with 88% of them valued at less than £3,000 and no claims for more than £5,000. It is possible, however, that the value of some of these settlements may have been increased had they been subject to court approval.
- 2.26 From the above analyses, it appears that the extent of the issue of *unrepresented children* is considerably less than that suggested by the information held in the CRS database, with compensators' records indicating

¹⁵ 1 of the claimants was an adult at the time of settlement.

that the actual number of unrepresented children in settled cases may only be 10% of the total recorded in the database.¹⁶

Unprotected awards

2.27 Table 3 below, however, shows the number of court approvals of compensation awards to children by calendar year. When these figures are compared in Table 4 to the total annual number of settled claims in a year as recorded on the CRS database (see Table 1), it indicates a gap of 312 cases over three years (104 per year on average).

Table 3: Court awards of compensation to children, 2017–19.

	2017	2018	2019	Total
County court disposals (minor petition)	1075	1003	1094	3172
County court disposals (civil bill)	555	444	493	1492
High Court disposals	65	65	63	193
<i>Total</i>	<i>1695</i>	<i>1512</i>	<i>1650</i>	4857

Source: NICTS. County court figures includes cases recorded on ICOS with at least one participant with a person category of 'Minor'. High Court figures are minor cases received by the Court Funds Office.

Table 4: Comparison of total compensation claims involving children with court approvals of compensation awards to children, 2017–19.

	2017	2018	2019	Total
Total settled claims	1863	1595	1711	5169
Total approvals	1695	1512	1650	4857
<i>Difference</i>	<i>168</i>	<i>83</i>	<i>61</i>	312

2.28 It is not possible to know the value of the awards that are not submitted for court approval, as the CRS database does not record whether or not a claim has been submitted for court approval and thus they cannot be identified.

Conclusions

2.29 The number of settled cases involving legally unrepresented children appears to be small, and the value of these cases appears to be relatively low (fewer than 30 per year, all settled for less than £5,000). Disregarding the question of

¹⁶ There may also be resolved but unsettled claims in respect of children in which there is no legal representation.

legal representation, however, there do appear to be around 100 settlements of compensation to children per year that are not submitted for court approval. This represents around 6% of all children's compensation settlements. We do not know the value of these cases.

3. Options

- 3.1 There are 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.
- 3.2 We have seen in the preceding chapter, however, that the number of children's cases in which there is no legal representation is very small; and we do not think that it would be appropriate or feasible to compel parents to obtain legal advice on behalf of their children, or to prohibit compensators from paying compensation where parents have not obtained legal advice. We have not been able to identify any precedent for a statutory requirement to obtain legal representation, decisions about which are generally accepted to be a matter of individual choice.
- 3.3 The absence of court approval, however, does give rise to the concern that the sum of compensation awarded may not be as much as a court would approve, and therefore 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.
- 3.4 The focus, therefore, of any legislation ought to be on court approval, which is the means of obtaining court protection, since an application for court approval will generally result in a court direction as to how the money is to be dealt with (which, in most cases, will be that the money is paid into court to be managed by the Court Funds Office).

Should there be a requirement for court approval?

- 3.5 The first question to consider is whether or not there should be a requirement for all awards of compensation for a child to be approved by a court, and thus subject to an order for court protection.
- 3.6 A consultation in 2019 about the management of court funds reached no consensus about whether or not court protection of children's funds should continue: of 103 respondents, 48 supported the status quo, 28 supported a

financial threshold below which funds would be retained by parents or guardians, 22 supported court management only by exception, and 3 did not answer. Since, however, 80% of respondents believed that the court protection of funds was important (because of the risk that the child may not benefit from the fund), it was concluded that there was insufficient support to warrant any change and the status quo has been maintained.¹⁷

- 3.7 About half of the respondents did take the view, however, that parents or guardians ought to be trusted to invest or spend sums of court-approved compensation for the benefit of their children either where the sum was below a certain threshold, or in the absence of exceptional circumstances. It might similarly be argued that parents ought to be trusted to manage for the benefit of their children sums of compensation that have been agreed without court approval; and a similar view may be that it is properly a parental decision to reach a settlement with an insurance company without seeking court approval, having balanced the advantages of doing so (a relatively quick and straightforward process that does not necessarily require a medical examination of the child) against the risks (of settling for a sum lower than might be awarded or approved by a court).
- 3.8 The following paragraphs consider how this might be achieved and the various issues that arise.

Voluntary regulation

- 3.9 The ABI has a code of practice on 'third party assistance', which serves as guidance for its members when dealing directly with an injured party who may be entitled to a compensation payment for personal injury, and who is legally unrepresented (an 'unrepresented claimant').¹⁸ The code recommends that insurers, when making initial contact, should inform unrepresented claimants of their right to seek independent legal advice and, should the claimant make

¹⁷ *Management of Minors' and Patients' Funds: Response to Consultation* (Northern Ireland Courts and Tribunals Service, 2019). Available at <https://www.justice-ni.gov.uk/consultations/management-minors-and-patients-funds>.

¹⁸ *ABI Code of Practice: Third Party Assistance* (Association of British Insurers, [n.d.]). Available at <https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/motor-insurance/compensation-claims/>.

clear that they do not wish to deal directly with the insurer, no further contact should be made. The code also states that 'insurers will strongly recommend that minors seek independent legal advice where the costs of that legal advice are recoverable by the claimant'. (In Northern Ireland, such costs are recoverable.)

- 3.10 Of course, by definition a code of practice is voluntary and unenforceable, and applies only to those insurance companies that are members of the ABI.
- 3.11 In addition, guidance issued by the Law Society of Northern Ireland advises solicitors that 'claims involving minors should not be concluded by way of a parental discharge or without court approval'. By definition, however, this relates only to cases in which the child is already represented; and even where the child is legally represented (the majority of cases), a parent is under no obligation to follow a solicitor's advice. As noted above, the figures appear to confirm that court approval may not be obtained despite legal representation.

Statutory regulation

- 3.12 Primary legislation might place a duty on one of the parties to seek court approval of any compensation settlement for a child.

Duty on parent or guardian

- 3.13 Placing a duty on the parent or guardian of the child seeking compensation to initiate court proceedings may be viewed as an unwelcome imposition on the party that has suffered the loss. The prospect of having to make a court application, probably engaging a solicitor and obtaining a medical report may even serve as a disincentive to some parents to seek compensation in the first place, thus leading to the unintended consequence of children missing out on compensation who might otherwise have received it.
- 3.14 On the other hand, the parent or guardian may be the best placed of the parties to make a court application, since he or she will be in possession of the relevant information, e.g. about the injury to the child. It is also the case that the current voluntary procedure for seeking court approval places the

onus on the parent or guardian; and it may be possible to devise a quicker, easier written procedure for obtaining approval in some cases.

Duty on compensator

- 3.15 Placing a duty on the compensator would make the process easier for the injured party but may create a less efficient procedure, whereby the party bringing the court proceedings is not in possession of the medical evidence required by the court, yet is responsible for obtaining it from the other party. The initial regulatory impact assessment (RIA) (see below) has also indicated that it would be a more expensive procedure, as the compensator would incur its own legal costs for applying to the court without necessarily removing or reducing all of the legal costs incurred by the claimant (who would still incur costs for legal advice and in some cases, for legal representation, if a hearing is required by the court).

Simplified procedure

- 3.16 Irrespective of whom the duty is imposed on, it should be possible to mitigate the 'hassle factor' by providing, in court rules, for a simple administrative procedure for obtaining court approval that doesn't necessarily require a hearing, and which would therefore incur lower legal costs.
- 3.17 In response to the coronavirus pandemic, and as a temporary measure, since 2020 many court approvals have been proceeding where possible 'on the papers' and without the need for a hearing in all cases. From an administrative point of view, feedback from NICTS staff suggests that this has worked efficiently and has reduced delay in those cases where a hearing has not been required.
- 3.18 The initial RIA (see below) found that a simplified procedure – under which the court would be able to approve settlements based only on the papers, but could order a hearing if it thought necessary – would reduce overall costs to compensators.

- 3.19 The introduction of such a procedure on a permanent basis would be a matter for the County Court Rules Committee, but this could be under the instruction of the Department.
- 3.20 There may still, however, be a question about the feasibility of the compensator having the responsibility for producing the appropriate evidence to the court, e.g. medical report about the claimant. This could be addressed by requiring the co-operation of the claimant in the application.

Enforcement

- 3.21 There are questions around how a duty to seek court approval could be enforced, and around detection: if both parties were content to reach a settlement without court approval, it is difficult to envisage how a failure to seek court approval would be brought to the court's attention. That the law may be ignored by some, however, should not preclude consideration of the issue.
- 3.22 Bearing in mind these enforcement difficulties, any duty to seek court approval ought to be accompanied by a provision to invalidate compensation paid to a child without court approval.
- 3.23 Legislation could require a compensator to obtain the approval of the court for a proposed settlement and failure to do so would mean regarding the payment as not having been made, allowing the child to pursue the matter afresh when they reach adulthood. Obviously, in such circumstances there would be much more of an incentive for the compensator to comply with any statutory requirement than for the parents. Indeed, there could be a perverse disincentive for a parent to ignore the obligation, the risk of which would tend to suggest that any obligation to apply for court approval should be on the compensator. Most compensators are also likely to be better placed than private individuals to bring the necessary application.

Threshold

- 3.24 If there were to be legislation to require court approval of compensation payments to children, it would be possible to apply a threshold below which

such a requirement would not apply. In Scotland, there is a threshold of £5,000, below which an out-of-court settlement cannot be given a direction as to its management. It might be argued that, where the costs of seeking approval outweigh the value of the settlement, it would be unreasonable to compel legal proceedings. Legislation in Northern Ireland could, however, still allow a voluntary process for awards below the threshold.

- 3.25 Another possibility would be to introduce a quicker and simpler procedure for obtaining court approval for settlements (as discussed above) below a financial threshold. This would reduce the ‘hassle factor’ for the parent or guardian and also reduce the legal costs that would ultimately be borne by the compensator.
- 3.26 A threshold might minimise the concerns expressed above about possible disincentives to parents to seek compensation or to compensators to settle quickly, where claims are of relatively low value. On the other hand, the practice of the courts in respect of settlements that are currently submitted for approval, appears to be that all settlements regardless of value ought to be placed under court protection. There may also be a concern that, to avoid having to go to court, a threshold might create an incentive for compensators to settle claims at a value below the threshold in cases where a court may consider the value to be higher.

4. Impact assessments

4.1 The policy proposal to require court approval of all compensation awards for children has been screened for various impacts. Screening documents are available at [enter web address]. The conclusion of the screening exercise was that a regulatory impact assessment was required.

Regulatory impact assessment

4.2 Regulatory impact assessment is a tool that informs policy decisions, with a view to regulating only when necessary and proportionately to the risk being addressed. It is designed to assist with consideration of potential economic impacts and must be considered if a policy has an impact on a sector of the wider business community in Northern Ireland.¹⁹ The imposition of a legal duty to submit all compensation settlements for court approval would have an impact on the insurance industry in Northern Ireland, since increasing the number of settlements submitted to court would increase the legal and other costs associated with such approvals, and these are borne by the compensator. An increase in court approvals would be of benefit to the legal profession by increasing chargeable work for solicitors and barristers. On the other hand, if a duty were to be accompanied by a simplified court procedure that reduced the number of court hearings, this may be a benefit to the insurance industry and a cost to the legal profession.

4.3 An initial RIA assessed six different options – the status quo, plus various scenarios in which there would be a duty to submit all minor settlements for court approval, including the duty being placed on the claimant or on the compensator, in which there was a simplified court procedure, and where the duty only applied above a threshold. The initial RIA is available at [enter web address]. Its conclusions are discussed below.

4.4 To estimate the costs for each of these options, the following categories of cost were identified (both for court approvals of settlements and settlements currently not submitted for court approval): legal advice and representation

¹⁹ *Northern Ireland Regulatory Impact Assessment: Guidance, Version 1.2* (Department for the Economy, 2019). Available at <https://www.economy-ni.gov.uk/publications/regulatory-impact-assessment-guidance>.

incurred by the claimant's parent/guardian; legal advice and representation incurred by the compensator; medical reports; court fees. The cost of court administration and judicial time was not included as these costs are recovered by the court fees. Benefits and costs to the legal profession of additional or reduced chargeable work were not costed as the margins between costs incurred and fees charged are unknown.

- 4.5 To estimate the costs, a series of assumptions had to be made about the current volume of minor settlements approved by the court (minor approvals), the values of those approvals, and current volume and values of minor settlements currently not approved by the court. This was done by obtaining data from the Northern Ireland Courts and Tribunals Service (NICTS) on the current number and values of compensation awards to children and applying a number of assumptions about how many of these awards would have been 'minor approvals'.
- 4.6 Assumptions about the legal costs incurred were informed by consultation with a solicitors' firm specialising in personal injury litigation and the Association of British Insurers. Further assumptions were made about the number of cases in which counsel is instructed, the number of cases in which a second hearing is required, and travel costs. The solicitors' firm was also consulted about the number and cost of medical reports.

Conclusions

- 4.7 The six options and their estimated costs are shown in Table 5.
- 4.8 The initial RIA has estimated that, currently, the estimated total cost of minor settlements to compensators is £3,625,195 annually. This includes the costs associated with both court approvals of settlements and with settlements that are currently not submitted for court approval. This represents an estimated average cost per case of £2,680 (based on all settlements, whether court-approved or not).
- 4.9 Placing a duty on the claimant to seek court approval of all settlements (Option 2) would increase the total annual costs to the insurance industry by an estimated £90,626 (2.5%), and the average cost per case by £67, by

increasing the number of settlements subject to court procedure. If, however, such a duty were accompanied by a simplified procedure (Option 3) – which would involve a paper-based assessment by the court, but with the option of ordering a hearing – this would reduce estimated total costs by 5.5% and bring the average cost per case down by £147.

Table 5: Initial regulatory impact assessment: estimated total annual average cost and average cost per case for each option.

Option	Description	Total average annual cost	Total annual cost relative to status quo	Average cost per case	Average cost per case relative to status quo
1	Do nothing/voluntary regulation	£3,625,195	-	£2,680	-
2	Legislation – duty on claimant to submit all settlements for court approval	£3,715,821	+ £90,626 (+2.5%)	£2,747	+£67
3	Legislation – duty on claimant to submit all settlements for court approval, under a simplified procedure	£3,426,439	- £198,756 (-5.5%)	£2,533	- £147
4	Legislation – duty on compensator to submit all settlements for court approval, under a simplified procedure	£3,799,736	+ 174,541 (+4.8%)	£2,809	+ £129
5	Legislation – duty on claimant to submit all settlements of more than £3,000 for court approval, under a simplified procedure	£3,407,608	- £217,587 (-6.0%)	£2,659	- £21
6	Legislation – duty on compensator to submit all settlements of more than £3,000 for court approval, under a simplified procedure	£3,776,527	+ £151,332 (+4.2%)	£2,791	+ £111

4.10 Placing the same duty on the compensator would lead to a greater increase in costs than would placing it on the claimant (a 4.8% increase rather than 2.5%). This is because of assumed additional legal costs that the compensator would have to pay in order to initiate the court proceedings. A comparison of Options 3 and 4 indicates that the average cost per case if the

duty were on the compensator would be an estimated £276 more than if the duty were on the claimant.

- 4.11 Comparisons of Options 3 and 5 and of Options 4 and 6 indicate that applying the duty only above a threshold of £3,000 combined with a simplified procedure would further reduce total annual costs, but only marginally.
- 4.12 Given the reliance on so many assumptions (discussed above), all the above figures should be treated with some caution.

5. 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.

2. If so:

(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.

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

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

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

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

(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.)?

3. If not:

(a) Are you content with the status quo, which includes voluntary regulation?

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

(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.)?

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

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

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

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

6. Next steps

- 6.1 We will consider all contributions within the scope of this consultation and take them into account in the development of any proposals for legislation. A summary of responses will be made available on our website.
- 6.2 You can respond to this consultation online via Citizen Space on the nidirect website at <https://consultations.nidirect.gov.uk/doj/minor-settlements>. Alternatively, you can also send the consultation questionnaire, which is provided separately on the Department's website (see <https://www.justice-ni.gov.uk/consultations/consultation-minor-settlements>), by email to AToJ.Consultation@justice-ni.gov.uk. A young person's version of the consultation paper is also available on Citizen Space and the Department's website. The consultation will be open for approximately twelve weeks. The closing date for receipt of responses is **5pm on Friday 24 September 2021**. Please note that it is unlikely that responses to the consultation will be accepted after this date.
- 6.3 Hard copies of this consultation document and copies in other formats, such as Braille, large print, etc., can be made available on request. If it would help you to have to this document in a different format or in a language other than English, please let us know and we will do our best to assist you. If you require any further information on this consultation, please contact us by email at: AtoJ.Consultation@justice-ni.gov.uk.
- 6.4 We intend to publish a summary of responses on our website on completion of the consultation process. Any contact details, which will identify a respondent as a private individual, will be removed prior to publication. All information will be handled in accordance with the General Data Protection Regulation 2018. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses, not subject to specific exemptions under that Act, be disclosed to other parties on request.
- 6.5 If you have any concerns about the way that this consultation process has been handled, please contact us by email at: Governance.Unit@justice-ni.gov.uk.

Appendix: Court rules

Rules of the Court of Judicature (Northern Ireland) 1980

Order 80: Disability

Compromise, etc., by person under disability

8. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

Approval of settlement

9.—(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for—

(a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under Article 21 of the County Court (Northern Ireland) Order 1980, or rule 10, or

(b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Order (Northern Ireland) 1977, the originating summons must include the particulars mentioned in Article 4 of the Order.

(3) No appearance need be entered to an originating summons under this rule.

(4) In this rule "settlement" includes a compromise.

Control of money recovered by person under disability

10.—(1) Where in any proceedings—

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or

(b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, whether under Article 21 of the County Courts (Northern Ireland) Order 1980 or this rule, or under both that Article and this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the High Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special direction that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a county court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the High Court, to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under sections 183 to 189 of the Merchant Shipping Act 1995, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

County Court Rules (Northern Ireland) 1981

Order 44: Settlement of claims by and money recovered on behalf of minor or patient

Compromise or payment of claim

1.—(1) In any proceedings in which money or damages is or are claimed by or on behalf of or for the benefit of a minor or patient suing either alone or in conjunction with other parties—

(a) no settlement or compromise or acceptance of money paid into court, whether before, at or after the hearing, shall be valid without the approval of the judge or district judge as the case may be;

(b) no money or damages recovered or awarded in any such proceeding whether by settlement, compromise, payment into court or otherwise before, at or after the hearing shall be paid to any party or to the next friend, guardian ad litem or controller of any party or to any party's solicitor unless the judge or district judge as the case may be so directs.

(2) All money so recovered or adjudged or ordered or awarded or agreed to be paid shall be dealt with as the judge or district judge as the case may be shall direct and the said money or any part thereof may be so directed—

(a) to be paid into court and to be invested or otherwise dealt with there; or

(b) to be otherwise dealt with.

(3) The directions referred to in paragraph (2) may include any general or special directions that the judge or district judge as the case may be may think fit to give, including (without prejudice to the generality of the foregoing provisions) directions as to how the money is to be applied or dealt with and as to any payment to be made either directly or out of the amount paid into court to the plaintiff, to the next friend or to the solicitor for the plaintiff in respect of moneys paid or expenses incurred or for maintenance or otherwise for or on, behalf of or for the benefit of the minor or patient or otherwise, or to the solicitor for the plaintiff in respect of costs.

(4) Where, under paragraph (2) money is directed to be paid into court on behalf of a minor, the next friend or solicitor of the minor shall lodge in the Office a copy of the minor's certificate of birth.

From 36: Petition by a minor for approval of a settlement in a claim for damages, appointment of guardian and application of funds

ORDER 5 RULE 5(1)

[Title as in Form 1]

THE PETITION ofofin the County ofa minor, byofhis and next friend showeth:

1. YOUR PETITIONER is a minor under the age of 18 years and is now years of age, having been born on the day of and has no testamentary or other guardian (except his)
2. The right of action the subject-matter of these proceedings does not exceed £45,000 in amount or value.
3. [The Father of your petitioner died on the day of and the nearest relatives of the petitioner are]
4. Your Petitioner met with an accident on the day of 20... .., when he was [set out circumstances and particulars of the person who caused the injury] and he sustained injury to his Your Petitioner has now recovered and does not suffer from any serious or permanent disability [other than]
5. The said has agreed to pay a sum of £... damages in settlement of all claims which your Petitioner may have in respect of the matters aforesaid, together with all medical and legal costs incurred by the said including the costs of this petition and order thereon and all costs of and incidental to the said settlement, and the said on behalf of your Petitioner has, subject to being authorised by this Honourable Court,

consented to accept such settlement on the said damages being lodged in Court to the separate credit of the Petitioner.

6. The said sum for damages is made up as follows-

.....
.....

YOUR PETITIONER therefore prays-

(a) That the said may be appointed Guardian of the estate [and person] of your Petitioner.

(b) That the said may be authorised to make the aforementioned settlement and that the said damages be lodged in Court to the separate credit of the Petitioner.

(c) That out of the said damages there may be paid out of Court the sum of £... to the said for the use and benefit of the Petitioner for the purpose of
.....

(d) Such further order as the nature of the case may require.

Dated this day of20

Signed Next friend.

Address

Form 141: Order on petition appointing guardians of minors and approving settlement of claims

ORDER 33, RULE 7(3)

[Title as in Form 1]

IT APPEARING to the Court that the said duly filed a petition dated theday of20 ..., seeking on the ... day of20, thatmay be appointed guardian of the [person and] estate of the said minor during his minority or until further order; and that the guardian when appointed be given liberty to accept the offer of £... for damages together with £... for costs and expenses in full settlement of all claims for damages arising out of on theday of20 ..., sustained by the said minor and that the guardian be authorised to sign a receipt or discharge for the minor's said claim; and that the said sum of £... when paid be lodged in Court to the credit of this matter;

AND IT FURTHER APPEARING that the property to which this matter relates so far as it consists of property other than land does not exceed £45,000 in amount or value and so far as it consists of lands does not exceed £500 in annual value. And the said matter [having stood adjourned until the day of 20, at, and] having come on this day to be heard.

And upon reading the said petition, dated the day of 20, and the documents therein referred to, the affidavit of sworn the day of 20, the consent of dated the day of 20 and the affidavit of sworn the day of 20;

AND IT FURTHER APPEARING that is a minor having been born on the day of, and that it is necessary and expedient that a guardian of the [person and] property of the said minor should be appointed, and that is a fit and proper person to be appointed such guardian, and has no interest in this matter adverse to the interests of the said minor, and has consented to be so appointed

IT IS ORDERED that the said be and he is hereby appointed guardian of the [person and] property of the said minor [under the provisions of section 2 of the Guardianship of Infants Act 1886[??], *to be included where mother is appointed guardian*] without security being required from him/her;

AND IT is FURTHER ORDERED that the settlement of the claims of the said minor as aforesaid against for the sum of £... for damages together with £... for costs and expenses [including the costs of this petition and order thereon and all costs of and incident to the settlement of the said claims] be and the same is hereby approved; and the said guardian is hereby authorised and directed to execute or sign a release, receipt or discharge in full settlement of the said claims upon payment of the said sums:

AND IT is FURTHER ORDERED that the said guardian do, on receipt thereof, upon the privity of the Accountant General, lodge in Court to the credit of this matter the said sum of £...

AND IT is FURTHER ORDERED that [out of the said lodgement] the Accountant General do [pay to the sum of £... for the use and benefit of the said minor and do] invest the [balance of the] said lodgement in the name of the

Accountant Generalin [the purchase of]to
be held until further order for the benefit of the said minor.

Dated atthisday of20

SignedChief Clerk.

(Seal)

SignedSolicitor for