

**Ministry of Justice**

**Consultation Paper CP 31/08**

**Civil Court Fees 2008**



**A response by the Association of Personal Injury Lawyers**

**March 2009**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Membership comprises solicitors, barristers, legal executives and academics, who are all committed to serving the needs of people injured through the negligence of others.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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## **Executive Summary**

APIL's long-standing position is that we do not support the fee policy of 'full cost recovery', especially for personal injury victims. The court service should be a resource of the state funded by taxation, with court users paying a contribution towards court services to reflect the individual benefit obtained.

We believe that higher court fees generally impede the ability of many innocent injured victims to gain access to justice due to difficulties in securing appropriate legal funding for their cases. Solicitors could be more reluctant to take on cases due to the potential financial risk involved.

We believe that if claimants are expected to pay higher court fees they should be able to expect a minimum level of service, with courts having to adhere to service level agreements and the reaching of targets.

We question whether court fee increases are an attempt by the Government to drive litigation from the courts into alternative dispute resolution, such as mediation and arbitration. Where mediation is seen by all parties to be a reasonable option, and the process is conducted by trained mediators with experience in personal injury litigation, it can be very valuable in resolving disputes. We do not believe that parties, under any circumstances, should be compelled to use ADR as this would constitute an unacceptable restraint on the right of access to the court.

## **Introduction**

APIL welcomes the opportunity to respond to the Ministry of Justice (MoJ) consultation paper on Civil Court Fees 2008. Whilst the paper specifically points out that the underlying fee policy of full-cost recovery is not in question in this consultation<sup>1</sup> it does go on to say that the MoJ will continue to implement their

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<sup>1</sup> Ministry of Justice Consultation Paper CP 31/08, page 7, paragraph 3

strategy over the next few years and outlines future steps, including development of hearing fees.<sup>1</sup>

APIL has expressed its views on civil court fees on previous occasions.<sup>2</sup> Our response reflects not only our views upon the specific increased fees outlined in the paper itself but also our general views on the continuing strategy and future steps outlined.

## **General comments**

APIL's long-standing position remains that we do not support the fee policy of 'full cost recovery', especially for personal injury victims, and we believe the court service should be a resource of the state funded by taxation, with court users paying a contribution towards court services to reflect the individual benefit obtained.

We believe that higher court fees generally impede the ability of many innocent injured victims to gain access to justice due to difficulties in securing appropriate legal funding for their cases. The reality in many cases is that solicitors fund disbursements (including court fees) for their clients with the ability to recover those fees only at the end of the case. Whilst this can have an impact on cash flow for large organisations, the impact on small to medium size enterprises (SME's), particularly in recessionary times, can be catastrophic. Solicitors could be more reluctant to take on cases due to the potential financial risk involved.

If claimants are expected to pay higher court fees they should be able to expect a minimum level of service, with courts having to adhere to service level agreements and the reaching of targets.

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<sup>1</sup> Ibid, page 7, paragraph 4

<sup>2</sup> <http://files.apil.org.uk/pdf/ConsultationDocuments/785.pdf>;  
<http://files.apil.org.uk/pdf/ConsultationDocuments/965.pdf>

We question whether court fee increases are an attempt by the Government to drive litigation from the courts into alternative dispute resolution, such as mediation and arbitration. Whilst there are currently no provisions to enforce compulsory mediation in this country the trend is clearly forceful 'encouragement', as the following quotations clearly show:

- In a speech on the 29<sup>th</sup> March 2008 the Lord Chief Justice, Lord Phillips of Worth Matravers said:  
'...Parties should be given strong encouragement to attempt mediation before resorting to litigation...'<sup>1</sup>
- In a speech on the 8<sup>th</sup> May 2008 the Master of the Rolls, Sir Anthony Clarke said:  
'...ADR in general and mediation in particular, where it is the appropriate ADR mechanism, must become an integral part of our litigation culture. It must become such a well established part of it that when considering the proper management of litigation it forms as intrinsic and as instinctive a part of our lexicon and of our thought processes, as standard considerations like what, if any expert evidence is required and whether a Part 36 Offer ought to be made and at what level...'<sup>2</sup>

APIL has an ongoing commitment to ensuring claimant solicitors are aware of mediation and how it may be used to benefit injured people. Where mediation is seen by all parties to be a reasonable option, and the process is conducted by trained mediators with experience in personal injury litigation, it can be very valuable in resolving disputes. We do not believe, though, that parties, under any circumstances, should be compelled to use ADR as this would constitute an unacceptable restraint on

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<sup>1</sup> [http://www.judiciary.gov.uk/docs/speeches/lcj\\_adr\\_india\\_290308.pdf](http://www.judiciary.gov.uk/docs/speeches/lcj_adr_india_290308.pdf), page 15

<sup>2</sup> [http://www.judiciary.gov.uk/docs/speeches/mr\\_mediation\\_conference\\_may08.pdf](http://www.judiciary.gov.uk/docs/speeches/mr_mediation_conference_may08.pdf), para 5, page 3

the right of access to the court (as held by the Court of Appeal in *Halsey v Milton Keynes General NHS Trust*<sup>1</sup>).

## Consultation Questions

### Q.1 Do you have any comments on the proposed fee changes in the higher courts, bearing in mind they take account of the work involved and the cost of each process?

Given the policy of full-cost recovery, with which we do not agree, achieving consistency between Supreme Court fees and County Court fees, where the process and average costs are similar, is logical. The fact, however, that we think the proposals are logical does not mean that we think they should be implemented. The proposed increases in the County Court fees in Annex A at 5.3, 5.4, 5.5 and 5.6<sup>2</sup> represent very significant increases, particularly for low value personal injury cases.

County Court Fees			
Fee Number	Current Fee	Proposed Fee	% Increase
5.3	£45	£60	33.33%
5.4	£105	£200	90.48%
5.5	£35	£50	42.86%
5.6	£65	£100	53.85%

The increase in those four fees alone averages out at a 55.13% increase overall.

The increase in Fee Number 5.1, for the filing of a request for detailed assessment, is potentially phenomenal. The paper attempts to justify the increase at paragraphs 14

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<sup>1</sup> [2004] EWCA Civ 576

<sup>2</sup> Ministry of Justice Consultation Paper CP 31/08, page 21

and 15<sup>1</sup> by asserting that there is a correlation between the value of the bill and the time and resources needed to assess it. We believe there is a significant difference, however, between assessment of costs on a party and party basis and a legal aid basis. In the former, one party is paying another party's costs and may dispute many items in the bill. In the latter, the court is ensuring the fees to be charged to the Legal Services Commission (LSC) are justified and the reality is that this will normally take considerably less time than a party and party assessment. The best case scenario is a fee increase of 185.71% (£105 - £300); the worst case scenario is a fee increase of 4,661.90% (£105 - £5,000).

We do not believe these significant fee increases are justified.

### **Q. 2; Q.3; Q.4; Q.5**

These questions relate to fees for enforcement proceedings and in the magistrates' court, both of which are outside of APIL's remit. We therefore make no response to these specific consultation questions.

- Ends -

## **Association of Personal Injury Lawyers**

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<sup>1</sup> Ibid, page 16