

Ministry of Justice

Fees in the United Kingdom Supreme Court



A response by the Association of Personal Injury Lawyers

May 2009

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants.

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:

Stephen Lawson – APIL Secretary

David Bott – APIL EC Member

Any enquiries in respect of this response should be addressed, in the first instance, to:

Helen Anthony

Legal Policy Officer

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 958 0585; Fax: 0115 958 0885

e-mail: helen.anthony@apil.org.uk

Executive summary

We believe that the civil court system should be funded by the taxpayer, with a contribution from court users, as it provides a vital public service. The Supreme Court itself will only hear cases with an element of wider public interest and it is therefore not fair for court users to pay for the full cost of this.

Personal injury victims who make court claims do so because they feel they have no other choice. It is important that we have a system in place which ensures that any such claims can be fairly heard, and that such a system can be accessed by all who need it, not just those who can afford it.

The proposed court fees are prohibitively expensive and will mean that a decision as to whether a case should be taken to the Supreme Court will not be based just on the merits of the case but on whether it is affordable to do so.

We welcome the proposals for a system of concessions and agree that this should be based on the one applied by the lower courts to ensure consistency.

We do not agree with the proposals for fees for detailed assessment of costs to be based on a percentage of the sum claimed and allowed. All other civil courts have a system of fixed fees for detailed assessment, and we believe this much fairer system should be adopted by the Supreme Court.

Introduction

We welcome the opportunity to respond to the Ministry of Justice's consultation about fees in the new Supreme Court.

We are disappointed that the Government continues to adopt a policy that the full cost of civil business must be recovered by the Court. We have long advocated that the civil court system should be funded by the taxpayer, with a contribution from court users, as providing access to the courts and therefore to justice is necessary for a fair society.

The primary argument for state funding for the Supreme Court is set out in the consultation paper itself: "The Supreme Court will only select cases that have an element of wider public interest"¹. This recognition of the importance of these cases to society as a whole is not, however, reflected in the decision to charge the cost of these cases to all civil litigants. The cost of hearing the issues and presenting decisions in these cases which are important to our society should not just be borne by court users but by the public purse.

Furthermore, the decision to house the Supreme Court in premises in central London has added to the costs of running the court. This decision will now it seems affect all civil court users, almost all of whom will never get to use these new facilities. At a time when other courts are recognising the benefits of holding hearings local to litigants, such as holding judicial review proceedings in regional courts, creating a new prestigious court in central London seems to be a political decision rather than one made for the benefit of court users. Whilst we recognise that this is part of justice being seen to be done, we question whether all civil court users should be charged for this appearance whilst the taxpayer is not.

¹ Page 8 of the consultation paper

Personal injury victims who make court claims do not do so on a whim. They do not use the court voluntarily – they do so because they feel they have no other choice. Our society is one in which a person who is injured through another’s negligence can rightly claim compensation for his or her losses from the tortfeasor. We must ensure that we have a system in place which ensures that any such claims can be fairly heard, and that such a system can be accessed by all who need it, not just those who can afford it.

Consultation questions

1. Do the civil fee levels seem equitable taking into account the fact that they have not been increased since 2000?

Fees of £6420 fee² to appeal to the Supreme Court do not seem equitable. In April 2008 the average gross annual wage was £25,100³. Court fees which constitute over one quarter of the average gross annual wage cannot ensure access to justice, even with a detailed scheme for fee remissions.

We are not questioning the methodology of calculating the cost of the court or the logic which has been used to apply an inflationary increase to existing fees, but cannot agree with the principles behind the fees.

Such enormous fees will only ensure that cases are elevated to the Supreme Court not on the merits of whether the case concerns an issue or issues which are worthy of appeal, but on the basis of whether it is affordable to do so.

² Two fees of £800 or one of £1600, plus £4820, page 11 of the consultation paper

³ Page 2, 2008 Annual Survey of Hours and Earnings, First Release
<http://www.statistics.gov.uk/pdfdir/ashe1108.pdf>

There is a misconception that high court fees do not inhibit access to justice as solicitors pay these for many claimants and the cost is recovered if the claimant wins. Solicitors, however, do not have endless amounts of money and credit to be able to fund cases. Many rely on overdraft and other credit facilities which are becoming more difficult to come by in the current economic climate. The Government cannot assume that high court fees do not form a barrier to justice on the basis that claimant solicitors will be able to continue to fund these.

2. Do you think the proposed balance between fees charged and contributions from each jurisdiction is right given the benefits that will accrue to all users of the civil justice system?

On the basis of our submissions above, the balance cannot be right. The proposed fees are far too high, yet we do not feel that other court users should have to bear the whole burden when they represent just a small proportion of those who benefit. We believe that state funding is needed so that the cost of taking a case to the Supreme Court can be shared by all who benefit: the individual litigants, other civil court users and tax payers.

3. Do you agree that a three year cycle for reviewing the fee levels is suitable?

We welcome the proposal for a review of the fees and it seems sensible to wait until there is evidence of the volume of cases and of the actual running costs before this review takes place.

4. Do you agree that the Supreme Court should adopt the system of concessions used by the civil courts in England and Wales, which is broadly comparable with that used in Scotland and Northern Ireland?

Yes. We believe that the system of concessions should be as consistent as possible and so adopting the arrangements used by the lower courts is logical.

5. Do you agree that the fee increases for devolution cases are equitable?

6. Do you agree that the long term aim should be to bring these fees in to line with civil fees?

7. If the answer to question 6 is no what do you believe is the justification for keeping these fees lower?

The issues raised in questions five to seven are not within APIL's remit.

8. Do you agree with the fee proposal upon application for assessment of costs (2.5% of sum claimed) and the fee proposal once an assessment has been made (2.5% of sum allowed)? If not, what alternative do you propose?

No. We propose a system of fixed fees for the assessment of costs, similar to that which operates for the High Court and the Court of Appeal.

The percentage fee was dropped for the majority of civil cases at the time the Civil Procedure Rules were introduced and replaced by a fixed fee. Fees for the assessment of costs in county courts, the High Court, and the Court of Appeal are all fixed⁴. It is only the House of Lords which continues to charge a fee broadly based on a percentage of the amount allowed.

⁴ See HMCS Leaflet EX50, County Court Fees From 1 October 2007 <http://www.hmcourts-service.gov.uk/courtfinder/forms/ex50.pdf> and The Civil Proceedings Fees Order 2008 [http://www.hmcourts-service.gov.uk/docs/fees/Civil_Proceedings_Fees_Order_2008-No1053-\(L5\).doc](http://www.hmcourts-service.gov.uk/docs/fees/Civil_Proceedings_Fees_Order_2008-No1053-(L5).doc)

Charging a percentage of the bill does not reflect the work necessary to determine the correct amount of costs payable. In previous consultations, the Ministry has said “Court fees should be set, so far as possible, at levels that reflect the full cost of the process involved.”⁵ This proposal for a percentage fee for the assessment of costs is not consistent with this principle or with the fees for the assessment of costs in other civil courts.

Association of Personal Injury Lawyers

- ▶ 11 Castle Quay, Nottingham, NG7 1FW ● T: 0115 958 0585
● W: www.apil.org.uk ● E: mail@apil.org.uk

⁵ Civil Court Fees 2008 Consultation Paper, page 7.