

**Northern Ireland Courts and Tribunals Service**

**Review of County Court Scale Costs**



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

**6 May 2011**

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 practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 5,000 members in the UK, over 100 of which are based in Northern Ireland, who represent hundreds of thousands of injured people a year.

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; and
- 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:

Martin Hanna – APIL Executive Committee Member;

Peter Jack – Co-ordinator – APIL Northern Ireland Regional Group;

Lois Sullivan – Secretary – APIL Northern Ireland Regional Group;

Frank MacElhatton – APIL member.

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## **Introduction**

APIL welcomes the opportunity to put forward its comments on the Northern Ireland Courts and Tribunal Service consultation. We respond only in the context of personal injury cases.

## **Consultation Questions**

### **Q. 1. Are you content with the proposed bands?**

The bands proposed, in our view, are too wide. We would suggest that a fairer system would be for there to be six additional bands:

15,001 to 17,500

17,501 to 20,000

20,001 to 22,500

22,501 to 25,000

25,001 to 27,500

27,501 to 30,000

By referencing the bands in this way there will be certainty at the top end of the brackets as to which costs apply in any given case, thus giving a sure outcome on costs both for the plaintiff and defendant.

### **Q. 2. Do you agree that the guiding principles used in the 2001 review should be applied?**

We agree that the guiding principles used in the 2001 review should be used as a starting point, but suggest that further work should then be applied. As the jurisdictional limit of

the county courts will increase to £30,000, the vast majority of personal injury cases will now be issued there.

Procedures in the county court have not been updated for a number of years. Fixing costs does not fix the amount of work involved in pursuing a claim. In every case there are different issues and complexities to resolve before the injured person can obtain redress. Simply fixing costs is not the answer. More discussion is needed about defendant behaviour, and sufficient safeguards agreed to protect the injured person's right to bring a claim and to fully pursue it. There is still no requirement for the defendant to fully state their case prior to trial. This is different for cases that take place in the High Court in Northern Ireland where a fully pleaded defence is required.

We suggest that in order for costs to be fixed at the appropriate level, a cost drawer should be engaged as the requirements of the work have changed somewhat since the review was conducted in 2001. For example, plaintiff solicitors are now required to provide three copies of all documents lodged with the court. There are also now expectations for solicitors to attend regular review hearings as part of the fixed cost process. In 2006, the Belfast Solicitors Association (BSA) instructed Paul Kerr to advise whether having regard to the principles which underpin solicitors' remuneration and the documents disclosed by the Committee under the Freedom of Information Act the scales as determined by the 2002 survey provide fair and reasonable remuneration and what impact, if any, the Regulatory Impact Assessment (RIA) may have upon the same<sup>1</sup>. In his report, Paul Kerr considered the case of *Re C & H Jefferson (a firm)*<sup>2</sup> where the court stated,

*When the scales are applied there is no element of discretion and taxation of costs and fees is not required... If the scales are fixed at a suitable level, proceedings in the county court can be conducted at reasonable cost, while giving a reasonable return to the practitioners who conduct them.*

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<sup>1</sup> Review by County Court Rules Committee of County Courts Scale Fees, Opinion to advise the Belfast Solicitors Association, 10 October 2006, Paul G. Kerr B.C.L., Legal Costs Consultants.

<sup>2</sup> *Re C & H Jefferson (a firm)* [1996] NI 404

Paul Kerr goes on to state the court held that the scales were to apply as between solicitor and own client as well as inter-partes except in exceptional cases in which the work done by solicitor or counsel might merit an extra fee.

Paul Kerr concluded that

*the application of the scales to costs between solicitor and own client means that the solicitor must absorb any shortfall which might have arisen had the contractual costs been calculated on the basis of time expended. In effect, as will be seen, this means that in many cases solicitors conduct cases at a loss.*

He continues,

*In my opinion it is axiomatic that for remuneration to be fair and reasonable from the solicitor's point of view it must be both enable him to cover his overheads and provide him with a living.*

In his report, Paul Kerr also provides details on how to calculate the base rate, below which any work carried out by the solicitor would be carried out at a loss.

**Q. 3. Do you agree that any uplift in the present scales is by reference to the rate of inflation?**

Statutory scale of costs ensures that costs in the county court are certain, however; inflationary adjustment is not the most adequate way of dealing with increases. The hours of work and costs involved in conducting county court cases are affected in many ways. The fees should reflect a realistic amount for the work involved. As mentioned in response to question 2 there has been an increase in ancillary work in recent years and the scale costs have not been increased to take this into account. There are an increasing number of review hearings and direction appointments that solicitors have to attend and prepare for at short notice. There is waiting and travelling time on top of this that is not accounted for. Scale costs do not incorporate payment for this. In addition to this, the costs of running a practice and the expenses associated with this have increased.

There is also the added issue of increases to costs not being made yearly. The additional increases of annual inflation increases would be minimal, by not increasing the costs yearly by inflation once a full scale review has taken place, effectively means that the professionals suffer a drop in their income in real terms between the review years. This may very well lead to a reduction in solicitors prepared to do county court work and in particular personal injury work.

We do not for the reasons set out above believe that a purely inflationary increase in costs for the current bands is appropriate, without first, a full review of the current cost of processing cases in the county court up to a value of £15,000. Once this has taken place then a yearly inflationary increase would be fairer with full reviews every five years.

**Q. 4. Your views on such an approach and as to the level of such costs would be welcome. Please comment.**

As stated above, the guiding principles should be used as the starting point but the costs for the bands to be established must be properly costed for the amount of work involved for solicitors in cases of this value. An independent opinion by a Costs Drawer would ensure that the rates being set realistically reflect the work involved. Once this has taken place then yearly inflationary increases with five yearly reviews in line for the current bands would be sensible.

**Q. 5. Are you content with the present mechanism in respect of discretion on costs?**

It is our belief there are very few enhanced awards made and that the courts discretion on costs is rarely used. We are, therefore, not content with the current mechanism in respect of discretion on costs.

**Q. 6. If not, is there an alternative mechanism which could be adopted which addresses the question of complexity whilst at the same time retaining the fundamental nature of the scale cost system?**

As stated previously, it is our belief that very few enhanced awards for costs are made, and for this reason we believe there should be a separate scale for the types of cases listed on page 7 of the consultation document<sup>3</sup>. The separate scale should allow for an automatic assumption that these types of cases will be more difficult to run than the typical claim, such as clinical negligence cases, and, therefore, warrant a guaranteed uplift of one third.

**Q. 7. The District Judges' court limit is set to increase to £10,000. In light of this increase, are you content with the present provision?**

APIL has no issue with the increase of the District Judges' court limit to £10,000 other than those expressed in our response to the Northern Ireland Courts and Tribunals Service consultation on increasing the jurisdictional limit of the county courts in May 2010. In our response we stated,

*Personal injury cases, even those of a lower value, are not necessarily legally straightforward as they often involve complex arguments on apportionment or causation, and medical evidence can often involve exacerbation injuries or pre-existing conditions. We would, therefore, suggest that only specialist judges who have been ticketed, and hold a certificate, should hear personal injury cases.*

We still believe these comments to be true and recommend further training of District Judges in order to fully understand the complexities of higher value personal injury cases than those they currently deal with.

- Ends -

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<sup>3</sup> *Review of County Court Scale Costs*, Northern Ireland Courts and Tribunals Service, March 2011.