

Ministry of Justice

Court Fees: Proposals for reform



A response by the Association of Personal Injury Lawyers

January 2014

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 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year many of whom use the court system.

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.

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

Alice Warren, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road

Nottingham NG2 1RX

Tel: 0115 958 0585; Fax: 0115 958 0885 E-mail: mail@apil.org.uk

Introduction

We welcome the opportunity to respond to the Ministry of Justice consultation on reform of the system of court fees. The court system is a public service, from which the whole of society can benefit. A person does not choose to be injured through another's negligence; therefore the court service which helps them obtain redress should be primarily funded by taxpayers, with users paying a contribution towards the service they receive. Users of this service should not be expected to pay fees which go far beyond the actual costs involved. Further, the government should not be entitled to profit from people's unfortunate circumstances, which have led them to turn to the courts for assistance.

We do not support the proposals in this consultation, and in our view the fees proposed will impact on access to justice, prohibiting people from fighting their case in the courts because of the high costs of litigation.

Executive Summary

APIL believes that:

- The court service operates for the public good and should therefore be funded by taxation, with users paying a contribution towards costs. The whole of society benefits from the functions of the court, not just the direct users. For example, most people go to work safe in the knowledge that if they are negligently injured in the course of their employment they are protected by both the law and the impartiality of the court system which enforces the law. Furthermore, it is often the threat of court proceedings – and the possible sanctions which can accompany them – which will encourage observance of the law, and if necessary, voluntary payment from negligent defendants.
- Increased court fees will lead to increased insurance premiums because of the higher potential expenses involved in losing a case. This will include car insurance and ATE insurance premiums. This does not sit well with the 2013 reforms in the personal injury sector, which focused on driving down the cost of litigation and ensuring lower premiums for the customer.
- The proposals, if implemented, will have dangerous implications for access to justice. Claimants will be put off bringing matters to court for fear of having to pay high fees, and defendants may take advantage of this reluctance and offer low settlements knowing that the claimant will not take the matter to court. The claimant will then be out of pocket, and denied the compensation that they deserve.
- Throughout the consultation, there is a lack of hard evidence to support a change in policy. "Financial models" and "evidence" are mentioned, but there are no links to this research by way of verification.

General comments

Costs as a factor in the decision to litigate

At various points in the consultation, it is stated that the costs of litigation are a secondary consideration in deciding whether to take a matter to court. We are unclear as to where the evidence to support this assumption was gathered, and do not believe that this is accurate. Costs are a major consideration for an injured person when deciding whether to pursue

justice through the courts, and court fees should not be so high so as to be a prohibiting factor in this decision. Further, even if evidence does demonstrate that costs are not a major factor in the decision to litigate at present, this is likely to change if the fees go up significantly. The taxpayer funds the court services to ensure that the court system is accessible to all. An ordinary person should not be barred from using the courts because they cannot afford the necessary fees, especially if they have already contributed to the running of the system through the payment of taxes. The courts also have a social function and are of benefit to the whole of society, with people able to go about their day-to-day lives knowing that they can seek redress through the courts should they need to do so. The threat of court proceedings also ensures that often, matters are resolved through voluntary settlement.

Reducing the costs of litigation

We question how this consultation sits with the huge changes in the PI market which took place throughout 2013, including the Legal Aid, Sentencing and Punishment of Offenders Act and the portal reforms. These reforms aimed to reduce the costs of litigation; yet, this consultation seems to focus on introducing higher fees to turn a profit for the courts.

There has been a drive to improve efficiencies, reduce costs, and save the hard working tax payer from higher insurance premiums. There will be increases in car insurance premiums, and also employers' liability insurance premiums, which will add to the cost of running a business. Further, increasing court fees will have a significant effect on legal funding issues, as insurers will be more reluctant to offer cover due to increased financial risk. Premiums will rise, and this will have a direct impact on injured claimants' access to justice, with many worthy cases being unable to gain funding to continue to court.

Defendants pay for court fees if they are the losing party

If court fees are increased as proposed, defendants will also be at a disadvantage, because in successful cases, the defendant tends to be liable for the court fees. Further, the claimant has a choice of whether to litigate or not, but the defendant does not. The government is a major defendant in many personal injury cases and if the court fees go up, this will be felt by the government as a defendant, in the form of, for example, the Ministry of Defence, local authorities, hospital trusts and health boards. There will also be devolutionary issues, as the Welsh Government will also face increased court costs.

Other solutions

One aim of this consultation document is to introduce proposals that will allow the court system to run more efficiently and cost effectively. We suggest that this could be achieved without a strictly enforced full costs recovery system, but instead through the introduction of electronic solutions in the administration of the court process – court fees could be paid electronically, for example, with a similar system to the claims Portal.

Consultation questions

We have responded only to those questions within our remit as an association representing injured people.

Part 2: Costs recovery

As above, we believe that full costs recovery should not be a main focus when setting court fees. The court system is a public service and should be accessible if required, by all. The system should be primarily funded by the taxpayer with contribution from those using the system.

Post-issue fees

Q4 Do you agree with the removal of the allocation and listing fees in all cases? Please give reasons for your answer.

We agree that combining the allocation and listing fee does make sense on a practical level. We support this proposal in so far as the listing fee remains recoverable. If the hearing does not go ahead, it is correct that the listing fee should be refunded, as the court's time and resources have not been used. Additionally, should the listing fee become non-refundable, this will reduce the incentive for the parties to mediate instead of going through the courts.

Q5 Do you agree that small claims track hearing fees should be maintained at their current levels, which are below cost? Please give reasons for your answer.

We agree that small claims track hearing fees should be maintained at their current levels. As the consultation states, increasing court fees in the small claims track would mean that in many cases the fees would be greater than the value of the case itself. This would certainly be a deterrent to people bringing claims, and there would be a denial of access to justice as people will be unable to rationalize taking their case to court. For example, a person intending to bring a claim for £500 for a faulty washing machine will consider the court fees disproportionate, and will be immediately put off taking the case to court if they realise that the costs of the court are more than they would be compensated. Access to justice will therefore be denied.

Further, the lack of proportionality would sit discordantly with the government's 2013 reforms, which focused on an increased emphasis on the proportionality of legal costs in pursuing claims.

Q6 Do you agree that fast track and multi-track hearing fees should be maintained at their current levels, which are above cost? Please give reasons for your answer.

It is wrong of the government to profit from the court system. If multi-track fees and fast track fees are already above cost, they should certainly not be increased further. Fees should not be set so as to gain a profit from the essential administration of justice.

Q7 Do you agree with proposals to abolish the refund of hearing fees when early notice is given that a hearing is not required? Please give reasons for your answer.

We strongly disagree with this proposal. Experience from our members is different to the unidentified research in the consultation document, which states that "there is little evidence that [the hearing fee] influences behaviours in a way which allows the court service to benefit from its existence, nor that its presence encourages early settlement of claims". Our members' experience is that people are only too keen to settle and obtain a refund of the hearing fee. Further, the whole point of a hearing fee is to cover the cost of the hearing, therefore it is logical to refund the cost if that hearing does not go ahead as the court time and resources are not being used. The abolition of the refund would be a positive

disincentive to early settlement, leading to the wasting of valuable court time. If the court keeps this money and uses it to fund other areas of the court service, this is a stealth tax on vulnerable people and such a practice should not be permitted. As mentioned above, if there is no longer a refund of the hearing fee, this will remove the incentive to mediate.

Court of Appeal (Civil Division)

Q13 Do you agree with the proposed fee levels for cases taken to the Court of Appeal? Please give reasons for your answer.

As stated above, and as recognised at paragraph 101 of the consultation document, we believe that increased court fees would act as a deterrent to people bringing a case to court. This would be particularly dangerous in cases going to the Court of Appeal, as there is a public interest in the Court of Appeal clarifying the law. The proposed increases to £465 for permission to appeal and £1,090 for a hearing are almost double the current amounts, and will most likely act as a deterrent to people pursuing a claim to this level. We also disagree with the introduction of additional fee-charging points, as these would again act as a barrier to access to justice.

Further, there is no actual evidence present in the consultation to demonstrate that the fee levels in the Court of Appeal need to change. We believe that the courts should not be operated on a full costs recovery system because they are a public service for the good of the whole of society and should therefore be largely funded by taxes, and not expensive fees that could potentially be a bar to someone bringing a claim.

Court of Protection

Q14 Do you agree with the government's proposed changes to the fees charged in the Court of Protection? Please give reasons for your answer.

We do not support the conclusion at paragraph 109 of the consultation that the hearing fee in the Court of Protection is difficult to collect at the end of proceedings - there is no evidence in the consultation to demonstrate that this is the case. The Court of Protection makes decisions on behalf of people who lack the ability to be able to manage their own affairs. These are already vulnerable members of society. Charging the hearing fee at the beginning of proceedings will make it more difficult for people to bring a claim in this court, and will therefore impact on access to justice for these vulnerable individuals. Further, we do not support the introduction of fees with regard to procedures where currently no fee is charged.

The Court of Protection's role is vital to protect vulnerable members of society. To introduce fees where there currently are none or, changing the process to make fees payable at the beginning of the process instead of at the end would be largely unfair, especially without proper research and evidence that there are problems with the current system.

Part 3: Enhanced fee charging

We strongly disagree with the proposal to go further than full costs recovery, to charge fees at a level above the cost of the activities to which they relate. It is wrong for the government to profit from the charging of fees. As above, the courts are of benefit to the whole of society and have a social function in allowing people to access justice should they need to. It is

inappropriate for the government to gain a profit from peoples' misfortunes by setting fees that are above cost for users of the courts.

Unspecified money claims

Q18 Do you believe that unspecified claims should be subject to the same fee regime as specified money claims? Or do you believe that they should have a lower maximum fee of £5,000? Please give reasons for your answer.

For the reasons above, we do not believe that enhanced fees should be applied to any money claims at all – whether they are specified or unspecified. It is unjust to automatically charge 5 per cent of the value of the case as a fee. Just because a claim is higher value, it does not necessarily mean that more court resources need to be used.

Whilst we do not believe that any money claims should be subject to this regime, the claimants in unspecified money cases would be affected to a greater extent than those in specified money damages cases, because of the nature of their claim. The consultation document even acknowledges that “some (unspecified) claims can involve vulnerable victims with significant life changing injuries”. We suggest therefore, that victims of personal injury should not be subject to the same fee regime as the parties in debt recovery cases, where in many cases a business will be responsible for the upfront payment of the court fee. The injured person should not be deterred from bringing their claim and seeking justice because of higher court fees, and the defendant should not be put in a position where they can take advantage of the claimant and offer a low settlement, in the knowledge that the claimant will be extremely reluctant to take the case to litigation because of the costs involved.

Paragraph 149 introduces a number of factors taken into account in determining whether the fee would be likely to deter the claimant in unspecified money claims. These factors all relate to reforms which were implemented in 2013. These factors are currently in flux, and may not provide the protection to the claimant that they have done in the past. For example, following reform, fee remissions are now available to around 20 per cent fewer people than previously. APIL highlighted the injustice caused by the changes to the fee remissions system in a consultation response¹.

Further, the recoverability of costs has been affected following reforms and many costs that were recoverable from the defendant in a successful case are no longer so. The fact that the client can take out insurance to meet the costs of proceedings if they are unsuccessful does not provide the protection that it once did because the cost of ATE insurance premiums is no longer recoverable from the other side. The increase in court fees is likely to lead to an increase in ATE premiums as the costs involved in litigating rise. The claimant will continue to be liable for the ATE premium, regardless of whether they win the case or not, therefore the claimant will not be able to escape the increased costs.

At paragraph 150, the consultation again makes the point that the court fee is unlikely to act as a deterrent to bringing a case. Even if this was the case currently (which we are unsure it is), it is extremely likely that if the fees were significantly increased – as is proposed – this would act as a deterrent to bringing a case, and therefore a denial of access to justice.

¹<http://files.apil.org.uk/pdf/ConsultationDocuments/2704.pdf>

Q19 Is there a risk that applying a different maximum fee could have unintended consequences? Please provide details.

We believe that for the reasons above, there should be a different maximum fee for specified and unspecified money claims, due to the differing nature of the claims involved. We do not believe that there would be any unintended consequences in this applying a different maximum fee.

- Ends -

Association of Personal Injury Lawyers

- ▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
 - T: 0115 958 0585 ● W: www.apil.org.uk● E: mail@apil.org.uk