

**Ministry of Justice
Consultation on proposals for further reforms to court fees**



A response by the Association of Personal Injury Lawyers

February 2015

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 25-year history of working to help injured people gain access to justice they need and deserve. We have around 3,800 members, committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, Governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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.

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

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Introduction

We welcome the opportunity to respond to the Ministry of Justice's further consultation on enhanced court fees. We are strongly opposed to enhanced fee charging, and believe that the courts, as a public service, should be funded by the taxpayer with users paying a contribution. The proposals, in addition to the increases in court fees that are already going ahead, are likely to have a serious impact on the injured person's ability to access the courts.

We have only commented on the proposals within our remit – namely those affecting fees for general applications in civil proceedings.

Q2) Do you agree with the proposal to increase the fee for a general application in civil proceedings from:

- **£50 to £100 for an application without notice or by consent; and**
- **£155 to £255 for an application on notice which is contested**

Subject to exemption for:

- **Applications to vary or extend an injunction for protection from harassment or violence;**
- **Applications for a payment to be made from funds held in court; and**
- **Applications made in proceedings brought under the Insolvency Act 1986.**

The courts operate for the public good

As set out in our response to *Court fees: proposals for reform*¹, we do not believe that court fees should be increased to turn a profit for the Government - at the expense of access to justice for the individual. The court service operates for the public good and should therefore be funded by taxation, with users paying a contribution towards costs. 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.

Enhanced fees impede access to justice

If the fees for general applications are increased, this would add another layer of cost on top of the increases in court fees that are already going ahead. This could further deter injured people from bringing their claim to court for fear that they cannot afford the costs involved. This in turn could leave the injured person vulnerable to low offers to settle from the defendant, and therefore at risk of under compensation.

Reform of the PI market

We also question how these proposals – along with the proposed increases that are already going ahead - sit 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.

¹ <http://www.apil.org.uk/files/pdf/ConsultationDocuments/2826.pdf>

These reforms aimed to reduce the costs of litigation; yet, this consultation focuses on introducing higher fees and increasing the cost of litigation to turn a profit for the courts.

The goals of the reforms included a drive to improve efficiencies, reduce costs, and save the hard working tax payer from higher insurance premiums. As explained in our previous response, the enhanced fees will lead to increased car insurance premiums, as well as employers' liability insurance premiums, which will add to the cost of running a business. Whilst in the majority of cases, the claimant will need to fund the upfront payment of court fees; if the claimant is successful the defendant is most often liable for those fees. In road traffic and employment cases, the defendant is likely to be insured, so this will then add to the amounts that the insurance industry must pay out, which is likely to be passed on to individuals and businesses in the cost of their premiums. In addition, the government is a major uninsured defendant in many personal injury cases and if the cost of litigation rises, this will be borne by government departments and local authorities, should they be unsuccessful in the litigation in which they become involved.

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. ATE 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.

Government's rationale for enhancing fees

At page 25 of the document, the consultation says that the rationale for increasing these fees above full cost level is the same as the rationale for enhancing issue fees. We do not believe that the rationale stands up to scrutiny. Fee remissions are only available to a limited number of people, and even if a person does qualify, the process of applying for an exemption is extremely long winded and has to be undertaken for each and every fee that a remission is claimed for. Further, the changes to the PI market referred to in the above paragraphs mean the available funding arrangements for claimants do not provide the same protection as previously. 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. As mentioned above, 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.

Specific comments on enhanced fees for general applications

Many applications are made to draw the court's attention to a party in default of an order to do something positive to advance the case – for example, to file a list of documents, provide disclosure of documents, exchange witness statements or expert evidence. Compliance with directions timetables ensures the efficient administration of the court's function to ultimately have the case ready to be determined at a trial, whilst realising that aim within proportionate cost. Increasing the cost of application fees may act as a disincentive in bringing a party's

default to the attention of the court, thereby having an adverse effect on the proper administration of justice.

If the proposed application fee increases go ahead, the injured person's right to access justice will be severely impeded. Even in winning cases, the costs recoverable would be less than the cost of making the application. If an interim application costs £255 to make, then it will be higher than the maximum that can be recovered by the successful party on an application in fast track fixed recoverable costs. CPR 45.29H(1) sets this out by reference to table 6 or 6A at CPR. The maximum recoverable in a fixed recoverable cost case of up to £25,000 in value would be £125 for the preparation of the application and £125 for the advocacy. It will not be economically viable for firms, especially smaller firms, to take on these cases, and the claimant's access to justice will, therefore, be severely limited.

Q3) Are there other types of cases in which a general application may be made which you believe should be exempted from the proposed fee increases?

As above, we do not believe that any fees for general application should be subject to enhancement over full cost. The courts should not be run as a profit-making enterprise, for the reasons set out above. The state should not exploit its citizens by making a profit by charging for a basic right – in this case, access to the court system.

Q4) We would welcome views on our assessment of the impacts of the proposal for further fee increases on those with protected characteristics. We would in particular welcome any data or evidence which would help to support those views.

Many claimants who pursue claims for injury or harm done to them are vulnerable, and disabled. They may not be in receipt of welfare benefits but will still lack the means to pay these enhanced fees. These people should not be deterred from bringing their claim and seeking justice because of higher 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.

- Ends -

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