# County Court Rule Committee
# Review of scale costs and recent practice and procedural changes in the county court

## A response by the Association of Personal Injury Lawyers
## June 2016

The Association of Personal Injury Lawyers (APIL) was formed by plaintiff 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 plaintiffs. APIL currently has over 3,000 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:

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## Introduction

APIL is disappointed that the County Court Rule Committee has not taken on board our suggestions for improvements to the pre-action protocols. We will be writing separately to Lord Justice Gillen to ask that he considers our amendments to the protocols as part of his Review of Civil and Family Justice. We are also disappointed that the County Court Rules Committee is proposing to increase scale costs by only 3 per cent.

## Scale costs

### Q1) Do you agree with the proposal to review scale costs on a two year cycle?

Yes.

### Q2) Do you agree with the proposal that there should be a 3% rise in scale costs? If so, should it be done by way of two equal mutually contingent instalments of 1.5%?

We do not agree. Scale costs should be increased by more than 3 per cent, particularly given the proposals to increase court fees by up to 37 per cent. If there is not proportionality between the amount that solicitors are paid for their work, and the amount required to issue a claim, in particular smaller firms may be unable to bring a claim for the plaintiff because they cannot afford the risk of not recovering the fee from the defendant. In 2007, fees for the Certificate of Readiness were increased from £29 to £250 – a 762% increase - but during the period between 2007 and 2016, there have been no similar increases in solicitors' fees. The last full review of scale costs was in 2011, and another is therefore long overdue. In real terms, scale costs have increased by only 4 per cent in 7 years.

To demonstrate that scale costs are set too low at present, and a 3 per cent increase is simply not enough, one member has provided calculations for their last twelve cases, setting out the amount they earned through scale costs, and what the fee would be if based on time spent. Whilst this is just a snap shot of cases, the table below demonstrates that scale costs are up to 87% lower than if fees were charged on a "time spent" basis.

| Damages | Professional Fee Billed (scale costs) | Professional fee based on time spent |
|---|---|---|
| £2500 | £894.0 | £1225 |
| £1500 | £852 | £2205 |
| £1000 | £538 | £4252.50 |
| £2000 | £757.33 | £787.50 |
| £5000 | £1076 | £1242.50 |
| £4796 | £1076 | £1102.50 |
| £1750 | £757 | £1295.00 |
| £500 | £698.63 | £4147.50 |
| £2000 | £757.33 | £1067.50 |

£5000 £1076 £1155.00

**Q3) Do you agree that there should be a new lower scale costs band for awards of £0-£500? If so, at what rate should the Committee set the costs payable?**

We do not agree that there should be a new lower scale costs band for awards of £0 - £500, as this will lead to inappropriate remuneration for the work that the has been carried out. As well as catering for "insurance excess" cases, we are concerned that some employers' liability cases will also fall within this bracket. An employers' liability case that settles for £500 will often require the same amount of work as an employers' liability case that settles for £2,500 – but if a lower band of scale costs is introduced for cases below £500, the solicitor will simply not be remunerated properly for the work that they are carrying out, or may not be able to carry out the work necessary due to time/money constraints, and the injured person will then either be undercompensated or not compensated at all.

We reiterate that the scale costs bands at present are too wide at the top end. Cases between £15,000 - £30,000 would have previously been dealt with in the High Court, and as such are much more complex and would have attracted High Court costs. There needs to be certainty at the top end of the brackets as to which costs apply in any given case – giving a sure outcome on costs for both the plaintiff and the defendant. We suggest that a fairer system would require six additional bands:

£15,001 to £17,500

£17,501 to £20,000

£20,001 to £22,500

£22,501 to £25000

£25,001 to £27,500

£27,501 to £30,000

**Q4) Do you agree that fees for miscellaneous costs should be increased to the same extent as the substantive scale costs?**

We agree.

**Q5) Do you agree that the fee for drawing up a list of documents under Order 15 should be £60.00?**

We agree.

**Q6) Do you agree with the Committee's proposal that it should not introduce a specific fee for attending review hearings?**

We do not believe that review hearings are "relatively rare", and if a solicitor is being required to attend a hearing in person, they should be entitled to a specific fee for doing so. A Freedom of Information request to the Northern Ireland Courts and Tribunals Service revealed that in 2015, there were 613 listings for review hearings, and 13123 total listings. 5 per cent of listings were review hearings, therefore, which is not a "rare" occurrence. We

believe that for county court cases in particular, these hearings could be dealt with over the phone, for example. APIL members report that in certain courts, they are required to wait for half a day to be seen by a judge to simply say that the case is still going ahead. Case reviews carried out instead via email or telecon would save time and money both for the legal representative and the court service, particularly in light of the planned county court closures which are to increase travel times for plaintiffs and legal representatives alike.

**Q7) Do you agree with the Committee's proposal that it should not introduce an automatic uplift in scale costs in cases involving multiple defendants?**

Cases involving multiple defendants who are separately represented should attract an automatic uplift in scale costs. These cases often mean much more work is required than if there is only one defendant. The facts of the case are often more complex, and issues of liability and causation tend to be much more difficult in these cases.

**Q8) Do you agree with the Committee's proposal that it should not make any change to current travel entitlements?**

We do not agree that the current travel entitlements are reasonable, and these should be reviewed. This is particularly so given the recent changes to the Northern Irish court estate, which will increase travel times for plaintiffs and solicitors alike. For example, Magherafelt court house is to be closed, with business transferred to Dungannon. Dungannon is 20 miles and over 30 minutes from Magherafelt in the car. This 40 mile round trip did not used to be necessary, and the travel entitlements should reflect the changes to the court estate.

**Q9) Do you agree that there should not be a separate fee for drafting an affidavit?**

Affidavits, whilst not particularly complex, can be time consuming. If the rules surrounding affidavits were relaxed, there would not be a need for a separate fee. Given that, currently, the rules are inconsistent at best, a fee should be applied.

**Q10) Do you agree with the proposal that the range of cases in which the discretionary uplift is currently available should not be widened?**

**Q11) Do you agree with the proposal that there should not be provision for the uplift to apply in certain cases unless the court orders otherwise?**

We do not agree with the two proposals in Q10 and 11. There is an agreed assumption that complex cases, such as those involving clinical negligence, will be more difficult to run than the typical claim. Whilst a discretionary uplift is available currently, members report that this is very rarely – if ever – awarded. These cases can also sometimes settle before going before a judge, and when this happens, the discretionary uplift is not considered. Complex cases require significant amounts of work, regardless of the level of damages and, therefore, warrant a prescribed fee which is higher than the usual scale fees. Complex cases attracting higher fees should include clinical negligence and occupational disease/illness (including hearing loss, asthma and asbestos related illness), and RSI cases. Additional day hearings also require extra work and so should be guaranteed an uplift.

There should also be a prescribed fee for answering interrogatories. Case law suggests that they should be used in the rarest of circumstances, but we suggest that they are being improperly and overly used by defendants and this wastes the plaintiff solicitor's time.

**Q12) Do you agree with the proposal to provide for a fee for preparation of a court-directed skeleton argument with the fee payable to be at the judge's discretion up to a maximum of £100?**

We welcome this proposal – it would be good to have the work put into a skeleton argument recognised via a separate fee. This is a step in the right direction.

- Ends -


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