

**Northern Ireland Courts and Tribunal Service
Proposals for court fee increases**



**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:

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

APIL maintains that full costs recovery should not be the main aim when setting 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 and therefore the court service which helps them to obtain redress should be primarily funded by taxpayers, with users paying a contribution towards the service they receive. There should certainly not be over-recovery - the court service should not be entitled to profit from people's unfortunate circumstances.

APIL appreciates that court fees have not been increased since 2007, and so an inflationary increase is due. A staged increase, as set out in option 3, would be the best approach to implementing this increase.

General comments

Full costs recovery should not be the focus of fee-setting

Q1 Do you favour option 1, a 37% increase to ensure a return to a full cost recovery position?

We do not favour this option. Full costs recovery should not be a main aim when setting court fees. We believe that full costs recovery should not be a main focus when setting court fees. 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. 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.

Anecdotally, we understand that the court service in Northern Ireland is almost breaking even already, and as such only an inflationary increase in the level of fees is necessary. We are concerned that options 1 and 3 set out in the consultation may actually push the court service into a position of over recovery – meaning that the court service would be making a profit from the misfortune of those who require the service of the courts to enable them to access justice.

Q2 Do you favour Option 2, a 21.9% inflationary increase

We do not object to an inflationary increase in court fees.

Q3 Do you favour Option 3, which involves an increase of 10% on 1 April 2017, a 7.5% increase on 1 April 2018 and a 5% increase on 1 April 2019?

We agree that a staged approach would be the best method for reviewing fees, to avoid a sudden hike in fees that may deter plaintiffs and restrict access to justice. We believe that the increase should be no more than inflationary – i.e. no more than 21.9% in total.

Q4 Do you think there is an alternative way of moving towards our policy objective of securing full cost recovery?

As stated above, we do not believe that full cost recovery should be a policy objective when setting fees. The court service benefits society as a whole, and should be largely funded by the tax payer. Furthermore, just as schools are not paid for by pupils, and hospitals are not maintained by the sick, the civil court should not rely on court users as their sole source of revenue. Justice, just as education or healthcare, cannot be restricted to those able to pay for it.

Fee remissions

We note that the Remissions and Exemptions policy is outside the scope of this consultation, and it is the intention that it will remain unchanged as a result of the proposed uplift in court fees. We agree that it is timely for the policy to be reviewed, and it is very important that if court fee increases go ahead, the remissions and exemptions system is modified in line with this to ensure that those who cannot afford the fees are able to continue to access justice.

The review of fee remissions and exemptions should also look at how to improve knowledge and awareness of the fee remissions system. It is extremely important that practitioners and those seeking justice are aware of the assistance available to them, so that they are not deterred from pursuing a case, or left unnecessarily out of pocket.

Further comments on enhanced fee charging

Evidence of court fees as a deterrent for plaintiffs – England and Wales

Although we acknowledge that the fees proposed in this consultation do not go nearly as far as those implemented over the past few years in England and Wales, we wish to highlight the effects of these astronomical increases¹ on claimants in England and Wales as a warning against setting “enhanced” fees, whereby civil fees are set high enough to make a profit for the court system. Evidence has shown that expensive courts fees act as a deterrent for plaintiffs, and therefore prevent access to justice.

Throughout consultation on increases to court fees for civil claims in England and Wales, the Ministry of Justice maintained that court fees were not a major consideration in a claimant’s decision to litigate. In numerous responses, APIL stated that the source for this assumption was unclear, and even if true at present, the extortionate fee increases would mean that in future, the cost of fees would inevitably become a factor in the decision to litigate.

The Hodge, Jones and Allen Innovation in Law Report 2014² noted that 79% of 508 legal professionals polled agreed that “changes to court fees are making it harder for people to bring cases to court”.

The impact of high court fees on a person’s ability to access the employment tribunal and therefore enforce their rights was also the focal point of a recent judicial review³ by UNISON.

¹ Fees for civil money damages claims are now charged at 5% of the value of the claim, up to a maximum of a £10,000 fee. Fees for cases valued between £200,000 - £250,000 were subject to a 560% increase.

² Page 8 <http://www.hja.net/wp-content/uploads/hja-innovation-in-law-report-2014.pdf>

Prior to July 2013, claimants did not have to pay to bring their case in the employment tribunal. Since the fees order was introduced on 29 July 2013, the fees are £390 (both issue and hearing fee) for a single claimant to bring a “type A” relatively “straightforward” case, and £1,200 for a single claimant to bring a “type B” case (including a discrimination case). UNISON presented evidence to show that between April and June 2013 and the same period in 2014, there was an 81 per cent drop in the number of claims brought. Lord Justice Underhill stated that it is quite clear from the comparison between the number of claims brought before and after 29 July 2013 that the introduction of the fees had had the effect of deterring a very large number of potential claimants. Although he concluded (and the other Lord Justices agreed) that the fees order did not breach the principle of effectiveness, Underhill LJ did state that the decline in the number of claims in the tribunal following introduction of fees order is “sufficiently starting to merit a full and careful analysis of its causes” and if there are good grounds for concluding that part of it is accounted for by the claimant being realistically unable to afford to bring proceedings the level of fee remissions/criteria will need to be revisited.

In 2015, the Law Society of England and Wales drew attention to statistics highlighting that since employment tribunal fees were introduced in 2013, the number of employment tribunal cases has decreased by over 60 per cent⁴. Increased fees clearly do have an impact on access to justice and the decision to litigate, and this impact will not only be felt in employment tribunal cases but all civil claims in England and Wales which have been subject to disproportionate increases - including those involving personal injury.

Lack of ATE insurance market in Northern Ireland

Large increases in court fees would increase the costs involved in litigating. As mentioned in our response to the Access to Justice 2 Report, the ATE market in Northern Ireland is underdeveloped at present. The effects of a large increase in court fees would be keenly felt by plaintiffs because there is no funding mechanism in place to pay their court fee if they lose their case. Instead, the court fee will have to be funded by the plaintiff themselves.

- Ends -

Association of Personal Injury Lawyers

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

³ [2015] EWCA Civ 935 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2015/935.html&query=unison+and+v+and+lord+and+chan+cellor&method=boolean>

⁴ <http://www.lawsociety.org.uk/news/press-releases/two-year-anniversary-of-employment-tribunal-fees-shows-scheme-undermined-access-to-justice-july-2015/>

