

Northern Ireland County Court Rules Committee

Initial consultation on the review of scale costs in the County Court

A response by the Association of Personal Injury Lawyers

June 2023



Introduction

We welcome the opportunity to respond to the County Court Rules Committee's initial consultation on the review of scale costs.

APIL believes that a review of scale costs is well overdue, given that they have not been changed in the last five years. Costs must be fixed fairly to ensure that plaintiff solicitors are properly remunerated and can continue to operate in the sector and help to provide access to justice for injured people. The public's ability to access lawyers and the legal system for redress will be affected if scale costs are not set at the correct level.

We believe that scale costs should remain, but the rate must be considered carefully. Currently, scale costs do not reflect changes in practice and the increase in work for plaintiff solicitors in county court cases. We are disappointed that scale costs have only increased by 3 per cent in the last nine years, while court fees and inflation have significantly increased. APIL is of the view that there is no proportionality between the amount that solicitors are paid for their work and the amount required to issue a claim.

We query whether the scope of consultees for this initial consultation strikes the right balance between plaintiff and defendant representatives. According to the list of recipients, more insurer representative organisations were invited to respond than plaintiff representative organisations.

Q1 - Do you agree that the 2023 Review should look at the operation of the scale costs system? Are there any other factors relevant to the operation of the scale costs system which the Committee should look at?

We agree that the 2023 review should look at the operation of the scale costs system. APIL believes that a review is long overdue, given that scale costs have not been updated since 2018. Scale costs should be retained, as they provide certainty for both the plaintiff and their legal representative, but they must be set at the correct level to ensure that the solicitor is properly remunerated and can continue to run these cases, and access to justice can be maintained.

Scale costs have increased by only 3 per cent since 2014¹. We believe that this does not reflect developments in practice and the increase in work in county court claims. These changes resulted in additional work for plaintiff solicitors only, which is not being appropriately remunerated under the current scale costs bands. In 2016, the Committee proposed that scale costs should be reviewed on a two-year cycle, which has not happened. APIL reiterates the importance of frequent reviews, and we suggest that a yearly inflationary uplift should also be carried out. It is crucial to ensure that the bands reflect the work required to run these cases. It must be noted that most personal injury cases currently go

¹ Costs for cases between £10,000 - £12,500 increased from £2630 in 2014 to just £2709 in 2018.

through the county court, yet the amount of work involved in each case is reflective of that in a High Court case.

Q2 - Do you agree that the Committee should adopt the 2001 guiding principles when undertaking the 2023 Review? Are there any other principles or guiding elements to which the Committee should have regard?

APIL agrees that the Committee should adopt the 2001 guiding principles when undertaking the 2023 Review.

Q3 - Do you agree that the Committee should approach its review of the rate of scale costs by reference to the rate of inflation, as measured by the GDP Deflator, together with information from other sources? What, if any, other factors should the Committee take into account?

APIL agrees with this. We suggest that there should also be a reference to the retail price index as was the case in the review of the assessment of damages for personal injury claims (5th edition) in the foreword by Stephens J. Consideration also needs to be given to the fact that the Taxing Master's hourly rate for Solicitors costs has not been reviewed since 2014.

Q4 - What, if any, other matters should attract specific fees or sums and why?

APIL members have reported that despite discretionary uplifts being available, it is very rare for them to be awarded. We believe that the Committee should take this opportunity to establish a list of cases that would be eligible for a discretionary uplift. It would be much easier in practice if the categories of cases that would attract an uplift were defined in an exhaustive list.

There is an agreed assumption that complex cases, such as those involving clinical negligence, will be more difficult to run than the typical claim. These 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 such as clinical negligence and occupational disease/illness (including hearing loss, asthma and asbestos-related illness) and RSI cases should be included in the list to ensure that uplift is considered. These cases can also sometimes settle before going to court, and when this happens, it is not possible to apply for a discretionary uplift despite the amount of work required to reach a settlement.

Additional day hearings also require extra work and so should be guaranteed an uplift. Cases involving multiple defendants who are separately represented should attract an automatic uplift in scale costs, given the extra work required compared to cases with only one defendant. The facts of the case are often more complex, and issues of liability and causation tend to be much more difficult to resolve. Cases involving multiple defendants currently receive an automatic uplift in the High Court, and we believe the same should apply to county court cases.

Q5 - Do you consider that a fee should be introduced for case management reviews?

APIL believes that a fee should be introduced for case management reviews. Our members informed us that in certain courts, they can often wait for half a day to be heard by a judge to simply say that the case is still going ahead. When attendance at court is required there should be a fee for travelling as well as a fee for attending, time spent working away from the office should be fairly remunerated whether for a review or interlocutory hearing.

APIL believes that the Committee reevaluate the requirement for solicitors to attend case review hearings in person. If a fee is not payable to cover the cost of attending, then we do not think these should be carried out other than remotely via email or video conference.

Q6 - What factors should the Committee take into account when considering the number and width of the current bands and why?

We believe that, under the current bands, there is no proportionality between the amount that solicitors are paid for their work and the amount required to issue a claim. From 2017 to 2019, fees for the Certificate of Readiness increased from £275 to £311 – a 13% increase in just two years, which the profession understands reflected the additional costs involved in running the court service. However, scale costs have increased by only 3 per cent since 2014 (3 per cent in nine years), while inflation has increased by circa 30% in the last nine years, resulting in a significant period of solicitors' underpayment.

The first three bands are currently too low for the work carried out by plaintiff solicitors. A claim that settles for £500 will frequently involve the same amount of work as a case that settles for £2,500.

If the Taxing Master's hourly rate is applied to the first band this means that a case which results in damages of less than £500 only requires two and a half hours of work. In a personal injury case, the time involved in contacting the client, taking instructions, arranging a medical report, obtaining GP and hospital notes, reviewing and redacting as appropriate the notes and reading the medical report and seeking approval from the client to serve will take more than 3 hours. Further, drafting letters of claim, corresponding re-discovery and liability and negotiating with defendants will also take several hours more, and if the case proceeds to a hearing there is considerable time spent in preparing court bundles, briefing counsel, and attending court.

We believe that plaintiff solicitors are currently only being remunerated proportionally if their case falls under the third band or higher. The additional work carried out by the plaintiff solicitor is expected to be absorbed by the amount of the scale fee; however, the delay in its review means that the current bands do not reflect the hours of work required to prepare a case. It is very unlikely that the work required is below 10 hours. We suggest that none of the scale costs bands should be less than £1000 professional fee, regardless of what the plaintiff is being awarded.

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