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Ministry of Justice  
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Building a Brighter Future  
for Injured People

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4 December 2023

Dear Sirs,

### **Implementing increases to selected court and tribunal fees**

APIL welcomes the opportunity to provide comments to the Ministry of Justice consultation about proposals to increase selected court fees.

We do not object to the increase in court fees in line with the Consumer Price Index (CPI) rate as proposed in the consultation document. We understand that an inflationary increase in the level of fees is necessary. However, APIL emphasises that court fees must not be increased above inflation and there should not be over-recovery – the court service should not be entitled to profit from people's unfortunate circumstances. We also maintain that the level of service within the court system should be reflective of the fees paid.

APIL disagrees with the suggestion in paragraphs 9 to 12 of the consultation that court users should meet the full costs of the system. APIL maintains that the fee policy of 'full cost recovery' should not be the main aim when setting court fees. This is a flawed approach – the court system is a public service, from which the whole of society can benefit and should be funded, in the main, through taxation. For example, most people go to work safely 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 that enforces the law. 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. The whole of society benefits from the functions of the court, not just the direct users. For instance, 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 main source of revenue. Justice, just as education or healthcare, cannot be restricted to those able to pay for it.

We also have concerns with the proposal to make full or partial inflation-based increases to selected fees once every two years. Whilst we recognise that this exercise would enable fee increases to be implemented steadily over time, we have reservations if the Help with Fees (HwF) remissions scheme is not updated in line with the regular court fee increases. APIL strongly recommends that the HwF thresholds be updated for inflation every two years, in line with the timescale proposed for court fee increases in this consultation. Further, APIL believes that Guideline Hourly Rates (GHR) and fixed costs fees must also keep pace with increasing court fees. We are pleased to note that GHR will be uplifted annually from 2024,

but we are disappointed that there is no plan to introduce a mechanism to annually update fixed costs. We explain our concerns with the lack of adjustments for inflation below.

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### *Costs as a factor in the decision to litigate*

The costs of litigation are a primary consideration for claimants when deciding whether to pursue justice through the courts, and court fees should not be so high as to be a prohibiting factor in this decision. Increased court fees, if set too high, may lead to raises in insurance premiums because of the higher potential expenses involved in losing a case. This will include car insurance and after-the-event (ATE) insurance premiums. We take the view that this does not sit well with the reforms in the personal injury sector, which focused on driving down the cost of litigation and ensuring lower premiums for the customer.

Higher court fees have the potential to impede access to justice for injured people. Claimants may 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. Further, the reality in many cases is that solicitors fund disbursements (including court fees) for their clients with the ability to recover those fees only at the end of the case. Solicitors could be more reluctant to take on cases due to the potential financial risk involved, in particular, if fee remissions do not keep pace with the increases.

APIL strongly believes that if claimants are expected to pay higher court fees they should be able to expect a minimum level of service, with courts having to adhere to service level agreements and the reaching of targets. As mentioned above, the proposed increases for 2024/ every two years must not be above inflation because there should not be over-recovery for HMCTS.

### *Fee remissions*

As recognised in the consultation document, the Help with Fees (HwF) remissions scheme ensures access to justice is protected for all court users regardless of their financial status, by providing financial assistance towards the cost of court and tribunal fees for eligible users.

We believe that the thresholds in the HwF scheme must be regularly updated. The HwF thresholds must keep pace with the two-year increases to court fees proposed in the consultation. We understand that a revised fee remissions scheme will come into force by the end of the year, but there is currently no plan to regularly review the thresholds in line with inflation. APIL recommends that the HwF thresholds should be updated every two years, in line with the court fee increases, to ensure continued access to justice for all.

If the assistance provided by the fee remission scheme fails to keep pace with these fee increases, there will be consequences on access to justice, potentially deterring many injury victims from pursuing their cases due to their inability to afford court fees. This directly undermines the fundamental principle of equitable access to justice. We strongly believe that the fee remissions scheme must be regularly updated to safeguard fairness and access to justice.

### *Legal professional's fees, fixed costs and inflation*

APIL does not object to the proposal to make full or partial inflation-based increases to selected fees once every two years. We recognise that court fee increases in line with inflation are necessary and that a regular review ensures predictability. However, we believe that the recognition of changes to inflation should apply across the board.

On page 3 of the consultation document the Minister states that *“it is critical that HMCTS continues to receive an adequate stream of income by ensuring that fees keep pace with increased costs to HMCTS as a result of changes in the general level of prices”*. The same is true for the legal profession. Whilst we are pleased to see that GHR have been updated and will come into force January 2024 with a commitment to do so annually, other legal costs remain out of kilter.

APIL is of the view that updating costs regularly and fairly is essential to ensure equality, accuracy, and sustainability within the legal profession while maintaining access to justice for individuals seeking legal assistance. Now that the annual inflationary increases will come into effect for GHR, we recommend that a full review should take place once per decade and other costs should be subject to the same annual uprating mechanism.

The Government’s failure to commit to annually uprating other costs figures, such as trial advocacy fees or portal fees is illogical and may result in costs not being reviewed for years, as is the case with the portal costs for cases under the Pre-action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents and Pre-action Protocol for Low Value Personal Injury (Employers’ Liability and Public Liability), which have not been changed since 2013. This failure to increase fixed costs fees is unfair to injured people. The work required from legal representatives to process the claim and advise the client means that deductions from damages are likely to increase in the absence of appropriate adjustment of fixed costs in line with inflation.

We recommend that there should be a commitment to uplift fixed costs in line with inflation annually. This mechanism should be built into the rules to ensure transparency and fairness in the fixed costs regime. We do not object the proposals to regularly adjust court fees to inflation, as long as other costs fees are also uplifted.

We hope that our comments prove useful.

Yours sincerely,

A handwritten signature in black ink that reads 'Ana Ramos'. The signature is written in a cursive, flowing style.

Ana Ramos

Legal Affairs Assistant

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