

Northern Ireland County Court Rules Committee
Consultation on the review of scale costs in the County Court
A response by the Association of Personal Injury Lawyers
August 2024



Introduction

APIL is grateful for the opportunity to respond to the County Court Rules Committee consultation on the review of scale costs. We welcome the Committee's recognition, following analysis, that scale fees ensure proportionality, fairness, and certainty in litigation – a position long upheld by the judiciary. Scale costs play a fundamental role in maintaining affordable access to justice in Northern Ireland, ensuring that both plaintiffs and defendants can access legal representation when required.

We welcome the proposal to increase scale costs across all bands. The fact that scale fees have remained unchanged since 2018 has placed many practices in a fragile position. Legal professionals have encountered significant financial constraints, particularly due to the COVID-19 pandemic and the economic repercussions of the 2022 invasion of Ukraine. These pressures have resulted in increased employee wages, higher office costs, and reduced profit margins, all whilst income from scale fees and hourly rates has stagnated. The failure to review both scale costs (since 2018) and Taxing Masters' hourly rates (since 2015) has left many practitioners chronically underfunded during a period of extraordinary inflationary pressure.

Question 1: Do you agree with the proposal that there should be a 23% rise in scale costs across all bands (including specialist bands)?

APIL agrees with the Committee's assessment that there should be a 23% rise in scale costs across all bands. However, we strongly advocate for the immediate implementation of this increase, as recommended by the Committee in the summary of responses document. As noted above, scale costs have not been reviewed since 2018, and solicitors have been underfunded during this period. The adjustment to scale costs should be implemented now pending any further protracted delay of the review being carried out. If there is a further one-year delay before the consultation outcome is finalised, as was the case between the targeted consultation and the current consultation, we are concerned that scale costs will continue to lag behind inflation.

We recommend that the County Court Rules be amended to include an implementation date for this increase and for the future reviews of scale costs. It is essential to have a set review date within three years of the last review and an implementation date set out in the rules otherwise there is a risk that adjustments to inflation or reviews will be pushed back and not seen as a priority again.

Question 2: Do you agree that there should be no change to the current costs bands?

No, we do not agree with this proposal. We remain concerned that there is a lack of proportionality between the remuneration solicitors receive for their work and the amount

required to issue a claim under the current bands. The fees in the first three bands are currently insufficient to reflect the work carried out by plaintiff solicitors. A claim that settles for £500 can, and frequently does involve, the same amount of work or time as a case that settles in the fourth band and therefore these cases are run at a loss.

If the Taxing Master's hourly rate, which in itself is 10 years out of date, is applied to the first band, a case resulting in damages of less than £500 only requires two and a half hours of work. In a personal injury case, the time required for contacting the client, taking instructions, arranging medical reports, obtaining GP and hospital notes, reviewing and redacting the notes as appropriate, reading the medical report, and seeking the client's approval to serve, will exceed three hours. Drafting letters of claim, correspondence relating to discovery and liability, and negotiating with defendants will take many hours more. If the case proceeds to a hearing, there is considerable time spent in preparing court bundles, briefing counsel, and of course consulting with the client and attending at court.

We believe that plaintiff solicitors are currently only being remunerated proportionally if their case falls within the fourth band or higher. It is very unlikely that the work required in any PI case will amount to less than ten hours. We suggest that none of the scale costs bands should be less than a £1000 professional fee, regardless of what the plaintiff is being awarded.

Question 3: Do you agree with the Committee's proposal that it should not introduce a specific fee for attending case management review hearings?

No, we maintain that a fee should be introduced for case management review hearings. We disagree with the statement in the consultation paper that case management reviews are rare in the County Court. Our members report that review hearings are frequent. We suggest that the Committee confirms the frequency of case management review hearings independently through data from the Northern Ireland Courts and Tribunals.

We strongly disagree that a fee for case management review hearings has the potential to cause an increase in the demand for such hearings. These reviews are only carried out according to the parties' best interests. Furthermore, given that this is often a very stressful process for clients, it is offensive to suggest that solicitors would try to delay a case, particularly in a regime where the fees are set irrespective of the time and work involved.

A fee for case management hearings is also required because there is additional work in County Court cases that is expected to be absorbed and remunerated through the "swings and roundabouts" principle. The County Court's jurisdiction extension to £30,000 and changes in the complexity of claims have meant that additional work done by solicitors is already expected to be covered by the set fee. Examples of this are the instruction of several medical experts in most cases and the preparation of bundles.

If the Committee is not minded to introduce a fee for case management review hearings, they should be carried out only on a remote basis via email or video conference.

Question 4: Do you agree with the Committee's proposal that it should not introduce an automatic uplift in scale costs in cases involving multiple defendants?

We do not agree with this proposal. 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. A distinction could be made between road traffic accident cases, where there are two defendants, such as a driver and owner, and cases involving multiple separately represented defendants, as in public liability or employer's liability cases. Dealing with correspondence, service of documents and discovery from multiple defendants requires additional time and solicitors should be remunerated accordingly. This additional time has always been recognised in High Court proceedings, and we believe the Committee should consider the same for County Court cases.

Question 5: Do you agree with the Committee's proposal that an uplift of 32% should be applied to the current travel entitlements?

APIL agrees with this.

Question 6: Do you agree with the proposal that a fee of £75 shall be payable for any necessary affidavit not otherwise provided for?

We agree that a fee should be payable for an affidavit. Currently, the fee for a certificate of application for discovery is £122.12 and a skeleton argument fee is £101. We propose that the fee for an affidavit should be set at a minimum of £100.

Question 7: Do you agree with the proposal that the range of cases in which the discretionary uplift is currently available should not be widened?

APIL does not support this proposal. Our members have indicated that despite discretionary uplifts being available, it is very rare for them to be awarded. We maintain that the Committee should establish a list of cases eligible for discretionary uplifts. It is widely accepted 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 attracting higher fees should also include occupational disease/illness (including hearing loss, asthma and asbestos-related illness), and repetitive strain injury (RSI) claims and stress and harassment cases. Furthermore, when cases settle before going to court, 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.

Question 8: Do you agree with the proposal to review scale costs on a three year cycle?

We agree with the proposal to review scale costs on a three-year cycle if the increase is implemented at the end of each review cycle. We are concerned that if the review is initiated every three years, it could take up to four years to conclude, causing scale costs to, once again, fall behind inflation. As stated in response to question 1, we believe the Committee should establish an implementation date for reviews or inflation uplifts. Furthermore, we recommend that if a full review is not conducted within three years, an interim adjustment for inflation should be applied as a provisional measure.