

Introduction

APIL welcomes the opportunity to respond to the Northern Ireland Courts and Tribunals Service (NICTS) consultation on proposals regarding court fees.

We maintain that full cost 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.

We are disappointed that the proposals also fail to consider that the inflationary pressures mentioned in paragraph 11 of the consultation document have also affected the legal profession. County court scale fees have significantly lagged behind inflation. Legal professionals and firms are facing business pressures, with lower profit margins and increased employee wages. The failure to review scale costs since 2018 has left many practitioners chronically underfunded during a period of extraordinary inflationary pressure. Further, where plaintiffs are represented, firms often have to frontload costs and continuous increases in court fees have an impact on their ability to do so. The combined effect of scale fees that have not kept pace with inflation, and continuous increases to court fees not only negatively impacts legal professionals, but also impacts plaintiffs -who are already vulnerable due to their injuries- and their ability to access justice.

We believe the increases to scale fees proposed by the County Court Rules Committee in 2024¹ should be reviewed to account for inflation since then and implemented urgently. If court fees are to keep pace with inflation, so should the fees paid to solicitors.

General Court Fee Increases from 2026

We are seeking your views and any comments on the proposal to increase court fees over the next three years by 5%, 2% and 2% and the intention to move towards a three-year rolling cycle of consultations and annual inflationary uplifts.

APIL does not agree with this proposal. As above, we do not believe that full cost recovery should simply be accepted as the basis on which to set court fees. The whole of society benefits from the functions of the court, not just the direct users, and as such should be largely funded by the taxpayer. 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 the law and the impartiality of the court system which enforces the law.

¹ <https://www.judiciaryni.uk/publications/consultation-review-scale-costs-county-court>

A very high proportion of costs are already being recouped from court fees – the consultation document states the cost recovery position in 2023-24 was 73%. There must be a balance struck between cost recovery and ensuring access to justice, and insisting on full cost recovery provides a blanket approval to continue to increase court fees year on year, without regard for whether fees are set at a level to ensure that access to justice can be achieved.

Furthermore, it is often the threat of court proceedings – and the possible sanctions which can accompany them, which will encourage observance of the law. People 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. 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. We understand the need for an inflationary increase, but we believe it should be capped to inflation and not set higher with the aim of achieving full cost recovery.

Lack of ATE insurance market in Northern Ireland

The ATE market in Northern Ireland is underdeveloped at present. The effects of a significant increase in court fees would be keenly felt by plaintiffs because there is no funding mechanism in place to pay their court fees if they lose their case. Instead, the court fees will have to be funded by the plaintiff themselves.

The cost of litigation can be a deterrent for claims in the first place, given that it is a primary consideration for plaintiffs when deciding whether to seek justice through the courts, and court fees should not be so high as to prohibit access to justice. Higher court fees may pose a significant barrier to access to justice, especially if solicitors' fees remain static. Access to justice should not be restricted due to the cost of litigation. There is a justice gap between those who can afford litigation and those who receive legal aid that needs to be addressed. Continuous increases to fees will threaten access to justice and practitioners might become reluctant to take on cases due to the financial risk involved.

Help with court fees

We invite your views on the 'Help with Court Fees' policy including suggestions on future improvements.

We believe that if court fee increases go ahead, the remissions and exemptions system should be reviewed in line with this to ensure that those who cannot afford the fees are able to continue to access justice. We suggest that if a review is carried out, it should also consider how to improve knowledge and awareness of the fee remissions system. It is extremely important that plaintiffs are aware of the assistance available to them, so that they are not deterred from pursuing a case or left unnecessarily out of pocket.

Impact assessments – Legal profession

As mentioned above, legal professionals incur the cost of court fees upfront and only pass on the costs to their clients later on. The impact assessment recognises that increases in court fees will affect the cash flow of solicitors. However, we believe that the effects of increased court fees will be more significant in this case, given that solicitors' remuneration has significantly lagged behind inflation. County court scale fees have only increased by 3

per cent since 2014.² This is completely out of step with the continued increases to court fees in the same period, with court fees increasing by 9 per cent in November 2023, and a further 9 per cent in October 2024.

If solicitors are not properly remunerated for the work that they carry out, and court fees are set at higher and higher levels, some firms will struggle to pay costs such as court fees upfront, with the risk that they will not get reimbursed for those costs. This will lead to some firms simply being unable to take on more complex cases. The lack of efficiency in the court system also means that solicitors are paying costs upfront, and the time taken to resolve the case (and get those costs reimbursed) is too long. If there is no improvement in the efficiency, again, this may lead to some firms struggling to take on cases.

Any queries about our response should be directed, in the first instance, to:

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² For example, fees for cases between £10,000 - £12,500 increased from £2630 in 2014 to just £2709 in 2018.