

Northern Ireland County Court Rules Committee

Consultation on scale costs

A response by the Association of Personal Injury Lawyers

July 2026



Introduction

APIL welcomes the opportunity to respond to the County Court Rules Committee consultation on the review of scale costs.

We disagree with the proposed increase in the county court jurisdiction. We do not believe that simply increasing the jurisdiction of the county court will have a significant positive impact on the efficiency of the court system.

We are concerned that increasing the civil jurisdiction to £60,000 will overwhelm the county court. The increase in cases being processed in the county court in addition to the complex nature of higher value personal injury claims, will create additional delays for injured and vulnerable plaintiffs. We have concerns that not all judges in the county court will have experience dealing with clinical negligence and personal injury cases.

This increase would mean that cases involving more complex injuries including medical negligence, asbestosis claims and hearing loss claims, would be progressed in the county court. If the increase is implemented, we believe that industrial disease cases, clinical negligence cases and personal injury cases with multiple defendants should be deemed exceptional and the plaintiff should have the choice to issue those claims in the high court.

The scale cost bands below band four generally do not provide appropriate remuneration for the work carried out, and any increase in the County Court jurisdiction, as well as the impact of lodgements in county court cases, will simply exacerbate this.

General comments

APIL is concerned that the increase in jurisdiction to £60,000, with an increase in the jurisdiction of district judges to £20,000 will have a negative impact on access to justice.

Fundamental change is required to ensure appropriate access to justice and deliver a system which supports court users in the early and proportionate resolution of civil cases. This should include procedural reforms, improvement of the county court infrastructure and more training for the judiciary to ensure they have sufficient expertise to deal with cases appropriately.

We are concerned with the lack of specialty of judges in the county court to deal with clinical negligence and industrial disease claims. A judge should only be allocated a case which coincides with their experience and specialism. In personal injury and clinical negligence cases in particular, it is crucial that judges have the required knowledge to ensure better quality and more consistent decision making due to the complexity of the issues. These cases are not straightforward when proving liability and causation and require a great deal of consideration of the evidence, regardless of the value of the claim. Initial and ongoing training is vital and should be endorsed by a ticketing system as in England and Wales.

Our members report that the county court will not have the level of expertise or time needed to deal with more complex matters. Often, several hearings are listed for the same day on

the assumption some will settle and the court will be able to absorb the rest. However, some of the complex matters which would be in scope of the jurisdiction increase would not resolve or settle in one day and could run into the next day or days, which could increase delays in hearings. Paired with this, the current infrastructure is not appropriate, with often no access or very limited access to quiet areas and meeting rooms for solicitors to meet with plaintiffs or counsel. This would be detrimental for plaintiffs who are already experiencing trauma and stress, in particular if the plaintiff is vulnerable or elderly, which is often the case in industrial disease claims, including asbestos-related disease.

If the increase in jurisdiction is implemented, we strongly believe that industrial disease cases, clinical negligence cases and personal injury cases with multiple defendants should be deemed exceptional and the plaintiff should have the choice to issue those claims in the high court.

There are various issues with clinical negligence cases being heard in the county court. For example, experts are unlikely to attend hearings at the county court. Medical expert evidence is critical in establishing liability and causation in a clinical negligence case as well as confirming diagnosis and prognosis, however experts are unlikely to travel to different venues on multiple days of the week. This may cause logistical challenges as well as issues with listings, resulting in further delays. In addition, senior counsel is unlikely to be authorised by the Legal Services Agency to represent a plaintiff in the county court, yet defendants will undoubtedly continue to fund senior counsel. It is crucial to ensure that appropriately experienced counsel is instructed for clinical negligence claims due to the complexity of the issues.

Regarding industrial disease claims, cases are often complex and require significant expert evidence. One member has recently settled a vascular Hand Arm Vibration Syndrome (HAVS) case which needed four and a half hearing days in the high court, with the judgment for general damages being £30,000.¹ This illustrates our concerns and is a good example that the value of a case does not determine the complexity.

Alternatively, APIL believes clinical negligence and industrial disease claims should be heard in a new specialised county court with appointed specialist judges. It would then be decided on a case-by-case basis whether the county court judges have sufficient expertise to deal with the case appropriately or whether it should be heard by the high court.

We have responded to questions within our remit.

Lodgements and scale costs

Our members have raised concerns that the practical operation of the scale costs regime has been permitted to depart from the underlying ‘swings and roundabouts’ principle, whereby the scales linked to the value of the proceedings.

Historically, County Court scale costs have been determined by reference to the value of the claim or decree rather than by an assessment of the precise amount of work undertaken by the solicitor. By contrast, in the High Court, where costs are generally assessed by reference to work done and time reasonably spent, there is often only a limited relationship between the amount ultimately recovered by a plaintiff and the costs incurred in reaching that outcome.

If, however, as is the case, County Court scale costs are assessed by reference to the amount of a lodgement or payment into court, and are then further reduced by an award of

¹ Alan J Concarr v Montracon Ltd [2024] NIKB 34

only 75% of the relevant scale fee, a significant departure from the traditional scale costs model may occur.

Example

A claim valued at £50,000 settles following acceptance of a £30,000 lodgement. If the court approaches costs by reference to:

1. the value of the lodgement rather than the full true value of the claim; and
2. a further reduction to 75% of the applicable scale on the lodgement,

the plaintiff's recoverable costs, and hence the amount that the solicitors should be remunerated, are reduced twice. Once by moving from the scale applicable to a £50,000 claim to the scale applicable to a substantially lower value claim; and again, by reducing the resulting scale fee by a further 25%.

Impact

The practical consequence is that costs when a lodgement are accepted will become solely linked to the settlement figure and the stage at which the case concludes, rather than to the prescribed scale applicable to the proceedings themselves.

It is difficult to reconcile such an approach with the traditional rationale underpinning County Court scale costs. If scale fees are intended to provide a predetermined level of remuneration based on value, and if the principles of certainty and predictability remain central to the County Court system, there is a legitimate question as to whether routine reductions of this nature risk transforming scale costs into a form of partial taxation which was never intended to be the case as far as we are aware.

That issue is likely to become substantially more significant if the proposed increase of County Court jurisdiction to £60,000 proceeds.

At present, many cases in the £30,000–£60,000 range proceed in the High Court where costs are assessed under an entirely different framework. Once those cases are brought within the County Court jurisdiction, the financial consequences of cost reductions based upon lodgements and percentage deductions will become much more substantial. A practice which may have unwittingly been allowed to take hold in lower-value litigation will have even greater far-reaching consequences when applied to significantly higher-value and more complex claims.

There is also a broader policy issue. This consultation on scale costs highlights the principles on which scale costs are set, including ensuring access to justice as well as fair and reasonable remuneration for professional services. The consultation sets out that the Committee is assured that the new scales not only represent fair and reasonable remuneration but that, in conjunction with the increase in jurisdiction, an increased number of court users will have access to the more straightforward procedures of the County Court at a cost below that presently paid for proceedings that come within the new jurisdiction. recoverable costs in the County Court are detached from the claim value and instead become dependent on the amount of a lodgement and judicial discretion regarding percentage reductions, then the certainty which has traditionally justified the scale costs system will be undermined. Costs will be negatively impacted by the increased jurisdictional limits unless this issue is addressed and rectified.

We suggest that there should be consideration of whether the developing jurisprudence in this area remains consistent with the traditional principles governing county court scale

costs, especially in light of any increased jurisdiction. There should be consideration of whether there needs to be any amendment to the rules to preserve the predictability and certainty which have long been regarded as central features of the county court costs regime.

Consultation questions

Question 1: Do you agree that the guiding principles used in the 2001 Review should be applied?

APIL agrees with this.

Question 2: Do you agree with the insertion of six additional bands at intervals of £5,000?

As above, APIL does not agree with the rationale for the proposals, given the impact that the increase in county court jurisdiction would have in personal injury and clinical negligence cases.

If the increase is implemented, we would not oppose the interval of £5,000 between bands given that this is consistent with the current approach in the scale costs bands from £15,000 to £30,000.

Question 4: Do you agree with the Committee's approach to establishing fair and reasonable remuneration in respect of the six new bands?

To ensure access to justice and fair remuneration of solicitors, it is key that the remuneration fees are proportional to the work undertaken by practitioners. This remains an issue within 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 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.

As above, we are also concerned that there has been an increasing departure from the principles underpinning scale costs, where cases are settled via lodgement.

Question 7: Do you agree with the Committee's proposal in relation to the defendant's costs in remitted actions?

We agree.

Question 9: Do you agree with the Committee's proposal that the ceiling on solicitor's costs for an additional day should be raised to £1,000?

We agree.

Question 10: Do you agree that the rules should allow for the enhancement of costs in cases involving claims for these diseases?

We strongly believe that disease claims should not be heard in the county court due to their complexity. Please see our comments in the 'general comments' section.

Our members report that despite discretionary uplifts being available, it is very rare for them to be awarded. If asbestos-related disease and lung diseases are heard in the county court, the guidance for the granting of an enhancement of costs should be updated to ensure that judges are effectively applying the uplift.

Question 11: What, if any, other matters should be taken into account when assessing the impact of the proposals in this paper?

We have no further comments.