

**NORTHERN IRELAND COURT SERVICE
COUNTY COURT RULES COMMITTEE**

REVIEW OF COUNTY COURT SCALE COSTS

**A FURTHER RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY
LAWYERS**

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REVIEW OF COUNTY COURT SCALE COSTS

1. APIL supports, in principle, the scale costs system in the county courts. It provides a simple and efficient mechanism for awarding costs in relatively low value cases. We strongly believe that the current level of scales is too low, however, and that as a result:
 - the insurance industry has a tactical advantage in all personal injury litigation;
 - there is a serious risk that access to justice for the victims of personal injury will be impeded.

2. For the scales system to operate satisfactorily, the “swings and roundabouts” principle underpinning it must also operate satisfactorily. This means that the costs recovered in cases requiring “little effort for much reward” must compensate for those cases in which there is “much effort for little reward”. The evidence suggests that this cannot happen, and is not happening, in practice.

3. The costs recovered in cases towards the lower end of the scale are so low that there are few, if any, cases in which you can recover “much reward” for “little effort”. It is only once you get to the higher end of the scale that there is any chance of compensating for the fact that the costs recovered in cases towards the lower end of the scale did not cover, in most, if not all cases, the amount of work actually undertaken. This chance rarely arises in practice, however, as there are so few awards made towards the higher end of the scale and we would refer you to the annexed table outlining this. On average, between 1996-2000, only 10% of all awards made in the county court were between £5001-£9999 and only 2% of all awards made were between £10,000-£15,000. We do not know how many of these claims included claims for personal injury, possibly none.

4. This means that between 1996–2000, on average, 88% of all awards made in the county courts were between £0 - £5,000. The majority of claims fell, therefore, into the category in which there is rarely an opportunity to recover “much reward” for

“little effort”. Taking complex cases out of the scales system, as suggested in our previous response, would not solve this problem as it is not only in complex cases that recoverable costs are disproportionately low to the amount of work undertaken. The statistics outlined above also cause concern about the low level of damages awarded to the victims of personal injury. It is important to note the decline in levels of awards in recent years. For example, in 1994, 24%¹ of all awards made in the county court were over £5,000, whereas in 2000 only 11%² were over £5,000.

5. The above problems are likely to worsen in September. Solicitors are currently penalised on costs through the “half costs rule” if they issue a civil bill for more than £3,000, but the plaintiff is awarded less. Judges are reluctant to use their discretion to award full costs despite the fact that the solicitor may not have acted unreasonably in issuing the civil bill for a larger amount than actually awarded. The scope for the “half costs rule” to penalise solicitors will significantly increase when the district judges’ jurisdiction is increased to £5,000 in September, as the majority of awards made in the county court are below £5,000.
6. We believe that the case for further research into the appropriate level of scales is extremely strong. In our view this would involve research into:
 - The average number of hours spent on claims of all levels of awards, taking into account the effect of current procedure
 - The costs of running a legal practice in Northern Ireland taking into account the extra costs of IT.

Research into the costs of running a legal practice is conducted regularly in England and Wales on a regional basis and we do not believe such research would be too onerous. APIL would be more than willing to provide assistance in this research, as we are sure would other organisations. Whilst the Civil Justice Reform Group

¹ Out of a total of 9217 awards made in the county court in 1994, 2,252 were over £5000.

² Out of a total of 12,023 awards made in the county courts in 2000, 1289 were over £5,000.

endorsed the “swings and roundabouts” principle, it admitted that “it [was] neither practicable, nor appropriate, for the Group to indicate what the particular level of fees should be for County Court litigation.”

7. We fear that unless this research is conducted, the scales will continue to be based on fiction rather than reality. To say that legal costs or overheads in Northern Ireland are lower than in England and Wales because the hourly rates are lower is not a strong argument because the hourly rates in England and Wales are based on the research into the cost of living and overheads, whereas those in Northern Ireland are not. Applying a percentage increase to the current level of the scales will not remedy the problems outlined above as any such increase cannot compensate for inherent deficiencies within the scale costs themselves.
8. We believe it is important to stress that we are not seeking inflated costs for solicitors that would make litigation inefficient and uneconomical. We seek only “fair and reasonable” remuneration for professional legal services. Due to increases in the jurisdiction of the county court in the last 20 years, a high proportion of a solicitors’ income is derived from civil bills issued in that court. Comparison of the old Belfast Solicitor’s Association Guide with the current county court scale costs illustrates that remuneration for solicitors has declined dramatically in real terms over the past 20 years.
9. It is vital to remember that all costs liabilities are incurred by the parties in the action and if plaintiffs are unable to recover costs which meet, either individually or collectively, the actual cost of their solicitors’ work, there is a severe risk that access to justice will be impeded as follows:
 - Solicitors, with a view to the costs recoverable on the scale, may be encouraged to work less hours on a claim and under-settle it;
 - Solicitors may cease to take on cases in which it is believed the recoverable costs will not be proportionate to the amount of work undertaken on the case;

- Solicitors may begin to charge their clients fees to compensate for the fact that the current level of scales is far too low.

In view of the Human Rights Act 1999 such risks cannot be ignored.

10. The established rule of costs is that the loser should pay, but as demonstrated above, in the current system, it is the victims of personal injury and / or their legal representatives that have to pay, even if they are successful. In addition, the scales system, at the current level, provides an in-built tactical advantage to the insurance industry. With no fear of adverse costs consequences the insurance industry can unreasonably delay and defend cases so as to put pressure on plaintiffs to settle.
11. In our previous submissions we stated that the insurance industry can take tactical advantage of the high number of bands in the current scale and for this reason stated that the number of bands should be reduced. We reserved judgment, however, on an alternative number until we had seen information relating to the number of awards falling into each band. Having now seen this evidence we believe that there should be three bands as follows: £0 - £5,000, £5001- £10,000, £10,001- £15,000.

ANALYSIS OF AWARDS MADE IN COUNTY COURT (1996 – 2000)

Award	1996	1997	1998	1999	2000
£ 0 -£ 5000	8,012 (88%)	8,724 (87%)	9192 (87%)	9677 (88%)	10,734 (89%)
£ 5001 - £ 9999	959 (10%)	1082 (11%)	1193 (11%)	1207 (11%)	1148 (10%)
£ 10,000 - £ 15,000	145 (2%)	194 (2%)	152 (2%)	147 (1%)	141 (1%)
Total	9116	10,000	10,537	11,031	12,023