13 June 2001

Senior Costs Judge Hurst
Supreme Court Costs Office
DX 44454
Strand

Dear Senior Costs Judge Hurst

Benchmark Costs

Please find enclosed the Association of Personal Injury Lawyers' response to the Supreme Court Costs Office consultation on benchmark costs. We are grateful to you for allowing us to submit our response past the established deadline.

Please do not hesitate to contact me if I can be of any further assistance.

With kind regards.

Yours sincerely

Annette Morris
Policy Research Officer

SUPREME COURT COSTS OFFICE CONSULTATION

BENCHMARK COSTS

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

JUNE 2001

The executive committee would like to acknowledge the assistance of the following in preparing this response:

Patrick Allen Vice-President, APIL

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Any enquiries in respect of this written evidence should be addressed, in the first instance, to:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:

- To promote full and prompt compensation for all types of personal injury;
- To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
- To promote health and safety
- To alert the public to dangers in society such as harmful products and dangerous drugs;
- To provide a communication network exchanging views formally and informally.

2. APIL welcomes the opportunity to respond to this consultation regarding benchmark costs. To put our response in context, we should note that the benchmarking of the following selected procedures are most likely to affect personal injury practitioners:

- Appeals on quantum;
- Applications by solicitors to come off the record;
- Simple appeals from Masters/District Judges to the High Court Judges/Circuit Judges;
- Applications for an extension of time;
- Simple applications without notice;
- Detailed assessment proceedings between parties.

3. We do not wish to be awkward, but we find ourselves unable to respond to the detailed consultation questions regarding the appropriateness of the benchmark costs detailed in the consultation paper and the assumptions on which they are based. This is, essentially, because, we do not have access to

statistics relating to the average costs of the selected procedures. The benchmarks detailed in the consultation paper may represent the average costs correctly. We are, however, in no position to challenge this. This is especially so because the average cost of an appeal on quantum in a building case may be very different from the average in such an appeal concerning personal injury.

4. We are both cautious and concerned about the introduction of benchmark costs as we believe that their introduction would bring few advantages and, in fact, may result in adverse consequences.

5. If a solicitor is aware that he will, in all likelihood, recover the benchmark cost for a particular procedure, and no more, there is a risk that he will tailor the amount of work undertaken to the recoverable cost, rather than do the actual amount of work required to undertake the relevant procedure. This may affect the standard of service provided and will not be in the interests of the client. Alternatively, a solicitor may conduct the actual amount of work required to undertake the relevant procedure and bill the client for the shortfall between the benchmark cost recovered from the losing party and the cost of the work done.

6. The only means of avoiding the above situations arising would be to allow flexibility within the benchmarking system. In view of this we are pleased to see that it is accepted, on page 5 of the draft report on benchmark costs, dated 16 February 2001, that the "court should retain its discretion as to what, if any, costs to allow and whether to award benchmark costs." It is further noted on page 5 that "it is important that the benchmark figures should be at the correct level to avoid constant applications to escape from the benchmark figure." Each case, however, is different. As a result, it is likely that the average or benchmark cost would be either over-generous or insufficient in a high number of cases. If there is flexibility in the system, as there must be, and lawyers are allowed to challenge the reasonableness of the benchmark costs on the facts of their cases, court time will still be consumed on issues of costs. It is highly questionable, therefore, whether the introduction of benchmark costs will reduce either the amount of court or practitioner time spent on issues of

costs or the resulting expense. In view of this there may be little advantage in introducing a benchmarking system.

7. The summary assessment of costs has been a step forward in simplifying costs procedures for the less complicated applications and hearings and has focussed the minds of litigants on the true cost of interim hearings. This has, in our view, encouraged litigants and their practitioners not to go to court on spurious points. We do not believe that benchmark costs will add anything to this system. It is only fair that solicitors are reasonably remunerated for work carried out by them and not remunerated too much or too little on the facts of the case.