

NORTHERN IRELAND COURT SERVICE

CIVIL JUSTICE REFORM

**DRAFT INSTRUMENT AMENDING THE RULES OF THE SUPREME
COURT (NORTHERN IRELAND) 1980**

- **OFFERS TO SETTLE AND PAYMENTS IN**
- **COMMENCEMENT AND CONDUCT OF PROCEEDINGS**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

OCTOBER 2003

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 5,000 members in the UK and abroad, with 121 members based in Northern Ireland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

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OFFERS TO SETTLE AND PAYMENTS IN

Rule 3

Order 22: Offers to settle and payment into and out of court

1. APIL supports the draft instrument and the proposed system which enables parties to make payments into court and offers to settle. We believe that payments into court provide a useful tool for negotiation and encourage parties to settle early without the need to resort to trial. As it currently stands there is little in the rules to encourage defendants to make payments in, or plaintiffs to accept such payments.
2. While APIL broadly supports the changes to be introduced via the draft instrument relating to offers to settle and payments in and out of court, we, however, have concerns over several of the articles contained within the draft instrument.
3. APIL would like to see Article 9 (3) – costs where payment not accepted – amended to include the adherence by defendants to soon-to-be introduced pre-action protocols. APIL has found that within the England and Wales jurisdiction it is the lack of adherence to the pre-action protocols, and lack of enforcement of appropriate sanctions, that has caused numerous problems. In addition the court should have the discretion to examine the general behaviour of the defendants through the process of the claim when considering factors relating to costs.
4. In relation to sanctions, APIL feels that article 13 (1) (i) should also be amended. This article concerns the stipulation that where a plaintiff's offer has not been accepted by the defendant, the Court –

“shall order interest on the principal sum (excluding interest) at a rate not exceeding 10% above the judgment rate from the last date on which the defendant could have accepted the offer”.

APIL considers the ceiling rate of 10% too low to act as an efficient sanction for defendants. Defendants are usually large and highly resourced insurance companies – the lack of a suitable financial penalty will mean that the non-acceptance of the plaintiff's offer will be offset against the possibility that the plaintiff will not be able to continue to fund his claim. The ongoing restriction and narrowing of the legal aid regime would seem to indicate that it is unlikely that the plaintiff will be proceeding through the legal process with state sanctioned funds; rather they will be self-funding via whatever means.

5. Following the above suggested amendments, APIL would like to suggest that a further article be added to the rules to specify that interest should automatically be applied to any judgment or settlement amount made by order of the court. Interest would be calculated at the normal judgment rate. APIL feels that this provision is a necessary addition to the rules as there are often instances of defendants delaying payment of the plaintiff's award for weeks and even months. The current remedy for this problem is go back to court and obtain a decree, and then attempt to pursue the matter through the Enforcement of Judgments Office. The additional costs that this involves intrinsically means that it is an action that plaintiffs can ill-afford to pursue. This abuse of process by defendants undermines the cost-saving functions advocated by the introduction of the civil justice reforms.

COMMENCEMENT AND CONDUCT OF PROCEEDINGS

Rule 5

Order 6: Statement of Claim

6. APIL believes that the time limit for service of the proposed statement of claim (and originating summons) should be kept within the current stipulation of twelve months of issue¹. Reduction of this time limit to four months – as detailed in article 8 (1) duration and renewal of statement of claim - will result in denial of access to justice. APIL acknowledges that in most cases service is affected within the early stages, but believes there is a percentage of cases that need marginally longer, and the provision that allows an extension of time for service in some cases, is in itself not sufficient. We would endorse the view that the current practices are retained.

Order 12: Entry of Appearance to Originating Summons

7. APIL does not wish to comment on this order at the present time.

Order 14: Summary Judgment

8. APIL considers that summary judgment is a useful way of dispensing claims without the need to resort to trial. In England and Wales, summary judgment is available to both claimants and defendants. Where either party feels that the other does not have a valid claim or defence, they can apply to the court for the claim or defence to be struck out and for judgment to be entered in their favour. The test that needs to be proved by the party applying for summary judgment is that the other party has “no realistic prospect of succeeding at trial either on the whole case or a particular issue” and that “there is no other reason why the case or issue should be dealt with at trial”.

¹ Rules of the Supreme Court (Northern Ireland) 1980, Order 6, Rule 7

9. By introducing a similar provision in Northern Ireland, APIL feels that there would be a decrease in the number of cases that go to trial, subsequently saving costs and unnecessary expenditure and delay. This additional efficiency within the legal process will mean that plaintiffs will now have to wait for less time for their cases to be heard, awards will be decided quicker and compensation awarded more promptly.