



**DEPARTMENT FOR CONSTITUTIONAL AFFAIRS  
(DCA)**

**PART 46 OF THE CIVIL PROCEDURE RULES: FAST TRACK TRIAL COSTS**

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

**MAY 2007**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

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

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## **Introduction**

APIL welcomes the DCA's consultation on fast track trial costs. As can be seen from our answers to the questions below, APIL strongly supports the proposal to increase fast track trial costs to take account of the rise in inflation since they were introduced eight years ago.

The views expressed below are, however, answers to discreet questions, and are not a full statement of APIL's views on fast track trial costs. This is particularly the case given the DCA's current consultation concerning case track limits and the claims process, which of course proposes that the fast track limit should be raised to £25,000. If this were to happen, at the very least there would need to be additional bands of fast track trial costs, with greater fees paid for those higher value cases. In APIL's view, consideration would also need to be given to whether fixed fees are suitable for advocates in cases which vary considerably in nature and complexity, with the consequence that preparation times for cases will also differ significantly.

### **Q.1 Do you agree that the fast track trial costs should be increased in line with inflation? If not, please set out your reasons why.**

APIL agrees that fast track trials costs should be increased.

Junior advocates and others working in the field of personal injury law, whose case load includes fast track trial cases, should be fairly and properly remunerated for work they carry out. It is not fair or reasonable that in 2007, advocates are still paid on 1999 rates as, if the rates were set at the correct level in 1999, the affect of inflation must surely mean that advocates are currently underpaid.

Many advocates carrying out fast track trial work are relatively junior barristers. If a young barrister concentrates mainly on personal injury work, fast track trial costs would be an important source of income.

Whilst fast track trial costs have remained unchanged there is no doubt that barristers' associated outgoings such as chambers, business and travel expenses have increased. Young barristers' earnings are therefore decreasing in real terms.

APIL therefore strongly supports the proposal to increase fast track trial costs in line with inflation.

**Q.2 If you agree, should the costs increase in line with the Retail Prices Index? If not please set out your reasons why and indicate whether you prefer the Private Sector Average Earnings Index or another index.**

APIL considers that the Private Sector Average Earnings Index (PSAEI) is the more appropriate index to use when calculating inflation, rather than the Retail Prices Index (RPI).

The Personal Injuries Bar Association (PIBA) said in its May 2006 position paper that on average between 20 and 33 per cent of a barrister's fee will be paid in chambers expenses. Chambers expenses therefore form a minority of a barrister's fee. The majority of costs an advocate might receive at a fast track trial will therefore constitute his "wage". As a result of this, APIL believes that the PSAEI is the most appropriate index to use.

When one considers how the 20 to 33 per cent of chambers expenses is made up, however, we believe the argument to link fast track trial costs to an index higher than RPI is even stronger. This is because a barrister's chambers expenses consist primarily of commercial rent and employing staff. The cost of the former is likely to have risen by more than the RPI over the last eight years, and the increased cost of employing staff, such as clerks, is most accurately reflected by the PSAEI.

In addition travel expenses can form a significant part of a young barrister's outgoings, especially as junior advocates are often expected to work over a wider geographical area than their more senior colleagues. It has been the experience of our members that travel expenses have been rising above the rate of the RPI. It would therefore be inappropriate to use the RPI to reflect the increase in the cost of travel.

The only expenses for which the RPI might reasonably be expected to be an accurate measure of inflation are those which form a relatively minor part of an advocate's outgoings, such as minor running costs for chambers, including stationery and telephone calls.

In the consultation paper the DCA notes that solicitors' guideline hourly rates have recently been increased in line with the RPI. Fast track trial costs and solicitors guideline rates are not directly comparable and have always been treated differently in terms of their composition. Furthermore, fast track trial costs should be increased in line with the most appropriate index of inflation, which is the PSAEI, irrespective of the basis for the recent changes in solicitors' rates.

**Q.3 Do you agree that the new rules should apply to all trials that take place on or after the date of implementation? If not, please set out your reasons why and state what you consider the appropriate transitional arrangements should be.**

APIL believes that the new rates should apply to all trials which are heard on or after the date of implementation.

We believe that this is the logical time for the changes to be implemented and that it would introduce certainty as to when the new costs will apply.

Furthermore there is no reason for introduction of the new rates to be delayed, as those most likely to be paying the increased fees have been put on notice of the fact that the fees may be increased by the publication of this consultation, several months in advance of the new costs being introduced.

Finally, increases in court fees and guideline hourly rates for solicitors take effect immediately they are decided upon, and there is no reason to depart from this practice with regard to fast track trial costs.