



HER MAJESTY'S COURTS SERVICE (HMCS)

Part of the Ministry of Justice (MoJ)

CIVIL COURT FEES

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

June 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

We are disappointed that the Government has adopted a court fee policy based on 100 per cent cost recovery, disregarding fee concessions. APIL's long standing position has been that the court service should primarily be a resource of the state and funded by taxation, but that court users should pay a contribution towards court services to reflect the individual benefit obtained. We believe that the court service is not something that an injured person chooses to use as a luxury, but rather that it is a service which should be provided for by the state to enable any person to use where necessary.

We do agree that introducing many of the proposals contained in the consultation paper is the logical way to help the court service meet its objective (despite the fact that we think the objective itself is flawed). The effect of the proposals, however, will be a significant increase in court fees for cases that proceed as far as a hearing. The greatly increased fees will deter claimants in person from pursuing their cases to trial, resulting in cases being under settled, and put pressure funding in those cases where claimants are legally represented.

1. Do you agree that this provides a fair, transparent and workable structure for determining fee concessions?

APIL believes that the new system is probably fair and that it appears transparent. The first test certainly seems workable. The second, more detailed, test involves the production of a significant amount of paperwork and the carrying out of a long calculation. Whether it is workable in practice remains to be seen and may well depend on the clarity of the forms which have to be completed in order to claim a remission of fees under the second test. We do, however, believe that the proposed new structure is clearer than the existing system.

2. Do you think that these proposals strike the right balance in targeting eligibility for full remission through a simple and workable system?

In particular, do you agree that the receipt of Child Tax Credit, Housing Benefit, Council Tax Benefit and Incapacity Benefit should not be an automatic passport to full remission? If you do not agree, please explain why, and what alternatives you propose.

Recipients of child tax credit, housing benefit, council tax benefit and incapacity benefit have already had their financial position assessed by a Government department. This occurred when they applied for their benefits and the assessments all resulted in decisions that the recipients needed financial help. To ask the Court Service to carry out such an assessment again would be to duplicate work already carried out. Given the state has taken the decision that benefit recipients are in need of financial assistance, we believe that they should be entitled to an exemption from court fees without the need for a further assessment of their finances.

3. Do you agree with the proposed simplifications, i.e. there should not be:

- (i) a gross income cap;**
- (ii) any capital element in the test;**
- (iii) a maximum monthly housing costs allowance for applicants without dependants; or**
- (iv) a fixed allowance for employment expenses?**

We agree with all the proposed simplifications.

4. Do you think there should be a residual discretion to grant remission in exceptional circumstances not covered by the means test? If so, in what circumstances do you envisage the discretion might apply?

Yes. We think there should still be a residual discretion to grant remission in exceptional circumstances. Although it may be difficult to envisage when this may be necessary, it is not possible to say such circumstances do not exist. There may be an instance where, for example, a person has a substantial income and assets but is unable to access these: the action may even be in relation to trying to access these assets.

In order for people to have access to the justice system in England and Wales, the court must have discretion to enable any individual to avail themselves of court proceedings without paying a fee.

We do, however, believe that there needs to be clear rules setting out who is able to decide whether a particular set of circumstances are exceptional enough to warrant remission from fees.

5. Do you think that court-ordered liabilities or any other specified types of debt repayment should be deducted in the calculation of disposable income?

Yes. Court ordered liabilities and other debts such as loan repayments and minimum monthly repayments on credit cards should be taken in to account in the calculation. If this is money which has to be paid out, it is not disposable income. It is unfair to make a person choose between paying a court fee to try to enforce their legal rights and paying liabilities that, if not met, could result in debt enforcement measures against them.

Potential claimants in personal injury cases are often in debt as a result of their injury: they may not have been working and had to rely on credit to pay their outgoings, or had to spend additional money to go about their daily life which pushed them in to debt. To exclude these debts in a calculation of disposable income can not be right.

- 6. Do you agree that we should remove the current exemption for those receiving Legal Help in family proceedings? If not, please give your reasons.**

This issue is not within APIL's remit.

- 7. Do you think it right in principle that an unsuccessful opponent ordered to pay costs should also be liable for the cost of any remitted court fees? Do you have any suggestions for how the system would best work in practice?**

Yes. We believe that it is right in principle that an unsuccessful defendant should be liable for the cost of any remitted court fees. Certainly this should apply in personal injury cases where most defendants are large companies or the case is being funded by insurers, both of whom can afford to pay the remitted fees, which would otherwise be paid for by taxpayer.

The system will work best in practice if the court is able to recover the remitted fee directly from the defendant. This could be achieved by the court notifying the defendant, once the court fees have been remitted, that they will have to pay the court fees if they lose the case. This would be a similar system to the Compensation Recovery Unit's recoupment of benefits which appears to work well in personal injury cases.

In order to make this system work, the circumstances in which a defendant has 'lost' or 'won' a case need to be made clear. We propose that a defendant should have to pay a remitted court fee in any case in which the defendant is paying the claimant's legal costs, either as a result of an agreement or a court order.

- 8. Do you agree that the system should apply to individuals only? If not, what criteria should be included in a scheme for small businesses, etc.?**

We agree that the system should apply to individuals only.

- 9. Do you think that there is anything more that should be done to ensure that users are aware of the possibility of a fee remission and how to apply?**

We believe that if all possible advisers such as solicitors and not-for-profit organisations have the relevant information, this should be sufficient to ensure that users are aware of the possibility of remission.

- 10. Do you agree that applications for permission to commence litigation by vexatious litigants should be subject to a fee, even where the applicant would normally be exempt? If not, why not? If you agree, do you think that this should be a nominal fee, say £10, or the full fee of £40 (under the new proposals)? Please give reasons for your view.**

This issue is not within APIL's remit.

11. Do you agree with the objective of achieving a closer match between fee and cost, and the proposed structure for achieving this? If not, please explain why and indicate what alternative structure you would propose.

Given the Government's objective of 100 per cent cost recovery disregarding fee concessions (with which we disagree), trying to achieve a closer match between fee and costs is logical. The fact, however, that we think the proposals are logical does not mean that we think they should be implemented. The practical effect of the proposals is that there will be very significant increases in fees for claimants who take their cases to trial.

This significant increase is caused by the introduction of very high hearing fees. The following are the court fees payable for taking a £5,000 personal injury case to trial, using the fast track procedure under both the existing and proposed systems:

	Existing fees	Proposed fees
Issue fee	£120	£115
Filing allocation questionnaire	£100	£110
Filing listing questionnaire	£275	£200
Fast track hearing fee	N/A	£500
Total	£495	£925

This is a massive 87 per cent increase in court fees payable.

We are concerned that the high costs of hearings may mean that a claimant in person may choose not to take his case to trial and will under settle his claim as a result. The hearing fees will effectively act as a deterrent to people who need to take their personal injury case to court to be fairly compensated for their losses, forcing them to settle for a lower sum than the court is likely to decide is fair.

In personal injury cases where the claimant is represented by a solicitor, the solicitor is often instructed on a “no win, no fee” basis, with the solicitor paying the court fee out of his office account on the client’s behalf. The significant increase in court fees will put pressure on many solicitors’ businesses as, even though they may eventually recover the court fee from the defendant if they win the case on their client’s behalf, the increased amounts still have to be paid out in advance of the hearing.

The changes could also affect after the event insurance premiums, which may have to rise to cover the cost of paying the increased court fees in the event that a case is lost.

Solicitors not acting on a conditional fee agreement basis are most likely to be funded by the client’s pre-existing legal expenses insurance policies. The cost of these policies, which are paid for either by premiums or referral fees, may also rise to cover the cost of the proposed increases in court fees.

Most personal injury claimants who reach the hearing stage win their cases and defendants therefore usually end up paying claimants’ costs, including any court fees. Given that the defendants eventually pay costs in most cases, it would be preferable for the court fees to be paid by the defendant up front. We recognise, however, that until the trial, the court has not found that the defendant has been negligent, and that the defendant can not reasonably be asked to pay the court fees in advance of the hearing.

We therefore propose that the hearing fee becomes payable after the trial, when the identity of the party who is liable for the costs of the case is clear, and the court can recover the fees due.

The proposed structure does not take account of fast track hearings that are significantly shorter than average, such as assessment of damages hearings in personal injury cases which sometimes last for as little as 15 minutes. Given the Government's aim of matching fees to the cost of the service provided, a considerably reduced fee should be payable for such short hearings. It is important that this is addressed, particularly in light of the proposals for quantum only trials contained in the Ministry of Justice's consultation paper "Case track limits and the claims process for personal injury claims" (April 2007).

The Ministry's consultation paper also seeks to ensure that costs in personal injury cases are proportional to the damages awarded, something which the proposals to significantly increase court costs will not help.

12. Do you agree that, where the process and average costs are similar, High Court and county court fees should be aligned?

Yes.

13. Do you think the allocation fee can act as a disincentive to attempt mediation? If so, how do you think this would best be addressed?

We do not think the allocation fee acts as a disincentive to attempt mediation. In lower value personal injury cases, there is rarely a suggestion of formal mediation as more informal alternative dispute resolution such as negotiation is used. In higher value cases, a fee of a few hundred pounds does not put people off mediation because the financial rewards to be gained can be significant.

14. Do you agree with the principle of refunding the hearing fee depending on the timing of settlement, and the proportions and timings suggested?

We agree with the principal of refunding the hearing fee depending on the timing of the settlement. We believe that the proposed timings will result in the full refunds of very few court fees in relation to personal injury cases, given that insurers rarely make significant attempts to settle a case which is set down for a hearing 28 days in advance of the hearing date. Shorter time limits would therefore enable the refund of more fees.

15. Do you agree in principle that additional hearing fees should be charged in longer trials to reflect their true cost? Do you agree that it is reasonable to apply such a system only in specialist jurisdictions that deal with high-value commercial cases?

We do not think that additional hearing fees should be charged in longer personal injury trials, to reflect their true cost. It cannot be just to charge a person who has been injured as a result of the defendant's negligence extra court fees because their case is particularly complex and as a result the court needs to hear a significant amount of evidence in order to adjudicate on the matter.

16. Do you agree that hearing fees in lower value small claims should continue to be subsidised by issue fees to ensure a degree of proportionality? Do you think that the figures proposed strike the right balance?

We agree both that hearing fees in lower value cases should continued to be subsidised and that the proposed figures strike the right balance.

17. Do you agree that lower fees should be charged for using e-systems with lower processing costs? Do you think the proposed reductions create reasonable differentials between the various channels? Do you think that unreasonable extra cost of using more expensive channels should be recoverable in costs?

This is a common sense approach.

It would be preferable, however, if claimants in person or solicitors issuing personal injury cases were also able to have to option of doing so electronically and thereby availing themselves of lower court fees.

We understand that it would be neither practical nor desirable to issue personal injury cases out of Northampton County Court where the County Court Bulk Centre is based, but the technology must be available to enable electronic claims to be issued at local courts at a lower cost than if issuing in person.

18. Do you agree that assessment fees should be set by reference to bands of value? If so, do you agree with the bandings proposed? Do you agree that the fee should be calculated by reference to the bill as presented?

This approach is consistent with the logic applied throughout the paper.

19. Do you agree with these proposals in this section? If not, please explain in what respects.

The proposals in this section represent minor charges in relation to the overall cost of bringing a personal injury claim. Although we do not necessarily agree with the excessive photocopying charges, we recognise that these have always been high, and consider that it is more important for the other significant proposals to be properly addressed

20. Do you agree that the particular fee increases proposed are reasonable, given our target of moving towards full cost recovery (net of fee concessions) in this area?

This question relates to hearings in magistrates courts, which are not in our remit.

21. Do you agree with the proposal to create a separate fee for appeals?

This question relates to hearings in magistrates courts, which are not in our remit.