

NORTHERN IRELAND COURT SERVICE

CIVIL COURT FEES

**EQUALITY IMPACT ASSESSMENT
AND
SUMMARY OF RESPONSES TO THE CONSULTATION PAPER**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

JULY 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 communication networks for member

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

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Executive Summary

- Few of the concessions outlined in the summary of responses paper have been made for court users on low incomes who fall just above the threshold for assistance with fees. The steep increases in court fees will significantly reduce access to justice for such people. The concessions generally affect those court users who are already well protected.
- All but one of the concessions are for procedures which are rarely used. Steep increases remain for commonly used procedures.
- The background to the new cost model still fails to provide sufficient information for consultees to gain a full understanding of how the proposed fees were calculated.
- We remain opposed to any arrangement under which personal injury victims would be expected to subsidise family proceedings.
- We reiterate our view that current court users cannot reasonably be expected to finance the long-term investment of introducing new, computerised technology into the courts. Furthermore, it still appears that no allowance has been made for efficiencies resulting from modernisation, such as reductions in staff, which APIL would expect to be translated into lower fees.
- The steep increases in court fees have the potential to undermine a proposed new alternative to legal aid in Northern Ireland.
- Increased court fees are likely to reduce the profitability of firms of solicitors in Northern Ireland to such an extent that they will not be willing to take on meritorious but low value claims, thus reducing access to justice for claimants.

- We remain opposed to the principle of full cost recovery on the grounds that the courts should perform the function of a public service. We believe that this will create a spiral of rising fees and falling access to justice.
- We reiterate our view that the cost of a self-financing civil judiciary may be more than offset by gains to public funds in other areas, such as the opportunity to recover state benefits and costs of care for injured people from defendants.

Introduction

1. Although we have only been specifically requested to comment on the equality impact assessment, we felt it appropriate to also comment on the summary of responses paper because not all the issues raised in the summary were covered by the equality impact assessment.
2. As we represent the interests of personal injury victims, we have only commented on issues relevant to such claimants.
3. Since the majority of the questions asked are not applicable to personal injury claimants, we have not directly answered the questions. However, we trust that our overall response will satisfy the Court Service's consultation requirements.

Measures to Mitigate any Adverse Impact

4. APIL is concerned about the potential negative impact of the proposed increases on people on low incomes who fall just above the threshold for assistance with court fees.
5. According to the Northern Ireland Statistics & Research Agency, there are "many individuals working in low paid employment or otherwise working for the minimum wage".¹ This claim is supported by two further agency reports which highlight a large service industry employing 79.3 per cent of the population,² and 36.7 per cent of full-time employees earning between £280 to £320 gross per week, mostly within the service industry.³

¹ Northern Ireland Statistics & Research Agency *Northern Ireland Multiple Deprivation Measure 2005* p9

² Northern Ireland Statistics & Research Agency *Northern Ireland Census of Employment September 2005* p1

³ Northern Ireland Statistics & Research Agency *Northern Ireland Annual Survey of Hours and Earnings 2006* p12

6. APIL strongly believes that people falling just outside eligibility for assistance with court fees are likely to be adversely affected by the steep increases with the result that they will not be able to afford to make a claim and will be left without compensation. This is especially unfair on personal injury victims and their families who may suffer continued financial hardship where the victim's ability to work has been taken away or reduced due to the injury.
7. APIL does recognise that the system is flexible enough to waive or reduce court fees to those who would suffer financial hardship, through remission. However, as this is discretionary we are concerned that there is still no certainty for claimants. Therefore, it would be helpful if the Court Service could provide additional information as to how remission applications are assessed.
8. Whilst the fee concessions are welcomed, we submit that except for adjournments, the other items are rarely used or do not apply to personal injury cases. There has been a clear failure to make concessions on commonly used procedures such as a certificate of readiness and a writ of summons. The fee for a certificate of readiness has increased from £29 to £250, a massive 762 per cent increase. The increase in the fee for a writ of summons is more reasonable at 14 per cent from £175 to £200, but nevertheless is well above inflation and large enough to have an adverse impact on vulnerable claimants. APIL would therefore strongly urge the Court Service to reconsider the amount of such fee increases.

Cost Model

9. We thank the Northern Ireland Court Service for providing a background to the new cost model. However, the level of information provided is limited and does little to improve consultees' understanding of the methodology used when calculating the fee increases. To ensure transparency, we suggest consultees should be provided with the information set out below.

- Annual frequency of each court fee.
- For each court tier, details of annual costs and number of cases, broken down into type of civil business, for example, personal injury, family and debt.
- A breakdown of other costs as these appear high compared to other headings such as staffing. Is accommodation a significant part of these other costs?
- Approximate amount of the investment in information technology.
- Estimated efficiency savings as a result of the new technology.

10. This information will assist consultees in understanding how the proposed fees are set at achieving the stated full cost recovery level, as set out in the consultation paper.

Subsidies

11. We are disappointed that the summary of responses document fails to reflect the views of APIL on the matter of subsidising family proceedings. Whilst we have no major objection to the principle of subsidising such proceedings for

potentially vulnerable claimants, we do object to the fact that other civil litigants, such as personal injury victims are required to fund the subsidy. As the subsidy is a matter of public policy, we believe it should be funded with public money.

Information Technology

12. Again we are disappointed that our views on this matter were not evident in the summary of responses paper.

13. We wish to confirm that whilst we welcome investment in modern technologies, we believe it is unfair for future court users to fund past years of under-investment. In our opinion it is a one-off cost that should be covered by public money as part of the Government's duty to provide a fair and efficient court system, accessible to all those in greatest need of justice.

14. Furthermore, the response document fails to take into account likely efficiencies resulting from the new technology such as reduced staff costs.

Effect on Proposed New Legal Aid Scheme

15. The Court Service is probably already aware of new proposals being developed by the Northern Ireland Legal Services Commission to reform the legal aid system in Northern Ireland.

16. Under the proposed Northern Ireland Additional Legal Aid Scheme (NIALAS), a large proportion of the population would be eligible for assistance with legal costs, including court fees.

17. APIL submits that the proposed steep increases in court fees threaten to undermine this proposed scheme by reducing the size of available funds.

Impact of Fee Increases on Solicitors

18. In our original response to the consultation paper, APIL expressed concerns about the negative impact the fee increases would have on firms of solicitors in Northern Ireland.
19. Since this response, one of our members has conducted an impact assessment of the fee increases on solicitors. It shows that the typical income per action will be reduced from £445 to £295, before bank charges have been taken into account.
20. As we highlighted in our earlier response, it is standard practice for practitioners to finance clients' cases by borrowing the necessary funds at commercial rates for the duration of the case because clients are not normally able to afford to pay the costs themselves.
21. Our concern is that the proposed court fee increases will make cases less financially viable to such an extent that solicitors will be more selective about which cases they take on, meaning that they may have to refuse clients with meritorious but low value claims, and further limiting access to justice.
22. As previously submitted, we also believe that this could lead to exploitation of claimants from experienced defendants, who in the knowledge that the claimant is unlikely to take the case to court because of the level of costs involved, may offer a derisory settlement figure.
23. A copy of this impact assessment can be found in Appendix A.

Full Cost Recovery

24. As set out in our original response to the consultation paper, APIL would like to reiterate its earlier warnings that the principle of full cost recovery is contrary to the interests of justice, unjustifiable as a matter of policy and potentially costly to society as a whole.
25. As an independent judiciary is a key pillar of a democratic society, we maintain that the courts should form the function of a public service, with an element of Government funding, not just full cost recovery from court users. Otherwise, access to justice is restricted to those who can afford to pay or are eligible for financial assistance.
26. We repeat that the justice system serves the public as a whole, not merely the parties who happen to find themselves before the courts. Court decisions lead many people to receive fair and lawful treatment in everyday interactions and also enable parties to settle out of court on the back of decisions court users have generated. It seems unfair that those who do go to court have to pay for the benefit of others.
27. Furthermore, just as schools are not paid for by pupils, and hospitals are not maintained by the sick, the civil courts should not rely on court users as their sole source of revenue. Justice, just as education or healthcare, cannot be restricted to those able to pay for it.
28. We confirm our belief that the proposed increases will lead to a circle of higher court fees, fewer cases, higher unit costs per case and the need for further fee increases. The multiple increases outlined in the consultation document will inevitably place many current cases outside the realm of financial viability, and stop them from being brought before a court. As a result, case volumes before each court will drop significantly. The expense of

running a civil justice system will, under the principle of full cost recovery, then have to be divided between the much reduced number of cases that still reach the courts.

29. We repeat that the costs of a self-financing judiciary may be more than offset by successful personal injury litigation because this allows the public purse to recover the cost of public services the victim receives, such as welfare benefits, care and health services, from the tortfeasor. Only where liability is identified and personal injury compensation obtained by the claimant, is the state able to recover these costs. If, as is likely, the cost of civil court action becomes prohibitive for many injured people, public funds will be forced to pay for state services that would otherwise be the negligent party's liability.

30. We therefore once again urge the Court Service to carry out a full assessment of the fee increases on public services overall, offsetting likely losses to health and care services and the benefits system, against the estimated increase in court revenues.

31. If however, the proposals do come into effect, the Court Service must become more user-focused, especially in relation to setting convenient hearing dates. For example, it would be totally unreasonable to expect a court user to pay for a full hearing, plus an adjournment fee, if an inconvenient hearing date had been fixed.

Court Increase Impact Assessment

It is widely recognised throughout the profession that the proposed reforms will have a potentially significant adverse impact on legal practices in Northern Ireland – particularly with regard to personal injury cases with a corresponding consequent effect on the victims of personal injury in Northern Ireland.

The vast proportion of all injury claims are dealt with in the County Court and the average award is under £5,000 in 87% of cases within this Jurisdiction.

Average solicitor costs recovery in the County Court is currently in the region of £897 subject to a recent 10% uplift pursuant to the County Court (Amendment) Rules (Northern Ireland) 2006.

There has been a marked down turn of legal proceedings being issued in the County Court over the past four years by approximately one third. 33% of all cases determined result in dismissal or no order.

In Northern Ireland solicitors have traditionally funded clients' outlay – from court issue fees, medical reports, hospital notes, general practitioners notes and records, X-Ray reports, engineers and other experts.

APPENDIX A

Under the current regime the approximate costing of a personal injury action in the County Court is as follows, assuming 1 interlocutory application and 1 adjournment application:-

	£
Court fee on Civil Bill	140
Court fee on COR	29
Court fee on Interlocutory Application	35
Court fee on adjournment	NIL
Medical report	180
Hospital notes	25
GP notes	50
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Total	£459

A case load of 100 contested actions will involve an outlay of £45,900 with a 33 per cent potential write off value of £15,147 against a potential fees base of £89,700 [written down by 33 per cent being cases dismissed or where no order applies] namely £59,202 less written off disbursements to £44,055 or **[£440.55 per action]** without factoring in bank borrowing charges. It is suggested that disbursement write off and bank borrowing to fund outlays are significant features of practices in Northern Ireland.

APPENDIX A

Under the proposed regime the approximate costing of a personal injury action will be:

	£
Court fee on Civil Bill	150
Court fee on COR	250
Court fee on Interlocutory Application	115
Court fee on Adjournment Application	115 ⁴
Medical report	180
Hospital notes	50
GP notes	50
Total	£910

In short terms this represents an increase of 98 per cent of outlays carried by the individual firm per case. The actual court fee increase is 209 per cent.

A case load on 100 contested actions will involve an outlay of £91,000 with a 33 per cent disbursement write off potential of £30,030 against a potential fees base of £89,700 [written down by 33 per cent being cases dismissed or where no order applies] namely £59,202 less written off disbursements to £29,172 or **£291.72 per action** without factoring in bank borrowing charges.

Faced with this scenario solicitors will inevitably become much more risk averse and/or will simply be no longer be able to fund outlays on behalf of victims of personal injury with serious consequences in terms of access to justice.

In addition solicitors will be compelled to request payment of outlays in advance of action being taken. There is a confusion in the minds of the public when being

⁴ Operation to be suspended for the time being.

APPENDIX A

asked to fund outlays as they perceive outlays to be solicitor's costs. The profession will therefore, in addition, suffer from adverse publicity.

The most significant cost increases occur in the County Court where the cost to gain ratio is at its lowest point. Again this will act as a deterrent to the general public seeking legal redress.

Finally there can be little doubt that the proposed changes will further depress the market and court issue rates which have a direct impact on revenue generated by the Court Service under its proposed amendments putting further inflationary pressure on court fees.

Robert Martin, APIL EC Member for Northern Ireland