



**NORTHERN IRELAND COUNTY
COURT RULES COMMITTEE
CONSULTATION:**

**REVIEW OF SCALE COSTS AND
RECENT PRACTICE AND
PROCEDURAL CHANGES IN THE
COUNTY COURT**

**Response of the Law Society of
Northern Ireland**

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Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,600 solicitors working in some 520 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Law Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

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Question 1: Do you agree with the proposal to review Scale Costs on a two year cycle? Please give reasons for your answer.

The Society believes that it would be sensible and proportionate to review Scale Costs on an annual basis in line with the rate of inflation and other important factors. This would ensure consistency and address fluctuations in the rate of inflation on a yearly basis, whilst retaining the flexibility of not opting for automatic adjustments. The Society stated its understanding that the most comprehensive measure of real purchasing power is the Consumer Price Index, however we note the Committee takes a different view and uses the GDP deflator as its preferred measure.

As stated in our response to the targeted Consultation in June last year, the Reviews should canvass the views of the Taxing Master, professional bodies, insurers and Government. This is subject the caveat that the Committee recognises cases paid through taxation often represent remuneration for work carried out some years previously. The rate of increase in scale costs should reflect the fact that keeping pace with inflation is a baseline necessary to maintain the real value of current rates of remuneration. Further increases could be considered in circumstances where a compelling case has been put forward that this is warranted to deliver fair and reasonable remuneration.

Question 2: Do you agree with the proposal that there should be a 3% rise in scale costs? If so, should it be done by way of two equal, mutually contingent instalments of 1.5%? Please give reasons for your answer.

The Society is in agreement with the proposal to increase Scale Costs by 3% and its content that this is done in two instalments of 1.5%.

Question 3: Do you agree that there should be a new lower Scale Costs band for awards of £0-£500? If so, at what rate should the Committee set the costs payable?

The Society agrees that there should be a new lower Scale Costs band for awards of £0-£500. We consider this should address the concerns expressed by others that in low value claims costs have the potential to mushroom beyond the value of the claim.

Question 4: Do you agree that the fees for miscellaneous costs should be increased to the same extent as the substantive scale costs? Please give reasons for your answer.

The Society agrees with this proposal, subject to the caveat that these costs should also be reviewed along with Scale Costs on a continuous basis.

Question 5: Do you agree that the fee for drawing up a list of documents under Order 15 should be £60.00? Please give reasons for your answer.

The Society supports the proposed increase to the fee for drawing up a list of documents under Order 15 and notes that the judicial discretion to award an uplift in appropriate circumstances should remain in place. As with all fees, this should be regularly audited to ensure it is struck at an appropriate level.

Question 6: Do you agree with the Committee's proposal that it should not introduce a specific fee for attending review hearings? Please give reasons for your answer.

The Society does not agree with this proposal. We indicated in our response to the initial targeted Consultation that Direction Appointments and Review Hearings are becoming an increasing feature of litigation at the County Court level, rather than being "comparatively rare", as the Consultation suggests. As more complex cases are moving within the jurisdiction of the County Court, this may cause the number of these hearings to increase. This has the potential to upset the careful balance of the 'swings and roundabouts' principle and the Society remains of the view some remuneration should be forthcoming to cover these hearings and appointments. It is agreed a view should be taken to ensure that any such fees are reasonable in the circumstances.

As mentioned earlier, the proposed introduction of CFAs and increasing up front disbursements through proposed increases to court fees should also be taken into account when assessing the burden on solicitors and whether fair and reasonable remuneration is provided in light of all the relevant considerations. If the Committee remain of the mind that no provision is necessary, this decision should at least be reviewed as part of the cyclical review process.

Question 7: Do you agree with the Committee's proposal that it should not introduce an automatic uplift in Scale Costs in cases involving multiple defendants?

The Society does not agree with this proposal and again refers to the BSA's Guide to High Court Costs, which recommends a tiered increase in line with each additional defendant. This reflects the fact that with each additional defendant comes increased risks of disputed issues of liability and causation which require additional time and preparation for solicitors. Again, this reflects the importance of weighing the cumulative impact of cost drivers in litigation, particularly in more complex cases.

Question 8: Do you agree with the Committee’s proposal that it should not make any change to current travel entitlements? Please give reasons for your answer.

The Society does not agree with this proposal. We note the proposals from the Department of Justice in respect of court closures which, if implemented, are likely to significantly increase travelling times for practitioners and impact the operation of the ‘swings and roundabouts’ principle. In some cases this represents a significant increase in travelling times and a reducing number of shorter journeys to offset this burden.

Question 9: Do you agree with the proposal that there should not be a separate fee for drafting an affidavit? Please give reasons for your answer.

The Society believes that there should be flexibility within the system to award remuneration for the drafting of an affidavit where this is appropriate in the circumstances.

Question 10: Do you agree with the proposal that the range of cases in which the discretionary uplift is currently available should not be widened? Please give reasons for your answer.

The Society believes that the relevant threshold for discretionary uplifts relates to the increased jurisdiction of the County Court and the increased risk of more complex actions falling within this court tier. On that basis, there should be flexibility to ensure an uplift is provided in appropriate cases whilst preserving the advantages of the Scale Costs system.

Question 11: Do you agree with the proposal that there should not be provision for the uplift in certain cases unless the court orders otherwise? Please give reasons for your answer.

As noted above, the Society notes that there are particular types of cases, quite often clinical negligence and industrial disease actions which go beyond the regular cases which are captured within the ‘swings and roundabouts’ principle. Practitioners report that the uplift at present is very difficult to obtain and whilst we support the maintenance of the Scale Costs system in terms of cost forecasting, it might be useful to revisit the factors which will trigger an uplift to ensure the system is flexible enough to remunerate bona fide work in particularly complex cases.

Question 12: Do you agree with the proposal to provide a fee for preparation of a court-directed skeleton argument with the fee payable to be at the judge’s discretion up to a maximum of £100? Please give reasons for your answer.

The Society welcomes the proposal for a fee to remunerate the preparation of court-directed skeleton arguments in line with our earlier representations.

Question 13: Do you agree with the proposal that, in remitted actions, the defendant's fee should be equal to a case in which the civil bill claims £30,000 (i.e. the present maximum jurisdiction of the county court)? Please give reasons for your answer.

The Society agrees with this proposal.

Question 14: Do you agree with the Committee's proposals in relation to practice and procedural issues? Please give reasons for your answer.

The Society has been fully engaged with the Civil and Family Justice Review Group and will continue to use that opportunity to set out our thoughts on the operation and compliance with Pre-Action Protocols.

The Society is supportive of the Committee's decision not to bring lower value RTA cases within the jurisdiction of the small claims' court. The potential for such cases to raise issues not properly within the scope of the small claims' court is acknowledged and the flexibility provided ensures both access to justice and equality of arms for plaintiffs. Furthermore, the new lower costs band should address the concerns of defendants about costs exceeding the value of claims in lower value cases.

Question 15: What, if any, other matters should be taken into account when assessing the impact of the proposals in this paper? Please give reasons for your answer.

The Society refers to our points above about the importance of undertaking an ongoing audit of changes in procedural demands on solicitors when looking at Scale Costs and bolt on fees and in particular related issues such as court fees and the reduction in the court estate.

Conclusion

The Society is grateful for the opportunity to submit a response in respect of the consultation on Review of Scale Costs and Recent Practice and Procedural Changes in the County Court.

We trust our contribution is constructive and we are happy to meet with the Committee to discuss any of the issues raised in our response.

We would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.