

NORTHERN IRELAND  
COUNTY COURT  
RULES COMMITTEE

CONSULTATION

REVIEW OF SCALE COSTS  
IN  
THE COUNTY COURT

County Court Rules Committee  
Secretariat

8 July 2024

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## Executive Summary

The County Court Rules Committee has reviewed the rates of legal costs payable between parties in proceedings in the County Court, commonly known as 'scale costs' or 'County Court scale costs'.

The Committee proposes to increase scale costs by 23% to take account of the 23% rise in inflation, as measured by the GDP Deflator, since scale costs were last uplifted in 2018. In recognition of the challenging economic climate, the Committee proposes an immediate full implementation.

The proposals are informed by responses from key stakeholders to an initial consultation paper issued by the County Court Rules Committee in June 2023.

This paper seeks views on the County Court Rules Committee's proposals.

Final decisions on the proposals will be informed by responses to this consultation.

## 1. Introduction

**1.1** By virtue of Articles 47 and 48 of the County Courts (Northern Ireland) Order 1980 and section 21(1) and (2) of the Interpretation Act (Northern Ireland) 1954, the County Court Rules Committee ('the Committee') may make rules specifying costs applicable to proceedings before the court.

**1.2** This consultation paper seeks views on proposals of the County Court Rules Committee to increase existing scale costs to take account of inflation.

**1.3** The Committee is writing to relevant organisations, groups and individuals with an interest in the legal system in Northern Ireland (listed at Appendix 1). The list of consultees is not meant to be exhaustive or exclusive and responses are welcomed from anyone with views on the subject covered by this paper. A copy of this document is available on the JudiciaryNI website at [www.judiciaryni.uk](http://www.judiciaryni.uk).

**1.4** The Committee welcomes views on any issue raised by this document and responses are welcomed from organisations and individuals.

**1.5** An equality screening exercise has been carried out on the Committee's proposals. Comments you may have on that assessment are also welcomed.

**1.6** Please respond by **2 September 2024** to:

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## 2. Background

**2.1** Legal costs payable between parties in County Court proceedings in Northern Ireland are determined in accordance with the rules and scales set out in the County Court Rules (Northern Ireland) 1981 ('the County Court Rules'). The current scales can be found in Appendix 2 of the County Court Rules and on the legislation.gov website at: [Scale Costs](#). The full County Court Rules which set out practices and procedures in the County Court can be found on the Department of Justice website at: [County Court Rules](#).

**2.2** The Committee has statutory responsibility for making rules which regulate the practice and procedure of the County Court, including legal costs payable between the parties. Once the Committee has made rules, which are a form of secondary legislation, they are submitted to the Department of Justice which, after consulting the Lady Chief Justice, may allow or disallow the rules. Rules are laid before the Northern Ireland Assembly after they are made and allowed and are subject to the Assembly's negative resolution procedure.

**2.3** In 2001, the Committee undertook a fundamental review of scale costs which examined the system on which scale costs are based. The review was informed by the views of a wide range of consultees, as well as responses to an earlier consultation conducted by the Civil Justice Reform Group. At that time, the Committee concluded it was desirable to retain the system of scale costs. As a consequence of that review, changes to the County Court Rules came into effect on 3 March 2003 which decreased the number of monetary bands within the scales, significantly increased the level of costs payable and made provision for a one-third uplift of costs, at the discretion of the judge, in complex cases.

**2.4** The Committee further reviewed scale costs in 2006. It decided that a fundamental review was not necessary at that time and the Committee brought forward an inflationary uplift to scale costs with effect from 7 January 2008.

**2.5** Prompted by the Department of Justice's decision in 2010 to increase the general civil jurisdiction of the County Court from £15,000 to £30,000, the Committee conducted another review of scale costs during 2011/12. That review also looked at practices and procedures in light of the proposed jurisdictional increase. As a result, on 25 February 2013, three additional new monetary bands were introduced to take account of the jurisdictional increase on the same date from £15,000 to £30,000. Existing scale costs were increased by 2% and a further 2% increase one year later was provided for. On the same date, practice and procedural changes were introduced together with two Pre-Action Protocols concerning personal injury cases and clinical negligence cases respectively. During the 2011/12 review, the Committee proposed to review scale costs fully eighteen months later and to review the practice and procedural changes, together with the operation of the Pre-Action Protocols, two years after they came into operation. Also, the Committee deferred consideration of issues relating to the jurisdiction of the small claims court, lodgements, offers to settle and sharing of medical evidence.

**2.6** In February 2014, the Committee considered its commitment to review scale costs at that time. Mindful that the increase in the civil jurisdiction of the County Court had come into operation later than had been anticipated, after consultation with representative bodies and interested parties, the Committee postponed its next review of scale costs until 2015.

**2.7** Following the 2015/2016 review, scale costs were increased by 1.5% in 2017 and a further 1.5% increase in 2018 was provided for. With regard to recent practice and procedural changes in the County Court and other procedural issues, the Committee proposed that it would consider whether it is necessary to review practices and procedures in the County Court more fully once Lord Justice Gillen’s Review of Civil and Family Justice was completed. The [Reports](#) of the Review of Civil and Family Justice were formally launched on 5 September 2017. Implementation is being taken forward by the relevant departments and the shadow Civil Justice Council.

**2.8** At the time of the 2015/2016 review, the Committee proposed that future reviews of scale costs should take place on a two year cycle. In light of consultation responses and mindful of the secretariat resources required to support such reviews, the Committee resolved ultimately that it would review scale costs on a three year cycle, to run from the implementation of the review in 2018. The onset of the Covid-19 pandemic in 2020 and its subsequent outworkings delayed the commencement of this review beyond the agreed three year period.

### Approach

**2.9** The provisions governing the making of County Court rules do not contain any direction as to how the Committee is to approach the task of specifying legal costs payable between the parties. The Committee takes the view that it should ensure that costs are ‘fair and reasonable’. In order to do so, the Committee has taken into account the essential guiding elements that informed the fundamental review carried out in 2001. Those were:

- (a) professional services require a fair and reasonable return for work done.
- (b) whether any proposal would constitute fair and reasonable remuneration should be assessed by considering what might be the result if cases were subject to taxation, using acceptable principles. In that regard, the assessment would address an appropriate hourly rate as well as information from the Taxing Master.
- (c) while it was proper to have regard to any scale fees prescribed for England and Wales, such work would require to be comparable and in that regard there appeared to be agreement that fast track costs in England and Wales were different from the County Court scale costs and operated on a different premise and for a different purpose.

- (d) the Civil Justice Reform Group expected the advantage of the Northern Ireland civil justice system being less expensive than that in England and Wales to be maintained in the future and that the Rules Committee would be alert to keeping the costs of litigation in the County Courts in Northern Ireland as economical as possible, consistent with the need to ensure that professional services are properly remunerated. This reflected the comments of the then Lord Chief Justice in Re C&H Jefferson [1998] NI 404 at 408 when he observed that the County Court should be a court 'in respect of whose proceedings the costs and fees should be both moderate and ascertainable'.
- (e) the Committee should seek to maintain the principle that there should be a measure of proportionality between the amounts awarded and costs.

**2.10** The Committee noted also that the 2001 review considered that the principle of 'swings and roundabouts' (an exercise in balancing out over a number of cases following the principle that 'what you lose on the swings you gain on the roundabouts') remained fundamental to the operation of scale costs and that account was taken of cases which are particularly complex and demanding by introducing the discretionary uplift. Additionally, the Committee noted Treacy J's analysis of the swings and roundabouts principle in In re Burns [2015] NIQB 24:

'[30] Many criminal cases involve, comparatively speaking, reduced levels of risk and follow predictable paths. Standard cases are characterized by broadly predictable and uniform elements such as the amount of preparation time required, the duration of the advocate's commitment to the case and the range of potential outcomes to the proceedings. These elements are uniform in the sense that they fall within normal ranges which apply to all cases within that category. The range allows for a degree of variation between cases but this variation is not such as to make an individual case within the category anything other than a standard case. Such cases may well be appropriate for remuneration by scale fees and indeed for the operation of the 'swings and roundabouts' principle because between cases properly within standard categories the scope for *gross* under- or overpayment does not arise.'

### **3. Initial Consultation**

#### **Stakeholder Engagement**

**3.1** To inform the current review, the Committee sought the views of stakeholders on a number of issues by way of an initial targeted consultation paper ('the initial consultation') issued on 1 June 2023. Responses were sought by 13 July 2023<sup>1</sup>.

**3.2** Nine formal responses were received to the initial consultation. A further two responses were received after the closing date and were treated as 'informal responses' by the Committee. These are included in the summary of views provided below. Of the eleven responses received in total, 36%<sup>2</sup> were from the legal profession (two from representative organisations and two from public sector legal offices or office holders). Four responses were from the insurance industry (36%), two responses were from Northern Ireland departments (18%) and one response was received from a judicial association (9%).

#### **Views of Respondents**

##### ***Approach***

**3.3** The Committee indicated in the initial consultation that having considered the 2001 guiding principles, it had provisionally concluded that they hold good today, not least because they establish a degree of certainty for parties as to how much they may have to pay, or be liable for, in the event of contested litigation. Accordingly, the Committee had reached the provisional view that a fundamental review of scale costs was not necessary at this stage and therefore proposed to review the operation of the scale costs system by reference to: the rate of scale costs; the scope of scale costs; the number and width of the scale costs bands; and how complex cases are dealt with.

**3.4** One respondent disagreed with the proposal and said that the rates of remuneration are the key aspect that the Committee should consider.

**3.5** One respondent said that the review should be limited to the level and amount of scale fees.

**3.6** One respondent confirmed it was content with the proposal and offered no further comment. Six respondents indicated that they were content with the proposal and went on to provide further comments.

**3.7** Two respondents commented that a review is overdue. One of these highlighted the increasing overheads and inflation rates that have affected the legal sector since the last review. The other noted that scale costs have increased by only

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<sup>1</sup> Copies of the initial paper can be obtained from the Rules Committee Secretariat at the address noted at the start of this document.

<sup>2</sup> Percentages have been rounded.



3% since 2014 and submitted that this does not reflect developments in practice and the increase in work in County Court claims. It suggested that a yearly inflationary uplift should also be carried out.

**3.8** Two respondents emphasised that regular reviews of the operation of rules for remuneration are important.

**3.9** Six respondents commented that the scale costs system offers certainty. One noted that the system allows defendants to provide accurate reserves in claims and another respondent considered that the system ensures compliance with the principles of the overriding objective as costs overall are proportionate to the complexity and value of the claim.

**3.10** One respondent said that other factors to bear in mind included the proposed changes to the jurisdiction of the County Court which would potentially bring more clinical negligence claims into the County Court.

**3.11** One respondent did not feel that there are any other factors relevant to the operation of the scale costs system that the review should consider. The out-of-date rates were the principal concern.

**3.12** Three respondents suggested that the Committee should consider a percentage deduction on the scale fee for less complex matters i.e. where there is no element of personal injury and where liability is admitted pre-Certificate of Readiness.

**3.13** Three respondents considered that the present convention that exists for cases resolved without the need for litigation should be codified.

### ***Guiding Principles***

**3.14** The Committee proposed to adopt the 2001 principles and the swings and roundabouts principle as the guiding principles for the scale costs element of this review.

**3.15** Three respondents agreed with this approach without further comment.

**3.16** One respondent agreed with the approach and considered that it would uphold the elements which informed the 2001 review.

**3.17** One respondent suggested that the Committee should imbed a mechanism to compel future reviews at set periods of time to ensure the scales do not fall into the current out of date position.

**3.18** One respondent considered that the Committee should have regard to the impact on other rates of payment for legal work, and primarily legal aid rates, when conducting the review.

**3.19** One respondent stated that it supported the 2001 principle that there should be a 'measure of proportionality between the amounts awarded and the costs'. It considered however, that it is no longer the case that the civil justice system in

Northern Ireland is less expensive than in England and Wales and the Committee should continue to be alert to keeping the costs of litigation in the County Court in Northern Ireland as economical as possible.

**3.20** One respondent submitted that overall, the principles the Committee should have regard to are encouraging cost effective and early resolution of claims in the County Court. For example, consideration should be given for not increasing costs that plaintiffs can recover on a staged basis which may disincentivise a plaintiff from early settlement. It also stated that consideration may need to be given to identifying complex matters which would be more suitable to be litigated in the High Court with its enhanced case management.

**3.21** One respondent considered that the Committee should have regard to the proposed jurisdictional increase in the County Court to £60,000 and the impact of hybrid working within the jurisdiction.

**3.22** Two respondents referred to the then pending review of the Guidelines for the Assessment of Damages in Personal Injury Cases in Northern Ireland (known as 'the Green Book') and the risk that solicitors representing plaintiffs could stand to doubly benefit in the next one to two years as a result of increased damages awards meriting higher costs bandings, and also if the figures within the bandings were to increase which would lead to a double inflationary increase.

**3.23** Two respondents referred to the present £600 penalty for costs thrown away and considered that any costs regime should be guided by encouraging good behaviours in support of the overriding objective. One considered the principle of costs rules assisting the timely and efficient resolution of disputes is of such importance that it should be added to the 2001 principles.

**3.24** One respondent suggested that the increased burden in the following areas be considered when the Committee determines the extent of any increase in brief fees: prevalent use of electronic briefs; use of electronic trial bundles; Teams/Zoom consultations and; written advices.

### ***Measure of Inflation***

**3.25** The Committee proposed to approach its review of the rate of scale costs by reference to the rate of inflation as measured by the Gross Domestic Product deflator ('GDP deflator'), together with information from other sources.

**3.26** One respondent commented that there has been a significant level of inflation since 2018 and scale costs needed to reflect this change. It considered that the Committee need to obtain as much information as necessary to assist with ascertaining the true level of inflation since 2018 and how this should be reflected in the new scale costs.

**3.27** One respondent stated that the situation in respect of inflationary pressures is not as simple as suggested in the initial consultation and that consideration should also be given to the significant budgetary constraints that NICS departments face, particularly as budgets are not linked to inflationary pressure.

**3.28** One respondent supported the view that the Retail Price Index ('RPI') is more reflective of the rate of inflation and ought to be used when increasing scale costs. It also suggested that the Committee should take into account that there is no 'no win no fee' arrangements in this jurisdiction. One other respondent said that there should also be a reference to the RPI as was the case when reviewing the rates for assessment of damages for personal injury claims.

**3.29** One respondent urged the Committee to have regard to the impact on legal aid rates when reviewing the operation of the scale costs system. It considered that raising fees by indexing to inflation while leaving case-value boundaries unchanged would result in a real terms uplift.

**3.30** Two respondents did not agree that the GDP deflator is the correct metric on which to base the costs review and recommended that the Services Producer Price Inflation ('SPPI') be used.

**3.31** Two respondents submitted that an increase at a rate lower than inflation should be considered by the Committee. If the Committee did refer to an inflation rate then one of these respondents considered that a more appropriate reference point for the uprating for inflation would be the SPPI.

**3.32** One respondent said that the GDP deflator was one of the tools that the Committee should have regard to when considering the appropriate level of increase. It also referenced the RPI, the Consumer Price Index ('CPI') and the Consumer Price Index with Housing ('CPIH') and the differences between the three.

**3.33** One respondent agreed that the Committee should review the rate of costs by reference to inflation but this should not be the sole measure of any potential rate change. It suggested the Taxing Master should be consulted regarding trends in the High Court relevant to scale costs in the County Court. It also suggested that the Committee consider the RPI and the levels to which scale fees would have changed had a review of scale costs taken place in 2021.

**3.34** Two respondents considered that the Committee should exercise caution with regard to seeking information from other sources. They were of the view that conducting a survey of the legal profession in Northern Ireland would require significant resources for a balanced outcome and at present the evidence-based approach is the most suitable. One other respondent noted that a survey of the profession may be practically difficult.

**3.35** One respondent suggested that other factors the Committee could take into account are the Solicitors' guideline hourly rates in England and Wales and the Fixed Recoverable Costs regime.

### ***Scope of fees payable***

**3.36** With regard to the scope of fees payable under the present system, the Committee sought views on what, if any, other matters should attract specific fees or sums.

- 3.37** Two respondents offered no response.
- 3.38** Four respondents did not consider it necessary to implement specific fees.
- 3.39** Three respondents suggested that there should be an uplift for multiple defendant cases.
- 3.40** One respondent invited the Committee to establish an exhaustive list of cases that would be eligible for a discretionary uplift. It submitted that complex cases such as clinical negligence and occupational disease/illness (including hearing loss, asthma and asbestos-related illness) and repetitive strain injury cases should be included in the list to ensure that uplift was considered. One other respondent also suggested that consideration be given to uplifts or additional fees for clinical negligence actions.
- 3.41** One respondent said that some of its members supported specific fees for review hearings, as well as case management review hearings.
- 3.42** One respondent considered that additional hearing days should attract a guaranteed uplift.
- 3.43** One respondent suggested that consideration should be given to making a sum payable for preparation of a court directed affidavit.
- 3.44** One respondent suggested that the Committee consider separating the drafting fee for a certificate/notice of motion so that there was clarity on the appropriate amount to be charged by counsel for drafting of same.

#### ***Case Management Reviews***

- 3.45** The Committee sought views on whether a fee should be introduced for case management reviews.
- 3.46** Two respondents offered no response.
- 3.47** Two respondents agreed with the principle that a fee should attach for reviews, however, to avoid a scenario where delay was rewarded they proposed a fee for the first such review, a lesser fee for the second review and no fee for any reviews thereafter.
- 3.48** Two respondents reported that a considerable number of their members were calling for a fee. They both suggested that if the Committee considers that a fee should not be introduced for reviews and case management reviews then they ought to be conducted online.
- 3.49** Four respondents did not consider that a fee should be introduced.
- 3.50** One respondent suggested more information and data would be required before deciding if a fee should be introduced for case management reviews.

*Number and width of bands*

**3.51** The Committee sought views on the factors it should take into account when considering the number and width of the current bands.

**3.52** One respondent had no issue with the current bands.

**3.53** Two respondents did not comment on this question.

**3.54** One respondent was content with the widths of the current bands but believed that the lowest band ought to cover the range from £0 to £2,500.

**3.55** One respondent considered the current bands and the width of the bands to be acceptable.

**3.56** One respondent reported that its members held different views. Some were content and felt that they operated well, others called for increasing the width of the bands but removing the lower band/s as the swings and roundabouts principle could make recovery disproportionate in relation to damages.

**3.57** One respondent considered that plaintiff solicitors were currently only being remunerated proportionally if their case fell under the third band or higher. It suggested that none of the scale costs bands should be less than £1000 professional fee, regardless of what the plaintiff is being awarded.

**3.58** Four respondents suggested that the present review and consideration of the banding should take into account the proposed increase in the County Court jurisdiction to £60,000. One of these suggested that further fixed bandings for cases worth up to £60,000 should be taken into consideration, as there is a concern that there could be a further windfall if County Court costs are increased again once the jurisdiction of the County Courts does actually increase. One other respondent said it was confident that if the proposed increase in the County Court jurisdiction was implemented that the bands can be extended, and the numbers of bands increased to set an appropriate scale for settlements up to £60,000.

**3.59** One respondent considered that the bands should take into account damages inflation.

## **4. Proposals**

**4.1** The Committee noted that the responses in relation to its provisional view that a fundamental review of scale costs is not necessary at this time show a general acceptance of the scale costs system and the relative certainty which it provides. Given, however, that the last fundamental review took place in 2001, the Committee agreed that a more detailed review of the scale costs system should take place before 2030.

### **The operation of the scale costs system**

**4.2** The Committee considered the varying responses received regarding other factors relevant to the operation of the scale costs system to which it should have regard. In relation to potential forthcoming changes to the monetary jurisdiction of the County Court, given that there is no certainty regarding the timing of such a change, the Committee is of the view that the current review should proceed on the basis of the current monetary jurisdiction only. The Committee is confident that in the event of a change to the County Court jurisdiction that new bands and scale costs can be agreed and taken forward promptly. The Committee noted that the suggestion that it should codify the present convention that exists for cases resolved without the need for litigation lies outwith the scope of the County Court Rules. With regard to the suggestion of several respondents that there should be a percentage deduction in scale fees for less complex matters, the Committee considers that this would neither be appropriate nor necessary in that it would operate contrary to the 'swings and roundabouts' approach.

**4.3** The Committee proceeded to consider the operation of the scale costs system by reference to the rate of scale costs, the scope of scale costs, the number and width of the scale costs bands and how complex cases are dealt with.

### **Guiding Principles**

**4.4** The Committee agrees that the 2001 principles should apply to this review. The Committee notes that the 2001 principles have never been the subject of judicial criticism and considers that they encapsulate the benchmarks against which the costs system in the County Court should be measured.

### **Setting the rate of scale costs**

**4.5** The initial consultation set out the Committee's proposal that it should approach this review of scale costs by reference to the rate of inflation as measured by the GDP deflator together with information from other sources.

**4.6** The Committee noted the varying responses received from respondents to the consultation paper and that the use of differing inflationary indices, including RPI, CPI and SPPI, was put forward. The Committee noted also that the Taxing Master has taken into consideration the RPI rate when determining the hourly rate for solicitors in the High Court and that the respective Green Book revision committees have historically had regard to the RPI.

**4.7** The Committee considers that, for the purposes of determining scale costs in the County Court, the GDP deflator is a more comprehensive approach to inflation than RPI and CPI which measure the change in prices of their respective fixed baskets of goods whereas the GDP deflator measures total output of the economy, including the prices of investment goods, government services and exports (but excluding the price of UK imports), in a given year measured against another year. In previous scale costs reviews, the GDP deflator has been used as the measure of inflation, on the basis of Treasury Guidance.

**4.8** In order to ensure consistency of approach, the Committee considers that it should use the GDP deflator in the present review when assessing any inflationary changes to current or previous scale costs which the Committee previously determined amounted to fair and reasonable remuneration for work done.

**4.9** The following table shows the GDP deflator since 2002 for the respective calendar years ending December, as provided by the Office of Budgetary Responsibility ('OBR'). It includes the OBR's predictions for year ending December 2024.

Calendar year	GDP deflator at market prices	
	2023 = 100	per cent change on previous year
2002	59.480	2.12
2003	60.903	2.39
2004	62.498	2.62
2005	64.333	2.94
2006	66.127	2.79
2007	67.616	2.25
2008	69.935	3.43
2009	71.243	1.87
2010	72.369	1.58
2011	73.955	2.19
2012	75.092	1.54
2013	76.680	2.12
2014	77.691	1.32
2015	78.206	0.66
2016	79.740	1.96
2017	81.222	1.86
2018	82.784	1.92
2019	84.534	2.11
2020	89.017	5.30
2021	88.733	-0.32
2022	93.293	5.14
2023	100.000	7.19
2024	-	1.52

**4.10** The 2024 GDP deflator adjusted figures are based on the OBR's official predictions for year ending December 2024. Using the GDP deflator model, the inflationary increase between 2016 (when the last review concluded) and 2024 is around 27%, while the inflationary increase between 2018 (when the second instalment of the last uplift was implemented) and 2024 is 23%.

**4.11** The Fundamental Review of County Court Scale Costs in 2001 produced a structure of scale costs which came into effect in 2002. In the Committee's experience, the most used set of fees within the scale costs structure are the plaintiff's and defendant's costs in ordinary civil bills<sup>3</sup>. As set out in the table below,

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<sup>3</sup> To be found in Table 1, Part 1 of Appendix 2 of the County Court Rules



the Committee has compared the 2002 scale costs for ordinary civil bills adjusted by reference to the GDP deflator with the current 2018 scale costs for ordinary civil bills.

<u>Damages Bands</u>	<u>Actual 2002 Fees</u>	<u>2002 Fees Adjusted by GDP Deflator to 2018</u>	<u>Actual 2018 Fees</u>
	<u>Solicitor</u>	<u>Solicitor</u>	<u>Solicitor</u>
£0-£500	N/A	N/A	£254
£501-£1,000	N/A	N/A	£554
£1,001-£2,500	£950	£1,322	£1,170
£2,501 - £5,000	£1,350	£1,879	£1,662
£5,001-£7,500	£1,750	£2,436	£2,155
£7,501-£10,000	£2,000	£2,784	£2,463
£10,001-£12,500	£2,200	£3,062	£2,709
£12,501-£15,000	£2,400	£3,340	£2,955
£15,001-£20,000	N/A	N/A	£3,992
£20,001-£25,000	N/A	N/A	£4,381
£25,001-£30,000	N/A	N/A	£4,833
	<u>Counsel</u>	<u>Counsel</u>	<u>Counsel</u>
£0-£500	N/A	N/A	£102
£501 - £1,000	N/A	N/A	£185
£1,001-£2,500	£220	£306	£271
£2,501-£5,000	£320	£445	£394
£5,001-£7,500	£400	£557	£492
£7,501-£10,000	£470	£654	£579
£10,001-£12,500	£535	£745	£659
£12,501-£15,000	£600	£835	£740
£15,001-£20,000	N/A	N/A	£867
£20,001-£25,000	N/A	N/A	£982
£25,001-£30,000	N/A	N/A	£1,092

**4.12** On the face of it, it would appear from this table that the scale costs have dropped behind the rate of inflation. The Committee considers this model to be an over-simplification of the issues involved in determining any rise in the scale costs and that any proposed inflationary rise in fees in the scale costs must take into consideration the comparable inflationary rise in damages.

**4.13** Although the Green Book uses RPI as the inflationary guide, rather than the GDP deflator, the general overall outcome of the matter is the same; that is, there has been a gradual increase in the level of damages being awarded by the courts since the initial scale costs came into operation in 2002. Thus, while the band minima and maxima have remained constant since 2002, the awards issued by the courts have steadily increased causing the potential for 'band uplift'. In effect, where a case was run in 2002 the damages awarded would be reflected by the

application of the scale costs within the relative band, however, if that same case was to be run in 2024, the inflationary rise in the damages awarded by the court could be such as to push the case into a higher band for the calculation of the scale costs. Such an effect, however, does not have an even application throughout the band widths; as one moves towards the band maximum, the effect becomes more pronounced. Due to this uneven application across the band, the Committee considers fairness dictates that any model used to compare an inflationary rise should adopt awards of damages which fall at each of the band midpoints.

**4.14** The Committee took the midpoint figure of each bandwidth<sup>4</sup>, assigned them as the notional damages awarded in cases in 2002 and then applied the GDP deflator to give the equivalent 2018 awards, as set out in the table immediately below. This shows that, when applying the 2018 scale costs presently in operation, in four out of the seven cases<sup>5</sup> solicitors would be paid more in real terms than if the GDP deflator was applied to the 2002 scale costs and in five out of the seven cases, counsel will be paid more in real terms than if the GDP deflator was applied to the 2002 scale costs.

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<sup>4</sup> For the purpose of this exercise the bands, and commensurate fees, being used are those found in Table 1 of Part 1 of the scale costs (Plaintiff's and Defendant's Costs (Ordinary Civil Bills)).

<sup>5</sup> This exercise cannot be applied to the three upper bands added in February 2013 as a consequence of the increase in the County Courts' jurisdiction from £15,000 to £30,000. It also cannot be applied to the lower band from £0 - £500 added following the outcome of the 2015/2016 Review.

<b><u>Midpoint of Damages Band in 2002</u></b>	<b><u>2002 Fees (Adjusted by GDP Deflator to 2018) Awarded on 2002 Midpoint</u></b>	<b><u>2002 Midpoint Adjusted by GDP Deflator to 2018</u></b>	<b><u>2018 Fees Awarded on Midpoint Adjusted by GDP Deflator to 2018</u></b>
	<i><u>Solicitor</u></i>		<i><u>Solicitor</u></i>
£500	£626	£696	£554
£1,750	£1,322	£2,436	£1,170
£3,750	£1,879	£5,219	£2,155
£6,250	£2,436	£8,699	£2,463
£8,750	£2,784	£12,178	£2,709
£11,250	£3,062	£15,658	£3,992
£13,750	£3,340	£19,137	£3,992
	<i><u>Counsel</u></i>		<i><u>Counsel</u></i>
£500	£209	£696	£185
£1,750	£306	£2,436	£271
£3,750	£445	£5,219	£492
£6,250	£557	£8,699	£579
£8750	£654	£12,178	£659
£11,250	£745	£15,658	£867
£13,750	£835	£19,137	£867

**4.15** The same exercise was then conducted adjusting the 2018 scale costs to 2024 based on the OBR prediction for year ending December 2024 (i.e. a 2% increase). That yielded the results set out in the table immediately below which show that, in six out of seven cases, a solicitor would be paid more in real terms than in 2002 and that, in six out of seven cases, counsel will be getting paid more in real terms than in 2002.

<u>Midpoint of Damages Band in 2002</u>	<u>2002 Fees (Adjusted by GDP Deflator to 2024) Awarded on 2002 Midpoint</u>	<u>2002 Midpoint Adjusted by GDP Deflator to 2024</u>	<u>2018 Fees (Adjusted by GDP Deflator to 2024) Awarded on Midpoint Adjusted by GDP Deflator to 2024</u>
	<u>Solicitor</u>		<u>Solicitor</u>
£500	£768	£853	£679
£1,750	£1,621	£2,987	£2,038
£3,750	£2,304	£6,400	£2,643
£6,250	£2,987	£10,667	£3,322
£8,750	£3,414	£14,934	£3,624
£11,250	£3,755	£19,201	£4,895
£13,750	£4,096	£23,468	£5,373
	<u>Counsel</u>		<u>Counsel</u>
£500	£256	£853	£227
£1,750	£375	£2,987	£483
£3,750	£546	£6,400	£603
£6,250	£683	£10,667	£808
£8750	£802	£14,934	£907
£11,250	£913	£19,201	£1,063
£13,750	£1,024	£23,468	£1,204

**4.16** In light of the results of the mid-point exercise used above which indicated that legal professionals would be better off in more cases than not, the Committee considers that the swings and roundabouts principle should balance any general increase in the scale costs which is lower than the predicted inflationary rises by the end of 2024. In those circumstances, the Committee proposes to increase current scale costs by the GDP deflator rate since 2018, which is 23%. The Committee considers this would retain a scale costs system which, taken as a whole and when the swings and roundabouts principle is applied, continue to provide for the fair and reasonable remuneration of legal professionals for work done.

**4.17** The Committee is aware that inflation predictions are not precise and it is alert to the possibility that changes in domestic and global economics could mean that the predictions are too high with the result that the proposed changes to scale costs would be above the rate of inflation. The Committee recognises that there is, in essence, an element of guesswork involved, albeit that it is informed by OBR predictions.

**4.18** The Committee has noted that the proposed 23% rise over the period does not keep pace with overall inflation since 2002. However, the Committee considers that the proposed 23% rise is fair and reasonable in the circumstances and would

result in fair and reasonable remuneration until the Committee has an opportunity to review scale costs again.

*Question 1: Do you agree with the proposal that there should be a 23% rise in scale costs across all bands (including specialist bands)?*

### **Number of Bands**

**4.19** Following the introduction of a new lower scale costs band for awards of £0 - £500 in 2016 there are now a total of eleven bands. Having taken account of the views of respondents, the Committee considers that the present bands and band widths are logical and manageable and proposes that these should not be changed.

*Question 2: Do you agree that there should be no change to the current costs bands?*

### **Review Hearings**

**4.20** The Committee has taken account of the consultation responses in relation to there being no specific fee for case management review hearings. It is the Committee's view that review hearings in the County Court remain relatively rare, that reviews fall within the 'swings and roundabouts' nature of scale costs and that a specific fee for review hearings has the potential to cause an increase in the demand for such hearings which could result in a disproportionate increase in the costs of County Court proceedings and the inefficient use of court resources and judicial time. The Committee considers that the current system encourages practitioners to expedite cases and proposes that it should not introduce a separate fee for attendance at review hearings.

*Question 3: Do you agree with the Committee's proposal that it should not introduce a specific fee for attending case management review hearings?*

### **Multiple Defendants**

**4.21** The Committee noted the responses which sought an uplift in costs where there are multiple defendants. The Committee considers that adherence to the Pre-Action Protocol for Personal Injury Litigation and Damage Only Road Traffic Accident Claims should obviate a scattergun approach to identifying respondents. Generally, the Committee considers that multiple defendants do not significantly increase problems within the proceedings and that this factor falls within the 'swings and roundabouts' principle of the scale costs system. In any case where the presence of multiple defendants does result in the case being 'complex', there is a provision within the County Court Rules for the judge to award an uplift in costs for complexity in certain causes of action<sup>6</sup>. On this basis, the Committee proposes that it should not make provision for an automatic uplift in costs in multiple defendant cases.

*Question 4: Do you agree with the Committee's proposal that it should not introduce an automatic uplift in scale costs in cases involving multiple defendants?*

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<sup>6</sup> Order 55, rule 11(2) of the County Court Rules.

### **Travel Entitlement**

**4.22** The Committee has considered the rate of travel costs. The Committee is aware that entitlements for travel costs<sup>7</sup> have not increased since 2013 and are currently set at £23.00 for journeys between 20 and 50 miles and £46.00 for journeys of over 50 miles.<sup>8</sup> The Committee has noted that there is no apparent correlation between the entitlements and the actual costs incurred nor between the entitlements and travel allowances permitted by HMRC, which is 45 pence per mile for cars<sup>9</sup>.

**4.23** The Committee has considered whether the current travel entitlements should be increased. The last uplift occurred in 2013 and there were modest uplifts of £2 and £1 in the two prior reviews up to that point. The Committee considers that, since travel entitlements have not been revised in over ten years, a rise is now appropriate. Using the GDP deflator model the inflationary increase from 2013 until 2024 would be 32%. The Committee proposes that an uplift of 32% should be applied to the travel entitlements.

*Question 5: Do you agree with the Committee's proposal that an uplift of 32% should be applied to the current travel entitlements?*

### **Affidavits**

**4.24** The Committee considered the current provision with regard to the fee for the drafting of an affidavit in Part X, line (ii) of Appendix 2 of the County Court Rules which provides for a fee to be paid per folio<sup>10</sup> of an affidavit.

**4.25** The Committee recognises the value of a well-drafted affidavit and considers that an affidavit should attract an appropriate and easily ascertainable fee. The Committee proposes that a fee of £75 shall be payable for any necessary affidavit not otherwise provided for.

*Question 6: Do you agree with the proposal that a fee of £75 shall be payable for any necessary affidavit not otherwise provided for?*

### **Order 55 Rule 11 Uplift**

**4.26** Order 55 rule 11 of the County Court Rules presently provides for the judge to have discretion to give a one third uplift in particular types of cases.

**4.27** There were suggestions in some responses to the initial consultation that the range of cases in which the uplift may be granted should be widened to include, for

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<sup>7</sup> Note 2 to Table 1, Part 1 of Appendix 2 of the County Court Rules.

<sup>8</sup> Counsel's journeys are measured from the Head Post Office, Belfast; solicitors' journeys are measured from the solicitor's office.

<sup>9</sup> <https://www.gov.uk/government/publications/rates-and-allowances-travel-mileage-and-fuel-allowances/travel-mileage-and-fuel-rates-and-allowances>

<sup>10</sup> 72 words

example, repetitive strain injury and industrial diseases such as dermatitis and hearing loss.

**4.28** While the Committee is aware that in High Court proceedings there is a general discretion as to costs in complex cases and therefore that an argument could be mounted that there should be similar discretion in the County Court, the Committee considers that widening the range of cases in which an uplift may be given would risk negating the relative certainty that the scale costs system brings. The Committee proposes therefore that it should not widen the range of cases in which the discretionary uplift is currently available.

*Question 7: Do you agree with the proposal that the range of cases in which the discretionary uplift is currently available should not be widened?*

#### **Review cycle**

**4.29** At the time of the 2015/2016 review the Committee had proposed to review scale costs on a two year cycle in future. In light of consultation responses and mindful of the secretariat resources required to support such reviews, the Committee resolved at that time that it would review scale costs on a three year cycle, to run from the implementation of the review in 2018. The onset of the Covid-19 pandemic in 2020 delayed the commencement of this review beyond the agreed three year period.

**4.30** The Committee recognises that a possible answer to keeping scale costs in line with inflation is for the Committee to make a rule providing that scale costs will automatically rise each year by the rate of the GDP deflator, the Committee considers that this has several demerits. Firstly, the Committee is concerned that making such a rule could be an abdication by it of the main guiding principle that the scale costs should represent fair and reasonable remuneration as it would have no control over rates. Secondly, there is the possibility that deflation could occur and the Committee would have limited, if any, discretion in the face of possible questions as to whether the resultant scale costs represented fair and reasonable remuneration.

**4.31** In order to ensure the scale costs continue to provide fair and reasonable remuneration for work done, the Committee considers that it is desirable for periodic reviews to occur and proposes a three year cycle for such reviews on the basis that this would be reasonable, proportionate and appropriate when weighing the amount of work involved against the reasonable potential for changes to occur in factors which may have an impact on what amounts to fair and reasonable remuneration.

*Question 8: Do you agree with the proposal to review scale costs on a three year cycle?*

## 5. Impact Assessment

5.1 The Committee recognises that it is good practice to assess the impact of policy proposals and therefore the Secretariat has carried out an initial Equality Impact Assessment screening exercise. Comments are welcome on any aspect of the equality screening assessment. Responses to this consultation will be used to inform the final impact assessment.

*Question 9: What, if any, other matters should be taken into account when assessing the impact of the proposals in this paper?*



## 6. Responding

6.1 The final closing date for responses to this consultation is **2 September 2024**.

6.2 Preferably responses should be submitted in the questionnaire which accompanies this document and sent to:

**Email:** [nirulescommittees@courtsni.gov.uk](mailto:nirulescommittees@courtsni.gov.uk)

**Post:** Katharine McQuade  
Consultation Coordinator  
Secretariat to the County Court Rules Committee  
Lady Chief Justice's Office  
Royal Courts of Justice  
Chichester Street  
Belfast  
BT1 3JF

**Tel:** 02890 724650

6.3 When responding, please state whether you are responding as an individual or representing the view of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and where applicable, how the views of members were assembled.

6.4 This consultation document is available at [www.judiciaryni.uk](http://www.judiciaryni.uk).

6.5 A list of consultees who have been notified about this consultation is presented at Appendix 1.

### **Confidentiality**

6.6 At the end of the consultation period copies of responses received by the Committee may be made publicly available. The information they contain may also be published in a summary of responses. If such a summary is published, it will be made available on the JudiciaryNI website. **If you do not want all or part of your response or name made public, please state this clearly in your response.** Any confidentiality disclaimer that may be generated by you or your organisation's IT system or included as a general statement in your fax cover sheet, will be taken to apply only to information in your response for which confidentiality has been specifically requested.

6.7 Any personal data which you provide will be handled in accordance with the Data Protection Act 1998.

6.8 You should also be aware that there may be circumstances in which the Committee will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000.

**6.9** Please contact the Secretariat to the County Court Rules Committee at the above address to request copies of consultation responses. An administrative charge may be made to cover photocopying of the responses and postage costs.

### Complaints

**6.10** If you have any comments about the way this consultation has been conducted, these should be sent to the Secretary to the Committee at the above address.

### Additional Copies

**6.11** You may make copies of this document without seeking permission. If you require further printed copies of the consultation document, we would invite you to access the document through our website and make the copies yourself. If you do not have access to the internet and require us to provide you with further copies, please contact the Consultation Coordinator with your specific request.

**6.12** This document is available in alternative formats on request. Please contact Consultation Coordinator at the address above with your request.

### What Happens Next?

**6.13** We will aim to publish a summary of the views expressed by consultees and the Committee's response on the JudiciaryNI website within three months of the end of the consultation period.

### Publication of Results

**6.14** Decisions taken in the light of the consultation shall be made public promptly with a summary of the views expressed (subject to respondents' requests for confidentiality) and reasons for the decisions finally taken.

**6.15** The information you send to the Committee may need to be shared with officials in the Lady Chief Justice's Office and/or published in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if you are replying by email, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system unless you specifically include a request to the contrary in the main text of your submission to us.

## Appendix 1 – Consultees

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ABI (Association of British Insurers)  
Advice Space  
APIL (Association of Personal Injury Lawyers)  
Association of District Judges  
Bar Council  
British Insurance Brokers Association (BIBA)  
CBI Northern Ireland  
Consumer Council for Northern Ireland  
Council of Her Majesty’s County Court Judges  
Crown Solicitor for Northern Ireland  
Department of Finance  
Department of Health  
Department for Infrastructure  
Department of Justice  
Departmental Solicitor for Northern Ireland  
Directorate of Legal Services  
Equality Commission for Northern Ireland  
Federation of Small Businesses  
Forum of Insurance Lawyers (FOIL)  
Judges’ Council  
Law Centre (NI)  
Law Society of Northern Ireland  
Logistics UK  
Mineral Products Association Northern Ireland  
Northern Ireland Chamber of Commerce  
Northern Ireland Housing Executive  
Northern Ireland Human Rights Commission  
Personal Injuries Bar Association  
Shadow Civil Justice Council  
Taxing Master

## Appendix 2 – Provisions governing the County Court Rules Committee and the making of County Court Rules

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### County Courts (Northern Ireland) Order 1980

#### *County court rules committee*

46. - (1) There shall be a committee known as the County Court Rules Committee (in this Order referred to as “the Rules Committee”) which shall be appointed by the Lord Chief Justice and shall consist of-

- (a) three county court judges (of whom one shall be the chairman);
- (b) two barristers-at-law;
- (c) two solicitors;
- (d) one [district judge];
- (e) one chief clerk; and
- (f) one other person.

(1A) The Lord Chief Justice must consult the [Department of Justice] before making an appointment under paragraph (1)(b), (c), (e) or (f).

(2) Nothing done by the Rules Committee shall be invalid by reason only of a vacancy among the members thereof.

(3) The Rules Committee shall have power to regulate its own quorum and procedure.

(4) The secretary of the Rules Committee shall be such person as the [Department of Justice] shall from time to time designate.

(5) The Rules Committee for the purpose of performing its functions may incur such expenses as may be approved by the [Department of Justice].

#### *Making of county court rules*

47. - (1) For the purposes of or in relation to any jurisdiction exercisable by county courts, any such rules as are referred to in section 21(1) and (2) of the Interpretation Act (Northern Ireland) 1954 or Article 48 may-

- (a) be made by the Rules Committee in accordance with Article 46 and the following provisions of this Article; and
- (b) be known as “county court rules”.

(1A) For the purposes of this Article, “relevant authority” means—

- (a) in relation to county court rules which deal (or would deal) with an excepted matter, the Lord Chancellor; and
- (b) otherwise, the Department of Justice;

and for the purposes of this paragraph “deal with” and “excepted matter” have the same meanings as in the Northern Ireland Act 1998.

(2) County court rules must be certified under the hand of the members of the Rule Committee, or any three or more of them.

(3) After making and certifying county court rules the Rules Committee must submit them to the relevant authority.

(4) The relevant authority must, after consultation with the Lord Chief Justice, allow or disallow county court rules submitted to it.

(5) County court rules have effect only if the relevant authority allows them.

(6) If the relevant authority disallows county court rules, the relevant authority must give the Rules Committee written reasons why it has disallowed them.

(7) County court rules allowed by the relevant authority shall come into operation on such day as the relevant authority shall direct.

(8) Paragraph (9) applies if the relevant authority gives the Rules Committee written notice that it thinks it is expedient for county court rules to include provision that would achieve a purpose specified in the notice.

(9) The Rules Committee must make such county court rules as it considers necessary to achieve the specified purpose.

(10) Those rules must be-

(a) made within a reasonable period after the relevant authority gives notice under paragraph (8);

(b) made in accordance with this Article.

#### *47A. Control of county court rules*

(1) County court rules that are required under Article 47 to be submitted to the Lord Chancellor are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 applies accordingly.

(2) County court rules that are required under Article 47 to be submitted to the Department of Justice are subject to negative resolution.

### **Interpretation Act (Northern Ireland) 1954**

#### *Rules regulating procedure of Courts and tribunals.*

21.- (1) Where an enactment confers any jurisdiction on a court or other tribunal or extends or varies the jurisdiction of a court or tribunal, the authority having for the time being power to make rules or orders regulating the practice and procedure of that court or tribunal may make such rules or orders (including rules or orders regulating costs, witnesses and other expenses) as appear to the authority to be necessary for regulating the practice and procedure of such court or tribunal in the exercise of the jurisdiction so conferred, extended or varied, and it shall not be necessary for any other enactment to confer power on the authority to make any rules or orders for those purposes.

(2) A county court rule or magistrates' courts rule which-

(a) directs money to be paid out of or in aid of public funds;

shall not be made without the concurrence of the Department of Finance and Personnel, but the validity of any county court rule or magistrates' courts rule shall not in any proceedings in any court be impugned either by the court or by any party to the proceedings on the ground only that any such concurrence as aforesaid had not been given or is not expressed to have been given.

(3) All such rules or orders heretofore made under any enactment shall be deemed to have been made under this section and may be varied or revoked accordingly.

(4) In any enactment-

“rules of court” shall mean rules of court made, or having effect as if made, under section 55 of the Judicature (Northern Ireland) Act 1978;

“Crown Court rules” shall mean rules made under section 52 of the Judicature (Northern Ireland) Act 1978.

(5) In any enactment-

“county court rules” shall mean county court rules made, or having effect as if made by the, authority having for the time being power to make rules regulating the practice and procedure in county courts;

“magistrates' courts rules” shall mean rules made under Part IV of the Magistrates' Courts (Northern Ireland) Order 1981 and shall include any rule or order which under paragraph 5 or 7 of that Order has effect as if it was a rule so made.

(6) References in this section to rules or orders shall include-

(a) in relation to the Court of `Judicature, the High Court or the Court of Appeal, references to rules of court;

(aa) in relation to the Crown Court, references to Crown Court rules;

(b) in relation to the county court references to county court rules; and

(c) in relation to magistrates' courts references to magistrates' courts rules.

#### *Powers of Rules Committee*

48. Without prejudice to the generality of section 21 of the Interpretation Act (Northern Ireland) 1954, the Rules Committee may, notwithstanding anything in any statutory provision, make county court rules with respect-

(a) to all matters of procedure or practice, or matters relating to or concerning the effect or operation in law of any procedure or practice, in any civil proceedings within the jurisdiction of county courts as to which rules of court have been or might lawfully be made for proceedings within the cognizance of the High Court;

(b) without prejudice to the generality of paragraph (a)-

(i) to prescribing the circumstances in which civil proceedings may be transferred from one court to another, and the procedure preliminary to and consequent upon such transfer;

(ii) to authorising any civil actions in which the defendant fails to appear at the hearing or admits the claim to be heard and determined by the prescribed officer or by a district judge;

(iii) to authorising a decree to be obtained through the Office in any action in which, if it had been brought in the High Court, the plaintiff could have obtained judgment by default;

(iv) to providing that in such cases or classes of case as may be prescribed the costs are to be in the discretion of the judge;

(c) to regulating matters of practice, procedure and costs in cases within the appellate jurisdiction of county courts;

(d) to regulating or providing for any matter which immediately before 1st April 1960 was regulated or provided for or authorized by any statutory provision to be regulated or provided for by county court rules or county court orders;

(e) to the amendment or repeal of any statutory provision relating to or affecting practice or procedure in the county court.

(f) the service of process outside Northern Ireland and the conditions subject to which process may be served.

### Appendix 3 – Proposed New Scales

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**Comparative Table of Solicitors Costs: Table 1 – Ordinary Civil Bills**

<b>Amount Claimed</b> <b>£</b>	<b>Existing Scale Cost</b> <b>£</b>	<b>Existing Scale Cost plus 23%</b> <b>£</b>
Does not exceed 500	254	311
501 – 1,000	554	679
1,001 - 2,500	1,170	1,435
2,501 - 5,000	1,662	2,038
5,001 - 7,500	2,155	2,643
7,501 - 10,000	2,463	3,020
10,001 - 12,500	2,709	3,322
12,501 - 15,000	2,955	3,624
15,001 - 20,000	3,992	4,895
20,001 - 25,000	4,381	5,373
25,001 - 30,000	4,833	5,927

**Comparative Table of Counsel's Costs (Table 1 – Ordinary Civil Bills)**

<b>Amount Claimed</b> <b>£</b>	<b>Existing Scale Cost</b> <b>£</b>	<b>Existing Scale Cost plus 23%</b> <b>£</b>
Does not exceed 500	102	125
501 – 1,000	185	227
1,001 - 2,500	271	332
2,501 - 5,000	394	483
5,001 - 7,500	492	603
7,501 - 10,000	579	710
10,001 - 12,500	659	808
12,501 - 15,000	740	907
15,001 - 20,000	867	1,063
20,001 - 25,000	982	1,204
25,001 - 30,000	1,092	1,339

**Comparative Table of Plaintiff's Solicitors' Costs (excluding disbursements): Table 2  
(21 Day Costs)**

<b>Amount Claimed £</b>	<b>Existing Scale Cost £</b>	<b>Existing Scale Cost plus 23% £</b>
501 – 1,000	107	131
1,001 - 5,000	197	242
5,001 - 10,000	298	365
10,001 - 15,000	383	470
15,001 - 20,000	453	556
20,000 - 25,000	513	629
25,000 - 30,000	583	715