

FOCIS

The Forum of Complex Injury Solicitors

Response to

The Ministry of Justice's Consultation regarding the inflationary increase of selected court fees and Help with Fees income thresholds

May 2021

About Us

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims, including group actions. The objectives of FOCIS are to:-

1. Promote high standards of representation of Claimant personal injury and medical negligence clients;
2. Share knowledge and information among members of the Forum;
3. Further better understanding in the wider community of issues which arise for those who suffer serious injury;
4. Use members' expertise to promote improvements to the legal process and to inform debate;
5. Develop fellowship among members.

See further www.focis.org.uk

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 24 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Eight of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members currently include:

Anthony Gold	Hugh James
Atherton Godfrey	JMW
Ashtons Legal	Irwin Mitchell
Balfour + Manson	Leigh Day
Bolt Burdon Kemp	Moore Barlow
Dean Wilson	Osbornes
Digby Brown	Potter Rees Dolan
Fieldfisher	Serious Law
Fletchers	Slater and Gordon
Freeths	Stewarts
Hodge Jones & Allen	Thompsons NI

Introduction

FOCIS welcomes the opportunity to respond to the Ministry of Justice's consultation paper regarding the inflationary increase of selected court fees and Help with Fees income thresholds. The impact of Covid-19 will likely only exacerbate issues within a justice system that has been chronically under-funded for a number of years. As we emerge from the pandemic, it therefore seems an appropriate moment in which to consider how the courts in England and Wales can restore suitable funding mechanisms and move forward as the demand for virtual legal practice increases.

Response to Consultation

We respond with reference to the two main changes recommended in the consultation as outlined below:

1. The proposal to backdate increases to court fees by inflation to 2016 or, if later than 2016, the year the fee was last increased; and
2. The proposal to inflate 'Help with Fees' (HwF) and the UK Supreme Court's remission scheme income thresholds in line with inflation backdated to 2016 through to April 2021.

In summary, FOCIS broadly offers its support to the government's proposals, which impact 67 court fees within the Civil Proceedings Fees Order 2008 No 1053, as set out within Annex A of the consultation paper. We recognise that the proposed changes are representative of an overdue adjustment in order to ensure that Her Majesty's Court and Tribunal Service (HMCTS) continues to receive appropriate and adequate funding. However, by virtue of their impact in potentially obstructing access to justice and deterring injured claimants from starting legal proceedings, increased court fees should not be formalised without careful consideration of the wider context and, in particular, the ability of the courts to deal with cases justly and at a proportionate cost.

Do you agree with the principle that fees should be increased periodically in line with inflation?

With court fees representing the main source of direct income for the court and tribunal service, it is sensible that court fees are kept under review and, where appropriate, periodically adjusted in line with inflation. Whilst this should go some way to ensuring that the courts are sustainable and fit for purpose, it also remains paramount that any increase in fees paid by the public contribute towards the smooth running of the court system. It seems unfair in principle to penalise those who have been unfortunate enough to suffer life changing injury, with the responsibility of paying increased fees in order to access justice. A significant proportion of serious injury claimants do not qualify for court fee remissions, or do not otherwise have adequate BTE insurance, and yet will nevertheless struggle to fund ongoing disbursements, including the issue fee of £10,000 simply to issue claims and pursue compensation. We are pleased to note that the £10,000 maximum fee is one of the few that will not be increasing.

With the impact of high fees in deterring claimants along with the inhibition of access to justice, we have two issues of profound moral importance which must take precedence over any mechanism which serves to simply generate funds and which would be unjustifiable merely to minimise the cost to the taxpayer. As opposed to simply prioritising increased funding, the courts must seek to strike a balance in terms of running a more efficient and effective court system, whilst also allowing meritorious claims to have a proper route to justice without delay.

The recoverability of court fees at the end of a case, in instances where a court fee remission has not been sought, also poses a risk for claimants. Paying parties are increasingly seeking to rely on CPR 44.3 – which has the effect of inviting the court to disallow costs “unreasonably incurred” – in order to avoid paying a claimant’s court fee disbursements once the matter has concluded. Court rules ought to prevent a defendant from adopting such a position. Rather we suggest that where a full or partial court fee remission has been incurred, the losing party should be required to reimburse the State (akin to the CRU scheme for welfare benefits), as ultimately, the tortfeasor rather than the tax payer should bear the cost of the court fee.

Do you agree with the principle that HwF income thresholds, including couple and child premiums, should be increased in line with inflation?

With the proposed increase in selected court fees, it is fundamental to a fair justice system to simultaneously raise the income threshold which determines eligibility for HwF in order to ensure that a greater number of claimants receive a full or partial remission from their court fees. That being said, with many not able to afford the cost of court proceedings, whilst concurrently not qualifying for HwF, we harbour concerns that increasing the thresholds in line with inflation, and in line with the proposed court fee increases, is not enough. Many complex injury claimants fall within that category of people who are marginally excluded from qualifying for court fee remissions and yet are not in a position to fund the cost themselves. We also note that the HwF scheme, in its current form, can misrepresent the issue of affordability where, for instance, it considers a parent’s or litigation friend’s income as opposed to that of a child claimant bringing proceedings. We suggest that the increased funding may be better spent on implementing a fairer system for all, before seeking to ease the burden on the taxpayer.

Conclusion

We are relieved that the maximum court fee of £10,000 will not be subject to further increases. The remainder of the proposed fees are neither dramatic nor excessive and we appreciate that taking no action could create significant problems for the operation of the court system and impede access to justice in itself as a result of delays and a great backlog of cases. The consideration of access to justice must always remain paramount and, where measures may have a potentially preventative impact on a prospective claimant’s ability to pursue legal action, alternative options should be considered. Tortfeasor’s should not be allowed to take advantage of court fee remissions and should be required to reimburse the State.