

Increasing the Jurisdictional Limits of the County Courts in Northern Ireland

Summary of responses and proposed way forward

serving the community through the administration of justice

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1.0 Introduction

- 1.1 This documentation is the post-consultation report on the consultation paper 'Increasing the Jurisdictional Limits of the County Courts in Northern Ireland'.
- 1.2 The report provides:
- a background to the consultation and policy proposal;
 - a summary of the views expressed by respondents together with the NICTS response to these issues; and
 - a conclusion and proposed way forward.
- 1.3 Further copies of this report and the consultation paper can be obtained by contacting:

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- 1.4 A copy of this report will be placed on the NICTS website at www.courtsni.gov.uk
- 1.5 You may make additional copies of this report without seeking permission. If you require further printed copies of this report, we would invite you to access the document through our website and make copies yourself. If you do not have access to the internet and require us to provide you with further copies, please contact the Consultation Co-ordinator at the address at paragraph 1.3 above with your specific request. The criteria for public consultation is at Appendix 1.

- 1.6 Comments in the summary of responses have not been attributed to any individual or organisation. A list of those who responded and who did not elect to remain confidential is provided at Appendix 2.
- 1.7 This document is available in alternative formats or languages on request. Please contact the Consultation Co-ordinator with your request.

2.0 Background and Policy Proposal

- 2.1 On 3rd March 2010 the NICTS published a consultation paper 'Increasing the jurisdictional limits of the county courts in Northern Ireland'. The paper sought views on proposals to increase the financial limit of the general civil jurisdiction of the county courts in Northern Ireland from the current level of £15,000 which was set in 1993. The paper also considered the options for increases in the financial limits of the District Judges' court (currently £5000) and the small claims court (currently £2000). Both of these courts are within the county court jurisdiction. The power to increase the jurisdictional limits rests with the Department of Justice and is exercisable by statutory rule under Article 22 of the County Courts (Northern Ireland) Order 1980.
- 2.2 The consultation ran for 12 weeks from 3rd March to 26th May and received a total of 72 responses from a range of individuals and organisations. Not all respondents gave views on all questions.
- 2.3 The consultation set out options for an increase in the county court jurisdiction to:
- £25,000 which is slightly in excess of an inflationary increase;
 - an unlimited jurisdiction where cases would be allocated to the High Court on the basis of complexity rather than the value of the claim; or
 - £50,000 which was the NICTS preferred option.
- 2.4 The consultation set out options for an increase in the jurisdiction of the District Judges' court to:
- £7000 which is roughly in line with inflation;
 - £10,000; or
 - £15,000 which was the NICTS preferred option.

- 2.5 The consultation set out options for an increase in the small claims court to:
- £2500 which is in line with inflation;
 - £5000 immediately or in stages; or
 - £3000 which was the NICTS preferred option.
- 2.6 The broad intention of the proposals outlined in the consultation paper is to better align the volume and type of cases with the court and judicial resources available. Cases better suited to a county court hearing will be directed away from the High Court which will enable cases to be managed in a more appropriate and efficient way.
- 2.7 The change would allow the High Court to specialise in complex high value cases. Raising the award threshold of the county court would enable court users to transact a greater level of business away from Belfast. This would facilitate a more efficient approach than is current and would also offer the public a more locally convenient alternative.
- 2.8 The consultation included a questionnaire seeking views on the following key issues:
- should the financial limit of the county courts be increased from £15,000;
 - should the county courts be financially limited or unlimited;
 - what should the new financial limit be;
 - should all clinical negligence cases over £15,000 be reserved for the High Court regardless of the financial limit of the county court;
 - should the financial limit of the District Judges' court be increased from £5000;
 - should the financial limit of the small claims court be increased from £2000;
 - should scale costs be increased up to the new limit or should there be taxation of costs.
- 2.9 This report summarises the responses.

3.0 Summary of responses to specific questions expressed by respondents and NICTS response

- 3.1 We received 72 responses to the consultation paper. Of these, the largest sector of respondents was the legal profession who made up 57%. This consisted of responses from 32 individual members of the Bar or barristers' organisations and 9 solicitors or solicitors' organisations. The insurance industry accounted for 6% of respondents and the voluntary sector accounted for 8%. 3 responses were received from the judiciary and one response was received from a Northern Ireland political party. A list of those who responded and who did not elect to remain confidential is provided at Appendix 2.
- 3.2 In summary, the majority of responses were overwhelmingly supportive of an increase in the jurisdictional limits of the county court and the District Judges' court. The majority favoured an increase to £25,000 in the county court jurisdiction with an increase to £7,500 in the District Judges' limit. A slight majority felt that the small claims limit should remain at £2000.
- 3.3 Some respondents commented generally on the proposals in addition to or instead of answering the specific questions posed. The following summary of responses is grouped according to the specific questions set out in the consultation questionnaire. It also addresses other, more general comments which were received.

Section 1 – County Court

Question 1 – Do you agree that the financial limit of the county court should be increased from the current level of £15,000?

Responses

- 3.4 An overwhelming majority of 89% (64 respondents) were supportive of the proposal to increase the jurisdictional limit of the county court from £15,000. 10% of respondents (7) stated that there should be no change, while one respondent did not answer the question.

Question 2 – Please state your reasons why

- 3.5 The majority of respondents in favour of an increase were of the view that a considerable period of time has passed since the last increase in 1993 and even on a purely inflationary basis an increase is merited. Many agreed with the NICTS view that, at present, the High Court has to deal with too many cases that could be dealt with in the county court and increasing the county court limit would relieve this burden on the High Court. They cited that too many cases are issued in the High Court which do not contain the type of complex issue or represent high monetary value which requires High Court scrutiny. Therefore in terms of efficacy and expediency the jurisdictional limit should be increased.
- 3.6 Respondents commented that the county court was an effective and inexpensive forum for dealing with civil claims and has a competent judiciary which is more than capable of dealing with higher value claims. One respondent stated that the county courts meet the needs of a modern dispute resolution forum as the process is quick and cost effective.
- 3.7 One respondent felt that the current jurisdictional limit of £15,000 has not kept pace with the levels of compensation awarded and increasing the limit will ensure that more claims can be dealt with at the appropriate court level.
- 3.8 One respondent added that the current limit of £15,000 results in a significant number of relatively straightforward claims being assigned to the High Court, with an unnecessary increase in costs for both parties. They went on to say that many claims are issued in the High Court because the plaintiff's solicitors are unable to accurately value the case at the outset and an increase in jurisdiction would assist in the proper allocation of cases. Many respondents who favoured an increase in the jurisdictional limit said that the redirection of many cases from the High Court to the county court would improve business efficiency and increase access to justice in Northern Ireland. Expenses such as travelling time, distance and other costs in providing legal representation in the High Court could be reduced by an increase in the use of county courts which are available locally.

- 3.9 The 7 respondents who opposed the increase cited a number of reasons for this. One respondent stated that cases above £15,000 carry sufficient importance to warrant High Court scrutiny. It was argued that £15,000 is a lot of money to the majority of litigants and in such circumstances they should be protected by a superior court. The most frequent point made by those opposed to an increase was that the county court system would not be able to cope with the increased workload which an increase in jurisdiction would inevitably bring. They felt that the county courts were already busy, as they deal not only with civil claims but criminal work such as criminal appeals from the magistrates' courts and that being the case it is already difficult to get a case heard on the first day it was listed for hearing in the county court.
- 3.10 A respondent who opposed an increase commented that the High Court is not currently overburdened and that an increase in the county court jurisdiction will impede access to justice for all, but particularly for plaintiffs, who the respondent felt are well served by the present system. They went onto to say that both jurisdictions are coping perfectly well, that the county court limit was high enough and that cases above £15,000 required expertise only found in the High Court with the use of senior counsel.

NICTS comments

- 3.11 It has been 17 years since the jurisdiction of the county court was last increased. It is widely recognised that there should be an increase in jurisdiction as many cases are presently being heard in the High Court which do not appear to require a High Court hearing in terms of quantum or complexity and an increase in the present county court limit will ensure cases are disposed of in the appropriate court tier. We agree with the overwhelming majority of respondents that there should be an increase in the jurisdiction of the county court.

Question 3 – If the answer to question 1 is 'yes', should the county courts be financially limited or unlimited?

Responses

- 3.12 86% of respondents (62) agreed that the jurisdiction of the county courts should be financially limited. One respondent was of the view the jurisdiction

should be unlimited while 9 respondents did not answer the question. Most of those who agreed that the jurisdiction should be limited argued that it would be difficult to determine in practice how a claim would be allocated to the High Court should the jurisdiction be unlimited. They commented that a fixed monetary jurisdiction provides greater certainty for parties allowing for the allocation of claims to the appropriate court. They suggested that an unlimited jurisdiction would be unworkable as there would be too much uncertainty surrounding what constitutes 'complexity' when allocating cases and this would likely result in a disparity in how county court judges would apply the test.

NICTS comments

3.13 An unlimited jurisdiction would be a radical change and would involve restructuring the system so cases are allocated to the High Court on the basis of complexity and not the value of the claim. An unlimited jurisdiction would require primary legislation and would require adjustments in the way in which proceedings are initiated to identify those cases which are complex and deserve High Court attention. Whilst this would be a much more flexible system, the majority of respondents were not in favour of it. The majority favoured the certainty of having a fixed limit based on the value of the case. The NICTS considers that the jurisdiction should remain limited at this time but that consideration might be given to an unlimited jurisdiction in the future.

Question 4 – If the answer to Question 3 is 'limited', what should the financial limit of the county courts be increased to?

Responses

3.14 42% of respondents (30) were of the view that the county court limit should increase to £25,000. This increase is only slightly in excess of an inflationary based increase. 14 respondents agreed with the NICTS preferred option of £50,000 (19%). Those respondents agreed that an increase in the limit to £50,000 would enable the county court to deal with claims which do not necessarily require the expertise of a High Court judge or High Court resources. One respondent was of the view that an increase to £50,000 would allow for future inflation and would bring Northern Ireland into step with England and Wales where a claim for damages in respect of personal injuries

may only be commenced in the High Court if the value is £50,000 or more. Another respondent commented that the adoption of the NICTS preferred option of £50,000 outlined in the consultation paper would help minimise the cost of claims in Northern Ireland and should lead to a reduction in insurance premiums for businesses. It would be easier to assess whether a case is worth in excess of £50,000 than to assess whether a claim is valued in excess of £15,000 therefore making it easier to issue proceedings in the proper court tier. The respondents in favour of an increase to £50,000 largely consisted of insurers.

- 3.15 13% of respondents (9) were of the view the county court jurisdiction should be increased to a figure ranging between £25,000 and £30,000. 8% of respondents (6) suggested a limit of £30,000. One respondent stated the limit should be at least £30,000 but not more than £50,000. 11 respondents (15%) did not answer the question.
- 3.16 A respondent who agreed with an increase slightly above inflation to £25,000 stated that cases over £25,000 should have access to the quality of service provided in the High Court jurisdiction. They went on to say that an increase above £25,000 will have greater importance to the parties and such cases require the full High Court process with full and detailed pleadings, full consideration of expert evidence and detailed attention to questions of law arising which could not adequately be dealt with under the less formal county court procedure. One respondent who agreed that the limit should be £25,000 said that High Court cases receive better focus and judicial scrutiny than those cases assigned to the county court and that, in the High Court a more predictable and uniform level of damages is maintained. This consequently produces a consistency in awards which is good for plaintiffs and defendants alike. The same respondent was concerned that a substantial increase to £50,000 would result in the removal of senior counsel from a greater number of cases. They argued that the involvement of senior counsel is a valuable contribution to the quality of professional representation for both plaintiffs and defendants. That respondent concluded that a significant increase to £25,000 rather than a radical increase to £50,000 would allow a proper and reasonable adjustment to the county court jurisdiction that would properly serve the interests of justice.
- 3.17 A respondent in favour of an increase in jurisdiction agreed with the Civil Justice Reform Group's Final Report (2000) which stated that, at the time, £15,000 represented a useful symmetry between the county courts and the Fast Track system in England and Wales. These principles still remain valid

and can be applied to a new limit of £25,000 in the county court as the limit of the Fast Track in England and Wales is currently £25,000. It also corresponds well to the jurisdiction of the Circuit Court in the Republic of Ireland which is approximately £33,000.

- 3.18 Some of those respondents who felt the jurisdiction should increase to £30,000 felt this could be done easily, provided that the system maintains its efficiency and simplicity to allow for a fast turnover of business. A respondent suggested that the limit should be increased to £35,000 and then reviewed after 2 years of the new arrangement to allow the change time to settle in. One respondent felt that it would be useful to have a review of the financial limits every 3 years or so to keep the jurisdiction in check.
- 3.19 A number of respondents suggested that if the limit was raised to £25,000 or even further it would be necessary to put certain safeguards in place. Some suggested the procedures in the county court should allow for the crystallisation of the issues involved in cases of greater value which presently exists in the High Court. They commented that interlocutory matters are dealt with by Masters in the High Court while in the county court the judges will have to deal with such matters themselves thus adding to their workload.

NICTS comments

- 3.20 The NICTS preferred option was that the jurisdiction should increase to £50,000 as it is the most impactful means for the realignment of business from the High Court to the county courts. However we recognise that the majority of respondents are in favour of an inflationary based increase and having considered the overall responses the NICTS has concluded that the county court limit should increase to £30,000. This would take account of past and future inflationary increases and would assist in the reallocation of civil business from the High Court to the county courts to ensure cases are dealt with at an appropriate level. The public should benefit as local county courts will be more convenient and the associated costs more affordable.

Question 5 – If the answer to Question 3 is ‘unlimited’, how would you define ‘complexity’ when deciding which cases should be allocated to the High Court?

Responses

3.21 One respondent felt that the county court financial jurisdiction should be unlimited and that cases should be allocated to the High Court on the basis of complexity. The respondent did not give reasons for their answer.

NICTS comments

3.22 86% of respondents expressed the view that the county court should continue with a system of fixed monetary limits which provides certainty for all parties involved. The NICTS has therefore concluded that the jurisdiction should remain limited at this time. However consideration might be given to an unlimited jurisdiction in the future.

Question 6 – Should all clinical negligence cases over £15,000 be reserved for the High Court regardless of the financial limit of the county court?

Responses

3.23 71% of respondents (51) agreed that all clinical negligence cases over £15,000 should be reserved for the High Court. 7% of respondents (5) did not agree with this proposal, while 22% of respondents (16) did not answer the question.

3.24 The majority of respondents were of the view that county court judges did not necessarily have the relevant expertise required to deal with these cases which involve complex and specialised points of law. Some stated that if cases such as a complex clinical negligence case were heard in the county court and inadequately dealt with, it may lead to further litigation in the form of an appeal to the High Court. A common argument among respondents who felt these cases should be reserved to the High Court was that specialist medical experts would be required and they would not be prepared to travel to local county courts which would cause potential difficulties for all sides. Others expressed the view that county courts are already busy dealing with the current workload and that the courts wouldn't have sufficient time to give to these complex and often lengthy cases. The hearing of many of these cases can last for several days which would affect the smooth operation of the county court. Lists would become unpredictable and could cause severe disruption to the organisation and attendance of witnesses.

- 3.25 Other comments highlighted the excessive or complicated pleadings in clinical negligence cases which normally last for long periods of time. It was suggested that county courts are ill equipped to deal with cases of this length and cases where such precise pleadings are required. One respondent was of the view that cases such as clinical negligence cases require highly specialised knowledge and expertise and should therefore fall within the jurisdiction of the High Court subject to some de minimus value under which the matter could be heard by the county court. One respondent who stated that these cases should remain in the High Court stated that the High Court is better able to accommodate multiple day hearings than the county court. These cases are usually complex and require expert witnesses and they should continue to have their own separate protocols and listing arrangements.
- 3.26 One respondent who agreed that clinical negligence cases should be heard in the High Court raised an issue in relation to the costs of clinical negligence cases being heard in the county court. The difficulty arises when medical experts outside Northern Ireland are required to attend hearings. Additional costs arise when the case is adjourned. Experts may have cancelled clinics to attend these hearings, which in turn has an impact on the Health Service and patients. The respondent commented that these difficulties are less likely to happen in the High Court and supports the view that these types of cases should be heard exclusively in the High Court.
- 3.27 Of the 5 respondents who answered in favour of clinical negligence cases in excess of £15,000 being dealt with in the county court one respondent argued that county court judges are perfectly capable of dealing with these cases. In order for this to be workable in practical terms the current procedure in the county court should be amended as the current pleadings system in the county court does not require the same level of detail as the High Court which is particularly restrictive in a clinical negligence claim. The relatively simple pleadings system in the county court was a common reason as to why so many wanted clinical negligence cases reserved for the High Court.

NICTS comments

- 3.28 The exclusion of clinical negligence cases from the county court is likely to require primary legislation as the current jurisdiction general civil limit is expressed only in monetary terms. As we are now recommending an increase to £30,000 rather than the preferred option of £50,000 expressed in the

consultation paper, we are of the view that the concern about clinical negligence cases will be less of an issue. It is however a matter which may be revisited in the medium term.

Section 2 – District Judges’ Court

Question 1 – Do you consider that the financial limit of the District Judges’ court should be increased from £5,000?

Responses

3.29 71% of respondents (51) were supportive of an increase in the jurisdiction of the District Judges’ court from the current limit of £5000. 22% of respondents (16) were not in favour of an increase while 5 respondents did not answer the question.

Question 2 – Please state your reasons why

Responses

3.30 The majority of the respondents who answered yes to an increase in District Judges’ court limit felt there should be a commensurate increase in the District Judges’ limit to reflect the increase in the jurisdiction of the county court. If the county court limit increased this would inevitably increase the volume of work for county court judges and an increase in the District Judges’ limit would reduce the burden of work on the county court. Furthermore, respondents agreed that account should be taken of past and future inflation when considering an increase.

3.31 One of the 16 respondent’s who answered no to an increase in the District Judges’ jurisdiction stated that District Judges’ presently have an unrealistically low valuation of cases and that cases over £5000 ought to be given the gravitas of a county court hearing. One respondent who agreed with this comment stated that an increase in the limit would overburden the District Judges while others felt the court is coping perfectly well and there is more than enough work for District Judges at present when the small claims cases are factored in without increasing the jurisdiction further.

NICTS comments

3.32 Having considered the responses to the consultation the NICTS agree with the majority of respondents that if the county court jurisdiction is to increase it is

appropriate to increase the jurisdictional limit of the District Judges' court and that account should be taken of past inflationary increases.

Question 3 – If the answer to Question 1 is 'yes', what should the financial limit of the District Judges' court be increased to?

Responses

- 3.33 31% of respondents (22) favoured an increase in the jurisdiction to £7,500. 18% of respondents (13) favoured an increase to £10,000. 13% of respondents (9) favoured an increased to the NICTS preferred option of £15,000.
- 3.34 Most of the respondents who agreed there should be an increase in the limit stated that any new limit should take account of inflation as the last increase was in 2001. One respondent was of the view that if the ratio between the county court and District Judges' court is to be retained then there is a strong argument for the limit to be £10,000 or slightly higher. One respondent felt the limit should increase to £10,000 regardless of what level the county court jurisdiction extended to. This respondent was against an increase to £7000 as it stands within a bracket of damages between £5000-£7500 and it is unlikely that many solicitors will issue at £7000 (or indeed £7500). Rather they would prefer to issue proceedings at £10,000 to ensure that they do not prejudice their clients. One respondent agreed with an increase but had reservations about an increase above £10,000 as that could mean the District Judges would be inundated with business which would delay court hearings and prevent the facilitation of ready and economic access to justice which exists at present.

NICTS comments

- 3.35 The majority of respondents favoured an increase approximately in line with inflation. If the jurisdictional limit of the county court was to increase to £30,000, in keeping with the present demarcation of the court (the District Judges' is one-third of the county court limit) the NICTS conclude that it would be appropriate to increase the District Judges' court limit to £10,000. This would provide for an inflationary increase whilst ensuring a proper allocation of cases between the county court and District Judges' court.

Section 3 – Small Claims Court

Question 1 – Do you consider that the financial limit of the Small Claims Court should be increased from £2,000?

Responses

3.36 A slight majority of respondents were in favour of the small claims court limit remaining at £2000. 28 respondents wanted an increase whilst 36 did not. Those respondents who did not support an increase amounted to 50% of those who answered the question. 11% of respondents did not answer the question.

Question 2 – Please state your reasons why

Responses

3.37 Respondents who argued that the limit should not be increased felt that small claims were exactly as described and should remain so. Any amount beyond £2000 was not small. The nature of small claims and the informal procedure applied in the small claims court means that small claims should not be required to have legal representation but should be given the option. Some expressed the view that cases of a value in excess of £2000 required the involvement of solicitors or counsel and therefore those cases should be heard in the county court where there is provision for legal costs. One respondent commented that the small claims court should preserve the existing informality of that court and any increase in limit would imperil this aspect.

3.38 The majority who did not want an increase in the small claims limit were of the view that anything over £2000 could not be categorised as a small claim. Increasing the jurisdiction would bring in more complex cases and a personal litigant who would normally conduct their own case should be able to do so without feeling inequality in arms. They argued that this forum should be kept for simple low value claims.

- 3.39 One of the respondents who argued for an increase in the limit stated that it was necessary to reflect the reduction in the value of money and that the court's simplified procedure should be applied to an increased volume of claims. They went onto comment that some matters which are suitable for the informal small claims procedure are currently clogging up the District Judges' court and this allow parties to avoid incurring significant risks in costs which are disproportionate to the issues at stake.
- 3.40 A respondent who was in favour of an increase believed there should be greater access to the small claims court procedure where costs are limited. The court provides quick and simple access for relatively minor disputes. One respondent stated that if there was an increase in both the county court and District Judges' court jurisdiction, it was logical to also increase the small claims financial limit. In any event an inflationary increase would be warranted in this consumer forum as the last increase was in 2001.

NICTS comments

- 3.41 NICTS appreciates the arguments are finely balanced. NICTS recognise that only a slight majority favoured no increase in the limit and felt £2000 was a small amount. However the effects of inflation must be accounted for since the last increase in 2001. In addition to this consultation NICTS conducted a survey of small claims users online and through interviews at various small claims venues throughout Northern Ireland. The outcome of the survey suggested that a limit of £5000 would be supported by most users.

Question 3 – If the answer to Question 1 is 'yes', what should the financial limit be increased to?

Responses

- 3.42 Of those respondents that argued for an increase in the small claims court limit, the majority agreed that £3000 was an appropriate limit (18%). 13% of respondents agreed with our preferred option of £5000.
- 3.43 Those who wished to see an increase in the small claims limit stated that there should be an increase to take account of inflation since the limit was last increased in 2001. The majority favoured an increase to £3000. Those who

supported an increase were of the view that more cases should benefit from the arbitration role of the District Judge on an informal basis in the small claims court. A small number of respondents wanted the limit to be on a similar level to that in England and Wales where the limit is £5000. One respondent suggested the limit should be increased to £3000 with a review every 3 years to keep pace with inflation.

NICTS comments

- 3.44 NICTS has considered the various points made by respondents and has concluded that, as proposed in the consultation paper, an increase in the small claims limit to £3000 would be appropriate. This is within what most people would deem a small claim and takes account of the inflationary effect on consumer goods since 2001 which form the basis of most small claims cases. This would allow greater access to this quick and simple procedure. This limit is supported by the majority of respondents who favour an increase.

Section 4 – Overall county court civil jurisdiction

Question 1 – If the financial limit of the county court is increased from £15,000 should scale costs be increased up to the new jurisdictional limit? (Costs in the County Court are awarded on a fixed scale. The scales correspond to different levels of damages which may be awarded).

Responses

- 3.45 57 respondents agreed that if the county court limit is increased, scale costs should follow to the new limit. These respondents accounted for 79% of respondents. 2 respondents answered no to this question and were in favour of taxation of costs. 13 respondents (18%) did not answer the question.

Question 2 – Please state your reasons why

Responses

- 3.46 The majority view was that scale costs avoid the delay involved in the taxation of cases and ultimately payment. Scale costs provide clarity and certainty for legal professionals when advising clients. One respondent commented that scale costs in the county court supports the principles of predictability and proportionality. The respondent went onto to comment that the scale cost system in Northern Ireland has a high reputation in other regions of the UK and it is important that this is not lost during a revision of the county court limit. One respondent argued that the scale fee system is the major reason why the current county court system works as efficiently as it does.
- 3.47 A small number of respondents suggested that county court judges should have the power to award enhanced costs or uplift in fees where appropriate or refer the matter to the Taxing Master for taxation if the circumstances of the case are exceptional.
- 3.48 A respondent who was opposed to taxation of costs in the county court being introduced stated that taxation in the county court would lead to huge backlogs and difficulties for practitioners in getting paid. It is advantageous for all parties to know the range of costs they may be liable for at the outset of the case.
- 3.49 One respondent expressed the view that before they could give an answer to this question further information was required as to the likely level of any scale costs to be imposed and the hourly rates that would be applicable if a taxation system were to be adopted. They felt that should the monetary jurisdiction of the county court increase, a further consultation process should take place to specifically address the issue of costs.

NICTS comments

- 3.50 NICTS acknowledges that the overwhelming majority of respondents are in favour of an increase in scale costs up to the new jurisdictional limit. Scale costs are contained in the County Court Rules (Northern Ireland) 1981 and are made by the County Court Rules Committee. NICTS will advise the Committee of the response. It is expected that the Rules Committee will bring forward a consultation and impact assessment exercise before bringing forward any changes to the scales.

Question 3 – If the answer to Question 1 is ‘no’, should scale costs be increased to a certain level which is below the new jurisdiction limit, with taxation of costs taking place thereafter? (Taxation of costs means costs are assessed by the Taxing Master in the High Court to decide the amount of costs that should be awarded in a case).

Responses

3.51 2 respondents argued that scale costs should not follow up to the new proposed limit and that taxation of costs should take place. 13 respondents did not answer the question. One of the respondents who was in favour of taxation said that taxation was the only fair way to deal with costs in high value cases as they are more complicated and much more is at stake.

Question 4 – If the answer to Question 3 is ‘yes’, what do you consider the limit of the scale costs should be?

Responses

3.52 The 2 respondents who felt that scale costs should be increased to a certain level and taxation should take place thereafter felt that scale costs should be limited to £15,000 (which is the present county court limit).

Question 5 – Please state your reasons why

Responses

3.53 One of the 2 respondents who answered yes to scale costs being limited suggested that £15,000 was an obvious figure. The other respondent did not provide a reason.

NICTS comments

3.54 NICTS recognises the majority of respondents are in favour of increasing scale costs up to the new jurisdictional limit. The County Court Rules Committee will be informed accordingly.

Equality Screening

3.55 We have carried out an equality screening of the consultation paper in accordance with our Equality Scheme to comply with section 75 of the Northern Ireland Act 1998. The equality screening exercise found that the proposals set out in the consultation paper are likely to have a positive impact on all the equality groupings especially those with mobility and dependency needs as an increase in the jurisdictional limit of the county courts will allow a greater number of cases to be heard in local and convenient courts thus improving access to justice. There were no comments on the equality screening.

Impact Assessment

3.56 The impact of the proposals in the consultation paper have been evaluated and two separate impact assessments were produced. One impact assessment for the small claims court and the county court and one for the District Judges' court. We are of the view that these assessments present a reasonable view of the likely costs, benefits and impacts given the evidence available. The key findings of our assessments were that the overall policy objectives will bring monetary and non-monetary benefits to society and the civil justice system. Cases would be directed to the most appropriate court resulting in a more efficient allocation of resources whilst litigants would enjoy increased accessibility to county courts providing a local, efficient and practical mechanism to deal with the majority of civil cases.

3.57 One respondent commented that the methodology used in the assessments was based on the figure at which a case was disposed of and not on the amount claimed. It is the latter figure that dictates which court proceedings will be commenced in. NICTS accepts that the figure for the amount claimed will determine which court will hear the matter. However the figure for the amount claimed whether it is contained on a civil bill or writ is not always recorded and therefore these statistics are not available. NICTS remains of the view the figures used in the impact assessments are relevant and an indicator of the likely costs and benefits of this policy.

Other Comments

(i) The county court ought to have the discretion to transfer complex cases from the county court to the High Court

3.58 Some respondents commented that county court judges should be given the power to transfer on his or her own motion any case to the High Court which is regarded as complex, of legal importance or one which could potentially last a considerable length of time. It was stated that this would reflect the statutory requirements in the Family Court where cases can be transferred from the Family Proceedings Court to the Family Care Centre. At present a transfer of cases from the county court can only be achieved by way of an application to the High Court which causes additional expense and delay. One respondent was of the view that complex cases which could be transferred include cases that involve industrial diseases such as asthma, asbestosis, dermatitis, clinical negligence actions and complex commercial actions.

NICTS response

3.59 We can see the argument for this however the transfer of cases from the county court to the High Court is likely to require primary legislation in the form of an amendment to the County Courts (Northern Ireland) Order 1980. This is, therefore, a matter which may be revisited in the medium term.

(ii) Exclusion of certain types of cases from the small claims court

3.60 Many respondents welcomed the opportunity to comment on the types of cases presently excluded from the small claims court. At present road traffic accidents are excluded from the small claims court and can only be heard in the county court. Some respondents argued that this should be changed. Some made the point that many claims arising from road traffic accidents are simple, low value claims with straightforward liability which are capable of being dealt with using the small claims procedure. Others recommended that Northern Ireland should adopt the position in England and Wales where personal injury cases with a value below £1000 can be dealt with in the small claims court. They expressed the view that as the present process stands, it

acts as an encouragement to the involvement of solicitors in low value cases causing a significant additional layer of costs out of proportion to the original claim.

- 3.61 One respondent who opposed a change stated that the small claims procedure was primarily designed to resolve disputes concerning issues such as compensation for faulty services or faulty goods and that claims for personal injury and for damages in respect of road traffic accidents usually involve complex issues of liability and quantum and should continue to be excluded. They went on to comment that the lack of funding for legal representation would prohibit the involvement of legal professionals and ultimately be unfair on the client. If individuals did bring their own cases there would be an uneven playing field as they would be against insurance companies and therefore at a disadvantage.

NICTS response

- 3.62 Road Traffic cases are currently excluded by the County Court Rules (Northern Ireland) 1981. We will forward all comments to the County Court Rules Committee for consideration.

(iii) Counsels fee

- 3.63 As well as increasing scale fees to the new limit some respondents were of the view that the fee structure for counsel should be amended to reflect the full range of work that counsel undertake, for example, in review hearings, interlocutory proceedings, drafting affidavits, summonses and attending consultations.

NICTS response

- 3.64 Scale fees are a matter for the County Court Rules Committee and we shall forward these comments to the Committee for consideration.

(iv) Pleadings

- 3.65 Some respondents were of the view that if the county court jurisdiction were to increase then there should be the introduction of pleadings in the county court similar to the statement of claim and defence pleadings in the High Court. They argued that such pleadings are particularly important in cases of increased value and complexity as they would encourage greater openness in litigation as is present in the High Court. The purpose of these pleadings is to provide each party to the action with details of the case against them or denial of liability, as well as the particulars of negligence or breach of statutory duty alleged. One respondent commented that all cases above £15,000 should have detailed pleadings, otherwise all the good work in the High Court in the recent development of pre-action protocols will be for nothing. One respondent was of the view that the developed system of case management for personal injury litigation in the High Court should be adopted. One respondent commented that the notice of intention to defend which is issued by the defendant in a county court case does not disclose much information and that consequently the plaintiff is unaware of what the nature of any defence might be. To ensure balance, such details as those required in High Court pleadings, including a detailed defence should be required.
- 3.66 One respondent believed that with an increase in jurisdiction there ought to be a compulsory protocol governing the pre-proceedings conduct of parties and legal advisers. The same respondent felt judges should have a greater discretion on costs. Another respondent agreed with this and stated that a judge should have discretion at the conclusion of a case to award higher costs and / or refer the case to the Taxing Master.
- 3.67 One respondent praised the existing listing arrangements in the High Court whereby a call-over to fix dates for hearings is held on a weekly basis. If an adjournment is required an application will be referred to a High Court judge. In the county court the listing of cases is an administrative process and there are no opportunities to check availability of clients and witnesses which inevitably leads to adjournment applications. Accordingly the respondent stated that the county court rules should be amended to take account of some of the procedures in the High Court.
- 3.68 One respondent suggested there should be a more streamlined procedure for applying for judgment in cases where there is no sustainable defence – similar to the Order 14 procedure in the High Court. They argued that this would be

important as the proposed increase in jurisdiction would, in theory catch more banking type litigation.

NICTS response

3.69 Pleadings are a matter for the County Court Rules Committee and we shall forward these comments to the Committee for Consideration.

(v) Cases excluded from the county court

3.70 As well as excluding clinical negligence cases from the county court, some respondents suggested that consideration should be given to reserving other cases to the High Court including certain industrial diseases cases such as asbestosis and dermatitis. Like clinical negligence cases these involve specialist medical and scientific experts and complex issues which should be reserved for the High Court.

NICTS response

3.71 The exclusion of cases from the county court is likely to require primary legislation as the current jurisdiction general civil limit is expressed only in monetary terms. As we are now recommending an increase to £30,000 rather than the preferred option of £50,000 we think the concern about clinical negligence cases will be less of an issue. It is however a matter which may be revisited in the medium term.

(vi) Judicial complement

3.72 Some respondents suggested that an additional county court judge would be required to facilitate an increase in the county court limit. Higher value claims may require greater case management and longer hearings which would have an adverse affect on judicial capacity. Consequently respondents indicate that an increase in the judicial complement will be required to maintain the speedy and efficient disposal of business in the county courts.

NICTS response

3.73 The determination of the county court judicial complement is a matter for the Northern Ireland Judicial Appointments Commission (NIJAC), although subject to the agreement of the Department of Justice. Our analysis would suggest that the more significant impact will be at district judge level and there may be a net reduction in the number of cases in the county court jurisdiction. When assessing judicial complement there is a need to take into account sitting times, disposals outside court, the work district judges currently undertake as deputy county court judges and the scope for flexible listing of cases. NICTS will consider the decision of NIJAC when it has had an opportunity to address the matter.

(vii) Specialist Judges

3.74 One respondent commented that if there is to be an increase in the financial limit of the jurisdiction of the county courts there will need to be a greater degree of specialisation of the judges. They stated that it would make sense to have specialist judges in personal injury cases which would result in better quality and more consistent decision making. A further benefit of having specialist judges means that there will be specialist court lists and courts' time will be used more effectively and efficiently.

NICTS response

3.75 The county court judiciary is capable of dealing effectively with all personal injury cases. Devising specialisms within the county court may detract from the straightforward and efficient procedure already in place, however this matter may be revised in the medium term.

(viii) Expert witnesses

3.76 Some respondents have expressed concern as to the likely willingness of many expert witnesses to attend courthouses outside Belfast. One respondent commented that experts currently attend the High Court in Belfast

and perform an efficient centralised service attending to a number of cases simultaneously. Having to disperse across county courts could cause potential difficulties for all sides. A suggestion was made that it may be necessary to take expert evidence by way of video link but that this would only be possible if existing limited video conferencing facilities were improved.

NICTS response

3.77 If this proves to be an issue we will extend the use of existing video link facilities to any experts who do not wish to travel to local courts. Thirteen courthouses currently have video link facilities.

(ix) Adequate facilities

3.78 Some respondents expressed concern about the capacity of existing county court resources to cope with the increased demand.

NICTS response

3.79 NICTS is of the view that there are suitable county court venues throughout Northern Ireland which are equipped to accommodate any additional business arising on foot of the increases. There are currently 18 courthouses where civil business is heard and there are 92 consultation rooms across those venues. There is at least one courthouse in each of the seven county court divisions which has suitable facilities for hearing higher value cases. Courthouses are equipped with consultation rooms for witnesses and experts and include waiting areas and facilities for vulnerable witnesses and children. Additionally, parties can contact Customer Service Officers at each court venue prior to the hearing date to discuss special arrangements or facilities they may need.

3.80 The NICTS welcomes the range of additional comments and suggestions on to how the county court process and procedure could be changed. We will forward all relevant comments to the County Court Rules Committee and we will undertake to review the areas identified and bring forward recommendations in due course.

4.0 Conclusion and proposed way forward

4.1 NICTS has considered carefully all the responses to this consultation exercise and notes that there is overwhelming support for an increase in the jurisdictional limit of the county court and District Judges' court. Having considered all the responses to the consultation we recommend the following increases:

- **County court** – the limit should increase from £15,000 to £30,000. This would take account of past and future inflationary increases and strikes the right balance in the reallocation of civil business between the High Court and county courts to ensure cases are dealt with at an appropriate level.
- **District Judges' court** – the limit should increase from £5000 to £10,000. This would provide for an inflationary increase whilst ensuring a proper allocation of cases between the county court and District Judges' court. An increase to £10,000 would also be in keeping with the present demarcation of the county court and District Judges' court.
- **Small claims court** – the limit should increase from £2000 to £3000. This is within what most people would deem a small claim and it takes account of the inflationary effect on consumer goods since the last increase in 2001 which forms the basis of most small claims. This increase would provide litigants with greater access to this simple and efficient procedure.

4.2 Any increase in the jurisdictional limits will be taken forward by subordinate legislation. It is possible that any increases will be staged with the increases in the small claims and possibly the District Judges jurisdiction coming into operation in Spring 2011. The increase in the county court jurisdiction would not be before September 2011.

4.3 A copy of this report will be placed on the NICTS website at www.courtsni.gov.uk.

4.4 NICTS is grateful to all those who considered and responded to the consultation paper 'Increasing the jurisdictional limits of the county courts in

Northern Ireland'. We shall continue to work with stakeholders to ensure the satisfactory implementation of any changes in due course.

Northern Ireland Courts and Tribunals Service

December 2010

Appendix 1

Criteria for public consultation

Criterion 1 – When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Appendix 2

Respondents to the consultation

Responses were received from the following:

- A Maxwell BL
- Alan Blackburn BL
- Alan Comerton QC
- Alan Stewart BL
- Allianz PLC
- Association of British Insurers
- Association of Personal Injury Lawyers
- Aviva Insurance
- Bar Council
- Belfast Solicitors Association
- CBI Northern Ireland
- Commercial Bar Association
- Committee on the Administration of Justice
- David Dunlop BL
- David Ringland QC
- Directorate of Legal Services
- Forum of Insurance Lawyers
- Freight Transport Association
- Hugh O'Connor BL
- Jack Gillespie BL
- John Stewart BL
- Joseph Aiken BL
- Law Society for Northern Ireland
- Legal Services Commission
- Michael Stitt QC
- Northern Ireland Association of Citizens Advice Bureaux
- Northern Ireland Chamber of Commerce
- Northern Ireland Legal Services Commission

- Office of the Lord Chief Justice
- Peter Hopkins BL
- Philip Dornan BL
- Quarry Products Association
- R.C. Hill QC
- SDLP
- Taylor Campbell BL
- Zurich Insurance

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