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Northern Ireland Court Service  
Increasing the Jurisdictional Limit of the  
County Courts in Northern Ireland

**Consultation Paper**

March 2010

Northern Ireland Court Service  
[www.courtsni.gov.uk](http://www.courtsni.gov.uk)

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# Contents

Foreword

Executive Summary

1.	Introduction	Page 4
2.	Background	Page 7
3.	Reasons for reform	Page 16
4.	Practical issues	Page 22
5.	The District Judges' & small claims court jurisdictions	Page 27
6.	Options for reform	Page 31
7.	How to respond	Page 34
	Appendix 1 - Article 22 of the County Courts (Northern Ireland) Order 1980	Page 38
	Appendix 2 - Consultees	Page 39

## **Foreword**

**by Bridget Prentice MP,  
Parliamentary Under-Secretary of State**



This consultation paper seeks views on proposals to increase the financial limit of the civil jurisdiction of the county courts in Northern Ireland.

The Northern Ireland Court Service is committed to ensuring a modern, accessible and efficient civil justice system meeting the needs of court users in Northern Ireland.

A central pillar of that system is the county courts which provide a forum for the disposal of the bulk of civil claims in Northern Ireland. Many people will come into contact with the county courts whether through a personal injury claim arising from a road traffic accident or a consumer dispute. This is your opportunity to express your views on the financial limits of those courts in which you bring your claim.

The general civil jurisdiction of the county courts was last increased in 1993. We think a further increase is now due. This consultation paper seeks views on proposals to increase the financial limit of the civil jurisdiction of the county courts in Northern Ireland from the current level of £15,000 to £50,000. Other options considered are an increase to £25,000 or an unlimited jurisdiction. The paper also welcomes views on the financial limits of the District Judges' jurisdiction and the small claims jurisdiction both of which are part of the county court.

This is a consultation document and no decisions have been taken. We welcome suggestions as to options that we may not have considered and we encourage everyone with an interest in this area to consider the paper and forward their response.

A handwritten signature in black ink that reads "Bridget Prentice".

**Bridget Prentice MP**  
**Parliamentary Under-Secretary of State, Ministry of Justice**

## Executive summary

The consultation paper sets out the reasons for increasing the jurisdictional limit of the county courts and the practical issues which will be taken into account in making any change to ensure that the county courts continue to provide an efficient and practical mechanism to deal with civil litigation in Northern Ireland. The paper sets out proposals for increasing the limits of the county court, District Judges' court and small claims court and the preferred options for reform.

### County court

It is now sixteen years since the current jurisdictional limit of £15,000 was set. 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. An increase in the present jurisdictional limit is therefore required to ensure cases are disposed of in the appropriate court.

The proposals for an increase in the limit of the county court are to £25,000; £50,000 and an unlimited jurisdiction. The Court Service's provisional view is that an increase to £50,000 represents the best early opportunity for meaningful reform. An increase to £50,000 can be achieved in the relatively short-term and is sufficiently impactful to allow business to be realigned from the High Court to the county courts so cases are dealt with effectively at their appropriate level.

A more modest increase is a limit of £25,000. This option would be only slightly in excess of an inflationary based increase and would be least likely to impact on court business and capacity.

A third more radical option is that the county court jurisdiction should become unlimited. This would mean cases would be allocated on the basis of complexity and not the value of the claim. However, this option would require primary legislation as

the County Courts (Northern Ireland) Order 1980 is currently framed in such a way as to determine jurisdiction on the basis of prescribed financial limits.

### **District Judges' court**

If there was an increase in the jurisdiction of the county court it is reasonable to suppose that there should be an increase in the District Judges' jurisdiction. The current limit of £5000 was set in 2001.

The options put forward include an increase to £7000 which is in line with inflation or an increase to £10,000. A third and preferred option is to increase the District Judges' jurisdiction to £15,000 which is approximately one-third of the preferred new county court jurisdiction of £50,000 and is consistent with the current demarcation of the two jurisdictions.

### **Small claims court**

The small claims court jurisdiction is probably the legal forum best known to most members of the public as it provides a simple and straightforward system designed for small value disputes. The present small claims limit of £2000 was set in 2001.

The options considered are that the small claims limit should remain at £2000; it should increase in line with inflation to £2500; it should increase slightly more than inflation to £3000 or it should increase to £5000 either immediately or in stages. The preferred option is an increase in the limit from £2000 to £3000. This is slightly more than an inflationary increase and is a meaningful adjustment (a one-third uplift) but still within the range of what might generally be regarded as a small claim.

Final views on the above options will be informed by responses to the consultation.

# 1. Introduction

- 1.1 This consultation paper seeks 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<sup>1</sup> to £50,000. The paper also invites views on an increase in the jurisdictional limits of the District Judges' court and the small claims court.
- 1.2 The jurisdiction of the county courts in Northern Ireland is governed by the County Courts (Northern Ireland) Order 1980<sup>2</sup>. The power to increase the financial limit of the county courts derives from Article 22 of that Order which provides that the Lord Chancellor may, after consultation with the Lord Chief Justice, direct that the financial limits be increased (Appendix 1)<sup>3</sup>.
- 1.3 This consultation paper examines the case for an increase in the general civil jurisdiction of the county courts (including the District Judges' and small claims jurisdictions), the issues arising and the options.
- 1.4 It is not the purpose of the paper to consider the other jurisdictional limits of the county court (for example in relation to equity matters) although that may in due course fall to be considered depending on the outcome of this consultation.
- 1.5 An equality screening exercise and an impact assessment were carried out for these proposals, which have been published separately. We welcome any comments you may have on these.

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<sup>1</sup> S.R. 1993 No. 282

<sup>2</sup> As amended by the Constitutional Reform Act 2005 (c.4)

<sup>3</sup> On devolution of policing and justice the Lord Chancellor's function will transfer to the a Northern Ireland Department of Justice.

## Consultation

- 1.6 The Northern Ireland Court Service is writing to relevant organisations, groups and individuals with an interest in the legal system in Northern Ireland (listed at Appendix 2). This list is not meant to be exhaustive or exclusive and responses are welcome from anyone with views on the subject covered by this paper. A copy of this document is also available on the Court Service website [www.courtsni.gov.uk](http://www.courtsni.gov.uk).
- 1.7 We welcome responses from organisations and individuals. A number of questions are contained in a questionnaire and on which we would be particularly grateful for views.
- 1.8 This consultation is being carried out in accordance with the Cabinet Office Code of Practice on Consultation. This Code of Practice stipulates that the following seven consultation criteria must be reproduced with any consultation document:
  1. **When to consult** – Formal consultations should take place at a stage when there is scope to influence the policy outcome.
  2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
  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.

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.
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.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
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.

1.9 Please respond by **26th May 2010** to:

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## 2. Background

### Structure of the civil courts in Northern Ireland

- 2.1 The structure and jurisdiction of the civil courts in Northern Ireland is governed by the Judicature (Northern Ireland) Act 1978 (“the Judicature Act”), the County Courts (Northern Ireland) Order 1980 (“the 1980 Order”), and the Magistrates Courts (Northern Ireland) Order 1981. The primary legislation is underpinned by court rules governing practice and procedure in the different court tiers. The legislation and rules have been amended on a number of occasions since enacted.
- 2.2 Civil disputes in Northern Ireland are dealt with in (i) the High Court; (ii) the county courts; (iii) the magistrates’ courts, and various tribunals.

### The High Court

- 2.3 The work of the High Court is allocated to three Divisions. The Queen’s Bench Division deals principally with actions in -
- contract and tort (primarily personal injury actions),
  - defamation,
  - public law cases (mainly applications for judicial review), and
  - a variety of other cases for which special provision has been made by statute.

It is to this Division that most appeals from the county courts are taken.

- 2.4 The Chancery Division deals mainly with land and property matters, cases arising from the declaration or execution of trusts, bankruptcy and winding-up proceedings, the

dissolution of partnerships and probate.

- 2.5 The Family Division deals with matrimonial cases such as divorce and matters relating to the dissolution of marriage, the adoption of children and the affairs of patients.

### **The County Courts**

- 2.6 Northern Ireland is divided into 7 County Court Divisions and cases are heard throughout the province in 21 courthouses.
- 2.7 The main work of the county courts is the resolution of disputes in contract and tort up to a maximum claim value of £15,000. The majority of cases heard in the county courts are claims for compensation for personal injury arising from road traffic accidents and accidents at work. Cases in the county court are processed with less formality than in the High Court.
- 2.8 The county courts also have jurisdiction, within various financial limits, in equity matters and disputes relating to the recovery of, or title to, land and the probate of wills. They may also hear uncontested petitions for divorce. While dealing primarily with the hearing of civil cases at first instance, the county courts also hear both civil and criminal appeals from the magistrates' courts. The jurisdiction of the county courts is entirely statutory and is to be found primarily in the County Courts (Northern Ireland) Order 1980.
- 2.9 Cases in which £2,000 or less is in issue (other than personal injury cases) are dealt with under the informal "small claims" procedure. This is a special county court procedure provided for by the County Court Rules. These cases are heard by District Judges. Contested cases involving amounts

over £2000 and less than £5,000 are also heard by District Judges (or deputy District Judges) while County Court Judges (or deputy County Court Judges), will hear contested cases involving more than £5000 but less than £15,000.

### **The Magistrates' Courts**

- 2.10 Northern Ireland is divided into 26 Petty Sessions Districts based on the local government districts. While primarily concerned with criminal cases, the magistrates' courts also deal with two civil matters – certain kinds of debt cases and various “ejectment” cases involving disputes between a landlord and tenant.

### **Tribunals**

- 2.11 Many other types of “civil” disputes are dealt with by tribunals which are separate from the courts described above. For example, many types of dispute arising from employment are dealt with by the Industrial Tribunals and there are a number of tribunals which hear and determine disputes relating to social security benefits.

### **History of jurisdictional increases**

- 2.12 The 1980 Order set the original jurisdiction of the county court at £2000. It was increased to £5000 in 1982<sup>4</sup>, £10,000 in 1992<sup>5</sup> and to the present limit of £15,000 in 1993<sup>6</sup>. The last increases were around the same time as fundamental changes to county court procedures<sup>7</sup>.

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<sup>4</sup> S.R. 1982 No. 122

<sup>5</sup> S.R. 1992 No. 372

<sup>6</sup> S.R. 1993 No. 282

<sup>7</sup> S.R. 1993 No. 282

- 2.13 The possibility of a further increase in the general civil jurisdiction of the county courts was considered by the Civil Justice Reform Group ('the Reform Group') in 1999. That group had been established by the then Lord Chancellor to carry out a review of the civil justice system in Northern Ireland. In an interim report published in April 1999, the Reform Group recommended that the limit of £15,000 should be retained for the time being. The Reform Group felt this limit represented a realistic dividing line between the county courts and the High Court and that it enabled the county courts to deal with medium level claims which did not merit the procedural complexity of High Court proceedings and provided a forum for the practical and efficient disposal of the bulk of civil business. The majority of respondents to the interim report supported this conclusion although there was a minority opinion suggesting that the county court could sustain a rise to £20,000.
- 2.14 In its Final Report published in June 2000 ('the 2000 Report'), the Group remained of the view that £15,000 was the appropriate financial limit for the county courts in Northern Ireland at that time and represented a useful symmetry between the county courts and the Fast Track in England and Wales (see paragraphs 2.17 – 2.23 below).
- 2.15 The financial limit of the District Judges' court was increased from £3,000 to £5,000 in 2001 and the financial limit of the small claims court was increased from £1,000 to £2,000 in the same year following a recommendation in the 2000 Report.
- 2.16 In early 2007 the Lord Chief Justice established the Civil Justice Reform Committee ('the Reform Committee'), comprising members of the High Court judiciary and the legal professions. The remit of the Reform Committee is to

advise the Lord Chief Justice in making recommendations to the Lord Chancellor on initiatives to improve the transaction of civil litigation in Northern Ireland based on the recommendations in the 2000 Report. The Reform Committee also seeks to identify current issues which may require attention. One of the recommendations discussed by the Reform Committee is the length of time since the last increase in the general civil jurisdiction of the county courts and the fact that the majority of civil cases in the High Court are not complex cases, but medium level cases which the Reform Group wished to see dealt with in the county court. The Lord Chief Justice has shared with the Reform Committee a paper which recommends an increase in the county court general civil jurisdiction to £50,000. The reasons for the proposal to increase the general civil jurisdiction are considered below.

## **Limits in other jurisdictions**

### **England & Wales**

- 2.17 In England and Wales, following Lord Woolf's report "Access to Justice" in 1996 a new unified code of practice and procedure was introduced in the form of the Civil Procedure Rules 1998 ("the CPR"). The CPR provide a single set of rules that apply to claims both in the High Court and county courts and they provide for a system of case management "tracks" designed to ensure that cases are dealt with in a manner appropriate to their value and complexity. All defended civil claims are allocated to one of three tracks – the 'multi-track', the 'fast track' or the 'small claims' track – each with a financial limit. The decision on which track should be used is made by the District Judge in the county court or the Master in the High Court. There are several factors that the court can take into account when allocating a claim to a certain track, for example the views

of the parties and the nature and complexity of the claim. However, the most straightforward way for the courts to distinguish between cases is on the basis of monetary value.

- 2.18 Currently claims for less than £5000 (£1000 for personal injury claims) fall into the small claims track. Claims with a value exceeding the limit of the small claims track but less than £25,000 (previously £15,000) are normally allocated to the fast track. Claims with a value over £25,000 will be allocated to the multi-track. The multi-track is the normal track for any claim that does not fall within the scope of the small claims or fast track.
- 2.19 Under the High Court and County Courts Jurisdiction Order 1991<sup>8</sup>, proceedings in England and Wales which include a claim for damages in respect of personal injuries may only be commenced in the High Court if the financial value of the claim is £50,000 or more. It will then be heard by a High Court Judge normally in the Queen's Bench Division.
- 2.20 In April 2007 the Ministry of Justice consulted on proposals to raise the small claims track limit for personal injury claims from its current limit of £1000 and to introduce a new streamlined claims process for personal injury cases to make it more efficient and cost effective.
- 2.21 The Ministry of Justice published its findings following the consultation in July 2008 and concluded that there should be no change to the small claims limit. However it was as a result of this consultation that the fast track limit was increased from £15,000 to £25,000 to provide greater flexibility in case allocation.
- 2.22 Presently in England and Wales there is debate that unification of the civil court jurisdictions should now take

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<sup>8</sup> S.I 1991 No. 724

place and that a single civil court should be created. In February 2005 the Department for Constitutional Affairs published a consultation paper (“A Single Civil Court?”) which was the first phase in a scoping study to assess the case for unifying the jurisdictions of the High Court, the county courts and the Family Proceedings Courts. The proposed new Civil Court would operate as one court with a number of tiers of different judges performing different roles but broadly corresponding to the role currently performed by High Court Judges and Masters, Circuit Judges and District Judges.

- 2.23 Those advocating unification suggested that reducing or removing present boundaries in the system would firstly offer user benefits, it would reduce the actual and apparent complexities of the system which would enhance users’ access to it. Secondly, it would offer judicial benefits – the complexities of the current system with all its boundaries – geographical, financial and subject-specific – unnecessarily complicates the allocation of work to the most appropriate judges. Thirdly, a unified court would offer administrative benefits. The body responsible for administering the courts would no longer have to maintain separate systems, leading to greater efficiencies and savings on things like IT, training and forms.

### **Scotland**

- 2.24 In Scotland small claims actions may be brought for amounts up to £3000. Except for cases where the sum claimed is under £5000 (increased in 2008 from £1500) the claimant has a choice whether to issue in the Sheriff Court which has unlimited jurisdiction, or the Court of Session. The Court of Session is the supreme civil court in Scotland and is both a court of first instance for initial consideration of cases and a court of appeal. It has been argued this has resulted in too many routine low value cases being raised in

the Court of Session. This is said to lead to the inefficient use of that court's resources and that it may also be inappropriate for cases other than those of general importance, or of exceptional value, to be dealt with at first instance in the Court of Session. However others have said that the unrestricted access to the Court of Session at first instance, especially for personal injury cases, is one of the great advantages of the current system and essential to ensure continued access to justice.

- 2.25 Recently there was a comprehensive review of the civil courts in Scotland carried out by Lord Gill. In November 2007 a formal consultation paper was published entitled "Scottish Civil Courts Review". The remit of the consultation was to review the provision of civil justice by the courts in Scotland, including their structure, jurisdiction, procedures and working methods with a view to improving access to civil justice in Scotland, promoting early resolution of disputes, making the best use of resources and ensuring that cases are dealt with in ways which are proportionate to the value, importance and complexity of the issues raised. The Report was published on 30<sup>th</sup> September 2009 and made recommendations for change including an increase in the exclusive jurisdiction of the sheriff court from its current level of £5000 to £150,000 so that cases are dealt with at the appropriate level of court hierarchy and at proportionate cost. The Report has been presented to the Scottish Ministers who will decide how to take forward the recommendations that the Review has made.

### **Republic of Ireland**

- 2.26 In the Republic of Ireland the jurisdictional limit of the District Court in civil matters corresponds to approximately £5,500. The Circuit Court has an original and appellate jurisdiction of all matters arising in the District Court. The Circuit Court has jurisdiction in civil matters where the claim

exceeds the jurisdiction of the District Court but where it is not in excess of an amount corresponding to approximately £33,000.

- 2.27 The jurisdictional limit of the District Court and the Circuit Court may be extended where the parties consent (section 77 of the Courts of Justice Act 1924 and section 22(1)(b) of the Courts (Supplemental Provisions) Act 1961). Sections 13 and 14 of the Courts and Court Officers Act 2002 provide for an increase in the civil jurisdiction of the Circuit Court to 100,000 euros and the District Court to 20,000 euros. These provisions have not yet been commenced though the matter is currently being actively considered by the judiciary. The High Court has full original jurisdiction in all matters and there is no upper limit on the amount of damages that may be awarded.

### **3. Reasons for Reform**

- 3.1 It is now sixteen years since the current jurisdictional limit of the county court was set at £15,000. There can be little argument that an increase in the limit is required even if only on inflationary grounds.

#### **Inflation**

- 3.2 The present limit of £15,000 was set in 1993. An increase to take account of inflation alone (based on the GDP deflator for the period 1993 to December 2007) would require a percentage increase of 46% leading to a financial limit of £21,919.50. A degree of rounding would tend to suggest that an increase to £25,000 would be sustainable on a largely inflationary basis. There are however other important considerations which would tend to suggest that an increase beyond £25,000 is merited.
- 3.3 The Court Service's provisional view is that an increase to £50,000 represents the best early opportunity for meaningful reform of the allocation of court business and maximising access to justice. The reasons lending to this view are explained below. Ministers will however also want to take the views of consultees into account before reaching a conclusion.

#### **Rationalisation of the distribution of civil business**

- 3.4 Many cases presently being heard in the High Court do not appear to require a High Court hearing in terms of quantum or complexity, or even in terms of value. A significant proportion of cases in the Queen's Bench Division are disposed of for sums below the county courts' financial limit of £15,000. In 2007, 2,302 writs were disposed of, of which only 40% were for over £15,000<sup>9</sup>. This indicates

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<sup>9</sup> Taken from Northern Ireland Court Service Judicial Statistics 2007

that the majority of cases issued in the High Court could be dealt with effectively in the county court and thus raises the question whether the resources of the High Court should be devoted to the resolution of relatively small value claims of any kind. It is therefore appropriate to consider whether the present jurisdictional limits allows for the best possible use of county courts in their conduct of civil business.

3.5 In the county courts, the majority of awards are well below the full value of the maximum level of the jurisdiction of £15,000. A detailed breakdown of county court figures for 2007 indicates that of 5856 civil bills disposed of in court -

- 10% resulted in awards of less than £1000,
- 26% resulted in awards between £1000 - £2999,
- 22% resulted in awards between £3000 - £5000, and
- 15% resulted in awards of over £5000 and of these only 64 cases were awarded over £10,000

The remaining 27% of civil bills were disposed of for an unknown amount.

The statistics showing the number of cases awarded over £10,000 may indicate either that county court judges do not consider "high" awards to be merited in the cases before them, or that higher value cases within the limit of the county court jurisdiction are removed to the High Court.

3.6 At present cases actually worth around £10,000 appear to issue in the High Court because of the difficulty in accurately assessing the value of cases before hearing. If there was an increase such as the figure suggested by inflation – approximately £25,000 – cases worth slightly more than £15,000 will most likely still issue in the High Court. This could result in a large number of contested remittal applications which would delay cases and increase costs.

3.7 In deciding the amount of an increase, consideration must be given to the need to delineate clearly the respective jurisdictions of the county court and the High Court. There is a distinct advantage in having a substantial increase on the present figure in order to establish a clear dividing line between cases suitable for the county court and those suitable for the High Court. A substantial increase will also have the advantage that this issue will not have to be considered again within a short time frame.

### **Improvements in business efficiency**

3.8 An increase in the jurisdictional limit of the county court would improve business efficiency in Northern Ireland courts. There has been a modest decline in the amount of civil work in county courts in recent years. An increase in the jurisdiction of the county courts would ensure that the volume of claims which do not merit the procedural complexity of High Court proceedings and which the Civil Justice Reform Group envisaged as being suitable for the county court will be heard in that court.

3.9 The law and the legal profession are becoming increasingly specialised and as the complexity of civil cases continues to rise, it has been suggested there should also be increased specialisation in the courts. If the jurisdictional limit is increased the county court would become efficient in dealing with the majority of medium complexity civil cases while the High Court would specialise in complex high value cases. This would have the advantage of making more efficient use of the courts' resources and specialisations.

3.10 An increase in the county court jurisdiction leading to a reduction in the number of cases in the High Court civil list should also mean that cases properly requiring a High Court hearing will be heard more quickly and will benefit from

the more comprehensive interlocutory procedures available in that court.

### **More efficient use of judicial resources**

- 3.11 The fact that judicial resources in the High Court are being utilised in low value, non-complex cases is not the most efficient use of High Court time. High Court Judges could instead be freed up to deal with other areas of work. A significant number of low value civil cases requiring the attention of at least one of 10 puisne judges in the High Court could be reallocated.

### **Access to justice**

- 3.12 Central to court administration is service to the public and access to justice at a level appropriate to the dispute in question. Cost both to the litigant and to the public purse are also key considerations.
- 3.13 It is arguable the present system, in which a large number of cases are issued in the High Court, does not provide the most accessible and affordable justice: parties and witnesses must attend the High Court in Belfast irrespective of distance, travelling time, cost and other practical considerations when a local county court could be much more convenient. This would bring significant benefits to parties, witnesses and local solicitors as the county courts are viewed as providing an efficient and practical mechanism to deal with the majority of civil cases.

### **Clinical negligence**

- 3.14 Some of the most difficult and complex cases in personal, evidential and legal terms are those involving allegations of negligence by members of the health care professions in the treatment of patients. Negligence may occur from delay

or failure to diagnose a condition, or to treat a condition, use of the wrong treatment, or failure to obtain consent. Professionals covered by clinical negligence include GP's, nurses, occupational therapists and dentists. Clinical negligence is a highly specialised area of law as it involves the issue of professional negligence and has legal principles and rules of procedure which differ from those covering other personal injury claims. At present claims of this nature may be determined in the county court or High Court depending on the value of the claim. There may be a case for reserving these cases for the High Court especially if the jurisdiction of the county court is substantially increased because of the complicated issues and evidence involved. An alternative could be to provide the county court judiciary with the power to remove cases to the High Court on the grounds of exceptional importance or complexity. This might apply not only to clinical negligence cases but to any case which would more appropriately be dealt with by the High Court. Such an amendment is likely to require primary legislation.

### **Thinking broadly**

- 3.15 Looking at recent developments in England and Wales, in particular the proposals for a single civil court, there may be a case for a more radical change in the county court jurisdiction by restructuring the system so cases are allocated to the High Court on the basis of complexity and not the value of a claim. Value does not necessarily reflect time or effort required in a particular case. Small value cases can raise difficult or novel issues whereas high value cases can be quite straightforward in terms of legal principles engaged.

3.16 Creating an unlimited jurisdiction would however require primary legislation as the 1980 Order is currently framed in such a way as to determine jurisdiction on the basis of prescribed financial limits. This option would also require some adjustment to the way in which proceedings are initiated to identify those cases which are complex and therefore deserving of High Court attention. Significant consideration would be required as to how the process of allocation and listing of cases could be accommodated.

## 4. Practical issues

- 4.1 In considering an increase in the county court jurisdiction there are a number of practical issues to take into account.

### **Impact on judicial complement**

- 4.2 We recognise that an increase in the business of the county courts is likely to result in the need for an increase in the complement of county court judges. The increase in judicial complement would depend on the extent of the jurisdictional increase and the predicted increase in the number of cases. An assessment would be carried to take account of the degree of decline in current civil business as well as the present volume of Crown Court cases and other work such as extradition and appointments to outside bodies (such as the Judicial Studies Board, the Parole Commissioners and the Judicial Appointments Commission) which county court judges undertake.
- 4.3 At present there are 17 full time county court judges and 4 district judges. There are 31 deputy county court judges and 5 deputy district judges. The Northern Ireland Court Service has considered the number of sitting days that a county court Judge is required to sit, the time required for the preparation and writing of judgements in all areas of their work, and the demands to which reference has already been made in the preceding paragraph. It has also considered that normally a judge can dispose of 10-12 civil bills in one sitting. Allowing for the possible added complexity of the high level cases and the increased number of interlocutory applications, an increase in the county court judicial complement would seem to be required<sup>10</sup>. The exact addition to complement would have

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<sup>10</sup> The gross annual cost in providing a county court judge is £191,265.00 and the gross annual cost of providing a tipstaff for the judge is £18,167.00 giving a total annual cost of £209,452.00

to be the subject of careful consideration in close consultation with the judiciary.

### **Administrative capacity of the county courts**

- 4.4 The Court Service recognises that the main impact of an increase in the general civil jurisdiction will be a corresponding increase in the volume of business in the county courts. That of course can operate as a benefit but we need to be sure that county courts have the capacity to meet additional demand.
- 4.5 Judicial statistics have been used as indicators to summarize the potential effects on business levels within both the county court and High Court. The data used for this analysis is based on 2005, 2006 and 2007 civil bills and Queens Bench writs received or dealt with during that period.
- 4.6 The statistics show that civil work in the county courts has been declining (albeit modestly) in recent years; 13,008 ordinary civil bills were entered in 2005 and 12,604 in 2007 – a 3% decrease<sup>11</sup>.
- 4.7 It is recognised that cases of higher value and complexity may require more court time and allowance also needs to be made for an increased number of interlocutory applications. We would continue to analyse case volumes to ensure there is ongoing court capacity so court users continue to be offered a high standard of service. This may include the redeployment of court staff between court offices.

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<sup>11</sup> As these figures are taken from the judicial statistics for 2005 to 2007, more recent case volumes may vary this trend

## **Adequacy of accommodation**

- 4.8 An increase in the jurisdictional limit leading to an increase in the number of cases proceeding to the county court will inevitably put pressure on existing courthouses in each division. The facilities available at the various county court venues, including consultation facilities, public waiting areas and disability access, differ. However there is at least one courthouse in each of the 7 county court divisions which has facilities of sufficient quality and suitability for hearing higher value civil cases.
- 4.9 A flexible approach to scheduling of cases, which occurs at present (for example ensuring that a case with a witness in a wheelchair is allocated to a court with full wheelchair facilities) will continue to ensure that more limited facilities at some venues do not give rise to difficulties. Effective management of court lists to ensure that civil cases are not mixed in with other business and that sufficient judicial resources are available to deal with civil work should meet any concerns.

## **Costs**

- 4.10 The costs of most proceedings are borne by the losing party. Costs in the High Court are greater than in the county court. The costs paid to solicitors and barristers in county court proceedings are prescribed in the County Court Rules (Northern Ireland) 1981 in a fixed scale up to the present jurisdictional limit of £15,000. Costs are dependent on the value of the claim.
- 4.11 Costs in the High Court, which are not agreed by the parties, are assessed for the work carried out in each individual case through a process of taxation. They are “taxed” (i.e. assessed as to amount) by the Taxing Master in the High Court. Cases presently in the High Court which

result in awards under £15,000 usually still attract High Court costs which may have led to a perverse incentive to issue in the High Court rather than the county court as despite not receiving an award of greater than £15,000 costs were the same. If the limit was increased this will change and cases which should properly be issued in the county court will be appropriately remunerated on the fixed scale.

- 4.12 Should the county court jurisdictional limit be increased the implications for county court scale costs will be considered by the County Court Rules Committee. The Civil Justice Reform Group recognised that one of the strengths of the county court system was the certainty of the fixed costs system<sup>12</sup>. This view was shared by Lord Justice Jackson in his Report “Review of Civil Litigation Costs”<sup>13</sup> which recommended the introduction of fixed costs in the Fast Track in England and Wales as it gives all parties certainty as to the costs they may recover if successful, or their exposure if unsuccessful. Fixed costs are also proportionate and avoid the further process of costs assessment, or disputes over costs which can generate further expense.
- 4.13 The Rules Committee may consider devising new bands in the fixed scale up to any new jurisdictional limit. Alternatively it may consider there is a case for costs to be taxed in the same way as the high Court for the most high value claims. The outworking of any jurisdictional increase on the issue of county court costs will raise its own set of significant and complex issues. This will require careful consideration and will most likely need to be the subject of separate consultation. We invite any initial views you may have in relation to costs in the questionnaire which is published separately.

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<sup>12</sup> Paragraphs 8.45 & 8.47 of the Review of the Civil Justice System in Northern Ireland, Interim Report, April 1999

<sup>13</sup> Chapter 16 of the Review of Civil Litigation Costs, Final Report, January 2010

## Court fees

4.14 It is government policy to recover the full cost of conducting civil business in the courts. Fees are prescribed for the different court tiers and are related to the value of the claim. Fees for county court proceedings are set in the County Court Fees Order (Northern Ireland) 1996. The Order was most recently amended in September 2007 following a public consultation exercise<sup>14</sup>. If the volume of county court business increases such as to require for example additional judicial resources at that tier then the cost of providing the service will also increase. The overall number of cases as between the High Court and county courts should not however be affected by jurisdictional adjustments which would suggest that, taken in the round, the cost of civil business should not significantly alter. This is something however which will have to be the subject of separate consideration and, if it were necessary to do so, a separate consultation exercise.

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<sup>14</sup> S.R. 2007 No. 378

## 5. The District Judges' & small claims court jurisdictions

### District Judges' court jurisdiction

- 5.1 District Judges' courts hear cases where the amount claimed is below £5000. This limit was set in 2001<sup>15</sup> following a recommendation of the Civil Justice Reform Group.
- 5.2 Based on judicial statistics this means that District Judges deal with approximately 37% of civil bills disposed of. If there was an increase in the jurisdiction of the county court it is reasonable to suppose that there should be an increase in the District Judges' jurisdiction. This would reduce the impact on county court judges but in turn may require an increase to the District Judge complement.
- 5.3 An inflationary based increase between 2001 and 2008 would mean a percentage increase of 21% and take the limit to £6,057.80 which could be rounded up to £7000. This would seem proportionate with, say, an inflationary increase in the general civil jurisdiction (based broadly on inflation) to £25,000. If however as proposed the general jurisdiction were increased to £50,000 it would leave a significant gap between the two jurisdictions.
- 5.4 The existing limit could be doubled which would take the jurisdiction to £10,000. At present the District Judges' jurisdiction is approximately one-third of the county court jurisdiction. An option therefore is to pitch the District Judges' new jurisdiction towards one-third of the potentially new county court general jurisdiction of £50,000. A figure of £15,000 would seem consistent. This is the Court Service's preferred view as this limit represents an appropriate demarcation of the respective court jurisdictions for the effective delivery of civil justice.

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<sup>15</sup> S.R. 2001 No. 67

## Small claims court jurisdiction

- 5.5 Aside from considering the general civil jurisdiction of the county court it is desirable to keep the small claims jurisdiction under review. Apart from the tribunal system it is probably the legal forum best known to most members of the public as a place to resolve disputes. It is important therefore to ensure that it continues to meet the needs of court users particularly consumers and small businesses. At the same time the advantages of its speed and informality could become disadvantageous if extended to unsuited cases.
- 5.6 At present the small claims court can hear cases up to £2000 (except for certain types of claims including personal injury cases). This limit was set in 2001 following a recommendation of the Civil Justice Reform Group.
- 5.7 Any increase in the current limit must take into account the relative informality of the proceedings and the absence of legal representation. The intention was to apply the simpler procedures to genuinely small claims whilst ensuring that higher value cases are dealt with in more formal county court proceedings.
- 5.8 Anecdotally we understand that few cases are issued at the small claims limit of £2000 and this usually applies only where general damages are claimed. Furthermore, in only a small number of cases are excess amounts above £2000 abandoned to bring the case within the small claims court, whilst the number of cases where a civil bill is issued for an amount between £2000 and £3000 is small.
- 5.9 An inflationary based increase between 2001 and 2008 would take the small claims limit to approximately £2500. Other alternatives are to increase the limit slightly more than inflation to £3000 or even further to £5000 to mirror

the limit of the small claims track in England and Wales. A further option would be to adopt an incremental approach with an increase to £3000 followed by further staged increases at 12 month intervals to £4000 and perhaps thereafter to £5000. The Court Service's preferred view is an increase to £3000 which would ensure the small claims court continues to provide an efficient and practical forum for court users in low value disputes.

- 5.10 Alongside this consultation paper we will be carrying out a sample survey of small claims court users to engage their views on the appropriate financial jurisdiction.
- 5.11 In addition to the financial limitations, certain types of proceedings are also excluded from the small claims court. Claims for damages for personal injury or road traffic accidents are excluded by the County Court Rules<sup>16</sup>. The exclusions reflect that personal injury claims rarely fall within the monetary limit of the small claims procedure in any event and usually these cases tend to be more complex and therefore unsuited to being dealt with by unrepresented claimants. Claims for damage only road traffic accidents are also excluded as this could prejudice a later claim for personal injury in the county court arising out of the same accident.
- 5.12 This matter was reviewed by the Civil Justice Reform Group. In its final report the group concluded that actions for personal injuries and road traffic accidents should continue to be excluded from the small claims court in order to protect the interests of unrepresented claimants.
- 5.13 At the same time the exclusions do also operate to prevent genuinely straightforward minor personal injury or road traffic accidents being disposed of in the simplest form.

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<sup>16</sup> Order 26 rule 2 of the County Court Rules (Northern Ireland) 1981

- 5.14 It is also noted that in England and Wales the small claims track does include personal injury claims up to a value of £1000. Furthermore, the European Small Claims Procedure (“ESCP”) which was brought into force on 1<sup>st</sup> January 2009 provides for claims up to a value of 2000 euros to be heard in the small claims court. Types of claims included are certain personal injury actions and road traffic related claims whilst some matters such as employment claims (allowed under the national small claims procedure) are excluded<sup>17</sup>.
- 5.15 Whilst the exclusion of certain types of claims is a matter for the County Court Rules Committee, and not the primary subject of this paper, any views which consultees may express will be conveyed to the County Court Rules Committee.

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<sup>17</sup> Regulation EC No 861/2007

## **6. Options for Reform**

- 6.1 This section summarises the options for the proposed reform of the county court jurisdictions and identifies the preferred way ahead.

### **The county court**

#### **Option 1: An increase to £25,000**

The county court general civil jurisdiction should increase from £15,000 to £25,000.

This option would be only slightly in excess of an inflationary based increase and would be the minimum of any increase. This option would be the least likely to impact on court business and capacity and at the same time unlikely to effect any realignment or spread of civil business with probably as many cases continuing to proceed to the High Court as, in effect cases, worth slightly more than £15,000 will still issue in the High Court.

#### **Option 2: An unlimited jurisdiction**

The county court general civil jurisdiction should become unlimited.

This option would mean cases would be allocated on the basis of complexity and not the value of a claim. We recognise that this option is quite radical. It will require primary legislation to provide for an unlimited jurisdiction as Article 22 of the 1980 Order is framed in such a way as to require some financial limit to be set. It may also require some adjustment to the way in which proceedings are initiated to identify those cases which are complex and therefore deserving of High Court attention.

### **Preferred option: An increase to £50,000**

The preferred option is to increase the county court general civil jurisdiction to £50,000 with further consideration being given to the exclusion of clinical negligence cases which would be reserved to the High Court.

This option is viewed as the most impactful option which will realign business from the High Court to the county court so cases are dealt with effectively at their appropriate level. It is important to create “clear blue water” to delineate clearly the respective jurisdictions of the county court and the High Court which such a substantial increase would achieve. Such an increase would also help to improve the level of service to the public in terms of convenience, accessibility and affordability.

## **District Judges’ Court**

### **Option 1**

The District Judges’ court jurisdiction should increase from £5000 to £7000 in line with inflation (with a degree of upward rounding).

### **Option 2**

The District Judges’ jurisdiction should increase from £5000 to £10,000.

### **Preferred Option**

The District Judges’ jurisdiction should continue to be approximately one-third of the county court limit. If the county court jurisdiction is increased to £50,000 this would suggest the District Judges’ jurisdiction should increase to £15,000.

## **Small Claims Court**

### **Option 1**

The small claims jurisdiction should remain unchanged.

### **Option 2**

The small claims jurisdiction should increase to £2500 which is in line with inflation.

### **Option 3**

The small claims jurisdiction should increase to £5000 either immediately or in stages. An increase to £3000 could be made initially followed by further staged increases at 12 month intervals to £4000 and thereafter to £5000.

### **Preferred Option**

The small claims jurisdiction should increase to £3000 which is slightly above an increase with inflation but would avoid an early reconsideration of the matter.

## 7. How to respond

7.1 The final date for responses to this consultation is **26th May 2010**.

7.2 Preferably responses should be submitted in the questionnaire attached and sent to:

**E-mail:** [communicationsgroup@courtsni.gov.uk](mailto:communicationsgroup@courtsni.gov.uk)

**Post:** Paula Stevenson  
Consultation Co-ordinator  
County Court Jurisdiction Consultation  
Northern Ireland Court Service  
Laganside House  
23-27 Oxford Street  
Belfast  
BT1 3LA

**Tel:** 028 90412386

**Fax:** 028 90412390

**Textphone:** 028 90412920

7.3 When responding, please state whether you are responding as an individual or representing the views 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.

7.4 This consultation document is available at [www.courtsni.gov.uk](http://www.courtsni.gov.uk)

7.5 A list of consultees who have been notified about this consultation is presented at Appendix 2.

## **Confidentiality**

- 7.6 In line with the Northern Ireland Court Service's policy of openness, at the end of the consultation period copies of the responses we receive 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 Northern Ireland Court Service 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.
- 7.7 We will handle any personal data which you provide in accordance with the Data Protection Act 1998.
- 7.8 You should also be aware that there may be circumstances in which the Northern Ireland Court Service 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.
- 7.9 Please contact Angela Barratt the Northern Ireland Court Service Consultation Co-ordinator, at the address above to request copies of consultation responses. An administrative charge may be made to cover photocopying of the responses and postage costs.

## **Complaints**

- 7.10 If you have any comments about the way this consultation has been conducted, these should be sent to the Head of Communications Group at:

E-mail: [communicationsgroup@courtsni.gov.uk](mailto:communicationsgroup@courtsni.gov.uk)

By Post: Northern Ireland Court Service  
Laganside House  
23-27 Oxford Street  
Belfast  
BT1 3LA

Tel: 028 9032 8594

Fax: 028 9072 8942

### **Additional Copies**

- 7.11 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 Co-ordinator with your specific request.
- 7.12 This document is available in alternative formats on request. Please contact the Information Centre at the address above with your request.

### **What happens next?**

- 7.13 We will aim to publish a summary of the views expressed by consultees and the Department's response on the Northern Ireland Court Service website within three months of the end of the consultation period.

### **Plans for making the results public**

- 7.14 In accordance with criterion 6 of the Cabinet Office Code of Practice on written consultation, 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.

- 7.15 The information you send us may need to be passed to colleagues within the Northern Ireland Court Service 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 e-mail, 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

### County Courts (Northern Ireland) Order 1980 (No. 397 (N.I. 3))

#### *Power to increase Jurisdiction*

#### **Power to increase civil jurisdiction of county courts**

22.— (1) If it appears to the Lord Chancellor, after consultation with the Lord Chief Justice, that—

- (a) a sum specified in any of the foregoing provisions of this Part or in Article 30(1) or (3) should be increased, or
- (b) where any other statutory provision limits the jurisdiction of county courts by reference (howsoever expressed) to a sum of money, that sum should be increased,

the Lord Chancellor may<sup>F1</sup> by order, specifying the provision and the sum in question, direct that the provision shall be amended so as to substitute for that sum such larger sum as may be specified in the order.

(2) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

#### **Annotations:**

**F1** prosp. insertion by 2005 c. 4

## APPENDIX 2

### Consultees

Age Concern Northern Ireland  
Alliance Party of Northern Ireland  
Antrim and Ballymena Solicitors Association  
APIL (Association of Personal Injury Lawyers)  
Armagh Solicitors' Association  
Chief Officers 3rd Sector  
Association of District Judges  
Bangor Solicitors Association  
Bar Council  
Belfast Solicitors' Association  
CBI Northern Ireland (Confederation of British Industry's)  
Children's Law Centre  
Citizens Advice Bureau  
Coalisland & Dungannon Solicitors' Association  
Coleraine & Ballymoney Solicitors' Association  
Committee for the Administration of Justice  
Cookstown Solicitors' Association  
Council of Her Majesty's County Court Judges  
Criminal Justice Inspection Northern Ireland  
Crown Solicitor's Office for Northern Ireland  
Democratic Unionist Party  
Departmental Solicitors Office  
Disability Action  
Down and District Solicitors' Association  
Equality Commission for Northern Ireland  
Federation of Small Businesses  
Fermanagh Solicitors' Association  
FOIL (Federation of Insurance Lawyers)  
Foyle Solicitors' Association  
General Consumer Council for Northern Ireland  
Green Party  
Help the Aged  
High Court Judges  
Institute of Professional Legal Studies  
Law Centre (Northern Ireland)  
Law Society of Northern Ireland  
Limavady Solicitors' Association

Lisburn Solicitors' Association  
Lord Chief Justice's Office  
Magherafelt Solicitors' Association  
Newry & Banbridge Solicitors' Association  
Northern Ireland Commissioner for Children and Young People  
Northern Ireland Council for Voluntary Action (NICVA)  
Northern Ireland Human Rights Commission (NIHRC)  
Northern Ireland Law Commission  
Northern Ireland Legal Services Commission  
Northern Ireland Members of Parliament  
Omagh Solicitors' Association  
Personal Injuries Bar Association  
Portadown Solicitors Association  
Progressive Unionist Party  
SDLP  
Sinn Fein  
Strabane Solicitors Association  
Ulster Unionist Party



NORTHERN IRELAND  
**COURT  
SERVICE**



INVESTOR IN PEOPLE

For further information on the work of the Northern  
Ireland Court Service please contact

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