



THE BAR  
OF IRELAND

*The Law Library*

Submission by Council of The Bar  
of Ireland to the District Court Rules  
Committee on the review of the  
scale of District Court costs

7 November 2019

## **Introduction**

The Council of The Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,200 practising barristers.

The Council is pleased to make this submission in respect of the review of the scale of District Court costs. Order 53, r. 2(4) of the District Court Rules 1997 to 2014 (as amended by District Court (Civil Procedure) Rules 2014, S.I. No. 17 of 2014) provides that the schedule of costs must be revised no less frequently than once every three years. Notwithstanding this, the last revision of District Court scale costs appears to have taken place in October 2013. The Council’s submission on that occasion was made in response to the scales which were proposed on foot of the increase in the jurisdiction of the District Court from €6,384 to €15,000 pursuant to the Courts and Civil Law (Miscellaneous Provisions) Act 2013, the relevant provisions of which were commenced by the Courts and Civil Law (Miscellaneous Provisions) Act 2013 (Jurisdiction of District Court and Circuit Court) (Commencement) Order 2013 (S.I. No. 566 of 2013), with effect from 4 February 2014.

Order 53, r. 2 of the District Court Rules 1997 to 2014 provides, in respect of scales of costs:

“2. (1) Save as otherwise provided, the costs specified in each scale in the Schedule of Costs are the only lawful costs.

(2) The Court may, where appropriate in the special circumstances of a case, to be specified by the Court, award an amount for costs and/or counsel’s fees in excess of the amount provided in the Schedule of Costs.

(3) The costs in the Schedule of Costs are in every instance exclusive of and in addition to any sum allowed as recovery of value-added tax and all actual and necessary outlay as is allowed.

(4) The Schedule of Costs must be revised no less frequently than once every three years.

(5) In any case where the Court is of the opinion that there is no appropriate scale of costs provided, it may measure the costs.

(6) In this rule:

‘actual and necessary outlay’ must include a sum for miscellaneous outlays set out under the heading “Schedule of Outlays” in the Schedule

of Costs to include postage, photocopying, registered post, fax and sundries and the Schedule of Costs must also be read accordingly.”

Order 53, r. 13 provides:

“13 Scale fees

13. Where counsel is allowed, the scales of counsel’s fees in the Schedule of Costs apply, provided that in any proceedings not covered by these scales the fees must be determined by the Court having regard to the scales and to the amount involved in the case.”

Counsel’s fees are set out in the Schedule of Costs as follows:

13. Counsels’ Fees	
(1) in any defended case of contract, breach of contract, tort and claims for damages unconnected with contract (2) in any defended case of ejectment for overholding or non-payment of rent (3) where awarded under the Malicious Injuries Acts 1981 and 1986 to a respondent or to or against a ratepayer	
To the claimant's counsel when the amount recovered, or to the respondent's counsel when the amount claimed, in any defended case of contract, breach of contract, tort and claims for damages unconnected with contract— To the claimant’s or respondent’s counsel when the annual rent in any defended case of ejectment for overholding or non-payment of rent— When the amount of compensation claimed under the Malicious Injuries Acts 1981 and 1986—	
	€
Exceeds €2,000 and does not exceed €3,000	500
Exceeds €3,000 and does not exceed €4,000	550
Exceeds €4,000 and does not exceed €5,000	600
Exceeds €5,000 and does not exceed €7,000	750
Exceeds €7,000 and does not exceed €9,000	800
Exceeds €9,000 and does not exceed €11,000	850
Exceeds €11,000 and does not exceed €13,000	950
Exceeds €13,000 and does not exceed €15,000	1,050

Order 53, rules 28, 29 and 30 deal with counsel's fees as follows:

“28 Not allowed where sum does not exceed €2,000

28. (1) Subject to rule 2(2), in any award of costs in any civil proceedings in the Court a fee for counsel may not be included—

(a) in any action in contract, breach of contract, tort or in claims for damages unconnected with contract, where the amount recovered by the claimant or, where the claim was dismissed, the amount claimed against the respondent does not exceed €2,000, and

(b) in any landlord and tenant proceedings for overholding or non-payment of rent, where the annual rent does not exceed €2,000.

29 Court to certify for counsel

29. In the award of costs in any civil proceedings in the Court to which rule 28 does not apply, a fee for counsel may not be included unless the Court certifies that, in its opinion, the employment of counsel was necessary for the attainment of justice or for enforcing or defending the rights of the party concerned.

30 No separate counsel's fee for barrister employed on a full-time basis

30. Where a barrister who acts as advocate for a party in any civil proceedings in the Court to which rule 28 does not apply is employed on a full-time or exclusive basis by the party's solicitor or by the party, a fee for counsel may not be included in the party's costs in addition to any solicitor's scale fee.”

### **Submission of the Council of The Bar of Ireland**

While the Council of The Bar of Ireland (“the Council”) accepts that a scale of costs is an appropriate means for setting costs in the District Court, it has some concerns about the scales as they currently stand given the fact that the effect of the 2014 Rules is to increase the workload in advance of the hearing of the case in the District Court. The Council makes the following observations on the two distinct areas in which fees arise;

(a) **Quantum of brief fees:** given the work now undertaken by the District Court, the Council is of the view that the current level of fees is too low and ought instead to be adjusted as set out in the appended scale of costs. Whilst the

Council is suggesting an increase in some of the levels of costs, the Council is very alert to the fact that costs should be set at an appropriate level for the District Court. The Council submits that as a result of the introduction of the 2014 Rules, the work of Counsel in running a trial in the District Court is as complex as that of the Circuit Court. In this regard, particular issues are now expressly pleaded by the parties and the pleading points can form a part of the trial, (for example points pleaded on the Statute of Limitation, the pleading of contributory negligence against a Plaintiff, pleas of non-compliance with statute). Accordingly, despite the fact that the sums contested are smaller, the level of professional work involved is often similar to a case being heard before the Circuit Court. The Council submits that regard must be had to this when **considering** the scale of fees.

**(b) No scale for drafting:** This is not a matter that is exclusively an issue for barristers but also is an issue for solicitors. The District Court (Civil Procedure) Rules 2014 represented a seismic shift in procedure from the previous District Court Rules. The District Court is now a court that requires detailed documentary pleadings. Many of these pleadings, such as in personal injuries actions, are of considerable complexity and are time consuming to prepare. Accordingly, it is submitted that the scales ought to make express allowance for drafting work in respect of each individual item of drafting, separate and distinct from the fee as set out in the scale, currently. This separate category of fees should include an individual provision for drafting a pleading, motions and affidavits and pre-trial consultations with clients as set out in the schedule below.

The Council is mindful of the need to ensure that costs in the District Court are maintained at a realistic and economical level for litigants. At the same time, however, the Council submits that costs fixed in respect of legal practitioners' fees must be set at a realistic level; and while the question of economics is of course relevant to this, due regard must also be had to the interests of justice. While the Council accepts that, as a matter of practicality, a scale of costs is an appropriate means for setting costs in the District Court, there must also be some mechanism to ensure that where work is done, it is covered by the costs.

### **District Court Scale Fees**

The District Court scale fees have not been increased since February 2014 and it is the Council's view that they are now too low, as they do not take into account the level of work being performed by Counsel, particularly at the pre-trial stage of a case. It is the Council's view that this is an opportunity to increase the level to a fair yet competitive rate.

As the Court is one of full pleadings, express provision should also be made for preparatory work, as follows:

Draft civil process/defence:	€250
Draft notice of motion:	€75
Draft affidavit:	€150
Brief motion:	€200
Advice on proofs:	€250
Consultation:	€150
Notice for particulars:	€100
Replies to particulars:	€100

<b>Briefs</b>	<b>Fee proposed</b>	<b>Current fee</b>
13,000 – 15,000:	€1,100	€1,050
11,000 – 13,000:	€1,000	€950
9,000 – 11,000:	€900	€850
7,000 – 9,000:	€850	€800
5,000 – 7,000:	€800	€750
4,000 – 5,000:	€750	€600
3,000 – 4,000:	€700	€550
2,000 – 3,000:	€650	€500
Less than €2,000:	€500	See O. 53, r. 28

It is further submitted that the District Court scale of costs does not provide a fee for Counsel for the consideration and preparation of Discovery either upon receipt of a voluntary request or upon the making of an Order for Discovery by the Court. When required, this involves the detailed consideration of documents to ascertain their

relevance and necessity as regards the request or the Order made. It further involves the drafting of an affidavit together with the required schedule of documents. The latter often presents a very time consuming exercise. It is respectfully submitted that a fee of €120 plus VAT should be included for the drafting of the affidavit (as set out previously) and a fee of €180.00 for the time spent considering the papers and preparing the schedule of documents. Taken together, it is a total fee of €300.00 plus VAT for this part of the discovery process.

### **Conclusion**

The Council is grateful for the opportunity to contribute to the review of the scale of District Court costs and trusts that the above submissions are of assistance to the Rules Committee. The Council remains willing to engage further with the Rules Committee on the topic were that to be considered of assistance.



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