From: [redacted]
Sent: 13 October 2026 19:24
To: [redacted] Thomas [redacted]
Subject: Message for the Justice Committee

> You don't often get email from [redacted]

Dear Justice Committee

I have been asked to contact you on behalf of the FOIL Northern Ireland working group. As you may be aware, FOIL is a membership organisation made up of law firms which act predominantly for insurance clients and is an active lobbying organisation on civil justice reform. It is the only organisation which represents solicitors who act for defendants in civil proceedings.

FOIL members have a keen interest in the proposals to increase the financial jurisdiction of the County Court and have followed the progress of the change closely. We had understood that, upon referral of the proposal to the Justice Committee, there would be a four-week Call for Evidence, giving an opportunity for stakeholders to comment.

We are now aware that the Call for Evidence was published on 18 September and closed 12 days later, on 30 September. It is of concern that a proposed change, with significant implications for civil justice, was consulted upon for such a short period and it seems likely that, as in FOIL's case, stakeholders that would have wished to put forward a response have missed the opportunity to do so.

We have had the opportunity to communicate with officials from the DOJ on the issues and to meet with them last month. Whilst accepting that the Call for Evidence has closed, perhaps we could ask for our letter to the DOJ, raising several concerns at the change, to be accepted as a late submission: I attach above. We hope it may be submitted in time for consideration at the meeting of the Committee on 15 October.

Our contact with the DOJ and, in the past with the Justice Committee, is much valued. We appreciate the opportunity to put forward information based on our practical experience of civil justice before the courts and hope it assists in presenting a full picture of law in practice in Northern Ireland. Justice has been a very important and active area of reform over recent months, which seems likely to continue, particularly with the current focus on 'Enabling Access to Justice'. FOIL would welcome an opportunity to engage with members of the Justice Committee on these wider issues and would be happy to arrange a short meeting by video if that would be of assistance.

Yours sincerely

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By email

13 August 2026

Dear Department of Justice

Our thanks for the letter regarding the proposed increase in the general civil jurisdiction of the County Court.

Having had an opportunity to discuss the issues it raises with FOIL members, FOIL would reiterate its support for the increase, as set out in its response to the consultation on the change in 2021 but, as indicated then, we have concerns regarding the resources allocated to the County Courts. The Gillen Review itself recommended consequential reforms in the event that the County Court jurisdiction limit was raised to £60,000: at least three new Civil Centres to be established, and the assignment of at least five County Court judges for fixed periods to deal exclusively with civil and equity matters. FOIL is aware that some steps have been taken to address these points, which is welcome, but we would welcome confirmation on whether the Department is planning to implement any further recommendations prior to the new limit coming into force.

Obviously, a key issue in the successful increase of the jurisdictional limit is the extension of current Scale Costs. FOIL has significant concerns regarding the proposals put forward by the NI CCRC in the recent consultation and has submitted a response. In

particular, there are concerns at the piece-meal approach to changes in the Scale over recent years which FOIL believes has rendered it an unreliable tool in delivering fair and reasonable remuneration. FOIL believes a fundamental review of the Scale is overdue and that the proposed increase should be postponed until that can be undertaken. FOIL's full response is attached.

In addition to concerns around costs, FOIL members have concerns at the impact on the courts.

The raised County Court jurisdiction is likely to increase the pressure on court capacity. FOIL believes one way this can be addressed is by greater use of remote hearings. In particular, the default position on review lists could be listing for a remote hearing.

The uplifted jurisdiction will also increase the number of claims in the County Court involving significant expert evidence. At present, it will often be the case that in the High Court an expert witness will attend in person and be involved in several claims on the same day. This is much more difficult to achieve in the County Court. It is likely to create delay in cases being heard and may potentially reduce the availability of experts prepared to be involved in County Court claims. Although the assumption within the rules is that expert evidence is agreed unless stated to be otherwise, in practice oral evidence is often the default. The difficulties arising from higher value claims in the County Court could be addressed by reverting to the formal position – that there is no requirement for formal proof unless expressly required.

FOIL would welcome an opportunity to engage with the Department, to discuss the issues outlined above. We would be happy to find a convenient time to meet with you by Teams. Could we ask please for a meeting to be arranged?

Yours sincerely

[redacted]
Northern Ireland Representative
FOIL, the Forum of Insurance Lawyers

On behalf of the FOIL Northern Ireland working group.

A response by the Forum of Insurance Lawyers to the Northern Ireland County Court Rules Committee consultation on Scale Costs.

Question 1

Do you agree that the guiding principles used in the 2001 Review should be applied?

FOIL agrees that the overriding principle with regard to setting Scale Costs is to ensure those costs are "fair and reasonable".

In general FOIL agrees that the 2001 guiding principles are applicable but would note a growing tension between principles (c) and (d).

Under (d), the Civil Justice expects "*the advantage of the Northern Ireland civil justice system being less expensive than that in England and Wales to be maintained in future and that the Rules Committee would be alert to keeping the costs of litigation in the County Courts in Northern Ireland as economical as possible, consistent with the need to ensure that professional services are properly remunerated."*

With Fixed Recoverable Costs in England and Wales now extended (from October 2023) to claims worth up to £100k, delivering lower costs than apply in Northern Ireland to claims of similar value, the recognised advantage of a less expensive civil justice system in Northern Ireland is withering.

Principle (c) notes that "*fast track costs are different from the County Court scale costs and operate on a different premise and for a different purpose."* FOIL would agree that it is not possible to merely compare Scale Costs and fixed recoverable costs as the regimes are different, but the fact that access to justice in England and Wales in these lower value claims is being delivered at considerably less cost should be a circumstance the Committee takes seriously: it places additional emphasis on the need to ensure the "*proper*" remuneration of professional services is considered against that backdrop.

The principles as set out are now 25 years old. Whilst in general terms they remain relevant, their application needs to reflect current practice. As the County Court financial jurisdictional level has increased, and as it is to increase much more significantly this autumn, principle (e) – the maintenance of a measure of proportionality between the amounts awarded and costs – needs to be applied carefully. It is obviously important to recognise that in lower value claims at the bottom of the Scale, costs may appear disproportionate in recognition of the fact that there is an irreducible amount of work required to bring a claim regardless of the damages awarded. The same nuance should also be applied with regard to claims of higher value. An increase in damages does not inherently mean an increase in the work required to bring the claim and for costs to merely

rise to reflect higher damages awards is likely to result in excessive costs awards in these higher value claims.

Whilst FOIL is supportive of the "swings and roundabouts" principle, it has raised in previous consultation responses that a shift in the make-up of average caseloads has resulted in the operation of the principle becoming unfair.

Since the development of the 2001 principles, the volume of non-personal injury claims has increased. In practice, the majority of these claims are for vehicle damage and credit hire, where often the only issue is quantum. With no need for work on medical evidence, rehabilitation, loss of earnings etc, these claims can be finalised with much less work that that required in personal injury/disease claims.

Where a legal firm is handling a mixed caseload, the volume of personal injury claims is not sufficient to balance the reduced workload in non-personal injury claims, resulting in excessive remuneration overall. The difference between a personal injury/disease claim and a non-personal injury claim is too significant to be addressed by way of the "swings and roundabouts" principle, designed to deal with a mixed case load which will typically have some straightforward claims and some more complex claims. In contrast, PI and non-PI claims are two very different work types where the typical features of each are not within the same range.

FOIL believes an adjusted scale should be introduced for non-personal injury/disease claims. To avoid introducing unnecessary complexity into the system FOIL believes that appropriate adjustment could be built in through a simple percentage reduction to Scale Costs for claims which do not include PI/disease.

Question 2

Do you agree with the insertion of additional bands at intervals of £5,000?

Yes. FOIL would not agree that the costs for a claim worth £5,000 more should automatically be entitled to higher costs than a claim in the band below, but as the present system works on the basis of £5,000 bands it makes sense to maintain that structure for the extended financial bands.

Question 3

Do you agree with the insertion of three additional bands at the proposed intervals?

FOIL members are not involved in defamation claims and it therefore makes no comment.

Question 4

Do you agree with the Committee's approach to establishing fair and reasonable remuneration in respect of the new six bands?

No, FOIL does not agree with the proposed approach.

As a general point, FOIL would highlight that the last fundamental review of Scale Costs was in 2001- a quarter of a century ago. Changes to business practice, social trends and the introduction of new technology have transformed legal practice since then. The issues reflected in the Scale Costs then are not the same as now.

It is of concern that almost all the substantive changes to Scale Costs since then have focused purely on reflecting inflation.

When the financial jurisdiction limit of the county court was increased from £15,000 to £30,000, the approach to review of the Scale Costs to reflect that change was the same as that proposed now – the addition of further bands. During the 2011/2012 review, the Committee proposed a review taking into account practice and procedural changes and the operation of the Pre-Action Protocols, but that detailed review was postponed. It was anticipated that a fuller review would be appropriate when Lord Justice Gillen's Review of Civil and Family Justice was concluded. That work was completed in 2017 but that detailed review has not taken place. Although reviews of the regime have been undertaken on a two-or three-year basis since then, the changes have been largely limited to implementing increases to reflect inflation.

In effect, largely the same system is in place as in 2001. Reviews have used the same building blocks to increase costs, without any detailed consideration of whether the structure is sound. FOIL believes the lack of a fundamental review for such a long period, coupled with significant inflationary increases, has rendered the scale an unreliable tool in delivering fair and reasonable remuneration. For example, as part of the review FOIL believes there should be consideration of the average hours required to conclude a County Court claim. Consideration should also be given to formalising the previously accepted custom of reduced scale costs in the event that a claim settles before a Certificate of Readiness. Over the past year, members of the plaintiff representative community have expressed a view that the principles in *Cathcart v McClay* were never good law and, as a result, there has been a reluctance to adhere to the 25-year convention for claims which settle either pre-issue or after issue but before a Certificate of Readiness, ¾ scale costs are payable. The issue is still being resolved through the courts but the matter could be clarified and concluded by way of amendment to the rules, thereby saving costs and court resource.

A more detailed review has been promised before 2030, but there are concerns at a tendency in the past to dismiss the need for immediate fundamental review and push potential reform into the future. It is vital that a fundamental review is undertaken at the earliest opportunity, to bring the system up to date and avoid further changes that merely build on past decisions and assumptions that are outdated and are warping the current process.

With regard to the immediate proposals to address the increase in the County Court financial jurisdiction, FOIL does not agree that using the midpoints of the High Court scales and applying a 20% reduction is an appropriate methodology.

As a starting point, it is inappropriate to extrapolate County Court costs from those which apply to the High Court. The High Court process is not comparable to the County Court process. The High Court process of pleading a claim is more detailed and complex than in the County Court. There is generally more evidence in a High Court claim and the directions are more detailed, requiring more work. The County Court process is designed to be more streamlined and straightforward; its work cannot be treated as equivalent to the High Court less 20%. In addition, the judge is able to take a flexible approach to costs in the High Court, with discretion to adjust the award to deliver a fair result. There is no similar power within the county court. FOIL believes that is the right approach – the certainty provide by Scale Costs is a valuable feature of the regime – but its inflexibility means that care must be taken to ensure the regime is fair without the potential for judicial intervention.

The difference in nature between High Court and County Court claims is evidenced by claim lifespans. The Judicial Statistics for 2025, published in June 2026, indicate that the average time from issue to disposal of a civil bill in the County Court is 48 weeks. Although no official data is made available on the average lifespan of a High Court claim, FOIL members report that a typical claim can take twice as long to conclude.

With regard to counsels' costs the proposed figures are of even greater concern. As is evident from the graph on page 32 of the Consultation Paper, the proposed new figures create a significant uplift for cases valued at £30k plus, with no justification for the disproportionate rise. In the County Court counsel are often instructed fairly late in the claim; there are far fewer pleadings than in the High Court; and the preparatory work is significantly less. FOIL considers the proposed costs awards to be excessive.

There is considerable merit in certainty on costs and in principle FOIL supports costs awarded on a scale, but a failure to reform the scale to reflect modern conditions has resulted in a Scale that is simply too rough and ready. FOIL has already highlighted above that the "swings and roundabouts" principle is not working appropriately due to a change in the balance of the average caseload. Significant increases in damages awarded over recent years have also increased costs awards under the Scale, with no effect on the complexity of the work required to handle claims of higher value.

The extrapolation of costs from the High Court to the County Court, even with a 20% reduction, is too inexact to stand as the basis for costs arising from the major change of a doubling of the financial limit. FOIL would argue that, rather than building further on a regime no longer founded on a clear understanding of the nature of County Court claims and the work required to conclude them, the increase in the jurisdictional limit should be linked with a fundamental review of Scale Costs, with the increase postponed until that can be undertaken.

Question 5.

Do you agree with the Committee's approach to setting the scale costs where no intention to defend is served?

FOIL supports a fixed rate and, whilst conscious that the figure of £125 is a further example of a random change being introduced without the holistic consideration that is required to ensure the regime is fair, would not argue against the proposal.

Question 6.

Do you agree with the Committee's approach to setting the appropriate scale costs for defamation costs?

FOIL members are not involved in defamation claims and it therefore makes no comment.

Question 7.

Do you agree with the Committee's proposal in relation to defendant's costs in remitted actions?

Yes, FOIL agrees.

Question 8.

Do you agree with the proposed scale costs detailed in Appendix 2.

No, for the reasons set out in response to Question 4, FOIL does not agree with the proposed new scale costs.

Question 9.

Do you agree with the Committee's proposal that the ceiling on solicitors' costs for an additional day should be raised to £1,000.

The proposed increase is above inflation and FOIL believes it is too high.

Question 10.

Do you agree that the rules should allow for the enhancement of costs in cases involving claims for these diseases?

At present, few mesothelioma and asbestos-related disease claims are brought in the County Court and the provisions in Order 55, r.11(1)(ba) are rarely engaged. FOIL does not believe there is evidence that the complexity of these claims is such that enhanced costs will usually be appropriate. Much of the work in these claims is, in fact, undertaken by the defendant, and FOIL would argue that the current Scale Costs represent fair and reasonable remuneration for handling these claims.

The proposed change, to specify a number of lung conditions, would significantly widen the category of claims with the potential for an enhanced costs award. As the consultation paper indicates, the proposed new list records all the lung conditions set out in the Green Book, but there is no reason why these varied conditions should all be eligible for enhanced costs: it is the nature of the claim that should influence costs, not the nature of the injury.

In particular, asthma, chronic bronchitis, COAD, and mild respiratory conditions including mild bronchitis, can feature in a wide range of claims from exposure to industrial fumes to housing claims (The Green Book reference to mild respiratory conditions expressly notes that they usually arise from unfit housing or similar conditions.) There is no evidence that these claims are particularly complex and often liability and causation are straightforward.

Claims volumes arising from exposure to asbestos are declining and there is the potential for the proposed change to encourage cost-building, with minor conditions added into the pleadings to increase the costs award. FOIL believes the wording of the Order should remain as it stands.