



The Law Society

## **Fees in the High Court and Court of Appeal Civil Division**

Response to the Ministry of Justice consultation paper

February 2012

supporting  
solicitors

## **Fees in the High Court and Court of Appeal Civil Division**

The Law Society is the representative body of over 140,000 solicitors qualified in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators, governments and others.

The Law Society has a long standing position of opposing the Government's policy of seeking to recover the full cost of progressing cases through civil court fees because in our view this undermines access to justice, particularly for people on low incomes. It is essential that litigants' access to the civil justice system is not deterred by inappropriate fee levels.

The Society believes that a greater share of the cost of the civil justice system should be borne by the public purse rather than wholly or mainly by litigants. Provision by the State of access to redress through the courts for its citizens has been the hallmark of a civilised society. It is regrettably now a diminishing asset in England and Wales. Higher court fees represent significant barriers to justice for both individuals and small businesses.

As the consultation itself points out, an immediate move to full cost recovery in the High Court and Appeal Court would result in a profit for the Court Service. The fee income in the County Courts is already in surplus. The Society is concerned about the inter-relationship between fees in the High Court and the County Courts. The last increase in High Court fees was justified on the grounds that there should be no differential between fees in the County Courts and the High Court. The current proposals envisage increases in High Court fees in order to recover the costs of operating the High Court. We fear that the next step will be to raise County Court fees again to realign them once again with High Court fees.

The service provided in the courts continues to decline. Rather than reducing the subvention from the Ministry of Justice, court fees should be hypothecated for reinvestment into the court system particularly at a time when the courts overall are making a profit from the fees being levied. In our view there are other ways of tackling any shortfall in the funding from fees. The rising cost of running the courts is largely because the system has not moved with the times. There is scope for considerable savings if investment was made to allow electronic filing of papers via a web based portal. Cost savings could also be achieved through procedural improvements. Early applications to the court lead to hearings when a resolution to a dispute could have been found outside the arena of the court.

It is disappointing that the Ministry of Justice has not sought to offset the impact of these proposed fee increases by looking again at the exemptions available through fee remissions. The level at which fee remissions tail off is far too low to be of any assistance to the majority of individuals – it is below the threshold for eligibility for legal aid.

**Question 1 Do you agree that additional bands should be added for issue fees above the current maximum threshold? Please state the reason(s) for your answer.**

Our starting point remains opposition to the strategy of recovering the total cost of providing civil justice in the courts through fees by the end of 2014/2015. That said those lodging claims in excess of £300,000 will in the main be corporate entities rather than individuals and therefore better able to bear the cost of higher issue fees. It would be fairer for issue fees to be graduated above as well as below the current claim threshold of £300,000. However the increase from the current £1670 issue fee for claims in excess of £300,000 to a maximum of £10,000 on claims in excess of £1 billion is substantial (a six fold increase) and could have an adverse impact on England and Wales as the jurisdiction of choice by overseas corporations seeking legal remedy.

**Question 2 Do you agree that the fee for issuing a Bill of Sale should be increased from £25 to £60? Please state the reason(s) for your answer.**

In the main those issuing a Bill of Sale will be lenders and therefore able to bear an increase in the fee from £25 to £60.

**Question 3 Do you agree that the fee for permission to apply for judicial review should be increased from £60 to £235? Please state the reason(s) for your answer.**

No. Judicial review has evolved as the primary means of the citizen challenging the actions and decisions of the State and public bodies. Any increase in the fees paid to pursue a judicial review by the individual will undermine the availability of that review to many citizens. Access to justice will be closed off to many. The availability of legal aid to the less well off is being whittled away with tougher eligibility criteria and the withdrawal of legal aid from certain types of cases. For people just above the threshold for qualifying for legal aid and who are not excepted from fees this will greatly reduce access to justice at the initial gateway. The courts will become accessible only to the wealthy. Those bringing judicial reviews, particularly those relating to asylum and immigration cases, are often the most vulnerable, poor and disadvantaged claimants. Increased fees, even if offset by fee exemption provisions, will only add to the hurdles confronting those who need to make applications for relief, often in the most urgent circumstances.

The increase in the fee for permission from £60 to £235 alone is a four fold increase but to that has to be added the fee for continuation of a judicial review which it is also proposed should be increased. The cost of a judicial review would increase from the current level of £275 (£60 + £215) to £470 (£235 + £235). In our view that increase is unreasonable and prohibitive which may prevent many from accessing justice who might otherwise challenge an unfair Government decision.

**Question 4 Do you agree that the fee for continuation of a judicial review should be increased from £215 to £235? Please state the reason(s) for your answer.**

No – see our answer to the previous question. The proposed increase of £20 in the fee for continuation of a judicial review is small by comparison with other fee increases proposed in this consultation. However the total fees for bringing a judicial review to court would as a result be raised significantly from £275 to £470.

**Question 5 Do you agree that the fee for schemes of arrangement should be increased from £155 to £340? Please state the reason(s) for your answer.**

Schemes of arrangement are a function of companies which in the main are better able to bear increased fees than individuals. However we would point out that schemes of arrangement are applicable to all companies registered under the Companies Act which could include private companies owned by a group of individuals or family members. For those small private companies more than doubling the fee from £155 to £340 would be substantial and burdensome.

**Question 6 Do you think that an increase in the fee for applications on notice within proceedings from £80 to £105 is justified? Please state the reason(s) for your answer.**

No. Fees for applications on notice within proceedings are not the only charge to be met – they are supplementary to the fees payable to embark on proceedings in the first place. An increase in this fee by over one quarter cannot be justified.

**Question 7 Do you think that introducing a new fee of £105 for urgent applications in the High Court is justified? Please state the reason(s) for your answer.**

No. This is a particularly pernicious new fee. It would apply, for example, to an individual challenging deportation.

**Question 8 Do you agree that the existing fee of £45 for an official certificate of the result of a search should be expanded to include the search itself? Please state the reason(s) for your answer.**

We appreciate that undertaking searches of court records is costly for the Courts Service. As in the main those requesting the searches are journalists, lenders and companies, the extension of the existing fee of £45 for an official certificate of the result of a search to general searches would be acceptable.

**Question 9 Do you agree that banding hearing fees by projected time is a fair way of reflecting the increased cost of providing longer trials without increased administrative burden? Please state the reason(s) for your answer.**

No. We do not support the introduction of hearing fees linked to the time cases consume in court as they could deter some individuals from seeking legal redress. Moreover the proposed time linked hearing fees are penal – the current hearing fee charge of £1090 being treated as the standard fee per day and multiplied by the number of days the trial is projected to last. The increase from the current hearing fee of £1090 to £10,900 for a multi-track trial in the High Court exceeding 10 days would be prohibitive.

**Question 10 Do you agree that the current permission to appeal fee should be increased from £235 to £465? Please state the reason(s) for your answer.**

No. This represents a doubling in the permission to appeal fee in the Court of Appeal and in our view would deter some individuals from seeking legal redress

**Question 11 Do you agree that the fee for permission to appeal should be limited to a decision outside of a hearing, with an applicant liable for the full**

**appeal fee of £1,090 – but no further appeal fee – if they request a hearing?  
Please state the reason(s) for your answer.**

No. A single fee of £1090 for an appeal to be heard will deter many individuals from pursuing legal redress through the Court of Appeal – even the consultation document acknowledges at paragraph 93 that it should “discourag[e] spurious applications”.

**Question 12 Do you agree that each ancillary application to an appeal should attract a separate fee of £465? Please state the reason(s) for your answer.**

No. There should be better ways of deterring vexatious litigators than penalising those applicants genuinely seeking redress with a new separate fee of £465 for ancillary applications.

**Question 13 Do you agree that fees of £45 (without notice or by consent) or £105 (on notice) should be charged at the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests)? Please state the reason(s) for your answer.**

No. These new fees may seem negligible but in fact they would be in addition to the standard appeal fees.

**Question 14 Do you agree that a listing fee of £110 should be charged in the Court of Appeal? Please state the reason(s) for your answer.**

No. This new fee would be in addition to the fee for permission to appeal which it is proposed to double from £235 to £465.

**Question 15 Do you agree that the current appeal fee of £465 should be aligned with the multi-track hearing fee of £1,090? Please state the reason(s) for your answer.**

No. This would represent more than doubling of the current appeal fee and would deter some applicants. To equate the fee for an appeal brought by an individual with that for a multi-track hearing would be wrong.

**Question 16 Do you feel that time-related hearing fees are a fair way of reflecting the cost of hearing appeals in the Court of Appeal Civil Division? Please state the reason(s) for your answer.**

No. We have set out our objections to time related hearing fees in our answer to question 9 above. In this particular instance the time related fee for substantive hearings would be in addition to and not in place of the current appeal fees having to be paid by applicants.

**Question 17 Do you agree that applications under CPR 52.17 to reopen final decisions should be charged the appeal fee of £465? Please state the reason(s) for your answer.**

We agree that vexatious litigants should be deterred from reopening final decisions but consider that the imposition of a fee of this quantum would be unreasonable.

**Question 18 What do you think the impact of the proposals set out in this consultation paper will be on small and medium enterprise? Please state the reason(s) for your answer.**

Significantly increased fees in the High Court and Court of Appeal could well deter small and medium enterprises from seeking legal redress, particularly in relation to the recovery of debts, possibly placing their own future in jeopardy.

**Question 19 Do you believe that the proposals set out in this consultation paper will have an adverse effect on access to justice? Please state the reason(s) for your answer.**

Most certainly. The menu of significant increase in existing fees and the introduction of new supplementary fees will undoubtedly deter an increasing number of individuals from pursuing legal redress for themselves through the courts. The courts are becoming like the Ritz – open to all but affordable by a small minority. This is a regressive step in the denial of justice to the citizens of England and Wales.

**Question 20 What do you think the impact of the proposals set out in this consultation paper will be on those with protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Please state the reason(s) for your answer.**

The proposals will have the greatest impact on those with limited disposable incomes. The increased and new fees will apply to everybody. However, the elderly, disabled, those entering maternity and ethnic groups tend to be over-represented amongst the less well off in society and those least able to meet the increased costs. They will therefore be affected by these proposals disproportionately and their access to justice through the courts denied all the more severely.

**Addendum Do you have any comments on the fact that fees for fresh claim judicial review proceedings in the Immigration and Asylum Chamber of the Upper Tribunal should reflect fees for judicial review proceedings in the High Court?**

In principle we have no objection to this provided that the fees for judicial review proceedings in the High Court are reasonable and the same level of service is being provided by the Upper Tribunal, that is High Court Judges sitting to decide the applications.