



CONSULTATION ON FURTHER FEE INCREASES

A response by
The Chartered Institute of Legal Executives

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For further details

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Introduction

1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
2. This response has been formulated following member engagement.

General comments

3. We are concerned at the speed the Government is moving to further increase court fees. There has been little time to monitor the impact of the imposition of enhanced fees. Further increases without a solid evidence base, and given the scale and speed of change, may cause irreparable damage to the very concept the Government is seeking to protect; access to justice.
4. We are particularly concerned the Government is planning to increase these fees in a way that purposely goes beyond full cost recovery and is expressly intended to subsidise the running of the court system.
5. We accept the need for the Government to cover costs and to provide value for money to taxpayers. However, further increases to court fees risk undermining access to justice and there is a tangible risk of placing basic legal rights out of the reach of thousands of vulnerable people. The Government's own equalities statement, for example, recognises the increase in divorce fees to £550 will have 'a greater impact on women.'¹ A further increase to issue a divorce petition is going to put this out of reach for many people, particularly women.

¹ https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/equalitiesstatementfeesresponse.pdf

6. There is a risk that going beyond full cost recovery may not achieve Government policy objectives, and as a result disturb the system unacceptably and hence fail to resolve the underlying issues of cost; quality; sustainability; and access to justice. There is an assumption by Government that the fee increase will not impact on litigant behaviour. In times of austerity, price is foremost in a person's mind when they buy a service and litigants may well consider other forms of dispute resolution if there are cheaper alternatives, such as mediation. Such a dramatic increase in upfront costs may well affect the appetite of individuals and commercial businesses to litigate. The court service could see a reduction in claims issued, interim applications made, and a further increase in the numbers of self-represented litigants, as parties seek to cut legal costs elsewhere in order to meet the cost of the new fees. In a high value claim, a mediator's fee is likely to be lower than the Court issue fee.
7. Subject to the above general comments, we confine our answers to questions 1 to 6 and 18 only.

Question 1: Do you agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000? Please give reasons.

Question 2: We would welcome views on whether the maximum fee for starting proceedings for the recovery of money should be increased:

to at least £20,000; or

to a higher amount;

Alternatively, do you believe that there should be no maximum fee for commencing a money claim? Please give reasons.

Question 3: Do you agree with the proposal to exempt personal injury claims from the higher cap and that the maximum fee of £10,000 should continue to apply in these cases? Please give reasons.

Question 4: Do you agree that if the maximum fee for money claim is increased as proposed, the disposable capital test for a fee remission should also be amended so that the disposable capital threshold for a fee of £10,000 is increased to £20,000 and to £25,000 for a fee of £20,000? Please give reasons.

Question 5: Are there any other benefits or payments that should be excluded from the assessment of a person's disposable capital for the purposes of a fee remission?

8. Questions 1 to 5 will be answered together.
9. Earlier this year a claim for £200,000 would have cost £1,515. From March 2015, that increased to £10,000. Further proposed increase will take the fee to £20,000, an increase of 1,320 per cent. The courts play a considerable public interest role and they contribute to a fair society. We would urge the Government to consider the wider impact of the further increases to court fees.
10. We continue to oppose the further increases. Further increases without a solid evidence base, and given the scale and speed of transition, will undermine access to justice for many individuals and small businesses. There has not been adequate time to assess the impact of the fee increases announced in March 2015, let alone assess what impact a further increase might have.
11. We agree with the proposal to exempt personal injury claims from the higher cap. If the fee increases go ahead, we agree that there is a strong case for disposable capital thresholds to be raised. However, we reiterate what we have said before about the remission scheme. It is imperative court users are aware of the existence of the fee remission scheme. We would urge the Government to run take up campaigns highlighting the fee remission scheme.

General uplift to fees for civil proceedings

Question 6: Do you agree with the proposal to uplift all civil fees not affected by one of the other specific proposals by 10%?

12. The proposed 10% uplift on all remaining fees may seem small. However, this will only serve to widen the access to justice gap by increasing the cost of justice to ordinary court users and businesses. It is difficult to see how this, together with the potential closure of a further 19 county courts (which is the subject of a separate consultation), fits with the concept of “access to justice”. We feel this is inconsistent with the Lord Chancellor’s aim of rectifying the UK’s “two nation” justice system.² Exercising a legal right will only be the preserve of the few, thus further increases to court fees will only reinforce the UK’s “two nation” justice system.

Question 18: We would welcome views on our assessment of the impacts of the proposals for further fee increases set out in chapters 3 and 4 on those with protected characteristics. We would in particular welcome any data or evidence which would help to support these views.

13. As mentioned above, the Government’s own equality assessment confirms that the increase in divorce fees will disproportionately impact on women and claimants with disabilities. Sweeping statements that the fees are a proportionate means to achieve a legitimate aim without further evidence are not helpful. We are of the view the research evidence base is too insubstantial for the speed and level of increase.

14. In terms of the fee remission scheme, assumptions are made that the scheme is likely to provide protection to a higher proportion of claimants with protected characteristics of ethnicity, disability and age. There is insubstantial evidence about how well targeted and transparent the scheme is and whether the scheme is widely available in different languages. It is imperative for the scheme to mitigate the risk identified to be readily accessible and targeted. Without access to legal advice, a claimant may not be aware of the existence of the scheme.

² <http://www.theguardian.com/law/2015/jun/23/michael-gove-rich-law-firms-help-secure-justice-for-all>