



The Law Society



Enhanced court fees - briefing for MPs and Peers



Informing Progress - Shaping the Future



For further information please contact: Iana Vidal (Public Affairs Adviser, the Law Society) T: 020 7316 5581, E: iana.vidal@lawsociety.org.uk

Key Points

1. This is a joint briefing for MPs and Peers prepared by a coalition of organisations united in our opposition to plans to increase court fees from April 2015. We oppose the recent proposals announced by the Ministry of Justice (MoJ) to increase court fees for claims over £10,000 to 5% of the value of the claim, capped at £10,000 for claims of £200,000 and over.
2. The coalition represents the concerns of lawyers, solicitors, business and patient groups, from both claimant and defendant perspectives. This briefing is supported by the following organisations: The Law Society, the Bar Council, the Chartered Institute of Legal Executives (CILEx), the Forum of Insurance Lawyers (FOIL), the Association of Personal Injury Lawyers (APIL), the Motor Accident Solicitors Association (MASS), Action Against Medical Accidents (AvMA), R3 Association of Business Recovery Professionals, the Commercial Bar Association (COMBAR), the Chancery Bar Association and the Professional Negligence Bar Association.
3. We are concerned about the impact the increase in court fees will have on claimants who already struggle to pay court costs, SMEs who rely on the courts to enforce contractual payments and restore cash flow, creditors in insolvencies, and smaller law firms who will inevitably suffer financially. These proposals will significantly reduce the ability of individuals and small businesses with legitimate claims to pursue these through the courts.
4. Equally, it will be the defendants who settle claims against them who will eventually be footing the bill for enhanced fees. This group comprises not just insurers, but also businesses, both large and small, and public sector organisations such as local authorities and the NHS.
5. We would also urge the Government to consider the impact of increasing court costs on this country's reputation and competitiveness as a global leader in dispute resolution.
6. We are calling on the Government to reverse its plans to introduce these fee increases, and are asking MPs and Peers to support this position when secondary legislation is introduced to make the changes.
7. We are asking MPs and Peers to take the following actions to support us:
 - Oppose the enacting legislation, *Draft Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015*, when it is debated in the Commons and the Lords;
 - Make representations to the Ministry of Justice and to the Department for Business, Innovation & Skills, to highlight the detrimental impact this will have on access to justice, particularly for vulnerable individuals and SMEs;
 - Table written questions, raise at Justice oral questions and during any relevant debates on justice and business.

Issue and timeline

8. In December 2013, the MoJ released a consultation on proposals to increase court fees in a number of areas; money claims (specified and unspecified), commercial proceedings, hearings (fast and non-fast track) and divorce proceedings.

9. A number of legal and business organisations responded to the consultation and in the main, did not support the proposed fee increases.
10. In December 2014, the MoJ undertook a statutory consultation exercise. This consultation was sent to the Civil Justice Council and the senior judiciary as statutory consultees but other stakeholder groups were not included.
11. On Friday 16 January 2015, the MoJ released a consultation response that announced that the department had decided not to proceed with enhanced fee increases for commercial proceedings and divorce proceedings. The Government has decided to proceed with fee increases for money claims.
12. The January 2015 consultation also proposes fee increases for possession claims, applications without notice or consent and application on notice with consent. Many legal and business groups are equally opposed to this.
13. The statutory instrument needed to implement the change, *Draft Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015*, is currently awaiting affirmative resolution in both Houses. The Government expects the changes to be in force from April 2015.

Our concerns

Access to justice

14. These increases represent a significant barrier to access to justice. The cost to issue a claim of £190,000 will rise by 622 per cent from £1,315 to £9,500. For individuals, this is most likely to affect claims for clinical negligence and personal injury and in many cases these claimants will be struggling financially, having been out of work due to the nature of the injury.
15. More widely, the fee increase drives up the cost of litigation. For those claims that do proceed through the courts, defendants who settle or lose the case will be liable for these additional costs.
16. Increasing fees to fund court infrastructure risks 'pricing out' those on low and medium-level incomes, leaving access to justice in the hands of a wealthy few. The civil courts are essential to a democratic society and should not be used to generate a surplus.

Impact on small businesses

17. The fee increases will also have a detrimental impact on small businesses enforcing their debts in the courts who will already be experiencing difficulties with cash flow in a challenging economic climate.
18. Over 200 individual examples provided by law firms show that the total value of cases brought by individuals would be likely to fall by around one-third (35 per cent) under higher court fees. For small and medium-sized companies it would halve (a 49 per cent decrease). This suggests that increased court fees could have a significant impact on access to justice for both individuals and businesses, as fewer could afford to pay the higher rates.

Impact on the UK's world class insolvency regime

19. An increase in court fees will impact adversely on an SME's cash-flow. If an SME is facing financial difficulty, such an increase will exacerbate cash flow pressure and

could help push them towards insolvency and make it more difficult to rescue or restructure the business.

20. Furthermore, the current court fee regime is not a barrier to bringing actions for recoveries in insolvencies. However the scale of the fee increase could lead to recovery proceedings becoming unaffordable as there may not be the funds available in the insolvency to pay for the upfront court cost. This could prevent insolvency practitioners commencing appropriate actions and so deprive the insolvent estate of a 'just' recovery and therefore the creditors (including the taxpayer and businesses) of their fair return.
21. A reduction in the amount returned to creditors will damage the UK's position as one of the best insolvency regimes in the world (according to the World Bank rankings on Doing Business). It could also deter creditor engagement and with it trust and transparency in the UK's insolvency regime.

This country's reputation as a global leader in commercial dispute resolution

22. The UK is a world-class destination for those wishing to settle their commercial disputes in the courts, and the English legal system is one of the most trusted and respected in the world. Data from the Admiralty and Commercial Court suggests that since 2010, around 80 per cent of all Commercial Court cases each year have involved at least one foreign party. Furthermore 60 per cent of cases in the Commercial Court have a claim value over £300,000.
23. However, we face competition from cheaper jurisdictions like New York and new, dynamic centres like Singapore for this business. An increase in court fees risks undermining this position and could have an impact on future commercial proceedings in the courts.
24. The MoJ commissioned a report by the British Institute of International and Comparative Law (BIICL) to improve its understanding of the factors that affect the decision of litigants to initiate litigation, and where to litigate. 61 per cent of those who participated in the research suggested that an increase could have a 'detrimental impact on the English litigation market.' This report was only made public on 16 January after the final decision had been announced.

Evidence base for the decision

25. We are concerned that this decision was made with very little evidence base. The consultation document states that the MoJ conducted a qualitative study of 18 telephone interviews to ascertain the impact in the civil courts. The paper makes it clear that 'caution should be applied in generalising the findings to all regular court users'. It goes on to state that the research was not designed to produce results representative of all court users and that individuals and small businesses pursuing money claims may have very different experiences.
26. In a rare 'red report', the Regulatory Policy Committee highlighted a number of problems with the MoJ's impact assessment on enhanced court fees, questioning whether the reforms would actually raise the additional funds that the department is seeking to make. The report says, '[The impact assessment] is not fit for purpose. The department needs to make clear whether the proposal will result in the court service raising more funds than is necessary to cover their costs.'
27. Beyond the public consultation, no attempt has been made by the MoJ to quantify the impact on those who rely on the courts, like small business owners and claimants with high-value clinical negligence cases.

Case studies

28. We have consulted our members on the potential impact of an increase in fees and many have responded with examples of cases where an increase will seriously affect access to justice for a wide range of claimants and defendants.

'I have just issued a claim for approximately £46,000 incurring a fee of £610 for a client. Under the new fee scheme that fee would be £2,300. My client is a widow and a pensioner and who can barely afford the £610. There is no possible way that she could afford £2,300, so that claim would have to be abandoned.' **Solicitor (sole practitioner), Norfolk**

'I am fairly certain that a person with the sort of catastrophic injury which makes damages of this level doesn't have a spare £10,000 rattling around in their bank account. Often claimants find themselves with some income (albeit very modest indeed) which excludes any remission at all. They are therefore caught in limbo and could not meet such a substantial cost.' **Small law firm of personal injury specialists, Preston**

'Charging 5% of the sum in issue will be extremely unfair and prejudicial to small and medium business who can often have tens of thousands of pounds owed to them. When there is already a hole in their cash flow, the court fees will make this much worse. This change is extremely bad news and will undoubtedly hinder access to justice and encourage debtors not to pay money they properly owe.' **Mid-size law firm, Manchester**