



JUDICIARY OF  
ENGLAND AND WALES

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**Response to consultation on Court Fees – Enhanced Charging**

Thank you for your letter dated 12 December. I am replying on behalf of all of the statutory judicial consultees\* for this matter; we discussed it together at the Judicial Executive Board (JEB).

I have seen the response of the Civil Justice Council, and I share the deep concerns it expresses in relation to the dramatic increase in court fees for cases involving claims above a value of £10,000, with the introduction of fees based on 5% of the value of the claim in specified money cases.

*Effect on SMEs*

Increases on this scale will have a detrimental impact on a number of court users, affecting individuals and businesses alike. There is likely to be a disproportionately adverse impact on small and medium enterprises and litigants in person. It needs to be borne in mind that while the court fee normally represents a relatively small proportion of total litigation costs it has to be paid up front and in full; whereas for individuals and smaller businesses the funding of cases is often after the event, post-judgment. And these are significant sums: for example a £7,500 fee for a £150,000 claim. In courts such as the Intellectual Property and Enterprise Court (IPEC) for example, which was designed to meet the litigation needs of small and medium companies quickly and cheaply, costs are capped at £50,000 and a £7,500 court fee amounts to 15% of that amount, to be paid on top of what would be paid by both parties in lawyer fees. Combined with a £500,000 damages cap specific to the IPEC, this fee increase may discourage litigants from using the IPEC and drive them towards the uncapped High Court system, which is clearly unsatisfactory.

### *Effect on litigants in person*

One further point raised in discussion at the JEB was that having to fund the increased fee might impact on parties' ability/preparedness to pay for legal representation; a downside in itself for the party concerned and also shifting cost onto the system elsewhere because of the potential increase in litigants in person.

### *Claims for unspecified amounts of money*

In relation to unspecified money claims, there are concerns about the effects of this SI on several areas, including personal injury cases where a valuation has not been completed at the very start of a case when the court fee is payable. Estimates in such cases are difficult. Similarly, many claims issued in the Rolls Building do not specify the sum of money claimed, because the primary role requested of the court by the claimant is not to attribute damages, but rather to grant an injunction or enforce proceedings or provide some other remedy. That is the case with requests for the grant of an injunction preventing the use of a company's patented invention, in relation to which there can be a subsidiary damages claim. The amount of damages in such claims often cannot be specified accurately at the time of issue.

The draft SI suggests that in those cases, the maximum fee of £10,000 would apply (ie the fee where "the sum is not limited"), when that fee may be completely disproportionate to the damages ultimately recovered. That is also the case with claims for the enforcement of an arbitration award. While the amount awarded is known, arbitration proceedings have already taken place to ascertain liability, and the court's role would only be to give effect to those proceedings; to treat such claims as money claims would cause litigants to incur twice the costs of litigation when they are simply seeking peripheral support to the arbitration process from the court. The SI and supporting documents fail to make clear whether claims for the enforcement of arbitration awards would be treated as "proceedings to recover a sum of money" or not.

Another difficulty is presented by claims for "a declaration from the Court as to the proper value of the [contractor's] final account" (as in a claim form lodged in the TCC last week). The court staff will not know the value of the final account, let alone the extent to which it exceeds sums already paid to the contractor: which represents the true value of the claim. Another form of words typically used in claim forms issued in the TCC (as in one issued ten days ago) is: "Value: The Claimants expect to recover more than £100,000". More commonly the figure is £250,000 in TCC claims, but the problem is exactly the same. What is the value of the claim for the issue fee?

### *Interest*

Furthermore, the fee that applies to monetary claims involving the payment of interest in addition to a capital sum is dependent on the total amount claimed including the interest, but that system therefore relies on court staff to calculate the applicable interest, which requires a level of training that court staff currently is not receiving, and would therefore entail additional training costs for the courts. As the SI and supporting documents give no indication that the money recovered from court fees would be invested in the court system, this would be an additional cost of these measures for the courts that ring-fencing of the fees as suggested by the judiciary would have avoided.

### *Evidence of impact*

In addition, the draft impact assessment for these proposals makes some very sweeping and, in our view, unduly complacent assumptions about the likely effect on the volume of court claims issued and access to justice of the proposed fee increases.

The research evidence base for these proposals is far too insubstantial for reforms and increases of this level. The 2014 research involved questioning just 31 civil users (only 9 of which were businesses), and the 2013 research was based on just 18 telephone interviews (14 being civil court users), and the supposed inelasticity of demand it claimed to have detected has been questioned in subsequent research conducted by the BIICL. Moreover, just 12 of the 2014 research interviewees were pursuing claims above £10,000 which is the area where the major increases are planned.

### *Divorce fees*

On a separate point, the family judiciary welcomes the decision not to impose a dramatic increase on the cost of obtaining a divorce.

### *London as a centre for international legal business*

One aspect of the proposals which the judiciary does welcome is the decision not to introduce daily hearing fees for commercial cases, and not to impose extremely high court fees for very high value commercial claims.

The success of the Rolls Building, and the attractiveness of London and the UK as a centre of excellence for the resolution of international commercial disputes is something we should all be proud of, but must not take for granted. The Government's recognition of this is to be welcomed, as court fees are a component in cost comparators even for high value litigation, given the availability of international competitors and sophisticated arbitration services.

However, there are fears that the increase in fees could trigger commercial work moving elsewhere. To illustrate this, the fees proposed are 25 to 100 times greater than those payable in New York. A real concern will be uncertainty over future fee increases and the possible imposition of daily hearing charges putting major litigators off London, particularly as commercial cases can take years to develop.

\*Sent on behalf of:

Master of the Rolls

President of the Queen's Bench Division

President of the Family Division

Chancellor of the High Court

Lord Justice Richards (Deputy Head of Civil Justice)