



**Civil Justice Council response to
Ministry of Justice statutory consultation letter
Court Fees: Enhanced Charging**

December 2014

The CJC welcomes some, but is extremely concerned about other, aspects of these proposed amendments to civil and family court fees.

The CJC particularly welcomes the proposal not to implement the proposal to introduce higher fee and daily hearing charges in respect of high value commercial proceedings. As the CJC submitted its January 2014 consultation response, great care should be taken in changing the cost structure of a market with such importance to the UK economy. Daily hearing charges would have had an adverse impact to some degree on the competitiveness of UK legal markets.

It must however be recognised that the proposed demonstration of a willingness to use enhanced fees in other areas will itself risk damage to the willingness of commercial parties to choose the UK for business dispute resolution.

Further, higher court fees are being proposed for larger value claims, and although the cap of a £10,000 fee means that while very high value litigation is less likely to be deterred, the fee will be seen, by international standards, as a high entry price to begin a commercial case in this jurisdiction. In addition there are broader access to justice concerns discussed further below.

To be welcomed however is the proposal not to increase fees for cases below £10,000 in value, particularly as fees for all these (except claims below £300 in value) increased significantly in January 2014.

The CJC also supports the principle of offering a reduced fee as an incentive to court users to use online and business centre processes in view of the business efficiencies these offer to the court as well as court users.

To return to the broader concerns, the CJC is extremely concerned about the proposal that court fees for cases above £10,000 in value should be based on 5% of claim's value. The effects of this proposal are illustrated in the table below. The size of the monetary price and percentage increase for all fast track and multi-track cases is immense.

The effects of implementing such major increases could be equally dramatic in terms of:

- acting as an effective barrier to entry to the justice system through pricing many court users out of the courts and thereby reducing access to justice for those litigants for whom court fees form a significant cost element of the overall process;

- making alternatives to the civil process a far more attractive proposition, thus undermining the very intention behind the court fee increase and thereby risking significantly reduced fee income, which is critical to funding the courts and the justice system; and
- having a disproportionately adverse effect on some groups e.g. small and medium enterprises, low income individuals and thereby undermining equality before the law.

The CJC set out its detailed concerns on the 5% of value court fee in its January 2014 response to question 16 of the consultation paper.¹

A table illustrating the effects of these proposals, not spelt out in this form in the material supplied for consultation purposes, follows.

Value of claim £	Fee now £ (paper)	Fee proposed £	Increase in fee in £	% increase
15,000	610	750	140	23%
20,000	610	1000	390	64%
25,000	610	1250	640	105%
30,000	610	1500	890	146%
40,000	610	2000	1390	228%
50,000	910	2500	1590	174%
70,000	910	3500	2590	285%
90,000	910	4500	3590	395%
100,000	1115	5000	3885	348%
125,000	1115	6250	5135	460%
150,000	1315	7500	6185	470%
175,000	1315	8750	7435	565%
190,000	1315	9500	8185	622%
200,000	1515	10,000	8725	576%
250,000	1720	10,000	8280	481%
500,000	1920	10,000	8080	421%

¹ <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/consultation+responses/CJC+response+to+MOJ+consultation+on+Court+Fees.pdf>

The figures make for a very stark reading with court users paying up to six times as much in court fees for some values of claim. The research on which the January 2014 proposal was based involved eighteen telephone interviews with court user organisations. It should be appreciated that such a small survey is completely inadequate as a basis upon which to base any proposed reform. It is a matter of grave concern that the Ministry is contemplating such a significant reform, and one that carries with it potentially far-reaching and damaging consequences for access to justice, on such a poor evidence-base. To take a vitally important example, the draft Explanatory Memorandum makes clear that there is no knowledge of what the impact of this proposal will be on SMEs as a key sector of the Court-user community and the wider economy.

The government has however shown appropriate caution in the imposition of daily hearing charges, and the CJC suggests a similarly cautious approach to enhanced fee recovery, the legislation for which was only recently passed. A more staggered, proportionate, approach is suggested, if this policy is to be pursued.

The CJC has not had an opportunity to consider an impact assessment for these proposals, which may have given rise to additional comments.

The CJC's final comments relate to the decision not to proceed with the increase in court fees for divorce, with the decision being not to raise this from £450 to £750. This move will no doubt be welcomed in respect of family justice. It is however of concern in so far as the civil justice system is concerned. The Council particularly notes in this regard that any shortfall in fee income thus presented will inevitably be mitigated by drawing on the fee income generated by the dramatic increases to civil fees. This will further entrench the approach so far taken that the civil justice system is used to underwrite the family justice system, rather than being used to improve the functioning of the civil justice system. Both systems ought to be properly funded.

The CJC highlighted this issue in its January 2014 and this further illustrates the points made there.

This response will not be published on the CJC website until the proposals are in the public domain.

Civil Justice Council
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