



Response to Ministry of Justice Consultation: Further Reforms to Court Fees

February 2015

Introductory and general remarks

These proposals follow immediately behind a wider range of court fee increases to which the Civil Justice Council (CJC) has responded in detail (<http://www.judiciary.gov.uk/wp-content/uploads/2015/01/cjc-court-fee-response-december2014.pdf>). The comments and concerns expressed in that, and earlier court fee consultations, apply equally to the present set of proposals both in terms of general principles (the impact on access to justice and the use of civil fees to subsidise the whole justice system) and business effectiveness (such as proceeding on the basis of an insubstantial evidence-base).

This response thus concentrates on the four questions posed in Part 2 of the Government's Response on the second part of the enhanced court fee proposals.

The impact assessment for these proposals makes an assumption that there will be no change in the number of these applications following the introduction of increased charges. The CJC consider that to be, at best, a questionable assumption, for reasons set out below in the answers to individual questions. It also queries the evidence-base for this specific set of proposals – the impact assessment makes clear that the underlying research was broad-based or out of date (fees have risen dramatically since the 2007 survey). Neither basis provides an adequate justification for reform. In addition, no account has been taken of the impact of the large fee increases imposed only 8 months before these proposals were published.

A major concern for the Council is the disproportionate cost effects of this set of fee rises. In the first place the April 2014 increases had less impact on small claims, but the current measures have a particularly adverse effect on lower value claimants. For example, any application made in claims of £1500 or less will cost more than the fee for commencing proceedings – including those on application for an adjournment on grounds of ill health.

An assumption is made on these increased costs being recoverable. That is not always possible and depends on the circumstances of the case and a defendant's means.

Another concern is that in some of the general applications the court acts as little more than a 'rubber stamp' and the size of this increase is excessive given the limited nature of the administrative task.

A further general point that should be noted is that the costs of these increases will be passed on by claimants. Lenders and landlords in particular will review rates and rents and recover them from mortgage payers and tenants. This is out of line with the Government's policy objective of reducing insurance premiums by bearing down on litigation costs.

Applications for the recovery of land

Question 1 – Do you agree with the proposal to raise the fee for a possession claim by £75? Please give reasons.

No, the CJC does not agree with this increase in any of the three categories of application. Its reasons are as follows:

- a) These fees were last increased in April 2014, and the level of additional increase is excessive given that context. It equates to the following percentage rises:

<i>Type of claim</i>	<i>Cost now</i>	<i>Cost proposed</i>	<i>Increase in £</i>	<i>Increase in % terms</i>	<i>Cost in 2011</i>
High Court application	£480	£555	£75	15.6%	£465
County Court application	£280	£355	£75	26.8%	£100
PCOL online application	£250	£325	£75	30.0%	£100

- b) The CJC has a number of comments in response to the supporting reasons set out for these proposals in paragraph 103 of the consultation paper. The arguments are particularly weak in relation to possession claims, as illustrated below:

- The court fee is a debt that can be recovered at the end of proceedings – many claimants will find that those losing possession claims have little or no means, and in many cases it will not be possible to recover the court fee costs; and the defendants will incur increased debts; .
- In these sorts of cases the court fee *can* form a reasonable proportion of costs – for private landlords representing themselves, the court fee may be a significant proportion of the overall costs – defendants may not be present,, the evidence can simply relate to account and rent book records. Only 41% of such cases proceed to repossession warrant stage¹;
- Fee remissions being available – by definition mortgage lenders and landlords (who have capital assets and revenue streams) are unlikely to qualify for any such remission;
- It is often the case that such claims are then followed by enforcement applications, and this means these claimants are paying additional court fees. For major lenders this will represent a considerable outlay.

One aspect of these reforms that the CJC does support is the lower fee applicable for online claims.

¹ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374286/mortgage-landlord-possession-statistics-july-september-2014.pdf.

General applications

The proposals cover a very wide range of applications to the court in relation to the conduct of a case, such as extending time limits, varying directions, striking out claims etc. There may be multiple applications in any case, and while each application creates an administrative demand on the court (and therefore a cost), the circumstances in which such applications are made will vary significantly, and some may involve a very small administrative burden.

The total effect of each application's fee may be very serious for the applicant in financial terms, particularly for lower value claims.

Question 2 – Do you agree with the proposal to increase the fee for a general application in civil proceedings from:

- ***£50 to £100 for an application without notice or by consent; and***
- ***£155 to £255 for an application on notice, which is contested, subject to exemptions for injunctions for protection from harassment or violence; applications for a payment to be made from funds held in court and applications made in proceedings brought under the Insolvency Act 1986?***

No. The CJC believes that the scale of these increases, coming so swiftly after the April 2014 changes, is excessive. The fee in the first category has risen 100%, and the second category by 61%.

It should be borne in mind that in a number of cases these applications arise from the behaviour of the other party (the respondent) or circumstances beyond a claimant's own control – for example time extensions due to ill health or an expert witness failing to meet a court deadline.

We fear that these measures may discourage co-operative behaviour by the parties – for example being required to pay a fee for an application for a consent order may discourage settlements.

We would also recommend exempting small claims (those below £10,000) from these increases.

The CJC strongly supports the proposal to exempt the three suggested areas (injunctions to protect against harassment and violence, applications on behalf of a child or vulnerable adult for payments out of court funds and specified insolvency proceedings) from these fee increases.

Question 3 – Are there other types of case in which a general application may be made which you believe should be exempted from the proposed fee increases?

Other organisations, dealing in more specialist fields of law, will be better placed to advise on specific areas of litigation that might be exempted from this fee increase.

The Equalities Duty

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

The CJC considers there to be a number of protected characteristic considerations in relation to the proposed fee increases for the recovery of land applications.

The impact will be felt disproportionately by protected characteristic groups (as defined by the Equality Act 2010) who are made homeless as a result of possession cases. Data on those losing possession claims is not recorded in terms of diversity characteristics, but some associated data points to conclusions which may be reasonably drawn by linking to statistics on homelessness.

Age – a study by Homeless Link found that more than half of those presenting to local authorities as homeless were under 25 years of age².

Disability – the House of Commons Library briefing paper Homelessness in England (January 2015) found that 15.4% of those recorded as being accepted as homeless and in priority need had a physical or mental disability.

Ethnicity – the same briefing paper recorded that non-white ethnic populations made up 27% of homeless people, compared to the 12.83% of ethnic minority residents recorded in the overall population (2011 census).

Gender – domestic violence can be a cause of homelessness (3% of all cases in the above Commons briefing) which disproportionately affects women³.

There is an important economic context here – the MoJ's own figures show that landlord repossessions in 2013 in the private and public sector reached a record high since statistics were first collected (in 2000) -37,739. Last year's figures were marginally better⁴, but levels of landlord eviction remain high. Mortgage repossessions conversely were lower in 2013 than for a decade.

² See <http://www.homeless.org.uk/sites/default/files/site-attachments/201411%20-%20Young%20and%20Homeless%20-%20Full%20Report.pdf>.

³ See http://www.ons.gov.uk/ons/dcp171778_298904.pdf.

⁴ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374286/mortgage-landlord-possession-statistics-july-september-2014.pdf.