



**Fees in the High Court and Court of
Appeal Civil Division – Ministry of Justice
Consultation CP15/2011**

Civil Justice Council Response

**January
2012**

Overview

The Civil Justice Council maintains its opposition to the policy of successive Governments that court fees should pay for the court service, subject only to remissions. All the answers to questions should be seen in light of this.

We welcome the acceptance that a move to 100% recovery would be premature at present, but note this is due to wide-ranging changes in train. We note that a comprehensive review of remissions is planned particularly in the context of proposals to introduce “universal credits” from 2013.

Our main concern relates to the impact on access to justice particularly for the more vulnerable members of society. This includes a concern to protect human rights and the rights of those who have protected characteristics. We note the observation that “initial analysis indicates that those who are disabled or of minority ethnic origin may be more heavily impacted than other groups, and further information on the effect of the proposals on these and other groups is invited as part of this consultation.” We also note that “Users of the High Court and Court of Appeal who have to pay court fees, as with the lower civil courts, are not required to provide personal information about themselves; as such, MoJ/HMCTS have limited data on the characteristics of people who pay court fees.”

We are not in a position to respond with evidence on the impact of these proposals on those with protected characteristics and we urge the Government to ensure they have the responses they have sought from appropriate representative organisations which will tell about the effect of these proposals on different groups.

However, we are able to make comment and propose an alternative approach in relation to those case types and activities where we have information about impact. For example we note that accounts given by High Court staff confirm that a substantial proportion of urgent applications in the High Court concern deportation proceedings. We refer to the response to Question 7 below in relation to that specific issue. We have also made comments where we can in similar vein in response to other consultation questions.

We also note with some concern that “The proposals are likely to lead to additional costs for businesses.” Whilst the consultation paper refers to the cost to the taxpayer in the event that court fees do not cover court costs, this ignores that to the extent that increased costs to business will be passed onto the consumer and insurance backed claims and defences will pass on increased cost in higher premiums.

Further we note that recovery of fees has fallen in light of a reduction in the number of court users. This trend can be expected to continue in light of “wide-ranging reforms”.

However, in the context of the policy of court fees covering the cost of the court service, most of the proposals appear logical and appropriate. Large companies involved in commercial litigation should not be subsidised by other court users and our proposals include a move to address that issue. Please note that we do not agree with all of the proposals in the consultation paper. See, for example, the reply to question 3 below in relation to Judicial Review.

Questions and responses

Question 1

Do you agree that additional bands should be added for issue fees above the current maximum threshold? Please state the reason(s) for your answer.

Yes. It appears appropriate and proportionate to introduce higher fees in bands as proposed for High Court cases where the sum claimed is above £300,000.

Question 2

Do you agree that the fee for issuing a Bill of Sale should be increased from £25 to £60? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, we have no strong view. We note that this amounts to bringing the fee for obtaining a bill of sale in line with that of other methods of enforcement in the High Court.

Question 3

Do you agree that the fee for permission to apply for judicial review should be increased from £60 to £235? Please state the reason(s) for your answer.

No. Judicial Review is an important remedy to challenge the state and public authorities. Any fee should not be seen to be prohibitive.

There are a significant proportion of Judicial Review cases that involve human rights issues and affect the vulnerable and those of minority ethnic origin. We note that “Of 10,548 judicial review applications received by the Administrative Court of the High Court in 2010, 8,122 concerned immigration or asylum issues; this represents 77% of the total”.

The substantial increase in fees would add to the problem that Lord Justice Jackson’s recommendation that Qualified One-Way Costs Shifting should apply to Judicial Review has been rejected. We endorse his observation that “Qualified one way costs shifting would ensure compliance with the Aarhus Convention in relation to environmental judicial review claims. Also, judicial review proceedings have the benefit of a ‘permission’ stage, which filters out unmeritorious cases (thus reducing the need for two way costs shifting as a deterrent).”

Question 4

Do you agree that the fee for continuation of a judicial review should be increased from £215 to £235? Please state the reason(s) for your answer.

See answer to question 3 above. The proposed increase to apply for Judicial Review coupled with the fee to continue amounts to an increase from £275 to £470.

Question 5

Do you agree that the fee for schemes of arrangement should be increased from £155 to £340? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, we have no strong view.

Whilst companies seeking a scheme of arrangement with its shareholders or creditors to alter the structure of a company can normally be readily afforded by the company, there may be a number of small businesses in particular that would face an added burden at a time of crisis.

Question 6

Do you think that an increase in the fee for applications on notice within proceedings from £80 to £105 is justified? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, we have no strong view.

Question 7

Do you think that introducing a new fee of £105 for urgent applications in the High Court is justified? Please state the reason(s) for your answer.

No. The concern here must relate to the evidence that “Based on accounts given by High Court staff, a substantial proportion of urgent applications in the High Court concern deportation proceedings, which are likely to involve an applicant of minority ethnic origin.”

Although “we can't quantify this number as urgent applications are not currently subject to separate fees” any potential impact can be avoided by not having such a fee. This should be the default position.

If those who are applying in relation to deportation proceedings (or who are otherwise relying on protecting their human rights, or protected characteristics) can rely on remissions, then the revenue will not be enough to justify the impact.

According to the other consultation document the other significant class of applications is to freeze assets. An applicant who needs to apply in such circumstances should not necessarily be penalised as a result of such needs.

We also understand that it is suggested that some solicitors take advantage of the availability of an urgent application to move their cause above others, or to resolve a problem created by their delay. This is not a reason to deny access to justice for others. Such problems should be resolved by appropriate costs orders at the time of the hearing of the application.

Question 8

Do you agree that the existing fee of £45 for an official certificate of the result of a search should be expanded to include the search itself? Please state the reason(s) for your answer.

Yes. An expansion to the fee to include the cost of the search charged to journalists, companies and lenders is appropriate.

Question 9

Do you agree that banding hearing fees by projected time is a fair way of reflecting the increased cost of providing longer trials without increased administrative burden? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, we have no strong view.

However, the proposed mechanism is wrong. A fee of £1,090 is currently charged. This does not equate to each additional day costing a further £1,090. Further, a half day should be half the cost of a day. The proposed mechanism also provides that for a time estimate of 2 days the claimant would pay a relatively excessive amount. This would encourage an estimate and use of a third day. The proposal would otherwise encourage court users to underestimate hearing time.

We note that the refund system will continue to apply.

Concerns raised by legal firms and members of the judiciary specialising in commercial law that the risk that increases to court fees may have an adverse impact on international litigation in London in particular should not encourage the fee system to subsidise such cases. However, the comparison with other jurisdictions should extend beyond the Commonwealth and include, for example, the Middle East. See <http://www.ft.com/cms/s/0/e2afcc74-0549-11e1-a3d1-00144feabdc0.html#axzz1j45rvTSc>

Question 10

Do you agree that the current permission to appeal fee in the Court of Appeal should be increased from £235 to £465? Please state the reason(s) for your answer.

No. Our response is intended to be consistent with our response to Question 3 above. Appeal cases are particularly important to justice. Fees should not be a deterrent. The application to appeal can be refused on good grounds.

Question 11

Do you agree that the fee for permission to appeal in the Court of Appeal should be limited to a decision outside of a hearing, with an applicant liable for the full appeal fee of £1,090 – but no further appeal fee – if they request a hearing? Please state the reason(s) for your answer.

No. Our response is intended to be consistent with our response to Question 3 above. Appeal cases are particularly important to justice. Fees should not be a deterrent. The application to appeal can be refused on good grounds.

Question 12

Do you agree that each ancillary application to an appeal should attract a separate fee of £465? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, we have no strong view.

Question 13

Do you agree that fees of £45 (without notice or by consent) or £105 (on notice) should be charged at the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests)? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs, this is justifiable for the reasons stated in the consultation paper.

Question 14

Do you agree that a listing fee of £110 should be charged in the Court of Appeal? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court cost, we have no strong view.

Question 15

Do you agree that the current appeal fee of £465 should be aligned with the multi-track hearing fee of £1,090? Please state the reason(s) for your answer.

Subject to our principled position in relation to fees and court costs and our response to question 11 above, this is otherwise logical.

Question 16

Do you feel that time-related hearing fees are a fair way of reflecting the cost of hearing appeals in the Court of Appeal Civil Division? Please state the reason(s) for your answer.

Please refer to our answer to question 9 above. However, the propensity for appeals to take time in relation to human rights and/or protected rights issues is significant.

We recommend an alternative such that fees are remitted in relation to any case where human rights and/or protected characteristics are in issue, subject to an adjudication that the relevant allegation was justified.

Question 17

Do you agree that applications under CPR 52.17 to reopen final decisions should be charged the appeal fee of £465? Please state the reason(s) for your answer.

We agree that the vexatious should be deterred from re-opening final decisions and that the proposal seems proportionate. We note that this will be subject to remissions.

Question 18

What do you think the impact of the proposals set out in this consultation paper will be on small and medium enterprise? Please state the reason(s) for your answer.

We are not in a position to respond with evidence on the impact of these proposals on SMEs. We urge the Government to ensure they have the responses they have sought from appropriate representative organisations which will tell about the effect of these proposals on SMEs.

Question 19

Do you believe that the proposals set out in this consultation paper will have an adverse effect on access to justice? Please state the reason(s) for your answer.

Yes. Please refer to answers to previous questions. However, with adjustments the adverse impact can be ameliorated.

Question 20

What do you think the impact of the proposals set out in this consultation paper will be on those with protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Please state the reason(s) for your answer.

Please see above including the overview.