



JUDICIARY OF  
ENGLAND AND WALES

**FROM DISTRICT JUDGE MICHAEL BUCKLEY  
Blackpool County Court**

**Response from the Association of District Judges to the Public Law  
Family Fees Consultation Paper.**

1. The initial reaction of many to the proposed substantial increase in Public Law Family Fees (payable by Local Authority) fees is likely to be one of hostility. Most users of the service no doubt feel that access to the courts (and the provision of the courts) should be a public service available as of right to all.
2. The proposed increase in public law family fees is predicated on the Government's established policy and strategy of full cost pricing. However, the Association has previously, and again now, voices its continued opposition to such a policy. Whilst the worse excesses of a full cost policy might be ameliorated by a system of exemptions and remissions, the Association continues to challenge the underlying assumption that the users of the civil and family courts should pay for the service provided to them. Just as the provision of health, education and defence are core functions of any state, so should be the provision of an effective and efficient justice system. We furthermore question whether the full cost policy and strategy can be carried over completely to certain Family Work, for instance in relation to matrimonial injunctions where the court is concerned not with monetary remedies but with the protection of the vulnerable. In cases involving children the welfare of the children is, of course, paramount. It is the contention of the Association that the policy of full cost pricing sits uneasily with the social aspects of much of the work of the Family Courts
3. If one accepts the propriety of the full cost policy then the Association can see the logic in the proposals to increase most fees for public law family cases fees that are paid by public bodies, not by individuals, to full cost price levels from April 2008. Public money is needed for these cases and it really is identifying which section of the public purse should pay for this essential work and the mechanisms of implementing the policy.
4. However, the Association fails to understand why the outcome of this consultation exercise has effectively been predetermined with the increased cost of public law fees having already been transferred to local authorities with effect from 2008/09. The major worry is that local authorities appear to be unaware of extra funds being made available to meet the increased court fees. We are, therefore, concerned that the scheme will be a significant disincentive to local authorities, struggling in any event to balance their budgets and with a myriad of competing calls on their resources, to start public law care proceedings, especially in those more borderline cases where

the outcome might be less than clear. Social workers might be persuaded, possibly against their better judgment, to monitor cases rather than initiate proceedings. There may also, for instance, be the temptation to see cases pursued through the Private Law s.8 route with relatives taking over the care of the children concerned but without the rigours of investigation one has in the public law arena as to whether the child concerned is at risk.

5. Any such change in policy should not be driven by the high cost of court fees. There is no general perception that Local Authorities are bringing Care Proceedings which are without merit. There is some concern that cash strapped Local Authorities are already allowing some vulnerable children to slip through the net by not intervening promptly and in appropriate cases taking Care proceedings. The Public Law Outline has been the judicial response to ensure that Care proceedings are conducted with the greatest efficiency. Judges at all levels are being trained to ensure that the Outline is implemented and procedures adopted which provide the maximum efficiencies possible.
6. To alleviate our major concern, we would encourage HMCS to use its very best endeavours to ensure that local authorities are aware that the necessary funding has already been transferred to them, even if that is not obvious from the block grants received by the local authorities from central government. This message needs to be conveyed not just to Chief Executives but also to the leaders of local authority child care and legal services' departments. Openness and transparency are key features of modern public life and it should be made demonstrably plain that the proposals are fiscally neutral and will not impose in themselves any undue restraint.

The answers to the specific questions raised – subject to the general observations set out above – are as follows:

**1. Given that fees need to be set to cover the full cost, do you agree that a single application fee is not the best approach?**

**If not, why not?**

A single fee is not the best option. It is unfair and sits uneasily with any policy of full cost pricing. Some cases inevitably take up more resources than others. As is mentioned in the Paper, it would not reward good preparation. Most civil cases have fees paid in stages: issue, allocation, listing and final hearing.

**2. Do you agree that a variable fee based upon assessed quality of case preparation is unlikely to be practicable?**

**If not, please explain why?**

We agree that a variable fee based upon the assessed quality of the case preparation is unlikely to be practicable. Neither court staff nor legal advisors are in a position to make this sort of decision. It requires a fairly detailed view of the case and an instant view of the competence of the local authority before proper investigation is possible. There would have to be some facility for the local authority to challenge any decision, and it would all be terribly messy and time consuming.

**3. Do you agree that there should be a “pay as you go” structure for care proceedings fees?**

We agree that a pay-as-you-go structure is the fairest and most sensible. It is similar to the one which operates in civil cases

**4. Do you agree that the proposed structure strikes the right balance between simplicity and ensuring that paying authorities only pay for what they get?**

**If you do not agree, please explain why and indicate what alternative structure you would propose.**

We agree that the proposed structure strikes the right balance between simplicity and ensuring that paying authorities only pay “for what they get”.

**5. Do you agree with the proposals on additional fees?**

**If not, why not?**

We agree with the proposed level of additional fees

**6. Do you agree with the proposal to retain a single application fee, rather than a pay-as-you-go structure, in adoption cases?.**

**If not, please explain why and indicate what alternative you would propose.**

We agree with the proposal to retain a single application fee, rather than a pay-as-you-go structure, in adoption cases

**About you**

Please use this section to tell us about yourself.

<b>Full name</b>	District Judge Michael Buckley
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	Chairman of the Family Law Committee of the Association of District Judges.
<b>Date</b>	
<b>Company name/organisation</b> (if applicable)	The Association of District Judges.
<b>Address</b>	Blackpool County Court, The Law Courts, Chapel Street, BLACKPOOL.
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If you would like us to acknowledge receipt of your response, please tick this box.	✓

**If you are representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

This response is sent in behalf of the Association of District Judges.