

The Response of the Family Justice Council to the public consultation paper, 'Court Fees: Proposals for Reform'

1. The Family Justice Council is an advisory Non Departmental Public Body sponsored by the Judicial Office. It is an inter-disciplinary body responsible for providing independent expert advice on the family justice system to Government, principally through the Family Justice Board. The Council is chaired by the President of the Family Division, Sir James Munby. Its membership reflects all the key professional groups working in the family justice system and includes: judges, lawyers, social workers, Cafcass officers, health professionals and academics. The views expressed in this response reflect the views of the Council's members. It should not be assumed that they are necessarily shared, in every particular, by the Chairman. The judiciary will be responding separately to the consultation paper. The numbering of the responses follows that of the questions in the consultation paper.

Responses to Questions

1.1 The introduction of a policy that the fees in family proceedings should be increased to reflect the true financial cost of providing the services ignores the role of social policy, social cohesion and public policy that the family courts provide. The proposed unified approach to fees fails to address the multi faceted aspects and positive social cost of universally available dispute resolution service for families in crisis. We note the difficulties which faced the Family Justice Review and many eminent academics who have researched the family justice system, in obtaining accurate data on the costs of the system.

1.2 It is generally the fact that one spouse or civil partner is often in a financially much weaker position particularly if they have taken on a caring role for children. In heterosexual marriage, this role is still largely taken on by women. The proposed increase in fees for divorce and applications about arrangements for children will compound that inequality. It is an issue of social policy that spouses and civil partners be given access to justice to end unhappy marriages and civil partnerships and on dissolution to a fair means of distribution of assets. This has a very clear social benefit not only to women but children too. The increase in fees as proposed will have an unintended consequence of causing financial hardship to those very sectors of society that social policy seeks to protect.

2.1 The grouping together of non money claims in an attempt to unify the fee structure is a positive step. However, the proposed levels of fees in non money family applications, in particular in cases involving children, are not necessarily agreed. There is not sufficient information about remissions in the consultation document to provide a detailed comment on individual fees.

3, 4, 5 6 & 7 have no direct relevance to family cases.

8.1 The fee remission scheme is available to protect those who cannot afford to pay. However, this scheme has been the subject of a recent consultation

(2013) and the final changes to that scheme are still unknown. We therefore strongly believe that any changes to court fees must be considered in tandem with any proposed changes to the court fee remissions scheme in order to ensure that those who cannot afford to pay are protected.

8.2 The abolition of fees for applications for non molestation and occupation orders is a very positive step and supports public policy on protecting the victims of domestic abuse.

8.3 The legal framework for marriage and civil partnership both stem from public policy decisions and they support a social purpose. The dissolution of a marriage and/or civil partnership must be looked at in the same light. It costs £35 per person to give notice of a civil marriage. It costs £4 to obtain a marriage certificate on the day. The fee for conducting a civil marriage on approved premises is £45. The fee for the issue of a petition for divorce is £410. The Council questions whether it is desirable, or justifiable, in public policy terms to have so great a cost differential between getting married and getting divorced.

8.4 The actual costs of divorce is £270. It sends a message that the Courts seek to make a profit from the personal misfortune and misery that is a divorce or a dissolution of a civil partnership. The high cost has a disproportionate negative effect on female spouses who traditionally are in an economically weaker position than male spouses. Some 75% of petitioners for divorce are women – this figure has remained broadly stable for many years.

8.5 The fees may prevent or delay some parents in conflict from getting divorced. This would leave children potentially exposed to ongoing conflict damaging to their long term welfare, and may also place the adult parties at risk of harm by prolonging the time when they live under the same roof. Experience from practice shows that some will not separate until their financial separation is recorded in a court order (whether by consent or not) for fear of being disadvantaged by not being in the family home

8.6 The current fee for the issue of ancillary relief proceedings is £255. The rationale for not amending the fee structure is not clear. This does not take into account there is an enormous difference between those couples that have minimal assets to those who have matrimonial assets of several million pounds. There is scope for increasing fees where the assets are large as the current flat fee has a disproportionate effect on those where the assets are modest and the sums distributed are as a result, modest.

9.1 The standardisation of fees for Children Act cases will make it easier for Court staff and the public to understand the fees to be paid. Given the increases in litigants in person and the numbers of people who will be seeking the assistance of the court to resolve the disputes about the arrangement for children the standardisation of fees is very welcome.

9.2 These reforms follow close behind the legal aid reforms which are resulting in many more litigants in person in private law cases. This includes not

only separated parents who are in dispute about arrangements for their children (and financial arrangements) but also relatives and friends who seek a residence or special guardianship order for a child who is at risk ***as an alternative to them entering the care system***. Although the proposed increase in fees for those applying for a special guardianship order and contact with a child in care may seem minor in the grand scheme of things, the impact will be considerable for family members and may even deter them from seeking such orders. Indeed there is research evidence that family and friends carers who take on the care of a child, typically as an alternative to them entering the care system, are particularly impoverished, hence finding an extra £45 and £35 respectively may prove impossible. Moreover, children in F & F care usually need a legal order to ensure their safety and protection, hence court is not the last resort, but part of the framework for early intervention for children at risk, which may avert the need for public law proceedings (resulting in overall savings) hence we consider it should be supported not undermined. We therefore suggest that instead of increasing the fees for such applications, it would be better to reduce the fees for a residence/child arrangements order for such children and s.34 contact applications to the same level as the SGO i.e. £170, to achieve consistency in order that children's best interests are not undermined.

9.3 Since July 2013 applications to restore matters to court in proceedings have increased substantially (from £80 to £215). We suggest that where the welfare and safety of a child is involved, that the fee is kept very low or remitted automatically.

9.2 The simplification of the fee to result in a one up-front fee in public law cases is welcomed. However, the amount of the fee is not welcomed.

9.3 The issue of public law cases is involuntary. Local authorities have a statutory duty to protect children, which has an enormous societal benefit. The costs of applications in public law children cases involve the spending of taxpayers money. The question whether the taxpayer pays for it in fees from the local authority budgets or fees from the courts budget is a wider issue of policy. However, when looking at the issue it is worth comparing the protection of children in the family courts, which involves the payment of court fees and the protection of society in general in the criminal courts, which do not involve court fees. That message of the differences between jurisdictions is often interpreted, as the protection of children is a duty to be subject to vagaries of financial budgets. The level of the fee and the fact that it reflects the full cost to the Court is part of that message.

9.4 The issue fees for public law children cases are always paid by local authorities. This fee therefore is always met by the public purse i.e the taxpayer. The cost of administering budgets and managing the payment and collection of these fees is therefore the real additional cost to the taxpayer. As the rationale behind the fee amendment proposal is the reduction of the cost to the tax payer, the abolition or immediate remission of fees in public law children cases is an area where cost neutral savings can be made. The Plowden report of his Review of Court Fees in Child Care Proceedings, published in September 2009,

recommended that fees should not be charged for issuing care proceedings, a conclusion supported at the time by the Family Justice Council.

10. The standardisation of general application fees will make it easier for Court staff to administer and easier for litigants to understand.

11,& 12. These do not have a direct implication for family cases. The jurisdiction of the Magistrates Court will be subsumed into the Unified Family Court and the single fee structure for the Unified Family Court is welcomed.

13.1 It is not clear what the fee levels for appeals in the Family Court will be. There will be a number of different appellate jurisdictions in the Family Court i.e. Magistrate/District Judge to a Circuit Judge, Circuit Judge to the Court of Appeal etc.

13.2 In public law children cases there is a policy argument that fees for Appeals to the Court Appeal should be remitted or abolished. In public law children cases parents are publicly funded by legal aid and local authorities are public funded by taxpayers. In these cases applications fees are paid by public money being moved around with consequential secondary costs. It will be cheaper for the taxpayer to have no fees payable in such circumstances because the only real cost is the administration.

14. No comment.

15. Whilst, of course, the FJC accepts that those who use the courts should, where they can afford to, contribute to the costs of the service they receive. However, the Council does not accept that the policy of full cost recovery should apply to the family courts. The services provided by the family courts, like the criminal courts, have an element of social policy. The issues of divorce, distribution of assets upon divorce and welfare of children are matters of social policy not just a court service. Pricing those elements of the court service out of the reach of the service users will result in injustice and perhaps a conflict in policy. Where litigation is funded by the public purse and the issue of proceedings is based on a statutory duty it seems pointless and wasteful to have a fee structure that will result in the shuffling around of public money from one budget to another.

16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 & 27 have no direct relevance to family cases

28.1 The fee for issuing a divorce petition should not be set at £750. As set out above the cost of obtaining a marriage certificate is £3.50. The cost of a giving notice for a marriage is either £30 per person or £40 per person and there is no cost for a marriage at a register office. The disparity in fees is stark.

28.2 The cost of a divorce is estimated to be £270. Keeping the fee at £410 and the court making a profit of £140 on each divorce is contrary to the stated policy aim of making each application pay for itself.

28.2 Increasing the fee to £750, resulting in a profit of £340 per divorce, compounds the identified conflict in the stated aim of the policy and reasons for the change in fee structure. The message the proposed fee structure sends is that couples who seek to have their marriages/civil partnerships dissolved are to be financially penalised. In the Council's view, the proposed fee level for divorce is disproportionate and would represent a very substantial over recovery. It is difficult to see how this approach can be squared with the Treasury Guide to Fees and Charging which prohibits over-recovery and cross-subsidy in setting fees and charges for public services.

28.3 If there is a need for the fees for certain application to make a profit to subsidise others the FJC would recommend further thought to a change in the fee structure for ancillary relief. At the moment the fee for ancillary relief is £255 regardless of the complexity of case or the amount of money the court is being asked to distribute. This is directly contrary to the fee structure to be imposed in commercial cases.

28.4 . Rather than increasing the fee for divorce, a sliding scale of fee for ancillary relief that is linked to the assets claimed could be examined.