

Civil and Family Court Fee Increases response by the Civil Justice Council

Consultation

The Civil Justice Council is concerned at the short time allowed for the current consultation, and that the consultation is limited to statutory consultees and other key stakeholders. Constant increases in court fees seriously threaten access to justice for those on low or modest incomes who do not qualify for fee exemption or remission, or for legal aid. This should not be seen as simply a book balancing exercise, but is a serious access to justice issue.

Funding

The Council is dismayed that the DCA is proposing another substantial increase in court fees so soon after the last significant increase, less than a year ago, which was designed to bring in sufficient additional income to meet the costs of the running the civil courts in 2005⁽¹⁾. Further increases will inevitably result in a vicious circle by dissuading potential litigants from using the court, resulting in less fee income, further cuts to services and further fee increases. We believe that it is essential that the department undertakes some research into the impact of the constant increases in fees to establish the impact on access to justice.

The failure properly to estimate the income required demonstrates that the department does not possess sufficiently reliable data on which to base assumptions about the volume of business - and therefore the necessary level of fees - to be raised from court fees.

Underlying policy

We note that the consultation paper specifically states that the department is not consulting on underlying policy of recovering the full cost of running the civil courts, less exemption and remission, from court users. Whilst we accept that it is reasonable to require citizens to pay something towards the costs of bringing a case before the courts, we believe that the very significant increases in fees in recent years means that the policy is fundamentally at odds with the aim of ensuring access to justice⁽²⁾. The policy itself is relatively recent. Until 1982 it was government policy that the salaries and pensions of Judges and the cost of court accommodation should be paid by the state out of public funds, while other administrative costs should be met by litigants. In 1982, court accommodation costs were included in the cost borne by litigants⁽³⁾. The figures relating to the value of court buildings have been calculated using the book value, which is much greater than the actual market value. Therefore, at the very least, the full cost should be adjusted to reflect a calculation based on the lower market value and not the book value. Only in 1992 were judicial salaries and pensions were included. The Council is of the view that the only way to resolve tension between the significant increases in fees and access to justice is for a fundamental review of the underlying policy.

The Council remains of the view that the policy is wrong in principle, in that it fails to recognise the significant element of collective benefit in the administration of civil justice. It is crucial that individuals have an efficient and authoritative means for resolving disputes, and there is a further public benefit in those cases which contribute to the clarification and development of the law.

Fees should not be set at a level which might prevent access to justice and should be proportionate. Proportionality should be the primary factor in determining the level of fees.

Access to Justice

The department has accepted that would be litigants might be deterred because of the level of fees. The last consultation paper, issued only fifteen months ago, said that the subsidy in certain types of family proceedings is "to ensure that would be litigants are not deterred from seeking, for example, contact with their children or freedom from physical violence, because they cannot readily pay the full cost of the proceedings."⁽⁴⁾ It is also important that the Legal Services Commission collects data on how much of the legal aid spend goes on court fees, distinguishing between civil and family, so that the impact of increases on the legal aid budget can be accurately identified.

Although the consultation paper states that exemption and remission, together with legal aid, meets the statutory obligation contained in S92(3) of the Courts Act 2003 ⁽⁵⁾ of protecting access to justice, the Council remains seriously concerned that the continual and significant increases in court fees have created a serious impediment to access to justice for people not eligible for legal aid or for fee exemption or remission under the current scheme. We are concerned that the persistent increases in fees are leading to a situation where certain groups in the population may no longer be able to afford to undertake litigation, and that the current exemption and remission scheme is not sufficient to guarantee access to justice. ⁽⁶⁾ There is a need to ensure that all front line staff dealing with applications for exemption and in particular remission of fees are adequately trained.

Proposed increases in fees

We will not be commenting in detail on all the individual proposed fee increases. However, the Council supports the principle that there should be some element of vertical subsidy between the different stages of a case. All those bringing a claim do so in the knowledge that their case may be disposed of quickly or may run all the way to a full hearing

Civil fees in the Supreme Court and county courts

We think it is important to protect smaller value claims from disproportionate issue costs.

We are particularly concerned at the disproportionate impact of the increase in the issue fee for claims in the county court not exceeding £300. For small claims of £150 or £200 this would be a significant increase - and issue fee of £35 on a claim of £150 is 24 per cent of the value of the claim, whereas a fee of £420 on a claim of £15,000 is less than 3 per cent of the value of the claim. We also note that there is a proposal to increase fees on relatively small claims in the High Court, where the sum claimed does not exceed £50,000.

We would prefer to see no increase in fees on claims up to £50,000, and consideration should instead be given to increases in the issue fee for claims over £100,000. The issue fee for higher value claims represents a far smaller percentage of the value of the

claim. We also suggest a further band for claims £300,000-£500,000, with the top band being claims over £500,000.

We are also very concerned about the increase in the appellants notice in small claims, which is already disproportionately high. Consideration should be given to having a separate fee for appellants notices for the fast and multi track, with a higher fee for higher value multi track claims.

We are of the view that further consideration should be given to the ability of the court to recover fees from a losing party when the claimant or applicant was either exempt from paying court fees or had fees remitted in whole or in part. It seems inequitable that a losing party should benefit in this way and that the Court Service should be unable to recover the money.

Civil fees in magistrates' court

The consultation paper states that fees for civil (non-family) business fees are "mostly paid by authorities pursuing small debts and there is no justification for a continuing general subsidy from the taxpayer". The Council is of the view that this is somewhat inaccurate since a major part of the increased income comes from proceedings relating to Council Tax applications which, although paid in first instance by the local authorities, are then added to debt of the individual who may already be struggling to manage their affairs.

We are concerned about the very significant increases in relation to applications under Child Support Act 1981, in particular the increase from £10 to £95 in the fee for a complaint or application and summons under CSA, which will make access to the magistrate's court much more costly than is currently the case

Given the range of work covered by the magistrates' court (civil, family and criminal) we wonder whether the Court Service has been able to cost with any degree of accuracy the elements which are attributable to civil or family business in order to determine the appropriate level of fee.

Fees Panel November 2005

1. The Regulatory Impact Assessment showed that the expected effect of the proposed fee increases on customers, with the overall level of income expected to increase by 12%.
2. For the Council's full argument see: Full Cost Recovery: A paper by the Fees Sub Committee. Published November 2002
3. The Council remains of the view that the cost of heritage buildings, such as the Royal Courts of Justice, should be excluded from Court Service expenditure. The overheads related to heritage buildings are out of proportion compared to the service they provide. The Court Service needs to fundamentally review its capital expenditure as well as other overhead costs.
4. Consultation paper paragraph 5.3
5. S92(3) Courts Act 2003 "When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied".

6. The Council has previously argued for a sliding scale for remission with an income taper similar to that involved in the calculation of a housing benefit, which would ensure that a more open and transparent system for fee remission, and ensure that those who could not afford the full fee had part of the fee remitted.