



Home Office

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Jack Dromey MP  
House of Commons  
London  
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10 OCT 2013

Dear Jack,

**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: GOVERNMENT AMENDMENTS FOR COMMONS REPORT STAGE**

I am writing to let you have details of a further tranche of amendments to the Bill (copy attached) which we have tabled today for Commons Report.

**Power to prescribe fees for courts, tribunals and the Public Guardian (new clause *Court and tribunal fees* and amendments to clauses 147, 149 and 151)**

On introduction of the Bill in May we made it clear that what is now clause 147 of the Bill was a placeholder clause enabling the Lord Chancellor to make provision for fees in respect of courts and tribunals. We are now in a position to bring forward the substantive provision.

The normal principle, as set out in *Managing Public Money*,<sup>1</sup> is that public bodies which charge users for the services they provide should set fees at a level to recover the full costs of providing the service. However, as the Government made clear in the Explanatory Notes to the Bill, we are considering the case for charging for certain services at a level which exceeds the costs to which those activities relate (“enhanced fees”).

The new clause provides the Lord Chancellor with a power to set fees above cost when exercising his existing powers under:

- section 92 of the Courts Act 2003 (which relates to fees payable in respect of proceedings in the Senior courts, county courts and magistrates’ courts);

<sup>1</sup>

- section 42 of the Tribunals, Courts and Enforcement Act 2007 (tribunal fees); and
- sections 54 and 58 of the Mental Capacity Act 2005 (Court of Protection and Public Guardian fees).

The purpose of charging enhanced fees is to ensure that access to justice is maintained by making provision for the financing of an effective court and tribunal service and the Office of the Public Guardian.

Initially, the Government's focus is on the resourcing of the courts in England and Wales. The courts fulfil a critical role in a fair and just society, providing access to justice for those who need it. They deal with those charged with criminal offences, proceedings involving children at risk of harm, and help to ensure the proper functioning of society and the economy. To ensure the proper functioning of the courts, and that access to justice is maintained, it is essential that the courts are adequately resourced.

Deficit reduction is the Government's key priority and this needs to be delivered while public expenditure is reduced. The court service, and those who use it, has a contribution to make.

The courts have already taken steps to reduce their spending. Since 2010, we have

- closed over 140 under utilised courts;
- reduced staff by over 3,500 through organisational restructuring; and
- centralised services to reduce costs.

There is, however, a limit to how much more we can achieve through cost cutting alone. In these circumstances, we think it is right that those who use these services should make a greater contribution to their cost, where they can afford to do so. This new clause will provide the Lord Chancellor with the power to achieve this, thereby reducing the cost of the service to the taxpayer. A scheme of fee remissions will continue to be available for those who qualify, so that those who cannot afford to pay the fee are not denied access to justice.

In exercising his powers under this provision in relation to the courts, the Lord Chancellor is required to have regard to the principle that access to the courts must not be denied, and to maintaining the attractiveness of the legal services sector when compared with competitors. Specific enhanced fees will be introduced by regulation, following Royal Assent. On the first occasion that an enhanced fee is introduced, the regulations are subject to the affirmative resolution procedure. Any subsequent amendment to those fees would be subject to the negative procedure.

Before bringing forward regulations, the Government will consult widely on our detailed proposals for charging enhanced fees.

The amendments to clauses 147, 149 and 151 are consequential on the new clause and provide, amongst other things, for the removal of the existing placeholder clause.

I am are copying this letter to Sadiq Khan, Sir Alan Beith (Chair, Justice Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights), Baroness Smith of Basildon, Lord Beecham, Baroness Browning and Baroness Hamwee. I am also placing a copy of this letter and enclosure in the Library of the House and on the Bill page of the Government website<sup>2</sup>.

A handwritten signature in black ink, appearing to read 'Damian Green', written in a cursive style.

**Rt Hon Damian Green MP**

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<sup>2</sup> <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>