

# Anti-social Behaviour, Crime and Policing Bill

## Fact Sheet: Court and tribunal fees

### Background

1. For many years, the civil and family courts have sought to recover the costs of proceedings from users, less the value of remissions. Fee remissions are available to those who qualify, so that those who cannot afford to pay the fee are not denied access to justice. The cost of fee remissions is met by the taxpayer.
2. Similar arrangements apply to certain tribunals for which fees are charged, the Court of Protection and for services provided by the Office of the Public Guardian.
3. In 2012/13, HM Courts and Tribunals Service (HMCTS) recovered 81% of the costs of civil and family courts, having already taken into account the cost of remissions. The Government will shortly publish proposals to achieve full cost recovery through fees for these proceedings.
4. The courts play a crucial role in ensuring a fair and democratic society, including the proper functioning of the economy. Ensuring that the courts are properly resourced is critical to providing access to justice. The courts also play a key role alongside our wider legal services sector in maintaining and building the reputation of our legal system as a world leader in commercial dispute resolution. High quality, modern court services are an important part of the growth agenda.
5. Nevertheless, the need to reduce the fiscal deficit means that this must be delivered while reducing public spending. The courts and those who use them must make their contribution. There is a gap of over £1 billion between what we spend on operating our courts and tribunals and the income we receive.
6. HMCTS has already delivered significant costs savings. Since 2010:
  - over 140 under utilised courts have been closed;
  - more than 3,500 staff exited through restructuring the organisation; and
  - work has been centralised where resources allow.

There is however a limit to how much more can be achieved through cost reductions alone.

7. The Ministry of Justice will therefore intend to undertake a public consultation on plans for full cost recovery to ensure that civil and family proceedings pay for themselves, but we need to go further in reducing the burden on the taxpayer. The Government believes it is right that those who use the courts should make a greater contribution

towards the costs of providing the service, where they can afford to do so, and the provision in the Bill would enable this.

8. The Government is separately developing plans for convicted defendants to pay towards the cost of the criminal courts.

### **Powers to prescribe fees**

9. The provision in the Bill (at clause 155) provides the Lord Chancellor with a general power to set fees at a level above the cost of those activities for fees made under:
  - section 92 of the Courts Act 2003 (proceedings in the civil and family courts in England and Wales);
  - section 42 of the Tribunals, Courts and Enforcement Act 2007 (tribunals); and
  - sections 54 and 58 of the Mental Capacity Act 2005 (the Office of the Public Guardian and the Court of Protection)
10. The purpose of this clause is to ensure that the courts, tribunals and Public Guardian are properly funded. The Bill also places a duty on the Lord Chancellor, in setting fees under this power, to have regard to:
  - the overall financial position of the courts and tribunals; and
  - the competitiveness of the legal services market.
11. The Government is not bringing forward specific plans for charging enhanced fees at this stage. We want to take some time to make sure we get these measures right. So we intend to consult publicly on detailed proposals, seeking a wide range of views on the options.
12. The Ministry of Justice will be looking carefully at how any proposed court fees might compare with the overall cost of litigation, the value of the issues at stake and the fees charged by our international competitors so that access to justice is protected, and our competitive position is preserved.
13. Any enhanced fees that the Government intends to take forward following the consultation would be made by a Fees Order and therefore subject to scrutiny in Parliament. On the first occasion a fee is introduced at an enhanced level, the Order would be subject to the affirmative resolution procedure, with subsequent changes to those fees subject to the negative procedure.