



Ministry
of Justice

Government Response to the Justice Committee's Second Report of session 2016/17

Courts and Tribunals Fees

November 2016



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Courts and Tribunals Fees

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

November 2016



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Introduction

The Government welcomes the Justice Committee's report on Courts and Tribunals Fees.

Our justice system is the envy of the world. We have an outstanding judiciary that is independent, incorruptible and impartial. Our lawyers have a global – and deserved – reputation for excellence. And we have a legal services industry that contributes billions of pounds every year to the UK economy.

Looking ahead, we need to make sure that our justice system continues to lead the world – that its impressive reputation is strengthened and that legal professionals are equipped to seize every new opportunity.

The vision for a reformed court and justice system, which we published on 15 September 2016, is a radical one – to modernise and upgrade our justice system so that it works even better for everyone – for judges and legal professionals, businesses and individuals, families, and witnesses and the vulnerable victims of crime. We want all people from every conceivable background, citizens and businesses of all kinds, to experience the finest justice system in the world.

We have the will and now the means to achieve this. The Government is committed to investing more than £700 million to modernise courts and tribunals, and over £270 million more in the criminal justice system.

Alongside this radical reform it remains vitally important to make sure that our courts and tribunals service is properly and sustainably funded now and into the future, so that access to justice is protected.

In 2015/16, the net cost of the courts and tribunals service to the taxpayer was £1.2 billion. This is unsustainably high and we think that it is right to reconsider the balance of funding between the taxpayer and those who use the courts and tribunals and can afford to make a larger contribution. We will continue to look for opportunities to increase fee income where they are justified. A scheme of fee remissions, known as Help with Fees, is generally available for those who need help with paying court and tribunal fees.

Freedom of Information Appeals

We see no reason to disagree with the view of the Independent Commission on Freedom of Information that legislation should be introduced to remove the right of appeal to the First-tier Tribunal against an Information Commissioner decision.

The Government does not believe that this recommendation is related to court and tribunal fees and we believe that strictly it falls outside the terms of reference of the Justice Committee's inquiry.

Nevertheless, as set out in the statement on 1 March 2016 of the then Minister of State at the Cabinet Office and Paymaster General, this is one of a number of recommendations made by the Independent Commission that are being carefully considered.

Employment Tribunals

We recommend that the Government publish forthwith the factual information which they have collated as part of their post-implementation review of employment tribunal fees.

The Government is finalising the post implementation review of fees and the conclusions will be published in due course.

We further recommend that:

- i. the overall quantum of fees charged for bringing cases to employment tribunals should be substantially reduced;**
- ii. the binary Type A/type B distinction should be replaced: acceptable alternatives could be a single fee; by a three tier structure as suggested by the Senior President of Tribunals; or by a level of fee set as a proportion of the amount claimed, with the fee waived if the amount claimed is below a determined level.**
- iii. disposable capital and monthly income threshold for fee remission should be increased, and no more than one fee remission application should be required, covering both the issue and prospective hearing fee and with the threshold for exemption calculated in the assumption that both fees will be paid;**
- iv. further special consideration should be given to the position of women alleging maternity or pregnancy discrimination, for whom, at the least the time limit of three months for bringing a claim should be reviewed.**

These recommendations relate mainly to matters under consideration in the Government's review of fees in the Employment Tribunals which is considering the impact of the introduction of fees in relation to the principal objectives set, including, insofar as we are able, the impact in relation to characteristics protected under the Equality Act 2010. We will publish the outcome of our review in due course and any proposals we have to adjust the current scheme of fees and remissions will be set out for public consultation.

The Committee's final recommendation includes a recommendation to review the time limit of three months for pregnancy or maternity related claims. This is not a matter related to Employment Tribunals fees and we believe that it is therefore strictly outside the terms of reference for the Committee's review.

Furthermore, the Committee may be aware that the Women and Equalities Select Committee, in their recent report on pregnancy and maternity related discrimination published on 31 August 2016,¹ also recommended that the time limit for bringing pregnancy and maternity discrimination claims to the Employment Tribunals should be reviewed. The Government is considering the recommendations of the Women and Equalities Select Committee, and we will be responding to them, including on the time limits for bringing pregnancy and maternity discrimination claims to the Employment Tribunals, in due course.

¹ <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/90/90.pdf>

Fees for money claims

We recommend that the Government review the impact of the April 2015 increase in fees for money claims on the international competitiveness of London as a litigation centre when sufficient time has elapsed, possibly 2 to 3 years, to enable that impact to be assessed. The Government should not resurrect its proposal to double the £10,000 cap, or remove it altogether, unless such a review has been undertaken.

The Government announced, in the Government response to consultation published in December 2015, that we did not intend to increase the maximum fee for a money claim until we had had time to assess properly the impact of the introduction of enhanced fees for money claims in March 2015.

We are currently undertaking research into the impact which will help to inform future decisions on the fees charged for these types of claim.

Divorce

We recommend that the increase in the divorce petition fee to £550 be rescinded.

The Government does not accept this recommendation.

Help is available to those who qualify under the fee remissions scheme, known as Help with Fees, which helps to ensure that those who are unable to pay are not denied access to justice. In the circumstances of a divorce (or any other matter where the parties have a contrary interest in proceedings) the applicant is assessed on his or her own, rather than the household's, means. On this basis, women are more likely to qualify for a fee remission than men.

The new fee of £550 for a divorce came into effect on 21 March. Although it is too soon to draw any firm conclusions, there is no evidence so far that the fee increase has led to a fall in applications for a divorce. We are continuing to monitor the position carefully.

Overall, we believe that the fee for a divorce is reasonable when considered against the objectives, generating an estimated £12 million per annum in additional fee income as a contribution to the savings required to make sure that the courts and tribunals are properly funded, and that access to justice is protected.

Fees for immigration and asylum appeals

We express the view it is unwise for the Government to have brought forward proposals for fees set at a level to achieve full cost recovery in the Immigration and Asylum Chambers before having published its review of the impact of implementation of employment tribunal fees.

We note the Committee's view but we disagree that it was unwise to bring forward proposals for increasing fees in the Immigration and Asylum Chambers.

There are a number of reasons why we believe that the proposals for fees in the Immigration and Asylum Chambers are not directly comparable with the position in the Employment Tribunals:

- the Employment Tribunals deal with private workplace disputes whereas the Immigration and Asylum Chambers deals with appeals against the decisions of the Home Secretary on immigration and nationality;
- prior to the introduction of fees in July 2013, access to the Employment Tribunals was provided free of charge, whereas fees have been charged in the First-tier Tribunal of the Immigration and Asylum Chamber since December 2011; and
- one of the aims of introducing fees in the Employment Tribunals was to encourage people to use Acas's free conciliation service.

This does not mean that we have not taken the impact of Employment Tribunals and other fees into account in developing these proposals. We regularly review the impact of our fees policy and adapt our approach to forecasting income in the light of experience. Our estimates include better, evidence based, assumptions about the estimated impact of fee increases on demand, and these are incorporated into our fee income forecasts.

We do not have sufficient evidence to come to a firm conclusion on whether the standard courts and tribunals fee remission system should be applied in the Immigration and Asylum Chambers; but it is important that the matter should be reviewed to ensure a proper balance between the desirability of a standardised system and the difficulties this could cause in immigration and asylum cases.

The fee remissions and waivers policy in the Immigration and Asylum Chambers has been considered as part of the consultation on increasing fees for proceedings in these chambers to full cost recovery levels. On 15 September 2016, we published the Government response to the consultation² confirming our intention to raise fees to full cost levels in the First-tier Tribunal, and to introduce fees for applications for permission to appeal and for appeals in the Upper Tribunal. The increases to fees in the First-tier Tribunal came into effect on 10 October 2016, and the introduction of fees in the Upper Tribunal and for applications to the First-tier Tribunal for permission to appeal to the Upper Tribunal will be introduced when Parliamentary time allows.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553387/proposals-imm-asylum-chamber-consultation-response.pdf

In the Government response, we also announced that we are extending the fee waiver and remissions policy, so that those who are in receipt of a Home Office fee waiver on the grounds of destitution will also have their tribunal fee waived. We have decided not to extend HMCTS's standard fee remission scheme to proceedings in the Immigration and Asylum Chambers in view of the administrative difficulties it raises. Further details are set out in the Government response to consultation.

Fee structure and fee remission

We can see distinct attractions in a system in which there is a graduated or sequential schedule of fee payments whenever there are substantial fees payable in total in respect of a case in the civil or family courts or tribunals, allied with a requirement for the respondent to pay a fee, but we do not feel that we have enough evidence to recommend such as system. We do however recommend that a pilot scheme take place to enable an evaluation to take place of such a system.

In setting fees, it is important that a balance is drawn between:

- maintaining a fee structure which is simple, so that people understand and have certainty about the fees they are committed to paying in proceedings, and is also straightforward for HMCTS to administer; and
- charging more for those who make greater use of the courts and tribunals.

It is worth highlighting that we do have graduated or sequential fees in the court and tribunals in certain circumstances. For example:

- in civil proceedings, the fee to start a money claim depends on the value for the claim, with a series of graduated fees for claims up to £10,000 and for those worth more than £10,000, the fee is 5% of the value of the claim up to a maximum of £10,000;
- once a defence to a civil claim has been served, there is a further fee payable depending on the track to which the claim is allocated: either the small claims track, where there is a graduated fee depending on the value of the claim; the fast track, which attracts a fee of £545; or the multi-track, where the fee is £1,090;
- in employment tribunals, the claimant is required to pay both a fee to issue proceedings and a fee for a hearing, if the claim progresses to one;
- a similar structure is in place for proceedings in the Property Chamber of the First-tier Tribunal, and we have announced plans to introduce fees in the General Regulatory Chamber and the Tax Chamber which include fees to issue proceedings and for hearings; and
- our proposals for probate fees are based on a graduated fee structure under which the fee payable increases with the value of the estate.

We therefore believe that we already make use of graduated and sequential fees where they are appropriate and, for this reason, we do not agree that a pilot would be helpful.

Neither do we agree that we should introduce fees for respondents. This was proposed by a number of respondents to the consultation on the introduction of fees in the Employment Tribunals, but was rejected at the time because respondent fees were not charged elsewhere in the civil and family courts in England and Wales. It was also not considered appropriate to require a respondent to proceedings to pay a fee because they had little influence over the decision to litigate, and therefore little choice on whether to engage in proceedings.

We continue to believe that it would not be appropriate to charge respondent fees for court and tribunal proceedings and therefore have no plans to test the proposals in a pilot.

The Law Society called for the Ministry to introduce a system for regular rerating of remission thresholds to take account of inflation, and to conduct a further review of the affordability of civil court fees and the remissions system, considering means of simplification, for example through automatic remission for all basic rate taxpayers. We recommend that the Ministry adopt the Law Society's suggestion as a matter of urgency.

We do not believe that there is a strong case for rerating the fee remissions threshold to take account of inflation. We do not, for example, routinely increase fees to reflect increases in costs.

The Ministry of Justice keeps fees under regular review and we do not believe that a specific review of the affordability of fees is necessary.

We will continue to look for opportunities to further simplify the fee remission scheme including, for example, the Committee's recommendation in the context of Employment Tribunals fees that there should be a single application for fee remissions. We do not, however, accept that basic rate taxpayers should automatically be exempt from paying court or tribunal fees. We continue to believe that entitlement to a remission should take into account of an individual's financial means so that those who use the courts and tribunals contribute towards the cost where they can afford to do so.

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