



Ministry
of Justice

Enhanced Court Fees

The Government Response to
Part 2 of the Consultation on Reform
of Court Fees and Further Proposals
for Consultation

January 2015



Enhanced Court Fees

The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation

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

January 2015



© **Crown copyright 2015**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available for download at www.official-documents.gov.uk and on our website at www.justice.gov.uk

Any enquiries regarding this publication should be sent to us at the Court and Tribunals Fees Policy Team, Law and Access to Justice Group, Ministry of Justice, Post Point 4.38, 102 Petty France, London SW1H 9AJ.

Print: 9781474112918

Web: 9781474112925

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 02121401 01/15

Printed on paper containing 75% recycled fibre content minimum.

Contents

Ministerial Foreword	3
Executive Summary	5
Introduction	7
Part 1: The Government Response to the consultation	12
Part 2: Consultation on proposals for further reforms to court fees	23
Next Steps	28
Contact details/How to respond	30
Annex A: Detailed responses to the consultation questions	32
Annex B: Schedule of fees to issue proceedings for money claims	41
Annex C: List of organisations which responded to the consultation	42
Annex D: Equalities Statement Government Response to consultation	46
Annex E: Equalities Statement Further Consultation	54
Annex E: Equalities Statement Further Consultation	54

Enhanced court fees

Ministerial Foreword

I am proud that we live in a country which operates under the rule of law, and where we have such a strong tradition of access to justice. We have some of the finest judges and access to some of the best legal services in the world. That is why so many people and organisations choose to bring their disputes here.

It is vital that these principles and qualities are preserved so that people can continue to have ready access to the courts when they need it. I believe that a key aspect of ensuring that access to justice is protected is to ensure that the courts are properly funded.

We can only have properly funded public services if we have a strong economy. This Government has made economic recovery our first priority. This has meant that we have had to make some difficult choices, but the tough action we have taken is working and the economy is getting stronger.

Our work is not finished, and delivering further reductions in public spending will continue to be necessary over the coming years.

There can be no exceptions for the courts, and those who use them. We must continue the drive for efficiency and where necessary we will invest to save. We have already announced that we will be investing £375 million over the next five years to modernise our services and improve efficiency, because this will enable us to make long-term and permanent savings worth over £100 million each year by 2019/20.

There is, however, only so much that can be achieved through cost efficiency measures alone. If we are to protect access to justice, and all the benefits that brings, I am convinced that there is no alternative but to look to those who use the courts to contribute more towards their running costs where they can afford to do so.

We consulted on proposals to introduce enhanced fees last year and this Government response sets out how we intend to proceed. The measures set out in this Government Response will deliver an estimated £120 million per annum in additional income, with every pound collected retained by the courts to deliver a better service for everyone who uses them.

Respondents to the consultation were particularly concerned about raising the fee for a divorce. We have listened to those concerns and we have decided not to pursue this measure for the time being. We have also listened to those who were concerned about the potential impact of the higher fees for commercial proceedings, and we have decided not to implement either of the options on which we sought views.

Enhanced court fees

However, while we have decided not to proceed with a number of the consultation proposals, this has not changed the financial imperative to increase the income to the courts from fees. The Government Response therefore also seeks views on proposals for raising fee income from possession claims and general applications in civil proceedings.

Increasing court fees will never be popular or welcome. But I am sure that those who choose to litigate in our courts will continue to recognise the outstanding qualities our legal services offer and the excellent value for money they provide.

Shailesh Vara

Executive Summary

Part 1: the Government Response to the consultation on enhanced fees

The Government has decided to increase the fee to issue proceedings for the recovery of money to 5% of the value of the claim for all claims over £10,000. The fees for claims of less than £10,000, which represent over 90% of all money claims, are unaffected by these proposals and will remain at their current levels. The maximum fee to issue proceedings will be £10,000.

Discounts of 10% will apply to these fees where the claim is initiated electronically using the Secure Data Transfer facility or Money Claims Online.

Having listened to the concerns of those who responded to the consultation proposals, the Government has decided not to implement the proposed increase to the fee for a divorce, or either of the options for charging higher fees for commercial proceedings.

This has not, however, changed the financial imperative to increase income to the courts from fees. This Government Response therefore also seeks views on proposals for raising fee income from possession claims and general applications in civil proceedings

Part 2: the Government's further proposals for consultation

Questions

Question 1: Do you agree with the proposal to raise the fee for a possession claim by £75? Please give reasons.

Question 2: Do you agree with the proposal to increase the fee for a general application in civil proceedings from:

- £50 to £100 for an application without notice or by consent; and
- £155 to £255 for an application on notice which is contested.

subject to an exemption for:

- applications to vary or extend an injunction for protection from harassment or violence;
- applications for a payment to be made from funds held in court; and
- applications made in proceedings brought under the Insolvency Act 1986.

Question 3: Are there other types of case in which a general application may be made which you believe should be exempted from the proposed fee increases? Please provide details.

Question 4: We would welcome views on our assessment of the impacts of the proposals for further fee increases on those with protected characteristics. We would in particular welcome any data or evidence which would help to support these views.

Introduction

1. This publication sets out the Government's response to Part 2 of the consultation paper, *Court fees: proposals for reform*,¹ which sought views on proposals for charging enhanced fees for certain proceedings in the civil courts in England and Wales.
2. In Part 1 of this response, we set out those measures we intend to implement following the consultation. In Part 2, we seek views on further proposals to raise fee income from court proceedings. The deadline for providing responses to the further consultation is 27 February 2015.

The case for reform

3. The case for reform is based firmly on the need to protect access to justice. This principle is a vital component of an effective and functioning democracy, helping to maintain social order and to support the efficient running of the economy.
4. The role of the courts is to provide access to justice for those who need it. This covers a wide range of circumstances, including: people accused of criminal offences; children who are considered to be at risk of harm; couples who need help in making arrangements for their separation and individuals or businesses involved in contractual or other disputes. In all of these cases, the courts are there to ensure that rights are protected and that cases are dealt with fairly, leading to a just outcome.
5. The Government has made the economic recovery our highest priority. We have started to tackle the unsustainable levels of borrowing by taking measured and proportionate steps to reduce public spending. These measures are clearly working, and the economy is getting stronger.
6. The Ministry of Justice, in common with most other public bodies, must continue to reduce its spending to meet its spending review settlements. Enhanced fees form part of our plans to meet the settlement. The measures we intend to implement, set out in this Government Response, will contribute an estimated £120 million per annum in additional income.
7. This is less than the income we estimated would be generated by the measures on which we originally consulted. The financial imperative to increase income to the Courts from fees has not changed and this Government Response therefore also seeks views on further proposals for increasing fee income from court fees. These measures, if implemented, would generate up to a further £55 million in annual income.

¹ *Court fees: proposals for reform*, Cm 8751, December 2013

The financial context

8. Since 2010, the Ministry of Justice, in line with most Government departments, has had to make substantial savings in its spending:
 - we have reduced spending on legal aid so that the scheme is more affordable;
 - we have closed inefficient prisons, and we have outsourced facilities management services and benchmarked others to drive greater efficiencies; and
 - we have reduced staffing levels in our headquarters functions, and in the headquarters of our agencies.
9. Her Majesty's Courts & Tribunals Service (HMCTS) is also playing its part in contributing to these savings. Since 2010:
 - we have consolidated under-utilised court buildings;
 - staff numbers have been reduced by 3,500 through organisational restructuring; and
 - common services, such as estates, finance and IT, have been rationalised to reduce the cost of overheads and improve overall efficiency.
10. There is scope to go further, and we will be investing £375 million over the next five years to modernise court services, which is estimated to realise steady state savings of over £100 million by 2019/20.
11. There is, however, a limit to how much can be achieved through cost cutting measures alone. The Government believes that these reforms must be complemented by increases in the contributions from those who use the courts, if access to justice is to be protected and the overall cost of the courts to the taxpayer is to be reduced in line with spending review commitments.
12. The measures set out in this Government Response, when implemented, will deliver estimated additional income worth £120 million per annum as a contribution towards the departmental savings required from 2015/16.

Legislation

13. The normal rule, set out in *Managing Public Money*,² is that fees for public services should be set at a level designed to meet the full cost of those services. The fee reforms introduced on 22 April 2014 were designed to ensure that the fees charged in the civil courts were broadly at full cost levels (less remissions).

² *Managing Public Money*, HM Treasury, July 2013.

14. In order to go further, we have taken a power, at section 180 of the *Anti-social Behaviour Crime and Policing Act 2014*, which allows fees to be set at a level above the costs of proceedings to which they relate. Under these provisions, the income from enhanced fees must be used to provide an efficient and effective system of courts and tribunals. The Lord Chancellor is also required to have regard to a number of factors before prescribing enhanced fees. In addition to the requirement to have regard to the principle that access to justice must not be denied (section 92 (3) of the Court Act 2003), he must also have regard to:
 - the financial position of the courts and tribunals service including the costs incurred by the courts and tribunals that are not being met by fee income; and
 - the competitiveness of the legal services market.

The consultation

15. In December 2013, the Government published proposals for using the enhanced fee power. These were set out in Part 2 of the consultation paper: *Court fees: proposals for reform*, which was published on 3 December and closed on 21 January 2014.
16. The consultation proposed enhanced fees for three categories of case:
 - money claims;
 - commercial proceedings; and
 - divorce.
17. We received 162 responses to the consultation. A list of the organisations which responded to the consultation is set out at Annex C.
18. The main points raised by consultees, and the Government's responses, are summarised in the following chapters and full details are contained at Annex A.

Research

19. One of the key concerns of introducing enhanced fees was that they might act as a barrier to justice. To seek to understand the likelihood and impact of this risk, two pieces of research were commissioned to support the development of the consultation proposals published alongside the consultation paper.

Potential impact of changes to the court fees on volumes of cases brought to the civil and family courts³

20. This study was undertaken by MoJ's Analytical Services team. Although a small scale study, it provides a valuable insight into the attitudes of those who bring the more routine types of case before the courts.
21. In summary, it found that court fees were not a primary factor influencing decisions to take cases to court: other factors, such as the prospects of success and likelihood of recovery, were more influential. Broadly, the current court fee structure was perceived favourably, and for these reasons, the proposed increases in court fees were not considered likely to impact on the volume of cases.

Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions.⁴

22. Queen Mary, University of London, were commissioned to undertake a quick and simple study to compare services and court fees charged in a small number of other jurisdictions. These were: Singapore, New York, Delaware, Australia, and Dubai. The comparison was based on a typical scenario of a claim with a value of more than £500,000, heard over four days.
23. The study concluded that:
 - the London courts enjoyed a competitive advantage over most of the jurisdictions in the study, including Singapore, Australia and Dubai; but
 - they did not enjoy a similar advantage over the courts of New York.
24. Further research has been undertaken during the course of the consultation. In particular, we have commissioned two further pieces of qualitative research:
 - IPSOS MORI were commissioned to undertake a study on the reasons why people and businesses bring cases to courts,⁵ and
 - the British Institute of International Comparative Law (BIICL) have completed a study on international cross border litigation.⁶
25. These reports are available on our website, and are considered in more detail in the following section of this Government Response.

³ https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/feesresearch.pdf

⁴ https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/supporting_documents/competitivenessofcommercialcourts.pdf

⁵ *The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants*, IPSOS MORI, April 2014

⁶ *Factors Influencing International Litigants' Decisions to Bring Commercial Claims to the London Based Courts*, British Institute of International Comparative Law, January 2015.

26. In Part 1 of this publication, we summarise the key issues raised in the consultation, the Government's response to those issues, and how we have decided to proceed. Further details of the issues raised in the response to the consultation are set out at Annex A.
27. In Part 2, we set out our further proposals for raising fee income for the courts. We would welcome views on these further proposals. The measures we are proposing are simple and straightforward reforms to existing fees. For this reason, we consider that a consultation period of six weeks provides adequate time to understand the proposals and to provide a response.
28. The deadline for responding to the consultation is 27 February 2015.

Impacts

29. We estimate that the measures contained in this Government Response will deliver additional income worth £120 million per annum from 2015/16. The further measures, on which we are seeking views, would additionally deliver £55 million per year if they were implemented. Full details are set out in the Impact Assessments, published alongside the Government Response.⁷
30. We have also undertaken an assessment of the impact of these reforms and proposals on people with protected characteristics. These are summarised in the following chapters and our more detailed assessments are contained in the Equalities Statements at Annexes D and E.

⁷ See: <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>

Part 1: The Government Response to the consultation

Introduction

31. This section sets out the Government's response to the consultation proposals for introducing enhanced fees. The consultation paper sought views on three sets of proposals for raising enhanced fees:

- money claims;
- commercial proceedings; and
- divorce.

1. Money claims

32. Money claims represent the majority of the business of the civil courts. In 2013/14, there were some 1.2 million money claims issued through the courts of England and Wales.

The proposal

33. Currently, the fee to issue a money claim depends on the value of the claim. The current fees are fixed within fourteen separate fee bands. The Government's proposal was to introduce a fee to issue proceedings for the recovery of money of 5% of the value of proceedings for claims worth £10,000 or more. Claims of less than £10,000, which represent over 90% of money claims, would be unaffected by the proposals, and would continue to attract the current fee.
34. We also proposed that the fee should be subject to a cap to avoid the fee becoming unaffordable or potentially giving rise to concerns about access to justice. The consultation proposed a cap of £10,000, the fee payable for a claim of £200,000.
35. We also proposed that specified and unspecified claims should be subject to the same fees regime. Nevertheless, we recognised that this would mean that some personal injury claims could be subject to very high fees and we therefore sought views on whether a lower maximum fee of £5,000 should be applied to unspecified money claims.
36. In line with current practice, we proposed that applications issued electronically either via the Secure Data Transfer (SDT) facility or Money Claims On Line (MCOL) should continue to be subject to the 10% discount.
37. It was also proposed that the same fee structure should apply to counterclaims.

Summary of responses

38. A number of respondents who answered these questions disagreed with the proposal to charge a fee of 5% of the value of the claim. They argued that the proposed fees did not represent the costs of proceedings, pointing out that higher value claims did not necessarily mean they were more complex or costly cases. Some respondents argued that for claims of £25,000 or more, the court fee would become too expensive, inhibiting access to justice.
39. Respondents also felt that enhanced fees were wrong in principle. The civil courts were, they argued, essential to a democratic society and should not generate a surplus. There was no rational argument for charging some users more than the cost of proceedings to subsidise other users of the courts.
40. Those involved in international litigation were concerned that the proposed fee increases would damage London's position as a leading centre for commercial dispute resolution.
41. However, those who agreed suggested that bigger claims tended to be more complex and took up more court time so a higher fee would reflect the cost of the service.
42. Most respondents, whether they agreed with the proposal or not, agreed that there should be a cap on the fee to issue proceedings. Those who disagreed with the proposals argued that the proposed cap of £10,000 was too high.
43. Although a majority of respondents disagreed that an unspecified money claim should attract the same fee as a specified money claim, they tended to do so because they opposed the introduction of enhanced fees for money claims altogether. Some respondents recognised that if enhanced fees were to be introduced, there was no reason to treat unspecified money claims differently to specified money claims. However, some respondents argued that if enhanced fees were to be introduced for money claims, they should all attract the lower £5,000 cap.
44. Some respondents argued that it would be difficult to apply the proposed fee to unspecified money claims because the value of the claim could not be known with any certainty.

The Government's response

45. The Government believes that there is a strong justification for the fee reforms. These proposals make a significant contribution to the Ministry of Justice's financial plans for 2015/16 and beyond. They are estimated to provide some £120 million per annum in additional income, reducing the cost of HMCTS to the taxpayer, helping to ensure that the courts are properly resourced and assuring access to justice for those who need it.

46. We recognise that some respondents were concerned that the fees bore little resemblance to the cost of proceedings. However, under the powers contained section 180 of the *Anti-social Behaviour, Crime and Policing Act 2014*, court fees are not limited by the cost of proceedings.
47. The Government agrees with those who argued that there was no reason in principle to distinguish between the fees charged for specified money claims, and those for unspecified money claims, and that there should be a common approach. We accept that there is some uncertainty at the outset of proceedings about the value of unspecified money claims. However, it is currently the case that the fee for issuing these proceedings is based on an estimate provided by the claimant. The Fees Order also provides that where the claim (or counterclaim) is amended, the party making the change must also pay any difference between the fee paid, and the fee due.⁸
48. The Government does not accept that the proposals could lead to difficulties in some people being able to access the courts. The research we have undertaken indicates consistently that fees are a secondary consideration in the decision to litigate, with the prospects of success and the likelihood of recovering the debt being primary considerations. Fees represent a small proportion of the overall costs of litigation and can, in successful civil proceedings, be recovered from the losing party. In addition:
- the fee to commence the large majority of money claims will remain unchanged under these plans. 90% of money claims are for sums of £10,000 or less;
 - the fee is proportionate to the sums in dispute and is capped at £10,000;
 - fee remissions are available for those who qualify;
 - money claims can be brought under a “no win no fee” conditional fee agreement; and
 - in limited circumstances, legal aid remains available.
49. For these reasons, the Government does not believe that the fee reforms are likely to result in people being denied access to justice.

International Competitiveness

50. There was particular concern among some respondents about the potentially damaging impact that the fee increases might have on legal services in this country, and in particular on high value international litigation.

⁸ See the note to fees 1.1 and 1.5 of Schedule 1 to the Civil Proceedings Fees Order 2008.

51. The Government commissioned the British Institute of International Comparative Law (BIICL) to undertake a study specifically into the attitudes of those involved in international, cross border litigation. The study, which is published alongside this Government Response, gathered views from legal professionals involved in this type of litigation and legal academics. There were 161 responses to an online survey; 54 in-depth interviews and a workshop with around 60 participants.
52. The study confirmed some widely held views on the strengths that London offers:
 - English law is the prevalent choice of law in commercial transactions because of its quality, certainty and efficiency;
 - the popularity of the English courts is mainly based on the reputation and experience of judges.
53. Around a quarter of respondents did not expect the consultation proposals to have an effect on the litigation market, principally due to the high quality of litigation services in the English courts.
54. However, 53 of the respondents to the BIICL study felt that MoJ's proposals were likely to affect London's position as the leading commercial dispute centre and a further 44 felt this was very likely. The concerns centred on the fact that commercial litigation was already perceived as expensive and there was an increasing sense of competition from foreign courts. In addition, there was a fear that wider reforms to civil procedure would increase the costs of litigation.
55. However, the study reinforced that court fees were not currently considered to be a factor in deciding whether and where to litigate.

The Government's response

56. The Government recognises that there are concerns about the risk of damage to legal services in this country and London's reputation as the leading commercial dispute resolution centre. However, no firm evidence could be produced to support these views, and we are confident that such concerns are misplaced.
57. We recognise that, when viewed in isolation, increasing court fees may raise general concerns about the cost of litigation and the threat from competitive jurisdictions. But our plans need to be considered in their full context. The principal reason why London is a popular centre for resolving these types of disputes is not related to the cost, but to the excellent value for money on offer. As the BIICL report demonstrates, people choose London because of the quality of legal services, the strength and independence of the Judiciary, and the particular suitability of English law for these types of proceedings.

58. Commercial litigation is expensive but court fees are a fraction of overall litigation costs. For example, based on data submitted to the Jackson Review, court fees amounted to less than one per cent of the value of a 'typical' personal injury or commercial claim worth more than £300,000.⁹
59. Furthermore, arbitration is already a popular alternative to litigation for many would-be litigants, even though the fees are often much higher than those for commercial litigation. This is because it delivers the desired outcome while maintaining confidentiality. This is further evidence that fees are not the deciding factor for people when choosing how to resolve commercial disputes.
60. This demonstrates that while commercial dispute resolution is expensive, it is a price that people are prepared to pay.
61. It is not therefore surprising that most people who took part in the BIICL research were unconcerned about court fees. Most respondents were unaware of the current level of court fees and considered them a non-factor for decisions about where to litigate. Over half of respondents (77 out of 108) said that court fees had little relevance, or no relevance at all, to the decision to use the English courts, and only two respondents said that court fees were a decisive factor.
62. When the proposed fees increases are considered against this background, it is clear that court fees are a minor consideration for most people, and that they are, and will remain, a very small fraction of the overall costs of litigation. We do not therefore believe that the fee increases on the scale we are planning are likely to make any difference to decisions on where to litigate.
63. Neither has any firm evidence been provided to support or quantify the risk that raising fees would damage legal services in this country, or adversely affect the contribution this sector makes to the economy.
64. For the reasons set out above, we do not believe that the fee increases are likely to damage London's competitive position.

Conclusion

65. Having considered carefully the responses to the consultation, the Government has decided to proceed broadly as set out in the consultation. Specifically we will:
 - introduce an enhanced fee to issue money claims of 5% of the value of the claim;
 - set a maximum fee to issue proceedings of £10,000 for claims with a value of £200,000 or more; and

⁹ LJ Jackson (2009). Review of Civil Litigation Costs: Preliminary Report (vol.1): Graph 7.1, p66,

- continue to apply a discount of 10% to claims lodged electronically using the Secure Data Transfer (SDT) facility or Money Claims OnLine.
66. This fee structure will apply to all money claims, both specified and unspecified, as well as counterclaims with a value of £10,000 or more. Further details of the enhanced fee regime are set out in the schedule of fees for money claims at Annex B.

Costs between parties

67. In their response to the consultation, the senior judiciary pointed out that in some cases, the claimant may not succeed on the whole of his claim and may only be awarded judgment on part of it. If enhanced fees were introduced, they argued that the amount of the fee recoverable from the losing opponent should be limited to the fee that would have been payable on the amount of the claim which succeeded, rather than the fee paid (if that was different).
68. The Government believes that there is merit in this proposal, but we would like to take some time to consider all of the potential impacts and consequences before deciding what action to take.

2. Commercial proceedings

Introduction

69. London is the most popular centre for international cross border dispute resolution, with a reputation for providing high quality legal services. Commercial proceedings are dealt with by specialist judges operating in the Rolls Building. This is a state of the art facility, with 31 courts rooms, three “super courts” with modern IT and video conferencing facilities and 55 consultation rooms available to litigants and their legal advisers.
70. In commercial proceedings there are usually significant sums of money at stake, and a large proportion of these cases involve at least one party which is based abroad. Unlike the standard claims dealt with in the civil courts, these are cases in which the parties often choose to be governed by English law, and to have their disputes decided in the English courts.

The proposals

71. Under the current arrangements, these cases are subject to the same fee structure as all other money claims, which means that the highest fee to issue proceedings is currently £1,920 (the fee to issue proceedings for claims of £300,000 or more).
72. Most commercial claims are claims for money and will therefore be subject to the general increases to fees for money claims set out earlier. However, in the consultation paper, we argued that there was a strong case for charging more for commercial and similar proceedings. The consultation paper put forward two proposals:
- a higher maximum fee. The consultation proposed capping the fee at either £15,000 or £20,000; or
 - a higher hearing fee: the consultation proposed a fee of £1,000 per day.
73. The consultation recognised that it was likely to be difficult to enforce a different fee structure if it only applied in the Commercial Court, as it was likely to encourage parties to issue proceedings in other jurisdictions. The consultation therefore proposed that the proposed fee structure should apply to money claims in all jurisdictions in the Rolls Building: i.e. the Admiralty and Commercial Court; the Chancery Division; and the Technology and Construction, and the Regional District Registries for these jurisdictions.
74. The consultation paper also recognised that the purpose of the Mercantile Court was to deal with lower value and less complex commercial disputes quickly and efficiently. It therefore also sought views on whether the proposals for fees in commercial proceedings should apply in the Mercantile Court.

Summary of responses

75. Most respondents (around 60%) agreed that these cases should attract higher fees. The main points made by these respondents were that commercial claims were by their nature more complex than standard money claims, consumed more resource and should therefore pay more. They pointed out that in these cases the court fee would be a fraction of the legal costs incurred.
76. Those disagreeing argued that:
- the proposals were unfair. There was, they felt, no justification for charging some types of court user more so that others paid less, or nothing at all;
 - the courts provided a public benefit that could not easily be reconciled with generation of surpluses;
 - these jurisdictions did not deal exclusively with high value international litigation, and lower value domestic proceedings would also be captured.
77. Those who disagreed with the proposals also argued that fees at these levels would damage the UK's competitive position in the international legal services market. They feared that increased fees, combined with other factors, would increase the perception that London was an expensive place to settle disputes, and would encourage parties to choose alternatives.
78. They pointed out that legal services exports make a significant contribution to GDP, generating a trade surplus of £3.3 billion in 2011.¹⁰ Raising fees for commercial proceedings, as proposed in the consultation, could, they argued, put that contribution at risk. In their view, the risks outweighed the potential benefits and they advised a precautionary approach.
79. Most respondents also felt that the Government's proposals would raise practical difficulties. The senior Judiciary in particular felt that the proposed fees would be unworkable as it would be impossible to define commercial proceedings tightly, and that the parties would be able to avoid paying the fee if they wanted to.
80. On the specific options presented in the consultation:
- 60% of respondents preferred the option of a daily trial fee for commercial proceedings;
 - of those who preferred the higher maximum fee, slightly more preferred the option of a maximum fee of £15,000 rather than £20,000.

¹⁰ *Legal Services 2013*, The CityUK, <http://www.thecityuk.com/assets/Uploads/Legal-Services-2013-F.pdf>

Enhanced court fees

81. The majority of respondents felt that the same fee structure should apply in the Mercantile Court.

The Government's response

82. The concerns about the potentially damaging impact of the fee increases on legal services, and London's position as an international litigation centre are considered in section 1. For the reasons set out above (see paragraph 54 on), we do not believe that the fee increases are likely to damage London's competitive position.
83. The Government recognised that there were practical difficulties in applying higher fees for commercial proceedings and that there was a risk that this could have unintended consequences. It was for this reason that we proposed that the higher fees should apply to all jurisdictions using the Rolls Building, including therefore the Admiralty and Commercial Court, the Technology and Construction Court, the Chancery Division and the Mercantile Court.
84. As many respondents pointed out, this would have the effect of capturing many non-commercial type cases under the higher fee structure. However, it would continue to be possible to avoid paying the higher fees by issuing proceedings in the Queen's Bench Division.

Conclusion

85. Having considered the consultation responses the Government accepts that there are practical difficulties to be overcome before either of the proposed options for charging higher fees for commercial proceedings could be implemented. We have therefore decided not to implement either of these options, and commercial money claims will therefore be subject to the same enhanced fee regime as standard money claims.

3. Divorce

Introduction

86. There are around 120,000 applications for a divorce each year. In 95% of cases, the divorce is not contested.

The Government's proposal

87. In the consultation, the Government proposed that the fee for an application to issue a divorce should be raised from £410 to £750. In doing so, we acknowledged that the current fee was already above the estimated costs of these proceedings of £270.

The consultation responses

88. Most respondents to the consultation did not agree with the Government's proposal.

89. The main reasons why respondents criticised the proposal were:

- the consultation had advanced no persuasive justification for increasing the fee;
- it was wrong in principle to seek to increase the cost of court proceedings associated with the breakdown of a family relationship;
- the fee was excessive and would deter people from seeking a divorce;
- this could result in people being trapped in unhappy or violent marriages. Alternatively, they would be unable to form new relationships which benefitted from the full protection of the law;
- some people would struggle to pay the fee: recent reforms to fee remissions meant that fewer people would qualify;
- it was potentially discriminatory: more women than men sought a divorce and it would therefore have a disproportionate impact on women.

The Government's response

90. This proposal attracted the highest level of criticism among respondents to the consultation. Having taken account of these concerns very carefully, the Government has decided to not to implement the proposed increase to the divorce fee, which will be maintained at £410.

91. However, this decision has not changed the financial imperative to increase income to the courts from fees. We are therefore also seeking views on proposals for raising fee income from possession claims and general applications in civil proceedings. These proposals are set out in Part 2 of this publication.

4. Other fees

92. In the Government Response to Part 1 of the consultation,¹¹ we highlighted three categories of fees which were already at a level which exceeded the costs of proceedings. Those fees were:
- the fee for an application for a divorce (fee 1.2 (a) of Schedule 1 to the Family Proceedings Fees Order 2008)¹², which is currently £410;
 - the fee to fix a date for the trial of a case allocated to the fast track (fee 2.1 (a) of Schedule 1 to the Civil Proceedings Fees Order 2008), which is currently £545;¹³ and
 - the multi track hearing fee (fee 2.1 (b) of Schedule 1 to the Civil Proceedings Fees Order 2008), which is currently £1,090.¹⁴
93. As set out in section 3 above, we have decided not to increase the fee for an application for a divorce, which will be maintained at £410.
94. In the current financial climate, we do not believe that a reduction in any fee can be justified, and we therefore also intend to maintain the fees for a multi-track or fast track hearing at their current levels.

¹¹ *Court Fees: Proposals for reform. Part one consultation response: Cost Recovery*, Cm 8845, April 2014

¹² SI 2008/1054 (as amended).

¹³ SI 2008/1053 (as amended).

¹⁴ *Idem*

Part 2: Consultation on proposals for further reforms to court fees

Introduction

95. This section of the Government response sets out the Government's further proposals for raising income from court fees. The specific areas in which the Government is proposing fee increases are:
- the fees to commence applications for the recovery of land (possession claims);
 - the fees for general applications in civil proceedings.
96. The current fees for these proceedings are full cost levels and the proposed increases would therefore be made using the power at section 180 of the *Anti-social Behaviour Crime and Policing Act 2014*.

Applications for the recovery of land

97. Proceedings for the recovery of land are generally brought in two sets of circumstances:
- by mortgage lenders, where the borrower has fallen into arrears on their mortgage payments; and
 - by landlords, whose tenants have fallen into arrears.
98. They also cover proceedings brought to evict trespassers.
99. The fees currently charged to commence these proceedings were last increased on 22 April 2014, and represent the average cost of providing access to the courts. The current fees are:
- £480 to commence proceedings in the High Court;
 - £280 to commence proceedings in the County Court; and
 - £250 to commence proceedings online using the Possession Claims Online facility (PCOL).
100. The large majority of these proceedings are brought in the County Court. A claim for possession may only be brought in the High Court if there are exceptional circumstances, including, for example, that the case:
- involves complicated disputes of fact; or
 - raises issues of law of wider public interest.
101. Practice Direction 55A of the Civil Procedure Rules provides guidance on starting possession claims.

102. Our proposal is to increase the fees charged in County Court proceedings for the recovery of land, including proceedings initiated using PCOL, by £75. We estimate that this would generate an additional £17 million per annum in income.
103. We believe that such an increase is justified, in view of the requirement to ensure the courts and tribunals are adequately funded, while at the same time reducing the cost of the courts and tribunals to the taxpayer. The factors influencing decisions on whether to bring these claims are very similar to those which apply to money claims:
- fees are generally a secondary consideration in the decision on whether to litigate, and other factors, such as the likelihood of success and the likelihood of the debtor being able to satisfy the judgment are more influential;
 - fee remissions are available for those who qualify;
 - the proposed fees would continue to be low compared to the overall costs of litigation; and
 - in successful proceedings costs, including the fee, would in most cases be added to the debt to be recovered from the losing opponent.
104. For these reasons, we believe that it is reasonable that those bringing these proceedings should pay a higher fee, where they can afford to do so.

Question 1: Do you agree with the proposal to raise the fee for a possession claim by £75? Please give reasons.

General Applications

105. General applications are applications made to the court in both civil and family proceedings and can cover many different types of application. They can include, for example, applications to amend pleadings in proceedings, vary directions, adduce fresh evidence, extend time or strike out claims or defences. Such applications may also be made to extend or vary the terms of an injunction.

106. These applications attract a generic fee: the fee for which no other fee is specified.¹⁵ The current fees, for both civil and family proceedings are:

- £50 where the application is made without notice to the opponent (an ex parte application), or where the opponent has indicated that he or she consents to the application; and
- £155 where the application is on notice and contested.

107. There are around 700,000 general applications made to the court each year, of which the large majority are made in civil proceedings. Of these around two thirds are ex parte applications, or applications made by consent, and the remainder are contested. Further details are set out in the Impact Assessment which accompanies this consultation exercise.

108. We accept that increasing the fee for a general application in family proceedings is likely to lead to similar concerns to those raised in response to the proposal to increase the fee for a divorce. For this reason, we are not considering fee increases to general applications in family proceedings.

109. However, we do believe that there is a good case for increasing the fees for these applications when they are made in civil proceedings. Two thirds of these applications are made in money claims, whether specified or unspecified. In these cases, the Government believes that the justification for enhanced fees to commence money claims, which is set out in Part 1 of this publication, applies equally to the fees charged to make applications within those proceedings.

110. In summary these are that:

- the fee remains low, compared to the overall costs of litigation;
- costs are recoverable from the opponent in successful proceedings;
- claims can be brought under conditional fee arrangements; and
- fee remissions are available to those who qualify.

¹⁵ Fees 2.4 and 2.5 of Schedule 1 to the Civil Proceedings Fees Order 2008 and fees 5.1 and 5.3 to Schedule 1 to the Family Proceedings Fees Order 2008.

Enhanced court fees

111. In most cases, therefore, we believe that charging an enhanced fee for a general application in civil proceedings would be reasonable, in view of the need to make sure that the courts are adequately resourced, while also reducing public spending.
112. However, general applications may be made in a wide variety of circumstances, and in some of these, we do not consider that it would be appropriate to charge a fee which exceeds the costs of those proceedings. These are:
- where a general application is made to extend or vary an injunction to protect someone from harassment or violence. People seeking the court's protection in these circumstances are often vulnerable but may be discouraged by having to pay a higher fee;
 - similar considerations apply where an application is made on behalf of a child, or vulnerable adult, for payment to be made out of funds held in court. These are often for small sums, for example, to pay for a school trip, and in many cases the proposed enhanced fee would be disproportionate to the sums involved; and
 - the power to charge enhanced fees does not extend to fees charged under sections 414 and 415 of the Insolvency Act 1986 and it would not therefore be lawful to charge an enhanced fee for these proceedings.
113. There may be other circumstances in which it would not be appropriate to charge an enhanced fee for a general application, and this is something on which we would welcome views.
114. Subject to these exemptions, the Government proposes to raise the fee for a general application in civil proceedings:
- by £50 for an application without notice or by consent. The fee would therefore increase from £50 to £100; and
 - by £100 for an application on notice which is contested. The fee would therefore increase from £155 to £255.
115. We estimate that these fee increases would generate £37 million in additional income each year.

Question 2: Do you agree with the proposal to increase the fee for a general application in civil proceedings from:

- **£50 to £100 for an application without notice or by consent; and**
- **£155 to £255 for an application on notice which is contested.**

subject to an exemption for:

- **applications to vary or extend an injunction for protection from harassment or violence;**

- applications for a payment to be made from funds held in court; and
- applications made in proceedings brought under the Insolvency Act 1986.

Question 3: Are there other types of case in which a general application may be made which you believe should be exempted from the proposed fee increases? Please provide details.

The Equalities Duty

116. We have, as required under the Equality Act 2010, undertaken an assessment of the impact of these proposals on people with protected characteristics.

117. The assessment is contained in the Equalities Statement attached at Annex E of this publication. In summary, our conclusion is that the proposals on which we are consulting are not directly discriminatory and are also unlikely to amount to indirect discrimination. However, we recognise that our assessment is based on limited information about court users, and we have very little information specifically on users with protected characteristics. We would therefore welcome any further views on the equalities impacts of the proposals in this consultation as well as any related data.

Question 4: We would welcome views on our assessment of the impacts of the proposals for further fee increases on those with protected characteristics. We would in particular welcome any data or evidence which would help to support these views.

Next Steps

The Government Response to the consultation

The Government has set out the measures it intends to take forward following the consultation on enhanced fees. Under the powers contained in section 180 of the Anti-social Behaviour Crime and Policing Act 2014, enhanced fees must be introduced by statutory instrument subject to the affirmative resolution procedure.

The Government will therefore prepare and bring forward the necessary legislation, with a view to the new fees coming into effect before the start of 2015/16, subject to Parliamentary time being made available.

Further consultation

The further proposals for raising fee income to make good the financial shortfall are simple and straightforward measures to address financial pressures. They will therefore be subject to a short, focussed, six week consultation period which will close on 27 February 2015.

The Government will consider the responses set out how we intend to proceed when we publish the Government Response.

About this consultation

To: This consultation is aimed at users of the civil court system, the legal profession, the judiciary, the advice sector, and all those with an interest in the civil court system.

Duration: From 16 January 2015 to 27 February 2015

Enquiries (including requests for the paper in an alternative format) to: Michael Odulaja, Ministry of Justice,
102 Petty France, London SW1H 9AJ
Tel: 020 3334 4417
Fax: 020 3334 2233
Email: mojfeespolicy@justice.gsi.gov.uk

How to respond: Please send your response by 27 February 2015
Michael Odulaja
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 4417
Fax: 020 3334 2233
Email: mojfeespolicy@justice.gsi.gov.uk

Response paper: A response to this consultation exercise will be published at: <http://www.justice.gov.uk>

About You

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 27 February 2015 to:

Michael Odulaja
Ministry of Justice
Law and Access to Justice Group
Post Point 4.38
102 Petty France
London SW1H 9AJ

Tel: (020) 3334 4417

Fax: (020) 3334 2233

Email: mojfeespolicy@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from Michael Odulaja.

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other

things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Annex A: Detailed responses to the consultation questions

1. Money claims

Q.16 Do you agree that the fee for issuing a specified money claim should be 5% of the value of the claim?

There were 76 responses to this question. 24 (32%) agreed with the proposition, 49 disagreed (64%) and 3 (4%) responded neither agreeing nor disagreeing.

Most of those who supported the proposal did not provide detailed reasons. One argued that such an approach was justified because bigger claims tended to be more complex and would therefore take up more court time. Another respondent said that the fee would make people think before issuing formal proceedings.

Many who disagreed argued that the proposed fees bore little relation to cost, and that higher value claims did not necessarily mean that they were more complex. Some respondents argued that some fees, for example, those for claims of £25,000 and above, would start to become prohibitively expensive, particularly as the fee had to be paid in advance. At these levels, fees were likely to have an adverse impact on access to justice.

Many respondents disagreed with the principle of charging enhanced fees. The City of London Law Society said that civil courts were an essential feature of a democratic society, and should not operate as a means of making money.

Some respondents said that the proposals would see court fees operating as a form of taxation.

The senior judiciary said that they did not agree with the principle of cost recovery and that they therefore disagreed with enhanced fees. They offered no observations on the detail of the proposal, but suggested that if introduced, the amount of the fee recoverable from the losing side should be limited to the amount that would be payable on the value of the claim as determined by the court.

The Bar Council, Chancery Bar Association, and the Professional Negligence Bar Association all disagreed with the proposal to charge an issue fee of 5% of the value of the claim, and noted that it would reduce the number of claims brought by medium income individuals, and Small and Medium sized Enterprises. While the Bar Association suggested that the proposal may result in an increase in the number of disputes resolved by other, less expensive means, they remained opposed to the proposition.

Although the City of London Law Society, the Commercial Bar Association and the Commercial Court Users Committee disagreed with the proposal of enhanced fees they did suggest an alternative approach based on a banded fees solution. In particular the Commercial Bar Association wanted to see tiers

for thresholds above £300,000. Both also noted the proposal would hinder the competitiveness of the Commercial Court.

Other points raised included:

- there was no reason given to justify why 5% was the right amount;
- the value of claims may change during proceedings, and in any event, may not be the amount the court finally determines;
- the evidence relied on was a small scale research project which did not support the contention that claimants would not be deterred from bringing claims;
- many of the claims affected would be those brought by small businesses which may no longer be able to afford to do so.
- the proposals would also affect claims brought by insolvent businesses, for the benefit of their creditors. They may be similarly unable to afford such claims in future;
- the proposals ran counter to the thrust of the Jackson reforms, which sought to ensure that the costs of litigation were proportionate; and
- the increase in the costs of litigation could exacerbate existing problems where many parties, including Small and Medium sized Enterprises (SMEs), were choosing to litigate without legal representation, increasing the workload for the courts, judges and opponents.

Some respondents said that the proposals would complicate the fee structure, and that HM Courts and Tribunals Service's IT systems would need to be adapted to be able to handle the changes to the fees.

Q17. Do you agree that there should be a maximum fee for issuing specified money claims, and that it should be £10,000?

71 respondents answered this question. 27 (38%) agreed with the proposal and 44 (62%) disagreed.

Many of the respondents who agreed with the proposal agreed that a cap was appropriate, but that the proposed level was too high.

Equally, many of those who disagreed with the proposal, including, the Bar Council, the Commercial Bar Association, the Commercial Court Users' Committee and the Technology and Construction Court Users' Committee, did so because they felt that £10,000 was too high. In particular, the Commercial Court Users' Committee believed that the high cap would affect the Commercial Courts in the international market.

The Chancery Bar Association disagreed with the imposition of a cap as they felt that this would unfairly disadvantage individuals or SMEs wishing to bring a claim to court who would be forced to pay high sums in absolute terms for relatively modest claims in comparison to large corporations who issue substantial claims.

The senior judiciary agreed that a cap would be appropriate but had no observations on the level at which it should be set.

While disagreeing with the proposal of enhanced fees in general, if implemented the Law Society believed it would be necessary to implement a cap.

Q18. Do you believe that unspecified claims should be subject to the same fee regime as specified money claims? Or do you believe that they should have a lower maximum fee of £5,000?

There were 64 responses to this question. 21 (33%) agreed with the proposal, 42 (66%) disagreed and one responded neither agreeing nor disagreeing.

Those who agreed tended to agree that there was no reason in principle why an unspecified money claim should be charged a fee on a different basis from a specified money claim even if they disagreed with the proposal to charge an enhanced fee. Many who disagreed did so because they disagreed with the principle of charging enhanced fees, and some disagreed because they felt that a cap of £5,000 was too high.

The senior judiciary and the Chancery Bar Association agreed that £10,000 might deter people from bringing unspecified claims, although they agreed that there was no logical reason for treating specified and unspecified claims differently. The senior Judiciary indicated that if the proposals on enhanced fees were to be implemented, they would not disagree with a cap of £5,000.

Some respondents argued that personal injury claims should be exempt from enhanced fees as the increase was likely to lead to an increase in insurance premiums. The Bar Council noted that although personal injury claims required the losing party to cover the costs, the claimant would still have to pay a substantial fee at the beginning. Some respondents also pointed out that the burden of increased fees would, in some cases, be transferred to other public bodies who were defendants in these types of case, such as the National Health Service, or on the legal aid fund which provides funding in certain types of case.

Some respondents argued that the proposed fee would present practical difficulties in the case of unspecified money claims, as the value of the claim could not be known with any certainty at the outset of the case.

Q.19 Is there a risk that applying a different maximum fee could have unintended consequences?

There were 53 responses to this question and the majority of respondents agreed that there was a risk of unintended consequences. Most of those who responded identified that the main risk was that claimants might seek to present their case as an unspecified claim in order to pay a lower fee. In particular, the Chancery Bar noted that this might create artificiality and was contrary to normal practice.

Others suggested it might drive work away from the courts or to pursue alternative litigation strategies, such as insolvency.

2. Commercial Proceedings

Q. 20 Do you agree that it is reasonable to charge higher court fees for high value commercial proceedings than would apply to standard money claims?

Most respondents to this question agreed that high value commercial claims should pay higher fees. 47 respondents (59%) agreed, 30 (38%) disagreed and 3 (3%) responded neither agreeing nor disagreeing.

Those who agreed said that commercial claims were by their nature more complex than standard money claims and should therefore pay more. They also pointed out that the court fee would be a fraction of the legal costs incurred in these types of proceedings.

Some respondents argued that if higher fees were charged, the income should be retained within the courts and used to invest in better services.

Those who disagreed argued that the proposal was unfair:

- it sought to charge some users more so that others would pay less
- the courts were not a business and should not seek to make profit;
- while commercial cases often involved large multi-national corporations and/or wealthy individuals, some did not and could involve, for example, claims brought by Small and Medium sized Enterprises.

The senior judiciary argued that the proposed approach to enhanced fees for commercial proceedings was mistaken, in that it failed to appreciate how the courts operated in practice which would have undesirable and unintended consequences, and was, in their view, unworkable.

They pointed out that the Rolls Building also heard claims in the Chancery Division. These represented a broad spectrum of claims (and not just high value commercial claims) and in many cases, there was little or no choice on the appropriate forum. They said that the proposals conflated two distinct concepts: commercial/non commercial proceedings and high value claims. They also argued that it would be relatively simple to avoid the fee by issuing proceedings in the Queen's Bench Division which had jurisdiction to hear commercial claims, and that there was, in any event, no justification for imposing higher fees for cases brought in one part of the High Court.

Finally, they said that there could be no justification for increasing fees unless:

- the income was retained within the court system for the benefit of court users; and
- funding was made available for investment in modernising and improving the court system.

The City of London Law Society strongly disagreed with the proposals for many of the reasons identified by the senior Judiciary. They argued that there was no good reason to surcharge commercial users. They also pointed to increased competition from arbitration and from other jurisdictions, and expressed a concern that the proposals risked undermining the UK's position in international dispute resolution.

The Bar Council did not support the proposal to charge enhanced fees, but agreed that if they were to be introduced at all, it should be for high value commercial claims.

Q.21 We would welcome views on the alternative proposals for charging higher fees for money claims in commercial proceedings. Do you think it would be preferable to charge higher fees for hearings in commercial proceedings?

There were 63 responses to this question. Of those who responded, the majority (38 respondents or 60%) favoured the proposed hearing fee, with 19 (30%) disagreeing and 6 who responded neither agreeing nor disagreeing.

The main reasons given by those who supported the proposal were that:

- the cases which took up more court time should pay more;
- it would encourage parties to settle, or to ensure that their cases were pursued proportionately;
- cases requiring longer hearings were generally more complicated and it was therefore reasonable to charge more; and
- the hearing fee spread the cost more evenly rather than requiring front loading the fees, in line with the approach generally taken in arbitration.

Some who supported this proposal argued that the hearing fee proposed looked very low. In comparison, arbitrators charged up to £700 per hour.

Those who disagreed generally did so because they were opposed to charging more for commercial proceedings, or charging enhanced fees at all.

The City of London Law Society disagreed for all the reasons set out above, and also noted that charging fees based on hearing times was contradictory to the MoJ aims of simplifying the fee court system as each would vary in time and therefore, cost. Additionally, they argued that international litigants would be discouraged from coming to the English courts if fees increased, and this ran counter to the policy of promoting the UK's legal services.

The Civil Court Users Committee noted the risk of damage to the UK's reputation, and added that difficulties would arise in collecting hearing fees after the hearing if fees are based on hearing time.

Q.22 Could the introduction of a hearing fee have unintended consequences? What measures might we put in place to ensure that the parties provided accurate time estimates for hearings, rather than minimise the cost?

There were 51 responses to this question, and the majority (70%) felt that there was a risk of unintended consequences.

The main risk identified was that it would reduce the number of cases litigated through the courts.

The other concern identified was that the parties might lower their time estimates to reduce the court fee. They also pointed out that time estimates were not an exact science, and could be affected by the behaviour of the other side.

Others highlighted the risk that parties would be encouraged to issue proceedings in Queen's Bench Division.

Some respondents pointed out that cost budgeting, introduced as part of the Jackson reforms, had not been introduced for commercial proceedings with a value greater than £2 million. It was felt that the discipline of cost budgeting would help to encourage parties to provide accurate time estimates.

Another concern noted by the Civil Court Users Committee was the disincentive for the case to be settled outside of court when paying a hearing fee if there were no refund available.

Some who did not believe that there would be unintended consequences as a result of the hearing fee noted that this largely relied on the appropriate case management by the courts to ensure that the party's estimate reflected actual hearing times.

The Law Society noted that the introduction of a hearing fee could not be opposed on principle, but suggested that if introduced to commercial proceedings it would have to be reasonable; not set at the level of cost recovery or enhanced fees.

Q.23 If you prefer Option 2 (a higher maximum fee to issue proceedings), do you think the maximum fee should be £15,000 or £20,000? - 15,000/20,000

Generally, respondents did not favour this option over the option for a hearing fee.

There were 22 responses to this question, with slightly more (12) preferring the maximum issue fee of £15,000, with 10 respondents supporting the £20,000 issue fee.

The main arguments given by those who disagreed with this option were:

- it would prove to be a disincentive for users to go to the Rolls Building;

- the costs are far higher than in other relevant jurisdictions;
- it would negatively impact on UK competitiveness in the legal market; and
- Option 1 (the daily hearing fee) was more appropriate and better attuned to actual costs.

Q. 24 Do you agree that the proposals for commercial proceedings are unlikely to damage the UK's position as the leading centre for commercial dispute resolution? Are there other factors we should take into account in assessing the competitiveness of the UK's legal services?

There were 52 responses to this question. Around a third of respondents agreed the proposals were unlikely to damage the UK's competitive position, and around two thirds disagreeing.

Those who agreed pointed out that the fees proposed would be a small fraction of the overall costs of litigation and therefore unlikely to make a real difference to parties' decisions on where to litigate.

Most respondents, however, disagreed. The City of London Law Society pointed to the value of commercial legal services and the contribution this sector made to the UK's GDP. These proposals, they argued, risked creating the perception that the courts were a means for making money, making our courts less attractive and potentially encouraging them to migrate to competitor jurisdictions, such as New York. They also argued that the policy was inconsistent with the MoJ's stated goal of promoting the UK's legal services abroad.

The view that this would affect the UK's reputation internationally was also supported by the Law Society, Bar Council, the Civil Court Users Association, the Commercial Bar Association, the Committee of the London Common Law and Commercial Bar Associations, and the Technology and Construction Courts Solicitors Association. However, the Law Society did acknowledge that fees were but one factor as to why the UK is an attractive place to bring commercial claims.

Those who disagreed also said that the conclusion that fees would not damage the legal sector was based on very limited research.

Q.25 Do you agree that the same fee structure should be applied to all money claims in the Rolls Building and at District Registries?

There were 50 responses to this question. 36 (72%) agreed that the fees, if implemented, should apply to all money claims in these jurisdictions. 9 (18%) disagreed and 5 responded neither agreeing nor disagreeing.

Most respondents who agreed said that it would be impractical to charge different fees as this would encourage forum shopping. Those who disagreed did so mainly because they disagreed with the principle of charging higher fees for high value commercial claims.

Q. 26 What other measures should we consider (for example, using the Civil Procedure Rules) to target fees more effectively to high value commercial proceedings while minimising the risk that the appropriate fee could be avoided?

There were 6 responses to this question, with the majority offering no opinion on other measures to be considered.

Some respondents said that Judges already had wide powers under the Civil Procedure Rules, particularly following the Jackson reforms, to manage cases and should make greater use of them.

Q.27 Should the fee regime for commercial proceedings also apply to proceedings in the Mercantile Court?

There were 42 responses to this question. 29 (69%) agreed that the fee regime should also apply to the Mercantile Court, 11 disagreed (26%) and 2 responded neither agreeing nor disagreeing.

Those who agreed said that proceedings in the Mercantile Court were, by their nature, commercial and should therefore be subject to the same fee regime. Where the claims were of lower value that would be reflected, at least to some extent, in the issue fee.

Those who disagreed argued that claims before the Mercantile Court often involved small or medium-sized enterprises who would struggle to pay the enhanced fees.

3. Divorce

Q. 28 Do you agree that the fee for a divorce petition should be set at £750?

There were 65 responses to this question. Most respondents were opposed to the proposal. 8 respondents (12%) agreed with the proposal, 58 disagreed (87%) and 1 responded neither agreeing nor disagreeing.

Most who disagreed pointed out that no persuasive rationale for charging above cost for a divorce had been advanced in the consultation paper. Some argued that that the current fee was already too high and that the proposed fee was excessive. The fee would have to be paid at a time when the parties were often in financial difficulties and therefore many would struggle to pay the fee. Recent reforms to the remissions scheme meant less support was available than before.

Some argued that it was wrong to seek to make a profit from the breakdown of a relationship. Other points made included that:

- those who wished to dissolve their marriage had no choice but to apply to the court for a divorce;
- it could lead to parties being trapped in unhappy or violent marriages;
- it might discourage people from getting married, or they may be prevented from remarrying, and would therefore be without the protection the law affords to married couples; and
- the fee would affect women more than men as more women than men initiated divorces. It was therefore discriminatory.

The senior judiciary, while disagreeing with the proposals of charging enhanced fees for divorce proceedings, noted that the current divorce fee was above cost, and that given the current financial climate accepted that it would not be feasible for the Government to reduce divorce fees to the cost recovery level.

Those who agreed pointed out that the additional income from divorce would help to cover the deficit in other areas of family proceedings.

Annex B: Schedule of fees to issue proceedings for money claims

Claim value				Current fee		New fee	
				Filed at a court centre	Filed via SDT/MCOL	Filed at a court centre	Filed via SDT/MCOL
Up to	£300			£35	£25	£35	£25
Greater than	£300	but no more than	£500	£50	£35	£50	£35
Greater than	£500	but no more than	£1,000	£70	£60	£70	£60
Greater than	£1,000	but no more than	£1,500	£80	£70	£80	£70
Greater than	£1,500	but no more than	£3,000	£115	£105	£115	£105
Greater than	£3,000	but no more than	£5,000	£205	£185	£205	£185
Greater than	£5,000	but no more than	£10,000	£455	£410	£455	£410
Greater than	£10,000	but no more than	£15,000	£455	£410	5% of the value of the claim	5% of the value of the claim, less 10%
Greater than	£15,000	but no more than	£50,000	£610	£550		
Greater than	£50,000	but no more than	£100,000	£910	£815		
Greater than	£100,000	but no more than	£150,000	£1,115	N/a		
Greater than	£150,000	but no more than	£200,000	£1,315	N/a		
Greater than	£200,000	but no more than	£250,000	£1,515	N/a	£10,000	N/a
Greater than	£250,000	but no more than	£300,000	£1,720	N/a	£10,000	N/a
Greater than	£300,000			£1,920	N/a	£10,000	N/a

Annex C: List of organisations which responded to the consultation

Administrative Law Bar Association (ALBA)
Anthony Collins Solicitors
Association of District Judges
Association of Lawyers for Children
Association of Personal Injury Lawyers (APIL)
Bar Council
Barrister, 12 King's Bench Walk Chambers
Belmont & Lowe
Berwins Solicitors Limited
Birkett Long LLP Solicitors
Blandy & Blandy LLP Solicitors
BNI Solicitors
Bray & Bray Solicitors
Bridge McFarland Solicitors
Chartered Institute of Arbitrators
Chartered Institute of Legal Executives (CILEX)
Chief Bankruptcy Registrar of the High Court
Children's Services and Education (St Helens Council)
City of London Law Society
Civil Court Users Association
Civil Justice Council
Civil Mediation Council
Civil Subcommittee of HM Council of Circuit Judges
Clifford Chance LLP
Coffin Mew LLP Solicitors
Colette Stroud Solicitors and family mediators
Commercial Bar Association
Commercial Court Users Committee
Committee of the London Common Law and Commercial Bar Associations
Council of Mortgage Lenders (CML)
Court of Appeal (Civil Division)
Cripps Harries Hall LLP Solicitors

Crocels CMG CYF (Voluntary sector/Community group)
Discrimination Law Association
Dunne and Gray Solicitors
East Sussex County Council
Employment Lawyers Association
Enyo Law LLP
Family Justice Council
Family Law Bar Association
Family Law Clinic Ltd
Family Law in Partnership
Felton's Law Solicitors
Forum of Insurance Lawyers (FOIL)
Fosters Mediation
Frettens LLP Solicitors
Glanvilles LLP Solicitors
Graham & Rosen Solicitors
Green Light Mediation Ltd
Griffins (Insolvency Practitioner)
Harland & Co Solicitors
Herbert Smith Freehills LLP Solicitors
Hertfordshire County Council Legal Services
HMCTS
HMRC, Central Policy
Hogan Lovells
Immigration Law Practitioners' Association
Institute of Credit Management
Irwin Mitchell
Kew Law LLP Solicitors
Kingston upon Hull City Council
KK Law Solicitors
Lane & Co Solicitors
Law Society
Leeds University
Lester Morrill Solicitors

Enhanced court fees

London Solicitor's Litigation Association
Lovetts PLC (Debt Recovery and Commercial Litigation)
McMillan Williams Solicitors
Miles & Partners
Millersands Solicitors
Mind
Minim Law Ltd
Mishcon de Reya
Money Advice Trust
Moon Beaver Solicitors
Motor Accident Solicitors Society (MASS)
Mott MacDonald (Engineering Company)
Mullis & Peake LLP Solicitors
Myerson Solicitors LLP
NHS Litigation Authority
Norton Rose Fulbright LLP
Online Legal Services Ltd
3PB Barristers
Paragon Group (Finance Company)
Pardoes Solicitors
Personal Capacity Response
Personal Injuries Bar Association
Pickering's Solicitors
Prince Family Law
QS Rubin Lewis O'Brien Solicitors
R3
Rayden Solicitors
Rees Wood Terry Solicitors
Relate and Marriage Care (Voluntary sector/Community group)
Resolution - First for family law
Ries Solicitors and Mediators
Robinsons Solicitors
Royal Bank of Scotland
Rudlings Wakelam Solicitors

Saracens Solicitors
Sembcorp Bournemouth Water Limited
Senior Judiciary of England & Wales
Sheffield City Council
Shoosmiths LLP
Sinclair Taylor Debt Management Limited
Society of Trust and Estate Practitioners (STEP)
Stewarts Law
Technology & Construction Bar Association
Technology and Construction Court
The Chancery Bar Association
The Family Law
The Insolvency Service
The Professional Negligence Bar Association
The Technology and Construction Courts Solicitors Association
The Thomas Higgins Partnership Solicitors
TheCityUK
Thompsons Solicitors
TWM Solicitors LLP
Whitehead Monckton Solicitors
Wilkins Kennedy LLP
Williscroft & Co
Women's Aid

Annex D: Equalities Statement Government Response to consultation

1. Introduction

- 1.1 This Equality Statement considers the impact of the Government's plan to increase the fee to commence certain money claims (i.e. those with a value greater than £10,000) against the duties in the Equality Act 2010.
- 1.2 A separate assessment has been undertaken on the impact of the further proposals on which we are consulting on fee increases for Possession claims and the fee for general applications within existing civil proceedings.

2. Policy objective:

- 2.1 The Government response to the consultation on enhanced fees sets out the background to, and rationale for, introducing enhanced fees. The main policy objectives are:
 - to ensure that the courts are adequately and properly resourced; and
 - to reduce the net cost of the courts and tribunals to the taxpayer.
- 2.2 In this way, we will reduce public spending and promote the economic recovery while at the same time ensuring that access to justice is protected for those who need it.

3. Equality duties

- 3.1 Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
- 3.2 Paying "due regard" needs to be considered against the nine "protected characteristics" under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
- 3.3 The Ministry of Justice (MoJ) has a legal duty to consider how the proposed policy proposals are likely to affect those people with protected characteristics and, in particular, to take proportionate steps to mitigate or justify the most negative effects and advance the positive ones.

4. Summary

- 4.1 Consideration has been given to the impact of the planned increase in the fees to commence money claims against the statutory obligations under the Act. These are outlined below.
- 4.2 **Direct discrimination:** our assessment is that the planned increases in fees is not directly discriminatory within the meaning of the Act as they will apply equally to all claimants irrespective of whether or not they have a protected characteristic. We do not consider that the proposals would result in people being treated less favourably *because of* their protected characteristic.
- 4.3 **Indirect discrimination:** our assessment, based on the information available, is that the increase in fees is unlikely to amount to indirect discrimination under the Act. There are limitations in the data available to us, and for this reason it is possible (although we judge it unlikely) that some groups with protected characteristics may feature disproportionately among those bringing certain types of proceedings subject to enhanced fees. However, we consider that the impact is mitigated by the availability of fee remissions because people with protected characteristics remain relatively over-represented among lower income groups.
- 4.4 Even if the availability of fee remissions was not sufficient to mitigate the impact of fee increases, we consider that the measures we are taking are unlikely to result in anyone who shares a protected characteristic being put at a particular disadvantage, compared to those who do not share that protected characteristic. Furthermore, the Government considers the preferred option to be a proportionate means of achieving the legitimate aims of the policy objective set out at paragraphs 2.1 and 2.2 above.
- 4.5 **Discrimination arising from disability and duty to make reasonable adjustments:** in so far as this policy/legislation may affect claimants with disabilities, we believe that the policy is proportionate, having regard to its aim. We will continue to provide reasonable adjustments for claimants with disabilities to ensure appropriate support is given.
- 4.6 **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation as a result of these plans.
- 4.7 **Advancing equality of opportunity:** Consideration has been given to how these plans may impact on the duty to advance equality of opportunity by meeting the needs of those bringing proceedings subject to enhanced fees who share a particular characteristic, where those needs are different from the needs of those who do not share that particular characteristic. We consider the availability of fee remissions will help ensure equality is advanced for those with protected characteristics who bring proceedings subject to enhanced fees.

4.8 **Fostering good relations:** we do not consider that there is scope within the policy of setting and charging court fees to promote measures that foster good relations. For this reason, we do not consider that these plans are relevant to this obligation.

5. Population Pool

5.1 To assess whether the planned fee increases have a differential impact on the protected groups (outlined above) a population pool has been defined. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be defined too widely.

5.2 We have defined the population pool as those who commence money claims as the fees for these proceedings are set to increase under the enhanced fees plans and these are the groups that would have to pay the higher fees. In money claims, it is likely that the cost of the fee will be passed on to the debtor where the claim is successful and in those circumstances the population pool also includes defendants to money claims.

5.3 Due to the limitations in the data available in some cases, we have had to make assumptions about the likely impact on people with protected characteristics based on the type of cases they may be pursuing.

6. Fee remissions scheme

6.1 The fee remissions scheme is designed to protect access to justice. Eligibility for a fee remission is based on an individual's ability to pay, and the scheme is targeted towards those in households on low incomes who are in receipt of certain state benefits. Eligibility is also subject to an assessment of the value of the applicant's disposable capital assets (e.g., savings) with a higher threshold applying to those aged over 61 years of age.

6.2 As we only have limited data on the characteristics of court users we assume any adult in England & Wales is equally likely to go to court. In reality, certain groups are more likely than others to go to court and eligibility within these groups is also likely to vary. Whilst we acknowledge the limitations of this approach, we consider it the best available.

6.3 Therefore, to assess whether the fee remissions scheme helps meet our obligations, we have used survey household income data¹⁶ to look at the household distribution of income of individuals with certain protected

¹⁶ DWP (2014) Households Below Average Income: An Analysis of the Income Distribution 1994/5-2012/13.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf

characteristics. This splits the population into five equally sized groups ('quintiles') with those in the bottom quintile being in households with the lowest incomes while those in the top quintile have the highest. These data have also been adjusted for the size of the household and take housing costs into account. However, this approach does not allow us to assess the impact on eligibility under the disposable assets test and so probably overstates eligibility for fee remissions.

- 6.4 As individuals living in households in the bottom quintile are the most likely to be in receipt of state benefits (DWP, 2014, Chart 2.5, p30) we can use the distribution of individuals within this quintile to help assess the extent to which the fee remission scheme protects those with protected characteristics. The available data allow us to do this for sex, ethnic group, disability and age. We present the results in Table 1.

Table 1: Distribution of Income by Protected Characteristics

% Individuals	Net equivalised disposable household income (after housing costs)					
	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	All (millions)
Gender						
Adult male	19	18	20	21	23	24.1
Adult female	18	20	20	21	21	25.4
Ethnic Group*						
White	18	20	21	21	21	55.3
Non-White	37	22	15	13	13	7.1
Disability						
Disabled	23	25	22	18	12	12.1
Non-Disabled	19	19	20	20	22	50.7
Age						
16-24	38	22	16	15	10	5.7
25-29	26	23	16	20	16	4.0
30-39	17	16	19	22	26	8.2
40-49	19	17	20	20	24	9.0
50 to Retirement Age	20	16	18	21	24	10.6
Pensioners	12	24	24	21	18	11.9
All Individuals	20	20	20	20	20	62.9
Source: MoJ calculations based on DWP (2014) Households Below Average Income 2012-13, Tables 3.1db & 5.2db.						
* By ethnicity of head of household, non-white households based on a three year rolling average.						

6.5 The results reported in Table 1 can be summarised as follows:

- **Sex:** Males and females appear equally eligible for either a full or partial fee remission. This is because eligibility is based on an assessment of household income. However, when members of the household have a contrary interest in the proceedings, they are assessed on their individual means. In these circumstances, the applicant with lower income is more likely to qualify for a fee

remission. Due to differences in gender earnings, this is more likely to be a female member;¹⁷

- **Ethnic Group:** Those living in households headed by someone from a non-white ethnic group are over twice as likely to live in a household in the **bottom** quintile compared to those headed by someone from a white ethnic background;
- **Disability:** Adults with a disability are more likely than the average to live in a **household** in the bottom quintile compared to adults with no disability;
- **Age:** Individuals under 30 years of age, and especially those aged under 25, are more likely to live in low income households and so are more likely to qualify for a fee remission.

6.6 In summary, and on the basis of the data set out above and our assumptions, we conclude that the fee remission system is likely to provide protection to a higher proportion of individuals with the protected characteristics of ethnicity, disability and age subject to the limitations on data about disposable capital assets.

7. Potential equalities impacts of enhanced fee proposals on users in the civil court system and mitigations.

7.1 Any impact on different groups will primarily be financial. Data on court users who will be affected by the proposal have been collected where possible. However, the government acknowledges that it does not collect comprehensive information about court users generally, and specifically information regarding their protected characteristics.

Key fee groups affected

Money Claims:

7.2 We plan to increase the issue fee for money claims with a value of £10,000 or more to 5% of the value of the claim up to a maximum fee of £10,000. Our assessment is that this is not directly discriminatory within the meaning of the Act as the increases apply equally to all claimants irrespective of whether or not they have a protected characteristic. In addition, the planned increase to fees for money claims is unlikely to amount to indirect discrimination under the Act because for those affected, they are unlikely to result in anyone sharing a protected characteristic being put at a particular disadvantage, compared to those who do not share that protected characteristic.

¹⁷ See ONS (2014) Annual Survey of Hours and Earnings, 2014 Provisional Results, Figure 8. <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2014-provisional-results/stb-ashe-statistical-bulletin-2014.html>

- 7.3 To assess whether there is the potential for discrimination, we have compared the characteristics of those who will be affected by the changes to the general population. Based on previous research¹⁸, we assume that around 50% of all specified money claim cases issued in the County Court which are set to incur fee increases are issued by businesses, such as banks, credit card companies and utilities companies while the remainder are issued by individuals. However, due to a lack of data about court users, we cannot say whether these individuals have particular protected characteristics. In any case, we consider that the remission system protects against any adverse equality impacts arising from these plans (see section 5).
- 7.4 Based on previous research we have also assumed that 20% of all unspecified money claims cases are issued by businesses. This is because, for unspecified money claims, a high proportion of claims are for personal injury, and in some of these cases, the claimant may have a disability. Although we do not have data on the protected characteristics of those bringing unspecified money claims, or claims for personal injury, it is possible that more people with disabilities will be affected by the increase in the fee for an unspecified money claim. However, to the extent that this is the case, the impact is mitigated by the fee remission scheme. Certain disability benefits are excluded from the capital and the income test, and the analysis at section 5 indicates that those who are disabled are more likely than non-disabled people to be eligible for either a full or partial fee remission. The analysis also indicates that eligibility for a fee remission for disabled people increases as the level of fee increases.
- 7.5 The normal rule in civil litigation is that the losing party will be ordered to pay the successful party's costs (including the court fees incurred), subject to the court's general discretion on costs. Data from Her Majesty's Courts and Tribunals Service's case management systems indicate that claimants are successful in around 80 per cent of cases. In most cases, therefore, the cost of the enhanced fee will be transferred to the defendant, to whom fee remissions are not available.
- 7.6 However, as we do not routinely collect data on the protected characteristics of defendants to these proceedings we cannot determine whether the policy of charging enhanced fees for money claims will have a greater impact on people with particular protected characteristics.

¹⁸ See p14 of the Consultation Stage Impact Assessment
http://www.legislation.gov.uk/ukia/2013/238/pdfs/ukia_20130238_en.pdf

Equality Impacts across the whole package

- 7.7 The Government acknowledges that we do not collect comprehensive information about court users generally, and specifically information regarding their protected characteristics. This makes it difficult to determine the impact of the enhanced fees reforms on those in the population pool with protected characteristics. Nevertheless, our assessment based on the information available, is that these proposals are not directly or indirectly discriminatory.
- 7.8 While there is a risk that some of the proposals may have a disproportionate impact on some groups with protected characteristics, we believe the remissions scheme, and in limited circumstances the availability of legal aid, provide sufficient mitigation for that risk. However, even if the availability of fee remissions and legal aid were not sufficient to mitigate the impact of fee increases, we consider the enhanced fees policy to be a proportionate means of achieving the legitimate aims set out at paragraphs 2.1 and 2.2 above.

Annex E: Equalities Statement Further Consultation

1. Introduction

- 1.1 This Equality Statement considers the impact of the Government's proposals to increase court fees for certain proceedings. The proposals are:
- to increase the fee for an application for the recovery of land by £75; and
 - to increase the fee for a general application made in civil proceedings by £50 for an application made without notice, or by consent; and by £100 for an application made on notice which is contested.
- 1.2 The current fees for these proceedings are set at full cost and any increase would therefore need to be made using the powers at section 180 of the *Anti-social Behaviour Crime and Policing Act 2014* to prescribe fees in excess of cost.

2. Policy objective:

- 2.1 The Government proposals for raising fees for these proceedings are contained in the Government Response to the consultation on enhanced fees. This sets out the background to, and rationale for, introducing enhanced fees. The main policy objectives are:
- to ensure that the courts and tribunals are adequately resourced; and
 - to reduce the net cost of the courts and tribunals to the taxpayer.
- 2.2 In this way, we will reduce public spending and promote the economic recovery while at the same time ensuring that access to justice is protected for those who need it.

3. Equality duties

- 3.1 Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
 - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
- 3.2 Paying "due regard" needs to be considered against the nine "protected characteristics" under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

- 3.3 The Ministry of Justice (MoJ) has a legal duty to consider how the policy proposals are likely to affect those people with protected characteristics in particular, to take proportionate steps to mitigate or justify the most negative effects and advance the positive ones.

4. Summary

- 4.1 Consideration has been given to the impact of the proposed fee increases against the statutory obligations under the Act. These are outlined below.
- 4.2 **Direct discrimination:** our assessment is that the proposed increases in fees would not be directly discriminatory within the meaning of the Act as they would apply equally to all claimants irrespective of whether or not they have a protected characteristic. We do not consider that the proposals would result in people being treated less favourably because of their protected characteristic.
- 4.3 **Indirect discrimination:** our assessment, based on the information available, is that the increase in fees would be unlikely to amount to indirect discrimination under the Act. There are limitations in the data available to us, and for this reason it is possible that some groups with protected characteristics may feature disproportionately among those bringing certain types of proceedings subject to these proposals. However, if that were the case, we consider that the impact would be mitigated by the availability of fee remissions. As our analysis suggests that people with protected characteristics are more likely to be represented in lower income groups they are therefore more likely to benefit from fee remissions.
- 4.4 Even if the availability of fee remissions was not sufficient to mitigate the impact of the proposed fee increases, we consider that the measures under consideration would be unlikely to result in anyone who shares a protected characteristic being put at a particular disadvantage, compared to those who do not share that protected characteristic. Furthermore, the Government considers that the options would be a proportionate means of achieving the legitimate aims of the policy objectives set out at paragraphs 2.1 and 2.2 above.
- 4.5 **Discrimination arising from disability and duty to make reasonable adjustments:** insofar as this policy may affect claimants with disabilities, we believe that the proposals would be proportionate, having regard to the aim. We will continue to provide reasonable adjustments for claimants with disabilities to ensure appropriate support is provided.
- 4.6 **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
- 4.7 **Advancing equality of opportunity:** We have considered how these proposals may impact on the duty to advance equality of opportunity by meeting the needs of those bringing proceedings subject to enhanced

fees who share a protected characteristic, where those needs are different from the needs of those who do not share that characteristic. We consider the availability of fee remissions would help to ensure equality of opportunity was advanced for those bringing proceedings with protected characteristics, if these measures were introduced.

- 4.8 ***Fostering good relations***: we do not consider that there is scope within the policy of setting and charging court fees to promote measures that foster good relations. For this reason, we do not consider that these proposals are relevant to this obligation.

5. Population Pool

- 5.1 To assess whether the proposed fee increases would have a differential impact on the protected groups (outlined above) a population pool has been defined. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be defined too widely.
- 5.2 We have defined two population pools, one for each of the proposed fee increases:
- 5.2.1 those who commence possession claims; and
 - 5.2.2 those who make applications within civil proceedings to which the general application fee applies.
- 5.3 In possession claims the court will normally order the losing side to pay the successful party's reasonable costs, and general applications may be made by either side in the proceedings. For this reason, the population pools also include defendants to proceedings. This is considered in further detail in section 7 below.
- 5.4 Due to the limitations in the data available in some cases, we have had to make assumptions about the likely impact on people with protected characteristics based on the type of cases they may be pursuing.

6. Fee remissions scheme

- 6.1 The fee remissions scheme is designed to protect access to justice. Eligibility for a fee remission is based on an individual's ability to pay, and the scheme is targeted towards those in households on low incomes who are in receipt of certain state benefits. Eligibility is also subject to an assessment of the value of the applicant's disposable capital assets (e.g. savings) with a higher threshold applying to those aged over 61 years of age.
- 6.2 As we only have limited data on the characteristics of court users we assume any adult in England & Wales is equally likely to go to court. In reality, certain groups are more likely than others to go to court and eligibility within these groups is also likely to vary. Whilst we acknowledge the limitations of this approach, we consider it the best available.
- 6.3 Therefore, to assess whether the fee remissions scheme helps meet our obligations, we have used survey household income data¹⁹ to look at the household distribution of income of individuals with certain protected characteristics. This splits the population into five equally sized groups ('quintiles') with those in the bottom quintile being in households with the lowest incomes while those in the top quintile have the highest. These data have also been adjusted to take into account the size of the household and housing costs. However, it does not allow us to assess the impact on eligibility of the disposable assets test and so probably overstates eligibility for fee remissions.
- 6.4 As individuals living in households in the bottom quintile are the most likely to be in receipt of state benefits (see DWP, 2014, Chart 2.5, p30) we can use the distribution of individuals within this quintile to help assess the extent to which the fee remission scheme protects those with protected characteristics. The available data allow us to do this for gender, ethnic group, disability and age. We present the results in Table 1.

¹⁹ DWP (2014) Households Below Average Income: An Analysis of the Income Distribution 1994/5-2012/13.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325416/households-below-average-income-1994-1995-2012-2013.pdf

Table 1: Distribution of Income by Protected Characteristics

% Individuals	Net equivalised disposable household income (after housing costs)					
	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	All (millions)
Gender						
Adult male	19	18	20	21	23	24.1
Adult female	18	20	20	21	21	25.4
Ethnic Group*						
White	18	20	21	21	21	55.3
Non-White	37	22	15	13	13	7.1
Disability						
Disabled	23	25	22	18	12	12.1
Non-Disabled	19	19	20	20	22	50.7
Age						
16-24	38	22	16	15	10	5.7
25-29	26	23	16	20	16	4.0
30-39	17	16	19	22	26	8.2
40-49	19	17	20	20	24	9.0
50 to Retirement Age	20	16	18	21	24	10.6
Pensioners	12	24	24	21	18	11.9
All Individuals	20	20	20	20	20	62.9
Source: MoJ calculations based on DWP (2014) Households Below Average Income 2012-13, Tables 3.1db & 5.2db.						
* By ethnicity of head of household, non-white households based on a three year rolling average.						

6.5 The results reported in Table 1 can be summarised as follows:

- **Sex:** Males and females appear equally eligible for either a full or partial fee remission. This is because eligibility is based on an assessment of household income. However, when members of the household have a contrary interest in the proceedings, they are assessed on their individual means. In these circumstances, the

applicant with lower income is more likely to qualify for a fee remission. Due to differences in gender earnings, this is more likely to be a female member²⁰;

- **Ethnic Group:** Those living in households headed by someone from a non-white ethnic group are over twice as likely to live in a household in the bottom quintile compared to those headed by someone from a white ethnic background;
- **Disability:** Adults with a disability are more likely as the average to live in a household in the bottom quintile compared to adults with no disability;
- **Age:** Individuals under 30 years of age, and especially those aged under 25, are more likely to live in low income households and so are more likely to qualify for a remission in fees.

6.6 In summary, and on the basis of the data supplied above and our assumptions, we conclude that the fee remission system is likely to provide protection to a higher proportion of individuals with the protected characteristics of ethnicity disability and age subject to the limitation on data on disposable capital assets.

7. Potential equalities impacts of enhanced fee proposals on users in the civil court system and mitigations.

- 7.1 Any impact on different groups will primarily be financial. Data on court users who would be affected by these proposals has been collected where possible. However, the Government acknowledges that it does not collect comprehensive information about court users generally, and specifically information regarding protected characteristics.
- 7.2 We first analyse the equality impacts of the proposals by each key affected fee group. We then make a cumulative assessment to determine whether, across the whole package there are any equality impacts.

Key fee groups affected

- 7.3 In both proposals, the proposed fee increases would, if implemented, apply equally to all and would not therefore be directly discriminatory.

²⁰ See ONS (2014) Annual Survey of Hours and Earnings, 2014 Provisional Results, Figure 8. <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2014-provisional-results/stb-ashe-statistical-bulletin-2014.html>

Possession claims

7.4 Our proposal is to increase the fee for a possession claim in the County Court by £75, raising the fee:

- from £280 to £355 for a paper application; and
- from £250 to £325 for a claim filed using Possession Claims Online.

7.5 Initially the impact of the fee increase would be borne by people and organisations bringing possession claims. However, the normal rule is that the court will order the losing party to meet the claimant's reasonable costs, including any court fees he or she has incurred. As recent court data shows that claimants are successful in around 75 per cent of possession claims we anticipate that in a large number of cases the costs will be added to the debt and be borne by the defendant.

7.6 We do not routinely collect information on those who bring possession claims, and those against whom proceedings are brought. We therefore do not know whether the increase in fees would have a greater impact on people with protected characteristics compared with those who do not share them. However, as there is no intrinsic reason to believe that the proposed fee increase would be more likely to affect a group or groups with protected characteristics, we do not believe that the proposal represents indirect discrimination.

General applications

7.7 The consultation also seeks views options for increasing fees for most general applications in civil proceedings:

- from £50 to £100 for ex parte applications, or applications made by consent; and
- from £155 to £255 for applications on notice and which are contested.

7.8 Under the government's proposals, applications made in certain types of proceedings would be exempt from the fee increase. These are:

- applications made by a victim to extend or vary the terms of an injunction providing protection from harassment;
- applications made on behalf of a child or other vulnerable applicant for funds to be paid out of monies held in court; and
- applications made in proceedings under the Insolvency Act 1986.

7.9 The consultation also seeks views on whether there are other circumstances in which a general application is made which should be exempted from the fee increase.

7.10 General applications may be made by either side in proceedings, and in most cases the costs, including fees, will be determined by the outcome of the substantive litigation. The impact may therefore be borne by any party involved in proceedings in which a general application is made. We

do not know the characteristics of court users, whether claimants or defendants, and we cannot therefore assess the extent to which the proposal might have a disproportionate impact on a group or groups of users with protected characteristics. However, there is nothing to suggest that an increase in the fee for a general application would be intrinsically likely to affect a group or groups with protected characteristics.

Equality Impacts across the whole package of proposals

- 7.11 The Government acknowledges that we do not collect comprehensive information about court users generally and, more specifically, information regarding their protected characteristics. This makes it difficult to determine the impact of the enhanced fees reforms on those in the population pool with protected characteristics. Nevertheless, our assessment based on the information available, is that these proposals would not be directly or indirectly discriminatory, for the reasons set out above.
- 7.12 However, there is therefore a risk that our proposals taken together may have a disproportionate impact on some groups with protected characteristics. If it were the case that a group or groups with protected characteristics would be affected disproportionately, we believe the remissions scheme would provide sufficient mitigation. This is because the analysis presented above suggests that people with protected characteristics are over-represented in lower income groups and are therefore more likely to qualify for a fee remission
- 7.13 However, even if the availability of fee remissions and legal aid was not sufficient to mitigate the impact of fee increases, we consider that the imposition of a higher fee would be unlikely to result in a particular disadvantage for people with protected characteristics. Furthermore, we believe that the proposed fee increases would be a proportionate means of achieving the aims set out at paragraphs 2.1 and 2.2 above.
- 7.14 In view of the lack of data about court users, and specifically their protected characteristics, we have included a question in the consultation about our assessment of the equalities impacts of these proposals and we will take these views into account in developing these proposals as part of our ongoing duty under the Equality Act 2010.

Enhanced court fees

ISBN 978-1-4741-1291-8



9 781474 112918