



House of Commons
Justice Committee

Courts and tribunals fees

Second Report of Session 2016–17

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*Report, together with formal minutes
relating to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Jonathan Whiffing (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Christine Randall (Senior Committee Assistant), Anna Browning (Committee Assistant), and Liz Parratt (Committee Media Officer).

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Summary

In this Report we consider changes introduced in recent years by the Government to fees for court users in the civil and family courts and in tribunals, as well as proposals for further changes which are yet to be implemented. Fees may be charged to achieve partial or full recovery of the costs of the courts, or at an enhanced level in excess of those costs. Our Report focuses on changes which have had, or may be expected to have, a major impact on litigants and on the caseload of the courts. It looks at the financial and policy objectives of the changes, and the impact which changes have had, particularly in relation to the extent to which they have affected access to justice. Much of the Report deals with the impact of fees introduced in 2013 for bringing cases before employment tribunals, which have been particularly controversial.

We consider a range of views expressed about the principle of charging fees to court users, including at full cost-recovery or enhanced levels. We conclude that a contribution by users of the courts to the costs of operating those courts is not objectionable in principle. The question is what is an acceptable amount to charge taking into account the need to preserve access to justice, and we say that the answer to that question will vary from jurisdiction to jurisdiction, and between different types of case. We also conclude that the introduction of fees set at a level to recover or exceed the full cost of operation of the court requires particular care and strong justification. In addition, we comment on the adequacy of the research which the Ministry has used in formulation of its fees proposals, saying that the Ministry should not represent the quality of its evidence base as being higher than it is.

The impact of fees is clearest in relation to employment tribunal fees, and we took considerable evidence on this subject. Unfortunately at the time we agreed our report the Government had not published its post-implementation review of the fees, which it had originally intended to complete by the end of 2015. We describe this delay as unacceptable and detrimental to our work, and we call for the review to be published forthwith. We recommend that the overall quantum of fees charged for bringing cases to employment tribunals should be substantially reduced; fee remission thresholds should be increased; and further special consideration should be given to the position of women alleging maternity or pregnancy discrimination.

Our other principal conclusions and recommendations can be summarised as follows—

- we recommend that the Government review the impact of the April 2015 increase in fees for money claims on the international competitiveness of London as a litigation centre, and we say that the Government should not resurrect its proposal to double the £10,000 cap, or remove it altogether, unless such a review has been undertaken;
- we recommend that the increase in the divorce petition fee, from £410 to £550, be rescinded;
- we express the view it is unwise for the Government to have brought forward proposals for fees set at a level to achieve full-cost recovery in the Immigration and Asylum Chamber before having published its review of the impact of implementation of employment tribunal fees;

- we recommend that a pilot scheme should be set up of a system in which there is a graduated or sequential schedule of fee payments whenever there are substantial fees payable in total in respect of a case in the civil or family courts or tribunals, allied with a requirement for the respondent to pay a fee;
- we commend to the Ministry the Law Society's suggestion that it should introduce a system for regular rerating of remission thresholds to take account of inflation, and that it should conduct a further review of the affordability of civil court fees and the remission system, considering means of simplification, for example through automatic remission for all basic rate taxpayers.

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1 Introduction

The Committee's inquiry

1. Over the course of the 2010-15 Parliament, the Coalition Government pursued policies aimed at decreasing the net cost of Her Majesty's Courts and Tribunals Service (HMCTS) to the public purse, through the introduction of, and increases in, various fees and charges for people using the courts. These included the introduction of fees for employment tribunals; a regime of fees for civil proceedings, including some so-called "enhanced" fees set at a level in excess of the cost of the proceedings to which they apply; and a mandatory charge imposed on anyone convicted of a criminal offence (the criminal courts charge). During this Parliament the Government has continued to bring forward and implement proposals for new and increased fees across civil and family courts and tribunals.

2. On 21 July 2015, shortly after we were established as a Committee at the start of this Parliament, we announced an inquiry into the impact or likely impact of a range of changes to the regime of fees and charges applying to the courts and tribunals system. These changes included ones that had been implemented during the previous Parliament and further proposals that were being consulted on by the Government. On 20 November 2015 we published a report on the discrete topic of the criminal courts charge¹, calling for it to be withdrawn, and we were pleased to see that the Secretary of State for Justice, Rt Hon Michael Gove MP, responded swiftly and accepted our recommendation. We await further details of the announced Government review of the panoply of financial sanctions which may be imposed on those convicted of criminal offences. This Report does not deal further with the criminal courts charge. For the record, this Report also does not consider the Government's proposals to reform fees for grants of probate, on which a consultation was begun in February 2016, after we had concluded taking evidence in our inquiry. Similarly, in April 2016 the Ministry published proposals to increase fees again, this time to full cost-recovery level, in the Immigration and Asylum Chamber²: we have not taken evidence on these specific proposals but we comment on them taking into account the evidence we received in the context of the previous changes to fees introduced in the Chamber.

3. In relation to court and tribunal fees, the original terms of reference of our inquiry asked:

How have the increased court fees and the introduction of employment tribunal fees affected access to justice? How have they affected the volume and quality of cases brought?

How has the court fees regime affected the competitiveness of the legal services market in England and Wales, particularly in an international context?

1 Second Report from the Justice Committee of Session 2015-16, [Criminal courts charge](#), HC 586

2 Tribunal fees: Consultation on proposals for the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber), [Cm 9261](#), April 2016

4. After we launched our inquiry, in July 2015, the Government announced decisions to implement certain fee increases and launched a consultation on proposals for further fee increases.³ In response to this announcement we updated our terms of reference to include the following question:

How will the increases to courts and tribunals fees announced in Cm. 9123, “Court and Tribunal Fees”, published on 22 July 2015, and the further proposals for introducing or increasing fees included for consultation in Cm. 9123, affect access to justice?

5. The Government’s programme of reform of courts and tribunals fees has been an extensive one comprising a large number of changes, some great and some small. This report is not intended to be a complete and comprehensive examination of all these changes. We have limited our consideration to the most salient and controversial parts of the Government’s reform of court fees, and we have focused on the extent to which it is possible to determine whether the Government’s objectives, in particular the objective of maintaining access to justice, have been met or are likely to be met. We are aware that the empirical data available on different aspects of the effects of court fee reform varies, and that it in particular it is early to draw definite conclusions about the effects of enhanced fees.

6. Discounting written and oral evidence to our inquiry which dealt solely with the criminal courts charge, we have received 75 pieces of written evidence, and we held 4 oral evidence sessions, hearing from 23 people in person. All this evidence is available on our webpages.⁴ We are most grateful to all those who provided evidence to our inquiry.

7. In the next Chapter we describe the changes to courts and tribunal fees which are the subject of this Report, and the fee remission system which is the main safeguard for access to justice for those of limited means. In Chapter 3 we consider general matters which apply to the various elements of the Government’s fee reform programme, including the objectives of the programme and the extent to which they are being achieved, the principles of cost-recovery, enhanced fees and cross-subsidisation of different components of the courts and tribunals system, the adequacy of the research and evidence base on which the Government has founded its reforms, and the general effectiveness of fee remission in safeguarding access to justice. In Chapter 4 we consider further matters of concern in relation to particular parts of the fees regime: fees for employment tribunals; enhanced fees for divorce petitions and for money claims; and fees in the Immigration and Asylum Chamber. Finally, in Chapter 5 we consider general proposals presented for reform of the structure of fees and fee remission.

³ Court and Tribunal Fees: The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings; and Consultation on further fees proposals, Cm. 9123. Cm. 9123 was later replaced with Cm. 9124, laid in August 2015, which corrected an error in the original document: references in this report are therefore to [Cm.9124](#).

⁴ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/courts-and-tribunals-fees-and-charges/>

2 Changes to courts and tribunals fees

Changes considered in this Report

Employment tribunal fees

8. Following a consultation which took place from December 2011 to March 2012, the Government introduced employment tribunal fees in July 2013.⁵ For the purposes of fees, employment tribunal claims are divided into ‘Type A’ and ‘Type B’ claims.⁶ Type B claims attract higher fees because they are, generally speaking, more complex and consuming of tribunal resources than Type A claims. Fees are also higher for claims involving more than one claimant. While there are a number of fees payable during employment tribunal proceedings, including for appeals, the fees which have been the subject of most controversy are the issue and hearing fees for single claims. The following table sets out the fee levels for single employment tribunal claims:

Type of fee	Type A claims	Type B claims
Issue fee	£160	£250
Hearing fee	£230	£950
Total fees (issue fee + hearing fee)	£390	£1,200

9. Employment tribunals have been a reserved matter and the fees have applied in Scotland since their introduction. In September 2015 the Scottish Government announced that it would abolish the fees following the transfer of the tribunals to the Scottish Courts and Tribunals Service in accordance with the provisions of the then Scotland Bill (now section 39 of the Scotland Act 2016).

Civil and family courts and other tribunals

10. The wider programme of changes to court fees in England and Wales which is also considered in this Report began when the Ministry of Justice launched a two-part consultation which ran from 3 December 2013 to 21 January 2014.⁷ The consultation document noted that fees had been charged to court users in the civil, family and probate divisions for a number of years, and that, although the Government had a policy of seeking full cost-recovery through fees, this was not being achieved. The Government’s December 2013 proposals were intended to achieve close to full cost-recovery by charging fees reflecting, or in some cases exceeding, costs incurred for those who could afford them, while maintaining the principle of access to justice through a system of fee remission. To that end, one part of the consultation concerned setting fees in civil proceedings to meet the cost of the proceedings to which they relate (cost-recovery). The second part of the consultation concerned the introduction of fees exceeding the cost of the proceedings to which they relate (enhanced fees). The Government published its response to the first

5 [The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013](#) SI 2013/1893.

6 [Ibid](#), Schedule 2, Table 2.

7 [Court fees: proposals for reform](#), Cm.8751, December 2013

part of the consultation in April 2014. The response confirmed both the introduction of various new court fees and increases to some existing fees. These new fees came into force on 22 April 2014.⁸

Enhanced fees

11. A basic principle set out in the HM Treasury handbook, *Managing Public Money*,⁹ is that fees for public services should be set at a level to recover the full cost of the service, and no more. However, under section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), the Lord Chancellor may, with the consent of the Treasury, set fees under certain enactments at a level greater than the expected costs of the proceedings to which fees relate. The enactments concerned are: section 92 of the Courts Act 2003 (senior courts, county courts and magistrates’ courts fees), under which the Lord Chancellor must have regard to the principle that access to the courts is not denied; section 54 of the Mental Capacity Act 2005 (Court of Protection fees); section 58(4)(b) of the Mental Capacity Act 2005 (Public Guardian fees); and section 42 of the Tribunals, Courts and Enforcement Act 2007 (tribunal fees).

12. Section 180 of the 2014 Act states that when setting enhanced fees, the Lord Chancellor must have regard to:

- the financial position of the courts and tribunals for which the Lord Chancellor is responsible, including in particular any costs incurred by those courts and tribunals that are not being met by current fee income, and
- the competitiveness of the legal services market.

Section 180(6) says that enhanced fees must be used to finance an efficient and effective system of courts and tribunals: they may therefore entail cross-subsidisation within HMCTS, with a proportion of fees paid by users of certain courts going to meet the costs of operating others.

13. Section 180 was not in the Anti-social Behaviour, Crime and Policing Bill as introduced in the Commons, although the Bill did have a “placeholder” clause on court and tribunal fees and Government declared in the Explanatory Notes accompanying the Bill:

The Ministry of Justice is considering the detailed mechanism by which court and tribunal fees may be set beyond full cost-recovery and therefore at a level which exceeds the cost of the activities for which the fees are charged. Clause 136 is designed as a placeholder to allow the Lord Chancellor to bring forward substantive provisions by amendment in the light of this further work.¹⁰

The provision was contained in a New Clause (NC 28) tabled by the government for report stage in the Commons, and added without debate. The clause was debated in the Lords at committee stage on an amendment moved by Lord Beecham.¹¹

⁸ Through [The Civil Proceedings Fees \(Amendment\) Order 2014](#), [The Family Proceedings Fees \(Amendment\) Order 2014](#), [The Magistrates’ Courts Fees \(Amendment\) Order 2014](#), and [The Non-Contentious Probate Fees \(Amendment\) Order 2014](#)

⁹ [Managing Public Money](#), HM Treasury, 2015

¹⁰ [Explanatory Notes to the Anti-Social Behaviour, Crime and Policing Bill](#), Bill 7-EN, 2013-14, para 82

¹¹ [HL Deb 11 December 2013](#) cols 862-866

14. As noted above, the second part of the Ministry's 2013 consultation on court fee reform concerned enhanced fees for some court proceedings. The proposals included enhanced fees for money claims over £10,000, increasing the fee for divorce proceedings to £750 and enhanced fees for commercial proceedings. The Government published its response to the second part of the consultation in January 2015,¹² confirming it would not go ahead with the proposals for increased fees for divorce or commercial proceedings but would proceed with the proposal for enhanced fees for money claims over £10,000. The Government response also put forward for consultation proposals for increases in fees for possession claims and for general applications in civil proceedings.

15. The power to set enhanced fees was used in March 2015 in relation to money claims.¹³ The fee-band system for claims between £10,000 and £200,000 was replaced by a fee set at 5% of the value being claimed (4.5% for claims initiated online.) For claims greater than £200,000, or where the sum is not limited, the fee is capped at £10,000. The following table shows the old and new fees for claims worth £10,000 or more:

Claim value	Old fee	New fee (since 9 March 2015)
£10,000-£15,000	£455	5% of the value (£500-750)
£15,000-£50,000	£610	5% of the value (£750-2,500)
£50,000-£100,000	£910	5% of the value (£2,500-5,000)
£100,000-£150,000	£1,115	5% of the value (£5,000-7,500)
£150,000-£200,000	£1,315	5% of the value (£7,500-10,000)
£200,000-£250,000	£1,515	£10,000
£250,000-£300,000	£1,720	£10,000
>£300,000	£1,920	£10,000

16. The Ministry of Justice concedes that, for the types of cases affected, there was a significant increase in the volume of claims issued in the period before the fee increases, followed by a significant fall after their introduction. In oral evidence Shailesh Vara MP, the Minister for Courts and Legal Aid, said that the significant dip in the number of cases brought after the introduction of the fee had subsequently risen, but it was not back to the level it was before.¹⁴ The Ministry argued in its written evidence that not enough time had passed to draw conclusions about any long-term effects on case volumes.¹⁵

17. In July 2015, through Cm. 9124, the Ministry confirmed the following fee increases would be introduced:

Claim	Current fee (£)	Fee to be introduced (£)
Possession claim (County Court)	280 250 (initiated online)	355 325 (initiated online)
General application in civil proceeding (by consent or without notice)	50	100
General application in civil proceeding (contested)	155	255

12 Enhanced Court Fees: The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation, Cm. 8971, January 2015

13 [Civil Proceedings and Family Proceedings \(Amendment\) Order 2015](#)

14 Q416

15 [FEE033](#), para 14

Claim	Current fee (£)	Fee to be introduced (£)
Divorce proceedings	410	550

18. Following approval by both Houses of Parliament of the relevant secondary legislation, the increases came into force on 21 March 2016. The same legislation also increased fees for judicial review claims in the Immigration and Asylum Chamber of the Upper Tribunal.

19. The decision to increase the fee for a divorce petition to £550 represented a partial reversal of the January 2015 announcement that the Government would not proceed with the proposed increase from £410 to £750. It should be noted that the £410 fee already represented an enhanced fee for such proceedings, the cost of which is estimated to average £270 for an uncontested divorce.¹⁶

Further proposals in Cm. 9124, July 2015

20. Cm. 9124 consulted on other proposals for further fee increases. These included: an increase in the cap on fees for money claims from £10,000 to £20,000; a general 10% uplift in civil fees (excluding those already set at enhanced levels); and the introduction or modification of fees across the First-tier tribunal and Upper Tribunal.

Money claims

21. The proposals concerning fees for money claims included, at a minimum, increasing the cap on money claims to £20,000, but the Government also asked for views on whether the cap should be higher, or should be removed altogether. The Government proposed to exempt personal injury claims from these increases, so the maximum fee a personal injury claim could attract would remain at £10,000. It also proposed that the disposable capital test for the fee remission system should be increased so the threshold for a fee of £10,000 would be £20,000 and for a fee of £20,000 the threshold would be £25,000.¹⁷ In the event, in its December 2015 response to the consultation, Cm. 9181, the Government announced that it would not be raising the cap on fees for money claims “at this time”. In making this decision, the Government cited the case made by respondents that insufficient time had passed since the fee increases in March 2015. The Government did state that it would not rule out returning to the proposal, once more time had passed to properly assess the introduction of the 5% fee with a £10,000 cap.¹⁸

General 10% uplift in civil fees

22. The proposals in Cm. 9124 also included a general uplift of 10% to other fees for civil proceedings that are set at or below cost recovery levels. The fees would affect:

- judicial review proceedings

¹⁶ [Court Fees: Proposals for reform Cm 8751, para 188. In evidence Resolution gave a figure of £270 as at January 2015 \(FEE 0031, para 5\).](#)

¹⁷ See para 31 below for explanation of the disposable capital definitions and levels

¹⁸ [The Government response to consultation on further fees proposals, Cm. 9181, December 2015](#)

- proceedings for the assessment of costs
- enforcement proceedings
- all civil proceedings in the High Court, County Court and Magistrates' Court and fees in the Court of Appeal (Civil Division).

The specific proceedings affected by this set of proposals were set out in a lengthy [annex](#) to the Command Paper.¹⁹ The fees for Court of Appeal proceedings are expected to still be well below cost, which is estimated by the Ministry of Justice to be around £10,000.

Tribunals

23. Cm. 9124 in July 2015 also included further proposals for fees in tribunals.²⁰ Specifically, these proposals were for the introduction or modification of fees in the Property Chamber, General Regulatory Chamber, Tax Chamber and Immigration and Asylum Chamber of the First-tier Tribunal and Tax and Chancery Chamber, Immigration and Asylum Chamber and Land Chamber (Upper Tribunal).

Immigration and Asylum Chamber (First-tier and Upper Tribunal)

24. In Cm. 9124²¹ the Ministry proposed increases to fees payable to bring an appeal to the Immigration and Asylum Chamber of the First-tier Tribunal. The proposal was to double the fees for application to the Immigration and Asylum Chamber of the First-tier Tribunal. It was further proposed that applications submitted online would benefit from a 10% discount. The initial introduction of fees in the Chamber had been intended to achieve cost recovery of 25% but, according to the Government's consultation, it had only succeeded in recouping 11%. The increases proposed in Cm. 9124, as set out in the table below were intended to bring about the original intention of 25% recovery.²²

Application Type	Current fee	Proposed fee
Application for paper determination	£80	£160
Application for oral hearing	£140	£280
Application for paper determination (submitted online)	£80	£140
Application for oral hearing (submitted online)	£140	£250

25. In December 2015 the Government announced its intention to proceed with all these increases; then in April 2016 it published a further consultation, Cm. 9261, with

¹⁹ Annex C, page 43

²⁰ The Tribunal, Courts and Enforcement Act 2007 established a two-tier tribunal system: a First-tier Tribunal and an Upper Tribunal. Both of these tribunals are comprised of several Chambers with similar jurisdictions. The primary work of the Upper Tribunal is the review and deciding of appeals from the First-tier Tribunal. The Chambers in the First-tier Tribunal are: General Regulatory Chamber; Social Entitlement Chamber; Health, Education and Social Care Chamber; Tax Chamber; War Pensions and Armed Forces Compensation Chamber; Immigration and Asylum Chamber; and the Property Chamber. The Upper Tribunal comprises the Administrative Appeals Chamber; Tax and Chancery Chamber; Lands Chamber; and the Immigration and Asylum Chamber. The Employment Tribunal and Employment Appeal Tribunal are separate.

²¹ [Cm. 9124, pages 22-24](#)

²² [Court and Tribunal Fees; The Government response to consultation on further fees proposals, Cm 9181](#)

a deadline of 3 June 2016.²³ In this consultation document the Government said that it had “reconsidered its decision” to proceed with a proposal to achieve 25% cost recovery; it no longer thought it reasonable to expect the taxpayer to contribute 75% of the cost of the First-tier Tribunal and it was proposing to move to full cost-recovery. The proposed increases are now of the order of 600%:

- Application for a decision on the papers, from £80 to £490
- Application for an oral hearing, from £140 to £800.

There will no longer be a reduction of 10% for online applications: the consultation paper explains that, given the financial imperative to deliver additional income to fund the First-tier Tribunal, “we do not believe that differential pricing as a means to incentivise behaviour continues to be justified”.²⁴ A new fee of £455 is proposed for an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal, and fees are to be introduced in the Upper Tribunal at full-cost recovery levels: a fee of £350 for an application for permission to appeal where such an application has been refused by the First-tier Tribunal, and a fee of £510 for an appeal hearing.

Property, Tax and General Regulatory Chambers (First-tier Tribunal), and Tax and Chancery Chamber and Lands Chamber (Upper Tribunal)

26. The Government proposed the introduction or increasing of fees for the Property, Tax and General Regulatory Chambers of the First-tier Tribunal and the Tax and Chancery Chamber of the Upper Tribunal. The General Regulatory Chamber hears appeals against decisions made by various Government regulatory bodies (for example, they hear appeals against the Information Commissioner’s Office about decisions on freedom of information.) The Upper Tribunal of the Lands Chamber is subject to the general 10% uplift in fees and the proposed changes are detailed on pages 35 and 36 of the Command Paper.

Government response to consultation in Cm. 9124

27. Except for the changes to the proposals specified in the following table, all fees proposed in Cm. 9124 were confirmed by the Government’s response to the consultation, Cm. 9181.

Proposal (Cm 9124)	Decision announced (Cm 9181)
Civil money claims - Increase the cap on civil money claims from £10,000 to “at least £20,000”	The cap on money claims will remain at £10,000
General Regulatory Chamber (First-tier Tribunal) - All proceedings in the General Regulatory Chamber of the First-tier Tribunal to be subject to an issuing fee of £100. Electing for an oral hearing would incur a further fee of £500. (Excludes fees for gambling cases).	Fees for cases brought against the Information Commissioner (freedom of information) are to be exempt from fees pending the outcome of the review of the cross-party Commission. All other cases in the Chamber are to be subject to the fees consulted on.

²³ [Tribunal Fees: Consultation on proposals for the First-tier Tribunal \(Immigration and Asylum Chamber\) and Upper Tribunal \(Immigration and Asylum Chamber\)](#), Cm. 9261, April 2016

²⁴ [Ibid](#), para.29

Proposal (Cm 9124)	Decision announced (Cm 9181)
Property Chamber (First-tier Tribunal)– All proceedings except leasehold enfranchisement to be subject to an issuing fee of £100 and a hearing fee of £200. Proceedings for leasehold enfranchisement to be subject to an issuing fee of £400 and a hearing fee of £2,000	Proposal confirmed, except all rent and park home pitch fee application cases are to be subject to a single fee of £20, and proceedings for leasehold enfranchisement to be subject to an issue fee of £100 and a hearing fee of £200, as for other proceedings.
Tax Chamber (First-tier Tribunal)–The following fees to be introduced: Issue fees: Paper and basic cases - £50 Standard and complex - £200 Hearing fees: Basic - £200 Standard - £500 Complex - £1,000	Proposal confirmed, but in the case of appeals against fixed penalty notices of £100 or less, there is to be a fee of £20.

Freedom of information

28. Given that the Government's decision in December 2015 was not to impose fees for bringing freedom of information cases in the Regulatory Chamber pending the outcome of the review of the Independent Commission on Freedom of Information, it is worth noting that the report of that Commission did not explicitly address the question of whether fees should be introduced for such cases. The Commission did, however, express the view that there was an abundance of bodies effectively hearing appeals (the public authority subject to the original request, the Information Commissioner, and then the First-tier Tribunal) and said that "considerable resources and judicial time are being taken up by unmeritorious appeals". It recommended that legislation should be introduced to remove the right of appeal to the First-tier Tribunal against an Information Commissioner decision (a right of appeal to the Upper Tribunal would remain on a point of law).²⁵ This recommendation is under consideration by the Government. **We see no reason to disagree with the Commission's view.**

Fee remission

Standard fee remission system

29. The cornerstone of efforts to mitigate the impact of courts and tribunal fees on access to justice is fee remission. A standard fee remission system for claimants in civil court and tribunal proceedings was introduced in October 2013, except in the Immigration and Asylum Chamber, which operates a different system (see paras 33 and 34 below). Fee remission is only available to individuals, including those who conduct their business as sole traders. It is not available to companies, charities or other organisations. Claimants must submit separate applications for remission of each fee, and to be successful, they must first pass the disposable capital test and then the gross monthly income test in respect of each fee. It is worth noting that this has the effect in accordance with the table below, that

²⁵ [Independent Commission on Freedom of Information Report](#), March 2016, Recommendation 17

the disposable capital threshold for remission for a person paying an issue and hearing fee for an employment tribunal is £3,000, not £4,000 as it would be if the two fees were considered as one.

30. The relevant secondary legislation defines disposable capital as the value of every resource of a capital nature, such as savings, belonging to a claimant and (if applicable) their partner on the date the application is made. If an applicant exceeds the threshold, they are not entitled to any remission. The following table shows the thresholds for the disposable capital test relating to each level of fee:

Court or tribunal fee is:	Disposable capital threshold:
Up to £1,000	£3,000
Between £1,001 - £1,335	£4,000
Between £1,336 - £1,665	£5,000
Between £1,666 - £2,000	£6,000
Between £2,001 - £2,330	£7,000
Between £2,331 - £4,000	£8,000
Between £4,001 - £5,000	£10,000
Between £5,001 - £6,000	£12,000
Between £6,001 - £7,000	£14,000
£7,001 or over	£16,000

31. If successful under the disposable capital test, the applicant must then also qualify for remission under the gross monthly income test. An applicant, assuming they are successful under the first test, is entitled to full remission if they receive any of the following means-tested benefits: Income-based Jobseeker's Allowance; Income-related Employment and Support Allowance; Income Support; Universal Credit with gross annual earnings of less than £6,000; State Pension Credit guarantee credit; Scottish Civil Legal Aid (not Advice and Assistance or Advice by Way of Representation). They are also entitled to full fee remission if they and their partner's gross monthly income is below the amount set out in the table below:

Gross monthly income with:	Single	Couple
No Children	£1,085	£1,245
One Child	£1,330	£1,490
Two Children	£1,575	£1,735
£245 for every additional child		

If the applicant does not meet these thresholds, they may still be entitled to partial fee remission if they are within the following thresholds:

Gross monthly income with:	Single	Couple
No Children	£5,085	£5,245
One Child	£5,330	£5,490
Two Children	£5,575	£5,735
£245 for each additional child		

32. In response to criticism concerning the complexity of the fee remission system, the Ministry of Justice changed the application procedure. It is now known as “help with fees” (“fee remission” was seen as too technical and unclear for the general public). The thresholds are the same as before, but the process has been simplified for people to apply for remission. The changes include simplifying the application form, simplifying the guidance accompanying the form, and no longer requiring applicants to send proof of income or benefits for their application. HMCTS will instead check directly with the Department of Work and Pensions as to whether an applicant is on qualifying benefits, or if their income qualifies them for remission. Some applicants may, however, need to send proof.

Immigration and Asylum Chamber fee remission

33. The standard fee remission system is not applicable to the Immigration and Asylum Chamber. Rather, the system provides for fee waivers for certain types of appeal and exemptions for individuals meeting certain financial criteria, as well as a power for the Lord Chancellor to remit fees in exceptional circumstances where their payment would cause undue financial or other hardship. Waivers apply to appeals concerning deprivation of citizenship and decisions to remove an EEA national or an EEA national’s family member. In December 2015 the Government said it would add a new exemption for appeals against the revocation of refugee or humanitarian protection status. For other cases, remission of fees may take place if the applicant is being provided with asylum support funding by the Home Office; is in receipt of legal aid; or is being provided with support by a local authority under section 17 of the Children Act 1989. The Ministry told us that in the period April to September 2015 41,000 appeals were lodged with the tribunal, and 5,600 fee remissions granted, either under the financial criteria or the Lord Chancellor’s power. The Ministry said that 445 out of 452 appellants recorded as being unrepresented who potentially met the financial criteria for remission or who applied for the Lord Chancellor to remit the fees received a remission.²⁶

34. The Government’s current consultation on increasing fees in the Immigration and Asylum Chamber²⁷ repeats the commitment it has given to establish an exemption for appeals against revocation of refugee or humanitarian protection status; and also repeats its intention to extend exemption from fees to parents of children receiving support under s.17 of the Children Act 1989, and to children being housed by a local authority under s.20 of that Act. In addition, the Government proposes to add an exemption for people appealing against a refusal to grant a visa who have already been assessed by the Home Office as being unable to pay the original visa application fees. The Government is also seeking views as part of its consultation on alternative approaches for fee exemptions for those who may be unable to pay the increased fees.²⁸

²⁶ [FEE0107](#). This submission also says that the exemption applies to legacy appeals under legislation before the provisions of the Immigration Act 2014 came into effect.

²⁷ [Cm 9261](#)

²⁸ [Ibid](#) para 49

3 The fee reform programme: policy objectives and evidence

Policy objectives

Employment tribunal fees

35. The series of consultation documents produced by the Ministry of Justice in its programme of fee reform set out, with varying emphases, the objectives and principles of the Government's approach. The Ministerial foreword to the 2011 consultation on the introduction of employment tribunal fees referred to the need to identify elements in the civil justice system which presented barriers to the promotion of growth. Describing employment tribunals and employment appeal tribunals as particularly in need of reform, it went on to say that requiring those who used the system to make a financial contribution would contribute to the goal

to relieve pressure on the taxpayer and encourage parties to think through whether disputes might be settled earlier and faster by other means.²⁹

The Impact Assessment accompanying the consultation noted that employment tribunal claims had risen to a total of 218,100 in 2010/11, over double the number in 2004/05, almost entirely due to a rise in the number of multiple claims.³⁰ Multiple claims are claims filed by more than one person as part of a group action, and are heard together. The Impact Assessment also noted that the cost of administering employment tribunals was £83.6 million in 2009/10, met from the public purse.³¹ In that context, the Impact Assessment said

The fundamental policy aim is to transfer a proportion of the cost of running the ET and EAT from taxpayers to users. The policy objective is to require those users to pay an appropriate fee where they can afford to do so in order to have their workplace dispute resolved through the ET and EAT process.³²

36. The Government's stated objectives for the introduction of ET fees were threefold: financial, behavioural (encouraging parties to find alternative ways of resolving disputes), and maintaining access to justice. There was no explicit and declared objective of deterring weak or vexatious claims, although this has been part of Government thinking for some time. The 2011 *Resolving Workplace Disputes* consultation issued by the Department of Business, Innovation and Skills and the Tribunals Service, for example, said, in relation to employment tribunal fees:

a price mechanism could help to incentivise earlier settlements, and to disincentivise unreasonable behaviour, like pursuing weak or vexatious claims.³³

²⁹ [Charging fees in employment tribunals and Employment Appeal Tribunal](#), Ministry of Justice, December 2011

³⁰ [Impact assessment: introducing a fee charging regime into Employment Tribunals and the Employment Appeal Tribunal](#), November 2011 para 1.10.

³¹ *ibid* para 1.27. The Employment Appeals Tribunal cost £2.5 million in the same year.

³² *ibid* para 2.4

³³ [Resolving Workplace Disputes: A consultation](#), DBIS and Tribunals Service, January 2011, p.50

The Ministry of Justice's own December 2011 consultation stated:

Whilst there is considerable disagreement about the number of weak and vexatious claims that are made, it is expected that the introduction of fees will encourage parties to resolve disputes earlier and to think more carefully about alternative options before making a claim or taking a case to final hearing.³⁴

Ministers have also claimed that the introduction of fees has had that effect.³⁵

Other court and tribunal fees

37. In its December 2013 consultation document *Court Fees: proposals for reform* the MoJ states that

Providing access to justice remains the critical objective, underpinned by legislation, of the government's approach to the reform of HM Courts & Tribunals Service generally, and to the reform of fees specifically.³⁶

But it also argues that the fact that the courts had not been operating on the basis of full cost-recovery meant that resources had been diverted from "other areas of operations", and that, with reducing the fiscal deficit a top priority for the Government,

those using the civil court system would, in future, be expected to meet the cost of the service where they can afford to do so, and for certain types of proceeding would be expected to contribute more than the cost. Fee remissions will continue to be provided for those who qualify, so that access to justice is not denied.³⁷

38. The Ministry of Justice's December 2013 consultation document on court fees said that there was a deficit of £110 million in the civil court system, the difference between the cost to the public purse of the courts and receipts from fees following remissions.³⁸ The MoJ's written evidence to this inquiry claimed there was still a "gap" of £214 million in the funding of the civil courts, family courts and tribunals.

39. In its original memorandum to our inquiry, the MoJ says that it is necessary to make sure that courts and tribunals are properly funded, and that the Government's plans for reform of courts and tribunals are intended to deliver a more modern, efficient and user-focused system. The Ministry further claims that its fee charging reforms have been in pursuit of the objective of protecting access to justice.³⁹ That claim found scarcely any supporters in the evidence submitted to us. One organisation which did express support, in the context of employment tribunal fees, was Peninsula Business Services Limited, which said that fees had "improved access to justice for all by helping to ensure that the tribunal's resources are allocated effectively".⁴⁰

34 [Charging fees in employment tribunals and Employment Appeal Tribunal](#), op.cit.. p 15

35 See e.g. HC Deb 21 October 2013, c.43W; and [Minister hails 80pc fall in employment tribunals](#), The Daily Telegraph, 26 April 2014, accessed 5 April 2016

36 [Court fees: proposals for reform](#), para 6

37 [Ibid](#) para 7

38 [Ibid](#), para 31.

39 [FEE0033](#) paras 1 and 3.

40 [FEE0042](#)

The principle of fees

40. Some oppose the charging of any fees to litigants on principle. The Odysseus Trust described fees as a “tax on justice imposed to enable HM Treasury to profit from people seeking to enforce their legal rights”.⁴¹ In the context of employment tribunals, many argued that it was simply wrong to impose any fee on claimants. Sybille Raphael of Working Families said “these fees imperil the rule of law”;⁴² and Rosalind Bragg of Maternity Action said there were broader social and economic benefits from enforcement of employment law, including promotion of gender equality and protection of the health and wellbeing of new mothers and their babies.⁴³

41. Others accepted, with varying degrees of reluctance, that fees for litigants were a legitimate tool for the Government to use, and took the view that debate should focus on ways to structure the system, through appropriate fee levels and fee remission arrangements, to protect access to justice. Some, while accepting the notion that users of the justice system should pay something towards the cost of the system, balked at fees being set at full cost-recovery level or at an enhanced level. The Judicial Executive Board explained the general position of the judiciary as being that it had “never accepted the policy principle that courts and the justice system should be self-financing”. The JEB continued:

While the judiciary would agree and support part of the costs of the justice system being borne by users of the system, the justice system is a public good that all society benefits from, and it warrants and requires the support of public funding.⁴⁴

42. The Judicial Executive Board’s response to the Government’s December 2013 consultation made the additional point that the civil courts were already self-financing, and that the cost-recovery proposals were in effect using fees in civil courts to seek to meet a financing deficit in the family courts. The JEB posed the question:

If, as all agree, it is essential in the public interest to provide a family justice system, and it cannot be fully self-financing, should the cost be found from society at large or from a charge, essentially by way of taxation, on those who need to bring claims in the civil courts?⁴⁵

43. In oral evidence, Lord Dyson, Master of the Rolls, emphasised that the real area of debate was the “critical point” of access to justice. On enhanced fees and cross-subsidisation between different parts of the court system, Lord Dyson said that, although this was ultimately a policy decision for Parliament and the Government, the risk of denying justice to a lot of people was intense.⁴⁶ His access to justice concern was not so much about people entitled to fee remission - although with the remission threshold set so low it only captured “really poor people” - but with “ordinary people on modest incomes”,

41 [FEE0045](#) para 8

42 Q80

43 Q78

44 [FEE0090](#) para 3

45 [The response of the senior judiciary to the Ministry of Justice consultation paper Court Fees: proposals for reform \(Cm. 8751\)](#), 4 February 2014, para 17.

46 Qq 269 and 271

who, he said, will “inevitably be deterred from litigating”.⁴⁷ In their written evidence the Family Division of the High Court gave a more sonorous denunciation of the principle of enhanced fees:

In this octocentennial year of Magna Carta, it is important to recall one of the fundamental principles articulated by that seminal instrument, namely that “To no one will we sell, to no one deny or delay right or justice”. The principle that the State will provide access to democracy without profit is one of the fundamental pillars of a democratic society.⁴⁸

44. Legal practitioners also expressed considerable concern about the impact of the level of fees on access to justice, and about the principle of enhanced fees. Jonathan Smithers, the President of the Law Society, said that any increase in fees would tend towards a two-tier justice system for the rich and the poor, and that cross-subsidy in the justice system was not the right way to proceed.⁴⁹ Chantal-Aimée Doerries, Chairman of the Bar Council of England and Wales, said that the Bar Council accepted an element of contribution towards costs, but they did not support cross-subsidy.⁵⁰

45. **In this Report we are concerned with the principles behind the Government’s policies as well as the practical effects of those policies. Before we look in more detail at those practical effects, we set out here the broad position from which we approach the main questions of principle. First, although it is a legitimate position to object to any court fees being charged to litigants, that is not a position we share. Some degree of financial risk is an important discipline for those contemplating legal action, and a contribution by users of the courts to the costs of operating those courts is not objectionable in principle: the question is what is an acceptable amount to charge taking into account the need to preserve access to justice. The answer to that question will vary from jurisdiction to jurisdiction, and between different types of case. Factors which need to be taken into account include the effectiveness of fee remission, the vulnerability of claimants and their means in comparison with respondents—which may pose particular problems of inequality of arms when individuals or small businesses are seeking to uphold their rights against the state or major companies—and the degree of choice which litigants have in whether to use the courts to resolve their cases and achieve justice. There should be a clear and justifiable relationship in the courts and tribunal fee system between these factors and the degree of financial risk, through the size of fee, that litigants should be asked to bear.**

46. **We recognize that the principles of cost-recovery and of enhanced fees have been accorded statutory authority by Parliament. There is no doubt that Ministers are empowered, subject to parliamentary approval of the necessary delegated legislation, and subject to other provisions in the relevant primary legislation, to introduce such fees for litigants. However, the introduction of fees set at a level to recover or exceed the full cost of operation of the court requires particular care and strong justification. Where there is conflict between the objectives of achieving cost-recovery and preserving access to justice, the latter objective must prevail.**

47 Q271

48 [FEE0091](#) para 3.10

49 Qq333-334

50 Qq339-340

Evidence base

47. Much of the discussion about the merits of the Government's policy on courts and tribunals fees revolves around the extent to which in practice it is affecting access to justice, so a central question to be addressed is the evidence which there is about those impacts or likely impacts. Evaluation of that evidence will be bound up with assessment of whether the impacts are bearing out the Government's predictions in the research and impact assessments which they conducted as part of the process of policy formulation, encompassing the degree to which the policy is meeting its objectives of raising projected revenue, encouraging alternative means of resolving disputes, and maintaining access to justice. We are conscious that although there is a considerable amount of information already on the public record about the impact of the introduction of employment tribunal fees, for the fees and fee changes introduced in 2014 and 2015 the picture is not so clear. We are also aware that fee increases are taking place alongside other changes in the justice system, such as changes to employment law and changes in eligibility for legal aid, which make it an uncertain business in many cases to disentangle impacts attributable to fees alone.

48. The December 2013 proposals for court fees were accompanied by—

- an MoJ Analytical Services Insight Paper on the potential impact of changes to court fees on volumes of cases brought to the civil and family courts, based on qualitative research carried out through 18 telephone interviews with debt recovery organisations and legal practitioners⁵¹
- another MoJ Analytical Services research paper on public attitudes to civil and family fees,⁵² based upon responses by 1,799 people in England and Wales in April and May 2013 to questions in the Office of National Statistics' opinions and lifestyle survey
- an impact assessment on the cost-recovery proposals⁵³
- an impact assessment on the enhanced fee proposals,⁵⁴ and
- research undertaken by the Centre for Commercial Law Studies at Queen Mary, London on competitiveness of Commercial Court fees in selected jurisdictions.⁵⁵

This research base was later supplemented by Ipsos MORI with research consisting of interviews with 31 people who had issued proceedings in the civil courts, and a study commissioned from the British Institute for International Comparative Law on factors influencing international litigants with commercial claims.⁵⁶

49. In its consultation response to Cm. 8751 the senior judiciary was scathing about the quality of the research used by the Ministry to inform its policy formulation, describing it as

51 [Ministry of Justice Analytical Services Insight Paper on the potential impact of changes to court fees on volumes of cases brought to the civil and family courts](#)

52 [Ministry of Justice Analytical Services Research Paper on public attitudes to civil and family fees](#), December 2013

53 [Court Fees. Cost Recovery. Impact Assessment MoJ 221](#), 2 December 2013

54 [Enhanced Court Fees. Impact Assessment MoJ 222](#), 2 December 2013

55 [Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions](#), Centre for Commercial Law Studies, Queen Mary, London

56 [FEE0117](#)

clearly inadequate to assess the probable consequences of both the Costs Recovery and Enhanced Fees proposals on the ability of parties to afford access to the courts and on their willingness to do so.⁵⁷

Lord Dyson amplified these criticisms in oral evidence, characterising the research which had been done as “lamentable”.⁵⁸ In his turn the Minister, Shailesh Vara, robustly defended the research base. He argued that the Master of the Rolls had “completely ignored” four pieces of research beyond that conducted by Ipsos MORI, and said he did not accept Lord Dyson’s criticisms.⁵⁹ In general other witnesses aligned themselves with a critique of the adequacy of the Ministry’s research. The Chairman of the Bar Council thought the research undertaken in relation to the domestic effects of fees was “insignificant”, and the President of the Law Society said it was “poor”.⁶⁰

50. The Minister’s wish to defend the quality of the Ministry’s research is understandable, but we share the view expressed by the senior judiciary and some others who gave evidence to us that the research which was conducted as part of the formulation of the Ministry’s proposals in relation to courts and tribunals fees provides an insufficient basis to justify the Ministry’s proposals. That does not mean that those proposals are unjustifiable; nor does it mean that we are heedless of the financial pressures on Ministers in a Department with unprotected spending. We understand that the Ministry does not always have the luxury to be as rigorous and meticulous in preparing the ground for controversial policies as it might wish. But we do consider it important that in such circumstances the Ministry is frank about that fact and does not represent the quality of its evidence base to be higher than it is.

Pace of reform

51. A feature of the Government’s programme of reform of court fees has been that packages of proposed changes have followed on so swiftly from each other that there has been insufficient time to assess the impact of particular changes before further changes are advanced. This was particularly the case in relation to the Government’s proposal to lift the cap on the fee for money claims from £10,000 to £20,000 or more, put forward for consultation only a few months after the introduction of the fee set at 5% of the value of the claim allied to the £10,000 cap. In the end the Government did not proceed with the proposed doubling of the cap, citing in particular the argument made by consultees that there had not been sufficient time to understand the impact of the enhanced fees with the £10,000 cap. The Chairman of the Bar Council told us that, with contracts being written today, the impact of enhanced fees for money claims on the international competitiveness of London would only become clear in a few years’ time.⁶¹

52. The impression that the Ministry of Justice tends to see court and tribunal fees as a potential milch cow of income to which it can repeatedly return is enhanced by its recent proposals for a substantial hike in fees for immigration and asylum claims, aimed

57 [The response of the senior judiciary to the Ministry of Justice consultation paper Court Fees: proposals for reform \(Cm. 8751\)](#), 4 February 2014, para 26

58 Q271

59 Qq417-429. As explained in supplementary evidence from the Ministry, [FEE0117](#), the other four pieces of research which Mr Vara was referring to were the two MoJ Analytical Services papers, the Queen Mary, London research and the BIICL study referred to in para 48.

60 Q358

61 Q371

at achieving full cost-recovery, published in April 2016.⁶² The background to this fresh consultation is explained in paragraphs 24 and 25 above. The main reason cited in Cm. 9261 for the Ministry having to look again so soon at recently announced decisions is the “very challenging settlement” reached by the Ministry in the Spending Review announced in November 2015.⁶³

Streamlining of court processes

53. Proceeds of court fees are intended to be applied to the operation of courts and, in the case of the proceeds of enhanced court fees, they are intended to contribute to provision of an efficient and effective system of courts and tribunals. The Ministry of Justice made no claim that the proceeds of enhanced fees had as yet contributed to a streamlined and improved service in courts, and witnesses to our inquiry saw no sign of such a development. That is not surprising as income from fees has in effect simply replaced funding previously provided from the public purse.

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62 [Cm. 9261](#)

63 [Ibid](#), para 21

4 The impact of fees

Employment tribunals

54. We begin our consideration of the impact of fees in relation to employment tribunals, where evidence is clearest. We are aware that a judicial review brought by Unison against the fees has proceeded to the Supreme Court, where a hearing is pending. In accordance with the principle of comity between Parliament and the courts, we have not considered the specific arguments which have been at stake in that case: our consideration of the issues is based solely upon the evidence we have received.

The Government's post-implementation review

55. The Government launched a post-implementation review of the fees on 11 June 2015. This review was intended to assess the effect of the introduction of fees against the following three objectives (expressed in the Government's words):

- Financial: to transfer some of the cost away from the taxpayer and to those who can afford to pay.
- Behavioural: to encourage parties to seek alternative methods of dispute resolution.
- Justice: to maintain access to justice.

The full terms of reference of the review are given at Annex B to the Ministry's original memorandum to this inquiry. The terms of reference stipulate various categories of data and evidence which the review is required to gather to support its analysis, and they require the review to take into account other factors which may have influenced trends in the numbers of ET cases, such as the impact of improvement in the economy and changes in employment law, as well as whether there has been a reduction in weak or unmeritorious claims. Finally, the review is required to "make recommendations for any changes in the structure and level of fees for proceedings in the Employment Tribunals and the Employment Appeals Tribunal, including recommendations for streamlining procedures to reduce costs".⁶⁴ When the review was announced the Government indicated that it would be completed by the end of 2015 but at the time of agreement of this Report it had not been published.

56. According to the minutes of the Employment Tribunals National User Group meeting on 7 October 2015, a Ministry official, Bill Dowse, reported that the review was then "with the relevant Minister... . Although there was no fixed timetable, it was hoped that the Minister's position would be known by the end of the year."⁶⁵ In response to a freedom of information request made in December 2015 asking to be provided with a copy of the review, the Ministry, declining the request on 29 December 2015, said that the minutes of the 7 October meeting did not record that Mr Dowse had said the review had been completed, and added: "The review is currently underway and will report in due course".⁶⁶ When Mr Vara gave evidence to us on 9 February 2016, we pressed him on when the review would be published. He said:

64 FEE0033, Annex B

65 Minutes of the 27th meeting of the National User Group on 7 October 2015

66 Employment tribunal fees, House of Commons Library briefing paper No. 7081, 13 May 2016, p 27.

I hope it will be sooner rather than later. It is well under way. I do not want to commit myself to a specific date and find that we overshoot it because I have been over-optimistic. I can, however, assure the Committee that this is something that I am personally following through, and I am urging officials to make sure that we have some sort of announcement as soon as we possibly can.⁶⁷

57. Our Chair wrote to Mr Vara on 31 March pressing him to publish the review by 22 April, or alternatively to provide a copy to the Committee in confidence. Dominic Raab MP, Parliamentary Under Secretary of State at the Ministry of Justice, who has taken over ministerial responsibility for policy on courts and tribunals fees from Mr Vara, wrote back on 25 April, declining to publish or provide a copy to the Committee. He said in his letter “the review has taken much longer than originally estimated”. He also said he needed to secure the collective agreement of Ministerial colleagues to the outcome of the review and any proposals he might have to adjust the scheme. The Government has not said that the Unison judicial review has had any delaying influence on publication of the review, so we assume it has not.

58. **It will be evident from the chronology in the preceding paragraphs that there are some inconsistencies in the Government’s account of the progress of its review into the impact of employment tribunal fees. It is difficult to see how a Minister can urge his officials to progress a review which they apparently submitted to him 4 months or more previously. And even if Ministers may now be discussing how to proceed on the basis of the review’s findings, and recognizing that Departments other than the Ministry of Justice have an input into this, there can be no compelling reason to withhold from public view the factual information about the impact of the introduction of employment tribunal fees which will have been collated by the review. There is a troubling contrast between the speed with which the Government has brought forward successive proposals for higher fees, and its tardiness in completing an assessment of the impact of the most controversial change it has made. Such assessments are crucial in enabling judgements to be reached on similar proposals, such as those issued in April 2016 on greatly increased fee levels in the Immigration and Asylum Chamber.**

59. **We find it unacceptable that the Government has not reported the results of its review one year after it began and six months after the Government said it would be completed. On the basis of Mr Vara’s evidence to us on 9 February, we assumed that the review would be published shortly and we put on hold our preparation of this report to enable us to take account of the Government’s review. Following receipt of Mr Raab’s letter of 25 April we decided we could wait no longer to finalise and agree our own report. We have not appreciated being strung along in this fashion; it has been detrimental to our work and occasioned public speculation about the reasons for the delay in production of our own report; and we view this as unhelpful and not good practice. As is often the case in inquiries of this kind, the evidence we have received has been preponderantly critical of the Government’s position. It is impossible for us to gauge whether the case in support of the Government’s policies would be strengthened by the outcome of its review, because they have not yet published it.**

The overall impact of employment tribunal fees

60. If our consideration of the impact of employment tribunal fees does not have the benefit of sight of the Government's review, there is a lot of information on the subject which has been provided to us in evidence or is otherwise available from public sources.

61. The introduction of issue fees and hearing fees for claimants in employment tribunals as of 29 July 2013 led to an undisputed and precipitate drop in the number of cases brought, approaching 70%. The number of single cases brought declined by about 67% to around 4,500 per quarter from October 2013 to June 2015; and the number of multiple cases declined by 72%, from 1,500 per quarter in the year leading to June 2013 to around 400 per quarter since October 2013.⁶⁸ Taking into account relevant changes in employment law and an underlying trend predating the introduction of fees showing an ongoing gentle reduction in cases being taken to tribunal, the timing and size of the drop in the number of cases brought places the onus of proof on those who would argue that the drop is not primarily attributable to the introduction of fees.

62. The startling drop was not predicted by the Government. In oral evidence to us, making the case that the effects of fees had not been as dramatic as the figures suggest, Mr Vara placed considerable emphasis on the fact that in the year beginning in April 2014 83,000 early conciliation cases had been dealt with by ACAS. Early conciliation was introduced on a voluntary basis on April 2014, and became mandatory on 5 May 2014. Mr Vara said

That is 83,000 cases which, alternatively, might well have ended up before the employment tribunal.⁶⁹

63. Others gave a very different analysis of the significance of the number of early conciliation cases dealt with by ACAS. The South Eastern Circuit noted that ACAS had recorded that, out of 60,800 early conciliation notifications made in the period April to December 2014, 15 per cent were settled and 22 per cent progressed to an employment tribunal claim; and that in an ACAS survey 26 per cent of claimants who did not progress their cases said they did not do so because they found the fees off-putting. If, of the 63 per cent who did not progress their claim in April to December 2014, a similar proportion were put off by fees, the South Eastern Circuit suggest that about 13,245 people a year were being deterred by fees from making a claim.⁷⁰

64. We heard a considerable amount of evidence that, far from encouraging early conciliation and resolution of disputes, employment tribunal fees were having precisely the opposite effect, because there was no incentive for an employer to settle in cases where the claimant might have difficulty raising the fee. Sir Ernest Ryder, Senior President of Tribunals, told us

68 [Employment tribunal fees](#), House of Commons Library Briefing Paper 7081, 13 May 2016; [Tribunal and Gender Recognition Certificate Statistics Quarterly October to December 2015](#), Ministry of Justice.

69 Q395

70 [FEE0047](#), paras 15 and 16

There is clear behavioural material as to the way in which respondents are behaving. They are avoiding engagement in conciliation processes and waiting for the next fee to be paid, which means that settlement opportunities are being lost.⁷¹

Kate Booth, a partner at Eaton Smith LLP, who represents both employers and employees, said

When I advise an employer, why would they engage in early conciliation? You wait for the employee to pay a fee. Ultimately you want to call their bluff—are they prepared to put their money where their mouth is?—so you sit back and see whether they do it.

65. We considered the extent to which deterrence of vexatious claims constituted an objective of the Government in introducing employment tribunal fees in paragraph 37 above. Although most accept that some claims fall into that category, there is no consensus on the proportion of claims which do. Rebecca Hilsenrath of the EHRC told us there was no evidence of the extent of the problem;⁷² when pressed to give an estimate, Sybille Raphael of Working Families said that vexatious claims “may be less than 5%, even less than 2%”.⁷³ Kate Booth said that from her analysis of 185 queries from employees she had received between May and August 2015, she concluded that only in a very small number of cases were people pursuing cases they believed were without merit.⁷⁴ Numerous witnesses argued that despite the steep fall in the overall number of claims brought since the introduction of fees, it was not the case that the proportion of cases in which the claimant was successful had increased, so fees had deterred claims which would potentially have been successful to roughly the same extent as potentially unsuccessful claims.⁷⁵

66. A different perspective was provided by the Federation of Small Businesses: in their supplementary written evidence, they said:

The FSB supports the rationale behind Employment Tribunal Fees and welcomed their introduction. Previously, an employment tribunal could be seen as a ‘no cost’ option by a disgruntled or former employee in the absence of fees. Under a fee-paying regime, this is no longer the case. Although it is difficult to make firm conclusions based on the available data, the number of speculative claims is likely to have decreased.⁷⁶

Peninsula Business Services said that

We used to be regularly involved in defending claims that had no genuine prospects of success but were being pursued solely on the basis that it was known that there would be a cost to an employer in defending the matter and the hope that an economic offer to settle the case would be made.⁷⁷

71 Q289

72 Q104

73 Q107

74 Q127

75 See e.g. Q316 [Sir Ernest Ryder]

76 [FEE0111](#)

77 [FEE0042](#)

They said that the pursuit of such claims against vulnerable respondents had had the effect of denying access to justice to those respondents, and the introduction of fees had redressed the balance.⁷⁸ In very brief written evidence, the CBI said that business had supported the introduction of employment tribunal fees in 2013 “as a mechanism to incentivise dispute resolution outside of a tribunal and deter weak claims”.⁷⁹ They said they looked forward to the conclusions of the Government review; and if the review concluded that access to justice had been restricted then the balance of fees and remissions should be recast.⁸⁰

67. The Ministry has advanced to us the case that changes to employment law and the improving economic situation, as well as a pre-existing downward trend in numbers of employment tribunals cases being brought, may account for part of the reduction in the number of cases. These may indeed be factors, but the timing and scale of the reduction following immediately from the introduction of fees can leave no doubt that the clear majority of the decline is attributable to fees.

68. **We consider it is a reasonable objective for the Government to seek to reduce the number of vexatious claims through a degree of financial risk for claimants, although we note the comment of Sir Ernest Ryder, Senior President of Tribunals, that it is too soon after the changes to judge whether that objective is being met.**⁸¹ The issue for us has been whether fees have unacceptably impacted on access to justice.

69. **In coming to a judgement about the impact on access to justice of employment tribunal fees, we consider, on the weight of the evidence given to us, that Mr Vara’s heavy reliance on the figure of 83,000 cases dealt with at ACAS early conciliation to support his contention that access to justice has not been adversely affected by employment tribunal fees was, even on the most favourable construction, superficial. Those cases cannot be simplistically assumed to represent displaced cases which were settled satisfactorily otherwise than by being taken to tribunal. In many cases the existence of fees erects a disincentive for employers to resolve disputes at an early stage. The arguments presented to us by the Government in this inquiry, limited as they are for the reasons we have previously set out, have not swayed us from our conclusion, on the evidence, that the regime of employment tribunal fees has had a significant adverse impact on access to justice for meritorious claims.**

Impact on types of ET claims and claimants

70. The Trades Union Congress and Unison provided information on the differential impact that fees were having on the propensity of people to bring different types of employment claims.⁸² Their statistics, comparing cases brought in the first three months of 2013 and of 2015, showed the following reductions in the number of cases for the most common types of claims: Working Time Directive, down 78%; unauthorised deductions from wages, down 56%; unfair dismissal, down 72%; equal pay, down 58%; breach of contract, down 75%; and sex discrimination, down 68%. The Discrimination Law Association argued that reduced access to tribunals had fallen disproportionately on women and those from traditionally disadvantaged groups.⁸³

78 [ibid](#)

79 [FEE0084](#)

80 [ibid](#)

81 Q316

82 [FEE0054](#); [FEE0083](#)

83 [FEE0101](#)

Maternity/pregnancy

71. Several witnesses claimed that ET fees were having a pronounced discriminatory effect in relation to pregnant women and new mothers who received poor treatment at work. A survey commissioned jointly by the Equality and Human Rights Commission and the Department for Business, Innovation and Skills found that 11% of mothers were dismissed, made compulsorily redundant or driven from employment by poor treatment when others at their workplace were not.⁸⁴ According to the Fawcett Society, pregnancy discrimination was widespread in the public and private sector, but very few women took action.⁸⁵ Rosalind Bragg of Maternity Action said that since fees had been introduced there had been a 40% drop in claims for pregnancy-related detriment or dismissal.⁸⁶ Sir Ernest Ryder explained some of the practical factors for women in this type of position:

If you are a pregnant woman saving for your baby—for the toys, bedding and so on—that money falls to be taken into account. All those small capital elements might prevent you from getting remission of fees in an employment tribunal case.⁸⁷

As well as fees, the three-month time limit to bring an action was considered by some as a factor militating against many women bringing claims.⁸⁸

Low value claims

72. Inevitably when deciding whether to bring a case to tribunal a person will weigh the cost of fees against the likely size of an award, if the case is successful. In those circumstances it might be predicted that people would be disproportionately deterred from bringing claims for low amounts of compensation. That appears to have been the case. The Council of Employment Judges told us

Many judges reported that they now hear no money claims at all. Prior to the introduction of fees money claims were often brought by low paid workers in sectors such as care, security, hospitality or cleaning and the sums at stake were small in litigation terms but significant to the individual involved. There are few defences to such claims and they often succeeded.⁸⁹

The Council added that there had been a particularly marked decline in claims for unpaid wages, notice pay, holiday pay and unfair dismissal, the types of cases brought by ordinary working people.⁹⁰ In their written evidence Unison used figures for the median awards for different types of discrimination claims in 2012-13, ranging from £4,499 in age discrimination cases to £7,536 in disability discrimination cases, in support of their contention that fees constituted such a high percentage of probable awards that many claims would be impossible or excessively difficult for people to bring.⁹¹ A survey

84 [FEE0089](#)

85 [FEE0082](#)

86 Q85

87 Q277

88 E.g. [FEE0083](#) [Unison]

89 [FEE0040](#)

90 *ibid*

91 [FEE0083](#)

conducted by Citizens Advice indicated that 47% of respondents would have to put aside all their discretionary income for 6 months to afford the £1,200 needed to bring a Type B claim.⁹²

73. The categorisation of Type A and Type B claims came in for some criticism from witnesses. The more complex Type B claims include unfair dismissal and discrimination claims, and the Equality and Diversity Forum said

Charging a higher fee—or the highest fee—to those who believe they have been discriminated against adds to further marginalise those people who have a protected characteristic and deterring them from using a service.⁹³

Sir Ernest Ryder argued more generally that the classification was too simplistic, and did not match the three-part classification of “short, standard and open” used by the tribunals themselves. Pointing in particular to the range of length and complexity of cases under Type B, he said that if fees were to be levied they should be structured to match the tribunals’ own classification, “the work that the judges recognise”.⁹⁴ **We agree with Sir Ernest’s assessment.**

74. Compounding the deterrent effect of fees for those wishing to bring claims, low value claims in particular, can be the difficulty in some cases of enforcing awards after they have been made. A Department of Business, Innovation and Skills study in 2013, much cited by witnesses to our inquiry, found that only 49% of successful claimants were paid in full, and 35% of them received no money at all;⁹⁵ the proportion who received nothing was even higher in Scotland, at 46%.⁹⁶ In cases of redundancy claims against employers of limited means, where the Redundancy Payments Service will not usually pay an employee until after a tribunal has established liability and all efforts to secure payment from the employer have proved fruitless, the RPS will not reimburse the fee if the employer is unable to.⁹⁷ There is also some uncertainty about whether claimants are able to secure partial or full reimbursement of fees from respondents if they are successful in their claims.⁹⁸

75. We asked some witnesses what a reasonable level of fee for bringing a case to an employment tribunal cases would be in their opinion. Some rejected any fee in any circumstance; of those who were not adamantly opposed, Emma Wilkinson of Citizen’s Advice cited a finding of their *Fairer Fees* report, published in January 2015, that when people were asked what level of fees they would be willing to pay, 90% said they would not be put off by a £50 fee.⁹⁹ We had little evidence beyond this for what might be an appropriate figure.

76. In relation to the suitability of the fee remission system for employment tribunal claimants, Employment Tribunals (Scotland) made an important point in their written evidence. They pointed out that redundancy payments, intended to cushion people during a potential period of unemployment, were counted towards disposable capital, as were other payments commonly made on termination of employment, such as pay in lieu of notice

92 [FEE0065](#)

93 [FEE0075](#) para 11

94 Q314

95 See e.g. [FEE0083](#) [Unison]

96 [FEE0087](#) [Law Society of Scotland]

97 [FEE0065](#) [Citizen’s Advice]; [FEE0076](#) [Thompsons Solicitors]

98 [Employment tribunal fees](#), House of Commons Library Briefing Paper 7081, 13 May 2016

99 Q88

or accrued holiday pay. These factors, together with the three month limit on bringing claims to employment tribunal, meant that many claimants would have artificially inflated means at the time they were being assessed for eligibility for fee remission.¹⁰⁰

77. Our conclusions and recommendations on what needs to be done in relation to employment tribunal fees are set out in the following paragraph. We have already made clear that we do not object in principle to the raising of income from litigants through fees for bringing cases to the courts. What counts, in our view, is that a fee system should not unreasonably damage access to justice.

78. **We do not have the benefit of seeing the factual basis of the Government's review of implementation of the fees; nor do we have the resources or data to undertake economic modelling of the impact of potential changes to the fees regime. The status of our recommendations, as set out below, is therefore that they should be taken as indicating options for achieving the overall magnitude of change necessary to reinstate an acceptable level of access to justice to the employment tribunals system.**

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

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

We cannot conclusively judge if such changes would adequately address the constraints upon access to justice in employment tribunals which have been identified. Any changes brought in should therefore be subject to further review and modification as necessary.

80. We recognize that the above recommendations would have cost implications for the Ministry of Justice, but note that an increase in the number of legitimate claims would in itself bring in additional fee income, and, secondly, we stress again that if there were to be a binary choice between income from fees and preservation of access to justice, the latter must prevail as a matter of broader public policy.

Cost recovery

81. The Ministry's original memorandum to our inquiry said that, following the introduction of the April 2014 cost-recovery charges, there was no noticeable impact on case volume or quality, with the exception of money claims. Shortly before the increasing of various fees for money claims in April 2014, the Ministry said there was a noticeable increase in demand for these types of claims, followed by a subsequent fall in claims. They said that, for the majority of cases, volumes quickly recovered to pre-cost recovery levels.¹⁰¹

Enhanced fees for money claims

82. In the same memorandum, the Ministry said that the introduction of enhanced fees for money claims in March 2015 again saw a significant increase in volumes of higher-value claims in the period immediately before the fee increase, followed by a significant fall following their introduction. Annex A to the Ministry's memorandum gave figures for various types of money claims in July 2015, running at between 55% and 90% of the levels before implementation of fee increases.¹⁰²

83. We heard evidence from a number of witnesses who expressed concern about the potential effect of the new fees for money claims on the global competitiveness of London as a location for settlement of disputes in comparison with centres such as Dubai, Singapore and New York. The Bar Council of England and Wales, for example, while noting that it was too early to provide evidence on the impact of the March 2015 increases on London's international competitiveness, expressed concern that London's attractiveness to litigants would diminish as a result of increased fees. The Bar Council expressed particular concern about the disparity with the fee for issuing proceedings in New York, of as little as \$400.¹⁰³ The Judicial Executive Board cited the research commissioned by the Government from the British Institute for International Comparative Law (BIICL) to warn, in the context of the Government's then proposal to increase the cap on fees from £10,000 to £20,000, that "the effect on business since the introduction of the enhanced fees needs to be carefully monitored and analysed prior to embarking on a fresh round of significant fee increases".¹⁰⁴

84. Mr Vara, in contrast, interpreted the BIICL research in more sanguine fashion. He told us: "the report said [increasing fees] may have an impact, rather than it would. I got the impression that a lot of people who had been questioned were simply hedging their bets by saying, "Yes, of course it may have an effect"."¹⁰⁵ Court fees, he said, were "a tiny, tiny proportion of the overall legal costs that parties incur". When asked whether the Government would measure the impact of the fee increases on international competitiveness, Mr Vara dismissed the idea, saying that the BIICL report had measured the impact and "I am not in the business of duplicating work that has already been done very recently".¹⁰⁶

85. The Government has not ruled out returning to its previous proposal of increasing the cap on fees for money claims from £10,000 to £20,000. It would be unsatisfactory if it were to bring forward this proposal again before undertaking an analysis of the

101 FEE0033

102 *ibid*

103 FEE0043

104 FEE0090

105 Q 409

106 Q413

impact of the increase which has already taken place, to 5% of the value of a claim up to a cap of £10,000. We recommend that the Government review the impact of the April 2015 increase in fees for money claims on the international competitiveness of London as a litigation centre when sufficient time has elapsed, possibly 2 or 3 years, to enable that impact to be assessed. The Government should not resurrect its proposal to double the £10,000 cap, or remove it altogether, unless such a review has been undertaken.

Divorce petitions

86. We have described (in paragraph 17 above) the background to the raising of the fee for a divorce petition from £410 to £550, following the Government's decision not to proceed with its original proposal that it should be increased to £750. We also noted that, with the average cost of proceedings standing at £270 in January 2015, the fee of £410 was already an enhanced fee.

87. The President of the Family Division, Sir James Munby, was highly critical of the enhanced fee which has been introduced in divorce cases. He said that many family judges were of the view that an enhanced fee was wrong in principle, and he added that it was discriminatory against women, who bring the majority of divorce petitions.¹⁰⁷ He continued:

There are only two things that the justice system does where you have no choice but to use the system. One is divorce; the other is probate. Therefore, we have a captive market..... I have to say that there is something rather unattractive—particularly if one is selling justice, which one should not be doing—in battenning on to the fact that there is a captive market and that, because there is no elasticity of demand, one can simply go on putting up the fees until it becomes another poll tax on wheels.¹⁰⁸

Contrasting the cost of divorce with the cost of registering a marriage, he said

There will come a point where people start to say to themselves, “Why does it cost six, seven or eight times as much to get divorced as it did to get married in the first place?”¹⁰⁹

88. The submission of Resolution expressed similar concerns. They said

There is no justification for charging the public more than the actual cost (even as done today) of using a legal service to pursue a remedy which is their right under statute.¹¹⁰

Resolution included as part of their evidence comments from some of their members, who are lawyers and others involved in the family justice system. One said: “I feel very strongly that an increase in the divorce petition fee is going to make it very difficult for access to justice for a large number of families”. Another said that “as a mediator and

107 Q 304

108 Q307

109 Q308

110 [FEE 0031](#) para 8

solicitor in a wealthy suburb of Manchester, it will affect the majority of my clients, who are already usually facing a huge financial squeeze and juggle month on month, as a result of separating.”¹¹¹

89. **We share the concerns which have been expressed to us about the increase in the fee for bringing a divorce petition. £410 is already an enhanced fee: a further increase to £550, which is approximately double the cost to the courts of providing the service, is unjustified. It cannot be right that a person bringing a divorce petition, in most cases a woman, is subject to what has been characterised in evidence to us as effectively a divorce tax. We recommend that the increase in the divorce petition fee to £550 be rescinded.**

Immigration and asylum

90. In paragraphs 24 and 25 above we have described the changes originally proposed to fees in the Immigration and Asylum Chamber, and the new proposals contained in the April 2016 consultation paper, Cm.9261. We give another reminder that the evidence we received on this subject concerned a proposed increase in fees in the First-tier Tribunal of around 100%; the fee increases now proposed are of the order of 600%, and fees are proposed for the Upper Tribunal as well.

91. The Immigration Law Practitioners’ Association (ILPA) argued that the imposition of fees on appellants in immigration tribunals had increased barriers to access to justice. They said that the majority of applicants in cases in which immigration appeals were still permitted were

detained and/or destitute and in many cases will be facing imminent removal. Either they will be unable to pay the fee and will be denied access to justice, or they will be forced into unlawful and potentially exploitative work to pay the fee. Finding the funds to pay court fees or completing complicated applications for remission of the fees is complicated by the urgency of these cases.¹¹²

In her oral evidence Carita Thomas, co-convenor of ILPA’s Legal Aid Working Group, stressed that ILPA disagreed with any fees in immigration tribunals, given the inequality of arms between the individual and the state, and the principle that the state should be held to account for unlawful action.¹¹³ She took us through her experience of the difficulties of seeking fee remission in immigration cases, and argued that one fee remission system should apply to all courts and tribunals.¹¹⁴

92. **The evidence which we received in our inquiry on the likely impact of the proposed doubling of fees in the Immigration and Asylum Chamber caused us considerable concern. That concern has been magnified by the more recent publication of the Government’s proposals to set fees at a cost-recovery level, involving a six-fold increase in the fees currently charged. Neither do we believe that significant cost-recovery is ever likely to be realistic given the circumstances of most people who come through the immigration and asylum system. If these proposals are proceeded with, there is a danger that they will deny vulnerable people the means to challenge the lawfulness**

¹¹¹ [ibid](#)

¹¹² [FEE0074](#)

¹¹³ Q257

¹¹⁴ Qq 252, 254

of decisions taken by the state about their immigration and asylum status. Given the experience with employment tribunal fees, we think it is unwise for the Government to have brought forward proposals for fees set at a level to achieve full-cost recovery in the Immigration and Asylum Chamber before having published its review of the implementation of employment tribunal fees.

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5 Fee structure and fee remission

93. In the preceding sections of this Report we have made certain recommendations about the quantum of fees applicable in respect of certain cases. We think it is important those recommendations are adopted if very significant concerns about access to justice as raised with us are to be allayed. Equally important, however, is a general fee structure and fee remission system which does not exclude a significant proportion of people from the realistic possibility of defending or enforcing their legal rights through the courts. In this final Chapter, therefore, we consider other proposals which have been put to us for changes to the structure of payment of fees, and fee remission, which could be adopted in the courts and tribunals system. The Ministry has argued that other safeguards for access to justice are available for claimants, particularly conditional fee agreements and after the event insurance. We found minimal agreement in other evidence we received that these were substantive safeguards. Conditional fee agreements are not applicable in tribunals.¹¹⁵

Staged fees

94. Each court or tribunal fee, where no exemption or partial exemption applies, is payable in full and up-front. One suggestion put forward to alleviate the deterrent effect of fees was to enable them to be met in a series of staged payments throughout the course of a case. Alice Hardy, representing the Police Action Lawyers Group, said that the new fee system for civil litigation had front-loaded the payment of fees to the issue stage;¹¹⁶ and Sarah Crowther, a barrister on the South Eastern Circuit, thought that a staged fee structure would mitigate the impact of fees for the majority of cases, and would chime with an approach to encourage early settlement.¹¹⁷ Both the Master of the Rolls and the President of the Family Division, however, expressed doubts. Lord Dyson, perhaps surprisingly, was concerned that if meritorious claims were not deterred but then reached settlement without going to court, under a staged fee structure there would be a reduction in fee income for the Ministry, though he agreed that it would be better from a justice point of view.¹¹⁸ Lord Dyson also saw administrative difficulties and costs in a staged payment system. Sir James Munby saw “very real conceptual problems and practical problems in translating the seemingly rather attractive idea of staged payments into a system that reflects what you are trying to do.”¹¹⁹ One difficulty would be if the court had been set up to deal with the next stage of a case and the fee had not been paid, which could generate “a vast amount of satellite litigation.”¹²⁰

95. Sir Ernest Ryder told us that the perspective from tribunals was different, because most litigants had cash-flow problems, “so there is a general acceptance that the graduated or sequential fee is better”, but even then there were adverse behavioural consequences in that respondents tended not to engage in conciliation in order to push claimants into paying the next fee. His solution to that was to adopt the Scottish civil justice model of requiring a respondent’s fee to be paid, alongside sequential fees: this would “make the playing field more level and place a risk on both parties”.¹²¹ *We can see distinct attractions*

115 Q288

116 Q208

117 Q215

118 Q280

119 *ibid*

120 Q283

121 Q281

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

Immigration and asylum fee remission system

96. We have described in paragraphs 33 and 34 above the separate system for exemption from fees which pertains in the Immigration and Asylum Chamber. The Ministry say that historically this has been “as a result of the difficulty in assessing the income of individuals who may be based outside the United Kingdom in many cases”.¹²² This argument was contested in our inquiry. Carita Thomas of ILPA said these things could be got round: and when she was making a legal aid application she had to evidence income which people had overseas.¹²³ For her as a legal representative it was still not clear how the fee remission system was meant to work; and it was “completely unfair”, especially when many exceptional circumstances cases were human rights cases. In principle it must be right as far as possible that the fee remission system across the courts and tribunals is standardised, but we recognize the real difficulties which can apply in immigration and asylum cases. **We do not have sufficient evidence to come to a firm conclusion, but it is important that the matter should be reviewed, to ensure a proper balance between the desirability of a standardised system and the difficulties this could cause in immigration and asylum cases.**

Fee remission thresholds

97. We have already expressed our view that the fee remission thresholds for employment tribunal claimants are too low, both in relation to disposable capital assets and monthly income, and recommended that they be approximately doubled. Outside the area of employment tribunals we received less copious evidence. We asked the Law Society for their views on whether the threshold should be increased, and they told us that

Even before the most recent fee increases, the fee remission system was overly complicated and the eligibility cut-off threshold set too low. Following the substantial fee increases in 2015, the fee remission arrangements have become still less fit for purpose.¹²⁴

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

¹²² Cm 9261 para 37

¹²³ Q255

¹²⁴ [FEE 0116](#)

Conclusions and recommendations

Freedom of information

1. We see no reason to disagree with the view of the Independent Commission on Freedom of Information that legislation should be introduced to remove the right of appeal to the First-tier Tribunal against an Information Commissioner decision. (Paragraph 28)

The principle of fees

2. In this Report we are concerned with the principles behind the Government's policies as well as the practical effects of those policies. Before we look in more detail at those practical effects, we set out here the broad position from which we approach the main questions of principle. First, although it is a legitimate position to object to any court fees being charged to litigants, that is not a position we share. Some degree of financial risk is an important discipline for those contemplating legal action, and a contribution by users of the courts to the costs of operating those courts is not objectionable in principle: the question is what is an acceptable amount to charge taking into account the need to preserve access to justice. The answer to that question will vary from jurisdiction to jurisdiction, and between different types of case. Factors which need to be taken into account include the effectiveness of fee remission, the vulnerability of claimants and their means in comparison with respondents—which may pose particular problems of inequality of arms when individuals or small businesses are seeking to uphold their rights against the state or major companies—and the degree of choice which litigants have in whether to use the courts to resolve their cases and achieve justice. There should be a clear and justifiable relationship in the courts and tribunal fee system between these factors and the degree of financial risk, through the size of fee, that litigants should be asked to bear. (Paragraph 45)
3. We recognize that the principles of cost-recovery and of enhanced fees have been accorded statutory authority by Parliament. There is no doubt that Ministers are empowered, subject to parliamentary approval of the necessary delegated legislation, and subject to other provisions in the relevant primary legislation, to introduce such fees for litigants. However, the introduction of fees set at a level to recover or exceed the full cost of operation of the court requires particular care and strong justification. Where there is conflict between the objectives of achieving cost-recovery and preserving access to justice, the latter objective must prevail. (Paragraph 46)

Evidence base

4. The Minister's wish to defend the quality of the Ministry's research is understandable, but we share the view expressed by the senior judiciary and some others who gave evidence to us that the research which was conducted as part of the formulation of the Ministry's proposals in relation to courts and tribunals fees provides an insufficient basis to justify the Ministry's proposals. That does not mean that those

proposals are unjustifiable; nor does it mean that we are heedless of the financial pressures on Ministers in a Department with unprotected spending. We understand that the Ministry does not always have the luxury to be as rigorous and meticulous in preparing the ground for controversial policies as it might wish. But we do consider it important that in such circumstances the Ministry is frank about that fact and does not represent the quality of its evidence base to be higher than it is (Paragraph 50)

The impact of fees: employment tribunals

5. It will be evident from the chronology in paragraphs 55 to 57 that there are some inconsistencies in the Government's account of the progress of its review into the impact of employment tribunal fees. It is difficult to see how a Minister can urge his officials to progress a review which they apparently submitted to him 4 months or more previously. And even if Ministers may now be discussing how to proceed on the basis of the review's findings, and recognizing that Departments other than the Ministry of Justice have an input into this, there can be no compelling reason to withhold from public view the factual information about the impact of the introduction of employment tribunal fees which will have been collated by the review. There is a troubling contrast between the speed with which the Government has brought forward successive proposals for higher fees, and its tardiness in completing an assessment of the impact of the most controversial change it has made. Such assessments are crucial in enabling judgements to be reached on similar proposals, such as those issued in April 2016 on greatly increased fee levels in the Immigration and Asylum Chamber. (Paragraph 58)
6. We find it unacceptable that the Government has not reported the results of its review one year after it began and six months after the Government said it would be completed. On the basis of Mr Vara's evidence to us on 9 February, we assumed that the review would be published shortly and we put on hold our preparation of this report to enable us to take account of the Government's review. Following receipt of Mr Raab's letter of 25 April we decided we could wait no longer to finalise and agree our own report. We have not appreciated being strung along in this fashion; it has been detrimental to our work and occasioned public speculation about the reasons for the delay in production of our own report; and we view this as unhelpful and not good practice. As is often the case in inquiries of this kind, the evidence we have received has been preponderantly critical of the Government's position. It is impossible for us to gauge whether the case in support of the Government's policies would be strengthened by the outcome of its review, because they have not yet published it. (Paragraph 59)
7. We consider it is a reasonable objective for the Government to seek to reduce the number of vexatious claims through a degree of financial risk for claimants, although we note the comment of Sir Ernest Ryder, Senior President of Tribunals, that it is too soon after the changes to judge whether that objective is being met. The issue for us has been whether fees have unacceptably impacted on access to justice. (Paragraph 68)

8. In coming to a judgement about the impact on access to justice of employment tribunal fees, we consider, on the weight of the evidence given to us, that Mr Vara's heavy reliance on the figure of 83,000 cases dealt with at ACAS early conciliation to support his contention that access to justice has not been adversely affected by employment tribunal fees was, even on the most favourable construction, superficial. Those cases cannot be simplistically assumed to represent displaced cases which were settled satisfactorily otherwise than by being taken to tribunal. In many cases the existence of fees erects a disincentive for employers to resolve disputes at an early stage. The arguments presented to us by the Government in this inquiry, limited as they are for the reasons we have previously set out, have not swayed us from our conclusion, on the evidence, that the regime of employment tribunal fees has had a significant adverse impact on access to justice for meritorious claims. (Paragraph 69)
9. We agree with the assessment of Sir Ernest Ryder, Senior President of Tribunals, that the Type A and Type B categorisation of employment tribunal claims is too simplistic. (Paragraph 73)
10. We do not have the benefit of seeing the factual basis of the Government's review of implementation of the fees; nor do we have the resources or data to undertake economic modelling of the impact of potential changes to the fees regime. The status of our recommendations, as set out below, is therefore that they should be taken as indicating options for achieving the overall magnitude of change necessary to reinstate an acceptable level of access to justice to the employment tribunals system. (Paragraph 78)
11. We recommend that the Government publish forthwith the factual information which they have collated as part of their post-implementation review of employment tribunal fees. We further recommend that –
 - the overall quantum of fees charged for bringing cases to employment tribunals should be substantially reduced;
 - the binary Type A/type B distinction should be replaced: acceptable alternatives could be by a single fee; by a three-tier fee structure, as suggested by the Senior President of Tribunals; or by a level of fee set as a proportion of the amount claimed, with the fee waived if the amount claimed is below a determined level;
 - disposable capital and monthly income thresholds for fee remission should be increased, and no more than one fee remission application should be required, covering both the issue fee and the prospective hearing fee and with the threshold for exemption calculated on the assumption that both fees will be paid;
 - further special consideration should be given to the position of women alleging maternity or pregnancy discrimination, for whom, at the least, the time limit of three months for bringing a claim should be reviewed.

We cannot conclusively judge if such changes would adequately address the constraints upon access to justice in employment tribunals which have been identified. Any changes brought in should therefore be subject to further review and modification as necessary. (Paragraph 79)

12. We recognize that the above recommendations would have cost implications for the Ministry of Justice, but note that an increase in the number of legitimate claims would in itself bring in additional fee income, and, secondly, we stress again that if there were to be a binary choice between income from fees and preservation of access to justice, the latter must prevail as a matter of broader public policy. (Paragraph 80)

The impact of fees: money claims

13. The Government has not ruled out returning to its previous proposal of increasing the cap on fees for money claims from £10,000 to £20,000. It would be unsatisfactory if it were to bring forward this proposal again before undertaking an analysis of the impact of the increase which has already taken place, to 5% of the value of a claim up to a cap of £10,000. (Paragraph 85)
14. We recommend that the Government review the impact of the April 2015 increase in fees for money claims on the international competitiveness of London as a litigation centre when sufficient time has elapsed, possibly 2 or 3 years, to enable that impact to be assessed. The Government should not resurrect its proposal to double the £10,000 cap, or remove it altogether, unless such a review has been undertaken. (Paragraph 85)

The impact of fees: divorce petitions

15. We share the concerns which have been expressed to us about the increase in the fee for bringing a divorce petition. £410 is already an enhanced fee: a further increase to £550, which is approximately double the cost to the courts of providing the service, is unjustified. It cannot be right that a person bringing a divorce petition, in most cases a woman, is subject to what has been characterised in evidence to us as effectively a divorce tax. (Paragraph 89)
16. We recommend that the increase in the divorce petition fee to £550 be rescinded. (Paragraph 89)

The impact of fees: immigration and asylum

17. The evidence which we received in our inquiry on the likely impact of the proposed doubling of fees in the Immigration and Asylum Chamber caused us considerable concern. That concern has been magnified by the more recent publication of the Government's proposals to set fees at a cost-recovery level, involving a six-fold increase in the fees currently charged. Neither do we believe that significant cost-recovery is ever likely to be realistic given the circumstances of most people who come through the immigration and asylum system. If these proposals are proceeded with, there is a danger that they will deny vulnerable people the means to challenge the lawfulness of decisions taken by the state about their immigration and asylum

status. Given the experience with employment tribunal fees, we think it is unwise for the Government to have brought forward proposals for fees set at a level to achieve full-cost recovery in the Immigration and Asylum Chamber before having published its review of the implementation of employment tribunal fees. (Paragraph 92)

Fee structure and fee remission

18. We can see distinct attractions in a system in which there is a graduated or sequential schedule of fee payments whenever there are substantial fees payable in total in respect of a case in the civil or family courts or tribunals, allied with a requirement for the respondent to pay a fee, but we do not feel that we have sufficient evidence to recommend adoption of such a system. We do however recommend that a pilot scheme take place to enable an evaluation to take place of such a system. (Paragraph 95)
19. We do not have sufficient evidence to come to a firm conclusion on whether the standard courts and tribunals fee remission system should be applied in the Immigration and Asylum Chamber, but it is important that the matter should be reviewed, to ensure a proper balance between the desirability of a standardised system and the difficulties this could cause in immigration and asylum cases. (Paragraph 96)
20. The Law Society called for the Ministry to introduce a system for regular rerating of remission thresholds to take account of inflation, and to conduct a further review of the affordability of civil court fees and the remission system, considering means of simplification, for example through automatic remission for all basic rate taxpayers. We recommend that the Ministry adopt the Law Society's suggestion as a matter of urgency. (Paragraph 97)

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Formal Minutes

Tuesday 14 June 2016

Members present:

Robert Neill, in the Chair

Richard Arkless

Chris Elmore

Alex Chalk

Mr David Hanson

Alberto Costa

Victoria Prentis

Philip Davies

Marie Rimmer

Draft Report (*Courts and tribunals fees*), proposed by the Chair, brought up and read the first time.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 97 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 28 June at 9.15am]

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Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 27 October 2015

Question number

Frances Crook, Chief Executive, Howard League for Penal Reform, **Phil Bowen**, Director, Centre for Justice Innovation, **Ben Summerskill**, Director, Criminal Justice Alliance, and **Penelope Gibbs**, Transform Justice

[Q1–37](#)

Richard Monkhouse, Chairman, Magistrates Association, and **Malcolm Richardson**, Deputy Chairman, Magistrates Association

[Q38–76](#)

Tuesday 17 November 2015

Rosalind Bragg, Director, Maternity Action, **Rebecca Hilsenrath**, Chief Executive, Equality and Human Rights Commission, **Sybille Raphael**, Advice Team Leader, Working Families, **Emma Wilkinson**, Senior Employment Expert, Citizens Advice

[Q77–118](#)

Kate Booth, Partner, Eaton Smith LLP, **Sally Brett**, Senior Policy Officer, Trade Union Congress, **Stephen Cavalier**, Chief Executive, Thompsons Solicitors, and **Shantha David**, Legal Officer, Unison

[Q119–155](#)

James Potts, Legal Services Solicitor, Peninsula Business Services Ltd, and **Michael Mealing**, Chair, Employment Policy Unit, Federation of Small Businesses

[Q156–186](#)

Wednesday 9 December 2015

Sarah Crowther, South Eastern Circuit and **Alice Hardy**, Police Action Lawyers Group

[Q187–225](#)

Derek Bambury, Forum of Insurance Lawyers, and **Anthony Abrahams**, Director General, Chartered Institute of Arbitrators

[Q226–240](#)

Jo Edwards, Chair, Resolution, and **Carita Thomas**, Co-convenor, Legal Aid Working Group, Immigration Law Practitioners' Association

[Q241–265](#)

Tuesday 26 January 2016

Rt Hon Lord Dyson, Master of the Rolls, **Rt Hon Sir James Munby**, President of the Family Division, and **Rt Hon Sir Ernest Ryder**, Senior President of Tribunals

[Q226–329](#)

Tuesday 9 February 2016

Chantal-Aimée Doerries, Chair, the Bar Council, **Michael Clancy**, Director of Law Reform, Law Society of Scotland, and **Jonathan Smithers**, President, Law Society of England and Wales

[Q330–389](#)

Mr Shailesh Vara MP, Parliamentary Under-Secretary of State, Minister for the Courts and Legal Aid

[Q390–447](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website. This list includes all written evidence submitted in the inquiry, including evidence dealing with the criminal courts charge which is not relevant to this report.

FEE numbers are generated by the evidence processing system and so may not be complete.

- 1 An individual ([FEE0104](#))
- 2 Anthill Debt Collectors ([FEE0001](#))
- 3 Bar Council of England and Wales ([FEE0043](#))
- 4 CBI ([FEE0084](#))
- 5 Centre for Justice Innovation ([FEE0034](#))
- 6 Chambers of Jason Dunn-Shaw ([FEE0013](#))
- 7 Chancery Bar Association ([FEE0098](#))
- 8 Chartered Institute of Arbitrators ([FEE0015](#))
- 9 Citizens Advice ([FEE0065](#))
- 10 Cohen Cramer Solicitors ([FEE0086](#))
- 11 Council of Employment Judges ([FEE0040](#))
- 12 Criminal Justice Alliance ([FEE0037](#))
- 13 Crown Prosecution Service ([FEE0073](#))
- 14 Debt Collection Service ([FEE0105](#))
- 15 Discrimination Law Association ([FEE0101](#))
- 16 DWF LLP ([FEE0069](#))
- 17 EAT Lay Members ([FEE0112](#))
- 18 Eaton Smith LLP ([FEE0004](#))
- 19 Employment Lawyers Association ([FEE0044](#))
- 20 Employment Tribunals (Scotland) ([FEE0032](#))
- 21 Equality And Diversity Forum ([FEE0075](#))
- 22 Equality And Human Rights Commission ([FEE0089](#))
- 23 Fawcett Society ([FEE0082](#))
- 24 Federation of Small Businesses ([FEE0023](#))
- 25 Federation of Small Businesses ([FEE0111](#))
- 26 Foil, The Forum of Insurance Lawyers ([FEE0067](#))
- 27 Frame Smith & Co ([FEE0026](#))
- 28 GMB ([FEE0048](#))
- 29 Hill Dickinson LLP ([FEE0063](#))
- 30 Ilpa ([FEE0074](#))
- 31 Judge Brian Doyle ([FEE0029](#))
- 32 Judicial Executive Board ([FEE0090](#))

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- 33 Kingsley Napley LLP ([FEE0102](#))
- 34 Legal Aid Practitioners Group ([FEE0072](#))
- 35 Liverpool Law Society Employment Committee ([FEE0095](#))
- 36 London Solicitors Litigation Association ([FEE0088](#))
- 37 Magistrates' Association ([FEE0062](#))
- 38 Maternity Action ([FEE0007](#))
- 39 Mcmillan Williams Solicitors Ltd ([FEE0014](#))
- 40 Ministry of Justice ([FEE0117](#))
- 41 Ministry of Justice ([FEE0033](#))
- 42 Ministry of Justice ([FEE0107](#))
- 43 Morrish Solicitors LLP ([FEE0036](#))
- 44 Motor Accident Solicitors Society (Mass) ([FEE0052](#))
- 45 Mr Bernard Hunter ([FEE0109](#))
- 46 Mr Chris Purnell ([FEE0106](#))
- 47 Mr Mike Guilfoyle ([FEE0017](#))
- 48 Mr Paul Jarvis ([FEE0058](#))
- 49 Mr Phil Lloyd ([FEE0011](#))
- 50 Mr Richard Dunstan ([FEE0024](#))
- 51 Mr Stephen Francis ([FEE0028](#))
- 52 News Media Association ([FEE0022](#))
- 53 North Hertfordshire Cab ([FEE0030](#))
- 54 Northumbria, PCC ([FEE0070](#))
- 55 Odysseus Trust ([FEE0045](#))
- 56 Peninsula Business Services Limited ([FEE0042](#))
- 57 Plumstead Community Law Centre ([FEE0097](#))
- 58 Police Action Lawyers Group ([FEE0066](#))
- 59 Pregnant Then Screwed ([FEE0003](#))
- 60 Previously Employed by Fera Defra ([FEE0009](#))
- 61 Prison Reform Trust ([FEE0055](#))
- 62 Professor Catherine Barnard ([FEE0093](#))
- 63 Prospect ([FEE0051](#))
- 64 Public and Commercial Services Union ([FEE0068](#))
- 65 Public Concern at Work ([FEE0061](#))
- 66 Public Interest Research Unit (PIRU). ([FEE0114](#))
- 67 Resolution ([FEE0031](#))
- 68 Sentencing Council ([FEE0094](#))
- 69 Simpson Millar LLP ([FEE0038](#))
- 70 Sir Brian Langstaff ([FEE0110](#))

- 71 Stepchange Debt Charity ([FEE0050](#))
- 72 Taxpayers Against Poverty ([FEE0079](#))
- 73 The Bar Council ([FEE0118](#))
- 74 The Family Division of the High Court ([FEE0091](#))
- 75 The Howard League for Penal Reform ([FEE0060](#))
- 76 The Law School, University of Strathclyde ([FEE0046](#))
- 77 The Law Society ([FEE0085](#))
- 78 The Law Society ([FEE0116](#))
- 79 The Law Society of Scotland ([FEE0119](#))
- 80 The Law Society of Scotland ([FEE0087](#))
- 81 The South Eastern Circuit ([FEE0047](#))
- 82 TheCityUK ([FEE0049](#))
- 83 Thompsons Solicitors ([FEE0076](#))
- 84 Transform Justice ([FEE0025](#))
- 85 Tribunals Judiciary ([FEE0092](#))
- 86 Trust for London ([FEE0103](#))
- 87 TUC ([FEE0054](#))
- 88 Unison ([FEE0083](#))
- 89 Working Families ([FEE0039](#))
- 90 Yorkshire Employment Tribunal Members' Association ([FEE0057](#))
- 91 Young Legal Aid Lawyers ([FEE0059](#))

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List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2016–17

First Report	Reduction in sentence for a guilty plea guideline	HC 168
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Session 2015–16

First Report	Draft Allocation Guideline	HC 404
Second Report	Criminal courts charge	HC 586 (HC 667)
Third Report	Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation	HC 624
Fourth Report	Criminal justice inspectorates	HC 724 (HC 1000)
Fifth Report	Draft sentencing guideline on community and custodial sentences	HC 876
Sixth Report	Prison Safety	HC 625
First Special Report	Women offenders: follow-up: Government response to the Committee's Thirteenth Report of Session 2014–15	HC 374
Second Special Report	Criminal courts charge: Government Response to the Committee's Second Report of Session 2015–16	HC 667
Third Special Report	Criminal justice inspectorates: Government Response to the Committee's Fourth Report of Session 2015–16	HC 1000

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