

Consultation on fees in the High Court and Court of Appeal

Questionnaire

We would welcome responses to the following questions set out the consultation paper. Please return the completed form by email to <mailto:mojfeespolicy@justice.gsi.gov.uk>

Question 1 - Do you agree that additional bands should be added for issue fees above the current maximum threshold? Please state the reason(s) for your answer.

Comments: In principle we think that additional bands for issue fees above the current maximum threshold are acceptable, but probably unnecessarily numerous. 3 or 4 higher categories should suffice, combining (n) and (o), (p) and (q), (r) and (s) and (t)-(v). In particular, we see no point in having more than one category for cases over £100M.

However, if the higher payment is intended to reflect the additional demands on resources which higher value cases generally make, then to charge hearing fees on an increasing scale by reference to the expected duration of the trial is surely double counting/charging for the same thing.

Furthermore, what of cases where the amount at stake is "unquantifiable" - is this the same as "unlimited", so that the issue fee for a £1B plus case is payable? As a matter of principle it should not be.

Question 2 - Do you agree that the fee for issuing a Bill of Sale should be increased to £60? Please state the reason(s) for your answer.

Comments: Yes. It is anomalous that what is effectively a method of enforcement should be charged at a different rate from other enforcement procedures. Whilst any significant increase in court fees must be closely scrutinised for its potential impact on access to justice, the proposed increase in this case is modest and is unlikely to impact adversely on creditors' access to the remedy.

Question 3 - Do you agree that the fee for permission to apply for judicial review should be increased from £60 to £235? Please state the reason(s) for your answer.

Comments: Yes. The proposed increase seems acceptable in principle, but surely there should be a separate fee for renewal of an application for permission, since most of these are likely to be unmeritorious and the justification for keeping down the continuation fee, where permission has been granted, does not exist.

By analogy with the approach to renewal of applications for permission to appeal, the continuation fee (or half of it) should become payable at the stage of renewal of an application for permission to apply.

Question 4 - Do you agree that the fee for continuation of a judicial review should be increased from £215 to £235? Please state the reason(s) for your answer.
Comments: Yes. The proposed increase is a modest one. See 3 above.
Question 5 - Do you agree that the fee for schemes of arrangement should be increased from £155 to £340? Please state the reason(s) for your answer.
Comments: Yes. Again, whilst any significant increase in court fees must be closely scrutinised (see 2 above), we do not believe that the proposed increase will impact adversely on the ability of companies and their creditors and shareholders to enter into schemes of arrangement.
Question 6 - Do you think that an increase in the fee for applications on notice within proceedings from £80 to £105 is justified? Please state the reason(s) for your answer.
Comments: Yes. The increase is a modest one.
Question 7 - Do you think that introducing a new fee of £105 for urgent applications in the High Court is justified? Please state the reason(s) for your answer.
Comments: Yes, It is anomalous that applicants should be able to pay a lesser fee for effectively side-stepping the normal court process.
Question 8 - Do you agree that the existing fee of £45 for an official certificate of the result of a search should be expanded to include the search itself? Please state the reason(s) for your answer.
Comments: Yes. The present position is anomalous and the proposed expansion of the existing fee is a modest one.
Question 9 - Do you agree that banding hearing fees by projected time is a fair way of reflecting the increased cost of providing longer trials without increased administrative burden? Please state the reason(s) for your answer.
Comments: This is very problematic. The theory is all well and good, but we foresee a significant risk that time estimates will be rendered less reliable because

of costs pressures to keep them down.

In any event, in addition to the double-charging point (see 1 above), there should be a separate category for 1-2 days, not a category for 1-3 days, since many cases are listed for a day to a day and a half, and it is not just to charge such cases (which often do get resolved in a single day) as if they were going to last for up to 3 days.

Furthermore, if the trial fee is calculated, as proposed, on the basis of the actual cost of court resources for a 1 day trial, then if those resources are not used - e.g. because the case settles - the trial fee should be refunded, subject to an administrative charge and perhaps an exception if the trial settles less than 24 hours before the hearing. Otherwise, for commercial cases, there is a significant risk that the combined effect of the issue fee and the hearing fee may make UK plc seem too expensive in comparison with other jurisdictions.

Question 10 - Do you agree that the current permission to appeal fee in the Court of Appeal should be increased from £235 to £465? Please state the reason(s) for your answer.

Comments: Yes, although it is a matter for concern that there was a review as recently as 2011 and no increase was then proposed. The proposal constitutes almost a doubling of the current fee, which may adversely impact on the ability of some litigants to appeal a wrong decision successfully. There should be no further increase in fees for permission to appeal for at least several years.

Question 11 - Do you agree that the fee for permission to appeal in the Court of Appeal should be limited to a decision outside of a hearing, with an applicant liable for the full appeal fee of £1,090 – but no further appeal fee – if they request a hearing? Please state the reason(s) for your answer.

Comments: Incurring the whole of the appeal hearing fee on a renewed application for permission is disproportionate, since the full hearing if permission is granted will clearly expend even greater judicial resources. If the increases are to be justified by reference to the actual demands on resources, then payment of the full hearing fee cannot be justified. The necessary (and appropriate) deterrent effect could be achieved by requiring payment of half of the appeal fee, with the other half falling due on grant of permission to appeal.

Question 12 - Do you agree that each ancillary application to an appeal should attract a separate fee of £465? Please state the reason(s) for your answer.

Comments: No. The proposal seems very heavy handed - would any ancillary application really consume an equal amount of resources as the application for permission to appeal itself? Furthermore, like an application for an extension of time, an application for a stay is routinely applied for, and should not be charged, since the Lord/Lady Justice considering the permission to appeal issue will deal with any stay on a purely ancillary basis (and not at all if permission is

refused).

Question 13 - Do you agree that fees of £45 (without notice or by consent) or £105 (on notice) should be charged at the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests)? Please state the reason(s) for your answer.

Comments: Yes, it would be anomalous for the Court of Appeal not to charge a fee where such an application would incur a fee in the High Court.

Question 14 - Do you agree that a listing fee of £110 should be charged in the Court of Appeal? Please state the reason(s) for your answer.

Comments: Whilst we understand the point behind the proposal, and are not opposed to the proposed amount of £110, the mechanism seems unduly bureaucratic. It should be possible to take account of the cost incurred by wrapping the fee up in the permission fee or the appeal hearing fee.

Question 15 - Do you agree that the current appeal fee of £465 should be aligned with the multi-track hearing fee of £1,090? Please state the reason(s) for your answer.

Comments: No. The increase is far too steep and runs the risk of shutting out too many litigants from the appellate process. Given the role of the Court of Appeal in defining and clarifying the law for the benefit of all litigants and not just the parties themselves, there is a good argument that that state itself should bear proportionately more of the cost of the appellate process than is appropriate in the High Court. We can see the argument for some increase in the current appeal fee to, say, £750, which would constitute a 62% increase, but not to the level proposed.

Question 16 - Do you feel that time-related hearing fees are a fair way of reflecting the cost of hearing appeals in the Court of Appeals Civil Division? Please state the reason(s) for your answer.

Comments: The same considerations apply as in the case of time-related hearing fees in the High Court. We refer to what we said in 9 above.

Question 17 - Do you agree that applications under CPR 52.17 to reopen final decisions should be charged the appeal fee of £465? Please state the reason(s) for your answer.

Comments: Yes. From our experience the provisions of CPR 52.17 are almost always used in spurious - and frankly vexatious - attempts to get the court to change its mind. The charging of the proposed fee would do much to deter such spurious and time-wasting applications.

Question 18 - What do you think the impact of the proposals set out in this consultation paper will be on small and medium enterprise? Please state the reason(s) for your answer.

Comments: The increases in fees are bound to have some effect, greater at the lower end of the range of court users and probably negligible when one gets to "medium enterprise".

Question 19 - Do you believe that the proposals set out in this consultation paper will have an adverse effect on access to justice? Please state the reason(s) for your answer.

Comments: We refer to 18 above and reiterate our concerns about the impact at the lower end of court users of the proposals in questions 10 and 15?

Question 20 - What do you think the impact of the proposals set out in this consultation paper will be on those with protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Please state the reason(s) for your answer.

Comments: We have no views on this subject.

Thank you for participating in this consultation exercise.