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Introduction

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Hodge Jones & Allen LLP

Further proposals for court fees

1 Do you agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000?

No

Please give reasons.:

We strongly disagree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000.00.

We do not consider sufficient reasons have been given to increase the maximum Court issue fee, or that there has been sufficient impact assessment. Court fees have already been raised significantly in the last 12 months and further increases should wait until the impact of the recent changes have been properly assessed.

The proposal seems to be based on the premise that only a small proportion of claims will be affected, and that it is mainly commercial claims that will fall in this category. We disagree; there are a large number of non-commercial claims brought by individuals with limited means, which could fall within the affected bracket, and the maximum fee increase may prevent such claims being brought. For example a claim involving a lengthy false imprisonment where a person has a loss of earnings claim for the duration of the false imprisonment and beyond. The proposed change could be the difference between the individual being able to bring his claim and not.

The consultation implicitly assumes that money claims are all about money, and brought by individuals with money. However the reality is that in all the tortious claims that we bring, and claims brought under the Human Rights Act, money is the nearest equivalent to putting people back in the position the person was in the first place. And until receiving that money the individual has little or no money, and often is unable, for reasons linked to the claim, to work and make money.

Where an individual is legally aided, higher court fees will have a significant impact. The legal aid budget has been under significant pressure and any savings made on reduced fees for solicitors and barristers would be undercut by increases in Court fees. These fees will use more of what are already stringent and restrictive cost limits and limit the ability of people to continue their claims to trial, claims which may have very good prospects of success and as a result of which the Legal Aid Agency has a good chance of recovering any money paid out. This will only serve to move public funds from the Legal Aid Agency to the Court service.

Where an individual has a conditional fee agreement, and they can obtain ATE, it is individual firms who will have to foot the bill for the increased court fees until the claim settles or concludes at trial. This will increase cash flow difficulties, with firms paying up to £20,000 on individual cases, which may be locked up in the case for 1 to 2 years (and indeed longer in some cases, often as a result of delay on the part of the Defendant). This could cause many firms to cease trading, or to stop taking on these cases. Further the initial fee to issue the Claim is not the only fee firms will have to fund, neither the only one which is to be increased.

Where individuals are funded by a CFA but they cannot obtain ATE, then this will mean them privately funding the court fee, which for many will make it impossible for them to proceed past the point of issue.

Increasing the maximum fee would also have a significant impact on the proportionality of litigation.

The increased costs of litigation resulting from an increase in Court fees will only serve to increase the number of litigants in person, people who can just afford to fund Court fees but not in addition afford to pay for legal advice. This is therefore counter-productive and any additional money brought in will be spent on additional Court time needed as a result of an increase in litigants in person. Judges will have to spend longer looking at applications and addressing matters at hearings, as key issues may not be appropriately covered in the application papers by unrepresented litigants.

Problems are already being experienced in the Courts service understanding how the new Court fees work, and in practise the system does not make it so that 5% of the value of the claim is paid but just provides for increased brackets of fees i.e. the Court charges £2,500 for cases where the value is £15,000 - £50,000.00. It is essential that whether or not the upper limit is increased, all courts are given clear mandatory guidance and targeted training for all counter staff and all those issuing claims on the fact that they can only charge 5% of the estimated value of the claim, not of the upper limit for each bracket.

We have significant overarching concerns about the proposals to further increase court fees and the rationale behind and justification for this. The government appears to be railroading through further changes, despite the vast majority of respondents to the previous consultation – representing practitioners in the legal profession - having voiced concerns. The government appears to consider the concerns raised consistently in all parts of the previous consultation to be misconceived – however no reason is given for this, and the reality is that the views of those actually practising in the legal profession – whose concerns are based on years of hands on practical experience - have been ignored without reason.

We have extreme concerns about the rationale behind raising court fees in the first place, which for the most part appears to be ideological. While the government purports to be committed to access to justice, everything contained within the actual consultation flies in the face of this assertion – and (as above) ignores the concerns raised repeatedly by those working in the ‘justice’ profession. We do not consider commissioning the British Institute for International Comparative Law to look at the attitudes of those involved in high value international litigation to be sufficient.

It is essential that people can access the courts to have issues determined where other means have proved unsuccessful – and for individuals as well as large corporations to be able to use the courts in this way.

The consultation wrongly proceeds on the basis that the majority of tax payers who do not themselves have to bring court proceedings foot the burden for those that do – and that those that do should pay more to subsidise the Treasury. This is wholly misconceived. The outcome of court cases – and the precedents set – have a great importance for all those living in the UK, not just those whose cases are litigated. The precedents set by some obviate the need for others to go to court, and/or pave the way for those following behind. In any event this is not the principle behind public services. No one expects that someone who through no fault of their own has to undergo urgent and costly treatment on the NHS should have to pay a subsidy, over and above the cost of the actual treatment, for having used the service. Likewise, though many people never claim benefits, it is there for those that need to and there is no expectation that benefit-claimants should repay the benefits received at a higher rate. It is therefore wholly unjustified for those using the courts to pay over the odds for doing so. All taxpayers fund the court service so that others can bring claims and so that if they themselves need to, they are able to.

The proposed court fee changes go hand in hand with other changes which make the fees all the more unjustified. With courts being closed all around the country and a significant and rapidly increasing number of litigants in person, the court system is at breaking point. There are consistently very long delays in courts dealing with correspondence and applications, and the standard of service is not fit for purpose in many civil courts. It is for this reason outrageous to expect people to pay not only the actual cost of the fees, but an enhanced level of fees – to repay the deficit.

2 We would welcome views on whether the maximum fee for starting proceedings for the recovery of money should be increased:

Please give reasons. :

We do not consider that the maximum fee should be increased from £10,000.00. We consider that the maximum fee for starting proceedings for the recovery of money should be decreased in order to assist with access to justice.

See our response above at question 1

3 Do you agree with the proposal to exempt personal injury claims from the higher cap and that the maximum fee of £10,000 should continue to apply in these cases?

Yes

Please give reasons.:

We agree that the maximum fee for personal injury claims should not be increased from £10,000.00.

Excluding personal injury claims however will not achieve the aim of ensuring that it is only ‘commercial’ claims which are affected by the maximum court fee increase. It is essential that all those bringing claims against public authorities are protected by the £10,000 cap; and that this cap is revisited – and reduced to a more realistic (yet still high) £5,000.

If personal injury claims alone are protected by the lower cap, this will create significant problems for those with important claims against the state which do not involve personal injury – as has been seen clearly post LASPO; many important claims against the state have simply had to be abandoned due to the inability to fund claims past the point of issue.

It will also create uncertainty for those with claims which involve a small element of personal injury linked only to part of the claim. For example a claim where a person has been assaulted, causing a soft tissue injury, but also falsely imprisoned (causing no injury) and maliciously prosecuted (causing no injury). These difficulties are already being experienced in relation to understanding when qualified one way cost shifting applies to claims.

All personal injury claims and all claims brought against public authorities should have a cap no higher than £10,000.

4 Do you agree that if the maximum fee for money claim is increased as proposed, the disposable capital test for a fee remission should also be amended so that the disposable capital threshold for a fee of £10,000 is increased to £20,000 and to £25,000 for a fee of £20,000?

Yes

Please give reasons.:

We agree that amendments will be required to the fee remission system in the event that the maximum Court fee is increased (and if there is a general 10% increase in all fees).

We do not however consider that the increase in the disposable capital threshold proposed goes far enough. The disposable capital threshold should be increased further as having to pay 60% of your disposable capital to fund a claim is prohibitive. Whilst it is noted that if the claim is successful this would be paid

by the losing party, very few claims which end up in Court are risk free. This is particularly true in claims against the police involving false imprisonment and / or malicious prosecution, which are often determined by juries whose assessment of the relative credibility of the parties is inherently unpredictable.

In addition changes would be required to the income tests to qualify for fee remissions, otherwise the increases to the capital threshold will prove to be pointless/ ineffective.

We agree that cost is a major consideration for someone when they decide whether or not to bring a claim in the court. We consider that one of the key responsibilities of any government is to ensure that citizens have the ability to bring claims through the court so that they can access justice and the government has committed itself, as governments have for 800 years, to ensure that justice is open and not solely dependent on means. Therefore the fee remission system is essential and needs to be robust and meaningful.

It is also essential because legal aid, the other means by which access to justice is available in the UK, is no longer available for most money claims. This is despite the merits test ensuring that only strong cases obtained assistance, and the statutory charge which had ensured that the costs of legal aid for such cases was almost always recovered in full.

It goes without saying that if fees are increased over and above what the current capital limits, the fee remission system would be absurd. It would have to change if the increase in fees is brought in. If someone has £18,000 of capital, they clearly cannot pay a fee of £20,000. There has to be a system whereby such a person, particularly if they are a sole trader, could issue a claim for the full value of their claim and this can only be done by a fee remission system that supports that.

However the capital limit, even if increased as suggested in the consultation, would not provide this. It would mean those with relatively modest savings of £16,000 would still be excluded from fee remissions if their issue fee was less than £10,000, whilst even for the largest claims those with capital of over £25,000, would fall completely outside of the fee remission system. These sums no longer provide the kind of financial security they once did. In January 2015, with the introduction of tougher lending rules, buyers needed over £71,000 deposit on average to buy their home, although the average deposit in great London was over £190,000.

<http://www.thisismoney.co.uk/money/mortgageshome/article-2918348/House-deposits-rise-71-000-tougher-lending-rules-stamp-duty-reforms-push-sums-laid-buyers-higher.html>

The above shows how aspiring homeowners need a significant sum saved in order to get on the property ladder and prior to purchase they would not be able to access fee remission. They would have to abandon their chances of home ownership to litigate or forego a valid claim because the costs would be prohibitive. In contrast, those who already own their home and even those that may have substantial equity in their home, may be eligible for a full fee remission because capital in your own home is excluded. There is no exception in the disposable capital test for investments or capital specifically kept for that purpose which effectively means that a vast number of people, specifically young adults, would be excluded from the system. Those without excluded assets would not be able to access a legal system to bring a claim if it would set back their plans for home ownership by 10 years or more.

It is easy to see how a claim for negligence, for example, in relation to a property purchase that did not go through may result in a substantial claim. However the excessive fee (higher than the true cost of the claim to the system) allied with exclusion from the fee remission system, means that the financial cost of bringing a claim would discourage such claims from being brought. The excessive costs would also mean that, if a claim was brought, it is less likely that expert assistance would be sought which could lead to problems with bringing a claim or errors in valuing the claim. This would be likely to damage the efficiency and reputation of our legal system. The fee remission system is broken in modern Britain. The capital limits should be more generous to allow people to be able to make claims through the court, and not just for claims where issue fees are over £10,000. Financial independence is not assured with savings or capital of £16,000. The system needs to be overhauled so that it does not leave so many without any realistic recourse to the courts. Fee remissions have to be available, in full for those of very modest means, and in part for those with more substantial means but who cannot afford to spend all their savings on an issue fee. There has to be a way beyond asking people of very modest means to pay almost all their savings to finance what is, after all, just the issue fee for their claim as under the current system. If they are

The proposed capital cut offs, given that they are also subject to income assessment, seem arbitrary and wrong. How can you ask someone with capital of £25,000 to fight a substantial claim, worth maybe £400,000, with just £5,000 of savings left after paying the issue fee. They would be impoverished by bringing the claim, they may be entitled to fee remissions as the claim progresses, and they would not be able to afford proper legal assistance to assist with their claim.

The proposal could also cause problems with 'deprivation of capital' rules. If someone has a very substantial claim they would be best advised to seek legal advice on the merits of their claim first. As part of that process, you would expect their legal advisor to advise on costs. The costs of bringing a claim for £400,000 for example are likely to be significant. There may very well be several witnesses and possibly even one or more expert witnesses. As a result, if the legal advisor, prior to issuing the claim was to ask for £20,000 for their costs in advance this would not appear excessive or disproportionate to the claim as a whole. It is spending which would be for legitimate services and paying legal bills would be like paying any other debt. So, if someone had acted properly and incurred £10,000 of legal costs to investigate their claim and a further £6,000 of expert fees in preparation of their case, and by so doing their capital fell to £18,000 so that they were eligible for a fee remission, would they be deemed eligible or not?

Fee remission to be meaningful has to properly assess capital. Capital should be passported for those on means tested benefit. Beyond that, the fee remission system as proposed may assist for those with property but for those without assets, the fee remission system has to work. It is not a valid system if it would see people with genuine claims impoverished by bringing them. The inherent risks of litigation mean that it would shut out whole sections of the lower middle class and small business owners from accessing the legal system. There should be a special category for those without fixed assets, giving a more generous capital limit. Those without the security of fixed assets are in a more vulnerable position when in legal proceedings and more likely to be made desperate by the injury caused to them that has made them seek reparation through the court. It is therefore important that there is a genuine scheme available to them. The enhanced fees paid by those claimants that can afford it, have to be used to subsidise the fees of those that cannot.

It is fundamentally wrong that justice should be run with an objective to make a profit from it.

5 Are there any other benefits or payments that should be excluded from the assessment of a person's disposable capital for the purposes of a fee remission?

Are there any other benefits or payments that should be excluded from the assessment of a person's disposable capital for the purposes of a fee remission? :

As above, we suggest that savings for those without fixed assets should be treated differently and that more generous disregards are given to such potential claimants. We would suggest that either all savings within specific savings/investment vehicles are excluded, ie savings in ISAs which are designed for deposits, or a set figure of £50,000 is excluded for those who do not own their home.

We would also suggest that income limits need to be amended when legal costs for issuing and pursuing a claim through the courts have been increased so excessively. Those on a typical salary in the UK cannot be expected to spend the equivalent of 3 months gross income on issuing even a relatively modest claim in the county court. Such a system would be a very effective economic block to accessing justice. As it is a fundamental principle that an individual must be able to access and enforce their rights through the court, and therefore there is no possibility of an economy of scale approach to this matter for the average citizen, it is essential that the financial criteria is appropriate in the circumstances. The gross income limit needs to be increased in addition to any increase to the capital limit.

It is important that all those benefits/ payments already excluded from assessment of a person's disposable capital are not removed. For example we consider the exclusion of money in Personal Injury Trusts to be particularly important. Otherwise people will have to pay out of funds which are meant to compensate them for a previous injury to bring fresh legal proceedings, creating a very unfair position.

6 Do you agree with the proposal to uplift all civil fees not affected by one of the other specific proposals by 10%? Please give reasons for your answer.

Question 6: Do you agree with the proposal to uplift all civil fees not affected by one of the other specific proposals by 10%? Please give reasons for your answer.:

No, we strongly disagree with these proposals. It also seems many claimants will be affected multiple times in a way which will significantly impact on access to justice, further preventing people from bringing claims.

We strongly object to the proposal to increase the fee for 'other remedies' by 10%, which overlooks the fact that many people bring claims for multiple remedies. We represent a significant number of clients bringing claims under the Human Rights Act 1998 or the Equality Act 2010, where they want both a declaration that their rights have been breached or that they have been discriminated against, and also damages. Such claimants will first be hit by the higher court fees, and then also have to pay a 10% uplift on the non-money element.

People will also be hit twice at the court of first instance and court of appeal stage; for example if someone has paid a £20,000 court fee in the court of first instance and is unsuccessful, they will then have to pay 10% more to seek permission to appeal and 10% more for other court of appeal costs.

To the above scenarios must be added what in our experience is the likelihood that there will be several applications along the way in each case, for example for anonymity, for a stay and often a further stay – each of these applications – even if made by consent, will now cost 200% of their current cost.

We have major concerns about the proposals to further increase fees for judicial review applications; given the recent changes to the funding of judicial reviews and the failure to assess the impact of these to date. As you acknowledge, Judicial Review is a critical check on the powers of the state and is a key mechanism for individuals to hold the executive to account. These fees should not be increased as a result, so that people are not discouraged from applying for this important remedy. This is particularly important in Judicial Review proceedings where alternative methods of funding are limited.

The increased costs of litigation resulting from an increase in Court fees at every stage will only serve to increase the number of litigants in person, people who can just afford to fund Court fees but not in addition afford to pay for legal advice. This is therefore counter-productive and any additional money brought in will be spent on additional Court time needed as a result of an increase in litigants in person. Judges will have to spend longer looking at applications and addressing matters at hearings, as key issues may not be appropriately covered in the application papers by unrepresented litigants.

Court fees increases has led to no improvement in the service received from the Court and we do not consider the service provided by the Court is worth the fees already being charged, let alone a 10% increase. Central London County Court for example as of July 2015 was dealing with correspondence within 64 working days. No proposals have been put forward for improvements to the service received from the Court. Significant delays are being incurred, and this only serves to increase costs. . For example a personal injury trial in May 2015 at Clerkenwell and Shoreditch County Court had to be adjourned the day before as there were not enough judges – this increased the costs involved for all parties including the Court at no fault of the litigating parties. Similarly a civil jury trial against the police at Central London County Court due to be heard in October 2015 was adjourned as a result of the assigned Circuit Judge being unavailable and has had to be relisted for March 2016.

The service is poor and has declined dramatically in recent years. It is lamentable for example that there is no ability to go before Judge of the day where applications are urgent.

Further we understand there are plans to close a number of Courts and it is unclear whether the alleged savings to the Court budget which these closures will lead to have been properly taken into account in considering whether increases to Court fees are necessary.

Proposals for tribunal fees

7 Do you agree with government's proposal to increase the fees charged for proceedings in the First-tier Tribunal (Immigration and Asylum Chamber) as set out in table 1 above?

Please give reasons.:

8 Do you agree with the proposal to introduce a 10% discount for applications lodged online?

Please give reasons.:

9 Do you agree with the government's proposal to revise the scheme of exemptions for the Immigration and Asylum Chamber, including the proposal to exempt from fees those individuals appealing against a decision to revoke their refugee and humanitarian protection status?

Please give reasons.:

10 Do you agree that it is right to increase fees for immigration judicial review applications in the Upper Tribunal?

Property, Tax and General Regulatory Chambers

11 Do you agree with the government's proposal to introduce a simple fee structure for most proceedings in the Property Chamber of £100 to start proceedings and £200 for a hearing?

Please give reasons.:

12 Do you agree with the proposal to charge higher fees for leasehold enfranchisement and valuation cases, and specifically £400 to start proceedings and £2,000 for a hearing?

Please give reasons.:

13 Are there any other types of application in this Chamber which you feel should be exempt from fees?

Are there any other types of application in this Chamber which you feel should be exempt from fees?:

14 Do you agree with the proposed fees for all proceedings in the General Regulatory Chamber: specifically £100 to start proceedings with a determination on the papers; and a further fee of £500 for a hearing?

Please give reasons.:

15 Are there any proceedings in the General Regulatory Chamber that should be exempt from fees?

Please give reasons:

16 Do you agree with the proposed fee structures we are proposing in the First-tier Tribunal (Tax Chamber) and the Upper Tribunal (Tax and Chancery)?

17 Are there any types of applications or cases which you feel should be exempt from the fees?

Are there any types of applications or cases which you feel should be exempt from the fees? :

Equalities duties

18 We would welcome views on our assessment of the impacts of the proposals for further fee increases set out in chapters 3 and 4 on those with protected characteristics. We would in particular welcome any data or evidence which would help to support these views.

We would welcome views on our assessment of the impacts of the proposals for further fee increases set out in chapters 3 and 4 on those with protected characteristics. We would in particular welcome any data or evidence which would help to support these views. :

We do not think that the impact assessment is remotely adequate.

In our experience, the courts are extremely confused about the court fees being 5% of the value of the claim – with different courts (and different individuals within some courts) taking different positions. Many courts maintain that the 5% fee is 5% of the upper end of the bracket, not 5% of the estimated value of the claim. This can make a difference of many hundreds of pounds. While lawyers in our team have spent hours battling this out in person and through correspondence, we have significant concerns that a litigant in person, and in particular one suffering from a psychiatric condition or where English is not their first language, might simply accept the erroneous advice given by the court, be unable to argue out the correct position, and conclude they cannot proceed with the claim. This issue must be resolved, with clear and transparent instructions given to all court staff, if there is not to be a significant and wholly unjustified adverse impact on those with protected characteristics.

We have serious concerns about the lack of proper impact assessment of the first round of proposals, which are being railroad through despite concerns being raised on all sides by those best placed to foresee the risks.

We have major concerns, already voiced by other groups, including by way of judicial review, about the significant, unjustified and un-thought-through impact of the proposed fee increases on access to justice. The government's determination, despite being alerted to real and pressing concerns repeatedly and by a large number of stakeholders, to railroad these increases through, setting the concerns to one side on the basis they are not accepted/justified, but with the flimsiest of reasons and a total failure to address the real concerns raised, is nothing short of perverse.