

Ministry of Justice Enhanced Court Fees

Thompsons Solicitors response to
consultation on proposals for further
reforms to court fees

February 2015



STANDING UP FOR YOU

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

No.

The fees for possession claims have already been increased significantly, by around 60% in April 2014. The further increase would mean that the fee would have more than doubled in less than a year.

Whilst they may generally be a secondary consideration that “fees are generally a secondary consideration in the decision on whether to litigate” in possession claims, the increase will not deter landlords from bringing possession claims and it means that it is the tenants, who are often already facing financial hardship (hence why they are unable to pay their rent), will be ordered to bear of the burden the additional fees. This will just increase the debt owed by the tenant and reduce the likelihood that they will be able to afford to pay off their debt.

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

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

Subject to an exemption for:

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

No. We can see no justification for such an increase.

We disagree with the points in justification raised in the consultation, as set out below:

'the fee remains low, compared to the overall costs of litigation'.

This is incorrect. The government indicates that over 90% of money claim litigation is for less than £10,000 (1st Paragraph of the report), and the majority of those will be at the lower end of that range. In those cases the enhanced fees will represent a significant percentage of the value / damages.

Many claims are settled but need to be concluded by a consent order. A case settling for £1,500 will have had an issue fee of £115 and, under these proposals, would also now require a further £100 for the final consent order. A consent order fee which is nearly 10% of the settled value of the claim is not 'low compared to the overall costs of litigation'.

If there has been just one application within a £1,500 case then the total fees would, under these proposals, be £475 (£115 plus £255 plus £100). £475, being almost one third of the settlement value is not 'low compared to the overall costs of litigation'.

If the case is a RTA in the fixed costs scheme which settles after issue, the allowed costs for a case with the value of £1,500 will be £1,460 (£1,160 + 20% of Damages). The court fees would represent around one third of the legal costs.

These are not low percentages.

In our experience, many applications are necessary to force the other party to comply with a Rule or Direction and a high proportion of those applications are ultimately agreed between the parties and a consent order lodged. Many courts demand separate fees for both the initial application and the consent order, which means that, for a simple application, the court fees could be in the region of £380. In our experience the higher the costs of an application the more likely respondents are to defend it. This means an increase in the fees will also increase the amount of court time taken up hearing applications.

Pre-action applications in personal injury matters are frequently required where an insurer or employer unreasonably resists sensible requests for disclosure. They are often effective and necessary to ascertain whether there is enough evidence to support the claim. Following the disclosure many cases settle without further litigation.

Claimants are not protected by QOCS provisions in respect of pre-action applications and the default position is that the party making the application bears the costs.

If the fees for general applications are increased, it will make more economic sense to enter litigation with full proceedings rather than make a pre-action application, particularly in lower value claims where the application fees will outweigh the issue fees (as they would in the example given above).

'claims can be brought under conditional fee arrangements'

The majority of cases are not brought under conditional fee arrangements. In those that are, where there is a need to insure against adverse costs orders, the increase in court fees will result in an increase in (non-recoverable) insurance premiums. This will mean that those who are injured through no fault of their own may be put off from bringing a claim. This may suit insurers and defendants but is a further fetter on access to justice and is grossly unfair on the injured individual.

It appears to us that this suggestion ignores the requirement of S180 (3)(b) of the Anti-social Behaviour Crime and Policing Act 2014, which requires 'the competitiveness of the legal services market' to be considered.

'fee remissions are available to those who qualify'

Whilst fee remissions are put forward as a panacea, in practice, it requires a separate application for remission, with provision of detailed evidence of income, for each separate fee incurred. The guidance booklet is 31 pages long. Preparation of applications can take up to around 30 minutes which will increase the costs of the case every time a court fee is incurred. Our understanding is that applications for remission are also a time consuming burden for court staff.

The reality is that fee remissions for most will only provide a partial remission and many litigants on fairly modest incomes will find that even if they can obtain a partial remission for the initial fee, they will not obtain a remission for any interlocutory fees.

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

We believe all general applications should be exempted from the proposed fee increases.

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

We do not believe there should be any increases as proposed.

For further information:

Tom Jones
Head of Policy,
Thompsons Solicitors
Congress House
Great Russell Street
London
WC1B 3LW

tomjones@thompsons.law.co.uk