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## Cutting costs and cutting corners

The government's hike to court fees is a further barrier to justice, say **Seamus Smyth** and **Jonathan Fozard**



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**T**he government says it must reduce the courts' cost to taxpayers.

Its solution: court users must contribute more. In spite of near-universal opposition, proposals to increase court fees will proceed. The level of the increase is staggering; the potential implications are wide-ranging and worrying.

Under the new rules (set to come into force on 1 March 2015) claims worth £10,000 or more will attract a court fee of 5 per cent of their value. A claim for £190,000 will cost £9,500 to issue; that is an increase of 622 per cent on the present cost of £1,315.

### Monumental impact

Small claims (ie those worth less than £10,000) are unaffected. Because 90 per cent of claims are small claims, the justice minister Shailesh Vara has played down the significance of the increases. As the proposed cap is £10,000 (5 per cent of £200,000), the effect on claims greater than

£200,000 becomes relatively less the bigger the claim gets (on a £2bn claim the fee would be not 5 per cent but 0.0005 per cent). The real impact, which could be monumental, is on the thousands with claims worth between £10,000 and £200,000, or for unspecified amounts (which the draft legislation suggests will attract the maximum fee even if that is entirely disproportionate to any actual damages award).

The minister says "court fees are not a decisive factor" for prospective litigants. Not only was this bold assertion based on a ludicrously small research base (18 phone calls to court user organisations in 2013 and the questioning of 31 civil users in 2014, only nine of which were businesses), it is also simply wrong.



**Defendants will play the system by trading on claimants' reluctance to pay a £10,000 issue fee**

Looked at 'backwards' from the conclusion of a trial (as the minister, like many judges, seems to be doing), the £10,000 fee may not be a significant proportion of the total costs. But only about 1 per cent of cases get that far. The stage at which it is significant (and for 100 per cent of cases) is at the start: an unpaid individual

or SME (already out of pocket and up against an overdraft limit) may be unable to raise the £10,000 needed to sue for £200,000 (or even the £1,000 to sue for £20,000). Debtors and defendants will play the system by trading on creditors' reluctance or inability to pay a £10,000 issue fee.

The minister may seek, laudably, to avoid taxpayers 'subsidising millionaires' over 'vast amounts'. But by imposing a relatively low fee increase for enormous claims, and protecting the small claims from any fee increase, what the proposed increases will do is subject the SMEs and individual claimants for between £10,000 and £200,000 to subsidising the billionaires and the 90 per cent: a small proportion of court users will be paying for the majority and for the extremely wealthy.

### Access to justice

Increasingly, fee-sensitive clients could now be faced with an upfront increase of as much as £8,725 in overall costs. Solicitors are unlikely to find it attractive to lend money to clients to issue claims. We may see an upsurge in litigants in person as claimants forgo lawyers' fees to compensate. A flood of inexperienced court users will only increase the administrative burden on the already over-stretched courts.

Perhaps the fee increase will enhance the attractiveness of alternative dispute resolution, which may be a good thing. But, hold on – the intention behind the higher fees is to increase court fee income. The reverse

might happen if court claims become so unattractive financially that swathes of litigants use alternatives.

Another concern is that London's position as a hub for international dispute resolution will be jeopardised. A study by Portland Communications suggests that 75 per cent of Commercial Court users are from outside the UK. The benefits of London's popularity to foreign litigants are well rehearsed – more work for English lawyers (and other professionals), increased income for the courts, and so forth. The fee hike risks driving international litigants elsewhere – fees in New York are up to 100 times lower.

In the wake of the Jackson reforms (particularly the introduction of costs budgeting and the removal of the conditional fee agreement 'success fee' and after the event premium recoverability), costs recovery for successful claimants has already been diluted significantly, and access to justice correspondingly reduced. The government's latest scheme is a further barrier to justice. **SJ**

### Key points

- Get ready for 1 March 2015:
  - Warn clients now about the fee increase.
  - Issue claims before 1 March 2015 (if possible and appropriate).
  - If issuing before 1 March 2015, expect (even) longer queues at the issue desks.
  - Brace yourself for more litigants in person.