

LSLA

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London: higher fees could affect international appeal

Court fees could exceed legal costs under government plans, lawyers warn

The government's proposals to increase court fees for commercial cases could lead to claimants facing a fee demand greater than their legal costs, litigators have warned.

This will probably deter small and medium-sized enterprises from issuing proceedings to recover debts worth hundreds of thousands of pounds, according to the London Solicitors Litigation Association (LSLA).

Among a [raft of proposals](#), the Ministry of Justice has put forward a fee of 5% of the value of the claim for issuing a specified money claim, possibly subject to a cap of £10,000, and also 'enhanced' fees for commercial cases to recover more than the actual cost of the service provided by the courts.

In its response to the consultation, the LSLA said that a £20,000 fee for a claim valued at £400,000 could be greater than the legal fees for preparing the proceedings "and will add to the already onerous pre-action costs which claimants are obliged to incur".

It continued: "In circumstances where the ability of the defendant to pay may be in doubt, such high fees will make litigation at this level considerably more risky. In cases where the lawyers are acting under a CFA

type arrangement, the court fees may be the entirety of the costs incurred, and claimants would very probably struggle to afford the entirety of the proposed 5% issue fee up-front.”

The LSLA raised similar concerns in relation to enhanced fees: “There should be proper research into how the proposed fee levels will affect [small and medium-sized] enterprises, and discussion had on how the impact of the increase in fees on those entities will be mitigated.”

More generally the LSLA maintained its long-standing opposition to the principle of full cost recovery, saying access to first instance courts was integral to a civilised society, rather than being a commercially traded commodity – but that parties should have to pay in full for appeals.

It noted that most of the £110m deficit in the civil and family courts arises from the family courts. “It therefore seems inconsistent to increase fees in the civil courts but to standardise, or even reduce, fees in the family courts: users of the civil courts are effectively being asked to subsidise the family courts.”

In its response to the consultation, the City of London Law Society (CLLS) made the same point, arguing that in any case, “not all business in the family courts justifies a subsidy”.

It said: “A dispute over the financial aspects of a divorce is a dispute about money in the same way that a dispute over the assets in a trust, over sums due on a building contract or over damages for breach of contract is a dispute about money.”

Time-related hearing fees were also a bad idea, the LSLA said, : “The LSLA has concerns about the mechanics of estimating

the length of trials for the purposes of time-related hearing fees, and considers that the process could well be open to manipulation and result in satellite litigation.”

Both the LSLA and CLLS expressed concern about the impact of fee increases on the attractiveness of London as an international litigation hub.

“Court fees might, in themselves, be a relatively small part of the cost to a foreign party of litigating in England, but overtly increasing fees to a level far in excess of the costs involved in order to subsidise unrelated parts of the justice system does not send a message that the courts of England and Wales welcome international business,” said the CLLS response.

“The more than sixfold increase in court fees proposed for higher value cases potentially makes court fees an issue that litigants must consider and will not promote the competitiveness of the English legal services sector.”

The CLLS’s litigation committee said the consultation paper did not make “any case” for increasing fees, arguing that “it is inappropriate for the government to seek to exploit the courts’ near monopoly position by using them as a means to raise money, especially in an area as vital to the functioning of civil society as a whole as the justice system”.

More generally it complained that the “lack of information and explanation” in the consultation paper.

Also opposing daily fees, the CLLS said that if it were necessary to impose extra fees on cases that make greater use of court resources, these fees should not be confined to litigation in particular courts, but should be general in application.

“In that scenario, the committee would favour additional graduated fees at later stages of proceedings (eg the first case management conference, listing and the pre-trial review) calculated on the same basis as issue fees.”

By [Neil Rose](#)