



Ministry
of Justice

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings

and

Consultation on further fees proposals

July 2015



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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

July 2015



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Print ISBN 9781474124119

Web ISBN 9781474124126

ID 21071511 07/15

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

Ministerial Foreword	3
Introduction	6
Chapter 1: Background and financial context	7
Chapter 2: Response to proposals for increases to fees for possession claims and for general applications	9
Chapter 3: Further proposals for court fees	14
Chapter 4: Proposals for tribunal fees	22
Chapter 5: Equalities duties	34
Questionnaire	35
About you	37
How to respond	38
Annex A: List of respondents	39
Annex B: Schedule of fees – possession claims, general applications and divorce	42
Annex C: Schedule of civil court and tribunal fees subject to the general uplift of 10%	43

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Ministerial Foreword



The courts fulfil a vital role in an effective and functioning democracy. They provide access to justice for those who need it, upholding the principle of the rule of law. That is why we need to make sure that the courts and tribunals are properly funded.

The Secretary of State and I have set out separately plans for reform to the courts and tribunals where we will be investing in reforms that will deliver a modernised, leaner, and more efficient system.

To deliver this vision, we need a strong, secure and effective economy. This Government was elected to continue our work to fix the economy, by reducing public spending, eliminating the deficit and reducing the national debt. The courts and tribunals must continue to play their part in this national effort as much as any other public service.

There is, however, only so much that can be delivered through efficiency measures alone. If we are to secure sustainable funding of the courts and tribunals, we must also look to those who use the system to contribute more where they can afford to do so.

That is why we have to look again at court fees. Despite the fees already introduced, HMCTS still costs £1 billion a year more to run than it receives in income. In considering the change outlined below, we have been determined to:

- deliver faster and fairer justice for all;
- protect the weak and vulnerable;
- promote equality of all before the law.

Following a consultation launched by the Coalition Government in January 2015, today's Government Response confirms that we will:

- Increase the fees for issuing a possession claim in the county court by £75, from £280 to £355. Our analysis of the available evidence suggests that this increase will deter anyone who would otherwise have taken their claim to court.
- Increase the fees for general applications in civil proceedings by £50, from £50 to £100, for an application by consent and by £100, from £155 to £255, for a contested application. In order to ensure the most vulnerable are not affected, we are excluding from this fee rise applications such as those to vary or extend an injunction for protection from harassment or violence.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

In December 2013, the Coalition Government also consulted on increasing the fee payable to issue divorce proceedings from £410 to £750. Today we are announcing that we will:

- Increase the fees for issuing divorce proceedings to £550. We have carefully considered the concerns raised during the consultation and decided not to increase fees by 80% as originally proposed. Instead we will press ahead with a more affordable increase of about a third. We are also protecting the most vulnerable by ensuring that fee remission is available for those who need it, such as women in low wage households.

These three measures are estimated to deliver over £60million in additional income each year but the drive to reduce costs is ongoing. We are therefore also announcing today a consultation on further proposals:

- An increase in the maximum fee for money claims from £10,000 to at least £20,000. Fees are currently payable on 5% of the value of a claim up to a maximum fee of £10,000. This change will only affect the highest value claims, worth £200,000 or more. There are 1.2 million money claims each year, of which 5,000 will be affected. That is just 0.4% of the total, or 1 in every 240 money claims. Many of the claims brought for higher values will involve large multi-national organisations or wealthy individuals, and we believe it is right to ask them to contribute more. In order to protect the most vulnerable, personal injury and clinical negligence claims will be excluded from this higher cap and fee remissions for those of limited means will continue to apply.
- Introducing or increasing fees for certain tribunals. We are proposing to double fees in the Immigration and Asylum Chamber, while applying exemptions to protect the most vulnerable. We will not be applying any fees to the Social Entitlement Chamber of the First-tier Tribunal, where most applicants do not have the means to pay, or to the Mental Health Tribunal, which deals with especially vulnerable individuals. We will, however, introduce fees to the property, tax and general regulatory chambers. In the property tribunal, we are proposing fees at low levels for the majority of applications, while setting higher fees for leasehold enfranchisement cases where there are often large sums of money at stake. In each of the Tribunals being consulted on, we aim to recover 25% of the total cost of the service through fees with taxpayers footing the rest of the bill.
- A general uplift of 10% to a wide range of fees in civil proceedings. These are small increases and only apply to fees which are not already recovering above full cost.

These further proposals are estimated to generate around £48million a year in additional income.

We are committed to protecting access to justice for all and so we will:

- Make the remissions scheme more generous. We will increase the amount of disposable capital those who need to pay a larger court fee are allowed to have in order to qualify for remission. We are also considering whether other forms of payment or benefit should be excluded from the disposable capital test. The HMCTS remission scheme will apply across all the courts and tribunals on which we are consulting, with the exception of the Immigration and Asylum Chamber where separate arrangements are in place.

We recognise that fee increases are not popular, but they are necessary if we are to deliver our promises to fix the economy and bring the nation into surplus. At every stage we have sought to protect the most vulnerable, by ensuring they will not have to pay new and higher fees, and by making the remission scheme more generous. We have also sought to ensure that those who can afford to – such as wealthy individuals or large corporations making very high money claims – will make a bigger contribution. Every pound we collect from these fee increases will be spent on providing an efficient and effective system of courts and tribunals.

Shailesh Vara

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Introduction

1. This document contains the Government Response to the proposals for enhanced court fees in possession claims and general applications in civil proceedings. It also includes further proposals for fee reform in courts and tribunals.
2. The proposals for fee increases to possession claims and general applications were consulted on in the document, *Enhanced Court Fees: The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation*¹ published on 16 January 2015.
3. In that consultation, we announced our intention to introduce enhanced fees in claims for the recovery of money. Those fees were introduced via secondary legislation² and came into effect on 9 March 2015.
4. In addition, we sought views on proposals for enhanced fees in possession claims and general applications in civil proceedings. This document summarises the responses we received to those proposals and sets out the Government's conclusions and next steps.
5. The Government is committed to paying off the deficit it inherited. We have therefore also reconsidered the decision, which we announced in January 2015,³ not to increase the fee for a divorce. We have concluded that if we are to fulfil the promises we made to the electorate to reduce public spending there should be a limited increase to these fees. In these circumstances, we have decided that the fee for a divorce should be increased to £550, an increase of a third compared to the increase of 80% proposed in the original consultation. The fee remissions scheme will continue to make sure that those who cannot afford to pay the fee are not prevented from seeking a divorce.
6. This document also considers a number of new proposals for fee reform in Chapters 3 and 4.
7. Further copies of this document can be obtained by contacting **Michael Odulaja** at the address below:
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This report is also available at <https://consult.justice.gov.uk/>
Alternative format versions of this publication can be made available on request from the address above.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396887/cm8971-enhance-fees-response.pdf

² The Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015

³ See the Government Response to the Enhanced Fees Proposals

Chapter 1: Background and financial context

The case for reform

8. The case for revisiting the way we charge court fees is based firmly on the need to ensure that Her Majesty's Court and Tribunal Service ("HMCTS") is funded properly to protect the vital principle of access to justice. Access to justice is crucial to the maintenance of an effective and functioning democracy, helping to uphold social order and underpinning an effective economy.
9. In a wide range of circumstances courts and tribunals provide the opportunity for individuals and businesses to enforce their rights by dealing with cases fairly, quickly and with certainty, leading to just outcomes.
10. Despite the significant economic progress that has been made over the last five years, the financial climate in which the Government is operating remains challenging. This Government is committed to delivering a balanced budget by 2019/20. The Ministry of Justice must continue to manage its finances sensibly in order to meet its spending review settlement.
11. Since 2010, the Ministry of Justice, in line with most Government departments has made substantial reductions to its spending. There is, however, only so much that can be delivered through spending cuts alone, especially when looking at ways to ensure the proper and sustainable funding of vital services, such as courts and tribunals.
12. In accordance with this aim we believe it is right to look again at the balance between what users pay towards the overall cost of the court and tribunal service as compared with the financial burden that falls on the taxpayer. That is why, in the last Parliament, we took a power, under section 180 of the Anti-social Behaviour Crime and Policing Act 2014,⁴ to set fees at a level above the costs of proceedings to which they relate.
13. Under these provisions, the income from enhanced fees must be used to provide an efficient and effective system of courts and tribunals. The Lord Chancellor is also required to have regard to a number of factors before prescribing enhanced fees. In addition to the requirement to have regard to the principle that access to the courts must not be denied (section 92 (3) of the Court Act 2003), the Lord Chancellor must also have regard to:
 - the financial position of the courts and tribunals service including the costs incurred by the courts and tribunals that are not being met by fee income; and
 - the competitiveness of the legal services market.

⁴ http://www.legislation.gov.uk/ukpga/2014/12/pdfs/ukpga_20140012_en.pdf

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

14. The increases in fees for possession claims and general applications in civil proceedings will be made under the power provided by section 180 and will contribute an estimated £52 million per annum in additional income for HMCTS. The divorce fee is also subject to section 180 and is estimated to generate an additional £12 million per annum. These fee increases form a key part of our plan to make sure that the courts service is properly funded.
15. The further proposals set out in chapters 3 and 4 would raise an estimated £48million per annum if implemented. Full impact assessments have been published alongside this document.

Chapter 2: Response to proposals for increases to fees for possession claims and for general applications

Introduction

16. The consultation on proposals to introduce enhanced fees in possession claims and general applications ran from 16 January to 27 February 2015 and proposed increasing court fees to enhanced levels in two categories of case:
 - possession claims (increasing the fee by £75 from £280 to £355); and
 - general applications in civil proceedings (by £50 from £50 to £100 for an application without notice or by consent and by £100 from £155 to £255 for an application on notice which is contested).
17. A total of 248 responses to the consultation paper were received. The majority of the responses came from solicitors, law firms or barristers, local authorities, housing associations, social housing providers and private landlords. We also received responses from sole traders, the judiciary, professional bodies representing the legal profession and private housing firms. A full list of respondents is attached at Annex A.
18. The majority of respondents to the consultation disagreed with the proposed fee increases. This group of respondents was predominantly made up of law firms or barristers, professional bodies representing the legal profession, the judiciary, local authorities, housing associations, private housing firms and private landlords. There was, however, a minority of respondents in favour of the proposals. This group also included law firms, barristers, sole traders and private landlords.
19. A revised impact assessment has been published alongside this document and we have also updated our assessment of the impact of these proposals on people with protected characteristics in an Equalities Statement which has been published alongside this document.

Responses to specific questions

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

20. We received 220 responses to this question. 18 (8%) respondents were in favour of raising the fee for a possession claim by £75. 202, 92% of respondents, disagreed with the proposal.
21. The respondents who agreed with the proposal commented that:
 - the proposal would encourage the use of alternative dispute resolution;
 - the increase is modest and proportionate; and
 - the applicants are ordinarily large financial institutions who have sufficient funds to litigate.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

22. The respondents who disagreed with the proposal argued that:
- the fees are already expensive;
 - landlords who are usually bringing the claim will be unable to recover the costs from the tenant; and
 - the proposal will act as a barrier to justice.

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.**

23. We received 168 responses to this question. Six (4%) respondents agreed that the fee for a general application in civil proceedings should be increased. 162 (96%) respondents disagreed with the proposals.

24. The respondents in support of this proposal argued that:
- the proposed increase are modest; and
 - the increases are in line with other court fee increases.

25. The main arguments of those respondents in disagreement were that:
- the proposals will restrict access to justice;
 - the proposed increases are disproportionate; and
 - uncontested applications should not be subject to an increase in fees.

26. Some respondents disagreed with the proposals on the grounds that it would impact unfairly litigants in person as this represents 100% of their legal costs. Other common responses included that the increase in fees would reduce the efficiency of the court both in terms of preventing court users from making further applications and discouraging the early settlement of claims.

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

27. We received 122 responses which argued that further types of applications and cases should be exempted from the proposed fee increases.

28. The most common applications and case types mentioned by the respondents included:
- applications made by consent;
 - consent orders;
 - applications for a stay of proceedings; and
 - all case types.

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.

29. Of the 248 people who responded to the consultation, we received 90 responses to this question with the remaining 158 respondents offering answers such as: “No Comment”, “No answer”, “No evidence to offer”, or leaving the response box blank. Of the 90 people who did respond to this question, seven respondents commented positively in relation to our assessment of the equality impacts of these proposals commenting that:
- I agree with the Government’s assessment; and
 - I agree that the proposals are not directly or indirectly discriminatory.
30. 83 respondents expressed concern with the Government’s equalities assessment, either commenting that the Government did not use enough data in assessing equality impacts or citing protected characteristics that they felt would be disproportionately affected by the proposals.
31. The specific protected characteristics referred to by the respondents included:
- disability;
 - gender;
 - race; and
 - age.
32. The remaining responses who disagreed with the proposal did not cite any protected characteristics as defined by the Equality Act 2010. They did, however, mention other groups of court users which could be adversely affected by these proposals which included:
- those on middle income;
 - users who don’t qualify for a remission;
 - people of limited means; and
 - all court users.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

33. Of the 90 people who responded to this question only two respondents provided data to support their views. The Civil Justice Council offered data on those who are made homeless as a result of possession cases. The Nottingham City Homes provided data on tenants in the social sector.
34. There was wide support from respondents for the proposed exemptions from the fee increases to general applications.

Conclusions and Next Steps

35. The Government has considered all of the responses to the consultation very carefully. The Lord Chancellor has a duty when setting court fees to have regard to the principle that access to the courts must not be denied. In order to protect access to justice, it is vital that HMCTS continues to be funded properly. Income raised through fees payable by users will necessarily play a significant role in the funding if we are to ease the burden on the taxpayer and bring down the deficit.
36. We do not accept the argument that these specific proposals to increase fees in possession claims and general applications will have the effect of preventing people from accessing justice. The increases proposed are moderate and, as our revised impact assessment explains, we do not anticipate that the increases will have any significant impact on demand. The evidence suggests that these increases will not deter anyone who would otherwise have taken their claim to court.
37. Therefore, on balance, the Government intends to proceed in implementing the policy as consulted on. This will mean:
 - increasing the fee for claims for possession of goods or land in the county court by £75, from £280 to £355 (from £250 to £325 for claims initiated online);
 - increasing the fee for uncontested general applications in civil proceedings made by consent by £50, from £50 to £100;
 - increasing the fee for contested general applications in civil proceedings made on notice by £100, from £155 to £255.
38. As we set out in the consultation, however, there are some situations where, due to particular sensitivities, we think it would be inappropriate to increase general application fees. Therefore we will, as proposed, exempt from the increased general application fees:
 - 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.

Divorce

39. The Government's original consultation proposals for enhanced fees, which was published in December 2013,⁵ included a proposal to increase the fee for an application for a divorce from £410 to £750. The large majority of respondents to that consultation strongly opposed the proposal and in January 2015 the Government announced that it had decided not to proceed with the increase.
40. The Government recognises that fee increases are never popular and we acknowledge the strength of feeling that exists on this particular proposal. Given the financial imperative to bring down public spending and reduce the deficit, and the need to make sure that the courts are adequately funded in the long term, we now believe that it is right to reconsider that proposal.
41. Most of the respondents who opposed the fee increase pointed to the potentially discriminatory impact of the increases on women. The Government accepts that the majority of applications for a divorce are made by women. Nevertheless, fee remissions are available to those who qualify. In the circumstances of a divorce, the applicant will be assessed on individual rather than household means. Our analysis shows that on this basis, women, particularly those in single parent households, are more likely to be in the bottom quintile of average household incomes, and therefore more likely to qualify for a fee remission than men. For these reasons, we do not accept that the fee increase would have a disproportionate impact on women. Further details are set out in the Impact Assessment.
42. In view of the financial challenge we are facing, and bearing in mind the safeguards in place to protect access to the courts, we have concluded that there should be a limited increase to the fees for a divorce if we are to make good our promise to the electorate to reduce public spending.
43. We do, however, recognise that the original proposal represented an increase of over 80%, and we are sympathetic to those who argued that this was too substantial an increase. We have therefore decided to limit the increase to this fee to £550.
44. The same fee applies to applications for a decree of nullity or, in the context of civil partnership, for a dissolution order or nullity order and the fees for these applications will also be increased to £550, an increase of about a third.

Conclusion

45. All of these increases will set fees above cost recovery levels and are therefore subject to the enhanced charging power provided by section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014. This requires the Government to lay the measures before Parliament in a Statutory Instrument subject to the affirmative resolution procedure, so that these measures are subject to the appropriate level of Parliamentary scrutiny. We will bring forward the statutory instrument as soon as Parliamentary time allows.
46. A full list of the fees affected is set out at Annex B.

⁵ <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform/results/enhanced-fees-consultation-response.pdf>

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Chapter 3: Further proposals for court fees

Introduction

47. It has long been an aim of the Government to reduce the level of taxpayer subsidy for the civil court system (which includes all civil, family and probate jurisdictions, as well as the Court of Protection and the Court of Appeal, Civil Division). The aim has been to cover the entire cost of the court service, less the cost of the remissions system (fee waivers), through fee income.
48. Since 2010 the Government has made significant progress towards this aim. In April 2014 we increased fees to achieve near to full cost recovery across the civil court system.⁶
49. Following those increases, the Lord Chancellor used the power contained within section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014 to make further increases to fees. This section empowers the Lord Chancellor under primary legislation to charge fees in excess of cost in a wide range of jurisdictions, and specifically: the Senior Courts, Court of Protection, County Courts, Family Courts, Magistrates' Courts, First-tier Tribunal, Upper Tribunal, Employment Tribunals and the Employment Appeal Tribunal.
50. Under this power, he may use surplus fee income generated in a wide range of proceedings to finance the costs of HMCTS as a whole, and specifically, those parts of HMCTS such as the criminal courts and the tribunals which are otherwise funded through general Government expenditure rather than fee income.
51. The power was used to prescribe enhanced fees for claims for the recovery of money, under which the fee charged was calculated as a percentage of the value of the claim. These fees came into effect in March 2015.⁷
52. Chapter 2 of this document announces the Government's intention to press ahead with further enhanced fees in possession claims, general applications in civil proceedings and applications for a divorce.
53. Whilst that combination of fee increases puts HMCTS above full cost recovery across the civil courts the net operating cost of HMCTS to the taxpayer remained around £1 billion in 2014/15. It is for this reason that the Government is now consulting on further fee increases in the civil courts in an attempt to reduce that funding gap and ensure that HMCTS can provide a properly resourced court system and access to justice for those who need it. The proposals set out in this chapter would generate additional income to this meet this aim.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300100/cm8845-court-fees-proposals-for-reform.pdf

⁷ <https://www.gov.uk/government/publications/enhanced-court-fees-the-government-response-to-part-2-of-the-consultation-on-reform-of-court-fees>

Higher Cap for Money Claims

Background

54. Money claims continue to represent the large majority of the work of the civil court system. In 2014/15, around 1,170,000 money claims were issued in England and Wales, and these made up around 65% of the overall claims in the civil courts. For a number of years HMCTS has charged fees for money claims based on the value of the claim. Traditionally this was achieved through a series of 14 'fee bands' where the fee was charged based on the range into which the value of the claim fell. For example, a claim worth between £1,500 and £3,000 attracts a fee of £115. The 14 fee bands were set at full cost recovery levels as part of the April 2014 changes.
55. The enhanced fee reforms that came into effect in March 2015 changed that system for both specified and unspecified money claims worth more than £10,000. We retained the seven lower fee bands, but removed the seven upper bands and introduced a system whereby for a money claim worth more than £10,000 the fee would be calculated at 5% of the value of the claim up to a maximum fee capped at £10,000 (the fee for a claim worth £200,000).
56. When we originally consulted on enhanced fees in money claims in 2013 we consulted on a proposal for a higher cap, of £15,000 or £20,000, specifically for commercial disputes. There were practical concerns around how a commercial dispute could be properly defined, however, and in January 2015 we announced that we had decided not to proceed with that proposal at that time.

Rationale for Reform

57. Chapter 1 of this document sets out the financial imperative for further fee increases. The case for a higher cap applying to higher value money claims remains one with significant attractions. There are around 5,000 proceedings for the recovery of money issued each year worth more than £200,000. Increasing the cap would have no impact on the fees already being paid by those people who are in dispute over smaller amounts, their fees will remain unchanged and many of the claims being brought for the higher values will involve large multi-national organisations or wealthy individuals. These are parties who have chosen to have their commercial affairs governed by English law, and to have their disputes decided through the English courts. We firmly believe that it is reasonable to ask those parties who are able to make a greater contribution to do so.

Proposals

58. The practical difficulties with the previous proposal for a higher cap to be applied specifically to commercial proceedings was in defining precisely what constituted a commercial proceeding. The Government has therefore reconsidered this proposal and is now proposing to increase the maximum fee for money claims, subject to the exemptions proposed in paragraph 80 below. At a minimum, we are proposing to increase the cap for money claims to £20,000, but we would also welcome views on whether the cap should be higher, or should be removed altogether.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

59. The Government remains mindful of the impact that higher fees for money claims can have on high value personal injury cases. In response to concerns, the previous Lord Chancellor wrote to the Master of the Rolls, the most senior Civil Judge in England and Wales, in March 2015⁸ indicating that the Ministry of Justice would monitor the situation and consider whether changes were required to the fee remissions scheme or additional guidance provided. To this end the Government has recently given a commitment to amend the fee remissions scheme to exclude lump sum state compensation payments awarded to mesothelioma victims from any assessment of capital assets when deciding whether an individual qualifies for a fee remission.
60. For the same reasons, we propose to exclude personal injury claimants from the higher cap of £20,000. Therefore under our proposals the maximum court fee that a person will be liable to pay in a personal injury claim would remain £10,000.
61. Under the current fee structure, the fee for issuing a counterclaim is the same as the fee for the principal claim. We do not propose to change this principle and so the cap for issuing a counterclaim would also be raised to £20,000.

Protecting access to justice

62. When setting fees, the Lord Chancellor has an existing duty under section 92(3) of the Courts Act 2003 to have regard to the principle that access to the courts must not be denied. Any impact would depend on the level at which the maximum fee is set, and in particular, we recognise that the removal of a maximum fee could lead to very high fees in a small number of very high value claims.
63. Nevertheless, in the main we believe that the proposal would be unlikely to represent a barrier to justice because:
 - the fees would continue to represent a small proportion of the overall litigation costs normally associated with higher value claims such as those that would be affected by these proposals;
 - the fee would continue to be proportionate to the sums in dispute, only having an impact on claims with a value of over £200,000; and
 - costs, including court fees, are normally recoverable in successful proceedings.

Fee remissions

64. The fee remission scheme will also continue to apply for money claim proceedings. The current fee remission scheme was introduced in October 2013, before the introduction of enhanced fees.
65. Under these proposal set out above, the maximum fee in non-personal injury cases would rise to at least £20,000 and the Government accepts that there may be an argument for a further revision of the scheme to make sure that it continues to protect access to the courts for those who need it.

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418837/leter-to-lord-dyson-27-march.pdf

66. Under the current arrangements, if an individual applying for a remission has over £16,000 in disposable capital they do not qualify for any form of fee remission regardless of the fee. That means that, if the proposed increase to the cap were implemented, an individual with disposable capital of £16,000 would not qualify for a fee remission to bring proceedings, even when the claim attracted a fee that was higher than his or her assessed disposable capital.
67. The Government therefore believes that there is also a strong case for the disposable capital thresholds to be raised, if we decide to proceed with the proposal to raise the maximum fee for a money claim. Consistent with the approach we have adopted to disposable capital under the current scheme, we do not expect people to contribute all of their savings and other capital for the payment of fees. We therefore propose to introduce two further bands into the test of disposable capital for a fee remission:
- £20,000 for a fee of £10,000 or more; and
 - £25,000 for a fee of £15,000 or more.
68. We also propose to raise the capital threshold for those aged 61 and over to £25,000. We would welcome your views on these proposals.
69. As set out earlier, the Government has agreed to amend the fee remissions scheme to exclude certain state funded lump sum compensation payments for mesothelioma and other asbestos related illnesses. We would also welcome views on whether there are other benefits or payments that should be excluded from the assessment of disposable capital for the purposes of a fee remission.

Impact on Legal Services

70. Under the enhanced charging power at section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014 the Lord Chancellor must also have regard to the competitiveness of the legal services market. For this reason, prior to the introduction of enhanced fees for money claims, we commissioned the British Institute for International Comparative Law to undertake a study on the attitudes of those involved in high value international litigation. Their report,⁹ which was published alongside the Government response on enhanced fees in January 2015, confirmed that:
- London is a popular centre for these types of dispute, because of the quality of the judiciary, the legal services on offer, and the fitness for purpose of English law; and
 - although many respondents were concerned about the potential impact of increased court fees and the risk of damage to London's position, especially given the fees charged in some competing jurisdictions, these views were based on perceptions and no evidence could be produced to support them.

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396343/factors-influencing-international-litigants-with-commercial-claims.pdf

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

71. The impact on legal services would also be affected by the level at which the maximum fee, if any, were set. For most claims, for the reasons set out above, we believe that proposals are unlikely to have an impact on legal services, and that the actual risk of damage is low. We will continue to monitor the impact that the enhanced fees introduced in March have had on case volumes, particularly high value money claims and those issued in the Commercial Court, alongside this consultation and will provide an update on our findings when we come to issue a Government response.

Questions

Question 1: Do you agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000? Please give reasons.

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

- to at least £20,000; or
- to a higher amount;

Alternatively, do you believe that there should be no maximum fee for commencing a money claim? Please give reasons.

Question 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? Please give reasons.

Question 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? Please give reasons.

Question 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?

General uplift to fees for civil proceedings

Background

72. The majority of fees charged in the civil court system were increased in April 2014 to achieve near to full cost recovery levels in the civil courts and to reduce the level of taxpayer subsidy needed to fund HMCTS.

Rationale for Reform

73. Given the ongoing financial pressures, in addition to the specific increases in court and tribunal fees proposed elsewhere in this consultation paper the Government is also proposing to uplift all remaining fees charged in the civil court system by 10%. This proposal would not include any of the fees that have already been increased above cost but would include the fees for judicial review proceedings, proceedings for the assessment of costs and enforcement proceedings as well as all civil proceedings in the High Court, County Court and Magistrates' Court and fees in the

Court of Appeal (Civil Division). Additionally, we do not propose to increase any further fees in the family court at this stage.

74. More detail on the specific proposed increased fees are provided below and at Annex C.

Proposals

Proceedings for any other remedy (i.e. not for money or possession of land or goods)

75. The current fees for any other remedy are set out at fees 1.5 and 1.6 of Schedule 1 to the *Civil Proceedings Fees Order 2008* as amended (the Civil Fees Order). These fees are payable by any party issuing proceedings in the civil courts that are not seeking to recover money or land or goods from the defendant. For example, if an individual brought proceedings seeking a declaration or an injunction from the court, these proceedings would attract the fee for any other remedy. The fee for any other remedy is currently £480 to start proceedings in the High Court and £280 to start proceedings in the County Court, but we propose to apply the 10% increase to these fees.

Assessment of Costs

76. The current fees for an assessment of costs are set out at fee 1.8(b) of Schedule 1 to the Civil Fees Order. Assessment of costs proceedings are cases where a party who has been ordered to pay an opponent's costs in proceedings has not been able to agree the amount and seeks a determination from the court of how much it is reasonable to pay. The fees currently charged are £200 for assessment where the party filing the request is legally aided and on a sliding value from £335 to £5,600 for an assessment where the party filing the request is not legally aided, but we propose to apply the 10% uplift to these fees. Judicial Review
77. Judicial review is a process by which individuals, businesses and others can ask a court to review the lawfulness of a decision, act or omission of a public body. Such proceedings can be brought, for example, to decide whether a public body has acted outside its powers, has followed a lawful process, or has come to a rational decision. The judicial review process is therefore a critical check on the powers of the state and is a key mechanism for individuals to hold the executive to account.
78. The current judicial review fees are set at full cost: £140 for an application for permission; £350 for a renewed application at a hearing (if permission is refused on the papers); and £700 for a hearing (reduced to £350 if permission was granted at an oral renewal hearing). Therefore the maximum that a claimant can currently pay for a judicial review which goes to a hearing is £840, but these fees are subject to the proposed 10% uplift. The same fees apply to judicial review proceedings brought in the Upper Tribunal (Immigration and Asylum Chamber). The proposal is that the 10% uplift should also apply to judicial review proceedings in the Upper Tribunal.

Civil proceedings in the magistrates' courts

79. Magistrates deal primarily with criminal work, but also handle a number of civil matters. The fees currently charged in civil proceedings in the magistrates' court are £205 for commencing proceedings where no other fee is specified and £515 for contested hearing. The proposed 10% uplift would apply to the fees payable in all civil matters in the magistrates' courts.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Court of Appeal (Civil Division)

80. The current fees charged for proceedings in the Court of Appeal are set out in Table 1 below.
81. In April 2014, we announced our intention to increase these fees, and to introduce new fees for proceedings in the Court of Appeal as part of a package of measures to bring fee income closer to full cost recovery in the civil and family courts. The new fees introduced were: a fee for a reconsideration of a decision on permission at a hearing; a fee for making an additional application; and a fee for making a general application. The intention was to charge the same fees for general applications in the Court of Appeal as apply in civil and family proceedings. As set out earlier in this document we have announced that these fees will increase to £100 (for an *ex parte* application or an application by consent) and £255 (for a hearing on notice).
82. The fees for proceedings in the Court of Appeal remain well below the full cost, which we estimate to be around £10,000.
83. These increases have not yet been implemented, as the new fee for a reconsideration of permission at a hearing also requires changes to the relevant procedure rules which have not yet been made.
84. We propose to apply the general 10% uplift to the April 2014 Court of Appeal fees, as set out in Table 1 below. Subject to the outcome of this consultation, we intend to make the increases to the fees which are currently in place as soon as possible. We intend to make the arrangements to introduce the new fees as soon as we are able.

Table 1: Fees in the Court of Appeal

Fee	Current fees	April 2014 fee increases	Proposed fees
Application for permission to appeal/for an extension of time	235	480	528
Appeals where permission is not required or has been granted	465	1,090	1,199
Appellant or respondent to file an appeal questionnaire	465	1,090	1,199
File an application or respondent's notice	235	480	528
Reconsideration of a decision on permission a hearing	N/a	545	600
New Fees in the Court of Appeal			
Additional application	N/a	480	528
General application – <i>ex parte</i> /by consent	50		100
General application – on notice	155		255

Enforcement

85. Enforcement proceedings can be brought against a person who has been ordered by a court to satisfy a debt and return goods, property or land to another person, but has failed to do so. The person seeking the return of their goods or property pays a fee if they require the court to take action to have the decision enforced. The fees charged in a County Court range from £30 to execute a warrant at a new address to £100 for an application for a charging order in High Court. These will all be subject to the 10% uplift.
86. A full list of every individual fee that would be uplifted under this proposal is included at Annex C.

Questions

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.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Chapter 4: Proposals for tribunal fees

Introduction

87. Tribunals exist in the United Kingdom to provide an alternative method of dispute resolution particularly in areas where there is a need for specialist knowledge or expertise in order to reach decisions. There has been significant reform in the area since the unified tribunal structure took effect in 2008, and more is to come in terms of modernisation as part of the reform of the courts and tribunals service that was announced in a Written Ministerial Statement in March 2014.¹⁰
88. One of the changes since 2010 has been to look at how the tribunals are funded to ensure that they are providing value for money both for users and the taxpayer. Fees have been introduced into some jurisdictions for the first time. In December 2011 fees were introduced into the Immigration and Asylum Chamber of the First-tier Tribunal and in July 2013 fees were introduced in the Employment Tribunals.
89. Since the introduction of fees in the Employment Tribunals there has been a significant drop in the number of cases being issued. There is likely to be a range of factors behind this and on 11 June 2015 the Government announced that it had begun a review into the impact of the introduction of fees, which will report later this year.¹¹
90. Given the financial imperative to look at funding across HMCTS, explained in chapter 1 of this document, this chapter considers the scope for introducing fees in some jurisdictions where fees are not currently charged as well as the possibility of increasing fees in some tribunals where they already apply for some or all cases.

First-tier Tribunal – Immigration and Asylum Chamber

Background

91. The Government introduced fees into the First-tier Tribunal (Immigration and Asylum Chamber) in December 2011 under the Lord Chancellor's power contained in section 42 of the Tribunal, Courts and Enforcement Act 2007 to charge fees for proceedings before tribunals.
92. In introducing fees, the Government's broad aims were to:
 - make sure that users made a greater contribution to the costs of the service, where they could afford to do so, reducing the cost of the Immigration Appeals system to the taxpayer;
 - improve the efficiency and effectiveness of the tribunal; and
 - protect access to the tribunal for those who needed it.

¹⁰ http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140328-wms0001.htm#wms_st_0

¹¹ <https://www.gov.uk/government/publications/employment-tribunal-fees-post-implementation-review>

93. The fees were not set to achieve full cost recovery and while no formal financial objective was set for the rate of recovery, nevertheless, we made clear that we expected fee income initially to deliver around 25% of the costs of the tribunal. This resulted in fees being set at:
- £80 for a decision on the papers; and
 - £140 for an oral hearing.
94. The introduction of fees has, however, only been partly successful in meeting the above financial objective. In 2014/15 the cost of the First-tier Immigration and Asylum Chamber was around £84m and generated an income of around £7.3m. This represented a cost recovery rate of around 9%. When assessing the relevant cost against which to calculate the percentage of cost recovery we, in line with HMT guidance on Managing Public Money, take into account:
- the costs of the First-tier Chamber, including, for example, an apportionment of corporate overheads; but
 - excluding the costs of proceedings in the Upper Tribunal as well as First-tier Permission to Appeal, and cases types for which fees are not charged; and
 - the calculation should also take account of the value of fee remissions, and other exemptions, consistent with the approach in the civil courts.
95. In contrast to all other HMCTS jurisdictions which charge fees, the standard HMCTS fee remissions scheme does not apply in the First-tier Tribunal (Immigration and Asylum Chamber). This is because of the practical difficulties of applying the income and capital tests to those who may be based outside the United Kingdom. For this reason, in order to ensure that the Government met the third aim in introducing fees – to protect access to the Tribunal for those that need it – a set of exemptions were introduced removing the requirement to pay a fee in certain circumstances. These exemptions fall into two broad categories.
96. First, appellants in receipt of certain financial support are exempt from paying fees, specifically:
- those in receipt of Asylum Support (where the Home Office has already assessed a person as requiring financial assistance);
 - those in receipt of legal aid (where income has already been assessed as part of the legal aid award);
 - those in receipt of support under section 17 of the Children Act 1989 (where a Local Authority has already assessed that the household requires additional funding to make sure the child within that household is not put at risk).
97. The second category of exemptions was originally put in place to exempt from fees appellants appealing against “state initiated action”. This was largely to cover circumstances where the state was seeking to remove someone from the country. Many of these appeal rights have now been removed by the Immigration Act 2014.
98. In addition to these exemptions, the Lord Chancellor also has a power to defer fees and to remit fees in full or part where he considers there is an exceptional reason for doing so.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Rationale for reform

99. The failure to recover a contribution of around 25% of full cost from users has created a funding pressure in the Tribunal. This means that the level of taxpayer subsidy remains higher than intended when fees were introduced. For this reason, and given the continuing need for sensible management of the public finances, the Government believes that there is scope to increase the fees charged in the Tribunal so that those who use it make a reasonable contribution to the cost.
100. Since fees were first introduced in this Tribunal, in December 2013, there have been significant reforms to appeal rights by the Immigration Act 2014. For this reason, we also need to review the approach to fee exemptions that currently apply in the Tribunal.

Proposals

Fee Levels

101. The Government's initial priority is to recover 25% of the cost of the tribunal, in line with original expectations. In order to achieve that aim we are proposing to double the existing fees charged. When submitting an appeal against an immigration or asylum decision it is possible to do so either by post or via an online system. Presently both methods of submitting an application attract the same fee. There is an administrative saving to HMCTS in processing online applications and the Government is keen to encourage users to make online applications where possible.
102. As a result the Government intends to offer a 10% discount (rounded to the nearest £10) for applications submitted online. This approach is also consistent with the level of online discount that we are offering in the civil court system.
103. This would result in fees being charged at the levels set out in the table below:

Table 2: Schedule of current and proposed fees, Immigration and Asylum Chamber

Application Type	Current fee	Proposed Fee
Application for paper determination	£80	£160
Application for oral hearing	£140	£280
Application for paper determination (submitted online)	£80	£140
Application for oral hearing (submitted online)	£140	£250

Exemptions

104. We also propose to revise the present list of applications subject to a fee exemption, as set out in the relevant fees order.¹² There presently eight appeal types listed as exempt in the fees order. Of these, only two continue to be valid rights of appeal following the changes in the Immigration Act 2014. These are:
- an appeal against a decision made under section 40 of the British Nationality Act 1981 (deprivation of citizenship); and
 - an appeal against a decision made under regulation 19(3) of the Immigration (European Economic Area) Regulations 2006 (a decision to remove an EEA national or the family member of such a national).

¹² http://www.legislation.gov.uk/ukdsi/2011/9780111514146/pdfs/ukdsi_9780111514146_en.pdf

105. We therefore propose to amend the fees order to remove the exemptions relating to rights of appeal that no longer exist, but with what is known as a “savings provision” that allows those exemptions to continue to apply to cases that began under the old system at a time when those decisions were appealable. We will also retain the exemptions for the two appeal types listed above that continue to exist.
106. The Immigration Act 2014 also introduced the right to appeal against a decision to revoke a person’s refugee and humanitarian protection status. This right of appeal is comparable with the deprivation of citizenship appeals for which we provide an exemption and therefore the Government believes that there is a strong argument for adding appeals of this type to the list of appeal types to which a fee exemption applies and we propose to amend the fees order to provide for this.
107. There is also an existing exemption for those people to whom Part 2 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 applies. The 2005 Rules have since been replaced by the Fast Track Rules Schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. The Fast Track Rules Schedule has, however, recently been ruled unlawful by the High Court and all asylum appeals are now proceeding under the main 2014 Rules. The Government is appealing this decision and is awaiting the outcome of its appeal. In the meantime our policy is that where people would have qualified for the fee exemption for their appeal under the Fast Track Rules Schedule, they will not be subject to a fee under the main 2014 Rules.

Upper Tribunal

108. A limited fee structure has existed in the Upper Tribunal (Immigration and Asylum Chamber) since 2011. This prescribed fees for immigration judicial review applications that are issued in, or transferred by, the High Court in England and Wales. Fees are not currently charged for other types of proceedings issued in the Upper Tribunal. This is a position that the Government may need to return to in the future, but for the time being the only changes proposed to the fees in the Upper Tribunal (Immigration and Asylum Chamber) are to the fees for Judicial Review proceedings which would increase by 10% in line with the proposals set out at paragraphs 95 to 97 of Chapter 3 of this document.

Protecting Access to Justice

109. We acknowledge that raising the fees increases the risk that some claimants may be prevented from accessing the Tribunal because they could not afford to pay the fee. In assessing the likelihood of the risk crystallising, we have taken into account the following factors:
 - most appellants will have already had to commit to pay Visa fees which are, in most cases substantially higher than the fees proposed for an appeal;
 - most appellants will have had to satisfy UK Visas and Immigration that they are able to be maintained and accommodated, alongside any dependents, by themselves or by their friends and relatives;
 - the Tribunal has the power to order the respondent to reimburse the appellant any fee he or she has paid if the appeal is successful;

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

- our revised and updated fee exemptions policy will continue to support applicants in the most vulnerable circumstances including, for example, those in receipt of legal aid and asylum support; and
- the Lord Chancellor has a power to defer, waive or remit the fee in those cases where the appellant can satisfy him that there are exceptional reasons why he or she cannot afford it.

110. For these reasons, we believe that appellants are unlikely to be deterred by the proposed fees from bringing appeals to the Tribunal, and that there is sufficient protection for those who are genuinely unable to afford to pay the fee.

Other Issues

111. Subject to the outcome of this consultation, the Government's proposals for Immigration Tribunal fees will be implemented by means of an amendment to the current Fees Order. The Government also intends to make some other amendments to put beyond doubt certain detailed aspects of its provisions in respect of fees in the Immigration and Asylum First-tier Chamber. They are:

- an amendment to ensure that HMCTS is not required to return any fee paid for an appeal that has been received but is subsequently determined to be invalid;
- an amendment to clarify that HMCTS is not required to return any full or partial fee which has been paid by the appellant before an appeal is withdrawn by the appellant, or when the decision against which the appeal has been brought is withdrawn by the respondent;
- an amendment to clarify that where a notice of decision contains a combination of decisions some but not all of which are fee exempt, a fee is due in relation to the chargeable elements of the appeal; and
- a widening of the exemption provisions so that they clarify the interpretation of the exemption for those in receipt of support under section 17 of the Children Act and to include an additional exemption for proceedings relating to children supported under section 20 of the Children Act 1989.

Questions

Question 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.

Question 8: Do you agree with the proposal to introduce a 10% discount for applications lodged online? Please give reasons.

Question 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.

Question 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

Background

112. The Government believes that it is right that those who use the tribunals should make a contribution to the costs of providing the service. After the First-tier Tribunal (Immigration and Asylum Chamber) and the Employment Tribunals the chamber with the next largest caseload is the Social Entitlement Chamber of the First-tier Tribunal. In view of the nature of the disputes brought before this Chamber, we consider it likely that a majority of applicants would qualify for a fee remission. For this reason, we do not believe that introducing fees in this chamber would meet our objectives of requiring the user to contribute to the costs, and reduce the cost to the taxpayer. Nor do we believe that it would be cost effective.
113. We do not consider that would be appropriate to introduce fees for proceedings in the Mental Health Tribunal, which deals with fundamental issues of people's liberty.
114. For these reasons the Government is focusing, for the time being, on three of the largest remaining tribunals: the First-tier Tribunal (Property Chamber); the First-tier Tribunal (Tax Chamber) and the Upper Tribunal (Tax and Chancery Chamber); and the First-tier Tribunal (General Regulatory Chamber).
115. Currently there are no fees charged in either the Tax Chamber or the Upper Tribunal (Tax and Chancery). Nor are there fees charged in the General Regulatory Chamber with the exception of the Gambling jurisdiction where fees are charged on the basis of the value of the licenses in dispute – a position we are not proposing to change in this consultation. There are presently some fees in the Property Chamber, however, the types of case for which fees are charged in that chamber reflect the structure that was in place before they came into the Property Chamber and fees do not apply across all case types.
116. The rules of procedure in the Property Chamber, and more generally, provide a power for the tribunal to order the losing party to pay any tribunal fee which the applicant has had to pay and which has not been remitted. Where such rules do not exist we will consider the need to introduce them alongside the proposals to introduce fees.

Rationale for reform

117. In 2013–14 we recovered £0.5m from fees in the Property Chamber against a total cost of £11.8m, a recovery rate of just 4%. The operation of the Tax Chamber (First & Upper Tier) currently costs HMCTS an estimated £8.7m per annum – none of which is currently recovered. The General Regulatory Chamber costs an estimated £1.6m per year to operate again, none of this is currently recovered.
118. The Government believes that is not fair to expect these costs to be borne entirely by the taxpayer and that it is reasonable that those who use the service and can afford to make a contribution to the cost of the service should do so. For this reason, and to be consistent with our approach in the Immigration and Asylum Chamber, our intention is to seek to recover around 25% of the cost across these three jurisdictions.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

119. Another key aim of these proposals is to ensure that fees are not a barrier to justice. We are also therefore proposing that the standard HMCTS fee remission scheme should apply in these jurisdictions. This will help to ensure that we protect access to the Tribunals for those who are unable to afford to pay. It is also the intention that the Tribunal should have the power to order that fees should be reimbursed, consistent with the approach on those Chambers where fees are currently charged. An additional aim of the Government in introducing and revising fee structures in these tribunals is to keep the fee charging structures as simple as possible to assist both tribunal users and HMCTS staff in understanding the new fees.

Proposals

First-tier Tribunal (Property Chamber)

120. The Property Chamber deals with private property related disputes including: rent, disputes over land, leasehold valuations and leasehold charges, right to buy cases and disputes in relation to park homes.
121. In 2013–14 the First-tier Tribunal (Property Chamber) cost an estimated £11.8m and generated income of £0.5m. This represented a cost recovery rate of around 4%.
122. We are proposing to introduce a simple fee structure with a £100 fee to issue proceedings and a £200 for a matter to be listed for a hearing, which will be applicable across the majority of case types in the Chamber. Our modelling indicates, however, that these proposals, applied to all proceedings, would not meet the objective of 25% cost recovery. We believe that in order to reach the target recovery rate for the Chamber there is a strong policy justification for charging higher fees in leasehold enfranchisement and leasehold valuation cases.
123. Data obtained from the Leasehold Advisory Service suggests that for a sample of around 840 leasehold enfranchisement and leasehold valuation cases lodged between 1994 and 2006, the average value determined by the tribunal was around £142,000.¹³ On this basis we believe that given the large amounts in dispute it is reasonable to expect those bringing these proceedings to pay a higher fee and have therefore modelled a proposal based on an issue fee of £400 and a hearing fee of £2,000. This would have the effect of charging those cases at close to full cost and, based on current volumes, would bring the cost recovery percentage across the Chamber to around 25% after remissions. However, an alternative to flat fees in these cases would be to consider a model where fees are charged as a percentage of the value at stake.

Questions

Question 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.

Question 12: Do you agree with the principle of charging higher fees for leasehold enfranchisement cases where there are significant amounts of money at stake? Please give reasons.

¹³ <http://www.lease-advice.org/lvtdecisions/tables.asp?table=3>

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

First-tier Tribunal (General Regulatory Chamber)

124. The General Regulatory Chamber hears a wide range of appeals on regulatory matters, for example charities, consumer credit, transport and appeals from decisions of the Information Commissioner. We do not currently charge fees for proceedings in this chamber, with the exception of appeals in relation to gambling licences. In these cases, the fee charged is based on the value of the licences that are in dispute. We are not proposing to change the fees for these proceedings.
125. In 2013–14 the estimated cost of the General Regulatory Chamber (including Gambling) was £1.6m. The fee income generated from Gambling proceedings (the only fee charging tribunal within the General Regulatory Chamber) was £11,600.
126. In the remaining jurisdictions within the General Regulatory Chamber, we have proposed one fee for an appeal decision on the papers and one fee for an oral hearing. Our proposal is to charge a fee of £100 to issue proceedings, which would entitle the claimant to a decision based on a review of the papers. The claimant may alternatively elect for an oral hearing, in which case a further fee of £500 would be payable. Based on current volumes, we estimate that this proposal would generate a cost recovery percentage of around 17% after remissions.
127. The fees will also apply to “reference” cases where cases are started in the first-tier Tribunal but have to be referred directly to the Upper Tribunal for a first instance hearing.

Questions

Question 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.

Question 15: Are there any proceedings in the General Regulatory Chamber that should be exempt from fees? Please give reasons.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

First-tier Tax Chamber and Upper Tribunal (Tax and Chancery)

128. The Tax Chamber (First-tier) deals with appeals from HMRC tax assessments and penalties. The estimated full cost of the First and Upper Tiers of the Tax Chamber was £8.7m in 2013–14.
129. When cases are first issued in the First-tier Tribunal, they are assigned a case category (Paper, Basic, Standard or Complex) by the tribunal. This is determined by how long a case is likely to take to resolve or the amount of sums that are in dispute.¹⁴ Many of the cases that are dealt with on the papers or assigned to the basic category relate to appeals against penalty notices issued by HMRC. These penalty notices can range in amount, however, a large percentage of these attract a relatively modest fine (for offences such as late filing of tax returns).
130. Therefore we are proposing two different issue fees in the First-tier Tribunal. For paper and basic cases we are proposing an issue fee of £50 and for standard and complex cases we are proposing an issue fee of £200. We are also then proposing to introduce a tiered fee structure where cases go to a full hearing based upon the complexity and length of the case. The hearing fees we are proposing are: Basic £200; Standard £500; and Complex £1,000.
131. The Upper Tribunal (Tax and Chancery) hears all onward appeals from the First-tier Tribunal (Tax Chamber). It also hears other onward appeals, including from the General Regulatory Chamber in relation to charities and the Property Chamber in relation to land registration issues. Our proposals in this chamber of the Upper Tribunal are limited to introducing fees for the onward appeals from the First-tier Tax Chamber.
132. Consistent with our approach in other Tribunals we are proposing to introduce fee structures that are based upon the level of tribunal resources that applications are on average likely to consume. Therefore we are proposing to introduce three fee points: a fee of £100 to seek permission to appeal; £200 for a permission hearing (where permission has been refused on the papers); and £2,000 for a substantive appeal hearing.
133. We estimate that these proposal would generate a cost recovery percentage to around 26% after remissions across the First-tier and Upper Tier combined.

Questions

Question 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)?

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

¹⁴ See: Practice Direction First-Tier Tribunal categorisation of cases in the Tax Chamber <https://www.judiciary.gov.uk/wp-content/uploads/2014/12/categorisation-of-case-in-the-tax-chamber.pdf>

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Table 3: Consolidated Table of proposed fee changes

Chamber (Application type)	Current Fees		Proposed Fees		Predicted Income
	Issue	Hearing	Issue	Hearing	
Property Chamber (most applications)	£155 (in most cases where fees are charged)	£158 or £194 depending on case types	£100	£200	£2.3 m
Property Chamber (Leasehold Enfranchisement)	No Fee	No Fee	£400	£2,000	£1.5 m
General Regulatory Chamber (Gambling appeals)	Between £800 and £14,000	No fee	unchanged	unchanged	£0.01 m
General Regulatory Chamber (all applications except Gambling Appeals)	No Fee	No Fee	£100	£500 (oral hearing)	£0.35 m
First-tier Tax Chamber					
Paper	No Fee	No Fee	£50	£0	
Basic	No Fee	No Fee	£50	£200	
Standard	No Fee	No Fee	£200	£500	
Complex	No Fee	No Fee	£200	£1000	£2.1 m
Upper Tribunal Tax and Chancery					
Permission to Appeal	No Fee	No Fee	£100	£200	
Appeal	No Fee	No Fee	£100	£2,000	£0.2 m
Total					£6.5 m

134. The table above sets out the fees that are currently charged in these Tribunals (where applicable) and what the fees would be under the Government’s proposals. We estimate that if all these proposals were to be implemented and there were to be no change in demand we would generate around £6.5million per annum. We believe this would make a significant contribution to the funding of HMCTS to ensure that courts and tribunals are properly resourced and able to provide access to justice both now and into the future.

Upper Tribunal (Lands Chamber)

Background

135. The Lands Chamber hears most types of appeals from the Property Chamber and also acts as a tribunal of first instance for certain applications relating to land and property. It also hears some appeals from devolved tribunals such as the residential property tribunal in Wales and the leasehold valuation tribunal in Wales. Fees are currently charged in the Chamber, both for first instance applications and for appeals from the Property Chamber (as shown in the table below).

Rationale for Reform

136. In 2014/15 we generated £0.8m in fees in the Upper Tribunal (Lands Chamber) compared with estimated costs of £1.7m, a cost recovery rate in the chamber of 47%. For this reason, the Government did not consider that the fees in this Chamber should be in scope of the wider reform agenda pursued in, for example, the Upper Tribunal (Tax and Chancery).

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

137. As set out earlier in this document, however, the Government believes that, in view of the financial challenge the country is facing, and the need to secure the long term funding of HMCTS so that access to justice is protected, that those fees which are not subject to one of the specific proposals set out in this consultation should be increased by 10%.

Proposal

138. We therefore propose to include the fees in the Upper Tribunal (Lands Chamber) in the general 10% uplift outlined at paragraphs 89 to 91 of chapter 1. The table below lists all the existing fees in the Tribunal and illustrates the proposed fee levels subject to the 10% increase rounded to the nearest £1.

Table 4: Schedule of current and proposed fees

Type of Application	Current Fee	Proposed Fee
Lodging a reference or an appeal (other than a rating appeal)	£50	£55
Lodging an absent owner application	£100	£110
Lodging a rating appeal	1% of rateable value Subject to a: Minimum fee of £50 Maximum fee of £5,000	1% of rateable value Subject to a: Minimum fee of £55 Maximum fee of £5,500
Lodging a restrictive covenant application	£200	£220
Lodging a rights of light application		
(a) for a definitive certificate	£250	£275
(b) for a temporary and definitive certificate	£300	£330
On lodging an interlocutory application	£40	£44
On lodging an application for a consent order	£100	£110
Hearing a rating appeal	5% of rateable value subject to: Minimum fee of £100 Maximum fee of £5,000	5% of rateable value subject to: Minimum fee of £110 Maximum fee of £5,500
Hearing a reference or other appeal (excluding one where the hearing fee is calculated on the basis of rental value)	2% of the amount awarded, agreed or determined to: Minimum fee of £100 Maximum fee of £5,000	2% of the amount awarded, agreed or determined to: Minimum fee of £110 Maximum fee of £5,500
On the hearing of a reference or an appeal against a determination where the award is in terms of rent or other annual payment	2% of the annual rent or other payment agreed or determined subject to: Minimum fee of £100 Maximum fee of £5,000	2% of the amount awarded, agreed or determined to: Minimum fee of £110 Maximum fee of £5,500
Determining a restrictive covenant application by:		
(a) a hearing as to entitlement under section 84(3A)	£250	£275
(b) order without a hearing (rule 17(2) and (3))	£250	£275
(c) substantive hearing of an originating application	£350	£385
(d) engrossing Minutes of Order	£100	£110

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Type of Application	Current Fee	Proposed Fee
On the hearing or preliminary hearing of a reference or appeal where either the amount determined is nil or the determination is not expressed in terms of an amount	£200	£220
For a photocopy or certified copy of a document, or for examining a plain copy and marking as a certified copy (for each page)	£1	£1
For supplying published decisions to subscribers (for each page)	10p	10p
On a taxation of costs for every £1 or part thereof allowed	5p	5p

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Chapter 5: Equalities duties

Introduction

139. This chapter considers the Lord Chancellor's duties under the Equality Act 2010.
140. Alongside this document we have published an updated equalities statement relating to the proposals set out in chapter 2 of this document that the Government now intends to take forward.
141. In addition, in line with our responsibilities under the Equality Act 2010, we have paid early consideration to the likely broad impacts of the proposals contained in chapters 3 and 4 of this document. We do not consider that any of these proposals will directly discriminate against any protected persons. If, however, they have an indirect impact, we believe that any impact would be mitigated by the availability of fee remissions and in limited circumstances, legal aid. In general we consider the policies to be a proportionate means of achieving a legitimate aim. An equality statement addressing the further proposals for fee increases has also been published alongside this consultation.
142. Once responses from the consultation have been received, analysed and collated, we will publish a revised equality statement with the Government response. We would therefore welcome any further views on the potential equalities impacts of the proposals in chapters 3 and 4 of this publication.

Question 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.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: Do you agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000? Please give reasons.

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

- to at least £20,000; or
- to a higher amount;

Alternatively, do you believe that there should be no maximum fee for commencing a money claim? Please give reasons.

Question 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? Please give reasons.

Question 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? Please give reasons.

Question 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?

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.

Question 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.

Question 8: Do you agree with the proposal to introduce a 10% discount for applications lodged online? Please give reasons.

Question 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.

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

Question 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.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Question 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.

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

Question 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.

Question 15: Are there any proceedings in the General Regulatory Chamber that should be exempt from fees? Please give reasons.

Question 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)?

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

Question 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.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

How to respond

Please send your response by **Tuesday 15 September** to:

Michael Odulaja
Fees Policy Team
Ministry of Justice
4.38, 4th Floor
102 Petty France
London SW1H 9AJ

Tel: 020 3334 4417

Fax: 020 3334 2233

Email: mojfeepolicy@justice.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Annex A: List of respondents

Accent Group Ltd	Charter Housing
Accent Housing Group Ltd	Chartered Institute of Credit Management
Accent Nene	Chartered Institute of Housing
Action against Medical Accidents	Civil Court Users Association
AmicusHorizon	Civil Justice Council
Appleton Letting	Civil Liberties Department, Hodge Jones & Allen LLP
Aragon Housing Association	Civil Sub-Committee of the Council of HM Circuit Judges
Arun District Council	Clinch Solicitors Limited
Association of Business Recovery Professionals	Community Housing Cymru Group
Association of Personal Injury Lawyers	County and Family Courts at Hereford & Worcester
Aster Communities	Crosby Housing Association
B3Living	Cross Keys Homes
Barrister (12 King's Bench Walk).	Dartford Borough Council
Barrister at 4 Pump Court	Direct Access Barristers
BG Solicitors LLP	DWF Ltd
Birmingham City Council	Ealing Council
Department of Business Innovation and Skills	Exchange Chambers
Blakeley Solicitors	Fieldfisher
Bolton at Home Limited	Foil
Boyes Turner LLP	Fraud Advisory Pan
Brighton and hove city council	Freelancer Lets Ltd
Brockhurst Property Ltd	Gateshead Council
Bromford Group	Geoffrey Leaver Solicitors LLP
Bromsgrove District Council	Golding Homes
Burges Salmon LLP	Grand Union Housing Group
Cabot Credit management group	Guildhall Chambers
Cadwyn Housing Association	Halton Housing Trust
Central Bedfordshire Council	Hamilton Davies
CentrePoint	Hastoe Group
Chambers of Timothy Raggatt QC	Help at Hand
Chancery Bar Association	Hillingdon Council

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Hodge Jones & Allen LLP	Nottingham City Homes
Holmes & Hills LLP	Nottingham Community Housing Association
Horwich Farrelly Solicitors	Nottingham County Court
Housing Association	PB
Housing Law Practitioners Association	PB Barristers
Housing Plus	Peaks & Plains Housing Trust
Housing team of Hodge Jones and Allen LLP	Peverel
Howes Percival LLP	Phoenix Rentals Ltd
Irwin Mitchell LLP	PIBA
Isos Housing Limited	Places for People
Judiciary of England and Wales	PlaceShapers
Landlord Action	Plymouth City Council
Lane & Co Solicitors	Poole Housing Partnership Ltd
London Borough of Hillingdon	Property Bar Association
London Borough of Islington	4 Pump Court, Temple, London EC4Y 7AN
London Borough of Newham	Radian
London Solicitors Litigation Association	Raven Housing Trust
Magdalen Chambers	Registered Social Landlord
Metcalfes Solicitors	Residential Landlords Association Limited
Midland Heart Limited	RESOLVE Antisocial Behaviour
Mishcon de Reya Litigation Practice	Restons Solicitors Limited
Money Advice Trust	RISE
Monmouthshire Housing Association Ltd	Rochdale Boroughwide Housing
Moore Allen & Innocent LLP	Rokeby Homes Ltd
National Housing Federation	Rosenblatt Solicitors
National Landlords Association	Rugby Borough Council
Neil Hudgell Solicitors.	S J Edney Solicitors
Nesbit Law Group LLP	Salix Homes
Newcastle upon Tyne Law Society	Saracens
Newport City Homes	SGH Martineau LLP
North Hertfordshire and District Citizens Advice Bureau (CAB)	Sheffield City Council
North West Property Owners Association	SHELTER
Northwood	Shoosmiths LLP
Norwich City Council	Shropshire Housing Group

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

SLC Solicitors	Whatley Weston & Fox
Sovereign Housing Association	Wirral Methodist Housing Association
Spectrum Housing Group	WM Housing
Spire Homes (LG) Limited	WMD Investments Ltd
St James's Church Legal Advice Centre	Yorkshire Housing Law Practitioners Association
St. John's Chambers	Your Homes Newcastle
Step Change Debt Charity	Your Housing Group
Stevenage Borough Council	Zenith Chambers
Stewarts Law LLP	
Stockport Council and Stockport Homes Limited	
Swindon Borough Council	
Symphony Housing Group	
Taylor Rose Law LLP	
Teign Housing	
The Association of HM District Judges	
The Bar Council	
The Chartered Institute of Legal Executive	
The City of London Law Society	
The Keith Jones Partnership	
The Law Society	
The Riverside Group	
The Royal Bank of Scotland PLC	
Thompson Solicitors	
Trafford Housing Trust	
United Kingdom Association of Part Time Judges	
Unity Street Chambers	
Vale of Glamorgan Council	
Wandsworth Brough Council	
Ward Hadaway	
Wards Solicitors	
Warwick District Council	
Watford Community Housing Trust	
Welsh Government	
West Kent Housing Association	

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

Annex B: Schedule of fees – possession claims, general applications and divorce

Fee Type	Current Fee	Proposed Fee	Exemptions from the increase
On starting proceedings for the recovery of land: - in the High Court - in the County Court - using the Possession Claims Online Website	£480 £280 £250	£480 £355 £325	
On application on notice where no other fee is specified.	£155	£255	applications to vary or extend an injunction for protection from harassment or violence; and applications for a payment to be made from funds held in court; and
On application by consent or without notice where no other fee is specified.	£50	£100	applications to vary or extend an injunction for protection from harassment or violence; and applications for a payment to be made from funds held in court.
Under the Insolvency Act 1986: - Application on notice where no other fee is specified - Application by consent or without notice where no other fee is specified.	£155 £50	£155 £50	
On presenting an application for: - a decree of divorce made under section 1 of the Matrimonial Causes Act 1973; or - a decree of nullity made under sections 11 or 12 of the Matrimonial Causes Act 1973; or - a dissolution order or nullity order made under section 37 of the Civil Partnership Act 2004.	£410	£550	

Annex C: Schedule of civil court and tribunal fees subject to the general uplift of 10%

		Current	New
	OTHER FEES		
1.5	Any other remedy (High Court)	£480	£528
	Any other remedy (County Court)	£280	£308
1.6	Filing proceedings against an unnamed party	£50	£55
1.8(a)	Permission to issue proceedings	£50	£55
1.8(b)	Assessment of costs (under Part 3, Solicitors Act 1974)	£50	£55
	JUDICIAL REVIEW		
1.9(a)	Permission to apply	£140	£154
1.9(aa)	On request to reconsider at a hearing a decision on permission	£350	£385
1.9(b)	Permission to proceed	£700	£770
1.9(c)	Permission to proceed (claim not started by JR procedure)	£140	£154
	DETERMINATION OF COSTS (Senior/County Court)		
5.1	Where the party filing the request is legally aided	£200	£220
5.2(a)	Amount does not exceed £15,000	£335	£369
5.2(b)	Exceeds £15,000 but does not exceed £50,000	£675	£743
5.2(c)	Exceeds £50,000 but does not exceed £100,000	£1,005	£1,106
5.2(d)	Exceeds £100,000 but does not exceed £150,000	£1,345	£1,480
5.2(e)	Exceeds £150,000 but does not exceed £200,000	£1,680	£1,848
5.2(f)	Exceeds £200,000 but does not exceed £300,000	£2,520	£2,772
5.2(g)	Exceeds £300,000 but does not exceed £500,000	£4,200	£4,620
5.2(h)	Exceeds £500,000	£5,600	£6,160
5.3	Issue of default costs certificate	£60	£66
5.4	Appeal (detailed assessment proceedings)	£210	£231
5.5	Request/application to set aside a default costs certificate	£110	£121
	ENFORCEMENT (HIGH COURT)		
7.1	Sealing a writ of execution/possession/delivery	£60	£66
7.2	Application for order for debtor/other person to attend court	£50	£55
7.3(a)	Application for third party debt order/appointment of a receiver	£100	£110
7.3(b)	Application for a charging order	£100	£110
7.4	Application for a judgement summons	£100	£110
7.5	Request/application to register a judgement or order Permission to enforce an arbitration award or Certified copy of a judgement or order for use abroad	£60	£66

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

		Current	New
	ENFORCEMENT (COUNTY COURT)		
8.1(a)	Issue of warrant of execution against goods (non-CCBC)	£100	£110
8.1(b)	Issue of warrant of execution against goods (CCBC cases)	£70	£77
8.2	Request for attempt of execution of warrant at new address	£30	£33
8.3	Application to require judgement debtor to attend court	£50	£55
8.4(a)	Application for a third-party debt order	£100	£110
8.4(b)	Application for a charging order	£100	£110
8.5	Application for a judgement summons	£100	£110
8.6	Issue of a warrant of possession/warrant of delivery	£110	£121
8.7	Application for an attachment of earnings order	£100	£110
8.8	Consolidated attachment of earnings/administration order	*	*
8.9	Application for enforcement of an award of a sum of money or any other decision made by any court, tribunal, body or person*	£40	£44
8.1	Request for an order to recover a specified road traffic debt	£7	£8
8A.1	Request for service by a bailiff	£100	£110
	FEES PAYABLE IN THE HIGH COURT ONLY		
10.1	Bills of sale	£25	£28
10.2	Official certificate of the result of a search (for each name)	£45	£50
10.3	Search, in person, of court records (per 15 minutes)	£10	£11
	PAYABLE IN HIGH COURT AND COURT OF APPEAL ONLY		
12.1	Affidavit	£11	£12
12.2	For each exhibit referred to	£2	£2
	PAYABLE IN THE COURT OF APPEAL ONLY		
13.1(a)	Application – permission to appeal/extension of time	£235 (£480) ¹⁵	£528
13.1(b)	Permission to appeal is not required or has been granted	£465 (£1,090)	£1,199
13.1(c)	Appellant/respondent filing an appeal questionnaire	£465 (£1,090)	£1,199
13.2	On filing a respondent's notice	£235	£259
13.3	On filing an application notice	£235 (£480)	£528
8.1	Commencing proceedings where no other fee is specified	£205	£226

¹⁵ As set out at paragraphs 84 to 85 of the consultation document the fees in brackets were the levels that were intended after the April 2014 changes. These changes have not yet been made but the 10% has been applied to the fees at their intended levels.

Court and Tribunal Fees

The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals

		Current	New
8.2 (a)	Application for leave/permission to commence proceedings (no other fee specified)	£105	£116
8.2 (b)	Proceedings where leave/permission has been granted.	£105	£116
8.3	Contested hearing	£515	£567

ISBN 978-1-4741-2411-9



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