

Litigation Committee response to the Ministry of Justice's consultation on Fees in the High Court and Court of Appeal Civil Division (CP15/2011)

The City of London Law Society (“CLLS”) represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 18 specialist committees. This response to the Ministry of Justice's consultation paper entitled *Fees in the High Court and Court of Appeal Civil Division* has been prepared by the CLLS Litigation Committee.

Question 1: Do you agree that additional bands should be added for issue fees above the current maximum threshold? Please state the reason(s) for your answer.

The Committee does not object to the principle of a graded approach but was concerned by the proposal (at v) that there be a court fee of £10,000 for an unlimited claim. Many claims, at the time of issue, are unquantified, thus attract the highest fee, but the claims when quantified may be for relatively modest sums. Furthermore a non-monetary claim should not attract the highest fee.

Question 2: Do you agree that the fee for issuing a Bill of Sale should be increased from £25 to £60? Please state the reason(s) for your answer.

Yes. We considered that the proposed increase was not that material.

Question 3: Do you agree that the fee for permission to apply for judicial review should be increased from £60 to £235? Please state the reason(s) for your answer.

The Committee was opposed to this quite substantial increase as a matter of principle. We were concerned that such an increase would limit access to justice particularly in a field where we suspect that there are many applicants of limited means.

Question 4: Do you agree that the fee for continuation of a judicial review should be increased from £215 to £235? Please state the reason(s) for your answer.

No. See the reason given in answer 3 above.

Question 5: Do you agree that the fee for schemes of arrangement should be increased from £155 to £340? Please state the reason(s) for your answer.

Yes. We consider the increase to be justified.

Question 6: Do you think that an increase in the fee for applications on notice within proceedings from £80 to £105 is justified? Please state the reason(s) for your answer.

Yes. We consider the increase reasonable.

Question 7: Do you think that introducing a new fee of £105 for urgent applications in the High Court is justified? Please state the reason(s) for your answer.

Yes. We consider the increase reasonable. However, we thought that a without notice application might attract the higher fee of £105 whereas an application by consent, which is often dealt with on paper, clearly justifies the lesser fee of £45.

Question 8: Do you agree that the existing fee of £45 for an official certificate of the result of a search should be expanded to include the search itself? Please state the reason(s) for your answer.

The Committee did not feel qualified to answer this question.

Question 9: Do you agree that banding hearing fees by projected time is a fair way of reflecting the increased cost of providing longer trials without increased administrative burden? Please state the reason(s) for your answer.

We did not agree that banding hearing fees by projected time is a fair way of reflecting the increased cost of providing for longer trials. We were opposed to this in principle because of the concern that this might drive business away from London, perhaps to arbitration. We were also concerned as to how the fees would fairly reflect the amount of time taken by the court on a counterclaim as well as the claim. Furthermore many cases settle during the course of a trial.

If the Committee's opposition is rejected, we would express the concern about the impact on lower value cases and we would encourage consideration of a more realistic system of rebates.

Question 10: Do you agree that the current permission to appeal fee in the Court of Appeal should be increased from £235 to £465? Please state the reason(s) for your answer.

The Committee were broadly happy with this proposal although some concern was expressed about the impact on access to justice.

Question 11: Do you agree that the fee for permission to appeal in the Court of Appeal should be limited to a decision outside of a hearing, with an applicant liable for the full appeal fee of £1,090 – but no further appeal fee – if they request a hearing? Please state the reason(s) for your answer.

The Committee were broadly happy with this proposal although some concern was expressed about the impact on access to justice.

Question 12: Do you agree that each ancillary application to an appeal should attract a separate fee of £465? Please state the reason(s) for your answer.

The Committee did not agree that each ancillary application to an appeal should attract a separate fee of £465. The proposed fee seemed to be excessive.

Question 13: Do you agree that fees of £45 (without notice or by consent) or £105 (on notice) should be charged at the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests)? Please state the reason(s) for your answer.

The Committee agreed. The fees proposed seemed reasonable.

Question 14: Do you agree that a listing fee of £110 should be charged in the Court of Appeal? Please state the reason(s) for your answer.

The Committee agreed. The fee proposed seemed reasonable.

Question 15: Do you agree that the current appeal fee of £465 should be aligned with the multi-track hearing fee of £1,090? Please state the reason(s) for your answer.

The Committee did not agree with this proposed fee increase as it felt that it would limit access to justice.

Question 16: Do you feel that time-related hearing fees are a fair way of reflecting the cost of hearing appeals in the Court of Appeal Civil Division? Please state the reason(s) for your answer.

The Committee repeats the answer it gave to question 9 above.

Question 17: Do you agree that applications under CPR 52.17 to reopen final decisions should be charged the appeal fee of £465? Please state the reason(s) for your answer.

The Committee agreed with this question. The fee proposed seemed reasonable.

Question 18: What do you think the impact of the proposals set out in this consultation paper will be on small and medium enterprise? Please state the reason(s) for your answer.

The Committee were concerned that certain of the proposals (as noted in the answers set out above) would inhibit access to justice by small and medium enterprises.

Question 19: Do you believe that the proposals set out in this consultation paper will have an adverse effect on access to justice? Please state the reason(s) for your answer.

Yes in the respect set out above.

Question 20: What do you think the impact of the proposals set out in this consultation paper will be on those with protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Please state the reason(s) for your answer.

The Committee did not feel qualified to answer this question.

**THE CITY OF LONDON LAW SOCIETY
LITIGATION COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Simon James (Chairman)	Clifford Chance LLP
Duncan Black	Field Fisher Waterhouse LLP
Richard Clark	Slaughter & May LLP
Tom Coates	Lewis Silkin LLP
Andrew Denny	Allen & Overy LLP
Angela Dimsdale Gill	Hogan Lovells International LLP
Geraldine Elliott	Reynolds Porter Chamberlain LLP
Gavin Foggo	Fox Williams LLP
Richard Foss	Kingsley Napley LLP
Tim Hardy	CMS Cameron McKenna LLP
Willy Manners	Macfarlanes LLP
Rory McAlpine	Skadden, Arps, Slate, Meagher & Flom (UK) LLP
Arundel McDougall	Ashurst LLP
Gary Milner Moore	Herbert Smith LLP
Hardeep Nahal	McGuireWoods London LLP
Stefan Paciorek	Pinsent Masons LLP
Kevin Perry	Edwards Angell Palmer & Dodge UK LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP
Philip Vaughan	Simmons & Simmons LLP