

Litigation Committee response to the Ministry of Justice's Consultation Paper entitled *Enhanced Court Fees: Part 2 of the Consultation Response and Further Proposals for Consultation*

The City of London Law Society (“CLLS”) represents approximately 15,000 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 consultations on issues of importance to its members through its 19 specialist committees. This response has been prepared by the CLLS Litigation Committee (the “Committee”) and addresses the Ministry of Justice's Consultation Paper entitled *Enhanced Court Fees: Part 2 of the Consultation Response and Further Proposals for Consultation* (the “Consultation Paper”).

General comments

The Committee continues to hold the views set out in its paper dated 21 January 2014 in response to the Ministry of Justice's consultation paper entitled *Court fees: proposals for reform*, namely that there is no justification for increasing civil court fees in the manner set out in that consultation paper. The reasons for this are, in very brief summary:

- The civil courts and the family courts pose different social and economic issues. They have historically, and correctly, been treated as distinct areas of the overall justice system. There is no sound basis for merging the budgets of the civil and the family courts.
- The civil courts are self-financing, while the family courts run at a significant deficit. The Ministry's proposals involved increasing fees in the civil courts solely in order to fund the shortfall in the family courts. This is unjustifiable.
- A civil justice system is essential to the proper functioning of any democratic society. It should not be treated as a means to impose what are, in

substance, taxes on those who are unfortunate enough to find themselves engaged in disputes.

- Increasing issue fees in the civil courts to 5% of the value of money claims risks imposing prohibitive costs on SMEs and individuals and, as a result, obstructing, even denying, access to justice.
- Any additional funds raised by higher fees in the civil courts should be reinvested in the civil justice system in order to improve the quality of the service provided.

The proposals in the Consultation Paper pursue further the Ministry of Justice's misguided policy set out in *Court fees: proposals for reform* of increasing fees in the civil courts in order to subsidise those involved in proceedings in the family courts. For the reasons given above, there is no justification for that policy. The Committee therefore considers that there is no good reason for the fee increases proposed in the Consultation Paper.

The Committee's comments below on the specific proposals in the Consultation Paper are subject to the general point that the Committee does not accept that there is any justification for increases in civil court fees.

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

No.

The Consultation Paper correctly points out that the increased fee will be added to the debt to be recovered from the losing opponent. In the case of possession claims, losing opponents will usually be tenants who have failed to pay their rents or mortgagors who have fallen behind in their repayments. They will therefore already be in financial difficulties and facing eviction from their homes. Imposing higher fees on this vulnerable category - in effect, a tax in order to fund the family courts - is a wholly inappropriate policy measure.

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?

No.

These increases will only serve to exacerbate the effect of the increase in issue fees in rendering access to justice less affordable, or even unaffordable, for many small businesses and individuals.

Even if there were no reasons of principle to object to this proposal, it is inappropriate for the fee for applications by consent to be the same as the fee for applications without notice. Applications by consent generally require little or no judicial time, unlike without notice applications, and should attract a lower fee.

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?

The Committee considers that the fee increases are, as a whole, unjustifiable.

27 February 2015

**THE CITY OF LONDON LAW SOCIETY
Litigation Committee**

Individuals and firms represented on this Committee are as follows:

Simon James (Chairman)	Clifford Chance LLP
Jan-Jaap Baer	Travers Smith LLP
Duncan Black	Field Fisher Waterhouse LLP
Patrick Boylan	Simmons & Simmons LLP
Tom Coates	Lewis Silkin LLP
Jonathan Cotton	Slaughter & May 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
Iain Mackie	Macfarlanes LLP
Michael Madden	Winston & Strawn LLP
Gary Milner-Moore	Herbert Smith Freehills LLP
Hardeep Nahal	McGuireWoods LLP
Stefan Paciorek	DWK LLP
Kevin Perry	Cooley (UK) LLP
Patrick Swain	Freshfields Bruckhaus Deringer LLP