



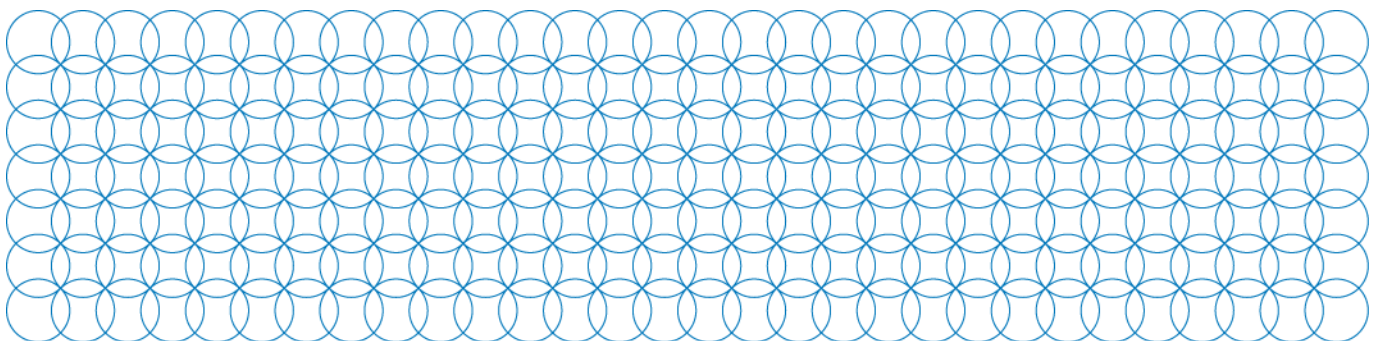
Ministry of  
**JUSTICE**

# **Fees in the High Court and Court of Appeal Civil Division**

Consultation Paper CP15/2011

This consultation begins on 15 November 2011

This consultation ends on 7 February 2012







Ministry of  
**JUSTICE**

## **Fees in the High Court and Court of Appeal Civil Division**

**A consultation produced by the Ministry of Justice. It is also available on the  
Ministry of Justice website at [www.justice.gov.uk](http://www.justice.gov.uk)**

## About this consultation

- To:** This consultation is aimed at users of the High Court and Court of Appeal Civil Division, the legal profession, the judiciary, the advice sector and all with an interest in this area in England and Wales.
- Duration:** From 15 November 2011 to 7 February 2012
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- How to respond:** Please respond online at [www.justice.gov.uk/consultations/consultations.htm](http://www.justice.gov.uk/consultations/consultations.htm) by 7 February 2012.  
Alternatively please send your response to:  
email: [mojfeespolicy@justice.gsi.gov.uk](mailto:mojfeespolicy@justice.gsi.gov.uk)  
or by post to:  
Diane Flanders, Ministry of Justice, Post point 4.32,  
102 Petty France London SW1H 9AJ
- Additional ways to feed in your views:** For additional ways to respond please use above email address
- Response paper:** A response to this consultation exercise is due to be published by 7 May 2012 at: [www.justice.gov.uk](http://www.justice.gov.uk)

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## Executive summary

In 2010/11 the cost of running non-criminal business in the courts service in England and Wales was around £612m a year. Of this, around 80% is funded through court fees. The remaining amount of around £121m is funded by the taxpayer as part of the Ministry of Justice's resource budget.

The Government's overall aim is for fees to cover 100% of the cost of providing civil justice in the courts by the end of the current spending review period (2014/2015), minus income foregone to fee remissions. In other words, we wish for the taxpayer contribution to be limited to those who can't afford court fees, with the user paying where it is possible for them to do so.

While it is the aim for the end of the current spending review period, a move to 100% recovery would be premature at present. Due to wide-ranging changes underway in civil justice and the wider justice system, HM Courts & Tribunals Service (HMCTS) currently has, and will have in the short to medium term, a highly variable cost base. Many of these changes have as their overriding aim to increase efficiency in the courts and tribunals services, with the potential effect of reducing overall cost; if we were to increase all fees to their full-cost levels we risk over-recovering for the cost of running the service.

Rather than risk this outcome, the Ministry of Justice aims to take measured and targeted steps to increase court fee income towards full-cost levels in the short term. This will have the double effect of reducing taxpayer subsidy of the courts service as far as possible while ensuring that, while the overall cost base is variable, that we do not take in court fees more than the cost of providing courts services.

The proposals outlined in this consultation paper focus on fees taken in the High Court and Court of Appeal Civil Division. These two jurisdictions hear the most complex of civil court cases, and are particularly resource-intensive to run. The fees structure<sup>1</sup> currently does not reflect the cost of providing services in these courts, meaning that there is a significant gap between costs and fee income. We propose to make targeted changes to these structures in order to more closely align costs and income for the High Court and Court of Appeal Civil Division.

Implementation of the proposals outlined below will mean that the taxpayer contribution to the HMCTS will be reduced and targeted towards those who need it most. The proposals can be summarised as follows:

- increases to some of the current fee charges in the High Court and Court of Appeal Civil Division

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<sup>1</sup> Full details of fees payable in the High Court and Court of Appeal can be found in the Civil Proceedings Fees Amendment Order 2011: [www.legislation.gov.uk/uksi/2011/586/made](http://www.legislation.gov.uk/uksi/2011/586/made)

- introduction of some new fee charges in the High Court and Court of Appeal Civil Division
- increases on the current bands of issue fees (the current maximum is payable on a claim in excess of £300,000) – these will be applicable in the county courts, but because of jurisdictional limits will have a negligible impact outside of the High Court
- introduction of time-related hearing fees in the High Court and Court of Appeal Civil Division to reflect the increased cost involved in providing longer trials.



## Introduction

This paper sets out for consultation proposals on reforming the fees structure in the High Court of England and Wales and the Court of Appeal of England and Wales Civil Division.

The consultation is aimed at users of the civil and family courts, the tribunals service, the legal profession, the judiciary, the advice sector and all with an interest in this area in England and Wales.

This consultation is conducted in line with Code of Practice on consultation and falls within the scope of the Code. The consultation criteria, which are set out on page 51, have been followed.

An impact assessment and equality impact assessment initial screening have been completed for these proposals. These documents have been published alongside this consultation paper. All users of the High Court and Court of Appeal Civil Division who are not entitled to a fee remission may be affected by the proposals included in this consultation paper; initial analysis indicates that those who are disabled or of minority ethnic origin may be more heavily impacted than other groups, and further information on the effect of the proposals on these and other groups is invited as part of this consultation. The proposals are likely to lead to additional costs for businesses.

Comments on the impact assessment and equality impact assessment initial screening, and the specific questions they contain, are very welcome.

Copies of the consultation paper are being sent to:

The senior judiciary and the Judicial Office of England and Wales

Council of Her Majesty's Circuit Judges

Association of District Judges

Civil Justice Council

Family Justice Council

Justices' Clerks' Society

Law Society

Bar Council

Resolution

Association of Personal Injury Lawyers

Institute of Legal Executives

London Solicitors Litigation Association

Civil Court Users Association

Advice Services Alliance

Citizens Advice

Local Government Association

Other Government Departments

HM Inspectorate of Court Administration

Legal Services Commission

CityUK

The Federation of Small Businesses

Confederation of British Industry

British Chamber of Commerce

Immigration Law Practitioners Association

## **Background and strategy**

### **Civil law in the United Kingdom**

1. Civil law is the branch of law which involves disputes between individuals or organisations. The civil law courts, to which this consultation paper relates, are one way of resolving disputes involving torts (where one party believes themselves to have been wronged by another), contract disputes, property disputes, administrative law, commercial law, and any other matter that involves private parties and organisations.
2. In the UK, civil law is generally split by jurisdiction depending on the type and value of claim:
  - Magistrates' courts, which deal with some family cases and selected civil matters
  - County courts, which process the majority of civil cases
  - The High Court, which hears the highest value and most complex civil cases, and also hears appeals from the lower civil courts. The High Court is based at the Royal Courts of Justice in London, but also has a number of District Registries around England and Wales which can hear almost all High Court cases.
  - The Court of Appeal Civil Division, which hears civil appeals from the High Courts and from the county courts.
  - The Supreme Court of the United Kingdom, which is the highest appellate court in the UK.

### **Court fee policy**

3. The cost of running the civil and family courts is currently around £612m a year. Of this amount, 80% is funded through court fees with the remaining 20%, around £121m, funded by the taxpayer as part of the Ministry of Justice's spending settlement. This amount is made up of two elements:
  - fees set below full-cost levels (e.g. the fee charged does not cover the actual cost to the court to process the work being charged).
  - fee income foregone under a system of fee remissions; this system offers full or part exemption from payment to those who can't afford to pay a court fee. It ensures that access to justice is preserved for the less well off. In 2010/11 162,048 fee remissions were granted at a total value of £24.7m.

4. The Government's long-term aim is to reduce this taxpayer subsidy by ensuring that fee income covers 100% of the cost of providing civil court services, minus the income foregone to the remission system. This will offer a fairer system to the taxpayer by targeting their contribution where it is most needed. The policy of full-cost recovery ensures that, as far as possible, users pay for the service they receive, while access to justice is protected for those who can't afford court fees.
5. The Government's court fee policy is therefore based on the principle of 'full-cost pricing'. In other words, fees should be set at levels calculated to cover the full cost of the system if they were paid in full in every case. Full-cost pricing, together with a remission system to protect the less well-off, is the best way of targeting the taxpayer's contribution to where it is most needed.
6. The following (non-exhaustive) list gives an insight into the various ways by which fees finance the courts:
  - accommodation (court buildings) and furnishings;
  - running court buildings (utilities);
  - salaries and expenses for court staff and the judiciary;
  - information technology and telephone systems;
  - new and ongoing estates maintenance;
  - stationery, office equipment and resources; and
  - shared costs from the Ministry of Justice - e.g. human resources, training.
7. Court fees have to comply with the legal and policy principles that apply to all services where the Government charges fees under statutory powers. General policy on fee charging is set out in HM Treasury's "Managing Public Money – Charges and Levies"<sup>2</sup>. It requires every fee-charging service to have a financial objective for the level of cost recovery agreed between the responsible minister and the Treasury. The default position is that fees should cover the full cost of the service but no more. Subsidies can be agreed where there is a sound policy justification; the remission system is one example of this.
8. As court fees should reflect the cost of running the service, any changes must be made in an informed and rational way and be based upon a stable platform. While our long-term aim is for court fees to cover the cost of running the service (minus remissions) civil justice is currently going through a period of considerable change, the result of which is that over the current spending review period HMCTS' cost base is likely to be highly variable. The risk of moving to 100% cost recovery in this climate is that we would recover

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<sup>2</sup> [www.hm-treasury.gov.uk/psr\\_mpm\\_index.htm](http://www.hm-treasury.gov.uk/psr_mpm_index.htm)

more than the cost of providing the service; for this reason it would be premature to simply increase all court fees to full cost in the short term. Our strategy is therefore to make targeted, staged changes to the fees structure. The proposals contained within this consultation paper represent one such stage.

9. We remain committed to delivering a simpler and more sustainable fee charging regime, with the support of HM Treasury. The benefits of a more streamlined and efficient system will be shown in the cost of providing the services and reflected in the level of fees in the medium and longer term, ensuring value for money to the users of the services provided. Transparency about the cost of services allows users to make rational decisions about whether to issue cases in court or to pursue alternatives, such as mediation, where appropriate.

### **Civil justice: the current landscape**

10. Civil justice in England and Wales is currently going through a period of considerable change. These changes are the result of a drive to make savings and reduce costs in order to create a more effective, efficient justice system, and form a key part of the Ministry of Justice's business plan for 2011-2015<sup>3</sup>. The business plan sets out the department's vision to reform courts, tribunals and legal aid, and details the steps it will take to realise this vision.
11. These reforms are varied and affect all areas of the justice system, but the most relevant for the purposes of this consultation are:

### **Consultation on reforms to civil justice**

12. A consultation entitled "Solving disputes in the county courts: creating a simpler, quicker and more proportionate system"<sup>4</sup> was published by the Ministry of Justice in March 2011. The consultation sets out proposals for widespread reform of the civil justice system, including increasing the use of alternative dispute resolution, simplifying claims processes and implementing reforms to enforcement procedure. The document also includes proposals around increasing the jurisdictional limits of the county courts, as well as granting the county court powers currently reserved for the High Court. This would have the effect of moving some cases currently heard at the High Court into the county court system, leaving the High Court to focus on the highest value and most complex disputes. The government response to the consultation is due to be published.

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<sup>3</sup> Ministry of Justice Business Plan 2011-2015: [www.number10.gov.uk/wp-content/uploads/MOJ-Business-Plan1.pdf](http://www.number10.gov.uk/wp-content/uploads/MOJ-Business-Plan1.pdf)

<sup>4</sup> Available on the Ministry of Justice website at: [www.justice.gov.uk/consultations/consultation-cp6-2011.htm](http://www.justice.gov.uk/consultations/consultation-cp6-2011.htm)

## **The Family Justice Review**

13. The Family Justice Review<sup>5</sup>, led by David Norgrove, is a wide scale review into the effectiveness of the family justice system and the outcomes it delivers. The review published its interim report on 31 March 2011; the report outlines a number of reforms which aim to bring greater coherence to the family justice system as a whole. The review published its final report on 3 November 2011. Fees paid in family cases are within the scope of the review. In order not to pre-empt any forthcoming changes to the way that family justice is run in this country, these fees are out of scope of this consultation.

## **Reform of court processes and the courts estate**

14. It was announced by the Ministry of Justice on 14th December 2010 that 142 courts across England and Wales would be closed in order to rationalise the courts estates. Closure plans will continue over the next three years, with associated reductions in estates and maintenance as well as staffing costs. The savings from these reforms will be realised gradually, and will result in a changeable cost base over the current spending review period (2009/10-2014/15).

## **Legal Aid reform**

15. A consultation was published by the Ministry of Justice in November 2010 outlining proposals for the wide-ranging reform of legal aid in England and Wales; the proposals aim to ensure that legal aid is targeted to those who need it most. The Government's response to this consultation was published in June of this year; it is estimated that the reforms will bring around £350m in savings. While savings to the legal aid budget are not part of HMCTS's cost base by 2014/15, a decrease in the scope and eligibility of the legal aid scheme may have an effect on the behaviour of current and potential court users.

## **Reforming civil litigation funding and costs**

16. The Government consulted between November 2010 and February 2011 on implementing a package of reform to civil litigation funding and costs, as recommended by Lord Justice Jackson in his review of civil litigation costs. This includes abolishing recoverability of conditional fee agreement success fees and after the event insurance premiums. The response to the consultation was published in March 2010, and those reforms which require primary legislation to implement are now being taken forward through the Legal Aid, Sentencing and Punishment of Offenders Bill, currently before Parliament.

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<sup>5</sup> Available on the Ministry of Justice website at [www.justice.gov.uk/about/moj/independent-reviews/family-justice-review/](http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review/)

## **Proposals to implement fees in the Asylum & Immigration and Employment Tribunals**

17. On 21 October 2010 the Ministry of Justice published a consultation paper on introducing fee charges for appeals in the Immigration and Asylum chambers of the first-tier tribunal and the Upper Tribunal. This consultation closed on 21 January 2011, and the government response announced the intention to introduce fees amounting to around 25% cost recovery levels for these jurisdictions. These fees will be payable from November 2011.
18. The Government also announced its intention in early 2011<sup>6</sup> to introduce fee-charging into employment tribunals and the Employment Appeals Tribunals, as part of the wider reforms to support and encourage early resolution of workplace disputes and in order to transfer the cost burden from the taxpayer to the users of the system. A consultation on this subject will be published in due course.
19. In addition to these specific changes, the proposals outlined in this document must be seen within a wider economic context. As part of the government's economic reform, the Ministry of Justice is committed to making savings of 23% to the department's budget of £8.3bn. Every part of the department recognises the imperative for savings to be made wherever possible. There is no alternative to optimising income where it is within our power to do so; where users are able to pay for the services they use, it is right for them to bear the burden rather than the taxpayer. For the courts service, this means we must make sustainable and targeted increases to court fees so that the user pays the whole cost of their case being progressed wherever possible. At the other end of the scale, where someone can't afford a court fee, we must target the taxpayer subsidy towards those who are in most need.

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<sup>6</sup> Resolving Workplace Disputes [www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf](http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-511-resolving-workplace-disputes-consultation.pdf)

## Proposals – fees in the High Court

### Introduction and aims

20. The following chapters set out proposals for reforming the fees structure in two of the higher civil jurisdictions: the High Court and the Court of Appeal Civil Division. The overall aim of these proposals is to make changes to the fees structures in the higher civil jurisdictions which will more accurately reflect the cost of providing services to users of these courts.
21. We wish to differentiate between the county court (a forum for resolving disputes and less complex points of law) and the High Court and Court of Appeal Civil Division (for more complex first hearing cases and appeals), which use resources more intensively, and to reflect this difference in an appropriate fees structure. These changes will reduce the current gap between court fee income and the cost of running the courts service, while recognising that the cost base of HMCTS is currently going through a period of considerable changes and that it would be premature to take all fees to full cost in the short term.

### The fee charging structure and costs in the civil courts

22. The fee charging structure between the county court and High Court jurisdictions is currently closely aligned. While there are some fees payable in the High Court only, for work specific to that area, fees for cases which are heard in both jurisdictions are almost identical.<sup>7</sup>
23. Conversely, Court of Appeal fees are not aligned to those of any other jurisdiction. The court has an extremely simple fee charging structure based on two basic fees: £235 for permission to appeal and £465 to proceed to a full appeal.
24. In both the High Court and Court of Appeal, the fee charging structures mask several areas where the cost of providing court services is considerably higher than in the county courts. One such area is hearings: the fee for a multi-track hearing in both the High Court and the county courts is £1090. However, High Court hearings on average last around five times longer than their equivalent hearings in the county courts, so average costs will be considerably higher.
25. The Court of Appeal, on the other hand, does not have a specific hearing fee – the cost of hearing appeals is represented only by the £465 appeal fee. This contrasts sharply with the actual cost of providing appeals: the judicial time alone for the average appeal has been calculated at £2,142. This is discussed in more detail from page 31.

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<sup>7</sup> See Civil Proceedings Fees (Amendment) Order 2011 [www.legislation.gov.uk/uksi/2011/586/made](http://www.legislation.gov.uk/uksi/2011/586/made)



26. Hearings are just one example of the increased cost associated with High Court and Court of Appeal work – this example and others are set out in more detail within this consultation paper. As well as estate rental and maintenance costs, the High Court and Court of Appeal Civil Division have higher general costs:

- administrative costs: these are higher for the more complex cases that the High Court and Court of Appeal hear
- judicial costs: where cases are more complex and hearings longer, greater judicial input is needed, at a higher cost.

## Scope

27. The fees in scope of these proposals are as follows:

- All civil fees (i.e. where fees fall under the Civil Proceedings Fees Order) paid in the High Court, both in London and in the District Registries
- All fees paid in the civil division of the Court of Appeal.

28. While in the long term further consultations on court fees will be published, the following fees are out of scope of the current proposals:

- Magistrates' court fees
- County court fees (except increases in issue fees, which are applicable in both the county and High Court)
- Supreme Court fees
- Non-contentious probate fees
- Court of Protection fees
- Fees paid in family cases in the High Court (i.e. where fees fall under the Family Proceedings Fees Order)

29. In the following proposals “the fees order” refers to the Civil Proceedings Fees (Amendment) Order 2011, which came into force on 4 April 2011. “The High Court” means the High Court of England and Wales, including work carried out at the Royal Courts of Justice (and its associated sites in London) and in District Registries in the regions. “The Court of Appeal” or “CoA” means the Civil Division of the Court of Appeal of England and Wales.

## Issue fees in the High Court

30. An issue fee is paid at the inception of a specified or unspecified money claim, and as such is the initial fee payable in the court system for many cases. Issue fees for money claims in both the High Court and the county courts are banded by the amount that is being claimed; fees range from £35 where a claim does not exceed £300, to £1670 for a claim in excess of £300,000 (full model set out below). The High Court hears the highest-value claims; almost all claims brought to the High Court are for £25,000 or more<sup>8</sup>.
31. Although it is not always the case, there is a broad correlation between the amount for which a claim is issued and the amount of court resource it will use over the life of the case. The High Court hears the highest value, and generally the most resource intense, civil cases: many claims exceed £1m in value, with some exceeding £1bn. This is not fully reflected in the current issue fee structure because the current maximum band is for claims which exceed £300,000. These bands were set several years ago when fewer claims exceeded this level. While someone issuing a claim up to £300 will pay over 10% of the value of their claim in a court fee (£35), once a claim exceeds £1m they pay only around 1% (£1670).
32. We propose to add additional bands over the current limit to reflect the increasing value of claims issued. As with the existing bands, we have calculated these fees on a sliding scale based on the value of the case, with the maximum fee payable being £10,000. This would be payable on a claim exceeding £1bn.
33. The model proposed for the additional bands is as follows. Existing bands and fee charges are shown in plain text, with new bands and their fees in italics. The existing fee charge (n) in the table below is proposed to be revalued:

Where a claim:

<b>Claim band</b>	<b>Proposed fee</b>
(a) does not exceed £300;	£35
(b) exceeds £300 but does not exceed £500;	£50
(c) exceeds £500 but does not exceed £1,000;	£70

<sup>8</sup> Jurisdictional thresholds are set out in part 7 of the Civil Procedure Rules  
[www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm)

(d) exceeds £1,000 but does not exceed £1,500;	£80
(e) exceeds £1,500 but does not exceed £3,000;	£95
(f) exceeds £3,000 but does not exceed £5,000;	£120
(g) exceeds £5,000 but does not exceed £15,000;	£245
(h) exceeds £15,000 but does not exceed £50,000;	£395
(i) exceeds £50,000 but does not exceed £100,000;	£685
(j) exceeds £100,000 but does not exceed £150,000;	£885
(k) exceeds £150,000 but does not exceed £200,000;	£1,080
(l) exceeds £200,000 but does not exceed £250,000;	£1,275
(m) exceeds £250,000 but does not exceed £300,000;	£1,475
<del>(n) exceeds £300,000 or is not limited.</del>	<del>£1670</del>
<i>(n) exceeds £300,000 but does not exceed £500,000.</i>	<i>£1,800</i>
<i>(o) exceeds £500,000 but does not exceed £1,000,000.</i>	<i>£2,300</i>
<i>(p) exceeds £1,000,000 but does not exceed £5,000,000.</i>	<i>£3,400</i>
<i>(q) exceeds £5,000,000 but does not exceed £10,000,000.</i>	<i>£4,500</i>
<i>(r) exceeds £10,000,000 but does not exceed £50,000,000.</i>	<i>£5,500</i>
<i>(s) exceeds £50,000,000 but does not exceed £100,000,000.</i>	<i>£6,500</i>

<i>(t) exceeds £100,000,000 but does not exceed £500,000,000.</i>	<i>£7,500</i>
<i>(u) exceeds £500,000,000 but does not exceed £1,000,000,000</i>	<i>£9,000</i>
<i>(v) exceeds £1,000,000,000 or is unlimited</i>	<i>£10,000</i>

34. This model reflects the fact that claim amounts now regularly outstrip the current ‘exceeds £300,000’ maximum threshold. As this is more often the case in commercial litigation than in disputes between individuals, we are aware that the proposed model is likely to have a larger impact on corporations than on individuals – increasingly so at the very highest bands.
35. While the model would be applicable to both county and High Court work, the model would impact on cases issued for more than £300,000 only, which will almost certainly be heard in the High Court (only 0.6% of money claims issued in the county courts are for £50,000 or above<sup>9</sup>).
36. Where commercial litigation in the High Court is concerned, it is vital to be aware of the potential effects of court fee increases on the legal sector in the UK. The legal sector contributed around £23bn to the UK in 2009, or about 1.8% of GDP, with an estimated 320,000 employed in the sector. Net exports of legal services in the UK stand at just under £2.5bn<sup>10</sup>.
37. London in particular is a landmark centre for high-value global commercial litigation, with about 90% of disputes handled by international law firms involving at least one party that is based elsewhere in the world. This has been underpinned by the opening of the Rolls Building in 2011; this is a new court which brings together the Chancery Division, Technology & Construction Court and Commercial Courts as a designated centre for business law. The Rolls Building is a key part of the Government’s plan to strengthen the UK as a centre of international dispute resolution; this is outlined in the document “Plan for Growth: Promoting the UK’s Legal Services Sector”, published by the Ministry of Justice and UK Trade and Investment in March 2011<sup>11</sup>.
38. In developing this model, and the model outlining changes to hearing fees (page 26 below), we have taken into account the position that UK legal services holds worldwide. In the Rolls Building, where a significant proportion of the highest High Court claims are likely to be issued,

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<sup>9</sup> Ministry of Justice judicial and court statistics 2009/10  
[www.justice.gov.uk/publications/judicialandcourtstatistics.htm](http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm)

<sup>10</sup> Source: The City UK Legal Services report February 2011  
[www.thecityuk.com/assets/Uploads/Legal-Services-2011.pdf](http://www.thecityuk.com/assets/Uploads/Legal-Services-2011.pdf)

<sup>11</sup> For full details the plan is published on the Ministry of Justice website at:  
[www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/legal-services-action-plan.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/legal-services-action-plan.pdf)

applicants have access to a judiciary with considerable expertise in commercial litigation, as well as an international reputation for quality. We do not wish to undermine this; however, it is our aim that those whose cases consume more resource should be charged in a way that is proportionate to the cost incurred to the courts service. We believe that the model proposed will achieve this, and we do not believe it will have a significant impact on commercial litigation in this country. We welcome respondents' views on this aspect of this proposal in particular.

#### **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.**

#### **Bills of Sale**

39. A bill of sale is a legal document which records the sale of an item of personal property from a consumer to a lender. The item does not change hands and the consumer is able to continue to use the property.
40. Increasingly, the largest users of bills of sale are 'logbook' lenders, who issue loans secured against a consumer's car to clients with a poor credit rating. If the consumer defaults on the payment the lender can take possession of the property without a court order, meaning that bills of sales are now being used primarily as a way to recover a debt in a similar way that an enforcement order would be. However, unlike an enforcement order, a bill of sale allows a lender to bypass the claim and judgement process usually needed to recover a debt; this reduces the time and cost for the lender.
41. Currently, bills of sale can only be obtained in the High Court and the fee for this is £25. We propose that obtaining a bill of sale should be included along with other methods of enforcement in the High Court, for which the fee is £60.

#### **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.**

#### **Judicial review fees**

42. The judicial review process (carried out at the Administrative Court of the High Court) is one where an applicant who feels that their rights have been violated as a result of a decision made by a court, tribunal, public body or person exercising a public function, can request to have the decision

43. Judicial review claims are in two parts: permission and continuation. Under the Civil Procedure Rules<sup>12</sup> an applicant must first gain the permission of the High Court to apply for judicial review; without this permission their further application is not admissible to the court. Permission may be refused if one of the following conditions is not satisfied:
- The application must be made within three months from the date when the grievance arose.
  - The applicant must have sufficient interest in a matter to which the application relates.
  - The application must be concerned with a public law matter, i.e. the action must be based on some rule of public law, not purely tort or contract.
44. At the permission stage the merits of the case must be fully considered; this is generally done by a judge, who will consider the merits of the case on paper. If the judge grants permission the court serves the order. If the judge refuses permission the claimant can request an oral hearing within seven days at no extra charge.
45. The current £60 fee does not reflect the cost of considering cases at the permission stage, whether they proceed to oral hearing or not. As the judicial review procedure is a type of appeal, we recognise a similarity in cost to the courts of processing the two types of case. Reflecting this, we propose to increase this fee to £235; this is the same fee as appellant's notice at the High Court (the fee for commencing appeal proceedings).
46. We also propose to increase the fee for beginning a judicial review other than through the formal judicial review procedure. This fee is also £60; we propose to make the same increase to £235. This is a parallel fee to the permission fee described above, and gives provision for the very rare cases where judicial review begins outside of the usual process. In 2009-2010 there were only 4 of these cases so we expect the impact of this particular increase to be negligible.
47. Continuation is the second stage of a judicial review application, where the case proceeds to full hearing; this fee charge is therefore effectively a hearing fee for this type of case. The current fee for continuation of a judicial review is £215.
48. We consider that this does not reflect the true cost of hearing judicial review cases; we therefore propose to increase the fee. However, we accept that judicial review cases can involve those who claim to have

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<sup>12</sup> [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm)

been wronged by a public body; we have also taken into account the proposed increase above to the fee for permission to apply for judicial review, which almost all applicants must pay before they pay the continuation fee.

49. It is therefore proposed to make only a small increase to the continuation of a judicial review fee from £215 to £235. These two proposals combined would take the full cost of a judicial review to £470.
50. Those whose cases are successful are eligible to have their costs reimbursed. Additionally, as with all proposals included in this consultation document, the fee remission system remains in place for those who can't afford to pay a court fee.

### **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.**

### **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.**

### **Schemes of arrangement**

51. A scheme of arrangement is an agreement between a company and its shareholders or creditors which alters the structure of a company. They are generally used to restructure debt. An application for a scheme of arrangement can only be made in the Companies Court of the High Court.
52. Processing applications for schemes of arrangement involves considerable resource at the Companies Court. Each case involves a minimum of two hearings; almost all schemes of arrangement also involve reduction of capital, which involves up to two further hearings. Additionally, each case involves several hours of administrative time outside of hearing in order to assess the evidence submitted.
53. The fee for these applications is currently £155, which does not reflect the considerable resource involved in processing these applications. We propose to raise this fee to £340, an approximate doubling of the current fee. We do not necessarily consider this to be the full cost of processing these applications; the resource needed per application can vary widely. However, we consider that increasing to £340 will cover more of the cost of these applications without making the fee disproportionately high.

**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.**

**Fees for applications where no other fee is specified at the High Court**

54. These are general applications made either by the claimant or by the respondent when two parties are already engaged in proceedings. A party seeking the direction of a judge on a particular point may submit an application to the court in one of two ways:

- on notice: this is where the other party is informed of the application. Where an application is on notice the other party is notified and a hearing is listed in the court's diary, except where the court deems that a hearing is not necessary. This will be heard by a judge, master or registrar depending on the jurisdiction and type of application. This fee is higher than the application by consent or without notice fee as it necessarily leads to a hearing, whereas the latter does not.
- without notice (or by consent of both parties). An application without notice is one where the other party is not informed of the application; this may happen where informing the other party would lead to the order being compromised (e.g. with a search or freezing order). It may also happen with certain types of application which have been deemed suitable to be granted without a hearing. An application by consent is where both parties agree to seek an order or direction.

55. There is currently a two-tier fees structure for these applications as follows:

On an application on notice	£80
On an application by consent or without notice	£45

56. The £80 fee for an application on notice currently does not reflect the cost to the court of processing these applications. This cost has been assessed as being £105<sup>13</sup>; we therefore propose an increase to this level.

57. However, from a wider perspective this structure does not fully reflect the process for interlocutory applications in the High Court. Some applications without notice lead to urgent hearings or decisions. At the judgement of listing staff, applicants can often appear before a judge or master within several hours of informing the court of their application, and waiting times rarely exceed three days – the RCJ has a dedicated court and a judge for

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<sup>13</sup> Source: HMCS fees model



these applications. Common reasons for urgent applications include requests to freeze assets or to delay deportation proceedings. These applicants currently pay the £45 fee above.

58. Such applications allow claimants to sidestep the usual listing process, where an application would be listed for hearing several weeks, and sometimes months, from the application date. We propose that these applicants should pay the higher application fee of £105, to reflect the fact that they are receiving a fast-tracked service in comparison to the usual process.
59. Proceeding to urgent hearing would not be at the discretion of the applicant; an applicant would, as now, have to show that their case is urgent in order to be heard at short notice. Whether a case is heard urgently is the decision of court staff and/or a member of the judiciary; this model would continue under the proposed structure. This will prevent applicants from being able to pay the higher hearing fee simply to avoid the usual listing process and waiting time.
60. This would lead to a three-tier fees structure for these applications as follows:

On an application on notice	£105
On an application at the High Court which leads to an urgent hearing	£105
On an application by consent or without notice	£45

<p><b>Question 6</b></p> <p><b>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.</b></p>
<p><b>Question 7</b></p> <p><b>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.</b></p>

### **Fees for general searches at the High Court**

61. It is common for individuals to request to search the court records, both in the county courts and the High Court. In the High Court it is especially common for members of the press to search the records, especially in high-profile cases – these searches can take significant amounts of time. This service is currently provided for free as there is no vehicle in the fees order to charge – there is currently a fee of £45 for an official certificate of

62. The simplest way to correct this anomaly would be to align the fee for general searches with the current fee for an official certificate of a search (£45); this would simply constitute a rewording of the existing fee.

#### 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.**

#### Time-related hearing fees for High Court cases

63. Currently, hearing fees in both the county courts and High Court are payable by band based on the track to which a case has been allocated. There are three tracks: the small, fast or multi-track; the track to which a case gets allocated is determined by its value and complexity<sup>14</sup>.
64. The fee for a multi-track trial, regardless of jurisdiction, is currently £1,090. All High Court trials fall into this band; High Court users therefore pay £1,090 for a hearing regardless of its length. This structure does not reflect the huge variance in hearing lengths in High Court cases, which can range from minutes to several weeks spent in court. The £1,090 hearing represents the assessed cost<sup>15</sup> of running a trial for one day; this includes judicial and administrative time as well as other shared costs such as estates and maintenance.
65. We propose to introduce a model by which High Court litigants would be charged hearings fees by the time their cases consume in court; such a model would more accurately reflect the cost to the courts of providing longer hearings. Several potential models for achieving this aim were explored as this consultation was developed; one such model was to introduce daily hearing fees across the jurisdiction. In this model litigants would be charged retrospectively for the time their trial lasted, by the day or half day; this proposal has been raised in previous court fee consultations, and has met with some opposition due to its administrative complexity and because those whose hearings were particularly long may be faced with particularly large fees to pay at the conclusion of their case. There was also concern raised that fees would become unpredictable for litigants.
66. To mitigate these risks we have developed a model which is more similar to the current structure, where a set and one-off hearing fee is payable at

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<sup>14</sup> For more details on track allocation please refer to the Civil Procedure Rules part 26 [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm)

<sup>15</sup> Source: HMCTS fees model

the time a case is listed for trial. At the High Court the hearing date and length is generally decided upon between parties at a case management conference or pre-trial hearing around eight week in advance of the trial. We propose to introduce hearing fees based on the projected length of a trial as decided between the parties and the court. In order to keep the system as simple as possible we propose to charge by bands of time rather than by the day or half day. We propose to keep the current hearing fee charge of £1,090 for those hearings which last one day or less, meaning that cases which lead to the shortest trials will pay the same fee as they currently do.

67. We have developed the model below based on a multiplier of the current multi-track hearing fee of £1,090, which is the calculated average cost of a one-day trial across the courts service. The uppermost band is for a trial exceeding ten days in length, for which the claimant would pay £10,900; this is the maximum fee any litigant could pay regardless of the length of their trial.

68. The model proposed is as follows (extract from the Civil Proceedings Fees (Amendment) Order 2011<sup>16</sup>). New fees and wording are in red:

2.3 On the occasion of fee 2.2 becoming payable; or where the claim is on the small claims track, within 14 days of the date of despatch of the notice (or the date when oral notice is given if no written notice is given) of the trial week or the trial date if no trial week is fixed a fee payable for the hearing of:	
(a) a case on the multi-track in the county court;	£1,090
(b) a case on the multi-track in the High Court where the trial is projected to last one day or less	£1,090
(c) a case on the multi-track in the High Court where the trial is projected to exceed one day but not exceed three days	£3,270
(d) a case on the multi-track in the High Court where the trial is projected to exceed three days but not exceed five days	£5,450

<sup>16</sup> [www.legislation.gov.uk/ukSI/2011/586/made](http://www.legislation.gov.uk/ukSI/2011/586/made)

(e) a case on the multi-track in the High Court where the trial is projected to exceed five days but not exceed 10 days	£8,175
(e) a case on the multi-track in the High Court where the trial is projected to exceed 10 days	£10,900

69. We propose that if the actual length of the trial were to differ from the predicted length, the fee paid would not be subject to change – in other words, once the hearing fee had been paid there would be no refunds if a trial were shorter than expected and no additional fee asked if it were longer (refunds based on a case settling or being discontinued would remain – see below). We believe that this would give the best incentive to parties to accurately assess how long they will need in court. Although there is a risk that parties would attempt to underestimate the time they needed in court, we consider that the case management process, which involves parties and court staff, would minimise this effect. General provisions on the management of cases allocated to the multi-track are set out in parts 26 and 29 of the Civil Procedure Rules and the accompanying practice directions<sup>17</sup>.
70. As well as reflecting more closely the cost to HMCTS of providing High Court trials, time-related hearing fees would present litigants with a truer representation of the cost of litigation, meaning they may consider more carefully whether to proceed to full trial.
71. We propose to retain the current refund system for hearing fees in the case of settled or discontinued claims, which is:

(i) 100% if the court is notified more than 28 days before the hearing;
(ii) 75% if the court is notified between 15 and 28 days before the hearing;
(iii) 50% if the court is notified between 7 and 14 days before the hearing.

72. As with changes to issue fees proposed above, it is likely that it will be commercial, and not individual, litigants who will more often pay the highest bands of time-related hearing fees. This is because there is a general correlation (though there are many exceptions to this rule) between the

<sup>17</sup> Civil Procedure Rules online: [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menus/rules.htm)

value of a case and the time that case will use in court if it proceeds to that stage, and we understand that the highest-value cases are often brought between corporations rather than individuals.

73. Where proposals on daily hearing fees have been raised in previous consultations, significant concerns have been raised by legal firms and members of the judiciary specialising in corporate law. The foremost of these concerns has been the risk that increases to court fees may have an adverse impact on international litigation in London in particular. At least one overseas party is involved in the majority of commercial cases brought in the High Court in London; in many cases, the chosen jurisdiction for potential dispute resolution is set within initial contracts between corporations. The concern is that corporation would begin to choose jurisdictions other than the UK in which to resolve disputes, meaning a loss not only of court fee income to the UK government, but a wider financial loss to the legal sector in this country. As outlined in the section on issue fees above, this is a particular risk at a time when the Rolls Building, a landmark centre for commercial dispute resolution, is opening in London.
74. We do not believe that charging litigants proportionally to the time they use in court will undermine London's global position as a centre for international dispute resolution. We are aware that legal fees in the longest-running commercial cases can be seven- and eight-figure sums; we believe that where a corporation is incurring costs of this magnitude to bring a case, a hearing fee of up to £10,900 (where the time spent in court will be eleven days or more) will not be a major disincentive to opting for the UK as the first choice of dispute resolution. Equally, we believe that the unparalleled reputation of the judiciary in this country, and the body of knowledge they collectively hold where commercial dispute is concerned, is a primary reason that commercial litigants choose to come to the UK. We believe that litigants will continue to seek this quality of service if court fees were rise to the levels proposed in this document.
75. To give respondents a view of how hearing fees in the UK compare to overseas jurisdictions, below is a table of hearing fees in various jurisdictions which are likely to be alternative choices for international litigants. We have compared fees on a like-for-like basis as far as possible; however, as fees structures differ by country, please see the notes in the table (prices have been converted to GBP as at August 2011). We have included the cost of an 11- and 20-day trial, in line with the maximum hearing fee band proposed above, for purposes of comparison.

Country	Hearing fee range	11-day trial cost	20-day trial cost
England & Wales (current)	£1,090	£1,090	£1,090
England & Wales (proposed)	£1,090-£10,900	£10,900	£10,900
Scotland Court of Session Inner House	£100 upwards (fees payable by time per half hour)	£11,000 (based on 5-hour sitting day)	£20,000 (based on 5-hour sitting day)
Australia Federal Court	£2,265 setting-down fee plus £452 per day	£7,273 including setting down	£11,305
New Zealand Supreme Court	£807 per day after the first day	£8,877	£15,333
Canada Federal Court	Up to three days free  £94 per day plus administrative fees	at least £1,034	at least £1,880
Singapore Supreme Court	1st to 3rd days: free  £4,570 for the 4 <sup>th</sup> day  £1,015 for the 5th day  £1,523 per day for 6 <sup>th</sup> -10th days  £2,538 per day for 11th day onwards	£15,738 (for claims over £500k)	£38,580 (for claims over £500k)

76. This table shows that the UK is currently competitive within this group. If the model for time-related hearing fees described above were to be implemented, we believe that the UK would retain its competitive position against other jurisdictions. We welcome respondents' views on this.

#### 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.**

## **Proposals – fees in the Court of Appeal Civil Division**

### **The Court of Appeal**

77. The Court of Appeal sits in the Royal Courts of Justice in London, and is made up of two divisions:
- a) The Civil Division, which hears appeals from:
    - The three divisions of the High Court (Chancery, Queen's Bench and Family Division)
    - county courts across England and Wales
    - certain tribunals such as the Employment Appeal Tribunal and the Upper Tribunal.
  - b) The Criminal Division, which hears appeals from the Crown Court.
78. The Court of Appeal is the highest court within the senior courts of England and Wales, which also include the High Court and Crown Court.

### **The Civil Appeals Office**

79. The Civil Appeals Office is responsible for the administration of the Court of Appeal Civil Division.
80. The Office supports the Court in making the best use of the judicial resource. To that end it:
- verifies whether the Court of Appeal has jurisdiction to hear a case
  - ensures that all the papers necessary for determining the case are available and in good order
  - ensures that there is compliance with all procedural steps
  - manages the progress of each case from setting down to disposal
  - draws up the constitutions of the Court, and under the Direction of the Master of the Rolls supervises the allocation of cases to those constitutions
  - ensures that orders reflecting the decisions of the Court are properly drawn, and

- provides assistance to the legal profession and to individual litigants.
81. The Civil Appeals Office is staffed by 68 administrative and legal staff. The Registry receives more than 4500 appellants' notices and applications each year.
82. Appellants' notices which have been accepted are characterised by subject matter and issues and referred to a case manager, assisted by a pool of filing clerks. The head of each case management team is a specialist lawyer. Pursuant to the model recommended in 1998 by the Bowman Report, each lawyer works directly to a supervising Lord/Lady Justice. The lawyer summarises the grounds of appeal and works closely with the Master and supervising Lord/Lady Justice to ensure that each case proceeds as smoothly as possible and in compliance with the CPR. They obtain individual directions for the appeal time estimate, the number of judges required and relative judicial expertise required for each case. The lawyers identify similarities in different appeals and advise the court on the relative benefits of linking appropriate cases. In addition, the lawyers seek to resolve all pre-appeal issues on the papers where possible. In consequence, it is exceptional for case management issues to be listed before the full court, which preserves the senior judiciary for hearing contested appeals where possible. A team of judicial assistants then assist the presiding Lords/Ladies Justice in their preparation for appeals hearings.
83. The Civil Appeals Office is unique within the courts service in that its work is principally judicial rather than administrative. The court delegates judicial case management to office lawyers under the close supervision of the Master, Deputy Master and supervising Lord/Lady Justice. The Master is accountable to the Master of the Rolls for the handling of all appeals. Accordingly, all case handling systems are devised and operated by the judiciary or lawyers working directly to the judiciary. This is a highly resourced and cost-intensive case management system, the aim of which is to reduce the amount of judicial time required per case while ensuring that appeals proceed to a conclusion as quickly as possible.

### The current fees structure in the Court of Appeal

84. Currently, the fees structure within the court is minimal: fees are charged on a two-tier basis, for permission to appeal and full appeal. These are as follows<sup>18</sup>:

13.1(a) Where in an appeal notice, permission to appeal or an extension of time for appealing is applied for (or both are applied for):	£235
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<sup>18</sup> Extract from the Civil Proceedings Fees (Amendment) Order 2011: [www.legislation.gov.uk/ukSI/2011/586/made](http://www.legislation.gov.uk/ukSI/2011/586/made)



on filing an appellant's notice; or	
where the respondent is appealing, on filing a respondent's notice.	
13.1(b) Where permission to appeal is not required or has been granted by the lower court:	£465
on filing an appellant's notice, or	
on filing a respondent's notice where the respondent is appealing.	

85. The first fee of £235 is paid when an applicant seeks permission to appeal; at this stage the merit of their case is considered by the Civil Appeals Office and, on request, by a Lord Justice of Appeal. If their case is considered to have merit the applicant progresses to a full appeal, for which the fee is £465.
86. This structure simply does not reflect the costs involved in processing this work; for example, the average length of a substantive hearing (i.e. one which represents a full appeal, not the permission stage) in 2010 was 1.5 days<sup>19</sup>. These hearings will be heard by at least one Lord/Lady Justice (and up to three); the cost of the judicial time alone for this length of hearing is £2,142<sup>20</sup>.
87. In addition, the fee structure does not reflect the various stages of work involved in processing each case. Aside from the standard applications which trigger the fees for permission to appeal and full appeal, the court also reviews several thousand ancillary and minor applications each year, for which there is no charge.
88. We propose to revise the fees structure in order to better reflect the resources involved in processing appeals. The following proposals represent a fairer and more proportionate way of charging litigants bringing cases to this jurisdiction. It is proposed for fees to be charged on a three tier-basis as follows:
- Permission to appeal fee: £465
  - Listing fee: £110 (to reflect the cost of listing hearings in the court, payable at the time a case is set down for trial)

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<sup>19</sup> Figures given by Civil Appeals Office for full year 2010

<sup>20</sup> From the Ministry of Justice Judicial Salaries 2009-2010. Figure updated to 2011-2012 prices and calculated inclusive of NI contributions of 12% and employer's pension contributions of 32%.

- Full appeal fee: either a flat fee of £1,090 or a time-related hearing fee as per High Court model (see below for full details of options)
89. This structural change will be supplemented by changes to the way that applications are made in this jurisdiction. Proposals are discussed in more detail below.

## **Proposals – Court of Appeal Civil Division**

### **Permission to appeal**

90. At this stage, an applicant presents the grounds of their case and the merit is considered by the court. In the majority of cases the decision as to whether a case has merit is initially made without recourse to a hearing unless a case is urgent. If permission is refused, the applicant then has the right to have their case reconsidered at an oral hearing (known as “oral renewal”) without any further fee being paid<sup>21</sup>. Currently, where permission to appeal is refused oral hearings are requested by around 80% of litigants in person (those without legal representation) and around 60% of those who are represented. This results in around 500 hearings per year in the court for which a separate fee is currently not charged.
91. This permission to appeal fee, currently £235, represents the work that the court carries out in assessing the merits of a case; this involves input from the Master and the office’s legal team and administrative staff. Depending on the case, it can also require input from at least one Lord or Lady Justice of Appeal. Although this fee was subject to an inflationary uplift in April 2011 from £200 to £235, it has not been individually reviewed since 2004. We consider that this level of fee does not reflect the considerable resources used in processing permission to appeal applications.
92. We propose two changes to the permission to appeal stage in the Court of Appeal Civil Division:
- 1) To increase the fee for permission to appeal from £235 to £465. This is an approximate doubling of the current fee; while this increase does not necessarily represent the full cost of processing these applications, it is a better reflection of the resources needed than the current level. We consider that this level of fee will allow the court to cover more of its costs through fee income without restricting access to the court’s judgement for the most vulnerable.
  - 2) To limit the scope of this fee to a decision without a hearing – in other words, an applicant will no longer have the right to automatically progress to oral renewal if permission to appeal is initially refused. If they wish to have their case assessed at hearing we propose that the full appeal fee of £1,090 (see below) should become payable. If the applicant is successful

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<sup>21</sup> Part 52.3 of the Civil Procedure Rules [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part52.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part52.htm)

at their oral hearing and their case progresses to a full appeal, the appeal fee will no longer be payable at that point.

93. The aim of this proposal is twofold: firstly, it will encourage applicants to more carefully assess their chances of success at oral hearing after an initial refusal, discouraging spurious applications. Secondly, it will more accurately reflect the cost of judicial and additional administrative input if the applicant chooses to progress to oral renewal; this will entail a hearing before at least one Lord or Lady Justice of Appeal.
94. This option will necessitate a change to the Civil Procedure Rules and accompanying practice direction, in order to ensure that the permission to appeal fee triggers a decision on the papers by default. Without this change there is a risk that applicants would choose to move straight to an oral decision in order to avoid the increased fee.

**Question 10**

**Do you agree that the current permission to appeal fee should be increased from £235 to £465? Please state the reason(s) for your answer.**

**Question 11**

**Do you agree that the fee for permission to 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.**

**Fee for additional applications in the Court of Appeal Civil Division**

95. Within the current appellant's notice form in the Court of Appeal there is a section for additional applications; these can be appended to the main application and be treated as part of the same case, with only a single fee being paid regardless of the number of additional applications included. The issues at stake can be varied between applications, with each involving separate administrative and potentially judicial time. There is justification, therefore, for requiring applicants to pay an individual permission to appeal fee for each application they submit; this will better reflect the separate work that goes into assessing each application.
96. This fee is proposed to be £465 in line with the permission to appeal fee above.
97. An exception to this proposal is extension of time applications. These are often appended to applicants' notices, but do not require significant administrative input. Additionally, a large proportion of litigants in person apply for extensions of time; charging the full application fee would therefore be a disproportionate burden on potentially more vulnerable applicants. It is therefore proposed to exempt extension of time applications

**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.**

**Fees for general applications in the Court of Appeal**

98. As in the High Court, there are many minor applications made to the Court of Appeal asking for judicial direction on matters ancillary to an appeal. As is the case in the High Court, these can take one of two forms:

- on notice, where a hearing is listed as a result of the application (unless the court deems that a hearing is not necessary);
- without notice or by consent of both parties, where a decision is made on an application without proceeding to a hearing.

99. The Court of Appeal currently has no fee for these applications, despite the fact that each of these requires separate input to process and despite the parallel with general applications within the lower courts, for which fees are chargeable.

100. We propose to reflect in the Court of Appeal a two-tier fees structure for general applications. These will reflect the levels proposed in the previous chapter for the High Court, with applications on notice charged at a different rate to applications without notice. As with equivalent applications in the High Court, these levels will be as follows:

On an application on notice	£105
On an application without notice or by consent	£45

101. As well as allowing the court to charge for general applications where no other fee is specified, this structure would be used for certain specific cases within this jurisdiction, for which the full application fee of £465 proposed above would be unjustifiable. These include:

- applications for extension of time in which to file. As no fee is currently payable for these applications, there is no financial incentive for applicants to file within time (generally 21 days after the date of the decision of the lower court that the appellant wishes to appeal). However, as these are routine applications and rarely require a large

amount of input by the court, it is felt that the full application fee would be unjustified.

- applications seeking dismissal with consent
- applications to amend an application notice at the permission stage
- applications to adjourn or stand out an appeal or permission to appeal.

102. At the discretion of the court, these lower fees may also be used where the work involved in processing an application would not justify the higher application fee of £465.

### **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.**

### **Listing fees**

103. As mentioned above, fees for appeals are currently charged on a two-tier basis: a permission to appeal fee and a continuation fee. This is in contrast to a High Court or county court case, where there is a fee-charging point to cover the cost of the administrative work involved in listing hearings. This fee becomes chargeable at the point at which the claimant files a listing questionnaire.
104. In the Court of Appeal listing is a particular challenge. The jurisdiction consists of 12 courts of 3 members, each with different expertise; coordinating the available judicial resource in a way that is most beneficial to the applicant requires legal training as well as considerable organisational input. It is a judicial function performed under the direct supervision of the Vice President. This process consumes considerable resource within the Civil Appeals office, for which the court is currently unable to charge.
105. To reflect the work involved at this stage in appeals proceedings we propose to introduce a fee, in line with that of the lower civil courts, payable at the point at which a case is listed for hearing.
106. We propose that the fee for this should be £110; this is in line with the equivalent fee in the High Court and county courts and, as in those jurisdictions, will become payable on the filing of a listing questionnaire.

**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.**

**Appeal fees**

107. The current fee for an appeal in the Court of Appeal is £465.
108. Charging a fee at this point represents the work involved in taking an appeal from listing, where the case is set down for hearing, to conclusion; this involves intensive judicial and administrative input. As stated above, the judicial time spent in court alone for the average hearing length of 1.5 days, is £2,142; however, this actually represents only a fraction of the true cost of running an average appeal. There is considerable administrative time needed to coordinate the parties, evidence and other documentation for the hearing; there is also a large amount of pre-trial reading for the judge(s) involved which, depending on the type of case, may take several days. After the hearing, time must be taken to write a judgement, which involves input by all judge(s) involved as well as court staff.
109. The current fee does not reflect this cost-intensive work. While it is difficult to quantify the full cost of an average appeal, it is clear that it would run into the several thousands of pounds. It is felt that increasing the fee to full-cost level would carry a risk of restricting access to the Court of Appeal for many applicants, particularly individuals who are unrepresented. A further argument against such a significant increase is that decisions made in the Court of Appeal are a pivotal part of the system by which case law in England and Wales is determined; it is arguable that litigants in this court should not pay the full cost of their cases where the benefits of decision-making in the appellate courts are felt throughout the civil justice system.
110. For these reason we propose to increase the fee for appeals in the Court of Appeal, but not to their full-cost levels. There are two options proposed:

**Option 1 – a flat hearing fee for appeals**

111. In order to allow the court to cover more of the costs of hearing appeals, we propose to align the current appeal fee of £465 to the hearing fee in the High Court of £1,090. This fee-charging point is similar to a hearing fee, as it represents the cost an applicant spends in court, plus the input needed outside of the courtroom as described above.
112. The primary advantage of this option is the simplicity of having a single fee for hearings in the Court of Appeal. This is arguably simpler both for the applicant and for court staff, although we anticipate no significant increase in the administrative burden as a result of introducing time-related hearing fees.

## Option 2 – time-related hearing fees for appeals

113. We also wish to seek views from respondents on the possibility of more closely aligning appeal fees with those proposed in the previous chapter for the High Court by introducing time-related hearing fees for substantive hearings (i.e. those associated with the appeal stage as opposed to permission to appeal or ancillary applications) in the Court of Appeal Civil Division.
114. This model is a more accurate reflection of the cost to the court of carrying out longer hearings, as each additional day of hearing incurs extra cost both in terms of judicial time and administrative input. It will therefore go further to reduce the taxpayer burden to subsidise services in the Court of Appeal.
115. The proposal to introduce time-related hearing fees in the High Court is set out in detail on page 26 of this consultation document. According to this model an applicant would pay a fee within a particular band depending on the time their appeal was projected to last. In line with the High Court banding model, the fee levels have been worked out by a multiplication of the one-day fee, as follows:

(a) an appeal in the Court of Appeal where the trial is projected to last one day or less	£1,090
(b) an appeal in the Court of Appeal where the trial is projected to exceed one day but not exceed three days	£3,270
(c) an appeal in the Court of Appeal where the trial is projected to exceed three days but not exceed five days	£5,450
(d) an appeal in the Court of Appeal where the trial is projected to exceed five days but not exceed 10 days	£8,175
(e) an appeal in the Court of Appeal where the trial is projected to exceed 10 days	£10,900

116. Although the model would be aligned with that of the High Court – allowing a maximum appeal fee of £10,900 for hearings exceeding 10 days – hearing times in the Court of Appeal are much shorter than in the High Court. The average substantive appeal hearing lasts 1.5 days and the longest such hearing in 2010 was just over two days<sup>22</sup>. For this reason we anticipate that the vast majority of appellants would pay either the £1,090 or £3,270 fee.

**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.**

**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.**

**Fees to reopen an appeal in the Court of Appeal Civil Division after a final decision**

117. There are around 100 applications per year in the Court of Appeal from litigants wishing to reopen their appeal after having been given a final decision. Very few of these applications are successful. No fee is currently payable for reopening an appeal.

118. In the Civil Procedure Rules part 52.17, the justification for reopening an appeal is given as follows:

*“The Court of Appeal or the High Court will not reopen a final determination of any appeal unless –*

*(a) it is necessary to do so in order to avoid real injustice;*

*(b) the circumstances are exceptional and make it appropriate to reopen the appeal; and*

*(c) there is no alternative effective remedy.”*

119. However, many applicants use this application simply to appeal against the court’s final decision, rather than because their case fulfils any of the above criteria. These applications necessitate the court reconsidering the merits

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<sup>22</sup> Statistics provided by the Court of Appeal



of the case, but there is currently no mechanism to charge for the work involved.

120. A fee charged at this point would achieve two objectives:

- to discourage spurious applications to reopen final decisions
- where an applicant chooses to reopen their appeal, to allow the court to recoup some of the cost of judicial and administrative input in re-reviewing the merits of the case.

121. It is proposed to introduce a fee for reopening final appeals in line with the application fee of £465.

**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.**

## Impact assessment

122. The Government recognises the importance of considering the impact of any policy on different groups. We have developed an impact assessment (published alongside this consultation paper) for the proposals detailed in this consultation paper; the impact assessment examines how we consider the proposals will affect court users, legal services professionals and wider society. The impact assessment has been scrutinised by the Regulatory Policy Committee and has been judged fit for purpose.
123. One of the aims of a consultation is to gather more data on the potential impact of a policy in order to help shape it before implementation. The impact assessment associated with this consultation highlights the potential impacts that the proposals may have both on small to medium enterprise and on wider access to justice. We would appreciate respondents' views, as well as any other data or evidence, as to the impact of these proposals in these two areas.

**We would also welcome any data or evidence we may have missed in developing the impact assessment for this document.**

124. As well as assessing the overall impact of the proposals set out in this consultation document, we have also examined how particular protected groups would be affected by any changes. We have set out these considerations in an Equality Impact Assessment (EIA) initial screening, which has been published alongside this consultation paper. We believe that the reforms outlined in this consultation paper will not have a significant adverse impact on any particular group; however, we have set out some specific questions in the EIA which aim to elicit further information from respondents. As well as responding to the question below and invitations for information within the EIA, we would be grateful for any other information you may have on impacts not considered in this paper.

<b>Question 18</b>
<b>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.</b>
<b>Question 19</b>
<b>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.</b>

**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.**

## Questionnaire

We would welcome responses to the following questions set out in this consultation paper. This questionnaire is also available online at [www.justice.gov.uk/consultations/consultations.htm](http://www.justice.gov.uk/consultations/consultations.htm)

<b>Question 1</b>
<b>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.</b>
<b>Question 2</b>
<b>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.</b>
<b>Question 3</b>
<b>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.</b>
<b>Question 4</b>
<b>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.</b>
<b>Question 5</b>
<b>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.</b>
<b>Question 6</b>
<b>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.</b>
<b>Question 7</b>
<b>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.</b>
<b>Question 8</b>
<b>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.</b>

<b>Question 9</b>
<b>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.</b>
<b>Question 10</b>
<b>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.</b>
<b>Question 11</b>
<b>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.</b>
<b>Question 12</b>
<b>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.</b>
<b>Question 13</b>
<b>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.</b>
<b>Question 14</b>
<b>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.</b>
<b>Question 15</b>
<b>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.</b>
<b>Question 16</b>
<b>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.</b>

<b>Question 17</b>
<b>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.</b>
<b>Question 18</b>
<b>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.</b>
<b>Question 19</b>
<b>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.</b>
<b>Question 20</b>
<b>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.</b>

**Thank you for participating in this consultation exercise.**

## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
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.

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## Contact details/How to respond

Please send your response by 7 February 2012 to:

**Diane Flanders**

**Ministry of Justice  
102 Petty France  
London SW1H 9AJ**

**Tel: 0203 334 3134**

**Email: [mojfeespolicy@justice.gsi.gov.uk](mailto:mojfeespolicy@justice.gsi.gov.uk)**

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at [www.justice.gov.uk/index.htm](http://www.justice.gov.uk/index.htm).

Alternative format versions of this publication can be requested using the email address above.

### Publication of response

A paper summarising the responses to this consultation will be published by 7 May 2012. The response paper will be available online at [www.justice.gov.uk/index.htm](http://www.justice.gov.uk/index.htm).

### 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 can't 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 – Summary of proposals

1	Add additional bands onto issue fees for money claims above the current maximum threshold of £300,000.
2	Increase the fee for issuing a Bill of Sale from £25 to £60.
3	Increase the fee for permission to apply for judicial review from £60 to £235.
4	Increase the fee for continuation of a judicial review from £215 to £235.
5	Increase the fee for Schemes of Arrangement from £155 to £340.
6	Increase the fee for applications on notice within proceedings in the High Court from £80 to £105.
7	Introduce a new fee of £105 for urgent applications in the High Court.
8	Expand the existing fee of £45 for an official certificate of the result of a search in the High Court to include the search itself.
9	Introduce banded hearing fees by projected time in the High Court.
10	Increase the current permission to appeal fee in the Court of Appeal Civil Division from £235 to £465.
11	Limit the fee for permission to appeal in the Court of Appeal Civil Division 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.
12	Introduce a separate fee of £465 for each ancillary application to an appeal in the Court of Appeal Civil Division.
13	Introduce fees of £45 (without notice or by consent) or £105 (on notice) in the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests and other specific applications).
14	Introduce a listing fee of £110 in the Court of Appeal Civil Division.
15	Align the current appeal fee of £465 in the Court of Appeal Civil Division with the multi-track hearing fee in the lower civil courts of £1,090.
16	Introduce banded hearing fees by projected time in the Court of Appeal Civil Division as per the model proposed for the High Court.
17	Charged the application fee of £465 in the Court of Appeal Civil Division for applications under CPR 52.17 to reopen final decisions.

## The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

**These criteria must be reproduced within all consultation documents.**

## **Consultation co-ordinator contact details**

**Responses to the consultation must go to the named contact under the How to Respond section.**

However, if you have any complaints or comments about the consultation **process** you should contact the Ministry of Justice consultation co-ordinator at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Ministry of Justice Consultation Co-ordinator  
Legal Policy Team, Legal Directorate  
6.37, 6<sup>th</sup> Floor  
102 Petty France  
London SW1H 9AJ**



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[consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).