Ministry of Justice

Executive summary: potential impact of changes to court fees on volumes of cases brought to the civil and family courts

BACKGROUND

The Ministry of Justice (MoJ) is currently reviewing civil and family court fees, with a view to implementing a new fee structure in 2014–15 that will achieve full cost recovery, as far as possible.

The current fee structure is complex, with different fee structures in place for different case types. For example, money claim cases involve different fees for different stages of the process, such as issuing the claim, allocation to track, and court hearing, with fees varying according to the value of the claim.

This executive summary presents findings from qualitative interviews undertaken by Analytical Services' researchers with organisations and solicitors that regularly use the civil and family courts. The research explores perceptions of current costs and the extent to which they influence decisions to pursue a case in civil and family courts, and how sensitive organisations or solicitors (and their clients) would be to fee increases.

METHODOLOGY AND SAMPLE

Eighteen telephone interviews were conducted in total. The sample comprised:

(1) Six large organisations that make debt recovery claims and handle their own litigation in-house;
(2) Two debt recovery agencies that purchase debts, then make debt recovery claims and handle their own litigation in-house;
(3) Four solicitors that make debt recovery claims on behalf of their clients;
(4) Two solicitors that make personal injury claims on behalf of their clients; and
(5) Four solicitors that represent privately paying private law family clients.

This qualitative research project provides valuable insight into how court fees are viewed and considered by large organisations that submit large volumes of claims, and legal professionals acting on behalf of organisations and individuals, and highlights potential behaviour changes in response to a change in court fees. However, the small scale of the project means caution should be applied in generalising the findings to all regular court users. Moreover, the research was not designed to produce results which are representative of all court users and the views of other types of court users (such as individuals and small businesses pursuing money claims, and civil and family court users who do not use legal representation) may be quite different.

KEY FINDINGS

The organisations and solicitors interviewed felt that the impact of court fee increases as discussed in the interviews could be minimal on the volume of cases that they (and their clients) bring to the civil and family courts. This was because litigation was seen as a last resort, court fees were considered to be a small proportion of the overall cost of going to court and decisions to take cases to court were influenced more by other factors.

All of the court users interviewed had a stated policy of using court as a final resort once all alternative dispute resolution avenues had been exhausted.

- Debt recovery claimants would try to engage with the debtor and negotiate a settlement (including through the offer of repayment plans) before considering issuing a claim in the courts.
- Personal injury lawyers would only recommend litigation if extensive negotiations to reach an acceptable settlement for their clients failed.
- The family solicitors interviewed would routinely suggest mediation at the outset of cases and some conducted mediation in-house or acted on behalf of their clients as collaborative lawyers.

Court fees were not considered to be a primary factor influencing decisions to take cases to court. This was because court fees were generally considered to make up a low proportion of the overall cost of going to court (when compared to the fees that solicitors charge and the costs of running in-house legal teams) and, in civil cases, it is possible to recover court fees from the debtor if the case is won.

Instead, decisions to proceed to court were influenced by other factors:

- **For debt claims**, the key consideration was whether a claim was likely to be decided in favour of the claimant and a judgment could be enforced. Customer profiling at the pre-litigation stage ensured that claims were only issued where there was a high probability that the debtor could repay the debt (and the court costs incurred). This meant that litigation was more likely against homeowners and the employed (which enabled charging orders and attachment of earnings orders to be imposed) and less likely against the unemployed and vulnerable (where repayment plans were more effective in getting back at least part of the debt).

- **Personal injury solicitors** conducted a risk analysis at the outset of the case (to determine where liability lay, the anticipated level of damages and the probability of winning) and then tried to negotiate a settlement that was in line with their valuation. If negotiations failed or the defendant responded with a counterclaim, personal injury firms conducted an additional risk assessment (to review the case in light of the other party's defence/medical evidence) before recommending whether a claim should be issued in the civil courts.

- **For private law family applications**, decisions to bring financial and children cases to court were made on a case-by-case basis. Applications were usually only made as a last resort, after negotiations between parties had broken down or where the dispute was over a point of principle (for example, about the need to pay a financial settlement, rather than the amount to be paid).

The existing court fee structure is perceived favourably by this group of interviewees and the current fee amounts that are set by the courts were generally considered to be a fair reflection of the amount of resource that the courts dedicate to handling civil and family cases.

However, some of the debt and personal injury claimants queried why issue fees are banded according to claim value, when courts spend the same amount of time processing claims of different value. And some of the family solicitors queried the rationale for increasing court fees for divorce applications[1] when judicial input in these cases is limited.

Potential changes to fee structure

Civil users were asked for their views on two different fee models: reducing the existing issue fee bands to three wider bands; and charging an issue fee of 5% of the claim value. Large organisations preferred the 5% fee option, which would have minimal impact on their claims which tended to be lower in value. Debt and personal injury solicitors felt that a 5% issue fee would need to be capped for the high-value claims they dealt with, and could result in errors when calculating the precise amount of the fee, and so they preferred the three wider bands model for its simplicity.

Family solicitors were asked for their views on increasing fees for divorce, financial orders and children orders to £500. They felt that increases of this size were unlikely to impact on the volume of applications they made in court given the composition of their client base, and that their clients were paying for legal representation.

Users interviewed indicated that although increases in court fees were not considered likely to impact on the volume of cases that they brought to the civil and family courts, a number of other factors might potentially impact on their future volumes.

- If debt claimants use increasingly sophisticated methods to profile their customers, in order to pursue only debts that are recoverable, this might reduce claim volumes.
- The influence of external factors, particularly the economic climate, was also seen as important, potentially leading to debt claims reducing in some areas (as credit was less freely available) but increasing in others, for example in utilities where costs to customers are increasing and they are unable to pay their bills.
- Some of the family solicitors envisaged the potential for increased use of mediation in children and financial cases following the proposed introduction of compulsory Mediation and Assessment Meetings.[2]

[1] Fees and processes which apply to divorce also apply to the dissolution of civil partnerships.

[2] Parties in private law family cases are currently expected to explore the scope for resolving their dispute through mediation before embarking on the court process (by attending a Mediation and Assessment Meeting or MIAM). Measures will soon be taken to mandate attendance at a MIAM, except in cases where mediation is not suitable.

POTENTIAL IMPACT OF CHANGES TO CIVIL AND FAMILY COURT FEES ON VOLUMES OF CASES BROUGHT TO THE CIVIL AND FAMILY COURTS

BACKGROUND

The Ministry of Justice (MoJ) is currently reviewing the civil and family courts fees, with a view to implementing a new fee structure in 2014–15 that will achieve full cost recovery,[3] as far as possible. To help inform the development of a new fee structure, Analytical Services are developing a court fee model which will allow MoJ to assess the potential impact of fee increases on the volume of cases reaching the courts, and on full cost recovery.

In addition Analytical Services are undertaking a number of small-scale, rapid research projects to provide insight into the experience and attitudes of court users (individuals, companies and solicitors), the factors which influence their decisions to go to court (including costs and other factors), and the public's attitudes to family and civil courts and their associated fees. Together these projects will provide insight into the likely impacts of fee changes on demand for court services and broader public attitudes.

This report presents findings from qualitative interviews undertaken in April and May 2013 by Analytical Services' researchers with organisations and solicitors that regularly use the civil and family courts. The research explores perceptions of current costs and the extent to which they influence decisions to pursue a case in civil and family courts and how sensitive organisations or solicitors (and their clients) would be to fee increases. Interviews were conducted with five groups:

(1) large organisations that make debt recovery claims and handle their own litigation in-house;
(2) debt recovery agencies that purchase debts, then make debt recovery claims and handle their own litigation in-house;
(3) solicitors that make debt recovery claims on behalf of their clients;
(4) solicitors that make personal injury claims on behalf of their clients; and
(5) solicitors that represent private law family applicants.

This qualitative research project provides valuable insight into how court fees are viewed and considered by large organisations that submit large volumes of claims and legal professionals acting on behalf of organisations and individuals, and highlights potential behaviour changes in response to a change in court fees. However, the small scale of the project means caution should be applied in generalising the findings to all regular court users. Moreover, the research was not designed to produce results which are representative of all court users and the views of other types of court users (such as individuals and small businesses pursuing money claims, and civil and family court users who do not use legal representation) may be quite different. The first part of this report summarises the findings that have emerged from civil court user interviews; the findings from family court user interviews can found be in the second part of the report.

[3] Fees are charged by the court for processing a claim and are designed to cover the costs of court buildings, IT and telephone costs and the costs of salaries of the court staff and judges. At present, the amount recovered in fees falls short of the amount required to cover these operating costs, which means that the system is currently being subsidised from tax revenues. Full cost recovery would see the courts recovering sufficient fees to cover their operating costs.

METHODOLOGY AND SAMPLE

On the civil side, 14 telephone interviews were conducted with organisations and solicitors that regularly make specified money claims (for debt recovery) and unspecified money claims (for personal injury). Debt recovery claimants and solicitors were sampled from a list of high-volume issuers that use the County Court Bulk Centre (CCBC),[4] and personal injury solicitors were recruited from a list of high-volume issuers supplied by the County Court Money Claims Centre (CCMCC)[5] in Salford. On the family side, four interviews were conducted with solicitors that specialise in private family law.

The interviewees in the bulk user and debt recovery agency sample worked in their organisation's in-house litigation teams and were responsible for deciding which customer debts to pursue in the civil courts – all understood their organisation's policies in this area and the financial costs involved in making these types of claims.

The interviewed solicitors issued claims and applications on behalf of their civil and private law family clients. In civil and family cases, clients with incomes below a certain threshold are eligible for fee remissions, which means they pay either reduced or no court fees. Legal aid is available to some family justice users to cover the cost of going to court (including court fees and solicitors' fees). Law firms that represented legally aided clients or clients whose court fees were remitted, were excluded from the study as their clients did not fund their own court fees, and therefore their behaviour was unlikely to be affected by any increases in court fees.

Sample profile

Large organisations which frequently submit specified money claims (six interviews): Sample comprised two utilities companies, two retailers, one finance company and one central government department, all of which had in-house litigation teams. The organisations were all large businesses (employing 250+ staff) and issued claims against a range of customer types (including individuals, businesses and ex-employees) for a variety of reasons (including non-payment of bills and goods, defaults on credit agreements and overpayment of salaries/holiday leave). The respondents worked in their organisations' in-house litigation teams and were responsible for deciding which customer debts to pursue in the civil courts – they typically issued low-value claims (worth up to £5,000) and some outsourced more complex/higher value claims to solicitors.

Debt recovery agencies (two interviews): Interviewees were managers of litigation teams in two large debt recovery agencies (employing 250+ staff). Both companies purchased debts owed by private individuals for non-payments/defaults on credit agreements. If they were unable to recover the debt through other means they would consider issuing a specified money claim. In addition to purchasing debts, one of the companies also carried out debt recovery work on behalf of clients in the government and automobile sectors.

Debt solicitors (four interviews): Two of the firms were general high street practices (one medium-sized business employing 30 staff and one large business employing 300 staff) and two

[4] The County Court Bulk Centre is located in Northampton. It has been set up specifically to deal with straightforward debt collection claims which are issued electronically. Users pay discounted court fees when issuing claims through the CCBC.

[5] The County Court Money Claims Centre in Salford administers specified money claims and unspecified money claims (including for personal injury) that are issued in paper format.

were smaller specialist debt recovery solicitor firms (both employing fewer than 25 staff). The individuals interviewed specialised in the recovery of debts that were owed to their commercial clients. Two of the respondents focused solely on business-to-business debts (including non-payment of invoices) while the other two respondents focused on recovering debts from private individuals (including for loan, credit card and car hire debts). The respondents comprised two senior solicitors, a manager of a commercial litigation team and a paralegal.

Personal injury solicitors (two interviews): One interview was with a partner in a medium-sized general high street practice (employing 130 staff, 17 of whom worked on PI); the other interview was with a fee earner manager in a large specialist personal injury practice (employing 300 staff). The firms acted on behalf of private individuals on a range of case types, including road traffic accidents (RTA), slips and trips, catastrophic personal injury and clinical negligence. Smaller value claims tended to be referred to the firm via claims management companies, while larger value/more serious claims tended to present off-the-street or via personal recommendation.

Family solicitors (four interviews): Three of the family solicitors specialised solely in private family law for privately paying clients; one of the firms covered other areas in addition to private family work. Two of the firms were sole practitioners (with only one solicitor) and two were small firms (employing fewer than 50 staff).

KEY FINDINGS

All of the organisations and solicitors included in the sample had a stated policy of using court as a final resort once all alternative dispute resolution avenues had been exhausted. Across the sample it was felt that the impact of court fee increases as discussed in the interview could be minimal on the volume of claims/applications submitted to the civil and family courts. This is because the organisations and solicitors interviewed (and, from the perspective of solicitors, their clients) generally considered court fees to be a small proportion of the overall cost of going to court. Decisions to pursue cases were, instead, considered to be influenced more by other factors – the key factor for debt claims was the ability of the defendant to repay the debt (and the costs of taking the claim to court) and personal injury and family cases were usually triggered by a breakdown in negotiations and a failure to reach an acceptable settlement or agreement through other routes.

CIVIL COURT USERS

This section presents key findings from the interviews with large organisations and debt recovery agencies that make debt recovery claims (and handle their own litigation in-house) and solicitors that make debt recovery and personal injury claims on behalf of their clients.

Cost of making claims in the civil court

In civil claims, the cost of conducting court proceedings (including court fees and solicitors' fees) are incurred by the claimant and then usually passed on to the losing party if the claim is successful (and, in the case of debt claims, if the judgment is enforceable). There are three main points when a court fee will need to be paid: at claim issue; when a claim is defended and allocated to a track; and when a claim goes to a final hearing.

The organisations and debt recovery agencies interviewed handled the majority of claims themselves via their in-house legal teams (although some outsourced more complex claims and higher value claims, e.g. claims worth £5,000 or more). This meant that, apart from the cost of maintaining an in-house legal team, court fees were the only costs for making claims that were incurred by these organisations.

The solicitors firms interviewed are working on behalf of clients and have fee models for their own time and to cover court fees. These models varied by solicitor type. The debt solicitors interviewed charged a one-off fixed fee for issuing a claim and then, if the claim was contested, an hourly rate to cover the cost of the additional time that they spent on the case. Court fees were paid by the client (via the solicitor) at the point at which they were incurred (together with fees for their solicitor's actions) and then passed on to the debtor if the debt was recovered. The amount of costs that can be recovered from the debtor is capped by the Civil Procedure Rules (CPR)[6] – this meant that the solicitors' fixed fees for claim issue and hourly rates for dealing with contested claims were kept in line with these fee caps. Clients were kept informed of solicitor and court fees throughout the process (in other words, at each of the stages that they were to be incurred).

[6] The Civil Procedure Rules, introduced in April 1999, govern the way in which a civil case is conducted in England and Wales.

Personal injury solicitors typically charged for their time on a no-win-no-fee basis – this meant that, if a case was lost, claimants were not liable for solicitors' fees (but they were still liable for court fees unless they had insurance to cover their legal expenses). If a case was won, solicitors typically took a proportion of the awarded damages to cover the cost of their time. As with debt solicitors, the hourly rates that personal injury solicitors can charge are capped by the Civil Procedure Rules. Personal injury solicitors covered the cost of their time and the cost of court fees themselves (whilst keeping clients informed of the court fees that they were potentially liable for) and then recovered costs upon completion of a case.

Trends in volumes of claims

- **The volume of specified money claims (which are mainly for debt recovery) has decreased in recent years, from approximately 1.6 million in 2006 to approximately 900,000 in 2012. Over the same period, the volume of unspecified money claims (which are mainly for personal injury) has increased, with 145,000 issued in 2006 and 173,000 issued in 2012.**[7]
- **The interviewees felt that the economic climate had influenced the volume of debt recovery claims issued in the courts, in some areas reducing the number of claims that they made, while in others increasing claims.**
- **The interviewees felt that the volume of personal injury claims they dealt with had remained quite stable over recent years.**

The organisations interviewed that handled their own debt recovery claims typically issued a high volume of low-value claims (£5,000 or less). Volumes varied from less than 250 per year (small retailer) to 40,000 per year (large water company). For most respondents, the volume of claims they issued had decreased in recent years. Most said that this was because of recent changes in their organisation's litigation policy which meant they were increasingly only issuing claims for debts that were likely to be recoverable – i.e. companies profiled their customer debts into those who 'won't pay' and those who 'can't pay', and tended to only issue claims against those in the former category from whom they felt they could achieve debt recovery (see 'factors influencing a decision to pursue a claim', below). Other reasons given for the decline in the volume of debt claims included the economic climate which meant that fewer people were able to secure credit and there were, therefore, fewer debts for people to default on. However, the economic climate was also suggested to have caused more defaults on payments for utility services, with a water company experiencing more defaults on payment of bills with the potential for more claims to be issued in the future. These findings are supported by the Claim Production Centre's (unpublished) statistics on County Court Bulk Centre volumes: whilst there has been a steady downward trend in the total volume of claims issued via the Bulk Centre (from 809,592 in 2008–09 to 530,620 in 2011–12), the volume of claims submitted by water companies has increased steadily (from 166,341 in 2008–09 to 190,728 in 2011–12).

The debt recovery agencies interviewed issued a high volume of claims (between 12,000 and 24,000 per annum) for amounts that varied between £500 and £60,000 (with many claims having a value of £5,000–6,000). Both of the agencies had expanded their debt purchase operation in recent years and expected to continue to grow in the coming years.

The debt solicitors interviewed each issued several thousand claims per year, with values of between £3,000 and £25,000 each. For some, the economic climate had led to a reduction in

[7] Court Statistics Quarterly, April to June 2013, national caseload data

claims – for example, those who relied on smaller business clients had seen volumes reduce in recent years. They suggested that possible reasons for the decline were small firms cutting back on their legal expenses and drops in trade resulting in fewer invoices to default on.

The personal injury solicitors typically issued claims with a much wider range of values (from a few hundred to several million pounds). One of the solicitors interviewed (working in a general high street practice with 17 personal injury solicitors) estimated that the firm issued 1,200 personal injury claims a year; the other interviewee (working in a specialist personal injury firm with 300 staff) was unable to provide an estimate of the firm's caseload but estimated that he personally issued approximately 250 such claims a year. Both interviewees reported that their firm's volumes had remained quite stable in recent years and that they expected volumes to remain stable in the coming years.

Alternative routes to pursuing claims

- **Interviewees stated that they felt litigation was very much a last resort, and a high proportion of debt recovery and personal injury disputes they took on were resolved before reaching the courts.**

Across the sample, there was a perception that litigation was a final resort once their organisations and solicitors' firms had pursued other avenues to try to recover the debt or damages owed – claims would only be issued if the defendant failed to engage with these pre-litigation measures or if these measures failed to result in an acceptable settlement.

Before considering litigation, large organisations said they used a range of channels to try to get the debt repaid. They might write to, phone and arrange home visits to try to recover payment, and some used debt recovery agencies.

The debt recovery agencies interviewed would typically inform debtors via letter that their debt had been purchased and then commence a period of telephone calls to try to get payment/repayment plans agreed. Often the threat of action was sufficient (one said that no more than 30% of cases they took on reached litigation). However, if the debtor failed to engage, the matter would be passed on to the litigation team.

For the debt solicitors interviewed, some or most of the pre-litigation efforts had already been undertaken by their clients prior to approaching the solicitor. However, these firms said they would ensure that they followed the CPR pre-action protocols before issuing a claim – these protocols included sending out a letter of claim to the debtor, attempts at telephone recovery and sometimes encouragement to take up mediation. One firm estimated that as many as 60% of their cases settled at this pre-litigation stage, while another firm said that 40% of their cases did so.

On the personal injury side, interviewees felt that between 50% and 70% of their firms' cases were resolved before a court claim is issued. Firms are required to ensure that the CPR personal injury pre-action protocol is observed – this involves sending early notification to the defendant/defendant's insurance firm in the form of a 'standard issue of claim' and evidence-gathering about the circumstances of the claim/expected damages, and is followed by negotiations to try to reach an acceptable settlement. For many claim types, there is an online portal that facilitates communication between the parties and helps to ensure that pre-action

protocols are observed. Only if an acceptable settlement fails to be reached, would a firm recommend issuing proceedings.

Success rates

- **Once claims were issued in the courts, interviewees reported that their success rates were typically high. The majority of debt claims were resolved upon claim issue. Whilst a higher proportion of personal injury claims were defended according to interviewees, most of their firm's cases were settled before a hearing.**
- **MOJ's official statistics[8] support these findings: around one in eight (12%) specified money claims (which are mainly for debt recovery) issued in 2011 were defended, and 3% progressed to a hearing. For unspecified money claims (which are mainly for personal injury) issued in 2011, three fifths (60%) were defended and 5% progressed to a hearing.**

Once debt claims and personal injury claims had been issued in the courts, success rates were typically high.

The bulk organisations, debt recovery agencies and debt solicitors that were interviewed said they were generally confident of their legal footing with regard to the disputed debt and that most of the claims that they (and, in the case of solicitors, their clients) issued were uncontested and resulted in a judgment in favour of the claimant. However, even if a judgment is made in favour of the claimant, it is not always possible to recover the debt (and any costs incurred for taking a claim to court) if, for example, the debtor lacks the financial means to repay. Therefore, the key measure of success for these companies was ensuring that claims were only issued against those who could afford to pay (see 'factors influencing a decision to pursue a claim', below).

On the personal injury side, most claims were settled before they reached litigation; the solicitors interviewed said that, while a high number of issued cases are defended, only a small number reached a hearing and of these the vast majority (90%–95%) were settled in favour of the claimant.

The above findings are supported by the Ministry of Justice's Court Statistics. Around one in eight (12%) specified money claims (which are mainly for debt recovery) issued in 2011 were defended, and 3% progressed to a hearing. For unspecified money claims (which are mainly for personal injury) issued in 2011, three fifths (60%) were defended and 5% progressed to a hearing.

Attitudes towards existing court fee structure

- **Interviewees generally considered court fees to be a small proportion of the overall cost of issuing proceedings in the courts and court fees were, in the main, seen as a fair reflection of the amount of resource that the courts dedicate to handling claims.**

[8] Court Statistics Quarterly, April to June 2013, national progression data

Court fees as a proportion of costs

The organisations and solicitors interviewed (and, from the perspective of solicitors, their clients) generally considered court fees to be a low proportion of the overall cost of going to court.

Since the organisations and debt agencies in our sample typically issued a high volume of claims that were uncontested (in other words, their claims generally only incurred issue fees), the court fees charged were generally perceived as low relative to other costs such as maintaining an in-house legal team.

The debt solicitors felt that in the main court fees made up a low proportion of the cost of taking a claim to court (when compared against the fees that their firms charged their clients for these cases). However, the interviews revealed that the fee caps (set to limit the amount of solicitors' fees that can be recovered from the losing party) mean that court fees make up a lower proportion of total cost for smaller value uncontested claims than for higher value uncontested claims. For example, an uncontested claim of up to £300 issued through the bulk centre currently has a court fee of £15 compared with a solicitor fee capped at £50. However, an uncontested claim of more than £50,000 has a far higher court fee of £550 compared with a solicitor fee capped at £100.

For contested claims, clients were required to pay additional solicitors' fees (based on their hourly rates) as well as additional court fees (in the form of allocation and hearing fees).

The personal injury solicitors who were interviewed felt that court fees generally accounted for a low proportion of the cost of going to court. This seemed to be partly because, as well as solicitor fees and court fees, personal injury cases typically involve payments to experts (including for medical reports, DVLA assessments, etc.) regardless of whether a case is contested and proceeds to a hearing.

Views on the court fee structure and amounts

All of the respondents in our sample had good awareness of the court fees and that courts charged fees to recover their administration costs. Most were generally content with the charging point structure for court fee payments, depending on how far a claim progresses – it was felt that users were being charged for what they received and that this staggered approach meant there was sufficient opportunity to pause, reflect and encourage settling. Across the sample, the court fee amounts were generally considered to be a fair reflection of the amount of resource that the courts dedicate to cases. However, some issues were raised about some of the fee amounts; for example:

Issue fee amounts were generally considered to be set at a reasonable level and were not considered to influence decisions by organisations, debt recovery agencies and solicitors' clients to issue claims. However, the debt and personal injury solicitors queried why issue fees are banded according to the value of the claim.[9] There was a feeling that the court spent the same amount of time processing high-value claims as low-value claims and therefore differential costs could not be explained in terms of the court resources required. Some felt that a flat rate fee (perhaps of £50) for all claims issued would be fairer because, as one debt firm said, the courts do very little at claim issue 'beyond stamping a claim with their seal'.

[9] Issue fee amounts vary in accordance with the value of the claim and how they are issued. See tables at end of report for fees at time of interviews.

Allocation and hearing fees were not perceived to play a role in influencing the issuing of claims because: most claims (particularly debt claims) were not expected to progress that far; organisations were confident about a favourable judgment in the cases they pursued; and these fees were often recoverable from the losing party. However, some of the organisations and debt recovery agencies interviewed said that – for the small number of claims that became defended – they would tend to pause and reflect on the costs and benefits of proceeding further (for example, one debt agency mentioned that if claims of less than £1,500 were defended then the allocation and hearing fees could become prohibitive, so they would be more likely to accept a partial payment). For organisations operating on a national level, hearing fees were sometimes considered alongside travel and subsistence costs, and if the total was deemed too high, this influenced the final decision on whether to proceed to a hearing.

Other concerns about the court fees structure included:

- Debt judgments: A judgment on admission (where the defendant accepts liability for the debt upon receipt of notification of the claim) costs £40 but a default judgment (where the defendant does not respond to notification of the claim) costs £22. Since these costs were routinely passed on to losing parties, some organisations felt that these costs could dis-incentivise some defendants from engaging in the court process. To mitigate against this there was an example of one company that covered the £40 charge if defendants agreed to settle their claim.
- Warrant fees: Some organisations described how a recent increase in warrant fees[10] had deterred them from seeking to recover debts (particularly small-value debts) via warrants of execution (which involve bailiffs) and, instead, focused their efforts on recovering debts via charging and attachment of earnings orders.

Factors influencing a decision to pursue a claim

- **Court fees were not considered to influence decisions by organisations, debt recovery agencies and solicitors' clients to issue claims because claimants were generally confident that they would win their cases.**
- **Decisions to issue claims in the courts were generally made on a case-by-case basis; for debt claims the key consideration was a defendant's ability to repay, for personal injury claims the key factor was how to achieve an acceptable settlement amount for the client.**

Costs in general (and court fees in particular) were not a major factor in decisions by organisations, debt recovery agencies and solicitors' clients to issue claims in the court. This is because claimants were generally confident that they would win their cases and then recover these costs.

For debt claims, decisions to issue claims were primarily influenced by the probability of being able to recover the debt (and any costs incurred) from the debtor once the case had been won. Organisations stated that they assessed whether they could recover debts from their customers by profiling them based on the information they held. Broadly, customers were placed into two categories: 'can't pays' and 'won't pays'. For example, organisations were more likely to litigate

[10] Prior to 2010, CCBC claimants paid £25 for a warrant on claims worth less than £125 and £45 on a warrant for claims worth £125 or more. In 2010 this two-tier system was replaced with a single fee of £70 for claims of any value. NB: fees for warrants of execution issued outside the Bulk Centre are higher (£100 at time of publication).

against those who owned their home or who were employed (which enabled charging and attachments orders to be imposed) and less likely to litigate against those who were unemployed, vulnerable (e.g. elderly, carers, the long-term sick) or where they had no details of address. For corporate debts, litigation may be less likely if the debtor already has a large number of creditors. Judgments against 'can't pay' customers, where individuals have no real means to pay the debt, are less enforceable so, rather than issue claims for these debts, organisations said they were more likely to try to recover a proportion of the debt (e.g. via repayment plans, charitable schemes, etc.).

The debt recovery agencies and debt solicitors that were interviewed also profiled debtors. The debt agencies said that they typically conducted profiling at the debt purchase stage (to help inform decisions on whether to purchase the debt, how much to pay for it and to decide whether litigation is the most appropriate route for recovering the debt). Solicitors said they would use profiling to advise their clients on whether litigation was the most appropriate route to recovery and, once a judgment had been received, profiling would be used again to help identify the most effective method of enforcement.

For personal injury claims, the key consideration that drove decisions to litigate was what was considered to be an acceptable level of damages for the client. The personal injury solicitors interviewed said that they conducted a risk analysis at the outset of the case (to determine where liability lies, the anticipated level of damages and the probability of winning) and then tried to negotiate a settlement that was in line with their valuation. If negotiations failed or the defendant responded with a counterclaim, personal injury firms conducted an additional risk assessment (to review the case in light of the other party's defence/medical evidence) before recommending whether a claim should be issued in the civil courts.

Potential changes to the structure for issue fees

- **Those interviewed felt that the fee changes that they were asked to consider in the interview would have a minimal impact on the volume of claims their organisations and clients issued.**
- **Of the two options presented, solicitors favoured the simplicity of the 3-band option for issue fees linked to claim value. Organisations favoured the 5% issue fee option because it would have minimal impact on their high-volume low-value claim profile. However, solicitors felt that the 5% issue fee option would need to be capped in order to prevent issue fees escalating for the higher value claims they often dealt with.**

The interviews were used to test reactions to two potential changes to the way fees were charged at the claim issue stage. Scenario 1 proposed introducing a flat rate fee of 5% of claim value or the existing fee rate, whichever was the higher. Scenario 2 proposed reducing the existing fee bands (9 debt recovery and 14 personal injury) that are linked to claim value to three broader bands – it was suggested that the three new bands would be set as follows:

- Debt claims – £1,000 or less; more than £1,000 to £5,000; more than £5,000
- Personal injury claims – £5,000 or less; more than £5,000 to £50,000; more than £50,000.

Overall, the organisations and solicitors interviewed did not appear to be very sensitive to court fee increases of the scale discussed in the interviews. The fee increases were considered to be unlikely to have a significant impact on the volume of claims issued by the organisations and

debt agencies because these companies were generally confident about winning their cases and (having profiled their customers) of recovering the money that was owed to them including the court fees. These organisations often already set a lower threshold on claim values to pursue in court (for example, not pursuing claims worth less than £40 or if the court fee is more than 10% of the debt) and these thresholds were not considered to be affected by the fee increases discussed in the interviews.

The debt and personal injury solicitors interviewed did not appear to be very price sensitive when discussing court fee increases in general terms as (particularly in the case of personal injury solicitors) court fees are a small proportion of the overall costs of going to court and are passed on to the defendant if the case is won. However, when discussing the detail of the scenarios, there was a view that there could be a potential fall in the number of clients wishing to proceed to claim issue in some areas due to court fee increases (see below).

Scenario 1 (issue fee set at 5% of value of claim):

The organisations tended to favour this option because the majority of their claims were for less than £5,000, and so their claims would be affected to a lesser extent than under the alternative option (scenario 2).

However, the debt recovery agencies, debt solicitors and (in particular) the personal injury solicitors felt that a cap would need to be introduced to prevent the issue fees for the high-value cases that they worked on becoming significantly more expensive. Some of the debt agencies said that they would introduce their own cap internally (above which it would be deemed too expensive to issue a claim) and some of the solicitors feared that this option could impact on their clients' pursuing higher value claims. A personal injury solicitor noted that if this option were to be implemented without a cap, issue fees could run into tens of thousands of pounds.

Another key concern for the interviewed debt agencies and debt and personal injury solicitors was the difficulty in administering a 5% issue fee. Some debt solicitors expressed concerns about how onerous it would be to calculate the precise issue fee on each individual case and feared that there could be errors (caused, for example, by uncertainties about whether to factor in anticipated interest when calculating claim amounts). And some mentioned that their in-house case management systems (which are used to produce claim forms) would need to be overhauled, which could require a significant financial outlay on software – this appeared to be more of a concern for larger firms that typically dealt with a higher volume of claims and were likely to have more automated systems in place for generating claim forms.

One of the personal injury solicitors who was interviewed described how difficult it is to calculate the precise value of personal injury claims (indeed, personal injury cases are often disputes between the parties over the exact amount of damages that the defendant is liable for) and so a precisely defined issue fee based on 5% of claim value was seen as very difficult to administer. For this solicitor, a more simplified system was needed in order to prevent an increase in the use of cost lawyers who are used to contest the amount of costs passed on to the losing party.

Scenario 2 (three new issue fee bands as follows:

- Issue fees for debt claims issued via CCBC worth £1,000 or less = £55; worth more than £1,000 to £5,000 = £85; worth more than £5,000 = £550
- Issue fees for personal injury claims issued via CCMCC worth £5,000 or less = £120; worth more than £5,000 to £50,000 = £395; worth more than £50,000 = £1,670).

The debt agencies and debt and personal injury solicitors interviewed preferred this option as they felt that it would have less of an impact on the cost of issuing the higher value claims that they routinely issued and would be much simpler to administer. Indeed, one of the personal injury firms felt that widening the issue fee bands would make it easier for them to identify issue fees for their cases.

Despite the more positive response, some debt solicitors and agencies felt that this option might lead to a reduction in the volume of very small debt claims and claims that fell at the lower end of the new fee bands – it was felt that even though fees were usually recovered from the losing party, significant issue fee increases were likely to lead some clients to reappraise the potential cost and benefits of proceeding to court (particularly for claims where the ability to enforce a judgment was not guaranteed). For example, an issue fee of £55 for a claim worth £150 (as opposed to the existing fee of £15) and an issue fee of £550 for a claim worth just over £5,000 (as opposed to the existing fee of £190) were felt to be disproportionate by some. There was also some concern about where the hypothetical thresholds had been set. In particular, some of the debt and personal injury solicitors felt that it would be simpler if the bands replicated those that are in place for assigning a claim to a court track.[11]

Even though a proportionate increase in issue fees was considered to be unlikely to have a significant impact on volumes, some interviewees identified some other potential impacts on behaviours. For example, most organisations said that increases in fee levels would instigate greater scrutiny of the way they handled claims at the pre-litigation stages. This meant they would need to be even more certain about which debts were worth pursuing (in terms of recoverability) and place a greater emphasis on pre-litigation checks (to ensure that the debtor is traceable and has received sufficient pre-litigation notices). And some organisations spoke of the need to keep court costs proportionate so that the burden of debt on the defendant (from whom the debt and fees will be recovered) does not reach a level where it impacts negatively on the organisation's reputation. For all groups interviewed, there was a desire to see an improved, more efficient service if fees were to go up.

[11] At time of publication, for debt claims, the thresholds for court tracks are as follows: small claim track = up to £10,000; fast track = £10,000–£25,000; multi-track = £25,000+. For personal injury claims the thresholds for court tracks are as follows: small claim track = up to £1,000; fast track = £1,000–£25,000; multi-track = £25,000+.

FAMILY COURT USERS

This section presents the key findings from the interviews with solicitors that specialise in private law family cases.

Private law family deals with issues following the breakdown of family relationships. The main sorts of cases covered include divorce proceedings, financial issues arising on the breakdown of a relationship, and private law children cases, mainly relating to the residence of and contact with children. The following differences between these types of cases should be noted:

In divorce cases,[12] there are no alternatives to going to court because a divorce needs to be processed by the court in order for it to become valid. Court fees are paid by the applicant when a divorce is first applied for.[13] The vast majority of cases (98%) are uncontested, and therefore when legal representation is used solicitors' fees are generally low (covering the completion and filing of a divorce application).

In financial and children cases, alternatives to court are available and there is an expectation that mediation is considered before a court application is made. A one-off court fee is paid by the applicant when an application is made to the court and, depending on the complexity of the case, solicitors' fees can be high. In financial cases, clients are seeking a financial outcome and so the costs of going to court (including court fees) are considered in the context of the potential financial outcome and the costs of alternative routes to resolution. In children cases, costs are considered against a non-financial outcome (e.g. contact with/residence of the child). For both financial and children cases, decisions to make applications are made by the client; the solicitor's role is to provide advice.

When considering the findings of the private law family interviews, the following points should be noted:

- In family cases, parties with incomes below a certain threshold are eligible for fee remissions which can reduce or eliminate the need to pay court fees, and legal aid is sometimes available[14] to cover the cost of going to court (including court fees and solicitors' fees). Law firms that represented legally aided clients or clients whose court fees were remitted were excluded from the study as their clients did not fund their own court fees.

- The family solicitors interviewed are dealing with clients who have made the decision to use paid-for legal representation, and can be assumed to have a certain level of financial resource to enable them to do so. The views of family applicants who are unable to afford legal representation (and represent themselves) may be quite different. It should also be noted that this research represents the views of a small number of solicitors regarding their client base; the views of the clients themselves may differ.

[12] Fees and processes which apply to divorce also apply to the dissolution of civil partnerships

[13] At the time of interviews, a further fee was paid before receipt of the decree absolute. From 1 July 2013, these were combined into one fee.

[14] From April 2013, legal aid is only available in family cases which involve an allegation of domestic violence or abuse, forced marriage or child abduction.

Trends in volume of applications

- **Interviewees felt that the volume of private law family applications had remained quite stable in recent years. However, there was a sense that volumes might decrease following implementation of the proposed interventions aimed at increasing awareness and consideration of mediation.**

The firms in our sample typically issued between 50 and 100 applications per year (with one sole practitioner firm issuing only 10 per year). Most of these were for divorce proceedings coupled with financial order applications and a smaller number for children applications. It was felt that their volumes had remained quite stable in recent years. However, some interviewees commented that the economic climate may have had an impact on volumes of applications, for example by encouraging some couples to 'hold tight' and avoid separating until the equity in their properties had replenished or, conversely, by some couples needing to divide their assets more quickly. Most believed that the volume of applications would remain stable in the foreseeable future. However, some interviewees envisaged the potential for increased use of mediation in children and financial cases following implementation of the proposed MoJ interventions aimed at increasing awareness and consideration of mediation.[15]

Factors influencing a decision to make an application

- **Interviewees said decisions to bring financial and children cases to court were made on a case-by-case basis and after all other avenues had been exhausted; collaborative approaches and mediation were routinely suggested (and used) but the cost of mediation could be prohibitive.**

Interviewees said decisions to bring financial and children cases to court were made on a case-by-case basis. Clients who they dealt with tended to present themselves to solicitors with a set objective in mind, and solicitors helped to identify the most appropriate pathway to meeting that objective (or a revised, more realistic objective), for example via negotiation or applications to the court. Applications were usually only made as a last resort, after negotiations between parties or lawyers had broken down or where the dispute was over a point of principle.

All of the firms suggested mediation to their clients at the outset of cases and some of the firms conducted mediation in-house or acted on behalf of their clients as collaborative lawyers. Mediation/collaborative approaches were seen as particularly effective for children's cases. However, mediation was often criticised for being more expensive than making court applications and was not considered suitable in some cases – such as if the parties couldn't bring themselves to sit in the same room together, if there were allegations of domestic abuse, or if there was a disagreement over principle (for example about the need to pay a settlement, rather than the amount to be paid).

[15] The current pre-action protocol sets out that parties in private law family cases are expected to explore the scope for resolving their dispute through mediation before embarking on the court process (by attending a Mediation and Assessment Meeting or MIAM). Measures will soon be taken to mandate attendance at a MIAM, except in cases where mediation is not suitable.

Attitudes to the court fee structure

- **Court fees were seen as a very small proportion of the total cost of bringing a case to court (given that solicitors' fees could run into thousands of pounds for contested financial and children cases) and were not perceived to influence decisions to bring cases to court.**

The court fee for a standard uncontested divorce is £385[16] (which is split over two charging points: £340 is payable when a divorce application is first filed and £45 is payable when an application for a decree absolute is filed). Because the legal processes for these cases are fairly standard, the solicitor firms interviewed tended to charge a fixed fee – for example, one of the firms interviewed charged a fixed fee of £550 excluding VAT.

The court fee for an application for a financial order other than by consent is £240 and the court fee for an application involving children is £200.[17] For these cases, the firms tended to charge for their time on an hourly rate as cases progressed. Court fees were a small proportion of the total cost of resolving these disputes in the courts and were not seen as a factor in their client's decisions to make applications – interviewees considered them to be a 'drop in the ocean' when compared to the solicitor fees that they charged for progressing a case (which can amount to tens of thousands of pounds) and, in some complex cases, the fees that experts charged (e.g. accountants, surveyors, actuaries, tax experts and in some cases overseas lawyers).

Overall, court fees in financial and children cases were seen as good value by the solicitors interviewed, and in their view by their clients (considering the fact that 'cases are presided over by an experienced judge') and something that clients were willing and able to pay. However, some interviewees noted that some clients with limited resources could occasionally struggle to pull together the money to pay for the up-front court fees, with some having to rely on family or securing credit. And, at times, clients had to represent themselves at court because they had 'run out of money' and were unable to continue to meet the cost of solicitor fees.

Some concerns were raised about anomalies in the fee charging structure. For example, one solicitor felt that the cost of some individual items had 'no rhyme or reason' and questioned why, for example, an application for a residence order costs £200 but an application for an injunction costs only £45.

Potential changes to the fee structure

- **Fee increases on the scale suggested were considered unlikely to impact on the volume of cases these solicitors brought to court; however it was felt that more significant increases might impact on volumes, have access to justice implications and lead to more applicants choosing to self-represent in their cases.**

The research tested potential increases to family fees, including increasing the cost of applications for divorces, financial orders and children orders to £500 and introducing fees at other points, for example introducing a hearing fee for financial cases.

[16] Correct at the time of the interviews. From 1 July 2013, these were replaced with a single fee of £410.
[17] Correct at the time of the interviews. From 1 July 2013, the fee for a financial order application is £255 and for a children's application is £215.

Overall, the solicitors interviewed felt that the proposed fee increases were reasonable and were unlikely to impact on the volume of applications they made in the courts on behalf of their client base.

Views on full cost recovery

Most of the family solicitors interviewed agreed that their clients should pay the full cost of the service that they received from the court (taking into account that the fee remissions system is available to assist those who cannot afford to pay). However, one solicitor felt that in principle the court system should be subsidised out of taxpayers' money because, like the NHS for example, it is an essential service that is there in case of need.

Views on increasing the fee for an uncontested divorce (from £385[18] to £500)

The suggested increase in the fee for an uncontested divorce was considered to be unlikely to have an impact on volumes – the solicitors interviewed felt most clients would not be dissuaded from getting divorced due to a fee increase of this scale. However, one firm felt that it might encourage people to apply for a divorce directly themselves (rather than through solicitors), particularly if there were no financial or child contact issues involved. There was also a view that the fee increase could be seen as unfair because it does not reflect the amount of time spent by the court processing the case (in uncontested cases, the judge only looks at the case once). And some felt there could be access to justice issues for low earners (with incomes just above the remission thresholds) because there are no alternative routes available to divorce applicants.

Views on increasing the fee for an application for a financial order other than by consent (from £240[19] to £500)

Again, interviewees felt the suggested fee increase for a contested financial application would have little effect on the volume of applications they dealt with. Some felt that the rationale for the increase was clearer than for divorce (given the higher level of judicial involvement in these cases) and some also thought that it might encourage greater consideration of mediation as an alternative to court. However, whether clients used mediation was also influenced by other issues. For example, mediation requires both parties to agree to participate, so a client may have no option other than a court application if their ex-partner refuses to attend mediation. Also, some solicitors mentioned that the costs of mediation itself might deter some clients.

Views on increasing the fee for applications involving children (from £200[20] to £500 or £1,000)

There was a sense that increasing the fee for children applications to £500 would not be prohibitive for many clients that the interviewees dealt with – however, there was some concern that clients with incomes just above the remission threshold might struggle to meet the increased

[18] At the time of the interviews, the total fee amount for an uncontested divorce was £385, paid in two fees of £340 for the original petition and £45 for the decree absolute. From 1 July 2013, these were replaced with a single fee of £410.
[19] Correct at time of interviews. From 1 July 2013, the application fee for a financial order is £255.
[20] Correct at time of interviews. From 1 July 2013 children applications are £215.

cost. Generally it was felt that mediation can be more effective in these types of cases so any increase in the use of mediation would be welcomed and might even 'prevent some unnecessary cases from progressing to court'.

Whilst the £500 fee was not seen to be excessive by those solicitors interviewed, they did feel that a £1,000 fee would have an impact on volumes and access to justice consequences: it was felt that clients would reconsider their position, look at other avenues, such as mediation, and quite possibly 'live with' the position that they found themselves in. One firm felt that this was particularly true of children cases because, unlike with financial cases, 'there's no obvious financial benefit' to issuing these types of proceedings (so there's less of a clear cost-benefit argument of proceeding to court). However, one firm (which represented high net-worth clients) felt that a £1,000 fee could be considered reasonable in more complex cases.

Introducing additional charging points

Solicitors said they and their clients tended to like the simplicity of the current fee structure, i.e. only needing to pay one fee at the outset. However, they were generally receptive to the idea of introducing a hearing fee for financial cases (depending on the fee amounts involved), with many saying that it was a logical way to charge for the judiciary's time – one solicitor suggested introducing a fee for the final hearing, as this might make clients more inclined to settle at the Financial Dispute Resolution stage (when many settle anyway).

Overall, it was felt that the increases in fees, as proposed, were unlikely to have a major impact on the volume of cases being taken to court among their client base. However, more substantial increases (especially if fees entered into the thousands of pounds) could have a major impact on the volume of applications made. It was felt that such large increases could also result in access to justice issues, and there might also be a chance that more clients would choose to self-represent, which could result in cases taking longer to resolve and, in turn, cause blockages in the court system. All of the solicitors interviewed suggested that if fees were to increase, they would like to see an improved, more efficient court system.

Table 1: Issue fees for claims issued via the County Court Bulk Centre (specified money claims)

Value of claim	Issue fee
Up to £300	£15
£300.01 - £500	£30
£500.01 - £1,000	£55
£1,000.01 - £1,500	£65
£1,500.01 - £3,000	£75
£3,000.01 - £5,000	£85
£5,000.01 - £15,000	£190
£15,000.01 - £50,000	£310
£50,000.01 - £100,000	£550

Table 2: Issue fees for claims issued via the County Court Money Claims Centre

Value of claim	Issue fee
Up to £300	£35
£300.01 - £500	£50
£500.01 - £1,000	£70
£1,000.01 - £1,500	£80
£1,500.01 - £3,000	£95
£3,000.01 - £5,000	£120
£5,000.01 - £15,000	£245
£15,000.01 - £50,000	£395
£50,000.01 - £100,000	£685
£100,000.01 - £150,000	£885
£150,000.01 - £200,000	£1,080
£200,000.01 - £250,000	£1,275
£250,000.01 - £300,000	£1,475
Over £300,000	£1,670