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Civil Court Fees

Response to Consultation

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Response to consultation carried out by Her Majesty's Courts Service, part of the Ministry of Justice. This information is also available on the Ministry of Justice website at www.justice.gov.uk.

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Introduction

This document is the post-consultation report for the consultation paper, Civil Court Fees

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report;
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Andrew Lee** at the address below:

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This report is also available on the Ministry's website: www.justice.gov.uk.

Background

The consultation paper Civil Court Fees was published on 2 April 2007. It invited comments to questions concerning specific proposals to –

- reform the system of fee remissions and exemptions;
- increase fees for civil business in magistrates' courts; and
- re-balance the fee structure in other civil courts.

The proposed changes are the next steps in our fees strategy to develop and reform the court fee system, to ensure that it is fair and sustainable.

The overall objectives of the strategy are to ensure that the system –

- meets its financial targets for cost recovery and net expenditure;
- protects access to justice through a well-targeted system of fee concessions; and
- remains viable when patterns of demand change, by achieving as close a match between income and costs within the system as reasonably practicable.

Views were sought on a number of proposals that included –

- Whether recommended changes to the fee concessions would provide assurance that the system adequately protected access to justice for the less well-off in a fair, consistent and transparent way;
- The introduction of hearing fees for civil cases and adjustments to other downstream fees would be fairer for users and achieve a better match of costs and income within the system;
- A reduction to issue fees for civil business, weighted towards the fees for using electronic systems, to create reasonable differentials between the various channels of recovery; and
- Increasing fees for civil proceedings in magistrates' courts, where reasonable, given our target of moving to full cost recovery (net of fee concessions).

Comments were not sought on the underlying fee policy and the need to cover costs through fees.

The consultation period closed on 25 June 2007. This report summarises the responses.

A list of respondents is at Annex A

Summary of responses

There were seventy-seven responses received from the judiciary, legal professions and other stakeholder bodies.

The numbers and categories of the respondents were as follows —

- 26 Legal Professions;
- 9 Judiciary and Magistracy;
- 3 Justice Councils and Court Committees;
- 21 Representative Bodies;
- 9 Other Public Bodies;
- 6 Other Groups; and
- 3 Individuals.

The responses were analysed to determine whether respondents considered if the proposals were fair, transparent and workable.

The responses received from the twelve-week consultation were generally very positive on all the proposals. Many consultees acknowledged the policy described as full-cost pricing, but were keen to ensure it remained suitably mitigated by a system of concessions to avoid denying access to justice for the less well-off.

Of the consultees who responded to the proposed new system of fees concessions, 68% agreed that it provided a fair, transparent and workable structure.

The majority of respondents agreed that introducing hearing fees was consistent with the objective of achieving a closer match between fees and cost. There was some concern at the lack of evidence that the cost of each stage had been properly identified or analysed, which could result in issue fee reductions being too low.

79% of respondents agreed that applications for leave to commence litigation by vexatious litigants should be liable in the first instance to a fee. This applies to those who would ordinarily have been eligible for a concession. If their application is successful then those people can apply for a refund.

The proposal to pilot daily hearing fees in the specialist commercial jurisdictions in 2008 was met with opposition from respondents representing the views of legal practitioners and the judiciary of those courts.

A number of respondents objected to the scale of fee increases for ancillary processes as these were considered to be disproportionate to the work completed, for example photocopying and oath fees.

48% of respondents agreed to the increases proposed in the magistrates' courts. 44% disagreed, with the proposals because they considered that the increases were disproportionate and would only increase their costs, which would in turn be passed onto already indebted customers.

95% of respondents agreed that a separate fee should be created for licensing and other appeals. There were concerns raised about how the level of the fees might deter individuals and residents associations appealing against the granting of a licence.

Additional Comments

While the twenty-one questions asked in the Consultation Paper generated a broad variety of responses, many respondents took the opportunity to make additional comments on other subjects. These are set out in the additional comments section on page 45.

The system of Fee Concessions

Question 1 - Do you agree that this provides a fair, transparent and workable structure for determining fee concessions?

Twenty-eight responses were received on question one (approximately 36% of all respondents) from the following categories of respondent —

- 11 Representative Bodies;
- 9 Legal Professions;
- 4 Judiciary / Magistracy;
- 2 Other Public Bodies;
- 1 Justice Council / Court Committee; and
- 1 Other Group.

Nineteen respondents (68%) agreed with the proposition. There were six (21%) respondents who disagreed. Concern was raised about whether the proposed system might be too time-consuming for court staff and questioned the system's workability in practice. There were three (11%) respondents who gave a mixed view.

The respondents suggested the following —

- use the Legal Service Commission's merits-test across all jurisdictions. (*Legal Professions*)
- introduce on-line calculation to help potential applicants. (*Legal Professions*)

Question 2 - Do you think that these proposals strike the right balance in targeting eligibility for full remission through a simple and workable system?

In particular, do you agree that the receipt of Child Tax Credit, Housing Benefit, Council Tax Benefit and Incapacity Benefit should not be an automatic passport to full remission?

If you do not agree, please explain why, and what alternatives you propose.

Twenty-seven responses were received on question two (approximately 35% of all respondents) from the following categories of respondent —

- 10 Representative Bodies;
- 9 Legal Professions;
- 4 Judiciary / Magistracy;
- 2 Other Groups;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committees.

Of which nineteen (71%) respondents agreed with the proposition. Eight (29%) respondents disagreed, most stating that each or a combination of Child Tax Credit, Housing Benefit, Council Tax Benefit and Incapacity Benefit should be treated as an automatic passport.

Among the views expressed, respondents —

- Accepted that Incapacity Benefit should not be included under concession one because it is an earnings replacement benefit rather than a means-tested benefit and as such the total household income of recipients could be higher than means-tested benefits. (*Representative Bodies*)
- Argued that full remission ought to be extended to recipients of Child Tax Credit, Housing Benefit, Council Tax Benefit and Incapacity Benefit because there is little justification for requiring payment of court fees by litigants who require state assistance to meet living expenses in the form of rent or local taxes. (*Legal Professions*)
- Expressed concern that the proposed concessions system appears to be driven by budgetary needs rather than ensuring access to justice. (*Representative Bodies*)
- Considered that partners of claimants of means-tested benefits and tax credits should be automatically passported. (*Representative Bodies*)

The respondents suggested the following —

- use receipt of Child Tax Credit in excess of Family Element. (*Representative Bodies*)
- allow full remission to all those in receipt of Child Tax Credit and Working Tax Credit, and those in receipt of Child Tax Credit which exceeds the Family Element. (*Representative Bodies*)
- allow full remission to those in receipt of State Pension Savings Credit. (*Representative Bodies*)
- consider allowing full remission to those in receipt of higher rate Disability Living Allowance. (*Justice Council / Court Committees*)

Question 3 - Do you agree with the proposed simplifications, i.e. there should not be:

- (i) a gross income cap;**
- (ii) any capital element in the test;**
- (iii) a maximum monthly housing costs allowance for applicants without dependants; or**
- (iv) a fixed allowance for employment expenses?**

There were twenty-five responses made to the four parts of question three (approximately 33% of all respondents) from the following categories of

respondent —

- 10 Legal Professions;
- 8 Representative Bodies;
- 4 Judiciary / Magistracy;
- 1 Other Group;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committees.

3(i) no gross income cap

Twenty-three (92%) respondents agreed with the proposal and two (8%) respondents disagreed.

3(ii) no capital element in the test

Twenty-one (84%) respondents agreed with the proposal and four (16%) respondents disagreed. Their main concern was that it would be unfair on the taxpayer to fund someone with high capital resources.

3(iii) no maximum monthly housing costs allowance for applicants without dependants

Twenty-three (92%) respondents agreed and only one respondent (4%) disagreed with the proposal. Just one (4%) respondent made no comment.

3(iv) no fixed allowance for employment expenses

Twenty (80%) respondents agreed and three (12%) respondents disagreed with the proposal, their main argument being that the same allowance is permitted within the calculation for Legal Aid. There were two (8%) respondents that made no comment.

The respondents suggested the following —

- applying a maximum monthly housing costs allowance for applicants without dependants could be assessed like a Council Tax banding. (*Legal Professions*)
- make assessments valid for a fixed period. (*Judiciary / Magistracy*)
- consider making an allowance for costs of disability. (*Representative Bodies*)
- include secured loan payments / ground rent and service charges in calculation of housing costs. (*Representative Bodies*)

Question 4 - Do you think there should be a residual discretion to grant remission in exceptional circumstances not covered by the means-test? If so, in what circumstances do you envisage the discretion might apply?

There were twenty-eight responses received on question four (approximately 36% of all respondents) from the following categories of respondent —

- 10 Representative Bodies;
- 9 Legal Professions;
- 5 Judiciary / Magistracy
- 2 Other Groups;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committee.

Twenty-two (79%) respondents were in agreement and two (7%) respondents gave a mixed response. Four (14%) respondents disagreed that any discretion should be allowed.

- discretion would be difficult to ensure consistency. (*Legal Professions*)
- completely contrary to the admirable concept of transparency and consistency. (*Judiciary and Magistracy*)

The following circumstances were given for residual discretion to be granted for remission in exceptional circumstances —

- where there is a carer or similar. (*Legal Professions*)
- for part-time or seasonal workers. (*Individual*)
- for urgent applications. (*Representative Bodies*)
- where a high proportion of an applicant's income was committed to specified, high priority debts. (*Judiciary /Magistracy*) (*Legal Professions*)
- for prisoners with housing and or family problems. (*Representative Bodies*)
- for habeas corpus, domestic violence and suspending warrants of possession. (*Judiciary / Magistracy*)

The following suggestion was made —

- undertake a survey of courts to ascertain how much demand there is for a residual discretion. (*Legal Professions*)

Question 5 - Do you think that court-ordered liabilities or any other specified types of debt repayment should be deducted in the calculation of disposable income?

There were twenty-eight responses received on question five (approximately 36% of all respondents) from the following categories of respondent —

- 11 Representative Bodies;
- 10 Legal Professions;
- 4 Judiciary / Magistracy;
- 1 Other Group;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committee.

Twenty-one (75%) respondents agreed and seven (25%) respondents disagreed. Their principal concern was that the calculation was not a true reflection of an individual's actual disposable income.

Fourteen respondents were in favour of including other liabilities —

- 3 respondents proposed debt repayments should be taken into account;
- 1 respondent considered that repayments on a loan secured on house should be included;
- 1 respondent was in favour of including fines; and
- 1 respondent argued that priority debt payments such as telephone, utilities, fuel, Higher Purchase instalments and Council Tax should be taken into account.

Question 6 - Do you agree that we should remove the current exemption for those receiving Legal Help in family proceedings? If not, please give your reasons.

There were twenty responses received on question six (approximately 26% of all respondents) from the following categories of respondent —

- 7 Representative Bodies;
- 7 Legal Professions;
- 3 Judiciary / Magistracy;
- 1 Other Group;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committees.

Twelve (60%) respondents agreed and eight (40%) respondents disagreed. They were concerned for the vulnerability of the parties involved and the fact that generally these users had no choice but to go to court to resolve certain family matters. One respondent considered that the costs of administering the change were likely to outweigh the proposed benefits.

Several respondents agreed that the financial eligibility criteria for Legal Help was considerably more generous than when the provision was originally introduced. In other words, Legal Help is available to people who under the new concession system would be likely to qualify only for a part remission at most.

Question 7 - Do you think it right in principle that an unsuccessful opponent ordered to pay costs should also be liable for the cost of any remitted court fees?

Do you have any suggestions for how the system would best work in practice?

There were thirty responses to question seven (approximately 39% of all respondents) from the following categories of respondent —

- 11 Legal Professions;
- 9 Representative Bodies;
- 5 Judiciary / Magistracy;
- 2 Other Groups;
- 2 Justice Councils / Court Committees; and
- 1 Other Public Bodies.

Twenty (67%) respondents agreed with the idea and ten (33%) respondents disagreed.

Among the views expressed, respondents —

- Proposed that there should be a general rule that the opposing party should pay Her Majesty's Courts Service the remitted fees and they should be able to enforce that liability. (*Judiciary / Magistracy*)
- Urged that Her Majesty's Courts Service introduce a system similar to the Compensation Recovery Unit's recovery of benefits. (*Legal Professions*)
- Considered that an unsuccessful party ordered to pay costs should be liable for the cost of any remitted fee – an successful litigant should not have the burden of enforcement in order to deliver the fee to Her Majesty's Courts Service. (*Legal Professions*)
- Expressed concern that it seemed inequitable that a losing party should benefit in this way and that Her Majesty's Courts Service should be unable to recover the money – the court papers should show the full fee payable not the amount paid so that the losing party is fully aware of the liability. (*Justice Council / Court Committees*)
- Expressed concern that it would involve an exception to the Indemnity Principle – it would be essential that the successful litigant was not at risk in any way if the losing party failed to pay. (*Judiciary*) (*Legal Professions*) (*Representative Bodies*)
- Considered that it would not be right for the winning assisted party to have to recover costs under a 'conditional system' and there are too many practical obstacles to Her Majesty's Courts Service recovering those costs. (*Judiciary / Magistracy*)

- Argued that the purpose of remission is to provide access to justice and it should not be part of the courts function to incur time and expense in retrieving remitted fees from unsuccessful parties. (*Judiciary / Magistracy*)

Respondents made the following suggestions —

- the full fee should be laid out on the claim form. (*Representative Bodies*)
- separate orders – one for Her Majesty's Courts Service and the other for the successful party. (*Representative Bodies*)
- it would seem more practical that if an order for costs is made against a party, any remitted court fees are ordered to be paid by that party directly to Her Majesty's Courts Service who can then enforce the court fees part of the costs order separately. (*Legal Professions*)

Question 8 - Do you agree that the system should apply to individuals only? If not, what criteria should be included in a scheme for small businesses, etc.?

There were twenty-nine responses to question eight (approximately 38% of all respondents) from the following categories of respondent —

- 11 Representative Bodies;
- 10 Legal Professions;
- 4 Judiciary / Magistracy;
- 2 Other Groups;
- 1 Other Public Bodies; and
- 1 Justice Council / Court Committee.

Twenty-three (79%) respondents agreed with the proposition and six (21%) respondents disagreed.

Among the views expressed, respondents —

- Emphasised that the system should apply to individuals and sole proprietors only. (*Representative Bodies*)
- Argued that the system should apply to individuals only but considered that there are a number of small businesses which in reality are no more than individuals with a trading name and consideration should be given to treating them in the same way as other individuals. (*Legal Professions*)
- Expressed concern that small businesses are put off by the expense of pursuing a matter, which could make a difference between their survival or demise. (*Legal Professions*)
- Argued that there was no reason in principle why businesses or charities of sufficiently limited means should not also benefit from the system, but considered that it may be too difficult to administer and assess eligibility. (*Legal Professions*)

The following suggestions were made —

- extend scheme to Non-Government Organisations like the Child Poverty Action Group, which bring test cases, or intervene in cases in the public interest. (*Representative Bodies*)
- Considered that if small businesses argue that such a scheme should apply to them, then the onus should be on them to prepare the first draft of a viable scheme. (*Judiciary / Magistracy*)

Question 9 - Do you think that there is anything more that should be done to ensure that users are aware of the possibility of a fee remission and how to apply?

There were thirty-one responses to question nine (approximately 40% of all respondents) from the following categories of respondent —

- 12 Representative Bodies;
- 12 Legal Professions;
- 4 Judiciary / Magistracy;
- 2 Other Groups; and
- 1 Justice Council / Court Committee.

Eighteen (58%) respondents considered that enough was being done to ensure users were aware of the fee concession system. However, thirteen (42%) respondents suggested that Her Majesty's Courts Service could raise awareness.

The following suggestions were made —

- Her Majesty's Courts Service's website should be reviewed to ensure on-line, up-to-date, accessible information is available to the public and also give the subject far greater prominence. (*Representative Bodies*)
- Her Majesty's Courts Service to work in partnership with advice agencies and other support services working with clients to whom remission information is relevant in order to ensure widespread access to this information. (*Representative Bodies*)
- ensure that consistent training for reception staff is provided across all courts, and 'mystery shopping'-type exercises could be carried out to assess the extent to which reception staff alert the public to fee remissions and maintain prominent displays of up-to-date, correct publicity materials. (*Representative Bodies*)
- make the EX160 available in different languages and an easy read version. (*Legal Professions*)
- promote the system through wide advertising in the media. (*Legal Professions*)

Question 10 - Do you agree that applications for permission to commence litigation by vexatious litigants should be subject to a fee, even where the applicant would normally be exempt? If not, why not?

If you agree, do you think that this should be a nominal fee, say £10, or the full fee of £40 (under the proposals below) ? Please give reasons for your view.

Twenty-six responses were received on question ten (approximately 34% of all respondents) from the following categories of respondent —

- 9 Representative Bodies;
- 9 Legal Professions;
- 5 Judiciary / Magistracy;
- 2 Justice Councils / Court Committee; and
- 1 Other Public Bodies.

Twenty-one (81%) respondents agreed that a fee should be paid. Of the respondents that agreed that some fee should be paid —

- 3 respondents agreed that a nominal sum should be charged;
- 3 respondents agreed that a fee of £10 was appropriate;
- 1 respondent proposed a fee of £65; and
- 7 respondents considered that the full fee of £40 should apply.

Five (19%) respondents were not in favour of the proposal and one (3%) respondent was unsure, agreeing that there should be a deterrent but unsure whether a fee was the correct way to go about it in light of access to justice.

Among the views expressed, respondents —

- Considered that a fee should be applied on a case by case basis. (*Legal Professions*)
- Proposed that the fee should be significantly higher to reflect the extent to which the court will be asked to devote time to such litigants. (*Legal Professions*)
- Questioned whether this was likely to breach such parties' Article 6 rights because the additional charge would amount to a "fine". (*Justice Council / Court Committee*)
- Argued that if someone is exempt, then they are exempt. (*Legal Professions*)
- Highlighted that the evidence presented does not suggest that this is a significant problem and therefore is unlikely to increase court costs, so it has to be questioned how this fits with the objective of a fee system that is well-targeted, simple transparent and consistent. (*Representative Bodies*)

The following suggestion was made —

- place a limit on the number of fee exemption applications which a litigant can make in any year. (*Judiciary /Magistracy*)

Re-balancing the Fee Structure

Question 11 - Do you agree with the objective of achieving a closer match between fee and cost, and the proposed structure for achieving this?

If not, please explain why and indicate what alternative structure you would propose.

There were thirty-three responses to question eleven (approximately 43% of all respondents) from the following categories of respondent —

- 15 Legal Professions;
- 10 Representative Bodies;
- 5 Judiciary / Magistracy;
- 1 Justice Council / Court Committees;
- 1 Other Group; and
- 1 Other Public Bodies.

Seventeen (51%) respondents agreed with the objective of a closer match between fee and cost. There were six (18%) respondents who agreed in part and ten (31%) respondents were opposed.

Among the views expressed, respondents —

- Agreed that the proposed allocation, listing and hearing fee for both fast-track and multi-track trials is an appropriate measure and attractively differentiates between the listing stage and the payment of the hearing fee in a manner which properly reflects the use of court resources. (*Legal Professions*)
- Acknowledged the proposed structure seemed reasonable but considered that the additional fees to be charges in multi-track cases do not appear to be matched by significant reductions in issue fees, particularly at the higher end of the scale. (*Judiciary / Magistracy*)
- Considered that if there has to be an alteration to existing practice and structure then in principle a closer match between fee and cost would be desirable, but argued that the 'cost' of each step or stage in the court process has yet to be sufficiently analysed or identified – the current system is distorted in the sense that the administrative burden and task, and therefore cost, of issuing a claim form is the same whether it be a claim for £100 or for £10 million. (*Legal Professions*)

- Questioned whether matching fees to the cost of the processes to which they relate was the best way of achieving full-cost recovery – in order for such a system to be successful it will be necessary to carry out a detailed costing of each process (and the related processes) for which a fee is charged to ensure that the fees charged reflect the total cost of the system – and the exercise will have to be repeated at regular intervals as costs change. (*Judiciary / Magistracy*)
- Emphasised that the overriding objective must be to provide justice regardless of the cost, otherwise the very essence of the judicial process is lost to economics – fees based on meaningful information in relation to the actual cost of the process for which a fee is paid should be the normal way upon which calculations are made. (*Representative Bodies*)
- Argued that court fees are already set at levels which many potential litigants find prohibitively high and considered that the state should fund the court services adequately and that the courts should not have to be reliant on fee income. (*Representative Bodies*)
- Expressed concern that issue fees are too high, even with the current proposal to reduce them, fees are still incurred disproportionately at the start of the process. (*Legal Professions*)
- Argued that if hearing fees are to be introduced then there should be an appropriate decrease in other fees so that the overall effect is neutral. (*Justice Council / Court Committee*)

The following suggestions were made —

- if it is possible for tests to be undertaken to determine whether an individual can receive either full or part remission from court fees then it is feasible to devise tests enabling financially successful corporations to pay higher charges than small businesses, charities, or individuals of moderate means. (*Representative Bodies*)
- to ensure a closer relationship between costs and fees it would be appropriate for a fee to be incurred for a case management conference – this would also encourage parties to try and agree directions to save having to pay a court fee for a hearing. (*Legal Professions*)

Question 12 - Do you agree that, where the process and average costs are similar, High Court and county court fees should be aligned?

There were thirty-one responses received on question twelve (approximately 40% of all respondents) from the following categories of respondent —

- 15 Legal Professions;
- 9 Representative Bodies;
- 5 Judiciary / Magistracy;
- 1 Justice Council / Court Committee; and
- 1 Other Public Bodies.

Twenty-nine (94%) respondents agreed with the alignment of the fees and one (3%) respondent disagreed with the proposal. Just one (3%) respondent gave a mixed view, agreeing in principle but not agreeing with the increase seen to these fees to meet the alignment.

Among the views expressed, respondents —

- Not opposed to the principle of alignment between High Court and County Court fees, expressed concerned that where alignment is being proposed by taking a midway point between the two current fees, the effect is to increase revenue dramatically as there is a considerably greater volume of County Court business. (*Legal Professions*)
- Considered that as with issue fees, allocation and listing fees should be graded according to value, rather than having a “one size fits all” approach – although there will always be exceptions, as a matter of generality high-value claims may require more work at the allocation and case management stages. (*Judiciary / Magistracy*)

Question 13 - Do you think the allocation fee can act as a disincentive to attempt mediation? If so, how do you think this would best be addressed?

There were thirty responses received on question thirteen (approximately 39% of all respondents) from the following categories of respondent —

- 15 Legal Professions;
- 9 Representative Bodies;
- 5 Judiciary / Magistracy; and
- 1 Justice Council / Court Committee.

Ten (33%) respondents agreed allocation fees act as a disincentive to mediation mainly due to the cost factor. They suggested that the allocation fee be suspended to allow mediation instead of having to pay both fees close together. Twenty (67%) respondents disagreed that there was any disincentive.

The following suggestions were made —

- the Allocation Questionnaire fee should be refunded in the event of a successful mediation. (*Judiciary / Magistracy*)
- invite the parties to consider a stay for the purpose of Alternative Dispute Resolution before (rather than after) the Allocation Questionnaire fee has to be paid. (*Legal Professions*)
- in the case of small claims (where no further fee is payable) the payment of an Allocation Questionnaire fee can be a disincentive to attempt mediation – refund of a substantial proportion (say 50%) of the Allocation Questionnaire fee if the case settles within a prescribed period would provide an incentive that would be readily understood, whether limited to small claims or applied more generally. (*Judiciary / Magistracy*)
- the Allocation Questionnaire fee can act as a disincentive to mediation for dealing with court claims – in a recent National Audit Office study, it was found that mediation in legally-aided family cases cost less than in contested cases and the cases were resolved more quickly – there should be no allocation fee if the parties agree to mediation. (*Representative Bodies*)

Question 14 - Do you agree with the principle of refunding the hearing fee depending on the timing of settlement, and the proportions and timings suggested?

There were thirty-one responses to question fourteen (approximately 40% of all respondents) from the following categories of respondent —

- 14 Legal Professions;
- 9 Representative Bodies;
- 6 Judiciary / Magistracy;
- 1 Public Bodies; and
- 1 Justice Council / Court Committee.

Twenty-eight (90%) respondents agreed with the proposal with only three (10%) respondents disagreeing.

Among the views expressed, respondents —

- Agreed that the proposed reductions by way of phased notification of settlement after the matter has been listed for trial are both proportionate and appropriately targeted. (*Legal Professions*)
- Envisaged that this may help prevent late settlement of cases with the attendant waste of court resources. (*Judiciary / Magistracy*)
- Agreed in principle, but anticipated that there would be complexity in executing such a policy particularly where there is complex litigation involving several parties as claimants, as defendants and as additional parties. It was further suggested that such fees would have to apply not only to trials but to hearings for summary judgment or challenges to jurisdiction. (*Legal Professions*)
- Argued that there was insufficient data provided to fully consider the proposals, for example, how many matters are listed on their own and do not proceed to trial? – it is standard practice for the courts to block book time and therefore the courts' resources are always utilised – the current system is clear and precise and most importantly it works. (*Legal Professions*)
- Suggested that the formula was too complicated and may have adverse consequences, for example, if a party states a deadline on reaching agreement in order to take advantage of the larger refund, a case which could be settled for want of a few more days discussion might not be settled at all. (*Representative Bodies*)

The following suggestions were made —

- the refund should be limited to 50 per cent (rather than 75 per cent) in cases where the court is notified between 28 and 14 days before hearing, and to 25 per cent (rather than 50 per cent) in cases where the court is notified between 14 and 7 days before the hearing; and if the court is notified less than 14 days before the hearing it may be difficult for the court to use the time efficiently and effectively – there should be no refund in cases where the court is notified less than 7 days before the hearing. (*Justice Council / Court Committee*) (*Legal Professions*)
- it should be increased again to 28 days with a full refund up to that point and no refund thereafter – as this more properly reflects the cost and inconvenience to the Court system. (*Judiciary / Magistracy*)
- the 50% refund for cancellation between 14 and 7 days might seem to compromise the objective to get litigants to settle earlier. (*Other Public Bodies*)
- propose a 100% refund if the court is notified more than 14 days before the hearing; a 75% refund if the court is notified between 14 and 7 days before the hearing; and a 50% refund if the court is notified less than 7 days but not more than 48 hours before the hearing. (*Legal Professions*)
- there should be a refund if the hearing does not go ahead because the court is unable to provide a court and / or judge. (*Legal Professions*)
- a refund should be given where cases settle within 7 days from the final hearing – the parties should be rewarded for avoiding the use of court time – whilst accepting that the court might find it difficult to use court time which has been allocated to a case which settles late, a party should still be entitled to a partial refund for avoiding the need for a hearing. (*Legal Professions*)
- a partial refund (25%) should be given for a settlement during the 7 days before the hearing. (*Judiciary / Magistracy*)

Question 15 - Do you agree in principle that additional hearing fees should be charged in longer trials to reflect their true cost?

Do you agree that it is reasonable to apply such a system only in specialist jurisdictions that only deal with high-value commercial cases?

There were thirty-eight responses to question fifteen (approximately 50% of all respondents) from the following categories of respondent —

- 17 Legal Professions;
- 9 Representative Bodies;
- 8 Judiciary / Magistracy;
- 2 Other Public Bodies;
- 1 Justice Council / Court Committee; and
- 1 Other Group.

Seventeen (45%) respondents agreed with the proposal and nineteen (50%) respondents disagreed. Two (5%) respondents were undecided on the proposals.

Among the views expressed, respondents —

For

- Agreed that it was consistent with the objective of achieving a closer match between fees and cost to charge additional hearing fees for longer cases, but since the hearing fee presently proposed is based on an average hearing length, considered that there may need to be a concomitant reduction in the basic hearing fee to avoid over-recovery. (*Judiciary / Magistracy*)
- Agreed with the proposal to introduce a pilot to see how it works and if successful to be rolled out to other jurisdictions. (*Representative Bodies*)
- Considered that it was reasonable to restrict additional hearing fees to specialist jurisdictions in the first instance, on the basis that the position would be reviewed after a pilot. (*Judiciary / Magistracy*)
- Expressed agreement with the principle that additional hearing fees could be charged in longer trials to reflect their true cost. This should be a potentially proportionate and appropriate measure, but only insofar as the additional funds generated reduce costs at the earlier stage to ensure that the longer hearing fee is not a penalty, rather a true reflection as to the level of court resources required to conduct the hearing. (*Legal Professions*)

- Agreed that with the proposal to start with the specialist jurisdictions and then consider extending the scheme. (*Judiciary / Magistracy*)
- Considered that a pilot for a daily hearing fee in specialist jurisdictions would be a starting point to assess the impact, but argued that there was no justification for a daily hearing fee to only apply to specialist jurisdictions. Complex commercial cases, by their very nature, last longer than more straightforward cases and, in light of the proposals and the views set out in this response, a higher court fee would be commanded over the length of the trial to justify the true cost. To reflect the additional cost of employing more senior judges, a higher daily fee should apply in more specialist courts and in multi-track cases. (*Legal Professions*)
- Argued that any hearing fee should in the first instance be limited to multi-track cases in the specialist jurisdiction such as the Commercial Court, the Technology and Construction Court, the Business List of the Central London Civil Justice Centre and Mercantile Courts, and any hearing fee should be based on a time estimate rather than a flat fee. (*Justice Council / Court Committee*)

Against

Additional costs on users

- Envisaged that it would impose an intolerable burden on the costs of litigation for litigants of lower-value claims and hence of modest means and public authorities. (*Judiciary / Magistracy*)
- Expressed concern that litigants should not be penalised for the fact that their cases are complex and take time to consider. (*Representative Bodies*)
- Predicted that it would increase the costs of commercial litigation still further and would amount to another tax on the business community. (*Legal Professions*)
- While agreeing in principle that additional hearing fees should be charged in longer trials to reflect their true cost, and that it is reasonable to apply such a system only in specialist jurisdictions that deal with high-value commercial cases, the respondent considered that this discriminates against those parties whose case involves complex law or facts – why should justice be more expensive for them? (*Representative Bodies*)
- Considered that it would be appropriate to take into account the ability of a litigant to pay the extended costs involved. (*Other Public Bodies*)
- Argued that no additional hearing fees should be charged in longer personal injury trials, to reflect their true cost, as it cannot be just to charge a person who has been injured as a result of the defendant's negligence extra court fees because their case is particularly complex and as a result the court needs to hear a significant amount of evidence in order to adjudicate on the matter. (*Legal Professions*)

Consultation with courts and users

- Emphasised that to pilot daily hearing fees in one or more of the specialist courts in 2008 was wholly unacceptable without consultation as to the court chosen, the rates to be charged and the basis of payment. (*Judiciary / Magistracy*)
- Considered that it would be wrong to charge higher fees in order to raise money from commercial parties as a subsidy for other parts of the system because of the perception that the specialist jurisdictions only involve “corporations and other wealthy litigants arguing over huge sums of money”. (*Legal Professions*)

Costs are same in other civil courts

- Argued that there was no justification for charging higher fees for longer trials in the specialist jurisdictions of the High Court but not in the other parts of the High Court or in the County Courts – a two-week trial in the Commercial Court will cost the same to Her Majesty’s Courts Service as a two-week trial in another part of the court system. It would be wrong in principle to charge higher fees to commercial parties to subsidise other points of the system. (*Legal Professions*)
- Expressed concern that such a proposal, if properly considered and fully based on empirical evidence, should not apply across the jurisdictions – favouring or penalising particular jurisdiction may prove difficult to justify, in circumstances where Her Majesty’s Courts Service is to provide a service to litigants within all jurisdictions. (*Legal Professions*)
- Argued that daily hearing fees would not add any value to the service provided by the Commercial and Admiralty Courts as the fees will do nothing to increase the quality of the work of the Court nor the physical conditions of the Court and neither will the proposal do anything to control or contain the cost of litigation. (*Legal Professions*)

Impact on international work

- Argued that the English court system has historically been successful in attracting work from the international commercial community, but it cannot be assumed that this will always be so, especially at a time when other dispute resolution centres are openly competing for commercial work. (*Legal Professions*)
- Emphasised that the United Kingdom earns billions of pounds from international dispute resolution, largely high-value commercial cases in the specialist commercial court and the imposition of daily hearing fees will render the United Kingdom expensive as an international jurisdiction causing corporate counsel to choose other jurisdictions in which to resolve their international disputes resulting in a significant loss of income and positioning for London as a world financial centre. (*Legal Professions*)

- Envisaged that it would be perceived as expecting foreign litigants to subsidise the domestic civil jurisdiction system across the board at ever increasing levels. (Judiciary / Magistracy)

Pressure on judiciary

- Anticipated that there would be pressure on judges to avoid courtroom use, absorb material in the evening and over the weekend will rise inexorably – invidious comparisons (even league tables) would drawn up comparing the hearing costs involved with individual judges. (Judiciary / Magistracy)
- Highlighted a concern that inevitably each judge deals with cases differently so if daily hearing fees are introduced this is likely to give rise to a certain amount of forum shopping; and parties may seek to have their cases listed before Judges who are perceived to dispose of hearings more quickly than others. (Legal Professions)

The following suggestions were made —

- a working party under the auspices of the Commercial Court Users' Committee should be established to assess the risk of an adverse impact on international litigation conducted in England if such a scheme was introduced. (Legal Professions)
- instead of introducing hearing fees suggest an additional increment could be added to each claim fee on claims exceeding say £100,000 and /or additional fees for claims in excess of higher figures such as £500,000, £1 million, £2 million, £5 million, more than £10 million, would be the fairest way to raise any extra money which may be required – all those who issue proceedings will therefore continue as at present to subsidise the minority whose cases go to trial – a proposal that additional issue fees should be payable on claims of £100,000 or more would not affect the unfairness said to be created by the current heavy reliance on issue fees in simpler mainly small undefended debt claims which are usually prosecuted in the County Court. (Legal Professions)

Question 16 - Do you agree that hearing fees in lower-value small claims should continue to be subsidised by issue fees to ensure a degree of proportionality? Do you think that the figures proposed strike the right balance?

There were twenty-eight responses received to question sixteen (approximately 36% of all respondents) from the following categories of respondent —

- 13 Legal Professions;
- 9 Representative Bodies;
- 5 Judiciary / Magistracy; and
- 1 Justice Council / Court Committee.

Nineteen (68%) respondents agreed with the proposal, seven (25%) respondents disagreed, and two (7%) respondents who had mixed views.

Among the views expressed, respondents —

For

- Emphasised that fees in small claims cases need to be kept in proportion to the sums in issue and the proposed structure seems a reasonable compromise – the notification of the provisions for fee refund applies even more in small claims cases where a very large proportion of litigants act in person. (*Judiciary / Magistracy*)
- Considered that the proposed fees' structure in relation to lower value small claims was an appropriate weighting between claims within the jurisdiction – it reflects the weighting of issue fee against value within the civil court costs regime. (*Legal Professions*)
- Agreed that it is necessary to subsidise very low value claims in order to ensure that the fees are not disproportionate to the amount in issue, but considered that in general, however, it is not desirable for fees to be set so low as to encourage unnecessary or disproportionate litigation. (*Judiciary / Magistracy*)

Against

- Considered that the cost charged for the hearing should be on a time basis and lower-value small claims should not, in general, be subsidised by higher-value claims, save for the fact that it is likely that high-value claims will take up more court time. (*Legal Professions*)
- Argued that if fees are intended to reflect costs, then why should the small number of parties who pursue low-value claims to trial be subsidised by other court users – subsidising low-value cases in this way could encourage the parties to go to trial, which will commonly be disproportionate both in terms of court time and the costs to the parties – fees reflecting the real cost of a trial might encourage the parties towards mediation and settlement and as a result do more to achieve proportionality. (*Legal Professions*)

- Questioned whether the figures proposed were reasonable and proportionate to the amount claimed. (*Legal Professions*)
- Expressed concern that if proportionality is to be retained as a meaningful criteria it must be recognised that small claims cannot be disposed of justly if anything approaching the full cost is to be charged – hearing fees would operate as a significant disincentive in lower value claims. (*Justice Council / Court Committee*)
- While acknowledging that for a claim up to £1,000 the proposal will result in a reduction of fees or be cost neutral, expressed concern that above £1,501 there is a substantial increase where £100 is replaced by £185 and above £3,000 the increase is enormous from £100 to £335. (*Judiciary / Magistracy*)
- Highlighted concern that the introduction of a hearing fee, even on a sliding scale, will act as a disincentive for consumers to take part in small claims cases. (*Representative Bodies*)

The following suggestion was made —

- suggest that hearings under a set time (for example, one-to-two hours) are included in the issue fee, but over that will become chargeable to the person responsible for costs. (*Representative Bodies*)

Question 17 - Do you agree that lower fees should be charged for using e-systems with lower processing costs? Do you think the proposed reductions create reasonable differentials between the various channels?

Do you think that unreasonable extra cost of using more expensive channels should be recoverable in costs?

There were thirty-one responses received to question seventeen (approximately 40% of all respondents) from the following categories of respondent —

- 13 Legal Professions;
- 10 Representative Bodies;
- 5 Judiciary / Magistracy;
- 1 Justice Council / Court Committee;
- 1 Other Public Bodies; and
- 1 Other Group.

Twenty-three (74%) respondents agreed with the proposition and two (7%) respondents disagreed. Six (19%) respondents gave a mixed view.

Among the views expressed, respondents —

For

- Agreed that it is reasonable to provide a financial incentive for using e-systems and that the court should have a discretion to allow only the lower cost of e-system issue. (*Judiciary / Magistracy*)
- Agreed with lower cost for using systems with lower processing costs, but would want to see how solicitor firms and other regular court users are moved towards these systems. (*Individual*)
- Urged that more efficient e-systems should be encouraged and the unreasonable extra cost of using more expensive channels should not be recoverable. (*Judiciary / Magistracy*)
- While agreeing that lower fees should be charged for issues with lower processing costs, considered that there needs to be an understanding of the issues leading to more expensive channels, not an across the board rule. (*Representative Bodies*)
- Considered that lower issue fees should be charged for cases issued using electronic and bulk buying processes, but only if the e-systems are properly resourced and functioning effectively. (*Legal Professions*)

- Considered that the unreasonable extra cost of using more expensive channels should be recoverable in costs, but this could involve considerable argument as to why the more expensive channel was used. (*Public Body*)

Against

- Considered that the issue fee exceeds the cost of providing the electronic service and urged that serious consideration must be given to investing the excess of the fee income in greater investment in IT in support of the civil courts – it is wholly unjustifiable and impermissible to use it to provide a cross-subsidy to those who are not civil litigants. (*Judiciary / Magistracy*)
- Emphasised that individuals unable to utilise the system should not be penalised. (*Justice Council / Court Committee*)
- Argued that users choosing to issue claims manually should not be penalised for exercising that choice because the cost of investing in computer software to issue claims in the County Court Bulk Centre is in excess of £10,000 and the way that Money Claim OnLine has been set up does not make it possible to issue claims in batches. (*Individual*)
- Strongly opposed to penalising litigants who do not issue electronically because the systems are not good (and that includes Money Claim Online) and not universal enough so that there is no reason not to issue electronically. (*Judiciary / Magistracy*)
- Pointed out that giving a discount produces a need to generate additional revenue elsewhere. (*Judiciary / Magistracy*)
- Argued that there should be no criticism for selecting a channel which is open to all users, and as the additional cost has been discharged, so should the same be capable of recovery from the unsuccessful party on the Indemnity Principle. (*Legal Professions*)
- Considered that it would be better if Her Majesty's Courts Service sold the concept of electronic payment on advantage to the user rather than penalty to the non-user – the differential is likely to be small and the cost of any dispute with regard to method of payment may be counter productive. (*Legal Professions*)
- Envisaged that the discount for the use of e-systems will in general benefit mainly debt-collectors, commercial and other institutional users of the court service. (*Legal Professions*)
- Reminded Her Majesty's Courts Service to take into account the proportion of people on low incomes who have access to a computer with an internet connection – research for OFCOM, the telecommunications regulator, found that in 2006 only 35 percent of particular social groups whose income was less than £11,500 per year had a home internet connection – the use of other methods not necessarily being convenient for people. (*Public Body*)

The following suggestion was made —

- to safeguard those of limited means seeking access to justice, it is suggested that all individuals are charged the lower rate. (*Legal Professions*)

Question 18 - Do you agree that assessment fees should be set by reference to bands of value? If so, do you agree with the bandings proposed?

Do you agree that the fee should be calculated by reference to the bill as presented?

There were thirty responses received in respect of question eighteen (approximately 39% of all respondents) from the following categories of respondent —

- 16 Legal Professions;
- 7 Representative Bodies;
- 5 Judiciary/ Magistracy; and
- 2 Justice Councils / Court Committee.

Twenty-two (73%) respondents agreed with the proposal and two (7%) respondents disagreed. There were six (20%) respondents who gave a mixed view.

Among the views expressed, respondents —

- Agreed that the assessment fees should be set by reference to bands value, as currently on larger matters, there is no incentive to agree costs as the assessment fee is so low in comparison with the costs sought. (*Legal Professions*)
- Divided as to whether the fee should be fixed by reference to the settled amount rather than the presented amount – there could be a system as before with say 50% based on presentation total on lodgement with the balance of the final figure on conclusion. (*Legal Professions*)
- Considered that it was hard to see what the actual difference would be in terms of the court's work in assessing a bill of £15,000 and say £20,000 and therefore why a client has to pay double the court fee – however, it is appreciated that the bands need to be drawn somewhere and they appear to be drawn to take into account civil cases. (*Legal Professions*)
- Disagreed that assessment fees should be banded by reference to the amount of costs claimed and concerned that the proposed bands were too high. (*Legal Professions*)
- Argued that the suggested court fees for assessing a Bill of Costs exceed the likely court fees payable throughout the proceedings and considered that it is inappropriate that a detailed assessment costs up to five times more than a multi-track trial – there is little justification for fees of up to £5,000 for filing a Request for Assessment when the majority of costs are agreed before the actual assessment hearing. (*Legal Professions*)
- Questioned whether it was necessary to have as many as eight bands. (*Judiciary / Magistracy*)

The following suggestions were made —

- it would be simpler to base the fee on the amount claimed in the bill lodged for assessment – propose that this should be calculated on a percentage basis – 1% or 2%. (*Judiciary / Magistracy*)
- fees should be set by reference to bands of value but the fee should be paid on the bill as presented – however on conclusion of the assessment proceedings the paying party only refunds the payee the assessment fee based upon the assessed figure for costs and the payee stand the cost of any shortfall which should discourage the filing of excessive bills. (*Legal Professions*)
- a single fee with no possibility of partial refund provides no incentive to settle, so it is suggested that a single fee (on a banded basis as proposed) made up of two parts – the first non-refundable would reflect the broad cost of setting up the assessment hearing, the second would reflect the broad average cost of assessment hearings for bills within the band and would be refundable in the event of settlement along the line proposed for refund of hearing fees. (*Judiciary / Magistracy*)
- there should be a lower band in respect of bills under £5,000 – the proposal being that the fee in such cases should be £100; the next band would be £5,000 – 15,000 for which the fee should be £200; and where the costs bill exceeded £1 million (as occurs in a few cases) the fee should be £10,000. (*Justice Council / Court Committee*)
- whilst the bands seem reasonable, there is no reason why the fee cannot be determined with reference to the daily court rate – if a costs hearing is scheduled to last more than one day, a fee per day should be charged on lodging the bill, this would ensure that the appropriate court fee is charged for the time involved and avoid other claims subsidising this. (*Legal Professions*)
- fees should be related to the amount of costs claimed – such banding would reflect the additional resources used in larger cases and might act as an incentive to settle – research should be undertaken to inform the setting of the bands by obtaining a breakdown of bills in quantum terms and details of the number of cases which actually proceed to assessment hearing following the filing of a request – but in the absence of that information then suggest consideration be given to banding along the following lines – £600 for bills up to £50,000; £1,000 for bills up to £100,000 and £2,000 for larger bills – these fees should cover hearings of up to two days, with an additional fee for subsequent days. (*Legal Professions*) (*Justice Council / Court Committee*)
- refunds should be available for hearings which are vacated if the issue is settled. (*Legal Professions*) (*Judiciary / Magistracy*)

Question 19 - Do you agree with these proposals in this section? If not, please explain in what respects.

Twenty-nine responses were received on question nineteen (approximately 83% of all respondents) from the following categories of respondent —

- 13 Legal Professions;
- 9 Representative Bodies;
- 4 Judiciary / Magistracy;
- 2 Justice Councils / Court Committee; and
- 1 Other Group.

The question related to changes to a number of ancillary processes that included oaths, copying and search fees. Twelve (42%) respondents agreed with the proposals and fifteen (52%) respondents disagreed. Two (6%) respondents gave mixed views.

Among the views expressed, respondents —

Bills of Sale Act 1882

- Expressed concern that there has been a substantial increase in the number of loans secured by Bills of Sale over the past few years and the security usually given for these loans is the borrower's car – interest charges are high and, in contrast to borrowers buying a car on a hire purchase agreement where there is some judicial protection against loss of the item subject to the agreement, borrowers with loans secured by Bills of Sale have no judicial protection against repossession of the security for their loan – whilst not disagreeing that it is reasonable to increase the fee to file a document under the Bills of Sale Act 1882, consider that the Government should legislate to introduce some judicial protection for consumers taking out loans secured by Bills of Sale. (*Representative Bodies*)

Certified Copy Documents

- Considered that there was rather more involved in getting a document certified as a true copy by a judge than in simply sealing a photocopy and perhaps the proposed fees should reflect this. (*Judiciary / Magistracy*)
- Argued that certified copies of marriage certificates can be obtained from registry offices for £7, so £15 for a certified copy of Decree Absolute seemed high. (*Legal Professions*)

Copying

- Argued that the proposed minimum fee of £5 for copying seemed wholly disproportionate against charges for such services in the High Street. (*Judiciary / Magistracy*)
- Questioned whether the proposed increase was based on the true cost. (*Representative Bodies*)
- Considered that the maximum charge was unjustifiable and would unfairly penalise unsophisticated litigants (who may not have brought to court everything they need) – the basic charge of 50 pence per sheet should also be reduced to 25 pence per sheet, this should more than cover the true cost of the service. (*Legal Professions*)
- Proposed that a rate of 30 pence per sheet in line with the charges of law firms should be charged. (*Legal Professions*)
- Urged Her Majesty's Courts Service that it should not be aiming to make a profit from providing this service, and a minimum charge of £5 and 50p a copy is significantly in excess of the charge made by shops on the high street – this will restrict access to justice by restricting a litigant in person's ability to provide copies if, as is often the case, they attend at court unaware of the need to make many copies of documents. (*Legal Professions*) (*Other Public Bodies*) (*Justice Council / Court Committee*)
- Cannot understand why the fee for provision of a copy document in electronic form should attract a fee of £20 when it is a simple matter to find the document and send it electronically. (*Judiciary / Magistracy*)

Oaths

- Argued that it was hard to see why the affidavit fee charged by court staff should differ from the fee which solicitors are entitled to charge. (*Legal Professions*)
- Considered that the proposed fee of £25 for oaths taken before an officer of the court seemed exorbitant. (*Judiciary / Magistracy*)
- Remarked that the increase was excessive and unjustified and was particularly concerned for the litigant who arrives at court unaware of the need for a document to be sworn. (*Justice Council / Court Committee*)
- Argued that as solicitors and commissioners of oaths can only charge £5 (and £2 per exhibit), a sudden increase to £25 therefore seems unfair and unreasonable as the oaths are administered by court clerks – but if there is to be an increase, it should be a smaller increase – particularly as it is in basic family cases (such as a non-defended divorce) where oaths are still regularly required – any increase in the oath fee chargeable by the court service should be duplicated so that other professionals can charge the same sums for administering oaths. (*Legal Professions*)

- Expressed concern that the proposed fee of £25 for making an oath or affirming to an officer of the court effectively introduces an up-front fee for applying for an administration order – it could also add to the costs of applying for a time order, where the court might insist that the applicant provides information on oath as to their circumstances at the time they took the loan out and their current circumstances. (*Representative Bodies*)
- Argued that the proposed increase was not in proportion to the actual costs incurred in undertaking the task and considered that this seems to amount to income generation and does not fit within the rationale of the paper, which is “full-cost price”. (*Other Public Bodies*)
- Considered that the charge for swearing affidavits at the court should be no more than £5. (*Justice Council / Court Committee*)

Searches

- Argued that a fee of £40 seemed a large cost for this search, especially as it is not optional – considered that the costs do not relate to the “true costs”. (*Representative Bodies*)
- Considered that a flat rate fee of £40 seemed very high. (*Legal Professions*)
- Expressed concern about the proposed high increase for a search in the Principal Registry of the Family Division for Parental Responsibility agreements and Decree Absolutes. (*Legal Professions*)
- Remarked that the proposed fee seems excessive especially for searching bankruptcy records. (*Legal Professions*)

Warrant for the arrest of a Ship

- Opposed to the proposal because the increased fee bears no relationship to the service provided. We considered the service to have deteriorated with the withdrawal of a guaranteed out-of-hours response capability – to double a fee whilst significantly reducing a service is an example of how the proposals bear no relation to access to justice nor service levels. (*Legal Professions*)

Fees for civil proceedings in Magistrates' Courts

Question 20 - Do you agree that the particular fee increases proposed are reasonable, given our target of moving towards full-cost recovery (net of fee concessions) in this area?

Twenty-seven responses were received on question twenty (approximately 35% of all respondents) from the following categories of respondent —

- 11 Representative Bodies;
- 6 Legal Professions;
- 4 (Judiciary / Magistracy)
- 2 Other Public Bodies;
- 2 Other Group;
- 1 Justice Council / Court Committee; and
- 1 Individual.

Thirteen (48%) respondents agreed with the proposals and twelve (44%) respondents disagreed. There were two (8%) respondents that gave a mixed response.

Among the views expressed, respondents —

- No objection, this should go some way towards easing the burden on claimants in the County Courts. (*Justice Council / Court Committee*)
- Members agree. (*Legal Professions*)
- Considered that Magistrates' Courts should not be subsidised by the civil court fees. (*Legal Professions*)
- Argued that it would be wholly unjustifiable for civil litigants to provide any cross-subsidy at all to the cost of civil claims in the Magistrates' Courts. (*Judiciary / Magistracy*)

Proceeds of Crime Act

- Urged Her Majesty's Courts Service of the need to re-consider the effect of the imposition of charges in Proceeds of Crime Act cases, which could represent a barrier to performance improvement and have an adverse impact on the delivery of the Government's targets. (*Other Public Bodies*)

- Predicted that Police Forces will consider that dealing with low value cases will not be cost effective and they may set their own threshold levels well above the £1,000 legislative threshold. (*Other Public Bodies*)

Warrant of Entry

- Proposed that only those warrants of entry applied for and granted are paid for and that either payment for these is made after the warrants of entry are obtained, or a refund process is introduced. (*Individual*)
- Envisaged that the three-fold increase will add significant additional costs, which will have to be passed onto customers. (*Other Group*)
- Considered that the proposed increase seems excessive for the volume of work involved in signing a Warrant of Entry and so would expect to see an improvement in the service. (*Other Group*)

Question 21 - Do you agree with the proposal to create a separate fee for appeals?

There were twenty-one responses to question twenty-one (approximately 27% of all respondents) from the following categories of respondent —

- 10 Representative Bodies;
- 5 Legal Professions;
- 3 Judiciary / Magistracy;
- 2 Other Public Bodies; and
- 1 Justice Council / Court Committees.

Twenty (95%) respondents agreed with the proposal and one (5%) respondent disagreed.

Among the views expressed, respondents —

- Considered the proposal had merit, and reflected the quantum of court resource expended. (*Legal Professions*)
- Argued that it was essential to maintain the fee for appeals involving the Licensing Act made by an individual resident, groups of residents and residents associations should either be subject to remission or the current fee should remain in order to avoid discriminating against “interested parties” that do not have the funds of the order of £400 to pursue their appeal. (*Representative Bodies*)
- Expressed concern that costs should not be applicable to local residents associations and members at all because any decision to do so would seriously undermine the intentions of the licensing legislation and the Government agenda as a whole, in giving local communities more control over issues that affect their lives. (*Other Public Bodies*)
- While not objecting in principle to having a separate fee for appeals and also to the principle of moving towards full cost recovery, considered that the fee for lodging an appeal under the provisions of the Licensing Act 2003 should remain at £25. (*Representative Bodies*)
- Highlighted that over 80% of pubs (nearly 50,000 outlets) are small businesses which are independently managed or run by self-employed licensees and considered that the proposed fee is a significant sum for a small pub or restaurant business or a village hall to pay, and also for other parties who may wish to appeal, such as responsible authorities or local residents. (*Representative Bodies*)
- Envisaged that the cost of appeals against 24 hour licensing of local pubs and clubs will dramatically affect the ability of the least well-off in society to appeal against 24 hour licensing decisions. (*Representative Bodies*)

- Anticipated that the proposal would add an extra, unaffordable financial burden when making a licensing application and this burden would disproportionately affect smaller retailers, which since the Licensing Act 2003, retailers have been faced with huge costs surrounding licensing applications. (*Representative Bodies*)
- Pointed out that it was not just businesses making applications for alcohol licences, but charities, voluntary organisations, village and community halls, schools and there were concerns that such an increase in the fee for an appeal would effectively rule out local residents and voluntary organisations being able to appeal licensing authority decisions which they don't agree with. (*Other Public Bodies*)

Additional Comments

The twenty-one questions asked in the Consultation Paper generated a broad variety of responses, comments were not sought on the underlying fee policy. However, twelve respondents (approximately 16%) took the opportunity to offer additional comments. The numbers and categories of respondents were as follows —

- 7 Legal Professions;
- 2 Justice Councils / Court Committees;
- 1 Other Group;
- 1 Judiciary / Magistracy
- 1 Individual.

Additional comments were provided on the following subjects —

- access to justice
- bankruptcy deposit
- fee-setting policy
- review of family fees

Access to Justice

- Concerned that the increases in court fees for cases going to trial will inhibit people with a real issue from starting legal proceedings and that the restructuring of fees will act as an inappropriate deterrent from going to trial – while this may help meet the government’s strategic objectives by controlling the civil courts’ workload, it does not meet the state’s obligation of ensuring that citizens have the means to access justice. (*Other Groups*).
- Considered that the word ‘exemption’ was readily understood by court users, while the word ‘remission’ was not, and proposed that the word exemption should be used in the new scheme. (*Legal Professions*).

Bankruptcy Deposit

- Suggested that payment of the bankruptcy deposit be spread over the lifetime of the bankruptcy order. (*Individual*).

Fee-setting policy

- Considered that the retention of escalating fees for the issue of claims was inconsistent with the objective of matching fees to costs, because it costs the same to HMCS to issue a claim whatever the value of it; and therefore to be consistent, the fee for issuing a claim should be a single, low flat-rate fee reflecting

the limited costs involved in the process and the fee should be lower if a party serves a claim itself. (*Legal Professions*)

- Argued that the core services of the state, whether policing, health care, the prison service, immigration system or court service should be funded mainly from general taxation. (*Legal Professions*)
- Argued that it is for the collective benefit that individuals have an efficient and authoritative means for resolving disputes; and that civil litigation also performs a public role in contributing to the clarification and development of the law. (*Legal Professions*)
- Considered that the provision of an adequate civil and family justice system should not depend on those who need to resort to the courts bearing the full cost of establishing and maintaining them. (*Judiciary / Magistracy*)
- Envisaged that as Her Majesty's Courts Service had made a profit of £34 million in relation to civil (non-magistrates) and £4 million in relation to non-contentious probate in 2005-2006, then a further increase in fees would lead to civil claimants further cross-subsidising other areas of the business. (*Justice Council / Court Committee*)
- Considered that court fees raised from civil actions being used to subsidise family courts and magistrates' courts was wrong in principle, access to justice through the civil courts for injured persons should not be clogged or taxed by Her Majesty's Courts Service to subsidise the public service provided by family courts. (*Legal Professions*)
- Expressed the view that the only way to resolve tension between the significant increases in fees and access to justice is for a fundamental review of the underlying policy. (*Justice Council / Court Committee*)

Review of Family Fees

- Suggested introducing staged fees for family proceedings, so the issue fees are not increased, but new fees introduced if you take a case through to a final, contested hearing (as for civil cases), but that left a question as to whether such a "listing" fee should be the sole responsibility of the applicant, or payable jointly between the parties. (*Legal Professions*)

Conclusion

- 1 After careful consideration of the responses received, with some adjustments, the decision was made to proceed with the changes proposed.
- 2 The current system of exemptions and remissions has been replaced with a new system of concessions that will apply to all the fees orders.
- 3 In light of the responses received, we have reconsidered the original proposals and have adjusted some of the fees accordingly, putting together a package of solutions that positively and affordably addresses the majority of concerns. Those are —
 - Some of the proposals for downstream civil fees have been adjusted to better reflect the cost of the stages concerned for example the fee for allocation questionnaires and listing questionnaires has changed. This has created scope to make larger reductions to some of the higher issue fees than originally proposed, so meeting the criticism that these reductions were too low.
 - In the Magistrates' Courts, a fee of £400 was proposed for appeals against the decisions of public authorities, mainly licensing decisions. Some respondents objected to this proposal and indicated that it was likely to deter individuals appealing against the granting of liquor licences in their neighbourhood. As a result we have created two different fees; the new one for appealing the refusal of a licence and the current fee will remain for those appealing the granting of a licence, so protecting individuals from the introduction of a separate appeal fee.
 - Many consultees disagreed with the scale of proposed increases to fees for ancillary matters such as oaths, copying and searches. As a consequence, a number of detailed adjustments have been made.
 - The proposal to pilot daily hearing fees in the specialist commercial jurisdictions in 2008 was met with opposition from respondents representing the views of legal practitioners and the judiciary of those courts. We therefore propose to review the scope proposed, and undertake further consultation. As a result, any introduction of a pilot scheme is unlikely to take place before 2009.
- 4 Fees Orders —
 - SI 2007 No. 2174 Non-Contentious Probate Fees (Amendment) Order 2007
 - SI 2007 No. 2175 Family Proceedings Fees (Amendment No. 2) Order 2007
 - SI 2007 No. 2176 Civil Proceedings Fees (Amendment No. 2) Order 2007

were laid before Parliament on 26 July 2007, and came into force on 1 October 2007.

- SI 2007 No. 2619 Magistrates' Courts Fees (Amendment) Order 2007

was laid before Parliament on 7 September 2007, and came into force on 1 October 2007.

5. Amendments to the Statutory Instruments —

- SI 2007 No. 2800 Family Proceedings Fees (Amendment) (No. 2) (Amendment) Order 2007
- SI 2007 No. 2801 Civil Proceedings Fees (Amendment) (No. 2) (Amendment) Order 2007

were laid before Parliament on 25 September 2007, and came into force on 28 September 2007.

Next Steps

1. These changes were the next step in a longer-term strategy for reviewing and reforming the court fee system to ensure it is sustainable and well-balanced. The strategy will ensure that we can —
 - provide the customer with services that represent value for money in terms of quality and price; and
 - balance the costs of the system with its income.
2. A sustainable system should —
 - be able to meet the financial targets set for civil, family and probate business;
 - protect access to justice through a well-targeted system of exemptions and remissions;
 - take into consideration the taxpayer who bears the cost of cases subject to a fee concession;
 - be flexible enough to accommodate changes in demand, whether driven by wider policy changes or extraneous factors. The current system is over-dependent on issue fees on undefended debt claims.
3. We will continue to implement our strategy over the next few years. Those steps will include —
 - a review of the financial targets and fee structure for family cases;
 - further work to improve our costing system and to create alternative ways in which fees can be paid in order to reduce administrative costs for users and HMCS;
 - further increases in magistrates' court civil fees to bring them to full-cost price levels in 2008;
 - development of hearing fees, including the possibility of daily hearing fees in large commercial cases;
 - feed into the Civil Justice Information Project.

Consultation Co-ordinator contact details

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact Laurence Fiddler, Ministry of Justice Consultation Co-ordinator, on 020 7210 2622 or email him at consultation@justice.gsi.gov.uk

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

**Laurence Fiddler
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Legal Professions

Association of Personal Injury Lawyers

Bar Council

Beachcroft LLP

City of London Admiralty Solicitors' Group

City of London Law Society

Clifford Chance LLP

Commercial Litigation Association

Irwin Mitchell Solicitors

Stephen Gisby

Simon Goddard – Family Lawyer

Morgan Lewis

Herbert Smith LLP

Institute of Legal Executives

International Committee of the Bar Council

Keoghs LLP

Law Society

London Solicitors Litigation Association

Stephen Males QC

Manchester Law Society

Medical Defence Union

Motor Accidents Solicitors Society

Personal Injuries Bar Association

Resolution

Jeremy Sutcliffe

Technology and Construction Court Bar Association

Technology and Construction Court Solicitors Association

Thompsons Solicitors

Commercial Court Users' Committee

Judiciary and Magistracy

Sir Henry Brooke

Civil Sub-Committee of the Judicial Executive Board

Civil Sub-Committee of Her Majesty's Council of Circuit Judges

His Honour Judge Holman on behalf of the Manchester Group Civil Judiciary

Mr Justice Jackson – Technology and Construction Court

His Honour Judge Mackie QC

Civil Sub-Committee of the Association of District Judges

Mr Justice Steel – Commercial and Admiralty Courts

Justice Councils and Court Committees

Civil Justice Council

Money and Property Committee of the Family Justice Council

South Yorkshire Criminal Justice Board

Her Majesty's Courts Service

Dorset Family Legal Team

Departmental Whitley Council Trade Union Side

Other Public Bodies

Department for Culture, Media and Sport

Her Majesty's Inspectorate of Court Administration

Metropolitan Police

Home Office

Her Majesty's Revenue and Customs

Representative Bodies

Association of Convenience Stores

British Beer and Pub Association

Business Information Centre

Centre for Effective Dispute Resolution

Child Poverty Action Group

Citizens Advice

Civil Court Users' Association

Credit Services Association

Institute of Credit Management

Legal Action Group

Licensing Act Active Residents Network

Local Government Association

Low Income Tax Reform Group

Money Advice Trust

National Association of Residents Associations

Other Groups

Grosvenor Legal Services

Odysseus Trust

Power2contact

Scottish Power

Association of Chief Police Officers

Justices' Clerks

Justices' Clerks' Society

Individuals

Allan Banks

Don Foster MP

Graham Green

Christopher Reed

Anthony Reeves

Annex B – Questions posed in the Consultation Document

Q.1. Do you agree that this provides a fair, transparent and workable structure for determining fee concessions?

Q.2. Do you think that these proposals strike the right balance in targeting eligibility for full remission through a simple and workable system?

In particular, do you agree that the receipt of Child Tax Credit, Housing Benefit, Council Tax Benefit and Incapacity Benefit should not be an automatic passport to full remission?

If you do not agree, please explain why, and what alternatives you propose.

Q.3. Do you agree with the proposed simplifications, i.e. there should not be:

(i) a gross income cap;

(ii) any capital element in the test;

(iii) a maximum monthly housing costs allowance for applicants without dependants; or

(iv) a fixed allowance for employment expenses?

Q.4. Do you think there should be a residual discretion to grant remission in exceptional circumstances not covered by the means-test? If so, in what circumstances do you envisage the discretion might apply?

Q.5. Do you think that court-ordered liabilities or any other specified types of debt repayment should be deducted in the calculation of disposable income?

Q.6. Do you agree that we should remove the current exemption for those receiving Legal Help in family proceedings? If not, please give your reasons.

Q.7. Do you think it right in principle that an unsuccessful opponent ordered to pay costs should also be liable for the cost of any remitted court fees?

Do you have any suggestions for how the system would best work in practice?

Q.8. Do you agree that the system should apply to individuals only? If not, what criteria should be included in a scheme for small businesses, etc.?

Q.9. Do you think that there is anything more that should be done to ensure that users are aware of the possibility of a fee remission and how to apply?

Q.10. Do you agree that applications for permission to commence litigation by vexatious litigants should be subject to a fee, even where the applicant would normally be exempt? If not, why not?

If you agree, do you think that this should be a nominal fee, say £10, or the full fee of £40 (under the proposals below) ? Please give reasons for your view.

- Q.11. Do you agree with the objective of achieving a closer match between fee and cost, and the proposed structure for achieving this?

If not, please explain why and indicate what alternative structure you would propose.

- Q.12. Do you agree that, where the process and average costs are similar, High Court and county court fees should be aligned?

- Q.13. Do you think the allocation fee can act as a disincentive to attempt mediation? If so, how do you think this would best be addressed?

- Q.14. Do you agree with the principle of refunding the hearing fee depending on the timing of settlement, and the proportions and timings suggested?

- Q.15. Do you agree in principle that additional hearing fees should be charged in longer trials to reflect their true cost?

Do you agree that it is reasonable to apply such a system only in specialist jurisdictions that only deal with high-value commercial cases?

- Q.16. Do you agree that hearing fees in lower-value small claims should continue to be subsidised by issue fees to ensure a degree of proportionality? Do you think that the figures proposed strike the right balance?

- Q.17. Do you agree that lower fees should be charged for using e-systems with lower processing costs? Do you think the proposed reductions create reasonable differentials between the various channels?

Do you think that unreasonable extra cost of using more expensive channels should be recoverable in costs?

- Q.18. Do you agree that assessment fees should be set by reference to bands of value? If so, do you agree with the bandings proposed?

Do you agree that the fee should be calculated by reference to the bill as presented?

- Q.19. Do you agree with these proposals in this section? If not, please explain in what respects.

- Q.20. Do you agree that the particular fee increases proposed are reasonable, given our target of moving towards full-cost recovery (net of fee concessions) in this area?

- Q.21. Do you agree with the proposal to create a separate fee for appeals?

