

Civil Court Fees

Consultation Paper

CP 5/07

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This consultation will end on 25 June 2007

Civil Court Fees

**A consultation produced by Her Majesty's Courts Service, part of the
Department for Constitutional Affairs.**

This information is also available on the DCA website at www.dca.gov.uk

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Executive Summary

1. The cost of running the civil and family courts in England and Wales is currently about £550m a year. Of this, almost 80% is funded through court fees. The fees are prescribed by the Lord Chancellor under statutory powers and must comply with the general policy principles for statutory fee-charging services set out in Treasury's *Fees and Charges Guide*. These include that:
 - the fees charged in respect of each service should not exceed the full cost of providing that service; and
 - each service should have a financial objective, which should normally be full-cost recovery, and that any subsidy should be justified and agreed with Treasury.
2. The existence of the scheme of fee remissions and exemptions is an example of an agreed policy subsidy to ensure that access to justice for the less well-off is protected.
3. The Government's policy for court fees is, therefore, based on the principle of 'full-cost pricing'. Court fees should generally be set at levels that reflect, on average, the full cost of the processes involved, with a well-targeted system of fee concessions to protect access to justice. This is a better way of targeting the taxpayer's contribution to the cost of the civil and family courts than setting fees generally below full-cost levels. That would mean that corporations and other wealthy litigants who could afford to pay would benefit from that contribution – increasing its cost and in turn putting pressure on legal aid and other programmes.
4. Achieving a closer match of cost and income within the system will make the funding of the courts more predictable and sustainable, and the system fairer as between different categories of court user.
5. The proposals contained in the consultation paper are part of our strategy to develop and reform the court fee system. The strategy seeks 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;
 - remains viable when patterns of demand change, by achieving as close a match as reasonably practicable between income and costs within the system.

The proposals in the consultation paper represent the next steps to delivering that strategy. We propose to introduce:

- A revised system of fee concessions which aims to ensure that the system meets the objective of protecting access to justice in a well-targeted and affordable way, and to tackle criticisms about the inconsistent application of the current system; these proposals are set out in Chapter 2.
 - Hearing fees for civil cases and adjustments to other downstream fees, aimed at a better match of costs and income within the system (Chapter 3.1).
 - Reductions in issue fees for civil business. The reductions will be weighted towards the fees for issue using our electronic systems, reflecting their lower marginal cost and in order to promote their use as part of Her Majesty's Courts Service's (HMCS) overall business strategy (Chapter 3.2).
 - Increases in many fees for civil proceedings in magistrates' courts, aimed at achieving overall fee levels that will recover about 50% of the full cost in 2007/08 (Chapter 4).
6. We will continue to implement our strategy over the next few years. Future steps include:
- a review of the financial objectives 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 by 2008;
 - development of hearing fees, including the possibility of daily hearing fees in large commercial cases.

Introduction

1. This Consultation Paper describes the Government's strategy for developing the fees system in the civil and family courts of England and Wales, and sets out for consultation 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 the other civil courts.
2. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria which are set out on page 71, have been followed. The Consultation Paper is also available on the Department's website and any responses received will be considered.
3. Specific questions for comment are summarised at pages 56 to 58. Replies are sought by 25 June 2007.
4. An Impact Assessment is annexed at pages 62 to 70. This indicates that the changes will not have a significant impact on any particular sector. However, if you disagree or wish to make any other comments they are particularly welcome.
5. Copies of the Consultation Paper are being sent to:
 - The senior judiciary and the Judicial Office of England and Wales
 - Council of Her Majesty's Circuit Judges
 - Association of District Judges
 - Magistrates' Association
 - Civil Justice Council
 - Family Justice Council
 - Justices' Clerks' Society
 - Law Society
 - Bar Council
 - Resolution

Association of Personal Injury Lawyers

Institute of Legal Executives

London Solicitors Litigation Association

Civil Court Users Association

Advice Services Alliance

Citizens Advice

Local Government Association

Other Government Departments

HM Inspectorate of Court Administration

Legal Services Commission

6. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with any interest in or views on the subjects covered by this paper.

Chapter 1 – Background and Strategy

1. The total cost of running the civil and family courts of England and Wales is currently some £550 million a year. Historically, the majority of this cost has always been met through court fees. In 2005-06, court fees represented 79% of the total cost.
2. That part of the cost not covered by fees is met by the general taxpayer as part of the resource budget of the Department for Constitutional Affairs. The taxpayer's contribution is made up of two elements:
 - potential fee income foregone under the system of remissions and exemptions.
 - fees set below full-cost levels (i.e. they would not cover the total cost even if none were remitted); this is currently the case with many fees for family proceedings generally and for civil proceedings in magistrates' courts.
3. But in 2005/06, the latter subsidy was partly offset by the fact that civil fees in the county courts and above recovered significantly more than the cost of those proceedings. We intend to remove this internal cross-subsidy over time.
4. Annex A on page 35 gives a more detailed breakdown of fee income and total cost for the financial year 2005/06.¹

Fee policy

5. Court fees have to comply with the legal and policy principles that apply to all services where the Government charges fees under statutory powers. The most important is that, unless Parliament has explicitly provided otherwise, fees should not be set to exceed the full cost of providing the service concerned.
6. General policy on fee-charging is set out in HM Treasury's *Fees and Charges Guide*. It requires every fee-charging statutory service to have a financial objective for the level of cost recovery agreed between the responsible minister and Treasury. The default position is that fees should cover the full cost (but no more). Lower targets can be agreed where there is a sound policy justification.

¹ Equivalent figures for 2006/07 will be published in the HMCS Annual Report and Accounts in due course.

7. In the case of court fees, the existence of remissions and exemptions to protect access to justice for the less well-off represents such an agreed policy subsidy.
8. In other words, although the term 'full-cost recovery' is often used, our target is not literally 'full-cost recovery'. The taxpayer makes, and will continue to make, a significant contribution to the cost of running the civil and family courts. A better way of describing the policy is 'full-cost pricing'. In other words, fees should be set at levels calculated to cover the full cost of the system if paid in full in every case. Full-cost pricing, together with a system of concessions to protect the less well-off, is the best way of targeting the taxpayer's contribution to where it is most needed. Setting fees generally at levels lower than full-cost price would mean that corporations and other institutions or wealthy individual litigants would benefit from that contribution – increasing its cost and in turn putting pressure on other budgets like legal aid.

Strategy

9. The proposals in the consultation paper are part of the Government's strategy to develop and reform the court fee system to ensure that it is fair and sustainable. This strategy is summarised in Annex B on pages 36 to 39.
10. 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;
 - remains viable when patterns of demand change, by achieving as close a match between income and costs within the system as reasonably practicable.
11. All these objectives are concerned with fairness as well as financial considerations.
12. Fee concessions are designed to ensure that the system is fair to those of limited financial means, ensuring that they can access the system on equal terms when they need to do so.
13. Appropriate financial targets ensure that the system is fair to the taxpayer (and, therefore, users of other public services). In particular, the policy of full-cost pricing (that is full-cost recovery disregarding fee concessions) ensures that so far as reasonable the actual users pay for the service they receive.

14. Matching cost and income within the system, as well as ensuring that funding is more predictable and sustainable, also makes the system fairer as between different categories of court user – the fees charged will more closely reflect the cost of the particular services used.
15. The current heavy reliance on issue fees in simple and mainly small, undefended debt claims creates a particular unfairness. These fees, which are added to the judgment debts of often vulnerable people in financial difficulties over relatively small amounts of money, effectively cross-subsidise the court costs of the corporations and other wealthy parties involved in major contested litigation.
16. For the purpose of setting and reporting cost recovery targets, civil and family court business is not treated as a single whole. Rather, it is divided into a number of distinct 'services', each with their own financial objective. Following the most recent review of Government spending plans until 2010/11, the current objectives are as follows:
 - Civil (excluding magistrates' courts) – 100% cost recovery, disregarding fee concessions (a long-established target); we plan to eliminate any over-recovery over the spending review period.
 - Civil (magistrates' courts): 100% cost recovery (net of concessions); we propose to increase fees to achieve this from 2008/09.
 - Probate – 100% cost recovery (net of concessions); we plan to eliminate any over-recovery by 2008/09.
 - Family (all courts) – targets to be confirmed following review and consultation during 2007.² The assumption is that the target should be 100% recovery (net of concessions) unless there is a clear long-term policy justification for a different approach in particular types of case. We would expect to achieve this for most in most areas of family business by the end of the spending review period (2010/11).

Progress to date

² The 2004 Spending Review set a target of 66% cost recovery (net of concessions) by 2007/08 for the county courts and Supreme Court, with an equivalent figure for magistrates' courts allowing for the different mix of business there. This target will not now be achieved because of changes since it was set in the mix of cases with higher and lower rates of recovery (e.g. more public law child care cases, but fewer divorces).

17. Her Majesty's Courts Service (HMCS) has been working towards the strategy since early 2005. Since then, we have:

- Implemented a package of fee increases in January 2006. This began the process of moving towards full-cost pricing for civil business in the magistrates' courts, and also for family proceedings not involving children. We also harmonised most family fees charged in both the magistrates' and county courts as part of our policy of integrating these jurisdictions so far as possible into a unified family service.
- Developed a new model for estimating the cost of different types of business and process within the civil and family courts. This allows us to set fee levels and estimate cost recovery more accurately than before. The proposals within this paper are the first to be based on the new model. We will continue to refine and improve our costing system as we take forward the rest of the strategy.

Next steps

18. The proposals in this Consultation Paper represent the next steps in the strategy.

19. We propose to introduce:

- A revised system of fee concessions applicable across all civil and family jurisdictions. This aims to ensure that the system meets the objective of protecting access to justice in a well-targeted and affordable way, and to tackle criticisms about the inconsistent application of the current systems. The proposals are set out in Chapter 2.
- Hearing fees for civil cases and adjustments to other downstream fees, aimed at a better match of costs and income within the system (Chapter 3.1).
- Reductions in issue fees for civil business. These will be calculated to offset the additional income arising from hearing fees and begin the process of removing the over-recovery in this area. The reductions will be weighted towards the fees for issue using our electronic systems, reflecting their lower marginal cost and in order to promote their use as part of HMCS's overall business strategy (Chapter 3.2).
- Changes to ensure that fees for various ancillary processes better reflect their true cost and, where appropriate, are harmonised across jurisdictions (Chapter 3.3).

- Increases in many fees for civil proceedings in magistrates' courts, aimed at achieving overall fee levels that will recover about 55% of the full cost in 2007/08 (Chapter 4).

20. Once the consultation closes on 25 June 2007, we plan to consider the responses and bring forward firm proposals in July for implementation in September 2007. This paper focuses on the principles and objectives underlying the proposals. It indicates, so far as possible, the order of magnitude implied for changes to particular fees. However, the exact figures in the final proposals will be refined to reflect both the consultation and the latest forecasts then available for workload, fee income and planned expenditure.

In the longer-term

21. The strategy at Annex B sets out the medium-term objectives which we will be taking forward following the current proposals. These include:

- A wide-ranging review of the financial objectives and fee structure for family business. We plan to consult on this in late 2007 and introduce the first changes from April 2008.
- Further work on our costing system and improvements in the way fees can be paid in order to minimise the administrative cost to users and HMCS.
- Further increases in magistrates' court civil fees to bring them to full-cost price levels from 2008. These will be based on a detailed analysis of the processes involved leading to further improvements to our costing system. This will ensure we can be confident of the cost involved and set full-cost fees accordingly.
- Further development of hearing fees, including the possibility of daily trial fees in large commercial cases, and further reductions in overall civil fees to eliminate over-recovery and reflect efficiencies in the administration of the courts expected to arise from the HMCS business strategy.

Chapter 2 – The system of fee concessions

Background

1. This Chapter sets out proposals to reform the current system of fee remissions and exemptions. The purpose of the scheme is to ensure that people of limited means are not denied access to the courts because they genuinely cannot afford to pay the fees.
2. It is central to the policy of full-cost pricing that this system achieves its purpose. It was, therefore, a priority objective of our overall fee strategy to review the current system to ensure that it does so.
3. The review was undertaken with the assistance of a Steering Group of external stakeholders, chaired by the then responsible DCA minister, Baroness Ashton of Upholland. The members of the Group, who were identified with the assistance of the secretariats of the Civil and Family Justice Councils, are listed in Annex C (on page 40). The Group met four times between May and September 2006.
4. The current system has two elements: automatic fee exemption for those in receipt of certain prescribed means-tested benefits and discretionary remission (in full or part) for those who might otherwise suffer 'financial hardship'. Annex D (on pages 41 to 44) contains a fuller summary of the current system, setting out the differences of detail in the criteria that apply in civil and family proceedings in the county courts, High Court and Court of Appeal ('the main civil courts') on the one hand, and magistrates' court proceedings on the other.
5. Responses to previous recent consultations about fees have contained a number of criticisms of the current system:
 - it was inadequately publicised so that potential beneficiaries were unaware that it existed;
 - the qualifying benefits for exemption were too restrictive;
 - the fact that remissions depended on the discretion of court staff created a lack of transparency – potential applicants could not readily tell if they would qualify;
 - different courts applied the discretion inconsistently; and
 - as a result, remissions were under-used – in particular, partial remissions were virtually unknown.

Objectives

6. The core objective of the review was to recommend any changes necessary to provide assurance that the system of fee concessions adequately protected access to justice for the less well off in a fair, consistent and transparent way.
7. More particularly, the system should meet the following objectives. It should be:
 - **Well-targeted**, assisting those genuinely unable to afford a fee but, so far as possible, not others. An over-generous system would be unaffordable and unfair to the taxpayer and other court users.
 - **Simple and transparent**, so that it was straightforward for applicants, their advisors and court staff to understand and apply. The system and its qualifying criteria should be well publicised and predictable, and so far as practicable the process should rely on information and evidence that it is generally easy for applicants to provide.
 - **Consistent**, in terms of both the criteria applicable in different jurisdictions and how they are applied in practice in individual courts. Also, unless there was good reason otherwise, the criteria should be aligned with those determining eligibility for Community Legal Service funding ('legal aid').
8. The Steering Group recognised that there was some tension between these objectives, particularly the first two. A well-targeted system implies a relatively detailed assessment of the particular circumstances of an individual applicant; a simple system requires a fairly broad-brush approach. The proposals below necessarily reflect judgements about how best to strike the balance between these competing considerations.

Proposed system

9. We propose to replace the current systems of exemptions and remissions with a single new system of fee concessions that will apply across all courts and jurisdictions.³ Annex E (on pages 45 to 50) sets out the proposed scheme in detail. The key features are summarised below. The Impact Assessment annexed to this paper (on pages 62 to 70) estimates the overall effect of the scheme.

³ We also intend to simplify the terminology. Applicants could qualify for either a full or part remission. The separate term 'exemption' will no longer be used.

10. The scheme is based on two distinct tests.

- The first test will determine whether the applicant is automatically entitled to a full remission of the court fee. This will apply if the applicant is currently receiving a prescribed means-tested benefit or, failing that, can demonstrate that their gross household income is below a threshold that probably entitles them to such a benefit.
- The second, more detailed test will consider both gross income and fixed out-goings to assess the applicant's net or disposable income. The applicant may then be required to pay a contribution towards the fee based on a fraction of their disposable income (or pay the full fee if it is lower than the contribution would be). This system is based on a simplified version of the means test for legal aid.

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

Full remission

11. Under the first element, it is proposed to broaden slightly and simplify the definition of benefits that provide an automatic 'passport' to a full fee remission, as it currently applies in the main civil courts.
12. As now, recipients of Income Support, income-based Jobseeker's Allowance and State Pension Guarantee Credit would be passported.
13. At present, recipients of Working Tax Credit are exempt, provided their gross annual income is below £15,460 and they also receive Child Tax Credit or a Disability Element to the Tax Credit.
14. We propose instead that all recipients of Working Tax Credit should be automatically passported to a full remission, provided they are not also in receipt of Child Tax Credit. The purpose of the proviso is to retain the effect of the existing gross income cap. Recipients of Child Tax Credit would continue to qualify automatically for full remission if their gross income was below the relevant limit under the second limb of this test described below.⁴

⁴ Gross income is shown on the Child Tax Credit Award Notice so providing the necessary evidence will be straightforward.

15. The main effect of this change, therefore, is to passport all recipients of Working Tax Credit without responsibility for children, regardless of whether there is a Disability Element. The number of households potentially qualifying for an automatic full remission under the new test would be approximately 5.2 million, compared to 4.7 million households under the current criteria in the main civil courts.
16. The new test will also apply in magistrates' courts. There, currently, all recipients of Working Tax Credit or Child Tax Credit qualify for an exemption. Under the proposals, recipients of Child Tax Credit would no longer qualify just by virtue of that fact. They could still qualify for full or part remission under the gross and disposable income tests described below. We consider that an automatic exemption for all recipients of Child Tax Credit is too generous and does not meet the objective of a well-targeted system. Child Tax Credit is a tapered benefit, with small amounts payable to people with relatively high income. It is possible for a couple with household income of £66,000 a year to receive Child Tax Credit.
17. The Steering Group also considered whether any other benefits, in particular Housing Benefit, Council Tax Benefit and Incapacity Benefit, should be a passport to full remission. However, these benefits can be paid to people whose means exceed the level that would entitle them to one of the existing passporting benefits. We understand that there could be up to 3.5 million households in this position. Allowing an automatic full remission to Housing Benefit, Council Tax Benefit and Incapacity Benefit recipients could therefore cost up to about £20m in additional full remissions. A significant proportion of this would be paid by way of full fee or partial contribution under the proposals below. The Steering Group therefore concluded that recipients of Housing Benefit, Council Tax Benefit and Incapacity Benefit should not automatically qualify for a full remission.
18. The second limb of this proposal is to allow a full remission on the basis of evidence of gross income alone. This will avoid the need for evidence of out-goings and a full means test in cases where that is likely to lead to a full or very high part remission in any event. Gross income thresholds are proposed for single people and couples, with a further allowance added for each dependent child. These thresholds and allowances are based on those that underpin the benefits system (slightly rounded up for simplicity).
19. This approach should make it easy for potential applicants to understand whether they qualify and to apply – it requires them to produce documentary evidence that confirms only gross household income and the number of dependant children.

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.

Part remission

20. The second element of the proposals is aimed at applicants of limited means who do not qualify for full remission on the basis of benefits received or gross income. They would be able to apply for a more detailed means-test to assess their disposable income on the basis of their income and essential expenditure, for example mortgage or rent. They would then be required to pay a contribution towards the fee based on a fraction of that amount.
21. The proposed means test is based on that which applies to Community Legal Service funding, but simplified in several respects. We consider that a simpler version of the test that applies for legal aid is appropriate in the context of court fees. Considerably smaller sums of public money are involved and applicants will be asked to pay only a single contribution towards each fee rather than on-going monthly ones. A less detailed and stringent test is therefore reasonable and affordable, and will make the system easier for applicants and court staff to understand and operate.
22. The following simplifications are proposed.
- (i) The test would not be subject to a gross annual income cap. In exceptional circumstances, such a cap could prevent someone of relatively high income but no disposable means from taking court proceedings.⁵ Conversely, the absence of the cap should cost relatively little in the context of fees because most applicants above any likely limit would be assessed to pay a contribution that would meet most court fees in full.

⁵ The gross annual income cap that applies to legal aid has the more limited effect of precluding publicly-funded legal help or representation; it remains possible to proceed unrepresented.

- (ii) The means-test would not consider capital resources. This would significantly simplify the test and the evidence required. It would avoid the issues that arise, especially in urgent applications, if non-liquid capital is included. And, again, the cost of potential contributions foregone is likely to be relatively limited in the context of court fees.
- (iii) For similar reasons, we propose that there should not be a cap on the amount of housing costs allowed in the calculation of disposable income.
- (iv) The test would not include an allowance of £45 for the incidental expenses of being in employment. We consider this an unnecessary refinement in the context of a one-off contribution.⁶

23. The contributions payable for given levels of disposable income are set out in a table in Annex E. These are calculated on a similar basis to legal aid contributions, with a sliding scale starting at 25% of disposable monthly income and increasing to 50% for disposable income above £200-£209. (The legal aid system also includes a 33% band which is not replicated here.) Contributions are a fixed amount within £10 bands of disposable income. No contributions are required from disposable income below £50 on the basis that it would be disproportionate to collect very small one-off contributions.

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?

Residual discretion

24. The Steering Group considered whether there should be a residual discretion to grant a remission in cases with exceptional circumstances not reflected by

⁶ Legal aid requires a full monthly contribution for the duration of the case. This system requires a single contribution based on monthly disposable income means, up to the level of the fee, in respect of each fee payable.

the means-test. The Group was unable to identify specific circumstances in which an exceptional discretion would be necessary, but felt that this could nevertheless be a useful safety net.

25. On the other hand, it recognised that there was a risk that a discretionary element would reduce transparency and simplicity and replicate the inconsistency of the current system. It might also encourage a significant number of hopeless applications, causing unnecessary expense and delay.
26. In the absence of caps on gross income or housing costs, the issue could only arise where all or a significant proportion of an applicant's income was already committed to types of expenditure not covered by the means test. The most foreseeable case in which this could arise was where the applicant was liable for substantial credit card or other debt repayments. Making allowance for all debt liabilities would create considerable practical difficulties of definition and evidence, and it is arguably inappropriate to give priority to all debt liabilities over court fees. However, the Group felt that, although not included in the legal aid test, there could be a case for making allowance for specific categories of debt which were clearly defined and of high priority, for example, fines, judgment debts and other court-ordered payments, and possibly rent or mortgage arrears and utility debts.
27. It would be possible to make allowance in the means test for specified types of debt either instead of or as well as a residual discretion to remit in exceptional circumstances. Also, such discretion could be limited to specific categories of especially urgent or important applications, for example to suspend a warrant of possession.

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?

Community Legal Service funding

28. At present, there are differences in the way in which the exemption and remissions system treat applicants who are also in receipt of 'legal aid' funding. In the main civil courts, those in receipt of funding for full representation are not entitled to exemption or remission as any court fees are paid by the legal aid system. This has the advantage that the cost may later be recovered through costs ordered against the other party, legal aid contributions or the statutory

charge. Under the proposed harmonised system, this approach would be extended to the magistrates' courts.

29. In family proceedings, there is also a provision that allows an automatic fee exemption to an applicant receiving Legal Help. This typically applies where there is a divorce petition and the applicant has not (yet) been granted full representation for ancillary relief or Children Act proceedings. Since 2002, the financial eligibility criteria for Legal Help have been considerably more generous than they were when this provision was originally introduced. Legal Help is now available without contribution to those with a disposable income equal to the upper limit for full representation, whereas previously it was broadly equivalent to the free limit. In other words, Legal Help is available to people who under our proposed fee concessions system would be likely to qualify only for a part remission at most. We propose to remove this anomaly so that Legal Help does not provide an automatic exemption for applicants in family proceedings. They would need to qualify for a full or part remission under the system described above in the same way as applicants in other proceedings. We estimate that this would lead to savings of around £3m.

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.

Recovery of costs

30. At present, when a party has qualified for an exemption or remission, the court fee is not paid and therefore not part of the costs of the proceedings. This means that if the exempt party wins their case and is awarded costs, the costs payable by the unsuccessful opponent do not include the cost of court fees as they would otherwise have done. The possibility of recovering costs is one of the reasons for charging fees in legally-aided cases. It would therefore seem fairer, and reduce the cost to the taxpayer of concessions, if fee remissions could somehow be made conditional so that the court system could recover the cost if the party concerned was successful and able to recover costs from a financially better off opponent.
31. A number of issues would need to be addressed in devising a practicable system to achieve this: how would the amount of remitted court fees be identified for the purpose of ordering costs; should the order be in favour of the successful party or HMCS – in other words, who should bear the risk that the order was not satisfied and the burden of enforcement? – could any system apply to any or some types of family proceedings where there are no 'successful' and 'unsuccessful' parties, and costs between the parties are not

generally ordered? – if not, is it worth introducing for other cases, given that fee concessions are most common in family cases?

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?

Scope

32. The current system of fee exemptions is based on the receipt of means-tested benefits payable to individuals. But the criterion for fee remission is simply 'financial hardship', with nothing expressly to limit this to individual people. In theory, a small business, charity or other institution could apply for a remission on this ground, although in practice this happens rarely if at all. The new system of fee concessions, based on household income and out-goings, is designed solely for individuals. A system aimed at small businesses etc., would require wholly different criteria and be disproportionately complex. Solvent businesses, charities etc., can reasonably be expected to use reserves or borrow money if it is necessary to take legal proceedings. We consider that the new system of fee remissions should apply to individuals only.

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.?

Information about the system

33. Respondents to previous consultations questioned whether adequate information was provided about the availability of fee exemptions and remissions. The Steering Group therefore considered this issue as a priority.

34. The information currently available includes:

- The EX160A – *Court fees and do I have to pay them?* – a combined 14-page leaflet and two-page application form, which explains the procedure for applying for exemption and remission. It is available free from all court offices or can be downloaded from the HMCS web-site. HMCS also provides Citizens' Advice Bureaux and others with bulk orders of the EX160A on request.

- Courts send out the EX160A whenever information is requested on a fee-paying service. Also, all court forms and guidance that provide information on fee-paying services signpost to exemption and remission.
- All civil courts in England and Wales display posters about fee concessions at the public counters and/or in waiting areas.
- Information provided by other departments on relevant benefits explains that recipients are entitled to various concessions, including fee exemption.

35. The Group was satisfied that adequate information about the system is provided. The information will be updated in accordance with any changes made.

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?

Vexatious Litigants

36. A particular issue arises in circumstances where fee exempt litigants are subject to either a Civil Proceedings Order under section 42(1) of the Supreme Court Act or a Civil Restraint Order under Civil Procedure Rule 3.11. Both types of order are designed to restrain vexatious behaviour by requiring litigants subject to these orders to obtain leave or permission from the court before commencing proceedings.

37. Anecdotal evidence suggests that some litigants subject to these restraining orders make numerous applications for leave or permission to commence proceedings. These applications usually turn out to be unmeritorious, and consume valuable administrative and judicial resources before they are disposed of, resources that would otherwise be available to deal with meritorious cases. These multiple applicants are usually fees exempt. Although no overall figures are collected for these applications, examples have been provided by members of the senior judiciary in the Court of Appeal which include one litigant who made 27 applications in August 2005 and another who made 30 applications between April and July 2005.

38. A possible solution to this problem would be to require a fee or partial fee to be paid for these applications, even if the applicant would normally be entitled to a full remission. This might be a nominal amount such as £10 or it could be the full fee: at present £35 in a county court and £50 in the High Court. Either option could be combined with the possibility of a refund if the application for leave was successful.

39. On balance the Department favours a nominal amount; the intention is not to raise revenue but to provide some disincentive against frivolous repeat applications.

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.

Chapter 3 – Re-balancing the fee structure

1. This Chapter contains proposals to re-balance the fee structure for civil business in the main civil courts to create a closer relationship between the fees charged and the cost of different stages of the process.
2. The current fee structure is heavily front-loaded onto the issue stage, with the fees charged at later stages of the court process covering only a small proportion of the cost of those cases that proceed to a full hearing. As a result, the funding of the civil courts is dependent on the sheer number of claims issued, the great majority of which are undefended claims for relatively small sums.
3. A key objective of our strategy is to achieve a closer match between when fees are charged and when costs arise. Civil court business is treated as a single 'service' for the purposes fee-setting and reporting in compliance with the *Fees and Charges Guide*. But it is nonetheless undesirable for there to be large cross-subsidies between different types of case within that service. This is for three reasons.
 - It means that the factors driving fee income (e.g. the volume of debt claims which may reflect the state of the economy) is largely unconnected to the factors causing cost within the system (e.g. the number of cases proceeding to trial). This means that the funding of the system is volatile and difficult to predict, and may in the long-term be unsustainable. It makes it harder to manage the system and plan for its modernisation.
 - It is arguably unfair if one category of litigant is systematically subsidising the costs of a distinctly different category. At present, the issue fees paid in undefended debt claims are significantly subsidising the rest of the system. These are mainly paid in the first instance by bulk creditors, such as credit card and utility companies, but are then added to the defendant's judgment debt. Most defendants in these cases are being sued for less than £500. The liability for fees added to these debts is contributing to the cost of courts dealing with large commercial litigation, possession claims by landlords and personal injury claims.
 - Once a case has been issued, the remaining fees due are unlikely to encourage litigants to pause and consider whether to settle their case rather than proceed to trial. Charging a realistic fee at key decision points in the process would mean that litigants were subject (in the jargon) to appropriate price signals. This would in turn support our objective of

encouraging as many cases as possible to settle before trial, whether as a result of negotiation, mediation or some other form of alternative dispute resolution. Early settlement saves money for both the parties and the court system; and the evidence suggests that mediated settlements tend to be better for the parties, with high levels of customer satisfaction and very little need for subsequent enforcement action.

4. This Chapter also proposes that various fees for similar processes in different jurisdictions should be aligned. The effort and cost of undertaking these processes is broadly similar, so alignment would make the overall fee system simpler and fairer.
5. The proposals in this Chapter are set out under the following sub-headings:
 - 3(1) civil hearing and other downstream fees;
 - 3(2) reducing civil issue fees;
 - 3(3) fees for ancillary processes (all jurisdictions).

3(1) Civil hearing and other downstream fees

6. This section proposes the introduction of hearing fees in civil cases in the county courts and High Court. It also proposes some consequential adjustments to other fees payable after issue in civil cases. The objective is to create a better balance between the cost and income of the system for the reasons described above.

Fast-track and multi-track cases

7. The basic fee structure for these cases is as follows: a fee payable on issue of the claim which increases according to its financial value; and fixed fees payable on filing of the allocation and listing questionnaires – with a higher fee in both cases in the High Court. The listing fee is refundable if the case is settled or discontinued more than 14 days before the hearing date. All the relevant fees are shown in tables 1 and 4 of Annex F (on pages 51 to 54).
8. It is proposed to introduce:
 - A single allocation fee for all cases based on the average cost of that stage of the process. We expect this fee to be around £110.
 - Similarly, a single listing fee, based on the cost of that stage of the process. This would be significantly lower than the current fee because it would not include any costs attributable to the subsequent hearing, and therefore it would not be refundable. We expect this fee to be around £200.

- A fixed hearing fee, payable at the listing stage but refundable in whole or part if the hearing date is vacated with adequate notice (see below). Fast-track trials are listed for a maximum of one day and average a little over half a day. The fast-track hearing fee would be based on the average cost of a fast-track trial, currently £500. Multi-track trials average just over a day in length in the county courts and 1½ days in the High Court (where the average is driven up by the major commercial litigation heard in the Commercial Court and Chancery Division). It is proposed that the multi-track hearing fee should be based, initially, on the average cost of a one-day multi-track trial, currently £1,000.

9. The likely levels of the new fees proposed, based on current costs, are shown in table 1 of Annex F.

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.

10. The High Court and county courts have followed a common code of procedural rules since 1999. In 2005 the Government announced a long-term objective of formally unifying these jurisdictions to create a single Civil Court. For most purposes, the business and cost base of these courts is broadly similar (identical in the case of High Court business in district registries), and therefore all civil business is treated as a single service for Fees & Charges purposes. The only significant difference in average cost arises where more complex cases require longer trials before more senior judges – these are more likely (but not certain) to be heard in the High Court. The proposed system of hearing fees will, increasingly, be able to take account of these differences. But where the costs are broadly similar, which is the case with fees relating to administrative and most interlocutory processes, we propose that there should be a common fee payable in both courts.
11. It is therefore proposed above that there should be a single fixed fee payable on allocation and listing, replacing the existing separate High Court and county court fees.
12. We also propose that the fees payable for other applications within proceedings should be aligned in the same way (see Table 2 of Annex F).

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

13. A further issue arises from the timing of the allocation fee. The Civil Procedure Rules provide for the court, following allocation to track, to consider whether it is appropriate to stay the case to attempt mediation. We wish to encourage mediation in as many cases as possible, and have put in place the National Mediation Helpline and a 'Toolkit' for courts to facilitate this. However, it may be a disincentive to try mediation if the parties are asked to pay the mediator's charges soon after having paid the allocation fee to the court. We wish to consider whether we can adjust the process or the fee structure to reduce this disincentive. This might involve suspending payment or refunding all or part of the allocation fee in cases that were successfully referred to mediation.

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?

14. It is proposed that hearing fees should be paid at the listing stage, and refunded if the hearing date is vacated with notice. The same principle would apply to hearing fees that currently applies to the listing questionnaire fee.
15. Where a case settles at a late stage, it becomes increasingly difficult and costly to arrange alternative uses of the judicial and courtroom resources that have been 'booked'. Where cases settle close to or on the day of the hearing, it is likely that a substantial proportion of the hearing cost will be wasted.
16. The system of refunds therefore creates an incentive on the parties to settle and notify the court at an earlier rather than later stage, and to some degree reflects the cost of the resources that may not be re-deployed and the of the associated listing processes.
17. The costs caused or wasted by a late settlement are likely to vary depending on the timing. The current system is based on a simple 100% refund at 14 days. It is proposed to introduce a more sophisticated system with the amount of refund varying over time:

100% refund if the court is notified more than 28 days before the hearing;

75% refund if the court is notified between 28 and 14 days before the hearing;

50% refund if the court is notified between 14 and 7 days before the hearing;

no refund if the court notified less than 7 days before the hearing.

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?

18. It is proposed, initially, to introduce a single fixed hearing fee for multi-track cases, payable in advance and set on the basis of the cost of one full day in court.
19. We hope in future to introduce a system of additional daily or half-daily fees payable in longer trials. However, more work is needed to decide how this system would work in practice and devise the necessary processes (time estimates and recording, billing, accounting, enforcement). We will need to consider, for example, whether the fees should be payable in advance on the basis of time estimates, and if so whether by the claimant or both parties and whether subject to refunds or top-ups; or after the event by the losing party when the length of the trial will be known but enforcement might be more difficult.
20. A further issue concerns fee remission when the paying party is an individual of limited means. The system proposed in Chapter 2 is based on the calculation of a one-off contribution based on monthly income. It is not well-suited to the situation where significant fee liabilities accrue on a daily basis.
21. However, in practice a significant proportion of the longer trials occur in the specialist jurisdictions of the High Court which deal with large commercial cases: Commercial Court, Admiralty, Technology and Construction Court, Patents Court and Chancery Division. These cases involve corporations and other wealthy litigants arguing over huge sums of money; fee remission is not an issue here. These jurisdictions deal with much international business, but there is no evidence to support the suggestion sometimes made that larger fees would reduce the attractiveness of English Law and our courts to these cases. Daily hearing fees based on full-cost would run to a few thousand pounds. This would be insignificant compared to the legal costs and the sums at stake in the cases.
22. We therefore intend to develop the necessary systems and pilot daily hearing fees in one or more of these specialist jurisdictions, probably starting in 2008. We would consider whether the same approach can and should be extended to all trials of two days and more at a later stage.

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 deal with high-value commercial cases?

Small claims

23. The small claims track deals with claims of up to £5,000. As with larger cases, the issue fee depends on the value of the claim in several bands. An allocation fee is payable only for claims over £1,500. A listing questionnaire is only required exceptionally in small claims, and no listing questionnaire fee is payable.
24. The average length of a small claim hearing is a little over an hour and the average cost is £300. In order to achieve the best possible match of income and cost, it would be necessary to charge this amount as a small claim hearing fee, and also re-introduce an allocation fee for claims below £1,500.
25. However, the result of this would be that in smaller claims the court fees payable would be disproportionate to the amount at stake. We therefore propose to charge a full-cost hearing fee, payable at the allocation stage, for claims over £3,000. Below this, we propose to introduce a range of banded hearing fees based on the value of the claim. The intention is to ensure that the total court fees payable (including the new issue fees) remain in reasonable proportion to the size of the claim; we have used an approximate benchmark of 20% for this purpose. Current and suggested fee levels are set out in table 3 of Annex F.
26. As with other hearing fees, there would be a refund if the court was given sufficient notice of settlement or withdrawal. In the case of small claims, we propose a full refund if the court is notified more than 7 days before the hearing, and no refund after that point. We do not think it necessary to provide for the partial refunds between 7 and 28 days proposed for the fast and multi-tracks. This is because it is generally easier to make alternative use of the resources concerned in these cases.
27. The result of this is that there remains an element of cross-subsidy, although smaller than now, from the issue fees paid in undefended claims. We consider this is a reasonable compromise given the objective of proportionality.

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?

3(2) Reducing issue fees

28. This section sets out our proposals to reduce the issue fees paid for civil claims. This is the necessary concomitant of the new hearing fees proposed above, and reflects the objective of better matching cost and income. The total value of the reductions proposed somewhat exceed the expected income from hearing fees because we need to begin to reduce the current over-recovery from fees for civil business as a whole (see Chapter 1).
29. We are proposing to reduce issue fees across the board, but to make proportionately bigger reductions for cases issued using electronic and bulk-issue processes - the County Court Bulk Centre (CCBC) and Money Claim OnLine (MCOL). This reflects the lower marginal cost of using these channels compared to traditional manual issue in the courts. There is already a small discount of £10 for cases issued at the CCBC. We hope that significantly lower fees will encourage many more regular court users to use CCBC or MCOL. This is a key objective in HMCS's strategy for restructuring and modernising its business to increase efficiency and save cost – savings that could then be reflected in future fee levels.
30. Table 4 of Annex F shows a scheme of reduced issue fees. These would reduce the total value of issue fees by 13% on current volumes. The reductions average 20% for CCBC, 15% for MCOL and 5% for manual issue.
31. Similarly, we propose to introduce a lower fee of £100 for issuing a housing possession claim using our new e-channel, Possession Claims OnLine (PCOL).
32. The increased use of fee differentials according to the channel of issue may raise an issue about the recoverability of the issue fee as part of the costs of the claim. In awarding costs, the court may consider that a claimant who could reasonably have used an e-channel – for example a solicitor's firm or a business which issues claims regularly – should not be able to recover the full cost of the manual issue fee. We would welcome such a view by the courts as this would increase the incentive to use e-channels whenever possible.

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?

3(3) Ancillary processes

33. This section deals with the fees charged for various ancillary processes and services. These can arise in various jurisdictions, including family, insolvency and magistrates' courts, as well as civil business in the High Court and county courts. In each case, the process and costs are broadly similar. We therefore propose to align these fees based on the full average costs across all relevant jurisdictions. We consider that this will make the overall fee system simpler and fairer. The current and proposed fees are set out in tables 5 (a-e) of Annex F and sections (f) and (g) below.

(a) Assessment of costs

34. Since 1999, there has been a single fixed fee payable for a detailed assessment of a bill of costs. This does not reflect the substantial difference of cost between different cases. Some assessments can take an hour and some several days.
35. Prior to 1999, the fee for an assessment of costs (then known as a taxation) was based on the total value of the bill submitted at a rate of 7.5%. Of this, 3.5% was payable on lodgment with the balance being paid on the bill as taxed. This provided some disincentive against excessive demands for costs, and promoted agreement on costs to avoid the fees. But the fees in larger cases were criticised as being excessive and bearing no relation to the costs involved. This led to the 1999 change.
36. It has become apparent, however, that the new system errs in the opposite direction, and that the fees for the assessment of larger bills are now too low. This point has been made by several respondents to previous fee consultations. A survey of almost all the civil courts in England and Wales in 2003 confirmed that a higher fee was needed to cover the cost and that there was a significant correlation between the value of the bill and the time and resources needed to assess it.
37. We therefore propose to revert to a fee system based on value. This would be based on bands rather than a percentage of the value of each bill. As a result, there would be a maximum fee for the highest band, avoiding the excessive fees that were payable in very large cases under the previous open-ended system. We are proposing 8 bands as set out in table 5a in Annex F.
38. The fee would be payable in advance on the basis of the bill as presented. It is this rather than the assessed amount which is likely to bear the closest relationship to the work involved. We also consider that this approach is

simpler and provides a stronger disincentive against excessive claims than the pre-1999 system of two payments.

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?

(b) Certified copy documents

39. Fees are payable in certain circumstances for the issue of a duplicate copy of a order or document which the applicant needs to be sealed or endorsed by the court. These currently cover certificates of discharge from bankruptcy and duplicate documents in magistrates' courts. A fee of £15 is proposed for any sealed copy of a document from the court files where a search is not required. Unlike now, this would extend to copies of a decree absolute.

(c) Searches

40. Various fees are payable when requesting a search of an index or register held by the court, and if appropriate providing a copy certificate or final order. A common fee of £40 is proposed. This would apply for the first time to searches of the bankruptcy and company records in a county court.

(d) Oaths

41. Fees are payable when someone swears an affidavit or affirms or attests before an officer of the court. A common fee of £25 is proposed.

(e) Copying

42. These fees apply when the court provides photocopies of documents for a party. The proposed fees will apply a minimum charge for photocopying any document of £5. This will apply to any document of up to ten pages, with a charge of 50 pence for each subsequent page.

(f) Bills of Sale and arrest of ships (High Court)

43. A specific fee relates to the filing any document under the Bills of Sale Acts 1878 and the Bills of Sale Act (1878) Amendment Act 1882. It does not currently reflect the full cost involved. The use of this 19th Century legislation has increased dramatically in the last few years, apparently to avoid other judicial process and associated fees. The proposed increase from £10 to £25 reflects the average cost of the process.

Similarly, it is proposed to increase the fee for a warrant to arrest a ship from £100 to £200 to reflect the true cost.

(g) Foreign process

44. There is currently no separate fee for handling cases coming to our court system from abroad, 'foreign process'. These cases are dealt with by the Foreign Process Section in the Queen's Bench Division of the High Court on behalf of the Senior Master, who for England and Wales, is:

- the Central Authority under the Hague Convention of 15 November 1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; and
- the receiving and transmitting agency and central body under the Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of Judicial and Extrajudicial documents in Civil or Commercial matters.

45. The Foreign Process Section receives and registers the foreign process and sends it to the appropriate local court for personal service by a bailiff. Article 12 of the Hague Convention permits the Member State to charge the applicant for the costs occasioned by the employment of a judicial officer or of a person competent under the law of the Member State. Article 11 of the Council Regulation allows for the payment or reimbursement of the costs the employment of a judicial officer, or of a person competent under the law of the Member State addressed.

46. A fee of £60 is proposed.

Q.19 Do you agree with the proposals in this section?

If not, please explain in what respects.

Chapter 4 – Fees for civil proceedings in magistrates' courts

1. This Chapter proposes increases to various fees payable for civil proceedings in magistrates' courts. The civil jurisdiction of these courts is limited to a range of specific proceedings under various statutes, and is quite distinct from the general civil business of the High Court and county courts. Unlike family cases, it is therefore treated as separate 'service' for Fees and Charges purposes.
2. Historically, magistrates' court fees were very low and were not used to offset departmental spending. Since 2005-06, however, these fees have been appropriated in aid of DCA's budget on the basis that they would in future be set in compliance with general Fees and Charges policy. Our target, therefore, is to increase these fees to full-cost levels.
3. We took a first step towards this target in the package of fee increases introduced in January 2006. That included substantial increases to several fees charged for specific types of proceedings, such as Council Tax and Child Support liability orders. These fees are not affected by the current proposals.
4. We are now proposing to increase to a full-cost level almost all other fees for specific proceedings and processes. This includes several 'ancillary' fees discussed in Chapter 3. The proposed increases are set out in Annex G (fee numbers 1.1, 3.1, 6.1(a)-(c), 7.1, 16.1, 17.1, 17.2 and 19.1).
5. However, there remains a wide range of miscellaneous business for which only a set of general £25 fees are payable (fee numbers 18.1-18.4). Relevant proceedings include recovery of unpaid income tax, applications for orders under various statutes (e.g. anti-social behaviour, proceeds of crime, environmental protection, dangerous dogs) and appeals against various local authority decisions (e.g. liquor licensing, Public Health Act, Buildings Act). This range of business accounts for about two-thirds of the cost of civil proceedings in the magistrates' courts, but the current fees only cover about 29% of this cost.
6. The cost of the different proceedings covered by these fees is likely to vary quite widely, but at present we only have very limited information to identify these variations. The current fee structure is largely defined in terms of the outputs produced by the court (complaint, summons, warrant) rather than steps in the process (e.g. application, hearing, enforcement). A £25 fee is charged in each case. This makes it difficult to reflect accurately the costs that arise at different stages of the process.

7. As a result we cannot yet confidently increase these fees to full-cost levels, as this would probably result in some types of case being significantly over-charged. We therefore propose to move to full cost pricing in two stages. Our current proposals would increase the existing fees to a level equating to about 55% of the total cost, but (with one exception) without changing the fee structure. We will then undertake a more detailed review of the different types of case and the procedures involved. This will enable us to identify more clearly the range of costs involved, and develop proposals for fees at full-cost levels. This may require changes to the fee structure, either to set different fees for different proceedings or to charge fees at different points in the process which better reflect the pattern of cost. We intend to implement this second phase in 2008 following a further consultation.
8. Within the areas of business covered by the general fees, there is one which is readily identifiable and where we have sufficient information to be confident that the cost is significantly higher than the average. This area is licensing and other appeals against local authority decisions, which often require lengthy hearings. We therefore propose to introduce a new separate fee of £400 for these appeals.
9. The existing fee for an appeal by way of 'case stated' (fee 2.1) is £382. This only covers about 25% of the average cost of these proceedings. However, it is proposed only to round this to £400 rather than increase to a full cost level at this stage. This is because the system of appeals in magistrates' court family proceedings has recently been subject to consultation, and the way forward has not yet been decided.
10. If an application to have a 'case stated' is refused, a fee of £8 (fee 2.2) is charged for a refusal certificate to be provided. The remainder of the original £382 fee is refunded. However, this only reflects the cost of producing the document. It does not reflect all the costs incurred by the court up to that point in the process, which involves the court in assessing the merits of the application. We therefore propose to charge £100 for the initial consideration of the application, refunding £300 if the court refuses to state the case.
11. In total, these proposals would raise £12m in a full year and increase overall recovery for civil proceedings in the magistrates' courts to about 64% of the full cost (net of fee remissions) in a full year.

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?

Annex A**A detailed breakdown of fee income and total cost for the financial year
2005/06**

| 2005-2006 | Net Fee Income £'000 | Income Foregone (Remission and Exemption) £'000 | Gross Fee Income £'000 | Expenditure / Cost £'000 | Total Surplus / Deficit £'000 | Fee Recovery % | Target % |
|--------------------------------|--------------------------------|--|----------------------------------|------------------------------------|--|--------------------------|-----------------|
| Civil | 335,859 | 11,226 | 347,085 | 301,513 | 34,346 | 115 | 100 |
| Family | 46,827 | 17,751 | 64,578 | 164,649 | (100,072) | 39 | 60 |
| Non- Contentious Probate | 16,608 | 8 | 16,616 | 12,733 | 3,883 | 130 | 100 |
| Sub Total | 399,294 | 28,985 | 428,279 | 478,895 | (50,617) | 89 | |
| Magistrates' Civil | 6,890 | 132 | 7,022 | 40,163 | (33,141) | 17 | N/A |
| Magistrates' Family | 1,770 | 154 | 1,924 | 36,853 | (34,929) | 5 | N/A |
| Total | 407,954 | 29,271 | 437,225 | 555,911 | (147,957) | 79 | |

Annex B

Civil & Family Court Fees Strategy

1. This strategy aims to ensure that the funding of the civil courts, including funding for their modernisation, is sustainable and fair.
2. It is intended to ensure that we can:
 - provide the customer with services that represents value for money in terms of quality and price; and
 - balance the costs of the system with its income¹
3. It is important to view costs and income in the round – it should not be a matter of taking cost as given and setting (increasing) fees to match. Indeed the requirement to fund most of the business from users' fees creates a strong onus to maximise efficiency.
4. Successful delivery of the fees strategy is therefore closely connected with plans in the HMCS business strategy for re-structuring the business in a modern and far more efficient way (e.g. through administrative back-offices, IT improvements including e-channels for court users, better use of the estate). The benefits of a more efficient system will be reflected in the level of fees in the medium and longer-term.

Assumptions and constraints

5. This strategy takes it as axiomatic that:
 - the civil courts will continue to charge fees – a free service would require our Departmental Expenditure Limit (DEL) to be increased by over £400m (assuming no consequent increase in demand); and
 - general Government fees and charges policy will continue to apply.
6. Specifically, all services must have a financial objective agreed with the Treasury. The norm is full-cost recovery. But different objectives may be agreed where there is a wider policy justification. Fee remissions and exemptions (Remex) are an example of such a 'social subsidy', and the cost of cases attributable to Remex is excluded from fee recovery targets. To that extent, the term 'full cost recovery' is somewhat misleading. In this context, it

¹ Principally fees, but also some net funding from the taxpayer through fee exemptions and remissions to ensure access to justice.

means recovering the total cost of those cases which are not exempt or subject to remission.

7. The calculation of full-cost on which fees are based takes account of the cost of all the resources needed to run the system. This includes the salaries of relevant HMCS staff and judiciary, general administrative costs including the cost of supporting IT systems, accommodation and an appropriate share of other HMCS overheads. It also includes the cost consequences of previous capital investment (depreciation and a charge representing the cost of capital employed) but not capital expenditure itself. In this way, fees can be said to cover the cost of investing in IT to modernise the court system. Future fee levels need to be planned in the light of future spending plans, including for relevant IT costs.

Long-term objectives

8. A sustainable system should:
 - Meet 'full-cost recovery' requirements (see above).
 - Protect access to justice: the fee-setting power in section 92 Courts Act 2003 makes this an explicit consideration. It is the purpose of Remex to help achieve this.²
 - Be affordable within our DEL. The cost of (i) cases subject to Remex and (ii) fees paid by legal aid (and not recovered through costs, contributions or statutory charge) falls on the taxpayer.³ Most family and magistrates' courts fees are currently set at levels well below full-cost.
 - Be flexible enough to accommodate changes in demand, whether driven by wider policy changes or extraneous factors. The current system is heavily dependent on the volume of issue fees on undefended debt claims. This

² There is a constitutional and human right of access to an impartial tribunal. But this does not constitute a right of free access. It could be a breach of Article 6 ECHR if a person was effectively unable to access court through being unable to afford the fees. However the court would no doubt take account of all the circumstances in the particular case, including the availability of legal aid or other alternative means of funding the fee.

³ Internal budgeting within the department must recognise that part of the projected income from any fee increase will be offset by increased legal aid spending. But it is preferable for the legal aid system to pay fees, rather than waive them altogether in legally-aided cases, for reasons of transparency and because some of the cost will be recovered in costs against the other side, contributions or the statutory charge.

makes its funding highly vulnerable to variations in uncontrollable external factors and affects our ability to introduce policies to discourage avoidable litigation against the over-indebted.

9. The overall strategy to meet these objectives should focus on achieving a much closer match between the costs of the system and its income. So, as demand rises and falls, both cost and income rise or fall broadly commensurately. Of course, there will always be a significant element of fixed costs, but we should seek to ensure that costs are sufficiently flexible at the margins (through casual staff, part-time judiciary, non-permanent accommodation etc.) to absorb likely levels of change in the medium-term.
10. This will require a programme of changes to the fee structure that will, over time, dramatically reduce the degree of cross-subsidy between:
 - different types of business (e.g. debt and personal injury) with different patterns of cost and unconnected demand drivers; and
 - different stages in the process: at present most of the income occurs at the issue stage, but most of the cost arises at later stages. This makes the system vulnerable to changes in the propensity to settle; and arguably means that litigants are not subject to appropriate price signals.
11. This strategy will inevitably lead to trial/hearing and other downstream fees that will fall on fewer cases and therefore appear relatively high. It will be important to ensure that these fees do not become as barrier to access to justice, by ensuring that the Remex system or legal aid or some other route operates in an effective but well-targeted way. Of course, more generous Remex etc., will impact on the DEL – so change will need to be affordable within the Department's spending review settlements.

Medium-term objectives

12. To explain clearly to all stakeholders the logic of fees and charges policy generally and our specific proposals.
13. To agree and deliver financial objectives for family business for the 2007 spending review period and beyond. The SR04 66% target was based on achieving 100% cost recovery (net of Remex) for most non-children private law family fees. Different policy considerations may apply to public law care cases, adoption, domestic violence and private law children cases. For example, it is arguable that domestic violence injunctions should not be a fee-charging service at all (because of their urgency and the vulnerability of the applicant).

14. To achieve the targets of 100% cost recovery (net of Remex) for Civil and Probate. This will involve further increases in magistrates' courts and overall reductions elsewhere.
15. To continue to improve the costing model and underlying data systems for setting fees. This could include, for example, the introduction of electronic fee books at court level (to record volumes directly) and a review of the Business Management System to align it more closely to fees.
16. To consider the potential use of a trading fund framework for those activities that are primarily funded through fees.
17. By 2008/09, to introduce systems for bulk payment of fees by legal aid, local authorities and other bulk sector users. This should enable significant administrative savings for both bulk users and HMCS.

Short-term objectives

18. During 2007, we need to:
 - Implement reforms of the Remex system to ensure that it is well targeted and consistently applied. The proposals would also harmonise the criteria for fee exemption and remission in different courts and secure a better alignment with legal aid eligibility.
 - Develop and deliver proposals for trial fees as the key mechanism for better matching cost and income; proposals should support our strategy for promoting earlier settlement.
 - Implement increases to magistrates' court civil to recover at least 55% overall.
 - Begin to eliminate the forecast over-recovery on mainstream civil fees, through reductions in issue fees generally, targeting in particular those for the use of e-channels.

Annex C

List of the members of the Fee Concessions Steering Group

Those involved in the Steering Group of stakeholders were –

Phil Bowden – Costs Manager (Masters Legal Costs Services) and member of the Civil Justice Council Fees Consultative Panel

Sophie Brookes – Citizens Advice

Vicki Chapman – Law Society and member of the Civil Justice Council

Richard Collins – Executive Director for Policy, Legal Services Commission

District Judge Carlos Debezies

Andrew Frazer – Head of Civil Law & Justice Division (Her Majesty's Courts Service)

Tony Guise – Solicitor (Guise Solicitors)

Brian Havercroft – Civil Court Users Association

Vicky Ling – Citizens Advice

Nick Longford – Solicitor (Rustons and Lloyd) and member of Resolution (Family Law Practitioners Association)

District Judge Edwina Millward

Margaret Wilson – Magistrates' Association (Family Proceedings Committee)

The Steering Group was chaired by Baroness Cathy Ashton.

Annex D

An overview of the current system of exemption and remission

Current Exemption System

The current criteria for an exemption from a court fee are contained in article 4 of Civil Proceedings Fees Order 2004 (2004 No. 3121), article 3 of the Family Proceedings Fees Order 2004 (2004 No. 3114) and article 4 of the Magistrates' Courts Fees Order 2005 (2005 No. 3444).

The Civil Proceedings Fees Order covers the Court of Appeal, High Court and County Courts. The Family Proceedings Fees Order covers the High Court and County Courts.

Legal Aid

An exemption is allowed to a party under the Family Proceedings Fees Order if they are in receipt of either –

- (i) legal advice and assistance under Part II or Part III of the Legal Aid Act 1988 in connection with the matter to which the proceedings relate; or
- (ii) Legal Help as defined in, and provided in accordance with, the Funding Code in connection with the matter to which the proceedings relate.

No exemption is allowed for a party under the Civil and Family Proceedings Fees Orders if they are in receipt of either –

- (i) representation under Part IV of the Legal Aid Act 1988 for the purposes of the proceedings; or
- (ii) funding provided by the Legal Services Commission for the purposes of the proceedings and for which a certificate has been issued under the Funding Code certifying a decision to fund the services for that party.

Under the Magistrates' Courts Fees Order a party is allowed an exemption if they are in receipt of either –

- (i) legal advice and assistance under Part II or Part III of the Legal Aid Act 1988 in connection with the matter to which the proceedings relate; or

- (ii) representation under Part IV of the Legal Aid Act 1988 for the purposes of the proceedings; or
- (iii) services funded by the Legal Services Commission as part of the Community Legal Service.

Benefits

In all cases, an applicant is automatically eligible for exemption from paying court fees if they receive either –

- (i) Income Support; or
- (ii) income-based Jobseeker's Allowance; or
- (iii) State Pension Guarantee Credit.

But there is a difference between the exemption criteria which apply in the Court of Appeal, High Court and County Courts and those which apply in the Magistrates' Courts is in respect of Tax Credits.

In the Court of Appeal, High Court and County Courts, in order to receive an automatic exemption, an applicant must receive Working Tax Credit, and have a gross annual income of £15,460 or less and be in receipt of either –

- (i) Child Tax Credit; or
- (ii) a Disability Element or Severe Disability Element (or both) to the Tax Credit received by the party.

However, in the Magistrates' Courts, the qualifying criteria for Tax Credit's are that an applicant must be in receipt of either –

- (i) any element of Child Tax Credit, other than the Family Element; or
- (ii) Working Tax Credit.

Current Remission System

The Civil and Family Fees Orders provide that the Lord Chancellor may reduce or remit a fee where it appears that its payment would "owing to the exceptional circumstances of the particular case, involve undue financial hardship". The provision in magistrates' courts is currently slightly different: fees may be remitted in whole or part "on the ground of financial hardship or other reasonable cause".

This function is discharged on the Lord Chancellor's behalf by court staff.¹ These decisions are discretionary based on the merits of each individual application, and are based on guidance requiring staff to take account of the applicant's income and expenditure.

Emergency Applications

There is a procedure that applies whenever an emergency application is made to the court, including an application to suspend an imminent eviction, a matter where a time limit for doing something is about to be reached, or a matter involving a child. If an emergency application is being made and the applicant is unable to pay the fee at the time of the request or is unable to provide evidence to support an application for an exemption or a remission, the court staff obtain the applicant's undertaking to pay the fee or make an application for exemption or remission within five working days and the application is processed. This procedure will continue to apply.

¹ The provision under section 138 of the Magistrates' Courts Act 1980 where a Magistrates' Bench could remit a court fee was repealed on implementation of section 92 of the Courts Act 2003 when the Magistrates' Courts Fees Order 2005 was made. Since 10 January 2006 the remission of court fees in the magistrates' courts has become part of the Lord Chancellor's executive function. As a result, administrative staff in magistrates' courts are authorised to discharge this function on the Lord Chancellor's behalf.

Table showing a summary of volumes and values of exemptions and remissions in different jurisdictions in 2005 – 2006

| 2005 — 2006 | Exemption | | Remission | | Overall Total | |
|--------------|----------------|-------------------|---------------|------------------|----------------|-------------------|
| | Instances | Amount £ | Instances | Amount £ | Instances | Amount £ |
| County Court | 68,828 | 3,731,671 | 26,813 | 1,367,490 | 95,641 | 5,099,161 |
| High Court | 3,623 | 897,214 | 7,541 | 2,200,256 | 11,164 | 3,097,470 |
| Insolvency | 13,397 | 1,955,204 | 7,598 | 1,073,855 | 20,995 | 3,029,059 |
| Family | 174,802 | 17,505,346 | 2,671 | 245,405 | 177,473 | 17,750,751 |
| Probate | 19 | 1,486 | 86 | 6,254 | 105 | 7,740 |
| Total | 260,669 | 24,090,920 | 44,709 | 4,893,260 | 305,378 | 28,984,180 |

| 2005 — 2006 | Exemption | | Remission | | Overall Total | |
|--------------|---------------|----------------|--------------|---------------|---------------|----------------|
| | Instances | Amount £ | Instances | Amount £ | Instances | Amount £ |
| Magistrates' | | | | | | |
| – civil | 11,015 | 119,717 | 2,755 | 23,516 | 13,770 | 143,233 |
| – family | 3,050 | 164,402 | 267 | 4,846 | 3,317 | 169,248 |
| Total | 14,065 | 284,119 | 3,022 | 28,362 | 17,087 | 312,480 |

Annex E**Proposals for a system of concessions**

It is proposed that there should be a single system of concessions, which has two elements and covers the Court of Appeal, High Court, County Courts and Magistrates' Courts.

Full Remission

(1)(a) A full remission if the applicant is in receipt of a means-tested benefit:

- (i) Income Support; or
- (ii) income-based Jobseeker's Allowance; or
- (iii) State Pension Guarantee Credit; or
- (iv) Working Tax Credit with no element of Child Tax Credit

(1)(b) A full remission if the applicant is either single or part of a couple, with or without dependant children and has a gross annual income that does not exceed the limits in the table below:

| Gross annual income with – | Single | Couple |
|----------------------------------|-----------|-----------|
| no children | £12,000 * | £16,000 * |
| 1 child | £14,375 | £18,375 |
| 2 children | £16,750 | £20,750 |
| 3 children | £19,125 | £23,125 |
| 4 children | £21,500 | £25,500 |
| £2,375 for each additional child | | |

(* The gross annual income thresholds are derived from HM Revenue and Custom's Working Tax Credit income cut-off for workers without children, where the rates currently are £11,450 for a single person and £15,900 for a couple – these have both been rounded up to £12,000 and £16,000 respectively. The allowance of £2,375 for each child is derived from the Income Support allowance for dependent children, which in the proposal above has been rounded up from £2,370.16.)

Part Remission

- (2) A part remission would be determined by a means-test based on the prescribed Legal Services Commission's test for Community Legal Service.

The applicant would be required to produce documentary evidence that confirms their income (and if applicable, that of their partner) from:

- (i) employment less deductions for Income Tax and National Insurance;
- (ii) people who live with the applicant (such as a lodger or tenant, non-dependant children or a relative);
- (iv) a pension (state, private or occupational).

The following benefits are excluded from income —

- (i) payments under the Social Security Contributions and Benefits Act 1992:
 - (a) attendance allowance;
 - (b) severe disablement allowance;
 - (c) carer's allowance;
 - (d) disability living allowance;
 - (e) constant attendance allowance;
 - (f) council tax benefit;
 - (g) any payment made out of the Social Fund;
 - (h) housing benefit;
 - (i) exceptionally severe disablement allowance;
- (ii) direct payments made under Community Care, Services for Carers and Children's Services;
- (iii) back to work bonus under section 26 of the Jobseeker's Act 1995;
- (iv) pensions paid under the Navy, Military and Air Forces (Disability and Death) Service Pensions Order 1983;

- (v) independent living fund payments; and
- (vi) financial support under an agreement for the care of a foster child.

The applicant would be required to produce documentary evidence that confirms their actual expenditure concerning:

- (i) their housing costs (mortgage, rent or bed and board);
- (ii) payment for child maintenance (court order, Child Support Agency assessment or voluntary);
- (iii) payment for child care.

Prescribed fixed allowances based on the Community Legal Service's test, would apply in respect of:

- (i) a partner (£142.00 a month);
- (ii) dependant (from birth to day before 20th birthday) children (£198.00 a month for each child);
- (iii) general living expenses (£279.00 a month).

The means-test would determine how much of a maximum contribution towards the court fee the applicant would pay from their monthly disposable income at the following rates:

- (i) if less than £50.00 disposable income – free (full remission);
- (ii) if between £51.00 and £209.00 disposable income, then – $\frac{1}{4}$ (or £2.50) of every £10.00 with a maximum of £50.00; and
- (iii) if more than £209.00 disposable income, then – £50.00 plus $\frac{1}{2}$ (or £5.00) of every £10.00 over £200.

Example –

A woman in full-time work with a gross annual income of £28,257, living alone with two dependant children, living in a mortgaged house. The applicant is seeking to make an application for financial provision for the children and the court fee is £175.

| Income | £ | Expenditure | £ |
|----------------------|-----------------|-------------------------------|-----------------|
| gross monthly pay | 2,355.00 | child care expenses | 700.00 |
| less deductions – | | housing costs | 520.00 |
| Income Tax | 396.49 | fixed allowances – | |
| National Insurance | 180.97 | Partner | – |
| total deductions | 577.46 | Children (£198.00 each child) | 396.00 |
| net monthly pay | 1,777.54 | general living expenses | 279.00 |
| Child Benefit | 126.31 | total fixed allowances | 675.00 |
| Child Tax Credit | 45.42 | | |
| total monthly income | 1949.27 | total monthly expenditure | 1,895.00 |

In this example, the applicant's total monthly income is £1,949.27 and has a total monthly expenditure of £1,895.00, leaving a monthly disposable income of £54.27. The applicant would pay a maximum contribution of £12.50 towards the court fee of £175.

A table setting out the progressions of disposable monthly income and the corresponding contributions appears on the following page.

Evidence

| Benefit | Administered by | Official notification confirms (some or all of) the following – |
|------------------------------------|----------------------------------|--|
| Income Support | Department for Work and Pensions | (i) recipient's identity (ii) period of recipient's award (iii) elements of the recipient's award (iv) income (v) children |
| Income-based Jobseeker's Allowance | Department for Work and Pensions | |
| State Pension Guarantee Credit | Pension Service | |
| Working Tax Credit | HM Revenue and Customs | |
| Child Tax Credit | HM Revenue and Customs | |

| Means-test item | form of evidence |
|--|---|
| (1) gross monthly pay | applicant must provide documentary proof of their recent pay slips that show Income Tax and National Insurance deductions and bank statements that show their net monthly pay |
| (2) income from people who live with applicant | applicant must provide documentary proof of any income from people who live with them, whether lodger or tenant, non-dependant child(ren) or a relative – e.g. bank statements |
| (3) pension | applicant must provide documentary proof of any income from a pension – <ul style="list-style-type: none"> ▪ state – pension book ▪ private – document from company paying pension ▪ occupational – document from employer paying pension |
| (4) other benefits | applicant must provide documentary proof of the benefit received |
| (5) housing costs | applicant must provide documentary proof of their expenditure for housing costs – rent – rent book mortgage (including monthly premiums for life and endowment policies relating to the mortgage) – mortgage statement from mortgage provider bed and board – agreement with provider of accommodation |
| (6) child maintenance | applicant must provide documentary proof of the child maintenance they pay, either – court order; or Child Support Agency assessment; or bank statements showing regular voluntary payments |
| (7) child care expenses | applicant must provide documentary proof of their expenditure for child care |

Table of Contributions

This shows the maximum contribution (up to the value of the fee) payable by level of assessed disposable income.

| Disposable monthly income | contribution | Disposable Monthly Income | Contribution | disposable monthly income | contribution |
|---------------------------------|--------------|---------------------------------|--------------|---------------------------------|--------------|
| £ | £ | £ | £ | £ | £ |
| 50 – 59 | 12.50 | 370 – 379 | 135.00 | 690 – 699 | 295.00 |
| 60 – 69 | 15.00 | 380 – 389 | 140.00 | 700 – 709 | 300.00 |
| 70 – 79 | 17.50 | 390 – 399 | 145.00 | 710 – 719 | 305.00 |
| 80 – 89 | 20.00 | 400 – 409 | 150.00 | 720 – 729 | 310.00 |
| 90 – 99 | 22.50 | 410 – 419 | 155.00 | 730 – 739 | 315.00 |
| 100 – 109 | 25.00 | 420 – 429 | 160.00 | 740 – 749 | 320.00 |
| 110 – 119 | 27.50 | 430 – 439 | 165.00 | 750 – 759 | 325.00 |
| 120 – 129 | 30.00 | 440 – 449 | 170.00 | 760 – 769 | 330.00 |
| 130 – 139 | 32.50 | 450 – 459 | 175.00 | 770 – 779 | 335.00 |
| 140 – 149 | 35.00 | 460 – 469 | 180.00 | 780 – 789 | 340.00 |
| 150 – 159 | 37.50 | 470 – 479 | 185.00 | 790 – 799 | 345.00 |
| 160 – 169 | 40.00 | 480 – 489 | 190.00 | 800 – 809 | 350.00 |
| 170 – 179 | 42.50 | 490 – 499 | 195.00 | 810 – 819 | 355.00 |
| 180 – 189 | 45.00 | 500 – 509 | 200.00 | 820 – 829 | 360.00 |
| 190 – 199 | 47.50 | 510 – 519 | 205.00 | 830 – 839 | 365.00 |
| 200 – 209 | 50.00 | 520 – 529 | 210.00 | 840 – 849 | 370.00 |
| 210 – 219 | 55.00 | 530 – 539 | 215.00 | 850 – 859 | 375.00 |
| 220 – 229 | 60.00 | 540 – 549 | 220.00 | 860 – 869 | 380.00 |
| 230 – 239 | 65.00 | 550 – 559 | 225.00 | 870 – 879 | 385.00 |
| 240 – 249 | 70.00 | 560 – 569 | 230.00 | 880 – 889 | 390.00 |
| 250 – 259 | 75.00 | 570 – 579 | 235.00 | 890 – 899 | 395.00 |
| 260 – 269 | 80.00 | 580 – 589 | 240.00 | 900 – 909 | 400.00 |
| 270 – 279 | 85.00 | 590 – 599 | 245.00 | 910 – 919 | 405.00 |
| 280 – 289 | 90.00 | 600 – 609 | 250.00 | 920 – 929 | 410.00 |
| 290 – 299 | 95.00 | 610 – 619 | 255.00 | 930 – 939 | 415.00 |
| 300 – 309 | 100.00 | 620 – 629 | 260.00 | 940 – 949 | 420.00 |
| 310 – 319 | 105.00 | 630 – 639 | 265.00 | 950 – 959 | 425.00 |
| 320 – 329 | 110.00 | 640 – 649 | 270.00 | 960 – 969 | 430.00 |
| 330 – 339 | 115.00 | 650 – 659 | 275.00 | 970 – 979 | 435.00 |
| 340 – 349 | 120.00 | 660 – 669 | 280.00 | 980 – 989 | 440.00 |
| 350 – 359 | 125.00 | 670 – 679 | 285.00 | 990 – 999 | 445.00 |
| 360 – 369 | 130.00 | 680 – 689 | 290.00 | 1,000 – 1009 | 450.00 |

If the means test calculates that the applicant has a monthly disposable income of more than £1,010, then the applicant's contribution will be £450.00 plus £5.00 of every £10.00 over £1,010.00.

Annex F

Table 1 – Fast-track and Multi-track

| High Court and County Court | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| filing allocation questionnaire (County Court) | 100.00 | 110.00 |
| filing allocation questionnaire (High Court) | 200.00 | 110.00 |
| filing a Fast-track listing questionnaire | 275.00 | 200.00 |
| filing a Multi-track listing questionnaire (County Court) | 500.00 | 200.00 |
| filing a Multi-track listing questionnaire (High Court) | 600.00 | 200.00 |
| Fast-track hearing fee | – | 500.00 |
| Multi-track hearing fee | – | 1,000.00 |

Table 2 – Miscellaneous applications

| | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| On filing against a party or parties not named in the originating proceedings in the High Court (Civil Proceedings fee number 1.5) | 50.00 | 40.00 |
| On filing against a party or parties not named in the originating proceedings in the County Court (Civil Proceedings fee number 1.5) | 35.00 | 40.00 |
| On an application for permission to issue originating proceedings in the High Court (Civil Proceedings fee number 1.7(a)) | 50.00 | 40.00 |
| On an application for permission to issue originating proceedings in the County Court (Civil Proceedings fee number 1.7(a)) | 35.00 | 40.00 |
| On an application for an order under Part III of the Solicitors Act 1974 for the assessment of costs payable to a solicitor by his client or on the commencement of costs-only proceedings in the High Court (Civil Proceedings fee number 1.7(b)) | 50.00 | 40.00 |
| On an application for an order under Part III of the Solicitors Act 1974 for the assessment of costs payable to a solicitor by his client or on the commencement of costs-only proceedings in the County Court (Civil Proceedings fee number 1.7(b)) | 35.00 | 40.00 |
| On an application by consent or without notice for a judgment or order where no other fee is specified in the High Court (Civil Proceedings fee number 2.6) | 50.00 | 40.00 |
| On an application by consent or without notice for a judgment or order where no other fee is specified in the County Court (Civil Proceedings fee number 2.6) | 35.00 | 40.00 |
| On an application on notice where no other fee is specified in the High Court (Civil Proceedings fee number 2.5) | 100.00 | 75.00 |
| On an application on notice where no other fee is specified in the County Court (Civil Proceedings fee number 2.5) | 65.00 | 75.00 |

Table 3 – Small Claims track

| County Court | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| filing an allocation questionnaire where the value of the claim is between £1,500 and £5,000 | 100.00 | 35.00 |
| hearing fee where the value of the claim is less than £300 | – | 25.00 |
| hearing fee where the value of the claim is between £301 and £500 | – | 50.00 |
| hearing fee where the value of the claim is between £501 and £1,000 | – | 75.00 |
| hearing fee where the value of the claim is between £1,001 and £1,500 | – | 100.00 |
| hearing fee where the value of the claim is between £1,501 and £3,000 | – | 150.00 |
| hearing fee where the value of the claim is between £3,001 and £5,000 | – | 300.00 |

Table 4 – Commencement Fees

| County Court Bulk Centre (CCBC) (fee 1.3) | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| does not exceed £300 | 20.00 | 15.00 |
| exceeds £300 but does not exceed £500 | 40.00 | 30.00 |
| exceeds £500 but does not exceed £1,000 | 70.00 | 55.00 |
| exceeds £1,000 but does not exceed £5,000 | 110.00 | – |
| exceeds £1,000 but does not exceed £1,500 (new band) | 110.00 | 65.00 |
| exceeds £1,500 but does not exceed £3,000 (new band) | 110.00 | 75.00 |
| exceeds £3,000 but does not exceed £5,000 (new band) | 110.00 | 85.00 |
| exceeds £5,000 but does not exceed £15,000 | 240.00 | 190.00 |
| exceeds £15,000 but does not exceed £50,000 | 390.00 | 310.00 |
| exceeds £50,000 but does not exceed £100,000 | 690.00 | 550.00 |

| Money Claim OnLine (MCOL) | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| does not exceed £300 | 30.00 | 25.00 |
| exceeds £300 but does not exceed £500 | 50.00 | 35.00 |
| exceeds £500 but does not exceed £1,000 | 80.00 | 65.00 |
| exceeds £1,000 but does not exceed £5,000 | 120.00 | – |
| exceeds £1,000 but does not exceed £1,500 (new band) | 120.00 | 75.00 |
| exceeds £1,500 but does not exceed £3,000 (new band) | 120.00 | 85.00 |
| exceeds £3,000 but does not exceed £5,000 (new band) | 120.00 | 100.00 |
| exceeds £5,000 but does not exceed £15,000 | 250.00 | 210.00 |
| exceeds £15,000 but does not exceed £50,000 | 400.00 | 340.00 |
| exceeds £50,000 but does not exceed £100,000 | 700.00 | 595.00 |

| Claims issued in the High Court and County Courts (fees 1.1 and 1.2) | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| does not exceed £300 | 30.00 | 30.00 |
| exceeds £300 but does not exceed £500 | 50.00 | 40.00 |
| exceeds £500 but does not exceed £1,000 | 80.00 | 75.00 |
| exceeds £1,000 but does not exceed £5,000 | 120.00 | – |
| exceeds £1,000 but does not exceed £1,500 (new band) | 120.00 | 85.00 |
| exceeds £1,500 but does not exceed £3,000 (new band) | 120.00 | 95.00 |
| exceeds £3,000 but does not exceed £5,000 (new band) | 120.00 | 115.00 |
| exceeds £5,000 but does not exceed £15,000 | 250.00 | 240.00 |
| exceeds £15,000 but does not exceed £50,000 | 400.00 | 390.00 |
| exceeds £50,000 but does not exceed £100,000 | 700.00 | 690.00 |
| exceeds £100,000 but does not exceed £150,000 | 900.00 | 890.00 |
| exceeds £150,000 but does not exceed £200,000 | 1,100.00 | 1,080.00 |
| exceeds £200,000 but does not exceed £250,000 | 1,300.00 | 1,280.00 |
| exceeds £250,000 but does not exceed £300,000 | 1,500.00 | 1,480.00 |
| Exceeds £300,000 or not limited | 1,700.00 | 1,680.00 |

| Originating proceedings for any other remedy | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| Non-possession claim | 150.00 | 150.00 |
| Possession Claim OnLine (PCOL) | 150.00 | 100.00 |
| Possession Claims non-PCOL | 150.00 | 150.00 |

Table 5 – Ancillary Processes

| (a) Assessment of costs | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| detailed assessment hearing (County Court) | 300.00 | – |
| detailed assessment hearing (High Court) | 600.00 | – |
| detailed assessment hearing (Family proceedings) | 250.00 | – |
| amount does not exceed £15,000 | – | 300.00 |
| exceeds £15,000 but does not exceed £50,000 | – | 600.00 |
| exceeds £50,000 but does not exceed £100,000 | – | 900.00 |
| exceeds £100,000 but does not exceed £150,000 | – | 1,200.00 |
| exceeds £150,000 but does not exceed £200,000 | – | 1,500.00 |
| exceeds £200,000 but does not exceed £300,000 | – | 2,250.00 |
| exceeds £300,000 but does not exceed £500,000 | – | 3,750.00 |
| exceeds £500,000 | – | 5,000.00 |

| (b) Certified copy documents | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| Certified copy of a Decree Absolute | – | 15.00 |
| Subsequent certified copy of certificate of discharge from bankruptcy | 1.00 | 15.00 |

See also fee 7.1 in Annex G.

| (c) Searches | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| Companies Search in County Court | – | 40.00 |
| On making a search in the central index of parental responsibility agreements kept at the Principal Registry of the Family Division | 25.00 | 40.00 |
| On making a search in the central index of decrees absolute or final orders kept at the Principal Registry of the Family Division | 25.00 | 40.00 |
| On making a search in the index of decrees absolute or final orders kept at any designated county court or district registry | 10.00 | 40.00 |
| For an official certificate of the result of a search for each name, in any register or index held by the court (High Court – Civil Proceedings fee number 9.2) | 5.00 | 40.00 |

See also fee MC 3.1 in Annex G.

| (d) Oaths | Current Fee | Proposed Fee |
|--|--------------------|---------------------|
| On taking an affidavit or an affirmation or attestation in lieu of affidavit (High Court and Court of Appeal only – Civil Proceedings fee number 11.1) | 5.00 | 25.00 |
| Taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration (Family Proceedings fee number 14.1) | 5.00 | 25.00 |

See also fees MC 17.1 and 17.2 in Annex G.

| (e) Copying | Current Fee | Proposed Fee |
|---|--------------------|---------------------|
| Request for copy of a document for the first page (except the first page of a subsequent copy of the same document supplied at the same time) | 1.00 | – |
| Request for copy of a document per page in any other case subsequent | 0.20 | – |
| Request for a copy of a document required in connection with proceedings and supplied by the party making the request at the time of copying, for each page | 0.20 | – |
| Request for photocopy of a document up to 10 pages | – | 5.00 |
| For each subsequent page | – | 0.50 |
| Request for a copy document on a computer disk or in other electronic form, for each such copy | 3.00 | 20.00 |

See also fee 6.1 in Annex G

Annex G**Magistrates' Courts fees**

| Fee Number | Description | Current Fee | Proposed Fee |
|-------------------|--|--------------------|---------------------|
| MC1.1 | On a justice of the peace, to view deserted premises in order to affix notice or to give possession thereof, or to view a highway, bridge or nuisance | 44.00 | 50.00 |
| MC2.1 | On an application to state a case for the opinion of the High Court ... drawing of case, copies, taking recognizance ... and enlargement and renewal of recognizance | 382.00 | 400.00 |
| MC2.2 | On a request for a certificate of refusal to state a case | 8.00 | 100.00 |
| MC3.1 | Every certificate not otherwise charged (including memorandum of conviction) | 25.00 | 40.00 |
| MC6.1 (a) | On a request for a copy of any document for the first page (except the first page of a subsequent copy of the same document supplied at the same time) | 1.10 | * |
| MC6.1 (b) | Per page in any other case | 0.55 | * |
| MC6.1 (c) | Each additional copy | 0.10 | * |
| MC7.1 | For the duplicate of any document | 5.00 | 15.00 |
| MC16.1 | Licence (for working children), consent or authority not otherwise provided for, to include registration when necessary | 8.00 | 20.00 |
| MC17.1 | Attestation of a constable | 8.00 | 25.00 |
| MC17.2 | Every oath, affirmation or solemn declaration not otherwise charged | 8.00 | 25.00 |
| MC18.1 | Other Civil – On a complaint (or application) | 25.00 | 75.00 |
| MC18.2 | Other Civil – On the issue of a summons and copy | 25.00 | 75.00 |
| MC18.3 | Other Civil – On the issue of a warrant and copy | 25.00 | 50.00 |
| MC18.4 | Other Civil – On the making of an order and copy | 25.00 | 50.00 |
| MC18(a) | Appeals against other Bodies | – | 400.00 |
| MC19.1 | Application for warrant of entry | 3.00 | 10.00 |

* See table 5e in Annex F.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

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?

Thank you for participating in this consultation exercise

About you**Please use this section to tell us about yourself**

| | |
|--|-------------------|
| Full name | |
| Job title or capacity in which you are responding to this consultation exercise | |
| Date | |
| Company name / organisation (if applicable): | |
| Address | |
| | |
| Postcode | |
| If you would like us to acknowledge receipt of your response. | (please tick box) |
| Address to which the acknowledgement should be sent, if different from above | |
| | |
| | |

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that it represents.

How to respond

Please email your response by 25 June 2007 to:

Email: FeesPolicy@hmcourts-service.gsi.gov.uk

Alternatively send a hard copy to

Andrew Lee
Civil Law & Justice Division – HMCS

Department for Constitutional Affairs
5th Floor, Selborne House
54-60 Victoria Street
London SW1E 6QT

Tel: 0207 210 2629
Fax: 0207 210 8825

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at:

<http://www.dca.gov.uk/consult/confr.htm#full>

Publication of response

A paper summarising the responses to this consultation will be published in due course and if possible within three months of the closing date of the consultation. The response paper will be available on-line at:

<http://www.dca.gov.uk/consult/confr.htm#full>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third party.

Impact Assessment

Title of Proposal

Civil Court Fees, including revising the Exemption and Remission System.

Purpose and Intended Effect

The proposals are part of a longer-term strategy which aims to ensure that the system of court fees is fair and sustainable. In particular, it must:

- meet its cost recovery and net funding targets;
- protect access to justice for the less well-off; and
- be flexible enough to accommodate changes in demand.

Objective

The objectives of the current proposals are to:

- introduce a new system of fee concessions that is well-targeted, simple, transparent and consistent;
- re-balance the structure of civil fees so there is a close match between income and cost drivers within the system;
- increase civil magistrates' court fees, aimed at achieving overall fee levels that will recover about 55% of the full-cost in 2007-08.

Background

Court fees are worth about £550m and cover nearly 80% of the full cost of running the civil and family courts.

The Treasury's *Fees and Charges Guide* requires all fee-charging services to have an agreed financial objective. The norm is full-cost recovery, but ministers can agree lower targets. That is the case here, because our targets discount the cost of fee exemptions and remissions.

However, family fees and magistrates' court civil fees do not currently meet the full-cost net of fee concessions. And within the civil court system, there is a substantial mismatch between the points where most fees are charged and income raised and the procedures which incur most of the cost.

The proposals currently subject to consultation would:

- Introduce a new system of fee concessions with the following key features: entitlement to a full remission based on receipt of certain benefits or gross income below a prescribed benefits; partial remissions based on a means test similar to that for contributory civil legal aid; abolition of the automatic exemption in family proceedings for recipients of Legal Help.
- Introduce changes to civil fees that would achieve a closer match of income and cost drivers and, other things remaining equal, a small reduction in the total level of fees. This is necessary both to make the system fairer as between different types of litigant, and make it easier to ensure that cost and funding remain in balance as workload changes.
- Increase various civil fees in the magistrates' courts.

Rationale for Government Intervention

The changes are driven by the need to meet financial targets while protecting access to justice for the less well-off.

Options

The current proposals are part of the broader strategy summarised in Annex B of the Consultation Paper. They are driven by the department's financial targets as set in the latest spending review settlement; the need to comply with the principles of HM treasury's *Fees and Charges Guide*; and the need to ensure that the fees system protects access to justice and remains compliant with Article 6 of the European Convention on Human Rights. If the changes were not made, the benefits set out below would not be realised. In particular, if the increases to magistrates' fees are not made, HMCS would need to instead reduce spending commensurately (e.g. by closing courts or reducing staff numbers); this would inevitably affect court performance and service to customers. Therefore, this assessment analyses the costs and benefits of the proposals, but does not consider any alternative options to the proposed package.

Analysis of costs and benefits

Fee Exemptions and Remissions

The benefits of the reforms proposed are that the fee concession system will be:

- Better-targeted – assisting those who are genuinely unable to afford a fee, but not others. An over-generous system would be unaffordable and unfair to the taxpayer and other users. In particular, people who do not qualify for basic means-tested benefits and who have some disposable income will be required to pay a contribution.

- Simple and transparent – making it easier for applicants, their advisors and court staff to understand and apply. The system and its qualifying criteria will be well published setting out the process including what information is required and the criteria for applying.
- More consistent – as with the process clearly defined in three stages it prevents staff throughout the courts from using their own discretion and making different decisions from those made in other courts.

The new system provides automatic full remission for those on basic means-tested benefits or equivalent gross income. As such, it is slightly more generous than the current system. Above that level, it provides for a means-test based on that for Community Legal Service funding. This calculates a maximum one-off contribution from income towards any fee otherwise payable by the applicant.

The core changes to remissions and exemptions will be broadly cost neutral. The slightly more generous criteria at the bottom of the scale will cost an estimated £1.2m in a full year through additional automatic full remissions. This will be offset by a reduction in the cost of remissions of about £1m, because more people of modest means will receive part rather than full remissions.

Removal of the automatic exemption for recipients of Legal Help in family proceedings will save over £3m in a full year. This does not create a consequential cost for the CLS fund as court fees are not recoverable under Legal Help.

Re-balancing the fee structure

We are proposing to introduce hearing fees for civil cases and adjust the fees for allocation, listing, applications and various ancillary processes so they more closely reflect cost. These increases will be slightly more than offset by reductions in issue fees, particularly for issue using HMCS's electronic channels.

The revised fee structure should provide stronger incentives for users to issue electronically and consider mediation or other means to settle the case before trial. Within the system, it shifts some of the burden of fees away from undefended claims and onto cases which proceed further and therefore incur more court costs.

Undefended cases are typically issued against individuals and small businesses by large-scale creditors, such as credit card and utility companies. The fees are initially paid by the claimant, but then added to the judgment debt and potentially recovered from the defendant. The parties in these types of case will tend to benefit most from the reductions in issue fees.

The cost of hearing fees, on the other hand, will be borne by litigants in contested cases (again, the claimant initially, but ultimately the losing party). These cases

include small claims, which are typically consumer claims against small business, personal injury claims against insurers and large-scale commercial litigation between companies.

The revenue arising from court fees depends on the number of cases issuing and reaching subsequent fee-charging points. This varies over time and depends on a wide range of factors, including economic conditions. The changes themselves are designed to encourage changes in litigants' behaviour (more electronic issue, more settlements). To illustrate the scale of the impact of the fee changes, however, the figures below are based on workload figures for 2006-07.

On that basis, the introduction of hearing fees and the other changes to downstream fees would generate additional fee income of about £10m a year.

The reductions in issue fees will reduce revenue by about £14m a year.

The net reduction of £4m will reduce the level of over-recovery on civil fees identified in 2005/06 by about 1%.

Fees for civil proceedings in the magistrates' courts

Fees for this area of business currently cover about 29% of the cost.

Assuming constant workload, the package proposed would increase cost recovery to 64% in a full year (55% on 2007-08 if introduced in September 2007), and raise an additional £12m in a full year.

This cost would be borne by applicants in a wide range of different types of case. In many cases, the cost will then be passed on to the defendant by way of an order for costs.

The most significant increase relates to the £25 fees payable in various stages in a wide range of miscellaneous applications for which case-specific fees are not set. These include recovery of unpaid income tax; applications for orders under various statutes (e.g. anti-social behaviour, proceeds of crime, environmental protection, dangerous dogs); and appeals against various local authority decisions (e.g. liquor licensing, Public Health Act).

We recognise that Anti-Social Behaviour Orders and other similar orders may require special consideration due to their close connection to criminal process. Full-cost recovery remains the aim, but further consultation with stakeholders in local government and the police will be required in order to develop a fair and workable system.

For licensing and other appeals, which often involve lengthy hearings, we are proposing a single new fee of £400. In other cases, fees of £75 and £50 will be charged. Many of the proceedings affected are ones brought by various public bodies. Others, including the £400 appeal fee, will typically fall on business.

Summary

The changes proposed would:

- increase the numbers eligible for an automatic full fee remission, but require others to pay at least a part contribution towards their fee;
- reduce the overall cost of fee exemptions and remissions by about £3m, due to the removal of the automatic exemption for recipients of Legal Help;
- reduce total fee income for mainstream civil business by about £4m (1%), while increasing fees paid in defended cases by about £10m;
- increase fees for civil proceedings in magistrates' courts by £12m.

The overall effect of the package is to increase the total level of fees paid by court users, and so reduce net spending by HMCS, by about £11m in a full year.

However, the CLS fund meets the cost of court fees for those in receipt of full legal representation in the main civil and family courts, and we are proposing to apply this to the magistrates' court as well when we introduce the new fee concessions system. The additional cost to the legal aid fund as a result of the proposals will be about £3m in a full year (£1m for magistrates, £2m for higher courts). This has been factored into the legal aid forecasting as an additional pressure.

Public Consultation

This Consultation Paper is being sent to a variety of stakeholders including the judiciary, Civil and Family Justice Councils, and bodies representing consumer, small businesses and legal practitioners.

Equality Impact Assessment

Government policies should be assessed specifically to ensure that they do not discriminate against anyone on the grounds of: race; disability; gender; sexual orientation; age; religion or belief; and caring responsibilities.

There is a lack of evidence as to how changes to court fees, and remissions and exemptions, specifically affect diverse communities. We have set out the probable impacts below. We would welcome your views on these as part of your response to the consultation.

Race Equality Assessment

The following table uses figures from a fact sheet produced by the Department for Trade and Industry ¹ and shows the average hourly earnings of people in the United Kingdom, by ethnic group in Spring 2002.

| Ethnic Group | Other Ethnic Group | Chinese | Indian | White | Caribbean | Black / Black American | African | Asian / Asian British | Mixed | Pakistani / Bangladeshi |
|--------------------------|--------------------|---------|--------|-------|-----------|------------------------|---------|-----------------------|-------|-------------------------|
| Mean Hourly Earnings (£) | 11.36 | 10.75 | 9.92 | 9.50 | 9.29 | 9.04 | 8.92 | 8.91 | 8.52 | 7.10 |

Some black and minority ethnic groups tend to have lower incomes, as the table above demonstrates. Any change in fees, therefore, would be likely to have a greater potential impact on these groups.

However, people for whom payment of fees will cause financial hardship will be able to take advantage of the exemptions and remission policy. Therefore, there will be no differential impact on these groups. Information on the fees including the remissions and exemptions policy will be available in a variety of other languages.

Because of the remissions and exemptions policy and other measures (e.g. provision of information in languages other than English) we will put in place, we do not think that there will be an impact of these fee policies on people because of their racial group.

Religion and beliefs

Due to the variety of fees that impact on different areas of work we do not have any information that gives a breakdown on court users' religion or beliefs. We do not expect there to be any impact on people because of their religious or other beliefs.

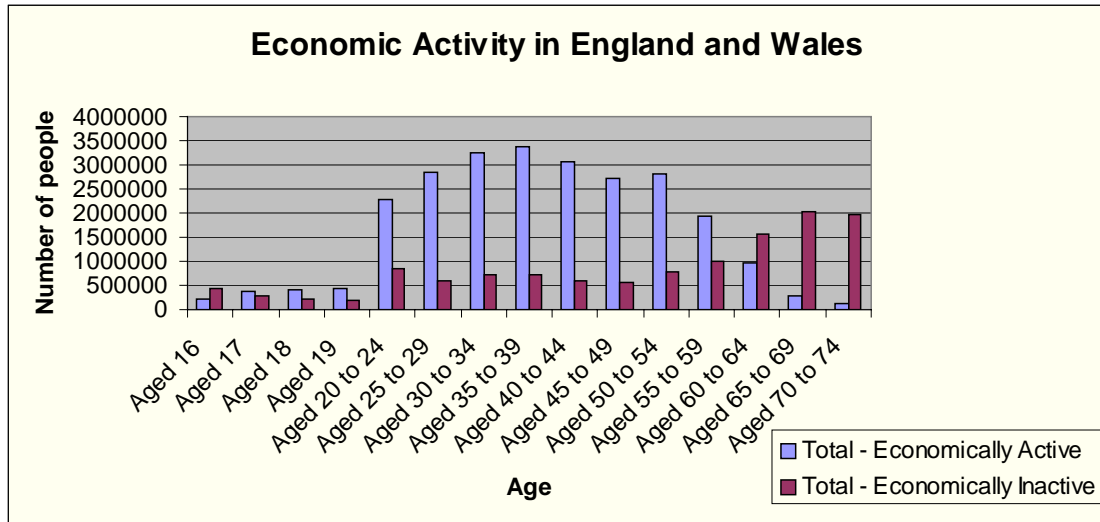
Disability impact assessment

At some point in their lives, millions of people in the United Kingdom lose their ability to make decisions that effect their lives – either through illness, disability or injury. And some people are born with disabilities. Due to the variety of fees and different services offered and our remissions and exemption policy being designed

¹ <http://www.womenandequalityunit.gov.uk/publications/>

for all those that would suffer financial hardship regardless of disability, we do not expect that these changes will have any impact on people with disabilities.

Age



The chart above shows the proportion of the population that is economically active in each of several age groups (from the 2001 census). We can see that until the age of 18, more people are economically inactive than are economically active. More significantly, people aged over 65 are much more likely to be economically inactive – due mostly, one would expect, to retirement.

We expect, therefore, that many of those potentially affected by fees will be covered by our remissions and exemptions policy, which is subject to no age limit. We think, therefore, that the actual impact of these policies on people because of age will be neutral.

Caring responsibilities

Again due to the variety of fees and different services offered the actual impact of these policies will be largely neutral. In any event our remissions and exemptions policy will permit those who may suffer financial hardship from paying a fee to avoid doing so should they qualify. Therefore, we do not expect there to be a direct impact of these fees on those with caring responsibilities.

Gender

The 2001 census shows that 48.67% of the population is male and 51.34% are female. Women tend to earn less than men (see below), and so they may be more impacted by new or increased fees.

Women who work full-time earn 13% less than men who work full-time, based on median hourly earnings, and 17% less based on mean hourly earnings. These

lower earnings leave women at greater risk of falling below the poverty line and of being worse off than men in retirement.²

It is expected that the exemptions and remission policy will mitigate this, allowing access to justice, and so, we do not expect there to be a an impact of these changes on the basis of gender.

Sexual orientation

A recent study has shown that gay men earn, on average, 6% less than their heterosexual equivalents, although lesbian women earn about 11% more than their heterosexual counterparts.³ This means that an increase in fees may affect gay men more than heterosexual men. However, if people cannot afford to pay the fees, they will be covered by our exemptions and remissions policy. We do not therefore expect that the proposed changes will impact this segment of the population.

Environmental

There is nothing to suggest that these fee policies, nor the associated remissions and exemptions policy, will have an environmental impact.

Small Firms' Impact Test

Claimants are not required by the court rules to provide information that would make it possible to classify them as belonging to a particular group. It is therefore impossible to estimate the effect in isolation on the 'small business sector'.

Business customers in general are mainly concerned about their ability to recover large numbers of small debts economically. However, the judicial statistics report for 2005-06 shows that 80% of liquidated claims (claims with a fixed monetary value) are issued by businesses to recover debts. The fees paid in those claims, which are ultimately recoverable from the debtor.

So the impact on the small business sector is likely to be neutral or positive. This is in accordance with the objective of setting fees to recover cost.

² Data from the women and work commission report "shaping a fairer future" Feb 2006

³ <http://cop.ISE.ac.uk/centrepiece>

Competition Assessment

An initial competition assessment test was undertaken, in line with Cabinet Office guidance. The main sectors affected by the proposed fees are small business, solicitors, individuals and other government departments. These areas are not dominated by a small number of large firms and are not characterised by rapid technological change. The proposed fees would affect existing and newer potential business / individuals in the same way, regardless of their size. As such the proposed fees are not expected to have an impact on competition. We consider that the proposals are unlikely to have a negative impact upon competition in any market. It is unlikely that there would be any markets that would face a disproportionately large impact and a detailed competition assessment is not deemed necessary.

Enforcement / Sanctions / Monitoring

Nearly all fees are paid for in advance of the service so the sanction for non-payment is that the service will not be performed. Special arrangements apply to fees on allocation to track and setting down for trial. The proceedings may be struck out if the fee is not paid. Similar provisions in the Civil Procedure Rules will be needed to enforce payment of the fee in relation to the proposed new hearing fee.

Legal Aid / Judicial Impact test

The impact of the proposed increases on the legal aid budget has been estimated at a cost of £3m (see breakdown of costs and benefits section for more detail).

The judicial impact will be broadly neutral, although there may some reduction in the number of hearings required. Charging cost-based fees at key decision points in the process would mean that litigants were subject to appropriate incentives to encourage settlement before trial, whether as a result of negotiation, mediation or some other form of alternative dispute resolution. Refunding the hearing fee on early notice of settlement could reduce the amount of judicial resource wasted when cases settle on the day.

Administration burdens / simplification

Administrative burdens will reduce as systems become more transparent and easier to understand. A single system of fee remissions will apply to all courts including magistrates' courts.

The Consultation Criteria

The six consultation criteria are as follows:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are who may be affected, what questions are being asked and the time scale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 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.

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 the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gov.uk

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

**Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
9th 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 under **the How to respond** section of this paper at page 60.

