

## **Implementing increases to selected court and tribunal fees**

### **Resolution's response to the Ministry of Justice**

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes. Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family and the best interests of any children in particular.

Resolution members seek to solve problems outside of court, where possible, through solicitor negotiation, mediation, collaborative practice, arbitration, roundtable discussions, private FDRs/early neutral evaluation and other processes.

Resolution is committed to developing and promoting best standards in the practice of family law amongst both its members and amongst family lawyers in general.

We also campaign for better laws and better support for families and children undergoing family change.

### **Responses to consultation questions**

**Question 1: Do you agree with the principle that fees should be increased periodically to reflect rising costs to HMCTS as a result of changes in the general level of prices?**

**Don't know, absent more information.**

We are very pleased that it is not being suggested that family court fees associated with the breakdown of family relationships should be set purely on the basis of cost of the service provided by the courts.

However, more information is needed to be able to respond to this question. Our answer would partly depend on how much it costs, for example, to run a children case or a divorce finance case and the detail of how it is proposed any rising costs are being apportioned across different fees.

We feel strongly that any court fees associated with relationship breakdown should not lead to profit for HMCTS. This is especially so in relation to fees for divorce, nullity or civil partnership which must already be at a level significantly above the cost of the service.

For one thing, people don't have any choice but to incur those fees. If they wish to get divorced, they need to pay the divorce fee; they are not choosing to litigate. For another, with the move to

online divorce and the introduction of no fault divorce from April 2022, divorce has become more of an administrative process and (we assume) less costly to administer. This should be reflected in the level of fee.

More broadly, given that there are various initiatives underway to divert more family cases away from the courts (e.g. the Supporting Earlier Resolution consultation in March 2023, government response awaited), careful consideration should be given to whether any scheme of court fees should 'reward' those who reach early agreements (please also see our response to Question 4).

**Question 2: Do you agree with the principle that a fee increase of 10% for up to 202 fees, to partially reflect increases in CPI from March 2021 is appropriate?**

**No.**

Whatever the value to individuals of pursuing a legal remedy (which is their right under statute) and of the proceedings, there is the issue of affordability. Increased fees will be beyond the reach of many vulnerable people and risk people being trapped in conflict to the detriment of their children and/or in an abusive relationship. All told, there is already a potential cost of £1,100 to pay a divorce application fee, the fee to pursue a contested money claim and a further fee if there are contested issues with regard to children. That is already a significant sum for many people on low and middle incomes who would notice a 10% increase.

Although it may be said that this can be remedied by tinkering with the fee remission scheme, that won't capture a significant cohort of people for whom a 10% increase would put getting divorced (or pursuing time with their children/other remedies) out of reach.

What is more, we question whether individual court users and local authorities will see the impact of a 10% increase in terms of an improved court service. If we had started from a baseline of a good service for users, it may be easier to justify an increase in court fees of the magnitude proposed. However, the reality (as can readily be seen from the HMCTS Family Court Statistics Quarterly) is that there has been a sharp uptick in the length of time it is taking to resolve proceedings over a long period (since 2016 at least). Absent any detail about the proposed fee increases leading to a commensurate improvement in service (as opposed to going to profit), it will be difficult objectively to justify increases at the present time.

**Question 3: Are there any fees outlined in Annex A that should not be increased by 10% as part of this proposal?**

It is impossible to answer this question without seeing the MoJ's analysis of each individual fee against the several exclusion criteria.

We are surprised at the selection of so many family fees given 'the Lord Chancellor's duty to protect access to justice, given the notable vulnerability of the majority user cohort and/or the sensitive nature of cases involved'.

Private family law proceedings have a serious purpose. The need to make an application to court is often a complex one about the future of family relationships and children. It may be needed due to protection, safeguarding and child welfare factors.

Likewise, increasing the already substantial fees paid by local authorities to initiate public law proceedings to protect children simply moves funding between different departments and exacerbates the difficulties for local authorities of meeting the costs of child protection. There are well documented issues of principle around the charging of local authorities to bring applications for proceedings under Section 31 of the Children Act 1989.

We have never understood the rationale for over-recovery of divorce costs. As mentioned in our response to Question 1, divorce is not a choice to litigate. It would seem very unfair to now increase that fee by 10% when HMCTS's costs of running a divorce must have decreased since the introduction of both the online procedure and no fault divorce. See paragraphs 86 to 89 of the [Justice Select Committee's 2016 report on Courts and Tribunal fees](#) to which we gave evidence -our views (which the Justice Select Committee endorsed) remain unchanged.

The vast majority of people consider carefully whether to end their marriage and have reflected long and hard before getting to the stage of beginning divorce proceedings. Our members report that, for many people they see, paying this fee is very expensive for them at even the current level. The quantum should not be acting as a deterrent if someone wants to end their marriage. The government largely seems to simply assume that there will be a continued willingness amongst divorcing couples to pay any fee to complete the dissolution of the marriage and that those divorcing can afford to pay. It could readily result in people remaining in marriages which have failed and in conflict for longer, which has been consistently demonstrated not to be in the best interests of children. And it risks people being trapped in an abusive relationship, or unable to form new relationships which benefitted from the full protection of the law.

It is not a decision to take a case to court. There is no alternative to court as the court has to process a divorce- they will have to pay the fee whether they choose an out of court issues resolution process for resolving their ancillary finance and/or children issues further to a MIAM or otherwise. Indeed, the vast majority of couples do not go to court at all in relation to resolving matters ancillary to the divorce. The need to make any private family law application to the court is a complex one about the future of family relationships and children. It may be needed due to protection, safeguarding and child welfare factors, regardless of means.

**Question 4: Do you agree with the proposal on making more regular, incremental inflation and cost-based increases to court and tribunal fees every two years, as opposed to more infrequent but more significant changes on an ad hoc basis?**

**No, and not without consultation every time.**

We are not persuaded that the application of a blanket policy is the right approach. We would like to see careful consideration of the cost to provide each service. In addition, there can be no justification for any increase to the divorce fee or any other court fees where the introduction of digital services reduces the costs of the service.

The proposal seems to allow for a lot of leeway, without proper scrutiny. HMCTS costs-based increases would need to be provided on a transparent basis and evidenced, and not be disproportionately levied on certain cases, for example, divorce as happens now.

Again we would be very mindful of:

- access to justice issues/not enabling a perpetrator of economic abuse to drag out litigation knowing their ex won't have the means to pay further court fees;
- ensuring that any such changes have an evidential basis and proper consultation;
- any such increases being invested in the court system/being reflected in tangible improvements; and
- any increase to court fees should also be accompanied by increased support to those most in need of it.

This proposal generally seems quite a blunt approach which will do nothing to incentivise parties to reach agreements/'reward' those who do reach early agreements. Whilst court fees shouldn't be a barrier to issuing an application and access to justice, there is a widely held view that the current court fee structure does not incentivise participation in OADR/deter litigation (as is common in other jurisdictions) and the level of court fees may perversely encourage some to circumvent the pre-court process. The MoJ may wish to consider whether there is a case for the introduction, for example, of staged or final hearing fees in money cases and to explore any learnings relating to the impact on access to justice of the 'pay as you go' system introduced in Scotland. The introduction of a new court fees system is not however Resolution's policy position, and we would wish to take the temperature of our membership on any further specific proposals.

Will the same approach be taken to the Help with Fees remission thresholds in relation to incremental inflation every two years? If fees are increased in line with inflation, then Help with Fees thresholds should also be increased.

**Question 5: What are your views on the proposal to enhance the council tax liability order fee, retaining its current value of £0.50p?**

Not applicable.

**Question 6: What do you consider to be the equalities impacts on individuals with protected characteristics of the proposals? Are there forms of mitigation in relation to equality impacts that we have not considered?**

We are unclear what is meant by the 'These proposals, if implemented, would also impact those who speak the Welsh language' (para 53 of the cp) given that there is statutory requirement for certain documentation to be provided in Welsh.

We are particularly concerned about the disproportionate impact on women and victims of domestic abuse of a further increase in the divorce application fee.

For private law family cases, there may be some groups with protected characteristics (race, age, gender and religion) that are over represented in private family law cases involving children where there are safeguarding concerns.

For public law children cases, whilst the burden of the increase in fees will not fall on individuals with protected characteristics, those non-parent family members involved, and who may well not be legally aided, even if of limited means, may be highly impacted by court fees as individuals.

For further information please contact:

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