

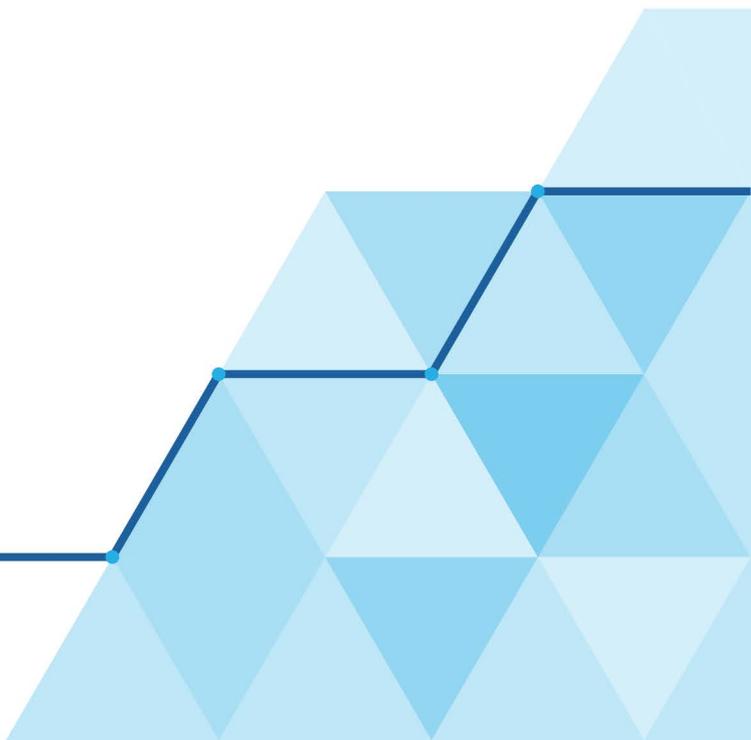


Ministry
of Justice

Court and Tribunal Fees

**The Government response to the
consultation on “Alignment of the Fees
for Online and Paper Civil Money and
Possession Claims”**

This response is published on 8 March 2021

A decorative graphic in the bottom right corner consisting of a grid of light blue triangles of various sizes, with a dark blue line and dots connecting some of the vertices.



Ministry
of Justice

Court and Tribunal Fees

The Government response to the consultation “Alignment of the Fees for Online and Paper Civil Money and Possession Claims”

Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

Contents

Introduction and contact details	3
Complaints or comments	3
Background	4
Summary of responses	6
Responses to specific questions	10
Impact Assessment, Equalities and Welsh Language	17
Impact Assessment	17
Equalities	17
Welsh Language Impact Test	19
Conclusion and next steps	20
Consultation principles	22
Annex A – List of respondents	23

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

Introduction and contact details

This document is the post-consultation report for the consultation paper “Alignment of the Fees for Online and Paper Civil Money and Possession Claims”.

It will cover:

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

Further copies of this report and the consultation paper can be obtained by contacting **Fees Policy Team** at the address below:

Fees Policy Team

Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: mojfeespolicy@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from mojfeespolicy@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

1. The case for regularly reviewing the way we charge court fees for online civil money and possession claims is based firmly on the need to ensure that Her Majesty’s Courts and Tribunals Service (HMCTS) is funded properly whilst protecting the vital principle of access to justice. Access to justice is crucial to the maintenance of an effective and functioning democracy, helping to uphold social order and underpinning an effective economy.
2. In a wide range of circumstances, courts and tribunals provide the opportunity for individuals and businesses to enforce their rights by dealing with cases fairly, quickly and with certainty, leading to just outcomes. Despite the exceptional circumstances arising from the pandemic and the number of unprecedented challenges it has brought to the fore, this Government maintains its commitment to ensure the efficient and effective running of courts and tribunals, while protecting access to justice and minimising the burden on the taxpayer.
3. The consultation paper “Alignment of the Fees for Online and Paper Civil Money and Possession Claims” was published on 20 November 2020. It invited comments on the proposal by the Ministry of Justice for the removal of the online discount applied to issue fees for users of the County Court Business Centre (CCBC), Money Claim Online (MCOL), Possession Claim Online (PCOL), and Online Civil Money Claim (OCMC), and the fee discount and exemption which applies to certain enforcement fees. The aims of the proposal rested broadly on the need to:
 - Help to ensure that courts and tribunals have the necessary resources to deliver their much-needed services
 - Ensure that those who can pay a fee, pay the same fee regardless of whether they lodged their claim online or via the paper route
 - Simplify the existing fee structure
4. The Government believes that there is a strong justification for the alignment of the fees for online and paper civil money and possession claims. This proposal is expected to make a significant contribution to the Ministry of Justice’s financial plans for 2022–23 and beyond. It is estimated to provide between £9 and £25 million per annum in additional income, reducing the cost of HMCTS to the taxpayer and contributing to the funding of our courts so to ensure access to justice for all.
5. The consultation sought views from users of the civil court system, the legal profession, the judiciary, the advice sector, and all of those with an interest in the civil courts system. It posed a series of questions aimed at understanding views on the proposed

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

alignment by courts users. The consultation was amended to include one additional fee on 11 December, and stakeholders were notified of the addition by email. The consultation period closed on 30 December 2020, and this report summarises the responses and the Government's response having considered carefully the information provided by all stakeholders.

6. The Impact Assessment accompanying the consultation was updated to take account of the responses provided by stakeholders during the consultation period. The updated Impact Assessment has been published alongside this document.
7. A Welsh language response paper can be found at <https://consult.justice.gov.uk/>
8. A list of respondents is at Annex A.

Summary of responses

9. A total of 22 responses to the consultation paper were received. The majority of responses came from the legal sector, the private sector and the third sector. Further responses were received from debt recovery companies, stakeholders' associations as well as individual citizens. A full list of respondents is available at Annex A.
10. A number of respondents raised concerns about the principle of enhanced fees rather than on the specific subject of this consultation, namely the alignment of online and paper fees for civil money and possession claims. The consultation exercise undertaken by the Ministry of Justice was broadly aimed at understanding the level of support among courts users for this particular policy. More specifically, the Government sought to gather stakeholders' perspectives on the merit of the proposal, as well as their assessments on how the proposed alignment could affect them. Particular attention was paid to the potential effects of the proposal on demand response and court users, that is, a change in the volume of claims directly resulting from the alignment of the online and paper fees.
11. The majority of respondents, namely those from the legal and credit sector, to the consultation disagreed with the proposed alignment. They argued that the proposed fees do not represent the costs of proceedings, pointing out that higher value claims do not necessarily correspond to more complex or lengthier cases. In this regard, some respondents argue that high value claims could be priced out, with claimants deterred from pursuing a claim due to a high fee, which could therefore inhibit access to justice. In their view, this could cause changes in the behaviour of claimants in response to the level of the fees, creating the risk of debt collection companies discriminating between debtors, pursuing those owing smaller amounts more than those owing larger amounts.
12. Respondents also felt that the proposed alignment was unjustifiable in relation to the quality of the service provided. Particular concerns were expressed in relation to the processes for warrants of control, which some respondents argued offer a poor service due to the county court bailiff service being already stretched and unable to enforce warrants in a timely manner. In addition, fee increases in their view would result in a reduction of claims being pursued and an increase in debt for debtors.
13. Overall, the majority of respondents opposed the principle of enhanced fees altogether. They argued that civil courts are essential to a democratic society and should not recover more than the cost of the service they provide. In their view, there is no rational argument for charging some users more than the cost of the process to subsidise other users of the courts. However, some respondents pointed to the fact that the proposed

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

fees alignment could be more acceptable if any additional income were to be reinvested into improving the services affected.

14. Conversely, a minority of respondents, namely those from the legal support sector, were in support of the proposed alignment. They contended that it would be unfair to charge paper users a higher fee than online users, especially in light of the fact that the objective behind the online discount has been achieved. Respondents in favour of alignment also mentioned that paper users often choose that route because they do not have internet access and are therefore currently at a disadvantage.

Summary of the Government's response

15. The Government believes that there is a strong justification to proceed with the alignment of the fees for online and paper civil money and possession claims. The income received from fees covers less than half of the cost of running courts and tribunals. In 2019/20, for example, there was a net fee income of £724m against the £2bn running costs of HMCTS, a significant gap that affects the taxpayer and hinders the effective and efficient running of HMCTS, making it more difficult to ensure access to justice.
16. We consider it is right that those court users who can afford to, should contribute more towards the operations of HMCTS. This proposal would provide much-needed additional income, which will be invested back into improving the efficiency and effectiveness of the courts and tribunals service. Alongside this, the Government is also providing additional funding to support HMCTS. This includes an additional £337 million for the criminal justice system in England and Wales, including £275 million to manage the downstream demand impact of 20,000 additional police officers and reduce backlogs caused by Covid-19 in the Crown Courts. We are also investing £76 million to further increase family court and employment tribunal capacity to reduce backlogs, £43 million to ensure courts and prisons remain Covid-safe; and £105 million for improvements to the court estate.
17. We acknowledge the concerns that respondents raised in relation to the quality of the county court bailiff enforcement service. In particular, we recognise the difficulty users of the service currently experience in enforcing warrants in a timely manner, and the potential for increased debt to be passed on to debtors. In recognition of those concerns, and in the spirit of consolidating the fee structure, after careful consideration, we have decided not to align the £77 online fee to the £110 paper one (Fee 8.1 in the proposal). Instead, we will apply a 7.7% inflationary increase backdated to 2016 (when this fee was last amended) and we will therefore consolidate the online and paper fees to a new level of £83.

Court and Tribunal Fees

The Government response to consultation on “Alignment of the Fees for Online and Paper Civil Money and Possession Claims”

18. We also recognise that some respondents were concerned that the fees considered under this proposal bore little resemblance to the cost of the processes to which they relate. However, under the power contained in section 180 of the Anti-social Behaviour, Crime and Policing Act 2014, The Lord Chancellor may set court fees at a level above the cost of the process. The Ministry of Justice carried out a separate consultation on the use of this power to set these particular fees in its 2015 consultation “Court and Tribunal Fees: The Government response to consultation on further fees proposals”.¹ Further, by setting some court fees above cost, the Government is able to cross subsidise other parts of the courts and tribunals system while ensuring that system is effective and efficient and minimising the cost to the taxpayer. For example, vulnerable users seeking non-molestation orders as a result of domestic abuse; or for those cases before First-Tier tribunals concerning mental health are not charged a court fee.
19. In addition to some of the negative responses received in relation to the substance of the proposal, some respondents stated that the consultation period was too short. The Government disagrees that the consultation period was insufficient to gather views from interested stakeholders. The consultation principles set out by the Cabinet Office state that a consultation should last a proportionate amount of time, taking into account the nature and impact of the proposal. After careful consideration, the Ministry of Justice ran a 6-week consultation because:
- The consultation was centred on a relatively straightforward measure, namely the proposed alignment of online and paper fees for the small number of fees where the difference exists.
 - The consultation developed from the 2015 “Court and Tribunal Fees: The Government response to consultation on further fees proposals”, therefore many consultees were already familiar with the legal powers and type of issues which are considered by ministers in relation to the setting of fees.
 - In addition, stakeholders were notified as soon as the consultation was launched.
20. The Government does not accept that the proposed alignment would inhibit access to justice. Research previously undertaken by the Ministry of Justice on this issue has consistently indicated that fees are a secondary consideration in the decision to litigate, with the prospects of success and the likelihood of recovering the debt being primary considerations.² Fees represent a small proportion of the overall costs of litigation and can, in successful civil proceedings, be recovered from the losing party. In addition:

¹ “Court and Tribunal Fees: The Government response to consultation on further fees proposals”, Ministry of Justice, December 2015. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515460/further-fees-proposals-gov-response-consultation.pdf

² The role of court fees in affecting users’ decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants, 2014. (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299804/role-of-court-fees-in-decisions-to-bring-cases-to-courts.pdf)

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

- The alignment for claims under £10,000 (which currently constitute 98% of all claims) is discreet and relatively small, with the difference between online and paper fees ranging from a minimum of £10 to a maximum of £45;
- Issue fees are proportionate to the sum in dispute;
- Help with Fees (HwF) is available to those who qualify; and
- Specific money claims can be brought under a "no win no fee" conditional fee agreement for those who qualify

21. For these reasons, the Government does not believe that the proposed alignment would be a barrier to access to justice.

Responses to specific questions

1. In light of our proposal as set out in Chapter Two, do you agree with the principle that online and paper fees should be the same? Please give reasons for your answer.

22. We received 22 responses to this question, with 17 (77%) respondents disagreeing with the principle that fees for online and paper claims should be the same. The vast majority of views reflected four main areas of concern. First, that claims issued online are cheaper to process, and therefore fees should reflect that moderate cost; second, that some companies have made investments to digitalise their infrastructures to respond to the Government's drive towards online processes; third, that any fee increase should only occur after a full review of the entire fee structure; and fourth, that users of the county court bailiff service are not currently satisfied with the service they receive.

23. Conversely, 5 (22%) respondents agreed with the principle of aligning the fees for online and paper claims, pointing primarily at two reasons. First, that vulnerable individuals who might lack access to online services should not be penalised for lodging claims via the paper route; and second, that it is broadly unfair to charge paper users a higher fee than their online counterparts given that the objective behind the online discount has been achieved.

Government's response

24. In relation to the majority of views expressed by the respondents, the Government appreciates that online claims are easier and quicker to process, but it disagrees that the current discount applied to online civil money and possession claims should not be removed. The online discount was originally applied to incentivise users to lodge claims via online platforms, a behaviour that has now become the norm for around 90% of them. As such, there is no longer a need to apply the same financial incentive. In addition, the Government will continue to reinvest the additional income across our courts to ensure the effectiveness of our services and that access to justice is protected for all users, including the most vulnerable.

25. The Government does recognise that some companies have made investments to shift towards online processes. Our commitment to keep improving online platforms remains unaltered. Furthermore, work is currently being considered across the whole of the possession and enforcement processes, which are to be scoped under civil reform work. For example, HMCTS is currently in the process of running a

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

review of the Warrant of Control Support Centres (WoCSC) following their introduction in 2019. The review will consider enhancements to processes and communications with both debtors and creditors with the aim to improve the county court bailiff service.

26. In relation to the issue of reviewing the entire fee structure, the Government recognises that there is a complex and wide-ranging fee structure in place. We will continue to consider this as part of our ongoing fees policy work.

2. Do you agree that the discounted online issue fees for MCOL and OCMC should be aligned with its paper issue fees? Please give reasons for your answer.

27. We received 22 responses to this question, with 20 (91%) respondents disagreeing with the proposed alignment. Most answers received referred back to Question 1 (above), with some notable additions. Some respondents suggested that the paper fee should be aligned to the level of the online fee, rather than the other way around, especially in light of the fact that those fees are already enhanced. In this regard, other respondents opposed the principle of cross-subsidisation, arguing that it classifies as a tax and therefore requires additional scrutiny. Finally, some respondents argued that the alignment of online and paper fees would negatively impact debtors, with some companies choosing not to pursue debts in a timely manner thereby allowing it to accrue.

28. Those who agreed (2 respondents – 8%) with the proposed alignment referred back to the answer provided for Question 1.

Government's response

29. The Government has carefully considered but ultimately disagrees with the suggestion that paper fees should be lowered to the current level of online fees. As noted above, the lower level of fees for online claims was set to incentivise users to adopt the online platforms, which has now become the norm for around 90% of users. In addition, aligning paper fees to the level of online fees would result in the loss of £5m per year in income, thus hindering our efforts to raise additional income to contribute to the funding gap between current fee income and the cost of running an effective and efficient courts system.

30. Underlying this issue, is the question of enhanced fees and cross-subsidisation raised by some respondents. As noted earlier, the powers contained in Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 allow for fees to be set above cost, where the Lord Chancellor expressly considers the financial position of the courts and in particular costs incurred by courts which are not being met by current fee income. Furthermore, the power given to set an enhanced fee can only

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

be exercised via an affirmative instrument, as we have set out at paragraph 31 of our consultation. Therefore, both the general principle to charge an enhanced fee and the individual exercise of that power will be debated by Parliament.

31. In designing this policy, the Government has also accounted for considerations of equity, whereby those who do not have access to online platforms, and therefore lodge paper claims, should not be penalised for doing so. The same logic applies to debtors, whose debt would increase or diminish according to the type of application used by claimants.

32. The Government has carefully considered the impact that the alignment proposal would have on debtors and remains committed to ensuring vulnerable and financially disadvantaged individuals can access the necessary help across the justice system. For example, debtors can make an application to a Judge to set the judgement aside if they believe the judgment has been entered incorrectly or the debt is not owed. Should the Judge find that the debt is still owed, a payment instalment plan to help the debtor fulfil their obligations may be agreed upon. This can also be done via a paper application to the court. In addition, Her Majesty's Treasury (HMT) will launch in May the "Debt Respite Scheme", which will allow a debtor to enter a 'breathing space' period of 60 days to come to a repayment agreement with their creditors.

3. Do you agree that the discounted online fee for PCOL users should be aligned with its equivalent paper fee? Please give reasons for your answers.

33. We received a total of 20 responses to this question, with 18 (90%) respondents disagreeing with the alignment for PCOL. Only one respondent provided an additional comment arguing that the platform should be improved. All other respondents referred to the answers they provided to previous questions.

4. Do you agree that the discounted online fee for warrant of control should be aligned with its paper fee? Please give reasons for your answers.

34. We received 22 responses to this question, with 21 (91%) respondents disagreeing that the fees for warrant of control should be aligned. The vast majority of those who provided a reason for their answer argued that the service offered is largely unsatisfactory, and that an increase in fee (for those applying online) might deter them from using the service altogether. They contended that the delays in the enforcement of warrants of control, as well as the overall standard of service they receive from bailiffs, do not justify a 43% increase in the fee payable by online users.

Government's response

35. The Government acknowledges the issues that users experience with the enforcement of warrants of control. It also appreciates that the measures implemented to address the delays in enforcing warrants of control, such as the Warrant of Control Support Centre (WoCSC), have not yet provided users with a satisfactory avenue to promptly recover the debt. For these reasons, the Government has decided not to align the fee payable by online users to enforce warrants of control to its correspondent paper level. Instead, we will apply an inflationary increase dated to August 2016, when the fee was last changed, of 7.7% to the online fee, thus consolidating both online and paper fee at a new level of £83.

36. In relation to the WoCSC, HMCTS instigated a piece of work with their Customer Research and Insight Team to look in detail at the centres and undertake a 'health check' aimed at improving the service they offer. An internal report was produced, which then fed into an action plan. This will inform the work that HMCTS will conduct with users to assess the impact to both debtors and creditors of the WoCSC and make improvements to the process and support provided.

5. Do you agree that the exemption for centre users who request a further attempt at execution of a warrant should be removed? Please give reasons for your answers.

37. We received a total of 17 responses to this question, with 16 (94%) respondents disagreeing with the removal of the exemption for a further attempt at execution of warrant. In explaining their disagreement, most respondents referred to their previous answers, with a couple of additional arguments being made. A couple of respondents pointed to the fact that there is seemingly no justification to remove the exemption, and therefore the proposal for this particular fee was not understood. Other respondents pointed at the increase in cost for the re-execution of a warrant, reiterating that the quality of the service offered does not justify the fee increase.

Government's response

38. The Government does not agree that the proposal to remove the exemption for a re-execution of a warrant is not justified in the consultation. Under the Civil Proceedings Fees Order 2008, fee 8.2 provides an exemption for cases brought via CCBC for a request for a further attempt at execution of a warrant at a new address following a notice of the reason for non-execution; Paper requests are instead charged a fee of £33. As such, the first exemption provided by fee 8.2 falls squarely within the policy rationale applied in this proposal.

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

39. Furthermore, there is no material difference in the process between a CCBC online request and a paper request. As CCBC does not process these requests, these are instead transferred to the local court to be considered as paper applications. The courts then need to identify whether the reissue request is a CCBC case or a paper case in order to identify whether a fee is payable under fee 8.2. For these reasons, the Government maintains that the removal of the exemption is consistent with the overall rationale of this policy.

6. As part of our assessment of the potential demand response, we would be grateful for feedback from consultees of the relative importance of different factors in the decision to take a case to court. These factors might include the court fee, other associated costs, the probability of success, the likelihood of recovering any debt, and any non-financial motivations such as any prior experience of court processes.

40. We received a total of 16 responses to this question. The majority of respondents suggested that the alignment would result in a drop of claims because the cost would be too significant, particularly when coupled with other potential financial difficulties: 18% of the respondents cited fears that the pandemic may cause financial difficulties. Further concerns were raised again around the issue of access to justice. Some respondents claimed that, although fees are not normally the primary consideration made when pursuing a claim, their current level contributes towards making them so. Finally, some respondents highlighted again that the quality of the service provided does not justify an increase in the fee.

Government's response

41. The Government recognises that some respondents have expressed concerns about the impact that the alignment will have on the number of claims being lodged. Evidence from the introduction of enhanced fees in 2015 indicates that the volume of money claims subject to higher fees fell after their introduction, before beginning to recover. Despite this, it remains the case that in 2019/20 (the last year for which we have full data) money claims for sums greater than £15,000 were eight per cent below their 2013/14 volumes. However, the fee rises in 2015 were in some cases much greater than those currently under consideration (a claim of £45,000 saw fees more than triple in 2015, while under the current proposals they will rise by 11%). Data on claims below £15,000 are not available as most of these fees were unaltered in 2015. As the relationship between fees and demand response is particularly complex, and in the absence of definitive evidence as to the magnitude of the possible demand response, we have considered three scenarios with varying illustrative demand responses. These are set out in the Impact Assessment.

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

42. Even allowing for initially lower volumes, we expect the proposed changes to increase fee income. Throughout this consultation, we have maintained that protecting access to justice by ensuring an effective and efficient courts service is of the utmost importance, and the key reason underpinning the implementation of the proposed changes. As evidenced earlier, the current gap in the funding of HMCTS threatens this principle, and this Government remains committed to reinvesting any additional income as part of our £1bn investment plan to strengthen and improve our justice system. We believe that the modest fee increase suggested in our proposal is a reasonable means to achieve our objective.
43. Furthermore, the Government maintains that considerations of equity are likewise pivotal for this proposal. The lower fee for online claims was originally adopted as a means to incentivise users to lodge their claims via online platforms, an objective that has now been successfully achieved. However, it is not right that those users who are not able to access online services are at disadvantage and asked to continue to pay a higher fee than their online counterparts. As such, we maintain that this proposal will not only contribute to the funding of HMCTS, but it will also contribute towards improving the fairness of the process by creating one, consolidated fee for both online and paper users.

7. Do you consider whether the proposal will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact? Please give reasons for your answers.

44. We received 7 responses to this question, with 5 (71.5%) respondents arguing that the proposed alignment will adversely impact individuals with protected characteristics or low-income households.

Government's response

45. Although no evidence was provided in support, the Government carefully considered the suggestion that the proposal will disproportionately affect individuals with protected characteristics or low-income households but does not agree. Claimants currently pay different fees depending on whether they start their application online or via the paper route, and as discussed above, the current structure discriminates against those who do not or cannot access online services. Evidence suggests that households with one adult aged 65 years old and over, for example, still have the lowest proportion of internet connections. Disabled individuals are also less likely to use the internet to communicate with public bodies. The 2020 ONS survey on internet access found that 34% of those classified as

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

disabled use the internet to "submit completed forms" to public bodies compared with 37% of all participants.

46. The Government has adopted a number of schemes to help those who feel they cannot afford to pay a fee. For example, our Help with Fees (HwF) scheme will remain broadly available to users who feel they are unable to pay the fee to issue a claim, and which they might also apply for up to 3 months after having paid the fee. HwF considers several factors including the applicant's income, savings, the size of the fee and whether they are in receipt of certain benefits. Successful applicants may receive a partial or total remission to their fee. For those who do not qualify for HwF but still feel they are unable to afford the fee, a remission can also be granted outside the main HwF assessment in exceptional circumstances. This is considered on a case-by-case basis by officers of the court. Remissions are not available for fees paid for copy or duplicate documents and searches. They are they generally not available for businesses.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

47. A response to the published Impact Assessment has been prepared and has been published alongside this document. The Government has estimated that the proposals contribute an additional income of £6m–£16m in 2021/22, and £9–£25m from 2022/23 onwards.

Equalities

Introduction

48. This Equality Statement below considers the impact of this Government’s plan to align the online and paper fees for civil money and possession claims against the duties in the Equality Act 2010 in light of the responses to the consultation. See also our response to Question 7 above.

Policy Objectives

49. The Government’s response to the consultation on the proposed alignment sets out the background to, and rationale for, aligning the online fees to the level of their correspondent paper fees. The main policy objectives are:

- Ensure that courts and tribunals have the necessary resources to deliver their much-needed services
- Ensure that those who can pay a fee, pay the same fee regardless of whether they lodged their claim online or via the paper route
- Simplify the existing fee structure

50. In this way, the Government will promote an efficient and effective courts system that will protect access to justice, while equipping HMCTS with the necessary resources to face the unprecedented challenges brought to the fore by the pandemic.

Equality Duties

51. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act

Court and Tribunal Fees

The Government response to consultation on “Alignment of the Fees for Online and Paper Civil Money and Possession Claims”

- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not)
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not)

52. Paying “due regard” needs to be considered against the nine “protected characteristics” under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

53. The Ministry of Justice (MoJ) has a legal duty to consider how the proposed policy proposals are likely to affect those people with protected characteristics and, in particular, to take proportionate steps to mitigate or justify the most negative effects and advance the positive ones

Summary

54. Consideration has been given to the impact of the planned alignment in the fees to commence money claims against the statutory obligations under the Act. These are outlined below.

- **Direct discrimination:** Our assessment is that the planned alignment is not directly discriminatory within the meaning of the Act, as it will not treat anyone differently, regardless of their protected characteristics. We do not consider that the proposal will result in people being treated less favourably because of their protected characteristic.
- **Indirect discrimination:** Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.

Our assessment, based on the information available, is that the alignment of the fees is unlikely to amount to indirect discrimination. We will charge the same fees to all users, regardless of whether they apply via the online or paper route. Evidence suggests that households with one adult aged 65 years old and over, for example, still have the lowest proportion of internet connections.³ Disabled individuals are also less likely to use the internet to communicate with public bodies. The 2020 ONS survey on internet access found that 34% of those classified as disabled use the internet to “submit completed forms” to public bodies compared with 37% of all participants. More broadly, fee remissions will remain available to ensure further protection to individuals with certain protected characteristics, as they remain relatively over-represented among lower income groups. The latest available evidence on the UK income distribution across individuals with the protected characteristics of ethnicity, disability and age,

³ Office for National Statistics, “Internet Access – households and individuals, Great Britain: 2020”, August 7th, 2020; available at <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2020>

Court and Tribunal Fees

The Government response to consultation on “Alignment of the Fees for Online and Paper Civil Money and Possession Claims”

suggests that the fee remission system is likely to provide protection to a higher proportion of individuals with those protected characteristics.⁴

Even if the availability of fee remissions was not sufficient to mitigate the impact of the proposed alignment, we consider that the measures we are taking are unlikely to result in anyone who shares a protected characteristic being put at a particular disadvantage, compared to those who do not share that protected characteristic. Furthermore, the Government considers the proposal to be a proportionate means of achieving the legitimate aims of the policy objectives set out in the consultation.

- **Discrimination arising from disability and duty to make reasonable adjustments:** In so far as this policy/legislation may affect claimants with disabilities, we believe that the policy is proportionate, having regard to its aims. We will continue to provide reasonable adjustments for claimants with disabilities to ensure appropriate support is given.
- **Harassment and victimisation:** We do not consider there to be a risk of harassment and victimisation as a result of this proposal.
- **Advancing equality of opportunity:** Consideration has been given to how this proposal may impact on the duty to advance equality of opportunity by meeting the needs of those bringing proceedings who share a particular characteristic, where those needs are different from the needs of those who do not share that particular characteristic. We consider the availability of fee remissions will help ensure equality is advanced for those with protected characteristics who bring proceedings subject to enhanced fees.
- **Fostering good relations:** We do not consider that there is scope within the policy of setting and charging court fees to promote measures that foster good relations. For these reasons, we do not consider that this proposal is relevant to this obligation.

Welsh Language Impact Test

A Welsh version of this document can be found at: <https://consult.justice.gov.uk/>

⁴ See Department for Work and Pensions, “Households Below Average Income: An analysis of the UK income distribution: 1994/95-2017/2018”, National Statistics, March 28th, 2019; available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789997/households-below-average-income-1994-1995-2017-2018.pdf. ‘Individuals in the bottom quintile are more likely to be from either an Asian (32%), Black (31%) or other ethnic background (30%). They are likely to live in a household where there is a disabled working age adult (27%) and they are also more likely to be single with children (33%) or a single pensioner (29%), especially a female pensioner (33%). The data suggests that individuals in second quintile are more likely to be either from an Asian (20%) or Black (26%) ethnic background. They are more likely to be living with a disabled child (34%) as well as being either single with children (34%) or a single pensioner (28%). In terms of gender, there is no evidence to suggest that either men or women are affected differently.’

Conclusion and next steps

55. The Government has considered all of the responses to the consultation very carefully. The Lord Chancellor has a duty when setting court fees to have regard to the principle that access to the courts must not be denied. In order to protect access to justice, it is vital that HMCTS continues to be funded properly. Income raised through fees payable by users will play a significant role in the funding of the system whilst easing the cost to the taxpayer.
56. Overall, the Government does not believe that the proposed alignment will prevent people from bringing proceedings. We recognise however, that the alignment may make some litigants reconsider whether they wish to pursue litigation in light of the cost and the prospects of success, including the likelihood of recovering a judgement against the respondent. We anticipate that the alignment in fees will generate between £9m and £25m per annum. Further details are set out in the Impact Assessments attached alongside this consultation response.
57. We acknowledge the concerns raised by respondents on the alignment of online and paper fees for the warrants of control (Fee 8.1). As noted in paragraphs 17 and 25, the Government is currently working on a number of initiatives with the aim of improving the service provided by the County Courts to enable users to promptly recover the debts. However, we appreciate that the delays currently being experienced by users in the enforcement of warrants are significant. Therefore, the Government will not align the £77 online enforcement fee to the higher paper level. Instead, we will apply to it a more modest 7.7% inflationary uplift backdated to 2016, the last time this fee was amended. This will result in a new, consolidated fee of £83, which will be payable by both online and paper users.
58. We believe this solution strikes the right balance between the concerns expressed by respondents, and the policy objectives set out in our consultation exercise. We further believe that these proposals do not create specific barriers to individuals seeking justice, and that they will contribute towards an effective and properly funded courts and tribunals system. Therefore, with the exception of Fee 8.1, all the remaining fees under this proposal will be aligned to their correspondent paper level as set out in the consultation.
59. The Government has set out the measures it intends to take forward following the consultation on enhanced fees. Under the powers contained in section 180 of the Anti-social Behaviour Crime and Policing Act 2014, enhanced fees must be introduced by statutory instrument subject to the affirmative resolution procedure. The Government will therefore prepare and bring forward the necessary legislation,

Court and Tribunal Fees

The Government response to consultation on "Alignment of the Fees for Online and Paper Civil Money and Possession Claims"

with a view to the new fees coming into effect in May 2021, subject to Parliamentary time being made available.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Emil

James Harvey, Max Engel & Co LLP

David Powell, Support through Court

Helen Patterson, Northumbrian Water

Rob Thompson, Civil Court Users Association (CCUA)

Brian Havercroft, CCUA (honorary vice president)

Lowell Solicitors

TM Legal Service

Allied Factors LTD

Brachers LLP

BW Legal

Ashley Taylors

Southern Water

Anglian Water

Civil Justice Council

Registry Trust

Moriarty Law

Bar Council

Lovetts Solicitors

National Residential Landlords Association

Cabot Credit Management Group/Mortimer Clarke

Dale Griffin, University of Sheffield



© **Crown copyright 2021**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from MoJ Fees Policy: mojfeespolicy@justice.gov.uk