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# Litigation Committee response to the Ministry of Justice's Consultation Paper entitled *Court and Tribunal Fees*

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients, from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to consultations on issues of importance to its members through its 19 specialist committees. This response has been prepared by the CLLS Litigation Committee (the "Committee") and addresses the Ministry of Justice's Consultation Paper entitled *Court and Tribunal Fees*, dated July 2015 (the "Consultation Paper"). This response addresses only the proposals regarding court fees, not those regarding tribunals.

The Committee continues to hold the views set out in its papers dated 21 January 2014 and 27 February 2015 in response to earlier Ministry of Justice consultations on increasing court fees, namely that there is no justification for increasing civil court fees in the manner set out in that Consultation Paper (or, indeed, at all). The reasons for this are, in very brief summary:

- The civil courts are self-financing. Indeed, as a result of recent fee increases the civil courts now run a surplus. There is no need for any fee increase in the civil courts.

- The Ministry's previous assertions that the court system's budget was in deficit were the result of merging the budgets of the civil courts and the family courts, the latter of which runs a significant deficit. There was no justification for that merger since the civil courts and the family courts operate in different sectors and raise different social and economic issues. They have historically, and correctly, been treated as distinct areas of the overall justice system.

- The Ministry now apparently seeks to treat the budgets of the civil and family courts and that of the criminal courts as one in order to compel users of the civil courts to pay in addition for the criminal courts as well as for the family courts. There is no justification for this, nor is any offered in the Consultation Paper.

- A civil justice system is essential to the proper functioning of any democratic society. It should not be treated as a means to impose what are, in substance, taxes on those who are unfortunate enough to find themselves engaged in disputes, still less as a milch cow.

- Increasing issue fees in the civil courts to 5% of the value of money claims risks imposing prohibitive costs on SMEs and individuals and, as a result, obstructing, even denying, access to justice.

- Any additional funds raised by higher fees in the civil courts should be reinvested in the civil justice system in order to improve the quality of the service provided.

We turn now to certain points made by the Ministry in the Consultation Paper.

First, the Consultation Paper argues that only a small number of parties would be affected by the increased fees (page 4 and paragraph 57). The fact that an exorbitant fee is imposed on a limited number of people does not make it any the less of an exorbitant fee. The limited number of parties who might suffer does not justify the proposed increase. Similarly, the fact that a limited number might be affected by an increase in fees does not prevent the increase from having a more general deterrent effect.

Secondly, the Consultation Paper argues that "many" of those who bring high value claims are large multi-national organizations or wealthy individuals (page 4). The Consultation Paper does not address the position of those who are not, such as SMEs. Further, court fees will ultimately be added to the costs of the losing party, which may not be the party bringing the claim and which may neither large nor wealthy.

Thirdly, the Consultation Paper argues that it is "right" and "reasonable" to ask those who have chosen to have their affairs governed by English law and to have their disputes decided through the English courts to make a greater contribution (page 4 and paragraph 57). The Consultation Paper offers no reason why it is either right or reasonable to impose what will, in effect, be a tax on those who use English law and the English courts. The revenues gained by HM Treasury from the use of English law and the English courts are already very significant, far exceeding the income from court fees.

Fourthly, those who choose to govern their affairs by English law and to use the English courts can also choose to use other laws and dispute resolution means instead. The Consultation Paper argues that there is no evidence that they will do so (paragraph 70). It is, however, obvious that there will be no evidence to this effect

since the evidence will only emerge after the introduction of higher fees, by which time it will be too late. The advantages brought to the UK economy by the use of English law and the English courts are such that a precautionary approach is necessary in the face of the international competition for legal work.

Fifthly, parties who have a choice of whether or not to use English law and the English courts may be prepared to pay for the service they receive. The accelerating increase in the up-front issue fee departs from any concept of paying fees in return for a service. There is no suggestion that fees will be used to improve the service offered by the civil courts. The fact that a fee is a fixed percentage of the sum claimed does not necessarily make it a proportionate fee.

Sixthly, the Consultation Paper argues that court fees are only a small proportion of total fees in high value cases. At present, that may be correct in a large number of cases. However, if an uncapped issue fee of 5% is charged, it will cease to be the case. On a claim for, say, £50 million, an upfront fee of £2.5 million will be a significant proportion of legal fees, perhaps dwarfing legal fees, and will act as a serious disincentive to the use of the English courts.

Seventhly, the judiciary is proposing to launch a Financial List within the Commercial Court and the Chancery Division in order to encourage more use of the English courts for financial litigation. Cases brought in the Financial List must, in general, have a value of at least £50 million. Imposing a minimum fee of £2.5 million on cases in the Financial List risks rendering the judiciary's initiative stillborn.

Accordingly, the Committee's responses to questions raised in the Consultation Paper are as follows:

Question 1: the Committee does not agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000. The current fee is already higher than is necessary or appropriate.

Question 2: the Committee does not consider that there is any justification for increasing fees at all.

Questions 3, 4 and 5: the Committee has no views on these questions.

Question 6: the Committee does not agree with the proposal to increase all civil fees by 10%.

15 September 2015

**THE CITY OF LONDON LAW SOCIETY**
**Litigation Committee**

Individuals and firms represented on this Committee are as follows:

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| Simon James (Chairman) | Clifford Chance LLP |
| Jan-Jaap Baer | Travers Smith LLP |
| Duncan Black | Field Fisher Waterhouse LLP |
| Patrick Boylan | Simmons & Simmons LLP |
| Tom Coates | Lewis Silkin LLP |
| Jonathan Cotton | Slaughter & May LLP |
| Andrew Denny | Allen & Overy LLP |
| Richard Dickman | Pinsent Masons LLP |
| Angela Dimsdale Gill | Hogan Lovells International LLP |
| Geraldine Elliott | Reynolds Porter Chamberlain LLP |
| Gavin Foggo | Fox Williams LLP |
| Richard Foss | Kingsley Napley LLP |
| Tim Hardy | CMS Cameron McKenna LLP |
| Iain Mackie | Macfarlanes LLP |
| Michael Madden | Winston & Strawn LLP |
| Gary Milner-Moore | Herbert Smith Freehills LLP |
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