

HOUSING LAW PRACTITIONERS ASSOCIATION

Enhanced Court Fees

Submission of the Housing Law Practitioners Association (HLPAs)

February 2015

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About HLP

The Housing Law Practitioners Association (HLP) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. HLP has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance. HLP's Responses are available at www.hlp.org.uk.

Membership of HLP is on the basis of a commitment to HLP's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

The Convenor of HLP'S Law Reform Group has prepared this communication, with assistance from other members of the Group. The group meets regularly to discuss law reform issues as it affects housing law practitioners. The Convenor of the group reports back to the Executive Committee and to members at the main meetings which take place every two months. The main meetings are regularly attended by c.100 practitioners.

Introduction

The Association is generally opposed to any increase in court fees. There is clear evidence that such an increase will lead to a reduction in access to justice as fewer people are able to afford the “up front” cost of issuing a claim.¹ We accept, however, that we are unlikely to persuade the government of this position and that some increase is inevitable.

We respond to areas of specific concern to housing lawyers and their clients below. We would, however, suggest that the government might be better served identifying those cases where no fee is currently payable and considering whether to introduce such a fee. For example, where a Right to Manage company² applies to the First Tier Tribunal (Property Chamber) for a determination that they are entitled to acquire the right to manage, no application fee is payable.³ These cases can be quite significant in terms of their cost to the Tribunal service and there is no obvious reason why leaseholders (who will, of course, be home-owners) should not be required to contribute to the costs of the Tribunal system. This is but one example; plainly, there will be others.

Question 1: Do you agree with the proposal to raise the fee for a possession claim by £75?

No, we do not agree. There are three reasons.

First, the overwhelming majority of possession claims are brought by social landlords (in 2013, 113,175 out of a total of 134,961).⁴ Social landlords should be spending their (limited) funds on providing social housing, not on legal costs.

Secondly, the vast majority of possession cases are dealt with in the “five minute list” whereby judges deal with 20 or 30 (or more) cases a morning. A fee of £355 *per case* (£280 plus the proposed £75 increase) represents nothing more than a gross subsidy of the court system by landlords. A claim which takes five minutes to decide cannot properly or fairly be thought to cost the court system £355. This *appears* to be accepted by the consultation paper (at [96]).

Thirdly, an increase in court fees will result in increased debt for many of the most vulnerable in society. It is routinely the case that a successful possession claim results in an order that the defendant re-pay the court fee to the landlord. For those being evicted, an additional £75 of debt will make their financial position all the more precarious and will plainly hamper attempts to obtain alternative accommodation. It is no answer to say that this cost can be avoided simply by the tenant leaving once a valid notice seeking possession is served, since doing so is likely to result in the

¹ See, *e.g.* the position in the employment tribunal in response to an increase in fees: <http://www.theguardian.com/money/2013/dec/23/employment-tribunal-claims-introduction-fees> (amongst many other possible sources).

² In general terms, a company comprised of leaseholders of flats who wish, collectively, to take over the management of their building from their freeholder: Commonhold and Leasehold Reform Act 2002.

³ See First-tier Tribunal (Property Chamber) Fees Order 2013, S.I. 2013/1179.

⁴ See table 5: <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-july-to-september-2014>.

tenant being regarded as “intentionally homeless” and ineligible for any significant support under Pt.7, Housing Act 1996.⁵

In short, we oppose this proposal as both unfair on landlords and detrimental to tenants.

Questions 2 and 3

We are concerned about the potential to increase legal aid costs as a result of these reforms. As a general rule, where a party is in receipt of legal aid, court fees would be covered by the legal aid certificate. We find it very odd that the government would wish to *increase* the legal aid bill (by increasing the fees for applications) and use that increase to subsidise the court system as a whole. It is, with respect, a classic case of robbing Peter to pay Paul.

We would therefore propose an exemption from fee increases for those in receipt of legal aid.

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⁵ See para.8.14, *Homelessness Code of Guidance*, CLG, June 2006. In practice, at least in any major municipal authority, many people are unable even to *apply* as homeless until a possession order is made and a date fixed for the execution of a warrant.