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## 'Tax on justice' could put small enterprises out of business

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### London's global reputation at risk from unnecessary government fee hike

Small businesses chasing debts could be disproportionately hit by the Ministry of Justice's (MoJ) plans to impose a blanket 5 per cent rise in court fees on such claims.

The Bar Council has argued that the MoJ's proposals, which introduce a fee to commence proceedings for the recovery of money of 5 per cent of the value of the claim on actions for more than £10,000, will affect businesses and individuals bringing claims for late payments, debt and compensation of up to £200,000, and will deter many from pursuing money they are owed.



The representative body for barristers also warned that small businesses already hamstrung by late payments from customers would either not be able to pursue a claim or risk paying a hefty court fee, which could be as much as £10,000 for larger claims.

Chairman of the Bar Council, Alistair MacDonald QC, said: "Cash-flow is the life blood of small businesses and many end up having to pursue late payments and other debts through the court system. Imposing a 5 per cent fee may well make many small businesses think twice before making that claim, and will certainly strengthen the hand of late payers."

The council suggests the proposed increases are deliberately designed to raise more money from claimants than the actual cost incurred by the courts in handling such claims. The maximum fee is to be increased by 420 per cent, from £1,920 to £10,000. The fee payable for a claim of £200,000 is to be increased by 660 per cent, from £1,315 to £10,000.

### Challenging customers

"If small businesses do go to court, they could face a £10,000 fee for the privilege," added MacDonald. "These sums of money are large enough to put many smaller enterprises out of business. The coalition has made supporting small businesses a central theme of its term, but this flies in the face of that approach.

"Many family-run businesses know that court proceedings are available, if they need them, to ensure that they are paid for their services and products. This move will effectively take that option away from many smaller businesses. We've heard the stories about commercial giants, such as supermarkets, taking their time to pay smaller suppliers. This move will act as a deterrent for smaller companies to challenge their larger customers."

The MoJ raised court fees as recently as April 2014 when the maximum fee payable in money claims for more than £300,000 was increased from £1,670 to £1,920. The fee payable for a claim of £200,000 was also increased in April from £1,080 to £1,315.

MacDonald continued: "The Ministry of Justice does not need these fees to meet the cost of money claims. The ministry is merely seeking to cash in on claimants who have to go to court to recover their debts. The ministry says that some of the funds raised from this hike will fund the family courts. The family courts have to be paid for, but penalising small businesses and individuals seeking redress is the wrong way of doing it. It is a tax on justice and risks pricing many out of court."

The Bar Council also warned that the move sends the wrong signal about the UK's place as the world's leading centre for international dispute resolution, especially with the imminent launch of the Global Law Summit in February 2015.

"The increase in court fees threatens to undermine the hard work done by barristers and solicitors to encourage international businesses to use English law to resolve their disputes and to bring those disputes here for resolution," concluded MacDonald. "This latest move by the government will be welcomed by our competitors overseas."

### **'Outrageous hike'**

The Association of Personal Injury Lawyers (APIL) has also condemned the government's move and described the court fee hike as 'outrageous'.

APIL president John Spencer said the government's claim that fees are not a major factor in a person's decision to go to court was completely disingenuous.

"This move is bound to discourage people from making valid claims – people who have every right to make them," commented Spencer. "And the idea that seriously injured people making higher-value claims are more likely to be able to afford the new fees is outrageous."

"The severity of an injury has nothing to do with the injured person's capacity to pay. This new regime will dictate that some seriously-injured people will be expected to pay £10,000 up front to bring their cases to court, and many simply won't be able to afford it," he added.

Pointing out that the planned increases has sparked criticism from both the judiciary and the Civil Justice Council, Spencer said that the courts operate for the public good, and should therefore be funded through taxation, with users paying a contribution towards the costs.

"These people do not ask to be injured," he said. "They are injured because someone else is negligent. To expect them, on top of all that, to pay a court fee which represents more than the actual cost of the service is simply unacceptable."

The Forum of Insurance Lawyers (FOIL) have since added its voice to the chorus of leading law groups in condemning the government.

The defendant insurance lawyers lobby group said the decision to charge some court users for more than the service they receive to cross-subsidise other parts of the courts service is disappointing. But FOIL said that would-be litigants should not be discouraged from bringing a court claim because of the size of the court fee.

"The government's contention that greatly increased court fees will not act as a disincentive to commencing litigation is unconvincing," said FOIL president, Nick Parsons. "Many individuals and SMEs will struggle to pay the new level of fee to start a claim. Ready access to the courts should be a right for every citizen, not a privilege only for those who can afford the entrance price."

"FOIL also foresees the law of unintended consequences coming into play. This decision has been taken as a revenue-raising measure by the state, yet many of the defendants who will eventually end up footing the bill are themselves public bodies; local authorities and the NHS, for instance. These are institutions that can ill afford such increased costs in these straitened times. The government may end up robbing Peter to pay Paul."

Parsons added: "It is clear from the consultation now under way that further increased court fees may well be on the cards. In time, claims below £10,000 might be seen as a fruitful area from which to raise income. This would be an ill-advised course to take."

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