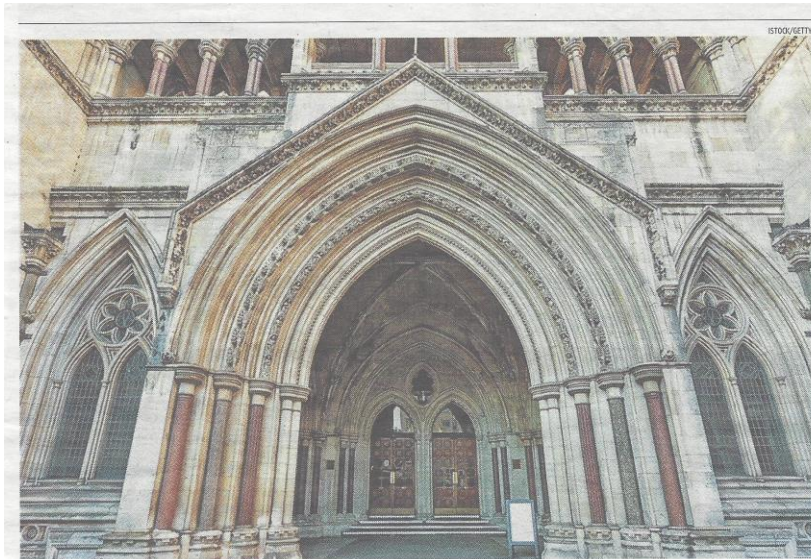


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# THE TIMES



Closed doors to justice: "deep concerns" at the proposed rises expressed by judges and commercial and legal aid lawyers

## Massive increases in court fees 'threaten access to justice'

UK's position as an international centre for legal disputes is also under attack, writes **Frances Gibb**

The legal profession may be split over next week's Global Law Summit to celebrate Magna Carta but one thing has united it: ministers' plans to raise court fees by up to 600 per cent for people using the civil, family and commercial courts — a move strongly opposed by commercial and legal aid lawyers alike. It means a sole trader or small business wanting to sue for £200,000 must pay an upfront fee of £10,000.

Judges, headed by the lord chief justice, are leading the charge. They have voiced "deep concerns" at the proposed increases (5 per cent fees on claims above £10,000) that are predicted to raise £120 million a year. In a letter to the Ministry of Justice, they say that the new fees will be 25 to 100 times greater than fees charged in New York and that, they warn, could hit London as centre for major litigation — damaging London's attractiveness as an international centre for legal disputes.

Yet their chief concern is over the impact on access to justice, deterring individuals, small businesses and others from using the courts — while fuelling a rise in unrepresented litigants.

The judges are not alone. This week Alistair MacDonald, QC, chairman of the Bar Council, has written to Matthew Hancock, minister for business and enterprise. He, too, warns that the fees — to take effect in April — will undermine the UK's position as a favoured forum for litigation. As for small and medium-sized businesses, who last year were owed more than £36 billion in late payments, they will find themselves "at the mercy of their debtors who know they are unlikely to afford court fees of up to £10,000 needed to pursue a claim".

There is also concern at the lack of evidence on the impact of the changes. Judges say that research has not ena-

bled them "to share the MoJ's confidence that the proposals will not affect access to justice". They agree that those who bring "very large claims" over commercial, financial, property and other business matters should pay the full cost of proceedings. But not all commercial cases are high-value: claims come in many different shapes and sizes. "For most, it is an expensive process which they may already have difficulty in funding." Fee remissions will only apply to those on very low incomes.

Fee levels aside, there is also a fundamental clash between judges and gov-

**'The courts are not just for those who can afford the entrance price'**

ernment over whether the courts should be self-financing at all when the system, as they say, "benefits the economy and society as a whole". The issue is one for parliament but they note: "access to justice is a practical requirement, not a theoretical aspiration". The state must provide a court system to which all parties have access — as the Courts Act 2003 makes clear. And they quote Lord Scott of Foscote, retired law lord, saying that the idea of self-financing courts "profoundly and dangerously mistakes the nature of the system and its constitutional function".

Ministers have made changes: they will not, for instance, increase fees for divorce. But they say that has not changed "the financial imperative" to increase court income from fees. Shailesh Vara, justice minister, says that there is "no alternative" but to look to courts to raise funds. The changes will not affect 90 per cent of claims, he adds. In his foreword to

the plans last year, he said that, for years, civil and family courts had operated under the principle that those who used them should pay the full costs of the service. That, however had not been fully achieved in practice "and hardworking taxpayers have had to pick up some of the bill. Last year the deficit was more than £100 million. That cannot be right".

Lawyers across the board are unpersuaded. The London Solicitors Litigation Association condemns the rises as "pure folly", a gift to New York or Singapore that will hit smaller businesses hard. John Bramhall, its president, said: that with "big ticket" international cases being litigated in London "you might think that a £10,000 fee will be neither here nor there" but "it will be a noticeable front-loaded distinction with other jurisdictions".

The concerns are shared by the Law Society, Association of Personal Injury Lawyers, Civil Justice Council, Action against Medical Accidents, Chartered Institute of Legal Executives, chancery and commercial bars and others. Nick Parsons, president of the Forum of Insurance Lawyers, said: "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" — echoes of the 19th-century judge's remark that "in England, justice is open to all, like the Ritz hotel".

The fees regulations come before an MPs' committee for a vote on Monday. The Lords traditionally do not vote on statutory instruments but Lord Pannick has tabled a "motion of regret". "There is justifiable concern that the regulations will inevitably impede access to justice," he says. As Chris Grayling leads the Magna Carta celebrations at the Global Law Summit, it would be unfortunate — as MacDonald, Bar chairman, says — were Grayling to pursue plans that undermine both the principles of the one, and the efforts behind the other.