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FOIL Responds to Court Fees Hike Consultation - Laurence Besemer, Forum of Insurance Lawyers



19/10/15. Although inflation in the UK has been bumping along at below 3% for the last couple of years there is been one area where the picture has been dramatically different – court fees. In 2014, issue fees were increased very significantly, with increases of up to 80% on money claims for between £3,000 and £100,000.

Earlier this year the Government introduced enhanced court fees for claims worth more than £10,000, increasing the court fee to 5% of the value of the claim, subject to a cap of £10,000. In September, the Ministry of Justice closed its consultation on a proposal to increase that cap to £20,000, or even remove it altogether.

The only exception from the proposed higher fees for claims worth more than £200,000 will be personal injury claims, a decision that has been strongly endorsed by the Forum of Insurance Lawyers (FOIL). Any personal injury claimant bringing a claim of that size will almost inevitably have suffered a life-changing injury and loss of income and, even with proposals to extend the remission scheme, any further increases would be likely to have a severe impact on access to justice.

Increased court fees in personal injury claims have the potential to backfire on Government. With court fees normally recoverable, and with a high success rate for personal injury claims, the cost will in many cases fall to be paid by the defendant. In many cases this will be the Government (through its role as a major compensator), local government and insurers, placing the burden on taxpayers and policyholders.

Although the Government argues that even enhanced court fees are only a small proportion of overall costs in a large claim, it fails to recognise that court fees are required to be paid up-front, even if the claim is being brought on a CFA.

Whilst it is welcome news that personal injury claims are not to be included in the latest increases, there are still concerns over the impact that high court fees have more widely on the UK civil justice system. In outlining its most recent proposals the Government stresses that many large claims are brought by large multi-nationals and wealthy individuals who can afford to pay more, but this is not the whole picture. It is not unusual for SMEs or individuals who are not wealthy to have claims for more than £200,000, for example, for professional negligence involving property or financial services.

FOIL highlighted in its response to the consultation that the Government's own promotional material indicated that UK legal services contributed £20.9bn to the UK economy in 2011 alone. It is of concern that these very significant financial advantages are in danger of being damaged, a view shared by the judiciary which has noted that enhanced fees make the cost of commencing litigation in England and Wales 25 to 100 times greater than in New York.

FOIL hopes that the Government will change its approach on the latest increases, and look again at the principle of enhanced fees. It remains to be seen whether that will be encouraged by the Justice Committee which is currently conducting its own inquiry on the issue.

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