



**Amidst controversy, the fees for issuing English High Court proceedings are expected to increase in March 2015.**

The fee increases, unveiled on 16 January 2015, follow a paper setting out the UK Government response to a consultation on the reform of court fees<sup>1</sup>.

The UK Government objectives of the enhanced fees are to ensure that the English courts are adequately resourced and to help reduce the burden of taxpayer subsidies currently paid to the court system. The increased court funds generated are also expected to be reinvested to assist with the costs of ongoing modernisation and improvements.

However, concerns about the proposal to increase the costs of litigation have been raised at a high level.

In a letter published on 2 February 2015 in *The Times* newspaper from the President of the Law Society and other distinguished industry heads, the Government are accused of making the decision to increase costs based on “scant evidence” and without full consultation. In addition, the authors argue the proposal risks damaging the UK’s reputation as a global leader in commercial dispute resolution.

The Law Society, the representative body for over 166,000 solicitors in England & Wales, has also set out its detailed response to the enhanced fees proposal saying that these are unacceptable and will restrict access to justice<sup>2</sup>.

**The enhanced fees proposals**

Under the existing regime, the maximum fee for issuing a claim is currently £1,920 for a “money claim”, applying to claims valued at more than £300,000.

1 *Enhanced Court Fees: The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation* (See: <https://www.gov.uk/government/publications/enhanced-court-fees-the-government-response-to-part-2-of-the-consultation-on-reform-of-court-fees>)

2 <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/consultation-on-court-fee-proposal-reforms-law-society-response/>



**Table 1: Existing fees comparison with expected enhanced fees**

Claim amount	Existing fees (until March 2015 TBC)	Enhanced fees regime (in force from March 2015 TBC)
Exceeds £500 but does not exceed £1,500	£70-£80	£80
Exceeds £1,500 but does not exceed £3,000	£115	£115
Exceeds £3,000 but does not exceed £5,000	£205	£205
Exceeds £5,000 but does not exceed £10,000	£455	£455
Exceeds £10,000 but does not exceed £200,000	£455 - £1,315	5% of the value of the claim

As a result of the new measures, the maximum fee is set to increase to £10,000 for all claims valued above £200,000.

For claims above £10,000 (which account for 90% of all money claims) and below £200,000, the new fee is 5% of the claim amount.

By way of illustration, the new fee to issue a claim in the amount of £100,000 is £5,000 (i.e. 5% of £100,000), whilst the current fee is £1,115.



The available data suggests that the uplift will apply to many of the claims brought before the Commercial Court. 60% of all Commercial Court cases currently have a value of over £300,000 and 16% have a value of over £1,000,000.

A slightly increased fee for issuing a court application, from £155 to £255, has also been announced. This new fee would, for example, apply to “on notice” applications to obtain an Order granting the provision of security for a Defendant’s costs, or an application to obtain an Order compelling a party to disclose documents relating to the issues in dispute.

Critics of the proposals argue that a downside to the new scheme is the frontloading of fees which are payable on issuing a claim (the payment of £10,000 for a claim above £200,000

will arise at the time of filing the claim form). This means that it will become more expensive to issue protective proceedings in order to avoid a time bar, for example.

The measures, if they proceed, will be implemented by the Civil Proceedings and Family Proceedings Fees (Amendment) Order 2015 and are anticipated to generate an estimated £120 million per annum to be reinvested into the English court system.

The Ministry of Justice has also launched a consultation seeking views on new proposals to raise fee income from possession claims and general applications in civil proceedings. The consultation period for these new proposals closes on 27 February 2015.

### Court modernisation and improvements

While there are critics, the new fee increases are seen as part of wider efforts to modernise and improve the efficiency of the court system for the benefit of participants.

These initiatives include:

- **The opening of the Rolls Building in central London:** for the first time, the Rolls Building brought under one roof the Chancery Division, the Admiralty and Commercial Court and the Technology Court. It is regarded as the largest specialist centre for the resolution of financial, business and property litigation anywhere in the world and boasts full wi-fi technology and ‘super-

The Ministry of Justice has also launched a consultation seeking views on new proposals to raise fee income from possession claims and general applications in civil proceedings.

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Although the emphasis of the new proposal is for increased funding of these initiatives to come from litigants and not the taxpayer, the good news for litigants is that the Government is unlikely to introduce daily hearing fees for commercial proceedings. This remains one of the significant differences between the English High Court and other major alternative dispute resolution forums, such as the LCIA and LMAA.

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courts' for large high-value disputes as well as multi-party cases. These include recent high profile cases such as *Berezovsky v Abramovich* [2012] and more recently *Otkritie Investment Management Ltd & Ors v Urumov & Ors* [2014], a case involving an alleged fraud worth US\$175 million, 19 defendants and a hearing that lasted 46 days over six months, with over 20 witnesses giving evidence by videolink.

■ **Technological advances:** in civil matters, it is already possible to file many documents by email, including key documents such as the Particulars of Claim, Defence and Acknowledgment of Service. However, a new system for “e-justice” – the electronic filing of claims and online payments – is also in the pipeline for High Court “multi-track” claims (i.e. high value

claims), possibly to be implemented later this year in October.

To encourage electronic filing, discounts of 10% will apply to fees where the claim is initiated electronically using the Secure Data Transfer facility or Money Claims Online, although it is understood that this discount may not apply for claims of £100,000, or above.

■ **Rationalisation:** as part of the drive towards improved efficiency, staff numbers have already been cut by 3,500 since 2010.

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differences between the English High Court and other major alternative dispute resolution forums, such as the LCIA and LMAA.

### Cost advantages of the English High Court

Further cost advantages offered to English High Court litigants include the following:

- **No hourly fees:** the Judge's costs are included as part of the fixed court fee. Time spent by a Judge hearing the dispute, or dealing with interim applications, is not charged to the parties. An arbitrator will tend to charge an hourly rate, which will vary.
- **Low administration costs:** again these are included as part of the fixed fee. By comparison, both the ICC and LCIA charge administration costs.
- **No advance deposit:** both the ICC and LCIA commonly require an advance deposit for the anticipated arbitrators' fees and administrative costs. It is not unheard of for LMAA arbitrators to require security for their costs, which is an express entitlement under the terms of the LMAA Rules.

### Conclusion

It remains to be seen how the Government responds to the calls for it to reconsider, but we shall report further when there are developments.



**Table 2: Fees Comparison Table for a Claim of US\$1 million**

Note: this table is for indicative purposes only, all fees referred to are subject to change and should be verified with the relevant administrative body. It also does not include the costs of a party's legal advisors or third party disbursements, such as expert fees.

Type of cost	English High Court		London Maritime Arbitrators Association (LMAA)	International Chamber of Commerce (ICC)	London Court of International Arbitration (LCIA)
	Existing regime (in force from April 2014 until approx. March 2015 <sup>3)</sup> )	Enhanced fees regime (in force from approx. March 2015 <sup>3)</sup> )			
1. Issuing/ appointment fee	<b>£1,920</b>	<b>£10,000</b>	<b>£250</b> Fixed appointment fee per arbitrator.	<b>US\$3,000</b> Filing fee paid by the claimant when filing the "Request for Arbitration". The filing fee is credited to the claimant for its share of the advance on costs (see below).	<b>£1,750</b> Registration fee payable with the "Request for Arbitration".
2. Any further fees payable in advance of an Award/ Judgment?	<b>Yes, but limited</b> to the fixed fee at the time of issuing any interim application and the setting down fee for trial (referred to below).	<b>Yes, but limited</b> to the fixed fee at the time of issuing any interim application and the setting down fee for trial (referred to below).	<b>Not normally</b> A Tribunal is entitled to reasonable security for its estimated costs (including its fees and expenses) up to the making of an Award <sup>4</sup> .  In practice, it is relatively unusual for a Tribunal to require security for its costs, which will be assessed at the Tribunal's discretion on a case by case basis.	<b>Yes</b> Advance on costs is calculated on the amount of the claim and for (i) Arbitrators' fees and (ii) ICC administrative fees. Arbitrators' anticipated expenses also to be included.  <b>Example:</b> Arbitrator's fee <sup>5</sup> : US\$39,378 (total for both parties).  ICC administrative fee: US\$21,715 <sup>6</sup> .	<b>Commonly, yes</b> The LCIA may direct the parties to pay anticipated administrative charges, plus Tribunal fees and expenses.  <b>Example:</b> Arbitrator's fee <sup>7</sup> : £37,698.58 (per party).  Administration fees: £30,617.34.
3. Hourly fees	<b>No</b> , the Judge's time is not charged.	<b>No</b> , the Judge's time is not charged.	<b>Yes</b> . Hourly rates apply. These vary and are agreed at the outset on appointing the Arbitrator.	<b>No</b> . The Arbitrators' fees are set as a percentage of the amount depending on the complexity of the case.	<b>Yes</b> . These vary, but must not exceed £450/hr.



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4. Administrative costs	<b>Included in filing fee.</b>	<b>Included in filing fee.</b>	<b>No.</b>	<b>Yes.</b> Set percentage of the amount of the claim.	<b>Yes.</b> Hourly rates apply. Rates vary from £150/hr to £250/hr.
5. Interim applications	<b>£155</b> fixed fee for each “on notice” application. No further fee applies.	<b>£255</b> fixed fee for each “on notice” application. No further fee applies.	<b>No fixed fee.</b> Arbitrator(s) will charge their hourly rates.  An Arbitrator at their discretion may require payment of their fees to date, but more usually these would be dealt with at the time of the award.	<b>Fee taken into account in overall fixed fees</b> (see above).	<b>No fixed fee.</b> Based on hourly rates.
6. Booking fee for trial/hearing	<b>£1,090</b> fixed fee, regardless of the hearing duration.	<b>£1,090</b> fixed fee, regardless of the hearing duration.	<b>£1,000/day</b> for hearings up to ten days.	<b>Fee taken into account in overall fixed fees</b> (see above).	<b>No booking fee.</b> Hearing fees are taken into account in Arbitrator’s fees charged on an hourly basis (see above).

3 Exact date to be confirmed. This is on the basis of current proposals and subject to the Government response to the calls to reconsider its proposals.  
4 See paragraph (E) to the First Schedule of the LMAA Rules (2012), allowing a Tribunal to require reasonable security for its estimated costs (including its fees and expenses) up to the making of an Award.  
5 Average fee estimate based on the appointment of a sole arbitrator, using the ICC online calculator. This fee estimate does not include Arbitrator’s disbursements. See <http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/cost-and-payment/cost-calculator/> for more details.  
6 Average fee estimate calculated, using the LCIA website online calculator. See <https://www.international-arbitration-attorney.com/lcia-arbitration-cost-calculator/> for more details.  
7 Assuming the appointment of a sole arbitrator. This estimate does not include any disbursements incurred by the arbitrator(s).



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