

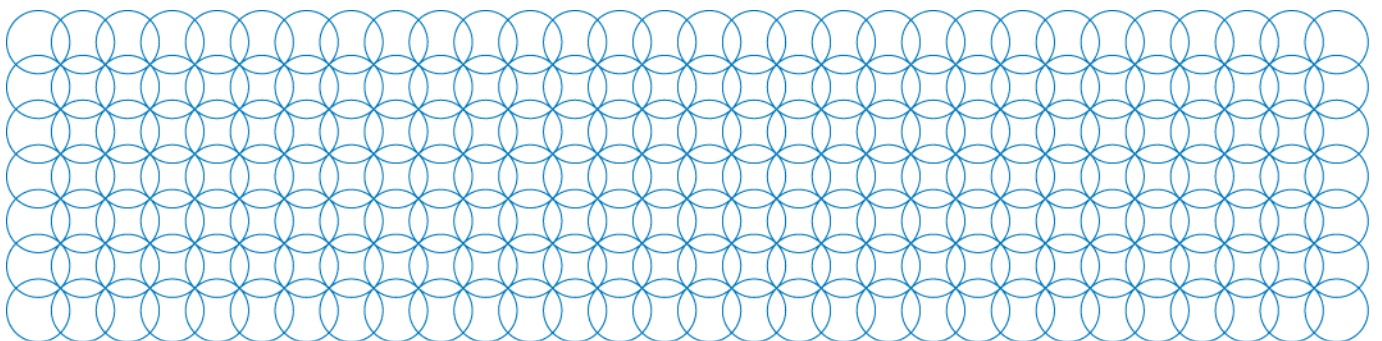


Public Law Family Fees Consultation Paper

Consultation Paper CP32/07

Published on 19 December 2007

This consultation will end on 11 March 2008





Ministry of
JUSTICE

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Public Law Family Fees Consultation Paper

A consultation produced by Her Majesty's Courts Service, part of the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

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Executive summary

The cost of running the civil and family courts in England and Wales is currently about £625 million a year. Of this, almost 79% is funded through court fees.

The proposals in the consultation paper represent the next stage in Her Majesty's Courts Service's (HMCS) fee strategy for developing the fee system.

It proposes to increase substantially the fees for public law Children Act proceedings so that they reflect the full cost of providing the court system for these cases.

At the same time, it proposes to re-structure these fees to reflect the stages in the revised procedure being introduced by the President of the Family Division's Public Law Outline (PLO). Cases identified as suitable for an early Final Hearing under the PLO would pay significantly less in fees than those cases that have to go through all the possible stages. Well-prepared cases are more likely to be suitable for a fast-track route, leading to savings for local authorities from lower fees and to HMCS in reduced costs.

The fees for applications by parents in care proceedings remain unchanged. As a result all the proposed increases will only affect fees paid by public bodies and not individuals.

The paper also proposes to increase the fee for public law adoption proceedings to £400. The fee for an adoption application by prospective parents is unchanged.

The effect of these proposals is to transfer a cost of some £40 million from HMCS to the authorities that initiate these proceedings. This transfer is reflected in the outcome of the 2007 Comprehensive Spending Review, and is therefore built into allocated public spending totals with effect from April 2008.

Introduction

This Consultation Paper describes the Government's strategy for developing the fees system in the civil and family courts of England and Wales, and sets out for consultation proposals to:

- make changes to court fees in relation to Public Law Children Act process; and
- make changes to fees charged for Adoption proceedings.

These changes will apply to court fees in both the County Court and the Family Proceedings Courts in the magistrates' courts.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria which are set out on page 32, have been followed. The Consultation Paper is also available on the Department's website and any responses received will be considered.

Specific questions for comment are summarised at page 20. Replies are sought by 11 March 2008.

An Impact Assessment is annexed at pages 24 to 31. This indicates that the changes will not have any impact on business or the third sector. They do involve a transfer of costs within the public sector. There is no adverse equality impact on any particular group. If you disagree with these conclusions or wish to make any other comments, you are welcome to do so as part of your response.

Copies of the Consultation Paper are being sent to:

The Senior Judiciary and the Judicial Office of England and Wales

Council of Her Majesty's Circuit Judges

Association of District Judges

Magistrates' Association

Civil Justice Council

Family Justice Council

Justices' Clerks' Society

Official Solicitor

Law Society

Bar Council

Family Law Bar Association

Resolution

Institute of Legal Executives

Citizens Advice

British Association for Adoption and Fostering (BAAF)

Local Government Association

Department for Communities and Local Government

Department for Children, Schools and Families (DCSF)

Children and Family Court Advisory and Support Service (CAFCASS)

Children and Family Court Advisory and Support Service Wales (CAFCASS CYMRU)

Association of Children's Services in England

Association of Directors of Social Services in Wales

HM Inspectorate of Court Administration (HMICA)

Welsh Assembly Government

Legal Services Commission (LSC)

This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with any interest in or views on the subjects covered by this paper. Details of how you can respond to this paper are on page 22.

The proposals

Background and Strategy

The civil and family courts in England and Wales are mostly funded through fees paid by the users of the service.

The total cost of running these courts is currently some £625 million a year. In 2006-07, income from court fees covered 73% of the total cost. The value of fee exemptions and remissions represented a further 6%. In other words, courts fees are currently set at a level that, on average, represents 79% of the total cost.

However, the ratio of fee levels to cost varies significantly between different types of court business. In particular, civil fees are currently set at levels that exceed the total cost of that part of the business; we intend to eliminate that over-recovery over the next few years. But most family fees are currently set at levels significantly below the 79% overall average. Annex A on page 15 gives a more detailed breakdown of fee income and total cost for the financial year 2006/07.

Her Majesty's Courts Service is implementing a strategy, agreed by ministers, to develop and reform the court fee system to ensure that it is fair and sustainable.

The overall objectives of the strategy are to ensure that the system:

- meets its financial targets for cost recovery and net expenditure;
- protects access to justice through a well-targeted system of fee concessions for the less well-off;
- remains viable when patterns of demand change, by achieving as close a match between income and costs within the system as reasonably practicable.

The strategy, and the underlying fees policy, were set out in detail in our previous consultation paper: Civil Court Fees, CP5/07, (www.justice.gov.uk/publications/cp0507.htm). The policy can be summarised as full-cost pricing. This means that fees should generally be set at levels calculated to cover the full cost of the system if paid in full in every case. Full-cost pricing, together with a system of concessions to ensure access to justice for the less well-off, is the best way of targeting the taxpayer's contribution to meeting the cost of the civil and family courts.

We have now implemented the proposals in CP5/07 to:

- reform the system of fee concessions to ensure that the system protects access to justice in a well-targeted and affordable way;
- re-balance the fee structure in the main civil courts, primarily by introducing hearing fees and making off-setting reductions in up-front issue fees; and
- increase fees for civil business in the magistrates' courts as a step towards full-cost pricing levels.

The paper is concerned with the next step in the strategy. That is to increase most fees for public law family cases – fees that are paid by public bodies, not individuals – to full-cost price levels from April 2008.

Following that, future steps in the strategy will include:

- further development of our costing systems and changes in the way fees can be paid in order to reduce the administrative cost to users and HMCS;
- further increases in magistrates' court civil fees to bring them to full-cost price levels during 2008-09;
- a review of probate fees during 2008-09;
- a review of the financial objectives and fee structure for private law family business; we plan to consult on this during 2008 and introduce any changes from 2009-10;
- further reductions in overall civil fees to eliminate over time the current over-recovery in that area of the business;
- further consideration of the possibility of daily trial fees in larger civil cases to help increase further the match within the system between where costs arise and where individual fees are charged. We hope to run a pilot in 2009.

Care Proceedings

Current position

This section proposes that the court fees paid by public bodies in child care proceedings should be increased to full-cost levels.

Currently, local authorities are charged £150 when care proceedings are issued. Other fees, which vary, are charged during or after proceedings (for example to renew an interim care order or vary a final order).

But child care proceedings are usually lengthy and expensive, involving several court hearings. The total average cost of the court system for these cases is over £4,000 each.¹ So this category of case has by far the lowest fee to cost recovery ratio of any type of civil or family court business.

The difference between the fees paid and the cost of the court system in this area was about £35 million in 2006-07. This cost is currently met from the budget allocated to HMCS by the Ministry of Justice. Raising fees to full cost levels will mean that the equivalent cost will in future fall on the local authorities that initiate the cases. This reflects the general Government policy that the full cost of fee-charging services should generally be met by users, including where the users are other Government departments or public sector bodies.

This change has been reflected in the 2007 Spending Review settlement. The HMCS budget was set at a level £35 million lower than it would otherwise have been to reflect the planned fee increases. On the other hand, the additional pressure on local authorities was reflected in the calculations that produced the spending settlement for local authorities. In other words, Government spending plans for 2008-09 and beyond already allow for the cost of these court proceedings to be borne in future by local authorities rather than HMCS as now. The net effect on public spending is, of course, neutral.

It is sometimes argued that it is unnecessary and/or inappropriate for one part of the public sector to charge others. The reasons usually given are that:

- this merely re-circulates money with the public sector often at considerable administrative cost;
- public bodies may be acting in pursuit of an important policy objective that should not be constrained by financial considerations.

Against this, the general arguments of principle in favour of charging for inter-departmental services are that:

¹ In 2006/07, the average cost of a care case was £4,244 in the county courts and £4,099 in the magistrates' courts.

- it promotes the efficient allocation of resources, by providing paying authorities with a greater incentive to use services economically and efficiently; and
- it improves decision-making and accountability by providing greater visibility of the true costs and benefits of the services provided by both the charging and paying authority.

Specifically, HMCS is taking steps to minimise the administrative cost to local authorities of paying magistrates' court fees (not just fees for care proceedings). HMCS is developing a new payment system that should mean local authorities will be able to set up accounts with magistrates' courts allowing them to pay all court fees incurred by single monthly or quarterly payments. This will substantially reduce the administrative cost associated with drawing a cheque in every case.

Social services departments are subject to a clear statutory duty to protect the interests of children. It would be unlawful for them to avoid taking court proceedings for financial reasons where they considered that to be the appropriate step. Nor, given that the local authority spending settlement reflects the additional pressure, is there any reason to think they would do so. Full-cost court fees will mean, however, that the cost to authorities of court proceedings and alternative social services interventions are set on a comparable basis. This will remove any perverse incentive there may currently be to pursue the former prematurely or unnecessarily when the latter would be more appropriate. This should underpin the revised statutory guidance aimed at encouraging more effective use of pre-application interventions by local authorities.

The move to full-cost fees in April 2008 is timed to coincide with the implementation of reforms designed to make the procedure for care cases speedier and more cost-effective. This provides an opportunity to ensure that the fee-charging structure is aligned with and supports the new procedure.

Care Proceedings Reforms

There are long standing concerns about delay in public law Children Act cases, which means that care cases take on average 51 weeks in Care Centres and 44 weeks in family proceedings courts from application to disposal.

The Review of the Child Care Proceedings System in England and Wales (the Review), published in May 2006, identified factors contributing to delay in care proceedings. These included poorly prepared applications. The Review recommended that the new fee structure might be used as an incentive to encourage better preparation for proceedings, for example by reflecting the true extra costs incurred by poorly prepared applications.

Following the Review's recommendations, the Department for Children, Schools and Families and the Welsh Assembly Government plan to issue revised statutory guidance² to support local authorities in preparing a care application. This will set out the steps that should be taken before an application is made to court. In addition, a new Public Law Outline³ should lead to an improvement in the quality of applications and case management during proceedings. These reforms will take effect in April 2008.

Essentially, the new process will operate in the following way:

Pre-proceedings – the court will review the work undertaken by a local authority – and whether it has followed the statutory guidance – before a formal application is made to court. This will determine what standard directions are given on issue of proceedings.

First appointment – those cases which might be suitable for an early final hearing will be identified. In all other cases, an outline timetable for progressing the case according to the needs of the child involved will be agreed.

Case Management Conference (CMC) – issues that need resolving in the case will be identified and a more detailed timetable will be agreed.

Issues Resolution Hearing (IRH) – the issues identified at the CMC will be reviewed and any outstanding issues identified, in order to be able to proceed to a Final Hearing. It is possible, at this stage, that the case will be able to be resolved.

Final Hearing (FH) – to determine any outstanding issues.

The outline of the new process above highlights that the case can be resolved at any of the different stages in proceedings; the options for progressing care cases under the new system are set out in the draft at Annex B.

² Volume 1 (Court Orders) Children Act 1989 Guidance, due to be published shortly.

³ The PLO will replace the current Protocol for Judicial Case Management in Public Law Children Act Cases.

Care Proceedings Fee Structure – Options

There are several options for how fees could be structured under the new process.

Option 1 – Full fee payable on issue

This option would broadly reflect the current arrangements, with a full fee payable up-front by the local authority in all cases. Based on the current average cost of these proceedings, a single application fee would be over £4,000.

The advantage of this approach is that it is simple and easy to administer. The disadvantage is that this does not take any account of the Review's recommendations to use the fee structure to encourage good preparation. All cases would be treated identically irrespective of how quickly they might be able to progress through the courts.

Q.1 Given that fees need to be set to cover the full cost, do you agree that a single application fee is not the best approach?

If not, why not?

Option 2 – Variable application fee based on quality of preparation

The option that most closely reflects the Review's recommendation would be set a variable fee with two (or possibly more) levels. The fee level charged would depend on the court's assessment at the pre-proceedings stage of the quality of the local authority's case preparation.

The advantage of this is that it provides a direct incentive to comply with the statutory guidance and ensure proper preparation. The fee charged is likely to be a closer reflection of the cost of many cases than under the first option. The disadvantages are that case preparation, although important, is not the only determinant of case length and cost. The fee level charged would depend on a subjective judgment by the court (in practice, probably by the legal adviser) which would be subject to challenge.

Q.2 Do you agree that a variable fee based on the assessed quality of case preparation is unlikely to be practicable?

If not, please explain why?

Option 3 – Incremental fees structured around the Public Law Outline

The third option is to introduce a series of incremental fees, structured around the various stages that cases will go through under the new Public Law Outline.

Different fees would be payable depending on how the case progresses. Those cases that can be resolved with fewer hearings will attract fewer and lower fees than those that follow all the stages of the Outline.

An incremental fees system has to strike a balance between, on the one hand, closely matching the fees to the costs actually incurred, and on the other hand, being straightforward enough to be workable in practice without undue administrative cost. A highly accurate but potentially over-complex system would charge a separate fee for each separate process and hearing, with the hearing fees variable according to the time taken. We do not think that a complex system is necessary or appropriate in this instance. All care proceedings are brought by a limited number of authorities, so that marginal differences in the cost of individual cases are likely to average out over time.

This paper proposes a simpler structure involving two levels of application fee, with a lower fee charged for the most straightforward cases, and two subsequent fees charged at the Initial Resolution Hearing and Final Hearing stages. This produces four possible overall charges based on four possible routes through the system, as shown in the table below.

PLO Route 1	Fee £	PLO Route 2	Fee £	PLO Route 3	Fee £	PLO Route 4	Fee £
Issue to CMC including additional appointments	2,225	Issue to CMC including additional appointments	2,225	Issue to CMC including additional appointments	£2,225	Issue to CMC – CMC is FH	1,725
IRH	700	No IRH	0	IRH is FH	700	No IRH	0
FH	1,900	FH	1,900	No FH	0	No FH	0
Total	4,825	Total	4,125	Total	2,925	Total	1,725

The advantage of this approach is that it produces a reasonable match between the fees charged and the costs incurred without undue complexity. Local authorities will broadly pay for what they get, and there will be an indirect incentive to ensure good early case preparation. Although this is not the only factor, well-prepared cases are more likely to be identified as suitable for assignment to one of the less expensive routes.

Q.3 Do you agree that there should be a 'pay-as-you-go' structure for care proceedings fees?

Q.4 Do you agree that the proposed structure strikes the right balance between simplicity and ensuring that paying authorities only pay for what they get?

If you do not agree, please explain why and indicate what alternative structure you would propose.

Additional fees

Currently, there is a range of subsidiary fees payable in care proceedings either by the applicant authority or by other parties (typically the parents of the child).

Those fees that would have been payable by the local authority during the progress of a care case, for example the fee for renewal of Interim Care Orders, will be subsumed by the new fee structure outlined above and abolished.

Fees payable by local authorities before care proceedings are commenced (e.g. applications for Emergency Protection Orders) or after proceedings have concluded (e.g. applications to vary or discharge a care order), will remain at their current levels.

Fees will still be payable by other parties to proceedings, say if an application is made for contact with a child in care. These will also remain at their current levels. Full details of the changes are at Annex C.

Q.5 Do you agree with the proposals on additional fees?

If not, why not?

Adoption Proceedings

The current position

The Adoption and Children Act 2002 was implemented in December 2005. It represents the most radical overhaul of adoption law for 26 years, replacing the Adoption Act 1976 and modernising the legal framework for domestic and inter-country adoption.

Among other things, the Act places a duty on local authorities to maintain an adoption service, including arrangements for the provision of adoption support services. It also makes provision for the process of adoption, including new measures for placement for adoption with consent.

A local authority applies and pays for a placement application in public law care proceedings. This then allows the child to be considered for adoption by prospective adopters. In effect giving rise to two applications being made one by local authorities for the placement and then if successful, one by prospective adopters who apply for the adoption order. Step-parent adoptions do not need to go through the placement process.

The current fee for of issuing adoption proceedings is £140. But the average total cost of these proceedings to process is around £350.

We propose to increase the fee for applications by a local authority for a placement orders to £400 (being the estimated full cost of this type of case once simpler parental applications are removed from the overall average). This will transfer a total cost of around £5m from HMCS to local authorities. As with care proceedings, this transfer is reflected in public spending plans from April 2008.

Given the relatively low level of the fee, we propose to retain the structure of a single application fee covering both the placement order and any subsequent adoption order. This means that the cost of more expensive cases, in particular contested ones requiring several hearings, will continue to be averaged out over all placement applications. We may review this at a later stage.

Adoption applications are also made by prospective adoptive parents, for example a step-parent living with the natural parent of the child. These cases tend to be more straightforward than local authority applications and are less likely to be contested. We are not proposing to change the current £140 for these cases. We will review this fee at a later stage when we consider fees in private law children cases generally.

Q. 6 Do you agree with the proposal to retain a single application fee, rather than a pay-as-you-go structure, in adoption cases?

If not, please explain why and indicate what alternative you would propose.

Annex A

Detailed breakdown of fee income and total cost for the financial year 2006/07

2006-2007	Net Fee Income	Exemptions/ remissions	Gross Fee Value	Full Cost	Surplus/ (Deficit)	Fee Recovery
	£'000	£'000	£'000	£'000	£'000	%
Family (higher)	54,793	21,904	76,697	186,308	(131,515)	41
Family (magistrates')	2,513	639	3,152	39,215	(36,702)	8
Sub-total family	57,306	22,543	79,849	225,523	(168,217)	35
Civil (higher)	357,604	12,018	369,622	343,572	14,032	108
Civil (magistrates')	16,612	118	16,730	44,026	(27,414)	38
Non- Contentious Probate	16,722	10	16,732	13,260	3,462	126
Total civil business	448,244	34,689	482,933	626,381	(178,137)	77

DRAFT PUBLIC LAW OUTLINE

The Outline document is a draft and is currently being revised

PRE PROCEEDINGS PRE-PROCEEDINGS CHECKLIST	STAGE 1	
	ISSUE	FIRST APPOINTMENT
	On DAY 1 and by DAY 3	By DAY 6
The Checklist Documents:	<u>Objective:</u> To ensure compliance with pre-proceedings checklist	<u>Objective:</u> To allocate and give initial case management directions
<ul style="list-style-type: none"> ▪ Previous orders & judgments/reasons ▪ Assessments <ul style="list-style-type: none"> – Initial and core assessment – Section 37 Report – Kinship assessments ▪ Additional Reports & Records <ul style="list-style-type: none"> – Existing single, joint or inter-agency materials – Strategy Discussion Record – Minutes of family group meeting ▪ Initial Social Work Statement ▪ Initial Social Work Chronology ▪ Schedule of Proposed Findings ▪ Outline Care Plans 	<ul style="list-style-type: none"> ▪ LA files: <ul style="list-style-type: none"> – New application – Pre-proceedings checklist – Checklist documents – An Allocation Proposal ▪ Issue application ▪ Give standard directions on issue including allocation <ul style="list-style-type: none"> – Compliance with pre-proceedings checklist – Consider allocation proposal – Nominate 2 case managers – Direct CAFCASS Analysis for FA ▪ Appoint Children’s Guardian ▪ Allocation of the Guardian by CAFCASS ▪ Appoint solicitor for child ▪ Invite OS to act for incapacitated adults ▪ LA serve issued documents on Parties 	<ul style="list-style-type: none"> ▪ Arrangements for contested interim care hearing ▪ Initial Case Management <ul style="list-style-type: none"> – Case management checklist – Parties & service of documents – Allocation guidance ▪ Hearings <ul style="list-style-type: none"> – Identify ‘<u>Early Final Hearing</u>’ and transfer cases – Fix ‘Early Final hearing’ or Stage 2 ▪ Outline Timetable for child ▪ Standard Directions on First Appointment <ul style="list-style-type: none"> – Direct CAFCASS Analysis for stages 2 & 3 – LA advocate’s case summary – Parties’ Outline position statements – Parties’ initial witness statements – For Transfer

STAGE 2	
ADVOCATES MEETING	CMC
No later than 2 days before CMC	Between DAYS 11 & 60
<u>Objective:</u> To prepare the case management template order	<u>Objective:</u> To identify issue(s) & give full case management directions
<ul style="list-style-type: none"> ▪ Consider Local Authority advocates' case summary, position statements & CAFCASS Analysis ▪ Draft Template Order ▪ File Template Order with case manager / case management Judge by 11am one working day before the CMC 	<ul style="list-style-type: none"> ▪ Scrutinise compliance and allocation <ul style="list-style-type: none"> – Identify issue(s) – Identify evidence, witnesses required & availability – Identify special measures – Give full case management directions – Case management checklist – Allocation checklist – <u>Confirm Timetable for the child</u> – Timetable IRH – Identify further hearings required and hearing dates/windows – Approve template order

STAGE 3	
ADVOCATES MEETING FOR THE IRH	IRH
No later than 2 days before the IRH	Between 16 & 25 weeks
<u>Objective:</u> To update the case management template order	<u>Objective:</u> To resolve and narrow issue(s) & identify any remaining key issues
<ul style="list-style-type: none"> ▪ Consider Local Authority advocates' case summary, position statements & CAFCASS Analysis ▪ Draft updated Template Order ▪ File Template Order with case manager / case management Judge by 11am one working day before the CMC 	<ul style="list-style-type: none"> ▪ Judicial identification of the key issue(s) (if any) to be determined ▪ Final Case Management directions <ul style="list-style-type: none"> – Case management checklist – Witness templates – Skeleton arguments – Judicial reading list / reading time / Judgment writing time – Time estimate – Bundles Practice Direction compliance ▪ Approve Template Order

STAGE 4
HEARING
In accordance with the timetable of the child
<u>Objective:</u> To determine remaining issues
<ul style="list-style-type: none"> ▪ All file & serve updated case management documents & bundle ▪ Draft final order(s) in approved form ▪ Judgment/Reasons ▪ Disclose documents as required after hearing

Proposed New Fees

Fee Number	Description	Fee
–	Issue to Case Management Conference – CMC is the Final Hearing	£1,725
–	Issue to Case Management Conference including additional appointments	£2,225
–	Initial Resolutions Hearing	£700
–	Final Hearing	£1,900
3.1 & 3.2	Placement Adoption Application	£400

Unchanged Fees

Fee Number	Description	Fee
2.5	Contact with a child in care	£150
2.6	Placement abroad	£150
2.7	Education Supervision	£150
2.8	Child Assessment Order	£150
2.9	Emergency Protection Order	£150
2.10	Recovery of Children	£150
2.11	Miscellaneous	£150
3.1 & 3.2	Adoption Application issued prospective adoptive parents	£140

Abolished Fees

Fee Number	Description	Fee
2.3	Secure Accommodation	£150
2.4	Care, Supervision etc	£150
2.13	Interim care / supervision orders	£30

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q.1 Given that fees need to be set to cover the full cost, do you agree that a single application fee is not the best approach?

If not, why not?

Q.2 Do you agree that a variable fee based on assessed quality of case preparation is unlikely to be practicable?

If not, please explain why?

Q.3 Do you agree that there should be a 'pay as you go' structure for care proceedings fees?

Q.4 Do you agree that the proposed structure strikes the right balance between simplicity and ensuring that paying authorities only pay for what they get?

If you do not agree, please explain why and indicate what alternative structure you would propose.

Q.5 Do you agree with the proposals on additional fees?

If not, why not?

Q.6 Do you agree with the proposal to retain a single application fee, rather than a pay-as-you-go structure, in adoption cases?

If not, please explain why and indicate what alternative you would propose.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please email your response by 11 March 2008 to:

Email: FeesPolicy@hmcourts-service.gsi.gov.uk

Alternatively send a hard copy to

Kate Lane, Civil Law & Justice Division, Her Majesty's Courts Service

**Ministry of Justice
5th Floor, Selborne House
54-60 Victoria Street
London SW1E 6QT**

Tel: 0207 210 2629
Fax: 0207 210 8825

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.justice.gov.uk.

Alternative format versions of this publication can be requested from Civil Law and Justice Division – telephone 020 7210 2629 or e-mail FeesPolicy@hmcourts-service.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months time. The response paper will be available online at www.justice.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Her Majesty's Courts Service	Impact Assessment
Consultation Stage	

Available to view or download at:

www.justice.gov.uk/publications/consultations.htm

Contact name for enquiries: Kate Lane

Telephone number: 020 7210 2629

What is the problem under consideration? Why is government intervention necessary?

The consultation proposes to increase substantially the fees for public law Children Act proceedings so they reflect the full-cost of providing the court system for those cases. The package is designed to deliver HMCS's income requirements for 2008-09 and beyond that have been built into our Comprehensive Spending Review Settlement. This is the next stage of HMCS's fee strategy agreed by Minister's in 2005 to develop and reform the court fee system to ensure it is fair and sustainable.

What are the policy objectives and the intended effects?

The objectives are to ensure the fee system; meets its financial targets; protects access to justice; and achieves a close match between income and costs within the system.

The effect of these proposals will transfer responsibility for meeting the full cost of public law family proceedings from HMCS to the authorities that initiate the cases. This reflects the Government's general fee-charging policy, which is intended to provide greater visibility, of and accountability for, the cost of providing services.

What policy options have been considered? Please justify any preferred option.

The current proposals are part of a broader fee strategy and are reflected in public spending settlements from April 2008. Not increasing fees would require HMCS to reduce spending by some £40 million; this would undoubtedly affect court performance and service to customers. Therefore, this assessment does not consider a 'Do Nothing' option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Initially on receipt of responses from stakeholders to the consultation. A Post-implementation Review would take place two years after introduction.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



Date: 19 December 2007

Policy Option	Description
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<p>ANNUAL COSTS</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 100px; height: 20px; background-color: #f0e68c;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div> <p>One off Yrs</p> <p>Transition)</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #f0e68c; display: flex; align-items: center; justify-content: center;">£</div> </div>	<p>Description and scale of key monetised costs by 'main affected groups'</p> <p style="text-align: right;">Total Cost (PV)</p> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;"> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #f0e68c; display: flex; align-items: center; justify-content: center;">£</div> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #90ee90; display: flex; align-items: center; justify-content: center;">£</div> </div>
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Other **key non-monetised costs** by 'main affected groups'

None.

<p>ANNUAL BENEFITS</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; width: 100px; height: 20px; background-color: #f0e68c;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div> <p>One off Yrs</p> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 20px;"> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #f0e68c; display: flex; align-items: center; justify-content: center;">£</div> </div>	<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p style="text-align: right;">Total Benefit (PV)</p> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;"> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #f0e68c; display: flex; align-items: center; justify-content: center;">£</div> <div style="border: 1px solid black; width: 150px; height: 20px; background-color: #90ee90; display: flex; align-items: center; justify-content: center;">£</div> </div>
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Other **key non-monetised benefits** by 'main affected groups'

Key Assumption/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £		
What is the geographic coverage of the policy/option?		England and Wales			
On what date will the policy be implemented?		On a date to be agreed			
Which organisation(s) will enforce the policy?		MoJ / HMCS			
What is the total annual cost of enforcement for these organisations?		general running costs			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		Nil			
What is the value of changes in greenhouse gas emissions?		Nil			
Will the proposal have a significant impact on competition?					
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

Increase of	£	Decrease of	£	Net Impact	£ (Increase - Decrease)
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Key: Annual Cost: Constant Prices (Net) Present Value

Evidence Base for summary sheets

Background

Court fees are worth about £625 million a year and cover nearly 79% of the full cost of running the civil and family courts.

The Treasury's *Fees and Charges Guide* requires all fee-charging services to have an agreed financial objective. HMCS's policy can be summarised as full-cost pricing. This means that fees should generally be set at levels calculated to cover the full-cost of the system if paid in full in every case. Full-cost pricing together with a system of concessions to ensure access to justice for the less-well off, is the best way of targeting the taxpayer's contributions.

Public law family fees do not currently reflect the full cost of those cases. These fees are, by definition, paid by public bodies. So the issue of fee remissions does not arise.

The current level of recovery based on 2006-07 figures show the cost of care proceedings (in both magistrates' and County Courts) was £45.2 million compared to a net income of £1.6 million; and the cost of all adoption proceedings was £3.9 million compared to a net income of £1.3 million.

The proposals in the consultation paper would:

- increase fees for child care proceedings to reflect the average cost of over £4,000, and introduce a simple incremental payment structure so less complex cases requiring fewer hearings would pay less;
- increase placement adoption fees paid by public authorities to reflect the full cost of around £400.

Rationale for Government Intervention

Many fees for family proceedings are set well below full-cost levels. It is Government policy to charge full-cost fees to those using services, including other public bodies. This provides greater visibility of and accountability for the cost of providing services. The 2007 Comprehensive Spending Review settlement took account of the transfer of the cost of these cases from HMCS to local authorities. The transfer is worth about £40 million a year on current costs and volumes.

Options

The current proposals are part of a broader fee strategy and are reflected in public spending settlements from April 2008. Not increasing fees would require HMCS to reduce spending by some £40 million; this would undoubtedly affect court performance and service to customers. Therefore, this assessment does not consider a 'Do Nothing' option.

Analysis of costs and benefits

Option 1 – Full fee payable on issue

This option would reflect the current structure, with a full cost fee of over £4,000 payable on issue in all cases.

Benefits

- Simple and easy to administer.

Drawbacks

- Does not take account of the new procedures in the new Public Law Outline, which would allow some cases to be resolved at an earlier stage and at a lower cost to the local authority and the courts.
- No incentive to encourage good case preparation.

Option 2 – Variable application fees based on quality of preparation

Benefits

- Provides direct incentive to encourage compliance with statutory guidance on case preparation.
- Poorly prepared applications are likely to take longer on average to progress through the system, so fees are likely to reflect the true cost of these lengthier cases more accurately.

Drawbacks

- Difficult to cost the effect of poor preparation accurately; it is not the only factor determining the length and cost of proceedings.
- Relies on scrutiny of applications by judiciary or legal advisers. These judgements will be subjective to a degree and liable to challenge.

Option 3 – Incremental fees structured around the Public Law Outline

Fees would be payable depending on how the case progresses. Those cases that are fast-tracked and which can be resolved quickly at a final hearing will attract lower fees.

Benefits

- Provides a closer match between costs incurred and fees charged in each case. Local authorities will pay for what they get.
- Provides incentives to encourage local authorities to prepare cases properly adhere to the Outline and seek to resolve cases at an early stage where possible.

Drawbacks

- More complex to administer than a single application fee.
- Difficult to predict number of cases settling early, creating a risk that HMCS fee income will be lower than required to meet cost in the short-term following implementation.
- In some cases, additional and / or more lengthy hearings may be needed than in the standard Outline procedure because of the complexity of the case or the behaviour of the parties to proceedings.

Summary

The changes proposed would transfer the full cost of public law children cases from HMCS to the initiating authorities. The overall effect of the package is to replace the current subsidy to local authorities by fee income. On current forecasts, the overall package would increase our total net fee income by £40 million in a full year. This will increase spending by local authorities and so reduce net spending by HMCS. Public spending plans from April 2008 already reflect this.

Public Consultation

The Consultation Paper is being sent to a variety of stakeholders including the judiciary, Family Justice Council, and bodies representing children and families.

The public spending implications have been discussed and agreed within Government.

Sectors and groups affected

Impact assessments have already been completed for the Care Review in May 2006, this generated the Public Law Outline changes. In addition an impact assessment was contained in the Adoption and Children Act Bill 2001. These contain more detailed information about for the number and cost of these cases and the groups affected. This assessment only considers the potential further impact effect of the changes to fee levels.

These proposals do not affect fees charged to business or third sector bodies. There is therefore no impact on these sectors.

Equality Impact Assessment

Government policies must be assessed specifically to ensure that they do not discriminate against anyone on the grounds of: race; disability; gender; sexual orientation; age; religion or belief; and caring responsibilities.

These proposals do not affect fees charged to individuals. There is therefore no adverse equality impact.

Local Authority Impact

The proposed changes will have an impact on local authorities, which pay the fees concerned. The latest local authority spending settlement takes account of this. If the total fees charged under the new structure equal current volumes and costs, the additional cost to local authorities would be about £40 million. This represents about 1% of the £4 billion total budget of social services departments (and a small fraction of one per cent of total local authority spending).

The consultation paper will seek views from local authorities upon whom the increases will fall whether our financial impact assumptions are accurate. If responses indicate legitimate concerns in relation to the timing or the cost we work with DCLG and DCSF to find an acceptable solution before deciding on when they will be implemented.

The new statutory guidance on pre-application interventions and case preparation, and the Public Law Outline, require better preparation of cases by authorities at the outset, but should deliver a speedier and more cost-effective court process.

In so far as the new fees encourage authorities to prepare cases properly and adhere to the Outline, it is likely that more cases will be assessed as suitable for a fast-track approach. This will tend to reduce the total fees paid by authorities relative to the £40 million figure above. However, the extent of this effect is unquantifiable, and likely to be marginal relative to the impact of the Outline generally. Therefore no assumption of such savings is made.

Enforcement / Sanctions / Monitoring

Fees are currently paid in advance. HMCS is developing a new payment system that should mean local authorities will be able to set up accounts with Magistrates' Courts allowing them to pay all court fees incurred by single monthly or quarterly payments. This bulk facility would be withdrawn in the event of non-payment.

Legal Aid / Judicial Impact

None of the increased fees will fall on the legal aid budget. In so far as the fees encourage earlier resolution, there could be legal aid savings.

There will be no or limited impact on the judiciary or the courts. In so far as the fees encourage earlier resolution, judicial time and court costs will be saved.

If the fee changes were not introduced, HMCS would be required to make savings in the order of £40 million. This is equivalent to a cut of 6% in civil and family court business, or 17% in family business alone. This would have a highly deleterious effect on court performance.

Administration burdens / simplification

The new fee structure involves 3 main fee-charging points. This is slightly more complex than charging a single application fee. However, the number of additional fees, including the fee for renewal on Interim Care Orders which falls to be paid several times in a typical case, will be reduced.

Also, HMCS is developing a less burdensome system to allow local authorities to pay Magistrates' Court fees in bulk.

Competition Assessment

No impact.

Small Firms Impact Test

There are no impacts arising from these proposals that will affect the private sector or small firms.

Specific Impact Tests - Checklist

Type of testing undertaken	<i>Results in Evidence Base? (Y/N)</i>	<i>Results annexed? (Y/N)</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

The consultation criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Laurence Fiddler, Ministry of Justice Consultation Co-ordinator, on 020 7210 2622, or email him at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 22.

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