The FSB welcomes this inquiry by the Justice Select Committee into the effects of the introduction and levels of court and tribunal fees and charges.

The FSB is the UK’s leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with around 200,000 members, it is also the largest organisation representing small and medium sized businesses in the UK. Small businesses make up 99.3 per cent of all businesses in the UK, and make a huge contribution to the UK economy.

The rule of law underpins all business activity. The law provides the essential framework within which small businesses can invest, produce, transact and innovate with confidence. Sustaining the rule of law is one of the basic functions of Government. Further, a vital element of the rule of law is the provision of a forum in which parties are held to account for breaching their obligations and for making wrongful decisions which result in detriment to others i.e. a court and tribunal system. The civil courts and tribunal system in England and Wales play a key role ensuring the rule of law by guaranteeing:

- The accountability of parties who breach their obligations.
- Redress for those who suffer as a consequence of obligations being breached.
- An independent channel for challenging decisions by the authorities (such as regulatory bodies) which are unjust.

Charges that are too high make it impractical to access the civil courts and undermine the rule of law. We are concerned that the proposals for more increases in the fees paid by users of the civil courts for money claims will further damage the ability of small businesses with such claims to access justice. The FSB had concerns about the increases that were brought in, both in 2014 and earlier this year and believe that additional ones are likely to compound the dis-incentive effects of the previous changes.

While there might be a short-term revenue gain from charging fees, over time, any gains could be counter-productive to the wider economy. The FSB expects that the steady increases in fees and charges that have occurred over the last 18 months will result in small businesses with just claims being less able to obtain redress. This outcome is not only economically inefficient for the affected parties but it could have wider negative consequences for commerce in the long-run as the costs associated with doing business increase as a result of:

- More businesses losing confidence in the rules and institutions which govern and protect their agreements and investments.
- Increasing levels of uncertainty about the ability of the civil legal institutions of England and Wales to deliver robust, balanced and commercially practical decisions that ensure parties are not able to abjure their obligations.

1 The Lord Chancellor in his recent speech to the Legatum Institute stated that ‘The rule of law is the most precious asset of any civilised society’. He added that it ‘...safeguards the private property on which all prosperity depends...’. Source: Gove, M (2015). ‘What does a one nation justice policy look like?’.
2 Adam Smith identified the importance of ‘...a tolerable administration of justice...’ as a vital ingredient in enabling commercial activity to take place and the economy to grow. As Irwin outlines: ‘Secure property rights provide the necessary incentive to align effort and reward, to enable people to reap what they sow, and to allow individuals and firms to plan for the future and invest in economic improvements’. Source: Irwin, D (2014). ‘Adam Smith’s “Tolerable Administration of Justice” and the Wealth of Nations’.
3 ‘The protection of private property makes economic progress possible and, consequently, in Smith’s view, it is the most important duty of government’. Source: Irwin, D (2014). ‘Adam Smith’s “Tolerable Administration of Justice” and the Wealth of Nations’.
4 As described by Irwin: ‘The administration of justice – a term Smith used frequently – was...a matter of peacefully adjudicating disputes and ensuring just relations between individuals. And such justice was absolutely essential for society to subsist at all; without the “administration of justice,” society itself would disintegrate and dissolve’. To achieve this ‘...an independent judiciary was critical, in Smith’s view...’. Source: Irwin, D (2014). ‘Adam Smith’s “Tolerable Administration of Justice” and the Wealth of Nations’.
5 This would be a considerable loss because as the Lord Chancellor noted in his recent speech to the Legatum Institute: ‘In these islands we are fortunate that the rule of law is embedded in our way of life...The principles that contracts should be honoured, property rights respected and all are equal before the law are customary – the deep fabric of our culture’. The Lord Chancellor added: ‘We are fortunate that the reputation of our independent judiciary, the quality of our barristers and solicitors, the centuries-old respect for due process that characterises our legal system and the total absence of corruption in our courts and tribunals, have all made England and Wales the best place in the world when it comes to resolving matters by law’. Source: Gove, M (2015). ‘What does a one
In addition to supporting private commercial activity, the rule of law is also important for enabling private individuals and businesses to independently challenge authority where they are the recipients of unjust decisions by regulatory authorities. Therefore we are concerned imposing fees on small businesses who would like to challenge the decision of a regulator in the General Regulatory Chamber. Imposing fees:

- Will restrict the ability of small businesses to disagree with the decisions by regulators and get any fine, injunction or order independently examined by raising the barriers small businesses have to get over before they can challenge a regulator. Small businesses are reluctant to do this under the current system. They have fewer resources to be able to mount any challenge. The data on challenging regulatory decisions and the resource constraints faced by small businesses make the likelihood of vexatious claims an unlikely phenomenon in the Grand Regulatory Chamber. Therefore additional disincentives such as fees will compound an existing problem rather than prevent or reduce a problem of unnecessary appeals.

- Appears to contradict one of the Government’s current policy objectives of improving reducing the burden of regulation for small businesses. Making it harder for small businesses to challenge the poor decisions of regulators means that in some areas some small businesses will be facing unnecessary regulatory burdens. The ability to challenge a poor regulatory decision may result in burdens being lifted (at best) or (at worse) less onerous measures than they might otherwise have been being imposed.

- Undermines trust and confidence among small businesses in the regulatory authorities. It is also likely to lead to poor decisions remaining in place, negatively impacting upon business activity and resulting in a more distant and adversarial relationship between the small business community and regulators. What is needed is a more collaborative relationship between regulators and small businesses that helps support compliance.

Therefore, if fees are to be imposed by the Government, we consider that:

- They should be nominal.
- Have an element of proportionality to reflect the severity/ value of the dispute under consideration.
- There should be more scope for fee remission for the very smallest and most vulnerable businesses.

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