Written evidence from Resolution

About Resolution

1. Resolution is an organisation of 6,500 family lawyers, mediators and family professionals who believe in a constructive, non-confrontational approach to family law matters.

2. We also campaign for better laws and better support and facilities for families and children undergoing family change.

3. Our submission relates to the impact of divorce and civil partnership fees on access to justice.

Executive summary

4. It is only 2 years since the divorce fee was increased from £340 to £410. The government now intends to increase this to £550 (without further consultation and impact assessment) which will be an increase of over 60% since 2013.

5. The current fee of £410 is already well above the estimated actual cost of these proceedings of £270 (as at January 2015) but which we anticipate will decrease if the new divorce centres deliver intended efficiencies.

6. We ask the Justice Select Committee to ask the government not to proceed with the increase without undertaking a full consultation and assessment; and to monitor the impact of the intended divorce fee increase, especially for those on limited means.

Divorce fees

7. In early 2014 the previous government proposed an increase to the divorce fee from £410 to £750 which Resolution and others opposed.

8. Our concerns were and remain as follows:

   i. The case for setting court fees purely on the basis of the cost of the service provided by the courts has not been made in relation to family proceedings. There is no justification for charging the public more than the actual cost (even as done today) of using a service to pursue a legal remedy which is their right under statute. The proposed divorce petition fee is disproportionate to the actual cost and where there is no apparent commitment to that revenue being spent on under resourced family court services.

   ii. We certainly see no justification for an enhanced fee paid only by the petitioner where it is intended to make an undefended divorce an administrative matter albeit dealt with by the family court – indeed divorce is already almost entirely an administrative matter.

   iii. The government largely seems to simply assume that there will be a “willingness” amongst divorcing couples to pay the proposed higher fee to complete the dissolution of the marriage and that those divorcing can afford to pay.
iv. We do not consider the Ministry of Justice’s ‘research in support’ to be robust. For example, only four solicitors were consulted, with little reference to the net worth of their client base, and the solicitors concerned do not seem to have been interviewed about a divorce fee as high as £750. Clients or those using the family courts on an unrepresented basis have not been directly consulted.

v. Whatever the value of the proceedings to them, we believe that increased fees will be beyond the reach of many and fees exemption is not widely available. It could readily result in people remaining in marriages which have failed and in conflict for longer, which has been consistently demonstrated not to be in the best interests if children.

vi. We cannot agree at all that getting divorced is a decision to pursue litigation. Unfortunately marriages come to an end and people decide to divorce for many emotional reasons, often after attempts to save their marriage and in mutual agreement. It is extremely rare for a divorce to be defended and it is divorce law which requires people to blame each other in the divorce petition if they do not want to wait for two years to begin their divorce. The vast majority of couples do not litigate at all in relation to resolving matters ancillary to the divorce.

vii. Nor will this fee in itself encourage parties to mediate or resolve issues through out of court family dispute resolution – there is no alternative to court as the court has to process a divorce- they will have to get divorced and pay the proposed fee whether they choose a suitable out of court option for resolving their ancillary finance and/or children issues further to a MIAM or otherwise, or need to make a separate private family law application to the court.

9. As recently as January 2015, the previous government, having taken account of the high level of criticism and serious concerns raised by us and other consultees in response to the previous consultation, decided not to implement any increase to the £410 fee. Their reasons included that the previous consultation had advanced no persuasive justification for increasing the fee; it was wrong in principle to seek to increase the cost of court proceedings associated with the breakdown of family relationships; the fee would deter people from seeking a divorce which could result in people being trapped in unhappy marriages, sometimes in circumstances of domestic violence or abuse, or unable to form new relationships which benefitted from the full protection of the law; and was potentially discriminatory against women.

10. The same main reasons not to now increase the fees still apply so it is disappointing that the current government’s decision to increase the fee at all has been made, and without any further consultation. We do not agree that the government has justified pressing ahead with “a more affordable increase of about a third” or that fee remission will assist many people in this context and where legal aid is generally no longer available for divorce.

11. Below are examples of feedback recently received from our members in response to the planned divorce fee increase:

“I feel strongly that an increase in the divorce petition fee is going to make it very difficult for access to justice for a large number of families. Legal aid is mainly a thing of the past and therefore clients who want legal advice must pay for it. In addition to paying for help with the legal advice clients must now pay the court fee and the fee remission scheme offered by the court can only help very few clients as the criteria is very strict now. For example, capital
is taken into account including net equity in a home that can’t be accessed by one party alone and therefore the court fee is a big investment for people on moderate incomes.”

“The divorce process opens up a client’s financial claims and therefore if the divorce petition fee is raised this will make it even more difficult for many people to access the courts to deal with cases when agreement can’t be reached on financial issues. I have a lot of clients who struggle to pay the petition fee. I think it is very unfair to penalise people who are trying to simply access the court system. It will be upsetting for people whose marriages are over and often with children involved not to be able to have their divorces dealt with.”

“My clients I find have limited funds and although an experienced divorce lawyer I am having to reduce my fees so people can afford representation. An additional cost imposed by the MoJ will put people off in issuing petitions with I believe more misery for them.”

“I am shocked by the price hike; it will not affect my wealthy clients (though it will not make them hold the family justice system in any higher regard); but as a mediator and solicitor in a wealthy suburb of Manchester, it will affect the majority of my clients, who are already usually facing a huge financial squeeze and juggle month on month, as a result of separating.

They will probably delay issuing, and delay seeing a solicitor and do more of their case themselves (which is fine so long as they already know about home rights/severing joint tenancies/making wills and the myriad of other stuff they learn in a meeting or two with a Resolution member)...coming through my door later in the process when they hit a brick wall...

Up here in the North, the ‘outsourcing’ of petitions to Liverpool has worked smoothly in terms of speed and admin efficiency, and credit to them there; but there is no ‘rolls royce’ service which will be offered when the fee hike comes in; so what is there to justify it?

We are facing the closure of a huge number of local courts; so when divorcing parties do need to access a court(for the finances, or children);they’ll have to travel miles; get to crowded courts with few ushers and clerks, and probably with several opposing pairs of litigants in person ‘facing off’ in crowded waiting areas.”

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