Written evidence from Young Legal Aid Lawyers

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 2,000 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL’s members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.

Introduction

2. This is YLAL’s submission to the Justice Select Committee inquiry into the effects of the introduction and levels of courts and tribunals fees and charges. We have also recently responded to the Ministry of Justice consultation on further fees proposals, which closed on 15 September 2015, and we append our response to that consultation to this response.

3. The court system plays an essential role in a democratic society and, in our view, should be funded by the public at large through general taxation, rather than by fees imposed on those who use the courts. Individuals seeking access to justice should not be required to subsidise one of the Government’s most basic responsibilities through the imposition of substantial court fees. We believe that the Government’s principal aim in respect of the court service should and must be to provide access to justice and ensure that the rule of law is upheld.

4. As a starting point, we hope it is uncontroversial to say that any changes to the level of court fees will – as with cuts or reforms to legal aid – inevitably have an impact on access to justice. While decreasing court fees is likely to enhance the ability of citizens to access the courts and thus enforce their legal rights, increasing court fees will undoubtedly have a deterrent effect on would-be litigants, with the consequence that meritorious claims are not brought simply because of court fees. In the case of the criminal courts charge, innocent but impecunious defendants will be pressured to plead guilty in order to avoid a substantially higher charge if found guilty following a not guilty plea.

5. We believe that justice should not be sold, delayed or denied (Magna Carta, Chapter 40). We believe that everyone should have equal access to justice, irrespective of their financial means. In our view, any claimant with a meritorious claim who is unable to enforce their legal rights because of the cost of doing so – whether through court fees, restrictions on legal aid or a combination of both – is being denied justice. Accordingly, any Government
which restricts its citizens’ access to justice through cuts to legal aid and increased court fees is directly undermining the rights of its citizens and denying them justice.

6. If one of the purposes of increasing civil court fees is to discourage the bringing of vexatious or unmeritorious claims, then we submit that this can be properly dealt with by the courts through the use of costs orders. The inevitable effect of significant court fees, for all types of case, is that people or organisations with meritorious claims will be effectively discouraged from enforcing and realising their legal rights solely because of the cost of doing so. This, in our view, demonstrates the inherent injustice of the Government’s approach to court fees. It is inconceivable that the Government is unaware of the effect of continuing court fee rises, combined with savage cuts to legal aid, on ordinary people’s access to justice. The only conclusion to draw, therefore, is that the Government is well aware that its reforms inevitably result in injustice, but it is determined to proceed regardless.

7. We therefore welcome this Justice Select Committee inquiry into the effects of courts and tribunal fees and charges. We hope that the Committee will be assisted by the following response from YLAL, as well as from many other respondents, in assessing the scale of the effect on access to justice of recent increases to court and tribunal fees. We look forward to reading the Committee’s findings at the conclusion of its inquiry and hope that this inquiry will form the basis of an informed debate on court and tribunal fees.

8. We now turn to address the specific questions posed by the Committee.

How have the increased court fees and the introduction of employment tribunal fees affected access to justice? How have they affected the volume and quality of cases brought?

9. We do not have access to any statistics concerning the impact of court and tribunal fees which are not already in the public domain. Our ability to provide an empirical answer to this question is therefore limited, and we acknowledge that court and tribunal fees will not be the only factor influencing the number of claims brought in the civil courts and employment tribunals.

10. We note from the most recent quarterly Civil Justice Statistics for England and Wales\(^1\), published on 3 September 2015, that there was a “general downward trend” in civil claims issued between 2006 and 2012 from 2.1 million to 1.4 million. This figure increased slightly to 1.6 million by 2014. The number of non-money claims fell from an average of around 400,000 between 2000 and 2008 to 317,530 in 2014.

11. Other factors being equal, it seems to us uncontroversial to state that increased court and tribunal fees will have a deterrent effect on would-be litigants and therefore reduce citizens’ access to the courts. It sometimes appears that this is in fact the intention behind increased court and tribunal fees. While it is likely that Government reforms to court fees (and legal aid) will be reflected in a reduced number of cases coming to the courts, there are other potential factors in play.

12. In applications for judicial review, fees were increased significantly in April 2014. The fee for permission to apply for judicial review was more than doubled from £60 to £135, while the fee for permission to proceed to a hearing increased by 216% from £215 to £680. The Government is currently proposing to further increase civil court fees, including for judicial review, by 10%.

13. Since the increased fees were introduced in April 2014, the number of applications for judicial review has fallen dramatically. This is an indication that people with meritorious claims that they have been subjected to unlawful decisions or conduct by the state are being discouraged from obtaining a remedy, simply by virtue of the court fees for doing so. This is unjust.

14. It is clear that the Government has an incentive to restrict the use of judicial review in order to avoid judicial scrutiny of policy. The particular importance of judicial review as a means for citizens to challenge the actions and decisions of public authorities, in our view, means that it would justify being treated as a special case, particularly worthy of being exempt from all but nominal court fees.

15. Further, those bringing judicial reviews are often the most vulnerable, poor and disadvantaged claimants. Increased fees, even if offset by fee remissions, will only lead to higher barriers for those seeking relief, often in the most urgent circumstances.

16. Outside of the specific context of judicial review, in the civil courts it may be too early to say what impact recent Government reforms to court fees have had on access to justice. However, in the employment tribunal the picture is clear: thousands of people with meritorious claims have been discouraged from bringing them since the introduction of increased tribunal fees.

17. The figures in relation to employment tribunal cases are stark. There has been a steep drop in the number of all types of employment cases being brought since the introduction of tribunal fees. As was noted by the Court of Appeal in *R (Unison) v The Lord Chancellor* [2015] EWCA Civ 935[^2^], the impact has been “dramatic”, with 79% fewer claims overall accepted by the employment tribunal in the first year after the introduction of fees. Among

these statistics, there were 83% fewer equal pay claims and 77% fewer sex
discrimination claims.

18. It has been estimated that, as of 30 June 2015, some 50,000 employment
tribunal claims have been ‘lost’ to fees, with a further 5,000-6,000 cases lost
each quarter that the fees remain in place. These statistics are not
surprising. What is – or should be – surprising is that the Government does
not appear to acknowledge the scale of this injustice and its principal
responsibility for creating it.

19. Unison’s General Secretary Dave Prentis has stated that the fees regime is
having a significant impact on the ability of workers to access justice, in
particular low paid women.

20. YLAL has strong concerns over the impact that the employment tribunal fees
and the significant reduction in cases before the tribunal will have for
discrimination in the workplace, as well as on the ability of individuals to
enforce their employment rights in general. We believe that a responsible
Government, committed to the rule of law and equality, would reverse its
decision to introduce employment tribunal fees in the face of such
overwhelming evidence that the fees are resulting in injustice.

How has the court fees regime affected the competitiveness of the legal
services market in England and Wales, particularly in an international context?

21. We defer to other respondents better placed to respond to this question, while
noting simply that increased fees must logically be likely to reduce the
competitiveness of the legal services market in England and Wales in an
international context where litigants have the option of choosing the forum in
which they bring their claims.

What have been the effects on defendants of the introduction of the criminal
courts charge? Has the criminal courts charge been set at a reasonable and
proportionate level? Is the imposition and collection of the charge practicable
and, if not, how could that be rectified?

22. The full effects of the introduction of the criminal courts charge have yet to be
felt and appreciated. However, the very fact that dozens of magistrates have
reportedly resigned in protest at the introduction of the criminal courts charge,
which is mandatory, suggests that there is significant opposition even
amongst those responsible for imposing the charge.

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3 http://hardlabourblog.com/2015/09/11/q1stats/
4 https://www.unison.org.uk/news/article/2015/04/unison-granted-permission-to-appeal-against-punitive-
   employment-tribunal-fees/
5 See, for example: https://www.judiciary.gov.uk/wp-content/uploads/2015/01/20141219-lcj-response-
tomoj-civil-fees.pdf
6 See, for example, the following reports:
   http://www.telegraph.co.uk/news/uknews/crime/11852943/Magistrates-resign-over-court-charges.html
   and http://www.independent.co.uk/news/uk/home-news/criminal-courts-charge-mass-resignations-amid-
23. In short reply to the questions posed:

a. The immediate effect of the charge has meant that some of the poorest members of society are plunged further into poverty with unaffordable debt, with anecdotal reports that innocent defendants feel pressured into pleading guilty as a result of the financial incentive (or imperative) upon them to do so by virtue of the criminal courts charge;

b. The fees are set with no reflection on the means of the individual convicted and with no discretion for the presiding magistrate or judge to waive or decide the level of the charge. On that rudimentary fact alone, the charge has been set at a wholly unreasonable and disproportionate level;

c. The imposition and collection is completely impractical given that many of those charged will not have any means by which to pay. The costs involved in chasing payment and the ultimate sanction of imprisonment for those unable to pay will render the function of the charge meaningless.

24. The Howard League for Penal Reform has prepared a briefing note detailing case studies of the types of individuals who have been severely negatively affected by this introduction. They are overwhelmingly poor and vulnerable. YLAL agrees wholeheartedly with the criticisms leveled at the criminal courts charge by the Howard League for Penal Reform.

25. In our response to the Ministry of Justice consultation on further fees proposed we explained that we firmly believe that the courts system should not be used as a profit centre. Individuals who have been charged with a criminal offence are in an extraordinarily vulnerable position as they face the criminal justice process and in some cases, the prospect of a trial and deprivation of liberty. The criminal courts charge offers a purely financial incentive to pleading guilty. We hope you will agree that this is fundamentally contrary to the principles of justice and right to a fair trial. Moreover, as the charge is not means tested and the court has no discretion as to whether it applies the charge, this will disproportionately affect those who have less financial means.

26. We also note the reports today (30 September 2015) that the Centre for Justice Innovation has reported that the criminal court charge “runs the risk of undermining defendants’ perceptions of fairness in the court process” which
will, in turn, “undermine their trust in the justice system and their willingness to obey the law in the future”.\textsuperscript{10} As the Centre for Justice Innovation notes, the criminal court charge makes defendants “change their pleas in order to avoid running the risk of incurring excessive penalties” and therefore “has the hallmarks of a plea bargaining system” which can lead to wrongful convictions. We therefore have grave concerns about the impact of the charge both on individual defendants and on the criminal justice system and society as a whole.

27. For the reasons set out above, YLAL fundamentally opposes the criminal courts charge. We feel that the sheer scale of fees imposed will be financially crippling for the vast majority of those who come before the criminal courts. The charge for contesting a charge in the Crown Court is set at £1,200 and the charge for pleading guilty in the Crown Court is set at £900. It is significant that the charge for pleading guilty in the Magistrates Court to an either-way offence is £180. In effect this is a £720 purely financial incentive for those charged with either-way offences to plead guilty in the Magistrates Court rather than the Crown Court.

28. Finally, from a practical perspective the enforcement of the criminal courts charge is likely to pose significant difficulties and costs for the Government and therefore the tax payer in whose name it has introduced this charge. The Ministry of Justice has repeatedly said that convicted adult offenders who use the criminal courts should pay towards the cost of running them. The Ministry of Justice argues that payments can be made in instalments to assist the offender and that imprisonment for non-payment will be used as a last resort. YLAL considers that the cost of implementing a payment by instalment system and the cost of imprisonment for non-payment by those who simply cannot afford the charge (which is not means tested) will render the “money saving” aims behind this charge virtually meaningless even before one considers the wider financial and social costs that the unaffordable debt will create for the individual and their family.

How will the increases to courts and tribunals fees announced in Cm. 9123, “Court and Tribunal Fees”, published on 22 July 2015, and the further proposals for introducing or increasing fees included for consultation in Cm. 9123, affect access to justice?

29. We refer to our response to the Ministry of Justice consultation on further fees proposals, which closed on 15 September 2015, which is appended to this inquiry response.

30. In short, we believe that further implemented and proposed increases to civil court and tribunal fees will negatively affect access to justice for all but the wealthiest individuals and organisations for the reasons set out in this

response and our response to the Ministry of Justice consultation on further fees proposals.

Conclusion

31. We have grave concerns about the impact of the introduction and current levels of courts and tribunals fees and charges. YLAL fundamentally opposes the use of court fees as a way of achieving the Government’s aim to cover the entire cost of the courts system through court fees. We believe that the court system plays an essential role in a democratic society and should therefore be funded by the public through general taxation. Individuals seeking access to justice through the courts should not be required to subsidise one of the Government’s most basic responsibilities.

32. The Government’s focus should be on improving efficiency within the court system by ensuring that systems and technology are updated to streamline the process whilst at the same time preserving access to justice. The Government should not target already vulnerable individuals and sacrifice the rule of law in an effort to save money. YLAL maintains that this “effort to save money” through legal aid cuts and increased court fees is a false economy and will ultimately result in a larger overall cost to the Government.

33. The Lord Chief Justice of England and Wales recently referred to this crucial issue when addressing the Commonwealth Magistrates’ and Judges’ Association and called for modernisation of what he called the “inordinately high cost of using the courts, which puts access to justice out of the reach of most, and a system that has not been modernised so as to meet the needs of ordinary citizens.”11 We believe that increased court fees (and legal aid cuts) contribute to further putting access to justice outside of the reach of most citizens, and as such the Government should reverse its policy in this area.

34. At the very least, we believe the Government should not implement any further increases to court fees at present and should urgently commission an independent review of the effect of recent court fee increases, including civil fees, the criminal courts charge and employment tribunal fees, as well as cuts to legal aid, on access to justice.

30 September 2015

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