Hill Dickinson LLP is a full service international law firm offering a comprehensive range of legal services including a dedicated insurance group of more than 500 people making it one of the largest insurance practices in the UK. We act for a wide range of clients including PLCs and other corporates, insurers, SMEs and individuals. A key area of the work we carry out involves dispute resolution and litigation, and we therefore consider ourselves to be well-placed to provide a submission to this inquiry.

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?

This question is raised prematurely in our view. Due to the time it can take for claims to be notified and then issued any data that is available will be immature and non-representative. A further period of monitoring is necessary before an accurate assessment can be made as to whether the initial round of fee increases (we note that further increases are currently under consideration) have created access to justice problems or not.

That point aside, there is already genuine concern amongst the legal community (and with clients) that the increases will create access to justice problems. Whilst it is right that fees are paid to contribute towards the funding of the court service and that they deter vexatious or weak claims it does not follow that parties should have to pay a fee that covers the entire cost of using the service or, as is now being proposed, an enhanced fee aimed not just at recovering the costs of the services to which they relate but which subsidises other aspects of the civil court system. It is likely that parties, even with strong cases, will be increasingly deterred from seeking justice. Parties approach litigation with caution in any event due to the cost of their own lawyers and the risk of paying the fees of an opponent if they lose. Grossly excessive court fees may deter meritorious proceedings being issued.

It is a basic tenet of our justice system that there should be access to justice for all. Access to justice should not be primarily concerned with how wealthy a client (individual or corporate) is.

We have experience of clients seeking to limit the amount they are claiming from their opponent to avoid increased fees. Access to justice is not best served where clients, of their own volition, decide not to pursue legitimate claims because the fees are too high.

Whilst there is an increasing market in ATE insurers offering disbursement only funding which could provide a partial solution, this is an increased cost to clients and such option may not always be suitable/recommended. The issue of assessing cases and the ability to bring claims being in the hands of insurers rather than the judiciary is undesirable.

It is inevitable that if fees go up to the levels proposed they will have an impact on premiums paid by SMEs towards their employers’ and public liability cover. These increases could even lead to some SMEs being unable to afford or get insurance cover.

Quality of current service

Another point which we consider needs to be looked at as part of any review of the impact of increased fees is the quality of the current service, whether this represents value for money and any access to justice problems being created by low quality service.
Whilst the quality of court service is varied across the country we perceive there to be a general feeling of unhappiness with many elements including:

- general administration standards;
- delays in post being dealt;
- hearings being rescheduled at short notice;
- delays in matters being listed;
- the standard of judicial training in some areas; and
- the lack of technology being used and the continued reliance on paper files and paper trial bundles.

Until such problems are remedied, some of which may be due to poor management, as opposed to lack of funding, it is inappropriate to expect parties to pay more. Court users expect a modern and streamlined court system, using the latest technology to ensure claims are dealt with quickly, efficiently and fairly.

**Impact on law firms**

Increased fees also have an impact on law firms of all sizes, not only on their clients. In many instances law firms have to pay fees before they are put in funds by their clients and they will frequently do so using financing provided by their banks. Increased fees will result in increased cash flow pressure on law firms which may not all find that they can secure additional funding from their banks. If law firms suffer, and potentially close, as a result of such problems, this creates a further potential layer of access to justice issues.

There is also the potential for satellite litigation where law firms are unable to fund court fees and miss limitation dates as a result. Such litigation is arguably unnecessary and has the potential to further clog up the courts and slow down access to justice.

**Bar to settlement**

We also have some direct experience of the potential effect that the increased court fees have had in acting as a bar to settlement of claims. In one matter settlement was obtained because the party wanted to avoid the additional cost of the increased fee. Had settlement not been achieved (for whatever reason) the increased fee may have acted as a bar to a later settlement. It seems incongruous that the justice system is promoting settlement yet at the same time introducing potential bars.

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

**Risk of high value litigation going elsewhere**

There is a real danger that some types of case currently dealt with in the courts of England and Wales may be taken elsewhere in search of better value, for example certain commercial and shipping/admiralty matters where arbitration in particular is already well-established. If this were to happen such substantial fee increases could prove to be self-defeating and harm the court system by reducing the number of claims. There is already competition from other jurisdictions and generally in terms of the rise of new and innovative types of dispute resolution.
Whilst court fee increases will not apply to commercial or shipping arbitrations it should be noted that there are now other jurisdictions working hard for this sort of work, Singapore being one example. Many companies are using English law and jurisdiction clauses because the process is viewed as being faster and is trusted. If the English courts get too expensive the choice of law and jurisdiction provisions will go to other jurisdictions. Given that the recent Maritime Growth Study published by the Government committed to keeping London as a maritime services centre this is not supportive of that commitment.

30 September 2015