Written evidence submitted by the Chancery Bar Association

The Chancery Bar Association is aware that the Justice Committee is conducting an inquiry into the effects of the recent rises in court fees and charges. We have no comments on the criminal courts charge, which is outside our experience, but we invite the Committee to take account of our views in relation to the rises in civil court fees.

We disagree with the Government’s policy aim of requiring the civil court system to subsidise the costs of the criminal courts and other courts and tribunals. We believe those costs are properly a matter for general taxation.

But, even if the Government’s policy aim is accepted, the principal change which has recently been introduced is flawed. That change involves charging a fee to issue civil proceedings for any specified sum of money which is 5% of the amount being claimed. The changes implemented in March 2015 capped this fee at £10,000 (so that any claim above £200,000 attracts the maximum fee). The Government’s current proposals (outlined in its consultation paper of July 2015) would involve increasing that cap to £20,000, or even abolishing the cap altogether.

Whilst we are not in a position to provide evidence of the effects which the changes made in March 2015 have had in particular cases (not least because it is currently too early to say), we nevertheless consider that they have obvious and serious consequences for access to justice.

We are enclosing our written responses to the Ministry of Justice’s three consultations of December 2013, January 2015 and July 2015, which explain our concerns in detail. We invite the Committee to read these responses in full, but wish to highlight four key matters.

First, there is no necessary correlation between the amount claimed and the complexity of a dispute, or the extent of Court resources required to resolve it. Debt claims worth many millions can involve relatively straightforward questions, whereas claims worth less than £200,000 can raise complex factual and legal issues. Many litigants expect cases to settle before much Court time has been expended on them, and they frequently do. A fee of £10,000 (let alone £20,000) is bound to appear a very high price to pay just to issue a claim which settles shortly thereafter.
Secondly, the fact that a relatively large sum is being claimed gives no necessary indication of ability to pay, or of the justice of requiring a particular litigant to subsidise other courts and tribunals. The assumption that larger claims are made by wealthy individuals or profitable corporations is wrong. The July 2015 consultation paper concedes that the current cap of £10,000 should not be further increased for personal injury claims. This is a tacit recognition that someone who has suffered a serious injury might not be wealthy and should not be required to pay an exorbitant sum to the Court in order to claim compensation from those who are culpable.

This is not the only kind of case in which high fees are inappropriate. House prices are such that very many disputes concerning the ownership of a home, or over entitlement to the estate of a deceased individual who owned a house, are likely to exceed £200,000. It does not follow that such claimants have large amounts of disposable capital or high incomes (although they may have more than the relatively small sums which would qualify them for fee remissions). The fact that a large amount may ultimately be recovered if the claim is successful is of no assistance to someone who cannot afford to issue the claim in the first place. Such circumstances enable unscrupulous defendants to force claimants to settle for less than their entitlement. Claims brought by liquidators of insolvent companies are another example of this kind of injustice, and it is not difficult to think of more examples.

Thirdly, the imposition of a 5% fee to issue money claims results in an irrational and unjust contrast with non-money claims. An action which does not involve a claim for a sum of money incurs an issue fee of only £480. Yet there are many such claims which involve real complexity and substantial Court time and expertise. Examples include claims about the administration of trusts, including pension funds, and claims concerning companies and insolvencies. The current fee structure results in a claimant seeking payment of a simple debt of £200,000 having to pay £10,000 to issue a claim, whilst a corporate trustee administering a pension fund with assets worth £200 million pays only £480. Apart from the obvious unfairness, this is likely to lead to claimants seeking ways of dressing up their disputes as non-money claims (e.g. as claims for a declaration of liability) in order to avoid the substantial issue fees. Any encouragement to indulge in such ploys is not conducive to the efficient administration of justice.
Finally, according to the research undertaken by Queen Mary, University of London “Competitiveness of fees charged for Commercial Court Services: An overview of selected jurisdictions” (prepared in connection with the Government’s first consultation paper), an issue fee of £10,000 far exceeds the fee charged in all other jurisdictions considered, apart from the Dubai International Financial Centre (and a fee of £20,000 is greater even than for that jurisdiction). According to that research, the court fee for issuing a claim in New York, for example, is less than £250 (and no other court fees are payable for hearings).

We believe the 5% charge is bound to have a damaging effect on the attractiveness of the UK as a forum for dispute resolution. The first consultation paper correctly recorded that London currently has an “unrivalled reputation as the world’s leading dispute resolution centre” and that legal exports have regularly generated a substantial trade surplus (paragraphs 156 and 173 of the consultation paper). The amount generated by the increases in fees is likely to be considerably less than the sums lost to the UK economy if high-value international disputes which would otherwise have come to London are litigated abroad instead.

For these reasons, as well as the more detailed explanations given in our responses to the consultation papers, we believe the Government should be urged to think again about the introduction of the 5% fee in particular.

As the Committee may be aware, the Chancery Bar Association is one of the longest established Specialist Bar Associations and represents the interests of some 1200 members handling the full breadth of Chancery work, both in London and throughout the country. Membership of the Association is restricted to those barristers whose practice consists primarily of Chancery work. It is recognised by the Bar Council as a Specialist Bar Association.

The ChBA operates through a committee of some 17 members, covering all levels of seniority. It is also represented on the Bar Council and on various other bodies including the Chancery Division Court Users’ Committee and various Bar Council committees.

26 October 2015