

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT CIVIL PROCEEDINGS, FAMILY PROCEEDINGS AND UPPER TRIBUNAL FEES (AMENDMENT) ORDER 2016

Thursday 28 January 2016

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Monday 1 February 2016

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FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: GERAINT DAVIES

† Cunningham, Mr Jim (*Coventry South*) (Lab)
 † Davies, Dr James (*Vale of Chwyd*) (Con)
 † Doyle-Price, Jackie (*Thurrock*) (Con)
 † Henderson, Gordon (*Sittingbourne and Sheppey*)
 (Con)
 † Herbert, Nick (*Arundel and South Downs*) (Con)
 † Jenrick, Robert (*Newark*) (Con)
 Mactaggart, Fiona (*Slough*) (Lab)
 † Mann, Scott (*North Cornwall*) (Con)
 † Parish, Neil (*Tiverton and Honiton*) (Con)
 † Rees, Christina (*Neath*) (Lab)

Robinson, Gavin (*Belfast East*) (DUP)
 † Skinner, Mr Dennis (*Bolsover*) (Lab)
 † Stuart, Graham (*Beverley and Holderness*) (Con)
 † Tami, Mark (*Alyn and Deeside*) (Lab)
 Timms, Stephen (*East Ham*) (Lab)
 † Vara, Mr Shailesh (*Parliamentary Under-Secretary
 of State for Justice*)
 † Warburton, David (*Somerton and Frome*) (Con)

Clementine Brown, *Committee Clerk*

† **attended the Committee**

Fourth Delegated Legislation Committee

Thursday 28 January 2016

[GERAINT DAVIES *in the Chair*]

Draft Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016

11.32 am

The Chair: Order. I belatedly call the Minister.

The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara): I beg to move,

That the Committee has considered the draft Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016.

It is, as always, a pleasure to serve under your chairmanship, Mr Davies. I take this opportunity to welcome the hon. Member for Neath; I welcomed her yesterday during oral questions in the House, but this is the first time that she and I are speaking in a statutory instrument Committee together. I look forward to working with her in the months ahead.

The purpose of the draft order is to introduce enhanced fees for certain types of civil and family proceedings. Specifically, the order will increase the fee to issue a possession claim in the county court to £355. It will also increase the fees for a general application made in civil proceedings to £100 for an application made by consent and to £255 for a contested application. The changes will also apply to general applications made in judicial review proceedings heard in the upper tribunal of the immigration and asylum chamber.

The order will also make a small number of increases to other fees in judicial review proceedings. It will increase the fee for copy documents from £5 to £10 and for a summons or order for a witness to attend the tribunal from £40 to £50. There are, however, general applications related to certain proceedings for which, given the particular sensitivities involved, we feel it would be inappropriate to charge a fee above cost. Those are applications in insolvency proceedings, in relation to an injunction for protection from harassment and for payment to be made out of funds held in court. Finally, the draft order increases the fee to make an application for a divorce to £550.

Where users are charged a fee to access public services, the fee should normally be set at a level to cover the full cost of delivering those services. For many years, the civil and family courts have operated on that basis. Section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 provides the Lord Chancellor with a power to prescribe fees above cost on the basis that those fees are used to finance an efficient and effective system of court and tribunals. The power was used for the first time in March last year to increase the fees for money claims.

Hon. Members will be well aware of the difficult economic situation we face and the fact that this Government were elected to continue our work to fix the economy. That is what we are doing. It is clearly right that we continue to look for opportunities to reduce public spending, including on the courts and tribunals and those who use them. In the current financial climate, it is right that we look again at the balance between what users pay towards the overall cost of the Courts and Tribunals Service and the financial burden that falls to the taxpayers. All the increases in the draft order have been subject to consultation and we announced those we plan to take forward in the Government response published in July last year.

The reason for introducing the fee increases is to ensure that courts and tribunals are funded in the long term. Courts and tribunals fulfil a vital function in our society, ensuring access to justice for those who need it. Access to justice is critical to the maintenance of an effective and functioning democracy because it helps to maintain social order, underpinning an effective economy and upholding the rule of law. It is crucial that those principles are preserved so that people who need it have ready access to courts and tribunals. A strong economy is a pre-requisite for effective and affordable public services.

Hon. Members will be aware that this Government inherited a growing budget deficit, increasing public sector debt and an economy in recession. We made economic recovery our first priority, which has required some difficult decisions. The action we have taken is working and the recovery is now well under way, but further reductions in spending are essential if we are to eliminate the deficit. We have secured more than £700 million of funding to invest in courts and tribunals and we have been working closely with the senior judiciary to develop a plan to invest that money in reforming the courts and tribunals so that they can deliver swifter, fairer justice for everyone in England and Wales at a lower cost. There is, however, only so much that can be done through cost-efficiency measures alone.

If we are to secure the sustainable funding of courts and tribunals, we must look to those who use the system to contribute more when they can afford to. We consulted on all the proposals and have carefully considered all the responses we received. We have listened to what people had to say and have decided to limit the increase in the fee for a divorce to £550, rather than to the £750 that was originally proposed. We estimate that the measures set out in the draft order will generate about £60 million per annum in additional income, with every pound collected spent on providing an efficient and effective system of courts and tribunals. We recognise that fee increases are not popular, but they are necessary if we are to deliver our promise to fix the economy while protecting access to justice. I commend the order to the Committee.

11.38 am

Christina Rees (Neath) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. We on this side agree that the Courts and Tribunals Service should be run as smoothly, and with as little expense to the taxpayer, as is reasonably possible. However, we do not believe that the justice system should be used as a cash

cow to make up for the shortfall in Government funding. Any attempts to plug the gap in funding should not be on the backs of people applying for a divorce.

The draft order increases fees across a number of civil litigation areas. However, our main bone of contention is with the substantial increase in the fees for divorce applications. The Government seek to increase those enhanced fees on the backs of people who are already going through a traumatic period of life. We heard this week from the Master of the Rolls, Lord Dyson, who has rightly criticised the Government's increase of court fees, and from Sir James Munby, who referred to the increase as a "poll tax on wheels", with those who want a divorce having to do so "through gritted teeth".

In the Government's own words, the Lord Chancellor has consulted

"the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Deputy Head of Civil Justice and the Civil Justice Council... They have expressed their opposition to the increased divorce fee as they think that it will be a disincentive for divorce and in particular, women that are victims of domestic violence."

An overwhelming majority—87%—of the people who engaged with the consultation on this proposal disagreed with it. The House of Lords scrutiny Committee, when looking at the SI, expressed disappointment that the Government had given no justification for the policy other than to generate income.

The average cost of divorce is about £270, but the Minister wishes to charge the public double that, to plug a funding gap. It beggars belief that the Government would go ahead with raising these fees without the support of the judiciary and the public, putting access to justice for vulnerable people, and especially those in abusive relationships, further out of reach. Divorce is not taken lightly, but once the decision is made there is no choice but to go through the courts, and people will be rightly aggrieved that the Government are making money out of their misery.

Opposition Members will not vote against the fee increases, but we would appreciate it if the Minister answered some questions and made some commitments.

Graham Stuart (Beverley and Holderness) (Con): I am sure the hon. Lady will want to be careful to make clear that for those in abusive relationships, the act of going through a divorce is not a necessary component of separating themselves from their abuser. Ultimately, the protection of vulnerable people should not be affected, whatever the fees for the divorce.

Christina Rees: Does the Minister agree that increasing these enhanced fees will discourage women in abusive marriages from pursuing litigation, as they may see the fee increase as a bridge too far?

Graham Stuart: For someone severing a relationship with a person who may have abused them, obviously this is a higher fee, but going through the act of divorce is not a necessary part of the personal safety of those who are abused. It is important that people realise that they need to separate themselves from their abuser and not worry about eventual, actual legal separation in order to get the physical separation that is important to them.

Christina Rees: What assessment has the Minister made of the impact of divorce rates—

Graham Stuart: Can the hon. Lady respond without reading?

Christina Rees: I took the hon. Gentleman's point on board the first and second time he made it.

What assessment has the Minister made of the impact of the fee increase on divorce rates? Does he agree that the fee increase will have a disproportionate effect on women, given that of 118,000 divorce applications, 65% are made by women? Will he commit to a proper review of the fees and review any negative impacts they may have, especially on access to justice and vulnerable women?

11.43 am

Mr Vara: I welcome the hon. Lady's comments and her agreement with the general thrust of the order—the need for an efficient Courts and Tribunals Service. I am happy to give consideration to the points she has made, and I hope to give her some assurance.

I recognise, as do the Government, that divorce is a very difficult time for the people concerned, particularly where families are involved. It is, however, important to remember two basic points. First, we have listened to the public. In response to their concerns, we did not go ahead with the initial proposal to raise the fees to £750, but will instead raise them to £550. Secondly, where people are unable to afford the fees, we have a remission scheme in place that will give them full or part remission, depending on their means.

Christina Rees: The point I was making is that the Government are making a profit on the £270 cost of divorce. That was my first point. Also, how difficult is it to get through that remission system? I understand that it is quite difficult.

Mr Vara: As far as the profit element is concerned, the hon. Lady will appreciate that we passed legislation to make it possible for fees to be raised to a higher level than simply cost value. She will appreciate, I hope, that the Government have a mandate to fix the economy, and that mandate was given at the general election. We put our cards on the table—our manifesto was there—and said that we would continue to have to take some tough decisions.

The increase is not an easy decision, and I do not for one moment say that it is. It is a difficult decision, but I hope she will accept that it is necessary as part of our overall scheme to ensure that we can raise sufficient funds. Through that, we can ensure that the responsibilities of the economy are taken on board by this generation and not passed on to the next or to our grandchildren.

Graham Stuart: In their modelling, the Government looked at a 10% or a 20% fall in case load volumes. Will the Minister share with the Committee where those falls are expected to land? Are we expecting to see a

[Graham Stuart]

disproportionate reduction in the number of applications for divorce as opposed to other proceedings covered by the fee increase?

Mr Vara: It is our expectation that where people need to divorce, they will go through that divorce. Where two people are in a relationship that is not working, they will need to separate, and many will go through a divorce. The increase will not impact in the way that the scaremongering would suggest, with people prevented from divorcing and forced to stay in abusive relationships. They will not, because the issue concerns funding and money. Where someone is saying, “I cannot afford the fees”, the answer is that remission is available.

The hon. Member for Neath asked how the remission is available. We are constantly looking at the remission system to ensure that it is easily accessible and easy to understand. We have looked at that in the past, and I am happy to continue to look at it. If she is aware of any issues or improvements, I am happy to listen, because I want to ensure that the process is made as simple and easy as possible for those in need of remission, so that what is there as of right is available, provided they meet the criteria.

Graham Stuart: May I press the Minister on this issue? He said that he does not think that those who want a divorce are likely to avoid going through the process, but the Department has modelled what will happen with a 10% and a 20% fall in case load volumes. My specific question—if he does not have the answer immediately, I am sure he can get support from somewhere—is about the percentage reduction. If divorce fees are put up by more than 30%, will we see fewer divorce applications? I want to know from the modelling how many and the percentage we expect.

Mr Vara: My hon. Friend asks a fair question. I do not, as he will appreciate, have the figures to hand. If my officials can give them to me during the course of the debate, I will happily mention what they are, but otherwise I am happy to write to him afterwards.

I emphasise that we have listened. We have not gone ahead with the proposed increase that we would have liked, and I assure the Committee that measures are in place to ensure that those in difficulty are looked after and that remission is available. I commend the order to the Committee.

Question put.

The Committee divided: Ayes 11, Noes 1.

Division No. 1]

AYES

Davies, Dr James
Doyle-Price, Jackie
Henderson, Gordon
Herbert, rh Nick
Jenrick, Robert
Mann, Scott

Parish, Neil
Rees, Christina
Stuart, Graham
Vara, Mr Shailesh
Warburton, David

NOES

Skinner, Mr Dennis

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Civil Proceedings, Family Proceedings and Upper Tribunal Fees (Amendment) Order 2016.

11.51 am

Committee rose.