

## WBG Response to Ministry of Justice Tribunal Fees Consultation

**Question 1: Do you agree with the principle that fees should be increased periodically to reflect rising costs to HMCTS as a result of changes in the general level of prices? Please give reasons for your answer.**

No, the Women's Budget Group (WBG) does not believe that service users should be charged for increased costs when they are still struggling through a cost of living crisis.

The reality is that the UK justice system has seen significant and sustained cuts to government funding over the last decade. In 2019/20, the Ministry of Justice budget was 25% lower than in 2010/11.<sup>1</sup>

Successive governments have painted tax cuts as desirable and have cut taxes alongside cutting public spending. But when the taxes that raise revenue used for public spending are cut, women are disproportionately impacted. And the impact of high inflation and energy costs is leaving public services with few options. For example, inflation will add an estimated £1.5bn to costs for the 40 largest councils in England.

At the same time, the cost of living crisis is having the biggest impact on the poorest households. Due to lower wages and savings, women are less able to cope with the sustained increase in prices we're seeing and are therefore more likely to rely on public services. Women's caring responsibilities also mean that they are less able to increase their hours of work to supplement their income. It is therefore essential that public service funding is increased in-line with inflation through taxing income first and foremost before costs are passed on through court fees to vulnerable users.

**Question 2: Do you agree with the principle that a fee increase of 10% for up to 202 fees, to partially reflect increases in CPI from March 2021 is appropriate? Please give reasons for your answer.**

No, the application of a blanket increase is not the right approach. There should be careful consideration of the cost to provide each service and a full outline of these costs. There should also be clarity as to how these costs are calculated, which is not outlined in the consultation.

We also question the justification for any increase to court fees where the introduction of digital services reduces the costs of the service, such as in the case of divorce proceedings.

In addition, we question the decision to increase fees at a time when people are still struggling to cope with the cost of living crisis. Millions of households across the UK have had seen their incomes stagnate as a result of over a decade of Government austerity policies and stagnant wages, and are now unable to withstand the unprecedented price rises. Importantly, women are the shock absorbers of poverty and are being hit hardest by the cost of living crisis, with poor women, BAME women, disabled women and lone parents suffering the most.

For many the increase in fees will reduce their access to justice. Concerningly, increased Family Court fees could mean that people can't afford to make certain types of applications i.e. women may not come forward with petitions for divorce, which could place vulnerable women at risk. There are of course fee exemptions, but according to Resolution, fees exemptions are not widely available and are difficult to evidence. Exemptions from the divorce or dissolution application fee, where legal aid is

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<sup>1</sup> House of Commons Library (2020) [Is the criminal justice system fit for purpose?](#)

generally no longer available, and certainly for applicants who are victims of domestic abuse, would be strongly welcomed.<sup>2</sup>

**Question 3: Are there any fees outlined in Annex A that should not be increased by 10% as part of this proposal? Please give reasons for your answer.**

Please see answer to Questions 1 and 2.

**Question 4: Do you agree with the proposal on making more regular, incremental inflation and cost-based increases to court and tribunal fees every two years, as opposed to more infrequent but more significant changes on an ad hoc basis? Please give reasons for your answer.**

Please see answer to Questions 1 and 2.

**Question 5: What are your views on the proposal to enhance the council tax liability order fee, retaining its current value of £0.50p?**

NA

**Question 6: What do you consider to be the equalities impacts on individuals with protected characteristics of the proposals? Are there forms of mitigation in relation to equality impacts that we have not considered? Please give reasons for your answer.**

We welcome the fact that the MoJ has carried out an Equality Impact assessment of these proposals, however the findings must be acted on in order to ensure that vulnerable women are not disproportionately impacted by these fee increases.

The civil legal justice system was in a fragile position even before the pandemic, and there were already concerns<sup>3</sup> about the different (and disproportionate) ways women were being impacted by the underfunding of the civil legal justice system compared to men. However, the full extent of these gendered and intersectional impacts – particularly on women on low incomes, Black and minority ethnic women, migrant women and women as carers – has not been fully explored.

The gendered dimensions to the economic impact of cuts, as well as other changes to the civil legal justice system are important. The different economic and social positions that women and men occupy in the labour market, the distributions of power within society, as well as the gender norms that determine caring responsibilities, mean that women will face specific challenges when navigating the civil legal system. And we know from equality impact assessments on intersecting inequalities,<sup>4</sup> that gendered structures of inequality interact with other inequalities, placing Black and minority ethnic, working-class women, and disabled women at more severe disadvantage than other groups.

How funding is distributed across the different stages of the justice system will also have implications for women. Cuts to the legal aid budget in the LASPO Act 2012 have led to what has been described as a 'justice gap' with millions of people falling between the income thresholds for legal aid

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<sup>2</sup> Resolution (2021) [Proposal for reform: Increasing selected court fees and Help with Fees income thresholds by inflation](#)

<sup>3</sup> For example see: EHRC (2016) Legal aid reforms and women's access to justice; Bach Commission Report (2017) The right to justice final report; APPG Legal Aid/Westminster Commission on Legal Aid (2021) Inquiry into the sustainability and recovery of the legal aid sector

<sup>4</sup> WBG and Runnymede Trust (2017) [Intersecting Inequalities: the impact of austerity on Black and minority ethnic women in the UK](#)

entitlement and the income/savings necessary to be able to afford legal advice without falling into poverty.<sup>5</sup> Some areas of law have been taken out of the scope of legal aid altogether.

The majority of those who use civil legal aid are women.<sup>6</sup> And legal aid has always been a critical lifeline for vulnerable women, like survivors of domestic and sexual abuse, and asylum-seeking women. There is therefore every reason to infer that women will be hit particularly hard by increases to court fees which will significantly infringe on their rights to access to justice.

**Table 1: Consequences of changes following the LASPO Act 2012, as well as broader changes to civil legal aid on women, as identified by percentage of organisations/services**

	No impact	Some impact	Major impact	Don't know	Total (N)
<b>Vulnerable women unable to access legal aid for various reasons</b>	4%	11%	74%	11%	66
<b>Women reaching crisis point or problems escalating</b>	3%	12%	65%	20%	66
<b>Women unable to get help with tribunals</b>	5%	14%	49%	32%	65
<b>Women not coming forward with issues or claims</b>	8%	14%	48%	31%	65
<b>Women unable to hold public authorities to account</b>	3%	12%	60%	25%	65
<b>BME/migrant women turning to informal community arbitration systems</b>	5%	18%	37%	40%	62
<b>Extra financial costs for clients/women</b>	6%	23%	52%	19%	64

*Source: WBG (2023) Gender Gaps in Access to Civil Legal Justice – Women’s Budget Group*

As shown in Table 1 above, WBG research found that the introduction of fees for court or tribunal hearings in relation to petitioning for divorce resulted in women not coming forward.<sup>7</sup> It is therefore likely that a further increase in fees will mean that fewer women petition for divorce. The MoJ’s own Equality Impact assessment advises that women are likely to be disproportionately affected by an increase to the divorce application fee amongst both same and opposite-sex couples.<sup>8</sup>

It is therefore vital that the Government considers and mitigates the impact of increased fees on women’s access to justice across all 202 areas under review within this consultation. The increase in funding – which is needed - should not be achieved by increasing fees for the most vulnerable, thus implementing significant barriers to justice. The fee exemption system as it currently stands should be reviewed to ensure existing barriers to justice are removed and the increases should be achieved through general taxation. The consultation mentions the creation of a more generous Help with Fees scheme, it is disappointing that information on this has not been provided in tandem with the fee increase proposals.

<sup>5</sup> Law Centres Network (2020) [Law for all](#)

<sup>6</sup> EHRC (2018) [The Impact of LASPO on Routes to Justice](#)

<sup>7</sup> WBG (2023) [Gender Gaps in Access to Civil Legal Justice – Women’s Budget Group](#)

<sup>8</sup> Ministry of Justice (2023) [Implementing increases to selected court and tribunal fees: Equalities Statement](#)