



Sir Robert Neill MP

Chair of the Justice Select Committee
House of Lords
London
SW1A 0AA

MoJ ref: 112427

12 February 2024

Dear Sir Bob,

CONSULTATION RESPONSE ON REFORMING UK SUPREME COURT FEES

I am writing to inform you that today the Government has published its response to the public consultation on reforming the fees payable in the Supreme Court of the United Kingdom.

The Consultation

The consultation was published on 16 October 2023. and invited responses to our four main proposals to reform, which are:

- Simplifying the fee structure by combining select fees
- Removing the distinction between devolution jurisdiction case fees and civil case
- Increasing fees by historic CPI inflation from April 2011 to March 2023
- Routinely reviewing and adjusting fees in line with inflation every two years

The Consultation Response

The consultation period closed on 27 November 2023 and a total of 9 responses were received. While respondents were generally content with the concept of streamlining and simplifying the fee structure, they raised concerns regarding the fairness of the fee increases and their impact on access to justice.

After considering the responses in detail, we remain confident that the proposals do not deny access to justice. The Supreme Court operates its own fee remission scheme that mirrors the Help with Fees scheme, which applies in the courts and tribunals administered by HM Courts and Tribunals Service. This remission scheme was recently revised to better target and provide more generous financial assistance to middle to low income litigants, thereby ensuring access to justice. Additionally, for those who are not eligible for remission under the scheme but who cannot otherwise afford to pay fees, the Chief Executive

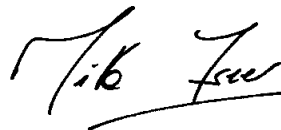
of the Supreme Court has the discretion to remit fees where they are satisfied that there are exceptional circumstances which justify doing so. Our more detailed response to both those who welcomed and those who opposed the proposals can be found in the consultation response.

Revising the fees order as proposed by the consultation will provide the Supreme Court with an estimated additional income of £170,000 - £210,000 per annum. This additional income will directly support the running costs of the Supreme Court and allow it to continue to be a world leading court in administering justice and upholding the rule of law. In addition, these reforms will create a more straightforward fees structure for users to understand and staff to administer, as well as ensuring that in the future fees are routinely reviewed to support the long-term financial stability of the Supreme Court.

The Statutory Instrument

We are taking forward the proposals as detailed in the consultation response and as set out in Annex A of this letter through a negative statutory instrument, which is intended to come into force in April 2024. This instrument will specify the fees payable in relation to proceedings in the Supreme Court.

Any questions regarding this consultation response can be addressed to the Ministry of Justice Fees Policy Team (mojfeespolicy@justice.gov.uk).

A handwritten signature in black ink, appearing to read 'Mike Freer', with a stylized flourish at the end.

MIKE FREER MP

Annex A: Final list of proposed fee changes

This annex sets out the final list of proposed changes to fees in the Supreme Court that we will be taking forward following the consultation.

Fee	Current fee (civil)	Current fee (devolution)	Proposed fee¹
1 Application for permission to appeal			
1.1 On filing an application for permission to appeal	£1,000	£400	£1,390
1.2 On filing notice of an objection to an application for permission to appeal	£160	£160	£220
2 Appeals, etc			
2.1 On filing notice under rule 18(1)(c) of the 2009 Rules of an intention to proceed with an appeal	£800	£400	*£7,855
2.2 On filing a notice of appeal	£1,600	£400	**£8,975
2.3 On filing a reference under the Supreme Court's devolution jurisdiction*	N/A	£200	***£7,015
<i>*No fee is payable where the reference is made by a court</i>			
2.4 On filing notice under rule 21 (1) of the 2009 Rules (acknowledgement by respondent)	£320	£160	£445
2.5 On filing a statement of relevant facts and issues and an appendix of essential documents	£4,820	£800	<i>Fee removed and combined with 2.1 – 2.2</i>
3 Procedural applications			
3.1 On filing an application for a decision of the registrar to be reviewed	£1,500	£200	£2,095
3.2 On filing an application for permission to intervene in an appeal	£800	£200	£1,115
3.3 On filing any other procedural application	£350	£200	£485
3.4 On filing notice of objection to a procedural application	£150	£150	£205

¹Applies to both civil and devolution as we are removing the devolution distinction

Fee	Current fee (civil)	Current fee (devolution)	Proposed fee ¹
4 Costs			
4.1 On submitting a claim for costs	2.5% of sum claimed	2.5% of sum claimed	4% of sum claimed
4.2 On certification by the Registrar under rule 52 of assessed costs	2.5% of sum allowed	2.5% of sum allowed	<i>Fee removed and combined in part with 4.1</i>
5 Copying			
5.1 On a request for a copy of a document (other than where fee 5.2 or 5.3 applies) –			
a. For ten pages or less	a. £5	a. £5	a. £5****
b. For each subsequent page	b. 50p	b. 50p	b. 50p****
5.2 On a request for a copy of a document to be provided on a computer disk or in other electronic form, for each such copy.	£5	£5	£5****
5.3 On a request for a certified copy of a document	£20	£20	£25

* Fee 2.1 has been calculated by combining fee 2.1 and 2.5 (£800 and £4,820) before applying the inflationary uplift.

** Fee 2.2 has been calculated by combining fee 2.2 and 2.5 (£1,600 and £4,820) before applying the inflationary uplift.

*** Fee 2.3 has been increased to reflect the operation and administrative cost involved in a reference case. It has then been uplifted by CPI inflation.

**** These fees remain the same, due to rounding down of the inflated amount.

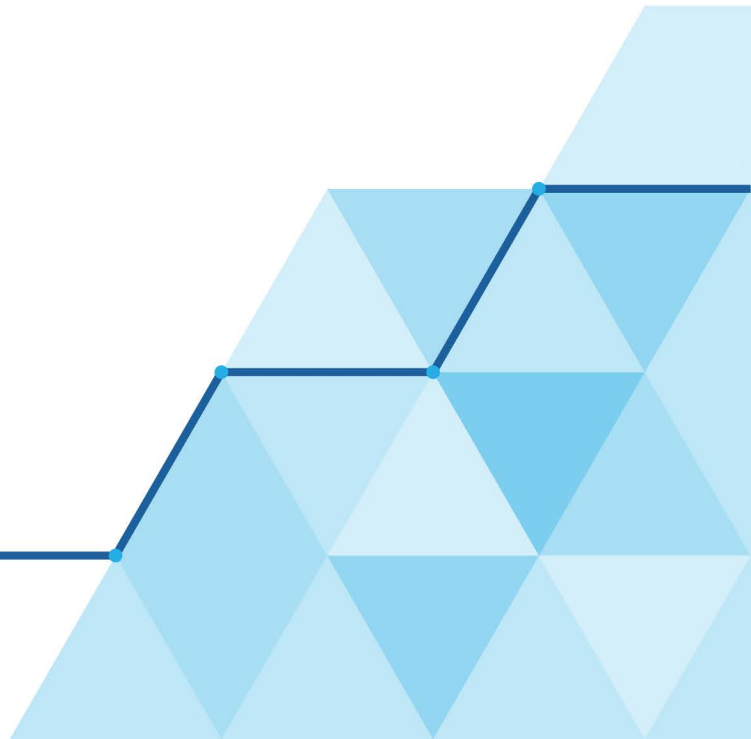


Ministry
of Justice

Reforming Fees in the United Kingdom Supreme Court

Consultation response

This response is published on 12 February 2024





Ministry
of Justice

Reforming Fees in the United Kingdom Supreme Court

Consultation response

Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

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Reforming Fees in the United Kingdom Supreme Court
Consultation Response

About this consultation response

This document is the post-consultation report for the consultation paper: Reforming Fees in the United Kingdom Supreme Court.

It will cover:

- The background to the report.
- A summary of the responses to the report.
- A detailed response to the specific questions raised in the report.
- The next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the **Fees Policy Team** at the address below:

Fees Policy Team
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Email: mojfeespolicy@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from mojfeespolicy@justice.gov.uk.

Complaints or Comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Introduction

Background

1. The Government published a consultation on 16 October on a set of reforms to the fees payable in the UK Supreme Court. The purpose of the proposals was to reduce the complexity in the current fees system, provide the Supreme Court with additional income to deliver its important work, and establish a framework for fee changes in the future.
2. The specific proposals consulted on, and which question they were part of in the consultation were:
 - **Question 1:** Combining the fees that are used to initiate an appeal (fee 2.1 or 2.2) with the fee that is paid when submitting the key facts and issues of the appeal (fee 2.5), and combining the two fees that are payable as part of an assessment for costs (fee 4.1 and fee 4.2);
 - **Question 2:** Removing the distinction in fees between a devolution jurisdiction case and a civil case, excluding fee 2.3;
 - **Question 3:** Retaining fee 2.3 as a distinct fee without a civil case equivalent, and widening its scope to include references on issues about assimilated (retained) EU case law;
 - **Question 4 and 5:** Increasing most fees payable in the Supreme Court by 40%, to account for historic inflation between April 2011 to March 2023; and
 - **Question 6:** Applying a principle of regularly reviewing and adjusting fees in the Supreme Court on a routine basis to account for changes in costs.
3. The consultation closed on 27 November 2023 and this document is the Government's response to the consultation. It provides:
 - a summary of the responses to the consultation;
 - a detailed response for each theme and specific questions raised in the consultation responses; and
 - the next steps that will be taken following this consultation.
4. The Impact Assessment that accompanied the consultation has been updated to reflect changes in the implementation date and references to the 2022/23 Supreme Court Annual Report. The Equalities Statement includes small amendments to reflect changes since it was last published. These documents are published alongside this consultation response.

5. A Welsh language response paper can also be found at:
<https://www.gov.uk/government/consultations/reforming-fees-in-the-united-kingdom-supreme-court/reforming-fees-in-the-united-kingdom-supreme-court>
6. A list of respondents to the consultation can be found at **Annex A**. The full list of proposals we will be taking forward following the consultation can be found at **Annex B**.

Summary of responses

7. A total of nine responses to the consultation were received. Of these, five were from current members of the judiciary. Other respondents were a former member of the judiciary, the Bar Council of England and Wales, the Bar Council of Northern Ireland and the Forum of Insurance Lawyers.
8. The consultation contained seven questions, and not all respondents provided an answer to all of those questions. Five responses from current and former members of the judiciary acknowledged the consultation but did not provide answers to the specific questions. Where respondents did answer the consultation questions, we have analysed their views and considered the content of our policy proposals in light of specific and recurring themes raised. The below summary of responses therefore focuses on the four remaining respondents.
9. Respondents were generally content with the concept of streamlining and simplifying fees. Respondents were content with the general principle of fees needing to increase, but showed concerns about the specific proposals that were consulted on. Overall, the three main concerns raised were:
 - whether a 40% increase to fees was justifiable in the context of current cost of living pressures;
 - the impact that increasing fees would have on access to justice; and
 - the effect of increasing fees on the balance of Supreme Court funding between the Government and users.

Responses to specific questions

Question 1: Do you agree with the proposed changes to simplify and streamline Supreme Court fees?

10. Four respondents answered this question. One respondent (25%) answered 'yes', three respondents (75%) answered 'no'.
11. Respondents noted that simplifying and streamlining the Supreme Court fee process was a desirable objective and would help reduce complexity as well as help the Supreme Court to provide an effective service to users. Of the respondents who disagreed, one raised a concern that combining the fee to initiate an appeal (fee 2.1 or 2.2) with the fee for filing a statement of facts and issues (fee 2.5) would front load the fee and financially disadvantage those appellants who settle before the second fee would have been payable.
12. Other responses to this question focussed on the impact of increasing fees on access to justice, or on the balance of funding for the Supreme Court between users and taxpayers – further details on the concerns raised and our response is provided at paragraphs 25–41.

Government response

13. Although we recognise the concern expressed with the proposal to combine fee 2.1 / fee 2.2 with fee 2.5, we consider that on balance the benefits of combining those fees outweigh any potential disadvantages.
14. Firstly, it is very rare that cases in the Supreme Court are withdrawn before a hearing, with only eight cases withdrawn prior to a hearing over the past five years. Of those eight cases, only two cases were withdrawn before fee 2.5 was paid. Secondly, the current split of fee 2.1 and 2.2 with fee 2.5 is administratively burdensome. Combining the fees will reduce the administrative burden on the Supreme Court and the need for appellants to apply and the Supreme Court to process applications for remission twice.
15. We consider that whilst there may be a minor lost incentive to settle before fee 2.5 is triggered, it is not proportionate to maintain the current split of fees, given the additional administrative burden and the limited evidence that the current split of fees in practice provides an incentive to settle before the next fee is triggered.

16. We welcome the view from stakeholders that simplifying and streamlining the Supreme Court fee process would help reduce complexity for users, and therefore will continue with both aspects consulted on. The first proposal we will take forward is to combine the fee to initiate an appeal (fees 2.1 or 2.2) with the fee for filing a statement of facts and issues (fee 2.5). The second proposal is to combine the fee on submitting a claim for costs (fee 4.1) with the fee for certification by the Registrar of the amount of assessed costs, or on receipt of an order showing the amount (fee 4.2).

Question 2: Apart from fee 2.3, do you agree that the fee structure for devolution cases should be removed, so that the same fee is payable for these cases as with other civil appeals?

17. Three respondents answered this question. One respondent (33%) answered 'yes', and two respondents (66%) answered 'no'.
18. One concern raised was that the fee structure for devolution cases does not consider regional socio-economic variations. The respondent made the comparison between the median annual earnings for full-time employees in Northern Ireland of £32,900 with the UK median of £35,000. They proposed that the fees should acknowledge and maintain regional variation, in keeping with the long-standing approach of the Judicial Committee of the Privy Council (JCPC), as originally adopted by the Supreme Court. They also raised the finely balanced constitutional arrangements at play within Northern Ireland and that the constitutional right of unimpeded access to the courts should be recognised and protected in these circumstances.

Government response

19. We do not consider that removing the fee structure for devolution cases will impede access to justice for individuals, or have a disproportionate impact on individuals from different parts of the UK. This is because individuals do not typically bring devolution cases. In the past five years, there have been ten devolution cases brought to the Supreme Court, and in each instance the appellant has been the Government or a devolved authority. Whilst it is rare for individuals to bring devolution cases, appellants on low incomes will be eligible for fee remission.
20. The administrative cost and judicial time spent in devolution cases is the same as comparable non-devolution cases. Therefore, removing the distinction between non-devolution cases and devolution jurisdiction cases will simplify the fee structure and ensure the fees charged better reflect the cost of providing the service.

21. In light of the above, we will proceed with the proposal as consulted upon, removing the fee structure for devolution cases so that the same fee is payable for these cases as with other civil appeals.

Question 3: Do you agree that the fee for devolution reference cases (fee 2.3) should be increased to allow the Supreme Court to recover more of the costs involved to administer such cases? Do you agree that the scope of this fee should be widened so that it also applies to references on retained EU case law?

22. Two respondents answered this question. One respondent (50%) answered 'yes', and one respondent (50%) answered 'no'.
23. No specific comments were received in response to this question.

Government response

24. We will proceed with the proposal as consulted upon, increasing the fee for devolution reference cases, and widening the scope of the fee so it also applies to references on assimilated (retained) EU case law.

Question 4: Do you agree that we should seek to increase the value of Supreme Court fees by inflation to support the Supreme Court's operation?

Question 5: Are there any fees outlined in this paper that should not be increased by historic inflation?

25. Four respondents answered question 4. One respondent (25%) answered 'yes', and three respondents (75%) answered 'no'. The three respondents who answered no to question 4 all answered 'yes' to question 5, and suggested that no fees should be increased.
26. The respondent who agreed to question 4 welcomed our proposal as the lack of increase since 2009 has resulted in a substantial fall in the real terms value of income for the Supreme Court. 50% of all respondents also accepted that some adjustments for inflation were warranted and one respondent welcomed the use of the Consumer Price Index (CPI) over the Retail Price Index as a measure of inflation.

27. The overarching concern by respondents that disagreed with this question was that the fee increases may be too high. Four points were highlighted:
- a) **The balance between taxpayer and user contributions to fund the Supreme Court:** Respondents highlighted that the consultation did not mention the split between government and fee funding when the Supreme Court was established to enable a valid comparison with the proposal in the consultation. They raised concerns on how this split would change because of fee increases.
 - b) **The risk of denying access to justice by increasing fees:** Two respondents raised concerns that an increase of the size proposed would result in a fee which serves as a barrier to access to justice for litigants on a low wage. The respondents also indicated that the monthly £1,420 income threshold for full fee remission was too low. They highlighted that a worker in full-time employment on the Living Wage (as set by the Living Wage Foundation), both inside and outside of London, would not be fully supported by the Supreme Court's fee remission scheme, running the risk of denying access to justice.
 - c) **Fairness of increasing fees in a climate of rising prices:** One respondent argued that a 40% increase in the context of cost-of-living pressures would be unfair, and that the Government should not pass the burden of inflation over to users in its entirety. They also noted that the 40% increase was higher than the general 10% increase the Government has consulted on for most fees in the lower courts of England and Wales.
 - d) **Affordability for businesses or users of King's Counsel:** One respondent did not accept that a litigant being an organisation or instructing a King's Counsel necessarily spoke to their future capacity to absorb any increased fees.

Government response

28. The Government welcomes the support and understands the concern regarding our proposal to increase fees. However, we would like to emphasise that these increases are intended to address the substantial fall in the real terms value of fees and provide additional income for the Supreme Court's administration. We have addressed each of the four concerns set out in paragraph 27 in turn below.

The balance between taxpayer and user contributions to fund the Supreme Court:

29. Table 1 shows the breakdown of Supreme Court funding from taxpayer sources and Supreme Court fees from the years 2010/11 to 2022/23. It also shows the percentage split of taxpayer and fees funding for the Supreme Court. We have not included the years 2013-2020 for ease of reading and to allow for easy comparison between when fees were last amended and now. The full table is in Annex C.

Table 1: Supreme Court Income from the taxpayer and court fees, 2010/11 to 2022/23

Year	Taxpayer contributions* (£) (000)	Supreme Court fees (£) (000)	Other income** (£) (000)	Taxpayer contributions to total income (%)	Supreme Court fees to total income (%)	Other income to total income (%)
2010/11	5,970	934	206	84	13	3
2011/12	5,970	727	241	86	10	3
2012/13	6,415	851	201	86	11	3
-						
2020/21	6,632	751	294	86	10	4
2021/22	6,632	533	455	87	7	6
2022/23	6,792	783	512	84	10	6

* Total contributions from HMCTS, HMT, and the devolved jurisdictions.

** Income from the Judicial Committee of the Privy Council fees and from wider market initiatives.

30. Table 1 shows that across the period from 2011 to 2023, the taxpayer has broadly increased its contribution in cash terms to the administration of the Supreme Court - in 2010/11, the taxpayer contributed £5,970,000 and in 22/23, this had increased to £6,792,000. Fee income on the other hand has generally been stable, and in comparison to 2010/11 has actually reduced. A full breakdown of Supreme Court income can be found below in Annex C, where the trend of court fees playing a continued minor role in the overall funding of the Supreme Court is more visible. The estimated additional income of £170,000-210,000 per annum will bring the balance between taxpayer contributions and court fees closer to when fees were last set.

The risk of denying access to justice by increasing fees:

31. We are confident that our proposals will not deny access to the Supreme Court for litigants on a low wage for two reasons.

32. The first is the existence of fee remission, particularly since the introduction of a revised scheme on 27 November 2023. The effect of this revised scheme is to reduce the fees payable for many individuals. Table 2 compares the amount an appellant working full-time at the UK Living Wage (as set by the Living Wage Foundation) who is single and passes the capital test would have needed to pay under the former remission scheme, and what they would now pay for an identical fee under the revised scheme. This litigant would not pay the full fees, and in fact will pay less towards their Supreme Court fees under the revised scheme than before.

Table 2: Comparison between old and current fee remission scheme for main appeal fees

Gross annual income	Fee description	Current amount	Old remission scheme		Current remission scheme	
			Amount paid	Percent paid	Amount paid	Percent paid
£23,400 (UK Living Wage)*	Permission to appeal (fee 1.1)	£1,000	£390	39%	£265	26.5%
	Intention to proceed fee (fee 2.1)	£800	£390	48.75%	£265	33%
	Notice of appeal fee (fee 2.2)	£1,600	£390	24.5%	£265	16.5%

* The UK Living Wage set by the Living Wage Foundation. This is calculated by an individual earning £12 an hour working 37.5 hours a week for 52 weeks of the year.

33. The second reason is that given the way that these financial safeguards operate, they will insulate many people from feeling any impact from fee increases at all. Any litigants who receive full remission (either because of their level of income, or because they receive certain benefits) will not be affected by a higher fee. The cohort of individuals who would receive full fee remission has grown as a result of the introduction of the revised scheme. If a litigant is in receipt of Legal Aid that covers the cost of their court fees, then they will not face the impact of higher fees too.
34. Even litigants with higher levels of income may not be affected by the fee increases (depending on the level of disposable capital they possess). This is demonstrated in Table 3 with two examples. The first example is a litigant who has a gross income at the UK Living Wage (£23,400). They would not have to pay any more towards the main fees to bring an appeal than they currently do. The second example is an appellant who is single, with no dependants, has little to no savings, and has a gross monthly income of £4,420 (£53,040 a year). This individual would still be eligible for partial fee remission and would pay a maximum of £2,100 towards their court fee.¹ This is because partial remissions are calculated against how much an individual earns over the relevant gross monthly income threshold and not by fee level. Overall, we assess that the financial support in place is sufficient to ensure that individuals across the income distribution can access the Supreme Court.

¹ Higher household incomes are eligible for fee remissions depending on their household composition. For example, a household with two adults and two children 13 or younger could earn up to £71,760 p.a. and still qualify for full or partial remission.

Table 3: Main appeal fee contributions under the current and proposed fee structure

Gross annual income	Fee description	Current fee structure			Proposed fee structure		
		Fee amount	Amount paid	Percent paid	Fee amount	Amount paid	Percent paid
£23,400 (UK Living Wage)	Permission to appeal (fee 1.1)	£1,000	£265	26.5%	£1,390	£265	19%
	Intention to proceed (fee 2.1)	£800	£265	33%	£7,855	£265	3.5%
	Notice of appeal (fee 2.2)	£1,600	£265	16.5%	£8,975	£265	3%
	Statement of facts and issues (fee 2.5)	£4,820	£265	5.5%	Fee removed and combined with 2.1 and 2.2		
£53,040*	Permission to appeal (fee 1.1)	£1,000	£1,000	100%	£1,390	£1,390	100%
	Intention to proceed (fee 2.1)	£800	£800	100%	£7,855	£2,100	27%
	Notice of appeal (fee 2.2)	£1,600	£1,600	100%	£8,975	£2,100	23.5%
	Statement of facts and issues (fee 2.5)	£4,820	£2,100	44%	Fee removed and combined with 2.1 and 2.2		

* This is the most a single person with no children can earn before no longer qualifying for partial fee remissions.

35. The overall amount a litigant will pay towards the main fees to bring an appeal will be lower under the proposals for the two litigants in our example. Under the current fee structure these litigants would contribute towards fee 2.5 but as we will be combining this with fee 2.1/2.2 it means litigants pay less overall. Table 4 illustrates this.

Table 4: Comparison between current and proposed total cost for main appeal fees

Gross annual income	Current fee structure			Proposed fee structure			Better or worse off from changes?
	Total fee amount to bring an appeal*	Amount paid	Percent paid	Total fee amount to bring an appeal*	Amount paid	Percent paid	
£23,400 (UK Living Wage)	£6,620	£795	12%	£10,365	£530	5%	Better
£53,040	£6,620	£3,900	59%	£10,365	£3,490	34%	Better

* This is the combined value of fees 1.1, 2.1, and 2.5. These are the fees paid when appealing to the Supreme Court where permission to appeal is required. As we propose combining fees 2.1/ 2.2 with the fee to submit a statement of facts and issues (fee 2.5) this reduces the number of fees payable to initiate an appeal.

36. The final view addressed in this section is the view that the £1,420 income threshold is below the UK Living Wage, and that requiring individuals earning around the UK Living Wage to pay fees would risk denying them access to the Supreme Court. The rationale for selecting this threshold level is set out in further detail in the Government's consultation on its revised fee remission policy.² The monthly income threshold accounts for the ordinary and reasonable expenditure of an individual, and the Government's view is that any additional income above this level could be used towards paying a fee – either in part, or in full (depending on the individual's exact income level). The particular threshold applicable for an individual will rise according to household composition. For example, an appellant who meets the disposable capital test and is single with a child over the age of 13 will receive full fee remission where their gross monthly income is £2,130 or less, which equates to a gross annual salary of £25,560. As illustrated by Table 3, an individual on the UK Living Wage will not pay more towards their court fees following our changes than they already do.

² <https://assets.publishing.service.gov.uk/media/6405b5798fa8f527f110a3b1/revising-help-fees-consultation.pdf>

Fairness of increasing fees in a climate of rising prices:

37. The proposed 40% increase to Supreme Court fees is not comparable to the proposed increases in HMCTS fees. Fees in the Supreme Court have not been changed since 2011. The consultation on HMCTS fees, published on 10 November 2023, proposed a 10% increase to certain HMCTS fees to partially reflect backdated changes in the CPI.³ Court and tribunal fees had previously been increased in 2021.
38. Additionally, individuals on low incomes, who are more likely to be impacted by rising prices, are not represented to the same extent in the Supreme Court as they are in the lower courts. Individuals who privately fund their fee, and will be affected by higher fees, only constitute 15% of appellants in the Supreme Court. The remainder of appellants are either businesses and governments who constitute 66% of cases or those in receipt of financial support who constitute 19% of cases and will not be impacted by increases to fees.⁴

Affordability for businesses or users of King's Counsel:

39. The cost to bring a case to the Supreme Court is greater than the court fees involved. This cost includes legal counsel, with most parties making use of King's Counsel. Over the past five years, the average costs claimed for an appeal in the Supreme Court was £183,000. We therefore assess it to be a reasonable assumption that given the costs that they typically incur in bringing a Supreme Court case (including the use of King's Counsel), appellants would also be able to afford to contribute more towards the running of the Supreme Court.
40. Businesses, depending on the circumstances, can count legal and other professional fees as allowable business expenses. Additionally, the Chief Executive of the Supreme Court has the discretion to remit fees where they are satisfied that there are exceptional circumstances which justify doing so.
41. In light of the above, we will proceed with the proposal as consulted upon and will increase the value of Supreme Court fees by inflation.

Question 6: Do you agree with the principle that Supreme Court fees should be adjusted by inflation on a routine basis to support the long-term financial stability of the Supreme Court?

42. Three respondents answered this question. One respondent (33%) answered 'yes', and two respondents (66%) answered 'no'.

³ <https://www.gov.uk/government/consultations/implementing-increases-to-selected-court-and-tribunal-fees>

⁴ This data was taken from Supreme Court administrative records of case data on past judgments handed down by the Supreme Court over an 18-month period.

43. The respondent who agreed to this proposal appreciated our commitment to review the thresholds every two years, which they felt was an appropriate timescale. The respondents that disagreed believed that there should not be an automatic adjustment for inflation upon each review and instead there should be an opportunity to comment on the appropriate index and approach used.

Government response

44. We welcome support for this proposal, which will support the long-term financial stability of the Supreme Court. In response to the concern about automatic inflation-based increases to fees, a full assessment of the impact of increases will be carried out before any amendments are made.
45. As noted in the Impact Assessment, the CPI is used as the inflation index as this provides a good measure of the general increase to prices. We will continue to use CPI to increase Supreme Court fees as long as it remains a good transparent indicator of general increases in prices.
46. We will proceed with this proposal as consulted upon, to regularly review and look to adjust Supreme Court fees by inflation on a routine basis in future.

Question 7: Following analysis of available evidence, we have concluded that the proposed fee increases will not impact disproportionately on any group due to the fee remission policy currently in place at the Supreme Court. Do you consider that the proposal will have a disproportionate impact on individuals with protected characteristics?

47. Three respondents answered this question, and all (100%) answered 'yes'.
48. They specifically highlighted discrimination cases where an applicant had lost employment and had to take employment at the level of the Living Wage set by the Living Wage Foundation charity, as these applicants would not be eligible for fee remission, and so would not be able to challenge the discrimination. Another respondent highlighted that the consultation acknowledges there is likely to be an over-representation of certain protected groups among the litigants in the Supreme Court, and suggested that more evidence should be provided to support our view that, given litigants with protected characteristics place in the income distribution, we consider them able to afford any higher fees.

Government Response

49. The Supreme Court hears relatively few cases each year compared to the lower courts and tribunals, in 2022/23 it only received 273 applications. The cases that the Supreme Court does hear tend to be brought by government or private organisations. Those cases that are brought by individuals can include cases where an applicant has faced discrimination at work. In the example provided by a respondent, this individual might now be earning the UK Living Wage and faces a situation where they are bringing a case to the Supreme Court. As mentioned in paragraph 34, provided that they pass the disposable capital test, low-income litigants who earn the Living Wage will not be required to pay any more towards their Supreme Court fees than they currently do. This will not represent an additional barrier to such a person bringing a case to the Supreme Court.
50. There will be some cohorts who will be more impacted by higher fees than others. The Equalities Statement that accompanies this publication provides details on the protected characteristics of this group. The individuals that are likely to be most affected by higher fees in the Supreme Court will be those that already have to privately fund their court fees, and may not qualify for partial fee remissions. Table 5 demonstrates that these individuals will be more able to absorb higher fees given their place in the income distribution. For example, an individual with no children would need to be in the top 50% of the income distribution to be required to pay a full £1,390 permission to appeal fee (fee 1.1), and in the top 30% to pay for their £7,855 or £8,975 combined appeal fee (fee 2.1 or 2.2). For a full explanation please see paragraphs 8.3 to 8.5 in the accompanying Equalities Statement.

Table 5: Gross monthly money values of quintile medians in average 2019/2020 prices (before housing costs), UK*

Household composition	Gross income at each quintile*					Income required to pay full PTA fee**	Income required to pay appeal fee**
	1	2	3 (median)	4	5		
Single, no children ***	£1,108	£2,328	£3,262	£4,313	£6,482	£3,635	£4,421
Single with children ****	£1,151	£1,703	£2,153	£2,684	£3,733	£4,060	£4,846
Couple, no children	£1,670	£3,239	£4,268	£5,559	£8,506	£4,345	£5,131
Couple with children *****	£1,303	£2,201	£3,003	£4,072	£6,709	£4,770	£5,556

* The figure given is the median for each quintile group, so quintile 3 is the overall median of the income distribution.

** Full fee liability means the income at which someone is liable to pay the full amount of their court fee. For the main appeal fee we are referring to the combined fee 2.1.

*** “Single with no children” is inclusive of all genders.

**** “Single with children” – in this household type the number of children will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0–13.

***** “Couple with children” – in this household type the number of children will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0–13.

Note: net income has been converted to gross using an online tax calculator.⁵

51. We also believe that the measures to increase Supreme Court fees are a reasonable measure to achieve a legitimate aim in ensuring the Supreme Court continues to have the resources to deliver its important constitutional role and remain a world leading court in administering justice and upholding the rule of law.

⁵ Available at: <https://www.thesalarycalculator.co.uk/>

Miscellaneous issues outside the scope of this consultation

52. Separate to the consultation responses detailed above, we received a general response to the consultation that was not directly related to the Supreme Court fee reform proposals. As such, we have separated these responses from the previous section and for completeness, address them briefly under this section.
53. One respondent raised that in the 2022-23 Supreme Court Annual Report and Accounts there was a significant fall in both judgments and court expenditure between 21/22 and 22/23. The respondent felt that it was unclear whether these changes had been recognised, specifically the decline in expenditure, whilst proposing to increase court fees in the development of the proposal to increase Supreme Court fees.
54. The respondent also raised that Supreme Court income should predominantly come from the different jurisdictions of the United Kingdom, as well as directly from HM Treasury.

Government Response:

55. We acknowledge that there have been fewer Supreme Court judgments and reduced expenditure in the last year. As noted in Table 1, whilst there has been a downturn in court expenditure from 2021-22 to 2022-23, since the Supreme Court's introduction in 2009 the taxpayer has contributed more and fees have contributed less towards total income. Additionally, since 2021, HMCTS have increased their contributions to the Supreme Court to account for inflationary pressures. The fall in expenditure from 2021-22 to 2022-23 is due to specific in-year factors which include staff vacancies and accounting for leases, and is not related to the proposal to increase fees. Regarding the fall in the number of judgments delivered, the UK Supreme Court does not have any influence over the volume of PTA applications it receives for consideration. The proposal to increase fees is unrelated to the fluctuation in the volume of judgments in 2022/23 and instead intends to restore the balance in the funding model between the taxpayer and court users, bringing the contributions closer to when fees were last amended.
56. In response to the comment on where the source of Supreme Court income should come from, we can reassure that the vast majority of income will continue to come from HMCTS, the Scottish Government, NICTS and HMT.

Conclusion and next steps

57. The Government has considered all the responses to the consultation carefully. In setting fees for the Supreme Court, the Lord Chancellor has a statutory duty to ensure that the Supreme Court is provided with the resources necessary to carry out its functions effectively. Increasing fees by inflation to reflect the increasing costs of the Supreme Court helps to maintain the funding of the system whilst easing the cost to the general taxpayer.
58. The Government will proceed to reform fees in the Supreme Court as set out in this consultation response. This will reduce the complexity in the fees system, provide the Supreme Court with an estimated additional £170k - £210k per annum income to deliver its important work, and establish a framework for fee changes in the future.
59. The full list of proposals we will be taking forward following the consultation can be found at **Annex B**. Going forward, our intention is to update fees more regularly, every two years, by inflation to ensure that fees continue to accurately reflect the costs of providing these services.
60. The Government has set out the measures it intends to take forward following the consultation.
61. The proposals will be effected by a negative statutory instrument and come into force in April 2024.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

62. An updated Impact Assessment has been prepared and published alongside this consultation response.

Equalities

63. Under the Equality Act 2010, the Government is required, as part of policy development, to consider the equalities impact of our proposal. In summary, public authorities subject to the equality duty must have regard to the following when exercising their functions:
- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not;
 - foster good relations between people who share a protected characteristic and those who do not.
64. For the purposes of the equality assessment the relevant protected characteristics under the Equality Act are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.
65. An updated Equalities Statement has been prepared and published alongside this consultation response.

Welsh Language

66. Implementation of the proposals would also impact those who speak the Welsh Language.
67. A Welsh version of this document can be found at:
<https://www.gov.uk/government/consultations/reforming-fees-in-the-united-kingdom-supreme-court/reforming-fees-in-the-united-kingdom-supreme-court>. A Welsh language copy of the updated Impact Assessment and the Equalities Statement will be provided on request.

Annex A: List of respondents

Former Lord Chief Justice of England and Wales

President of the Supreme Court of the United Kingdom

Lady Chief Justice of England and Wales

Lady Chief Justice of Northern Ireland

Lord President of the Court of Session

The Lord Justice Clerk of Scotland

The General Council of the Bar of England and Wales

The General Council of the Bar of Northern Ireland

Forum of Insurance Lawyers

Annex B: Final list of proposed fee changes

This annex sets out the final list of proposed changes to fees in the Supreme Court that we will be taking forward following the consultation.

Fee	Current fee (civil)	Current fee (devolution)	Proposed fee
1 Application for permission to appeal			
1.1 On filing an application for permission to appeal	£1,000	£400	£1,390
1.2 On filing notice of an objection to an application for permission to appeal	£160	£160	£220
2 Appeals, etc			
2.1 On filing notice under rule 18(1)(c) of the 2009 Rules of an intention to proceed with an appeal	£800	£400	£7,855*
2.2 On filing a notice of appeal	£1,600	£400	£8,975**
2.3 On filing a reference under the Supreme Court's devolution jurisdiction* * No fee is payable where the reference is made by a court	N/A	£200	£7,015***
2.4 On filing notice under rule 21 (1) of the 2009 Rules (acknowledgement by respondent)	£320	£160	£445
2.5 On filing a statement of relevant facts and issues and an appendix of essential documents	£4,820	£800	Fee removed and combined with 2.1 – 2.2
3 Procedural applications			
3.1 On filing an application for a decision of the registrar to be reviewed	£1,500	£200	£2,095
3.2 On filing an application for permission to intervene in an appeal	£800	£200	£1,115

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Fee	Current fee (civil)	Current fee (devolution)	Proposed fee
3.3 On filing any other procedural application	£350	£200	£485
3.4 On filing notice of objection to a procedural application	£150	£150	£205
4 Costs			
4.1 On submitting a claim for costs	2.5% of sum claimed	2.5% of sum claimed	4% of sum claimed
4.2 On certification by the Registrar under rule 52 of assessed costs	2.5% of sum allowed	2.5% of sum allowed	Fee removed and combined in part with 4.1
5 Copying			
5.1 On a request for a copy of a document (other than where fee 5.2 or 5.3 applies) –			
a. For ten pages or less	£5	£5	£5****
b. For each subsequent page	50p	50p	50p****
5.2 On a request for a copy of a document to be provided on a computer disk or in other electronic form, for each such copy.	£5	£5	£5****
5.3 On a request for a certified copy of a document	£20	£20	£25

* Fee 2.1 has been calculated by combining fee 2.1 and 2.5 (£800 and £4,820) before applying the inflationary increase.

** Fee 2.2 has been calculated by combining fee 2.2 and 2.5 (£1,600 and £4,820) before applying the inflationary increase.

*** Fee 2.3 has been increased to reflect the operation and administrative cost involved in a reference case. It has then been increased by CPI inflation.

**** These fees remain the same, due to rounding down of the inflated amount.

Annex C: Supreme Court income

Year	Taxpayer contributions* (£) (000)	Supreme Court fees (£) (000)	Other income** (£) (000)	Taxpayer contributions to total income (%)	Supreme Court fees to total income (%)	Other income to total income (%)
2010/11	5,970	934	206	84	13	3
2011/12	5,970	727	241	86	10	3
2012/13	6,415	851	201	86	11	3
2013/14	6,440	849	273	85	11	4
2014/15	6,631	966	382	83	12	5
2015/16	6,632	940	402	83	12	5
2016/17	6,632	761	320	86	10	4
2017/18	6,781	850	409	84	11	5
2018/19	6,781	809	412	85	10	5
2019/20	6,949	867	374	85	11	5
2020/21	6,632	751	294	86	10	4
2021/22	6,632	533	455	87	7	6
2022/23	6,792	783	512	84	10	6

* Total contributions from HMCTS, HMT, and the devolved jurisdictions.

** Income from the Judicial Committee of the Privy Council fees and from wider market initiatives.



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Alternative format versions of this report are available on request from Fees Policy, Ministry of Justice at:
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