

COURT FEES INCREASED FROM 9th MARCH 2015

HOW DOES THIS AFFECT COMMERCIAL LITIGATION & DEBT RECOVERY

The increasing cost of seeking Justice

We have in the past been asked by clients to explain why the Court charges different issue fees for issuing Claims of different values. For example, prior to the 9th March 2015 a Claimant issuing a Claim for monies due under a disputed contract for £3,500 would pay a Court fee of £205. However, a Claimant seeking payment of 4 undisputed invoices totalling £50,000 would need to pay the Court £610. We have pointed out that whilst the fee for issuing the higher claim is more, when considered as a percentage of what is being claimed it is actually far less. Nevertheless, we could never explain why there should be any significant difference in a fee which requires the same process to be carried out by the Court Office irrespective of value.

However, from the 9th March 2015, in spite of widespread opposition in the House of Lords, a final vote approved dramatic increases to Court issue fees. This has resulted in Claimants wishing to pursue claims in excess of £10,000 being charged a fixed percentage of the value of their Claim. This percentage charge is currently 5% (reducing to 4.5% in certain circumstances) and on the example set out above mean an issue fee of £2,500 as opposed to the previous £610. The new fees are capped at £10,000 for any claims for £200,000 or more.

The Government has calculated that the increase in fees will boost revenue for the Court Service by £120 million a year. However, Court users and the Law Society on their behalf have widely condemned the increases of 600% in some cases as tantamount to “selling justice” and an attempt by the Government at turning the Courts into a profit centre with a total disregard for small businesses who already struggled to access affordable justice under the previous system.

It is interesting to note that whilst traditionally fee increases tended to be in April, in the year of a general election the Government has chosen to push the changes through early. Whilst there may be genuine reasons for the actual timing of the changes, we remain cynical.

The effect on creditors seeking recovery of debts

We must stress at this stage that the changes only relate claims over £10,000 inclusive of any interest claimed. Therefore, if a creditor has a strong credit control policy and limits exposure to under £10,000, whenever possible, the cost of commencing Court proceedings against delinquent customers remains the same as it did before.

However, for those creditors who engage in high value contracts but payments are continually made late, the outlay in commencing proceedings for, say, £100,000 jumps dramatically from £910 to £5,000. Whilst it could be argued that it is not the Claimant who is feeling the effect of the increases but rather the debtor, who is ultimately responsible for payment if the Claim is successful, nevertheless it is the Claimant that is initially required to find that £5,000 when its cash flow may be specifically exacerbated by the late payment it is trying to chase.

In the past Solicitors have generally been willing and able to pay Court issue fees up front on behalf of their clients and then bill for that disbursement. Due to the previous level of issue fees, this risk was acceptable and willingly shared with their clients to help expedite urgent matters. However, if Solicitors are now asked to incur disbursements 5 or 10 times more than they have previously accepted risk for, it is entirely reasonable to expect that Solicitors will ask to be placed in funds by clients before issuing a Claim.

It remains to be seen whether the increase in Court fees will act as a deterrent to debtors in delaying payment and forcing creditors to issuing Court proceedings before getting paid or whether it will result in creditors not issuing Court Claims and perhaps threatening and presenting more Winding Up Petitions to the Court. We are of the opinion that the expected £120 million revenue expected by the Court Service will actually turn out to be significantly less and the number of higher value Claims issued will decrease.

Conclusion

We habitually talk through options with frustrated clients when an undisputed invoice or series of invoices totalling, say, £40,000 remain unpaid in spite of various letters and threat of Court proceedings issued. Often, our recommendation is the presentation of a Winding-Up Petition against the debtor company. However, upon consideration of the cost in terms of Court fees payable, our clients have normally chosen the lesser cost of £610 to commence the Court Claim as opposed to £1,530 to present the Winding Up Petition. However, with the Court Claim now costing £2,000 to issue, the presentation of the Winding Up Petition becomes the cheaper option.

Whilst the Courts frown upon Winding Up proceedings being used as a debt recovery tool, the unprecedented Claim fee increases will inevitably result in more and more creditors presenting Winding Up Petitions as a cheaper alternative to issuing Court Claims. It could therefore be argued that by their own actions the Courts are forcing creditors down this path.

We frequently present winding up petitions to the Court when a client is owed a significant undisputed debt. In most cases a County Court Judgment has already been obtained but has remained unpaid in whole or in part. We ensure that our clients are

fully aware that whilst payment may be made by a debtor company wishing to avoid being wound up, they should only contemplate issuing a Winding Up petition if the debt is not disputed and they are prepared to accept that their debtor may actually be insolvent so that the petition may result in liquidation of their debtor.

We believe it is vitally important for all creditors to take full and proper legal advice before embarking on this road or being enticed by “schemes” that on the face of it appear an attractive and quick solution. In reality they may deliver poor and unsatisfactory results because the entire situation and resulting litigation flowing from a contested petition was never explained at the outset. We nevertheless expect to see an increase in the number of petitions now presented to the Court as a direct result of the Claim fee increases and also an increase in debt collection agencies offering apparent quick fix solutions to debt recovery problems.

PAUL HILTON

Associate Solicitor

Commercial Litigation and Debt Recovery

GUY WILLIAMS LAYTON