

# Technical discussion paper

## Scale of costs in successful court actions for debt in England and Wales

### Introduction

1. HM Revenue & Customs (HMRC) has consulted twice on the principle of seeking payment of costs from a debtor where judgment is entered in the civil courts in England and Wales. Both consultations received broad support and HMRC will now be seeking an amendment to the Civil Procedure Rules to permit such costs to apply. This paper builds on those consultations and seeks views on whether the proposed scale of costs set out below is a proportionate response to the problem HMRC identifies below and whether it should therefore be adopted.

### Policy objective

2. The policy objective is to ensure debtors bear some of the cost of taking court action to recover tax debts. Where debt pursuit activity fails to secure payment of tax or other debt, HMRC can issue a claim and seek judgment in the county court. The number of claims issued by HMRC for unpaid tax varies each year, and in the year to April 2010 10,905 cases were taken.

3. It can be cheaper to owe money to HMRC than to a commercial creditor, giving scope for taxpayers to pay other debts before tax debts and so putting HMRC (and the compliant taxpayer) at a disadvantage. Seeking fixed costs in successful debt claims is one of a range of measures designed to ensure that HMRC has the right tools to tackle those who deliberately choose not to pay tax and other statutory duties. Awarding fixed costs will enable HMRC to recover part of the cost of operating the claims recovery system, and may encourage payment of more debts before formal proceedings are begun.

### Previous consultation

4. This proposal was one of a range of measures included in a public consultation in June 2007 entitled 'Payments, Repayments and Debt: the Developing Programme of Work'. The proposal was discussed in more depth in a second public consultation entitled 'Payments, Repayments and Debt: the Next Stage' in November 2008. Overall HMRC received a favourable response to the proposal that it should seek such costs from the debtor. The relevant extracts from the consultation papers and HMRC's published responses are attached at Annex A.

5. This paper follows on from those earlier formal consultations and the announcement at Budget 2009 that this work would continue. The focus is now on the proposed costs structure.

### How to comment

6. We welcome views on the proposed scale of fees. Comments should be received by 23 September 2010. Responses will inform discussion on the scale with the Rules Committee (the body that can give force to the proposed scale) due to take place in October 2010.

7. Comments should be sent to:

Siobhan McEleavey  
HMRC  
Tax Administration Advice Team  
4SW Queens Dock  
Liverpool  
L74 4AA

Fax: 0151 703 8452

Tel: 0151 703 8959

Email: [Siobhan McEleavey](mailto:Siobhan.McEleavey@hmrc.gov.uk)

### Confidentiality and disclosure

8. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

9. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

10. The department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

### **Current position**

11. Section 25(1A) Commissioners for Revenue and Customs Act 2005 (CRCA) permits an officer of HMRC to conduct county court proceedings for the recovery of an amount payable to the Commissioners 'under or by virtue of an enactment or contract settlement.'

12. Nearly all proceedings are conducted by officers of HMRC who are not legally qualified. Because they are acting on behalf of HMRC they are not considered litigants in person so cannot currently claim any costs. Legally qualified HMRC staff can claim costs in the normal way and litigants in person can claim fixed costs. So HMRC are treated differently from other creditors who can claim costs as litigants in person.

13. In recent years HMRC has reduced its overall costs by issuing the great majority of its routine claims through the Claims Production Centre (CPC), although costs increase where a hearing or hearings take place. A fair proportion of HMRC claims exceed the CPC limit of £100,000 and these cases must be issued manually through the local court. The average size of HMRC claims issued through the CPC by HMRC in the last few years has been £14,000.

14. The county court has unlimited jurisdiction for debt claims and the rules for the conduct of those actions are contained in the Civil Procedure Rules 1998 (CPR). These rules are laid down by the Rules Committee and once made these rules have legislative force in their own right. The general rules about costs are covered in CPR 44. CPR 45 provides for fixed costs to be claimed by solicitors in certain types of action as an alternative to a detailed assessment. In particular, Tables 1 and 3 of CPR 45.2 and 4 set out scales of fixed costs for straightforward claims for specified amounts of money exceeding £25 up to entry of judgment

- in default
- on admission
- on part admission
- summarily
- following strike out of the defence

15. CPR 45.3 limits the defendant's liability for costs where the claim, including fixed costs, is paid within 14 days of service of the claim.

### **Basis for calculation of HMRC scales**

16. The award of costs is intended to reimburse HMRC for some of the work done in successful litigation cases in a straightforward and simple way.

17. HMRC is seeking to charge a scale of fixed costs that reflects that set out in Tables 1 and 3 of CPR 45.2 and 4 and, for higher value claims, Table A, previously found at CPR 45.5.3.

18. HMRC's staff and other internal costs are broadly the same throughout England and Wales. The aim is that, unless the court orders otherwise, fixed costs should be awarded based on the total value of HMRC's claim for unpaid debt once judgment is entered. Since routine cases taken in the county court are undertaken by officers who are not legally qualified costs are lower than would be appropriate for solicitors.

19. The scale of costs that we propose is based on two thirds of the fixed costs that can be claimed by solicitors as set out in the tables at CPR 45 cited above. Given that these scales do not, on their own, adequately reflect the nature and scale of the debts claimed by HMRC, we have also adapted the scale at CPR 45.5.3 as set out in the White Book for 2009. These are the costs compiled independently by the Senior Queen's Bench Master and the Chief Chancery Master for claims in the High Court.

20. HMRC does not propose to seek miscellaneous fixed costs or enforcement costs, nor costs for attending hearings. The costs HMRC seek would be added at two stages: on issue of the claim; and on entry (or application of entry) of judgment.

21. In summary a uniform scale of costs for all cases in England and Wales will ensure that:

- taxpayers pay broadly the same amount wherever they live;
- they pay an amount that is closer to what would be paid in an action brought by any other creditor
- the costs recoverable reflect the cost to HMRC of taking county court action

22. HMRC will not retain the costs awarded under this policy. The money will be paid to the Exchequer as set out in Consolidated Budgeting Guidance.

### Options considered

23. Following earlier consultation a range of options were considered internally for the costs structure. These included:

- replicating the current fixed costs for solicitors as set in CPR 45
- charging a percentage of the amount claimed
- basing the scale on work done

24. Taking account of the earlier consultation responses in considering these options HMRC discounted the above for a variety of reasons, but in particular because they led to disproportionately high costs. For example, a percentage of the amount claimed, even if the charge were only 0.5 per cent, on a tax claim for £1million would lead to commencement costs of £5,000. Other reasons included the fact that they may:

- present difficulties in calculating and accounting for small amounts
- place an additional administrative burden on all those involved
- not be readily understood
- discourage taxpayers who feel they have a genuine grievance and wish to defend an HMRC court action

25. We are now consulting on a scale based on two thirds of the solicitors fixed costs. Arriving at the suggested scale was not a precise exercise but it has been underpinned by the responses received to the previous consultations and the general principles of providing a balanced and effective framework for tax administration. HMRC has taken account of the fact that although officers are not legally qualified, they perform the functions of a legal representative or paralegal, including representing HMRC at hearings. HMRC has also sought a scale that is reasonable, yet provides a measure of recompense for work done across all the cases HMRC pursues through the courts. HMRC is not seeking to be treated more generously than litigants in person, who may in certain circumstances claim two thirds of the costs claimed by solicitors. HMRC's view is that a fixed scale, calculated by applying a discount to the fixed scale for solicitors, delivers this.

26. Claiming fixed costs will be at HMRC's option and will not change the current arrangements for recovery of costs by HMRC's legally qualified staff or paralegals. Costs in defended cases are awarded at the court's discretion and depend on the extent and complexity of the work done.

### Proposed scale

27. The following tables set out the proposed scale fees that HMRC will charge on commencement of a claim and where the entry of judgement is in HMRC's favour. We welcome comments on these.

### On commencement of a claim in the county court:

Where the value of the claim	Fixed costs
- exceeds £25 but does not exceed £500	£33
- exceeds £500 but does not exceed £1,000	£47
- exceeds £1,000 but does not exceed £5,000	£53
- exceeds £5,000 but does not exceed £15,000	£67

- exceeds £15,000 but does not exceed £50,000	£90
- exceeds £50,000 but does not exceed £100,000	£113
- exceeds £100,000 but does not exceed £150,000	£127
- exceeds £150,000 but does not exceed £200,000	£140
- exceeds £200,000 but does not exceed £250,000	£153
- exceeds £250,000 but does not exceed £300,000	£167
- exceeds £300,000	£180

**On entry of judgment in HMRC’s favour:**

The values are two thirds of the costs at Table 3, CPR45.4, for entry of judgment in default of an acknowledgment of service under rule 12.4(1):

Where the value of the claim	Fixed costs
- does not exceed £5,000	£15
- exceeds £5,000	£20

**Next steps**

28. Taking account of responses to this paper, HMRC intend to seek an amendment by the Rules Committee to the Civil Procedure Rules to provide for a simple and transparent scale of fixed costs in respect of the issue of proceedings and entry of judgment for successful claims by officers in county court debt actions. The intention is to begin claiming these costs from April 2011.

## Annex A

### Excerpts from previous consultations on 'award of costs in debt litigation' and the responses to those consultations

#### 25 June 2007 consultation: Payments, Repayments and Debt: The Developing Programme of Work (page 26)

##### Award of costs in debt litigation

5.31 It can be cheaper to owe money to HMRC than to a commercial creditor, giving scope for taxpayers to pay other debts before tax debts and so putting HMRC (and the compliant taxpayer) at a disadvantage.

5.32 When a creditor takes legal action through a solicitor, the legal costs for actions in England and Wales will be included in the claim together with the court fees. There are scales of fixed costs, which are incremental and depend on the action taken and the value of the claim. Creditors who represent themselves can claim capped costs at two thirds the solicitor's level (although disbursements including expert fees and Counsel's fees can be recovered in full). However an officer of HMRC, if successful, cannot claim costs and can only recover the court fees. In Scotland, an officer of HMRC can recover expenses if successful in Sheriff Court proceedings.

5.33 One option would be to allow HMRC, if judgment is obtained following a court action for unpaid debt, to claim simple fixed costs. These would relate to the work done up to the time judgment is given. The costs of enforcing the judgment would be a separate matter.

We welcome views on whether HMRC should be awarded costs and in particular on the following questions:

- Should HMRC be awarded costs where it receives judgment in court when taking action for unpaid debt?
- At what level do you think that the costs should be set?

#### 10 January 2008: Summary of Responses: Payments, Repayments and Debt (pages 10 and 11)

##### A10. Award of costs in debt litigation

A10.1. The document asked whether HMRC should be awarded costs where it receives judgment in court when taking action for unpaid debt. There was support for HMRC claiming costs for judgments obtained from the court in respect of real debts. It was suggested that HMRC should claim its costs which, for the sake of simplicity, could be determined by reference to a sliding scale depending upon the amount of the debt. However some said that the costs are already covered by the State and that there is no symmetrical treatment for the taxpayer.

A10.2. Other issues raised were that adding court costs to a debt simply adds to an individual's indebtedness. It would not be appropriate for HMRC to be awarded costs where the taxpayer is in hardship or for tax credit overpayments.

A10.3. The consensus was that the additional costs HMRC can claim should probably be fairly minimal, but enough to cover those costs reasonably and genuinely incurred during the process of lodging the claim with the exclusion of any HMRC wage costs. HMRC should be entitled to recover the same costs in litigation as are available to all other creditors applying to the Courts.

A10.4. HMRC is looking further at this idea in the light of the responses received.

#### 24 November 2008 consultation: Payments, Repayments and Debt: The Next Stage (pages 23 - 25)

## **Award of costs in successful court actions: a level playing field**

- 5.12 Court action is a last resort for HMRC. It is in no sense a matter of routine and HMRC does not knowingly take people to court where it is satisfied that they are unable to pay.
- 5.13 In the commercial world, a creditor is entitled to include both court fees and legal costs in his claim against the debtor under the CPR in England and Wales and equivalent rules in the rest of the UK. These are awarded when the creditor successfully obtains judgment. Two scales of legal costs are applicable, one for solicitors and one for litigants in person capped at two thirds the solicitors' level.
- 5.14 Currently, in England and Wales, HMRC cannot normally claim costs on either scale because most officers of HMRC are normally neither solicitors nor paralegals, and nor are they litigants in person. In practice it is cheaper, for the defaulting taxpayer, to be sued by HMRC than by other creditors. As a delaying tactic, others deliberately wait to be taken to court before paying knowing they only face the court fees. Some debtors see these as further reasons to leave tax debts unpaid.
- 5.15 In Northern Ireland the position is the same as in England and Wales, and an officer cannot claim costs as a solicitor or as a litigant in person.
- 5.16 Officers of HMRC in Scotland can claim up to two thirds of the expenses which a solicitor might claim. The entitlement to two thirds is not mandatory and various circumstances such as the nature, time, earnings lost and complexity have to be considered. Unlike in England and Wales and Northern Ireland, entitlement to claim is not affected by whether or not officers are litigants in person for there is a statutory right for officers to be treated as such for that purpose.
- 5.17 The earlier consultation suggested that HMRC should be entitled to recover costs when it is successful in obtaining judgment. This suggestion found broad support in consultation because it levelled the playing field between HMRC and other creditors, although the point was made that adding court costs to a debt simply adds to an individual's indebtedness.
- 5.18 HMRC proposes to proceed with this suggestion and to align its position with those other creditors, on a scale of fixed costs based on the value of our claim.

### **What charges would apply?**

- 5.19 The scale of fixed solicitors' charges that apply in England and Wales under CPR are set by the Rules Committee and Ministry of Justice. Under these rules two different sets of fixed Solicitors' costs apply, one for claims for money in the County Court up to £15,000 and the other for High Court claims of £15,000 and above. Further fixed costs are added when judgment is entered.
- 5.20 HMRC's staff and other internal costs are broadly the same throughout the UK. As far as possible HMRC would want a uniform scale of costs to apply across the UK but we recognise that separate legislative procedures apply in Scotland and may have to apply in Northern Ireland.
- 5.21 Similarly, the award of court costs would be intended to reimburse HMRC for some of the work done in successful civil action taken in the courts in a straightforward and simple way.
- 5.22 Most claims for sums of money in the county court are under £1,000, but HMRC claims can often exceed £1m and the average claim for tax in recent years has run at about £14,000.
- 5.23 HMRC therefore propose that the fees it might seek should be based on or tied to the current scales already in place in the county court and High court to recognise the higher value of HMRC claims. Doing so would mean that the present costs, and any future changes, are independent from HMRC.
- 5.24 HMRC's claims for fixed costs in England and Wales could be based on the current scales that apply (and which are shown in Annex B).

5.25 There may be instances where the claim in England and Wales is exactly £15,000 and it would be possible to claim costs for two different amounts. Although this would be expected to occur infrequently, HMRC would claim costs for the lesser of these.

5.26 HMRC is discussing with the Rules Committee to establish whether legislation will be needed to bring this into effect.

5.27 Separate discussions will be held with the authorities in Northern Ireland.

5.28 HMRC proposes no legislative change to the sheriff court in Scotland but will review how HMRC seeks its costs and its procedures.

### **Symmetry for the taxpayer**

5.29 In a very small minority of cases HMRC is not successful in securing judgment. In these cases, unless the claim has been satisfied by payment or other means such as by filing late returns, the customer has always been able to make a claim for the costs of legal representation and accountancy costs in relation to the court case. This will not change.

5.30 Questions for consultation:

- Is the suggested scale a proportionate way to achieve the desired policy?
- Is there another way of achieving the same aim?

## **April 2009: Responses to Consultations and Explanations (page 31)**

### **Award of costs in successful court actions in England and Wales**

6.24 Levelling the playing field to allow HMRC to apply for the court costs of non-legally qualified HMRC officers found support, qualified by concerns about adding debt to irrecoverable debt and avenues for redress in the case of mistakes. Linking HMRC's costs to an independent and published scale was seen as reassuring.

**'The discussion about costs is reasonable and really hard to resist.'**

6.25 HMRC intends to continue discussions with the Ministry of Justice and others to see how this should be implemented.

## **Annex B**

### **Respondents to public consultations**

Institute of Directors

TaxAid

Low Incomes Tax Reform Group

Civil Court Users Association

Chartered Institute of Taxation

Professional Contractors Group

AstraZeneca

Association of Accounting Technicians

Association of International Accountants

KPMG

Federation of Small Businesses

Institute of Chartered Accountants in England and Wales

VAT Practitioners Group