

LOW INCOMES TAX REFORM GROUP

Scale of costs in successful court actions for debt in England and Wales Response to HMRC technical discussion paper

1. About us and overall summary

1.1. *About us*

1.2. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

1.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

1.4. *Overall summary of our views*

1.5. In general, we think that the proposals are fair but would emphasise that HMRC **must**:

- exercise discretion in claiming costs;
- give clear information to debtors if the costs are likely to be other than scale charges;
- tell debtors if they have any legal rights to challenge an award of costs, particularly if they are based upon time spent by HMRC's solicitors and other legal staff.

2. Our response

2.1. For context, we refer back to the comments we made in our response to the last consultation on the subject of court costs¹. In brief, we said that:

- we do not object to the principle of costs being sought (particularly in cases where taxpayers refuse to pay and the debt is high); but
- we do not support HMRC seeking costs from people who are already unable to settle their debts as such action would simply increase their overall indebtedness to no purpose.

2.2. As HMRC have now decided to go ahead with proposals to seek costs, we would therefore like to ensure that discretion of when to ask for costs (and equally when not to do so) is retained. Yet the discussion paper, para 18 suggests an automatic approach:

‘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.’

2.3. Furthermore, para 26 indicates that HMRC will retain the ability to depart from the fixed costs scale so that in cases where legally qualified staff or paralegals are used, costs may be claimed with reference to the extent and complexity of the work done (though the award of costs will be at the court’s discretion). How would the debtor know whether their case is being handled by such staff and therefore whether they could face costs based upon the fixed scale or otherwise?

2.4. Whilst we understand from HMRC that legal staff would be used in debt recovery cases only in exceptional circumstances, it is important to understand what these circumstances are. If it is, for example, in the context of a lead case which involves an important point of law or principle, the outcome of which may affect other taxpayers in a similar situation, why should the debtor in the ‘lead’ case face possible higher costs in the event that they lose?

2.5. We therefore consider it important that:

- HMRC guidance on when to use legal staff is published, and the guidance should include the requirement to consider the effect upon the defendant of a potential claim for legal costs (for example, in a test case as noted above).
- The debtor is made aware at the earliest opportunity if HMRC’s eventual claim for costs is likely to be more than the fixed costs stated on the county court claim form.
- The debtor is advised of any legal right they might have to challenge the amount of costs awarded where the fixed scale is departed from.

2.6. In terms of protection for vulnerable taxpayers, the discussion paper does not discuss whether HMRC would exercise discretion as to whether or not to seek costs

¹ See our response to ‘Payments, repayments and debt – the next stage’, 9 February 2009 (para 5.2.1ff)
http://www.litrg.org.uk/uploadedfiles/document/1_642_LITRG_Payments_Repayments_and_Debt.pdf

at all. Our understanding is that in legal terms, HMRC will have the right to claim costs but the choice as to whether they do so. However, the paper indicates that claims would be made automatically. But we suggest that HMRC should not normally seek costs:

- from those who it transpires genuinely can't pay;
- in tax credit overpayment cases;
- where to do so would result in the debtor's overall indebtedness being out of proportion with the size of the original debt.

2.7. As regards the final point, we are thinking particularly of where the original debt is small – under £500 – in which case applying costs according to the scale could increase the debt by more than 100% in some cases. On the whole we think the scale charge is acceptable, but HMRC should bear in mind the disproportionate effect of costs for small debts when they are deciding whether to seek costs in 'can't pay' cases.

2.8. Para 3 of the discussion paper says: *'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'*. This tends to suggest that court costs might be used as a threat to debtors. This would not be an appropriate approach for HMRC to adopt, particularly not in the genuine 'can't pay' cases.

LITRG
23 September 2010