ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: GOVERNMENT AMENDMENTS FOR COMMONS REPORT STAGE

I am writing to you following the arrival of the Anti-social behaviour, Crime and Policing Bill arriving in the Lords last week. I wanted, in particular, to explain our approach on court and tribunal fees following the tabling of a new clause on this issue for Commons Report. A copy of the new clause is attached, as you will see it provides the Lord Chancellor with additional powers to prescribe fees for courts, tribunals and the Public Guardian.

When the Bill was introduced in May we made it clear that what is now clause 147 of the Bill was a placeholder clause enabling the Lord Chancellor to make provision for fees in respect of courts and tribunals. We are now in a position to bring forward the substantive provision.

The normal principle, as set out in Managing Public Money, is that public bodies which charge users for the services they provide should set fees at a level to recover the full costs of providing the service. However, as the Government made clear in the Explanatory Notes to the Bill, we are considering the case for charging for certain services at a level which exceeds the costs to which those activities relate ("enhanced fees").

The new clause provides the Lord Chancellor with a power to set fees above cost when exercising his existing powers under:

1. section 92 of the Courts Act 2003 (which relates to fees payable in respect of proceedings in the Senior courts, county courts and magistrates' courts);

2. section 42 of the Tribunals, Courts and Enforcement Act 2007 (tribunal fees); and

3. sections 54 and 58 of the Mental Capacity Act 2005 (Court of Protection and Public Guardian fees).

The purpose of charging enhanced fees is to ensure that access to justice is maintained by making provision for the financing of an effective court and tribunal service and the Office of the Public Guardian.

The Government’s primary focus is the resourcing of the courts in England and Wales. The courts fulfil a critical role in a fair and just society, providing access to justice for those who need it. They deal with those charged with criminal offences, proceedings involving children at risk of harm, and help to ensure the proper functioning of society and the economy. To ensure the proper functioning of the courts, and that access to justice is maintained, it is essential that the courts are adequately resourced.

Deficit reduction is the Government’s key priority and this needs to be delivered while public expenditure is reduced. The court service, and those who use it, has a contribution to make.

The courts have already taken steps to reduce their spending. Since 2010, we have

- closed over 140 under utilised courts;
- reduced staff by over 3,500 through organisational restructuring; and
- centralised services to reduce costs.

There is, however, a limit to how much more we can achieve through cost cutting alone. In these circumstances, we think it is right that those who use these services should make a greater contribution to their cost, where they can afford to do so. This new clause will provide the Lord Chancellor with the power to achieve this, thereby reducing the cost of the service to the taxpayer. A scheme of fee remissions will continue to be available for those who qualify, so that those who cannot afford to pay the fee are not denied access to justice.

I recognise that there may be concerns about access to justice and in particular about taking a general power to charge higher fees without setting out the detail of how we propose to use it. The reason is that we have not yet decided, and we want to consult widely to ensure that fees are set at the right level.

There are also a number of safeguards in place to ensure that fees are not set at an excessive level:

- the Lord Chancellor is under an existing duty (section 92(3) of the Courts Act 2003) when setting fees to have regard to the to the principle that access to the courts must not be denied;

- as the new clause sets out, enhanced fees set under this power can only be brought forward with the agreement of the Treasury;
• in setting enhanced fees, the Lord Chancellor is required to have regard to the overall financial position of the courts and to maintaining the attractiveness of the legal services sector when compared with competitors;

• specific enhanced fees will be introduced by regulation, following Royal Assent. On the first occasion that an enhanced fee is introduced, the regulations are subject to the affirmative resolution procedure and will therefore be subject to a full debate in both Houses;

• a system of fee remissions is available for those who qualify, to ensure that those who cannot afford the fee are not denied access to justice. Legal aid is also available to those who qualify for certain civil and family proceedings, including in family proceedings where domestic violence is demonstrated. In those cases the court fee is borne is borne by the legal aid fund; and

• before bringing forward regulations, the Government will consult widely on our detailed proposals for charging enhanced fees. Our plan is to publish the consultation before the clause is considered at Lords Committee.

I would, of course, be happy to meet the Committee to discuss our approach in more detail if that would assist.

I recognise that the Committee will in the normal way want to scrutinise the whole Bill and Lord Taylor and I of course stand ready to answer any queries the Committee may have on other aspects of the Bill.

I am copying this letter to Lord Taylor of Holbeach.

Yours Sincerely,

TOM MCNALLY