

# Equality Impact Assessment Initial Screening

## 1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

The MoJ proposes to bring in increases to court fees, and introduce several new fees, in the High Court and the Court of Appeal Civil Division.

## 2. Individual officer(s) & unit responsible for completing the Equality Impact Assessment:

Kit Collingwood - Civil & Family Fees Policy

## 3. Aims and objectives

What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
1. To bring in additional court fee income into HMCTS in order to reduce the taxpayer subsidy of the courts service, without adversely affecting those who cannot afford court fees access to justice by continuing to provide the fee remission scheme.	1. Increases to select fees in the High Court and Court of Appeal Civil Division. 2. Introduction of several new fees in the High Court and Court of Appeal Civil Division. 3. Deliver income requirements for MoJ for 2011/12 and beyond.

## 4. Context

In 2010/11 the total cost of the civil and family courts and the probate service was £613m and gross fee income (i.e., including remitted fees) was £492m in nominal terms, amounting to a shortfall of £121m. Since the 2007 Spending Review settlement, the Ministry of Justice's departmental policy has been to remove any outstanding subsidy to the civil and family courts by the taxpayer, except for the cost of providing the fee remissions scheme<sup>1</sup>. Although progress has been made towards this policy goal, the taxpayer continues to subsidise fee-paying users of the civil and family courts in England & Wales.

The policy objective of these changes is to bring the MoJ closer to this aim by increasing some civil fees, and introducing some new civil fees, in the High Court and Court of Appeal Civil Division and by introducing time-related hearing fees in the High Court and Court of Appeal Civil Division. The intended effect of these proposals is to completely transfer the cost of providing these services from the taxpayer to the user while protecting access to justice for those on lower incomes.

To achieve full cost recovery in the civil and family courts and the probate service, fees should be set to reflect the total costs of services provided. Failure to reduce the income shortfall could result in a reduced level of service provision, given the limits on the available level of subsidy from the Exchequer.

The High Court of England & Wales deals at first instance with the highest value and most complex civil court cases, and also hears appeals from the lower civil courts and some (but not all) tribunals. The High Court is based at the Royal Courts of Justice in London, but also has a number of District Registries around England and Wales which can hear almost all High Court cases. These proposals apply to the High Court including the District Registries.

The Court of Appeal Civil Division in England and Wales hears appeals from the three divisions of the High Court (Chancery, Queen's Bench and Family Division); from the county courts across England and Wales; from certain Tribunals such as the Employment Appeal Tribunal, the Immigration & Asylum Chamber, the Lands Tribunal and the Social Security Commissioners. The Court of Appeal is the highest

<sup>1</sup> The remissions system provides fee waivers or discounts for those on lower incomes

court within the Senior Courts of England and Wales, which also includes the High Court and Crown Court.

This equality impact assessment initial screening accompanies a consultation paper on changing the fee structure in the civil jurisdictions of the High Court in England & Wales and Court of Appeal civil division. This consultation paper will seek to gain views and further evidence around the proposals included. The consultation period will be used to fill any evidence gaps, where applicable.

## 5. Data sources and analysis

Users of the High Court and Court of Appeal who have to pay court fees, as with the lower civil courts, are not required to provide personal information about themselves; as such, MoJ/HMCTS have limited data on the characteristics of people who pay court fees.

### Legal types of cases affected

Due to the wide variety of fees included in these proposals, the types of case affected will also vary. In particular, both issue fees and hearing fees are applicable to any general claim issued in the High Court, and appeal fees are applicable to every type of appeal. However, in some specific cases we can ascertain more information about the impact on protected groups by type of case:

#### **Appeals in the Court of Appeal**

Of 1,180 appeals in the Court of Appeal Civil Division in 2010, 302 originated in the Immigration and Asylum Tribunal<sup>2</sup>. It is likely that these cases involved an applicant from a minority ethnic group; this equals 26% of all appeals in this court. This could indicate a potential adverse impact in relation to ethnicity for increases to appeal fees.

#### **Judicial review in the High Court**

Of 10,548 judicial review applications received by the Administrative Court of the High Court in 2010, 8,122 concerned immigration or asylum issues; this represents 77% of the total<sup>2</sup>. It is likely that these cases involved an applicant from a minority ethnic group; this could indicate an equality impact in relation to ethnicity for increases to judicial review fees.

#### **Applications for urgent hearings in the High Court**

Based on accounts given by High Court staff, a substantial proportion of urgent applications in the High Court concern deportation proceedings, which are likely to involve an applicant of minority ethnic origin. While we can't quantify this number as urgent applications are not currently subject to separate fees, it is possible that there could be an equality impact in relation to ethnicity for this proposal.

#### **Length of hearing versus type of case in the High Court**

While any type of case can theoretically last any length of time, based on accounts from High Court staff we understand it is more likely that the longest hearings will relate to commercial rather than individual litigation. For this reason we expect that the highest fees within the time-related hearing model are unlikely to have an equality impact. However, we would welcome any views or evidence to challenge this expectation from any individual or group.

**We would be grateful for any additional information on the impact of these proposals on protected groups if new or increased fees were introduced for specific types of case. We invite responses from individuals, groups or organisations regarding any likely adverse equality impacts resulting from the introduction of new or increased fees, as well as feedback on measures that could be taken to mitigate those impacts.**

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<sup>2</sup> Source: Ministry of Justice Judicial and Court statistics 2010 ch. 7 <http://www.justice.gov.uk/downloads/publications/statistics-and-data/courts-and-sentencing/appellate-courts-tables-chp7-2010.xls>

## Income of the general population by protected characteristics

Due to the nature of the proposals included in this consultation, any impact on different groups will primarily be financial. Data on the general demographics and income of the population of England and Wales from The Department for Work and Pensions<sup>3</sup> has enabled an assessment of the potential impact of the proposals on different groups. We are aware that the demographics of the general population could differ from those who pay High Court and Court of Appeal fees; further information on demographics of users of these courts will be gathered at consultation stage as outlined above.

It is clear that there is income disparity between different parts of the population. The research above gives us an indication of the groups that, due to their lower average incomes, may be disproportionately affected in general by any court fee increases. Initial findings are that the following factors may be important:

### **Ethnic origin**

Those in households where the head of the household is from a minority ethnic group are more likely to have disposable incomes in the bottom two quintiles: this percentage stands at 55% for black/black British groups, 57% for Asian or Asian British and 50% of Chinese, versus 37% of the working population overall and versus 34% of the white population.

However, for any increase to fees, the fee remission scheme (described below) is available to all those who have a low income or are in receipt of state benefits. For this reason we don't anticipate the proposals to have any equality impacts on the lowest income groups; however, we will use the consultation period to gather further evidence which will help to inform the final EIA.

For this reason there is a possibility that the proposed changes would in fact have a larger impact on those on middle incomes, who would not be eligible for a fee remission. Among this group the following factor may be important:

### **Age**

The research above indicates that 24% of individuals in households with children where the head of the household is aged 30-34 years old, and 21% of those in households without children where the head of the household is aged 20-29 years old, are in the middle quintile for disposable income versus 19% of the working population as a whole. Pensioners are also more likely to have a disposable income in this quintile: 23% versus 19% of the working adult population.

### **Disability**

Although the general disabled population is similarly likely to have a disposable income in the middle quintile as the general adult population, 27% of disabled pensioners in particular have disposable incomes in this quintile versus 20% of the adult population and 23% of pensioners in general.

**We would be grateful for feedback on likely equality impacts of the new and increased fees on both low and middle income groups. We would also welcome feedback on the likely equality impact of any of the new court fee or increases to existing fees on protected groups within society.**

## **6. Mitigating measures**

The Government's policy is that court fees should be paid by the users of the service and not by the taxpayer. However, in recognition of the fact that some applicants on low incomes would have difficulty paying court fees, a system of fee remissions is in place within HMCTS. The purpose of the remission system is to ensure that people of limited means are not denied access to the civil and family courts and probate services if they genuinely can't afford to pay a fee. The remission system allows people on low incomes to access HMCTS services free of charge or at a reduced rate. The remission system is funded by the taxpayer.

The remissions system is made up of three elements, aimed at different groups:

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<sup>3</sup> Source: Households Below Average Income (HBAI) 1994/95-2009/10  
[http://research.dwp.gov.uk/asd/index.php?page=hbai\\_arc](http://research.dwp.gov.uk/asd/index.php?page=hbai_arc)

- **Remission 1** – A full fee remission for an individual in receipt of one of the following benefits:- Income Support, income-based Jobseekers Allowance, Pension Credit guarantee credit, income-related Employment and Support Allowance and Working Tax Credit (but not also receiving Child Tax Credit).
- **Remission 2** – A full fee remission for an individual or couple based on a means test to calculate gross annual income. Gross annual income not exceeding the stated threshold amounts will receive a full fee remission:

**Table 1: gross annual income thresholds for remission 2**

Number of children of party paying fee	Single	Couple
No children	£13,000*	£18,000*
1 child	£15,930	£20,930
2 children	£18,860	£23,890
If the party paying the fee has more than two children then the relevant amount of gross annual income is the amount specified in the table for two children plus the sum of £2,930* for each additional child		

\*The amounts contained in this table for an individual (and couple) are based on the Working Tax Credit thresholds set out by HM Revenue and Customs. The single child amount is based on the amount provided by Income Support for a dependant child.

- **Remission 3** - A full or partial fee remission for an individual based on an income and expenditure means test to calculate the individual's (and if applicable their partner's) monthly disposable income<sup>4</sup>:
  - No fee payable if monthly disposable income is £50 or less;
  - If monthly disposable income is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's monthly disposable monthly income up to a maximum of £50;
  - If monthly disposable income is more than £250, an amount equal to £50 plus one-half of every £10 over £200 of the party's monthly disposable income

There are also three fixed allowances permitted as part of the means test for Remission 3:

**Table 2: fixed allowances in remission 3**

Partner	£159* a month
Dependent children	£244* a month per child
General living expenses	£315* a month

\*The amounts contained in this table for an individual (and couple) are based on the 'Monthly Disposable Income' bands which are used by the Legal Services Commission to calculate how much someone would pay towards their case when assessing Legal Aid.

This system aims to protect access to justice for the most vulnerable applicants, and will mitigate the impact of any changes on those with the lowest incomes

## 7. Data gaps

As with the rest of the courts service, users of the higher civil courts who have to pay court fees are not required to provide personal information about themselves; as such, MoJ/HMCTS have limited data on the type of people who pay court fees.

In order to fill this gap in information, we propose to gather information at consultation stage which will tell us more about the effect of these proposals on different groups. Our equality stakeholders will be:

- Disability interest groups
- Minority ethnic interest groups

<sup>4</sup> Monthly household disposable income is defined as net monthly income (after deduction of tax, national insurance contributions and student loan payments) minus fixed allowances (depending on whether the party has a partner and the number of children they have- see table 2 above ), housing costs, childcare expenses, child maintenance expenses and payments under a court order

- Solicitors and other legal representatives who work specifically with protected groups
- Civil court user groups

A copy of the consultation paper will be specifically sent to these groups at publication stage, and their responses sought. We will also cascade information on the consultation on minority group and disability forums in order to reach the widest possible audience. We will be holding a series of focus groups with court users during the period, which will include representatives from minority groups.

In general, court user feedback will be monitored through treat officials, ministerial correspondence and parliamentary questions. HMCTS Civil and Family Operations also provide Civil and Family Fees Policy with feedback from the queries they have received from court staff and users. Fee income levels are also monitored at regular intervals throughout the year to assess whether there are any changes in case levels that would warrant further investigation.

### 8. Name of Senior Manager and date approved

Name (must be grade 5 or above): Osama Rahman
Department: Chief Economist
Date: 05 August 2011
Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. <b>If a full EIA is not required send the initial screening by email to the Equality, Diversity and Human Rights Division for publication</b>