

Title: Increases to civil court fees at the High Court and Court of Appeal Civil Division Lead department or agency: Ministry of Justice Other departments or agencies: Her Majesty's Courts & Tribunals Service	Impact Assessment (IA)
	IA No: MOJ 098
	Date: September 2011
	Stage: Consultation
	Source intervention: Domestic
	Contact for enquiries: Kit Collingwood 0203 334 5589

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary? <p>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, excluding the costs of fee remissions (discounts for those on lower incomes funded by the taxpayer). In 2010/11 the total costs of the civil and family courts and the probate service were £613m and gross fee income (i.e., including remitted fees) was £492m in nominal terms, amounting to a shortfall of £121m. 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.</p>	
What are the policy objectives and the intended effects? <p>The Ministry of Justice's (MoJ) long-term aim is that fees in HM Courts & Tribunals Service (HMCTS) reflect the full cost of the services provided, as set out in the Comprehensive Spending Review settlement for 2010, while protecting access to justice for those on lower incomes. 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.</p> <p>The intended effect of these proposals is to ensure that court users contribute more towards the cost of these services.</p>	
What policy options have been considered? Please justify preferred option (further details in Evidence Base) <p>Option 0 – Do nothing: retain current fee levels for all civil fees in the High Court and Court of Appeal Civil Division Option 1 – Increase certain civil court fees at the High Court and Court of Appeal Civil Division Option 2 – Introduce banded time-related hearing fees at the High Court and Court of Appeal Civil Division Option 3 – Do both Options 1 and 2</p> <p>Option 3 is the preferred option as it is likely to go furthest to reducing the current level of taxpayer subsidy to the courts service.</p> <p>These proposals are not within scope of "One In, One Out" because they relate to improving the cost recovery rate of an existing service.</p>	
When will the policy be reviewed to establish the actual cost and benefits and the achievements of the policy objectives?	Ongoing monitoring
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:..... Date:.....

Summary: Analysis and Evidence

Policy Option 1

Description: Increase some fees and introduce fees where no fee is currently charged in the civil jurisdictions of the High Court and Court of Appeal

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
2011/12	2011/12	10			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Cost (nearest £5m) (Present Value)
Low	N/A	10	80
High	N/A	11	85
Best Estimate	Negligible	11	80

Description and scale of key monetised costs by 'main affected groups'

Transition costs including costs of minor adjustments to court IT systems and reissuing forms and guidance, expected to be under £0.5m.

The additional cost to court users in the High Court and Court of Appeal Civil Division is estimated as £10-11m in the next financial year. These users include individuals, private companies, public sector and non-profit organisations (both claimants and defendants).

Other key non-monetised costs by 'main affected groups'

There may be a minimal administrative burden of HMCTS staff familiarising themselves with the increased fees. There may be costs to legal professionals who represent clients at the High Court or Court of Appeal, if case volumes decrease. There should be minimal impact on the legal aid budget.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Benefit (nearest £5m) (Present Value)
Low	0	10	80
High	0	11	85
Best Estimate	0	11	80

Description and scale of key monetised benefits by 'main affected groups'

HMCTS fee income is expected to increase by £10-11m annually as a result of these increases. Taxpayers benefit by this amount, as this represents a decreased burden on the taxpayer to fund the civil courts.

Other key non-monetised benefits by 'main affected groups'

A reduction in the "deadweight loss to society" caused by a reduction in the amount of UK taxpayer subsidy.

Key assumptions/sensitivities/risks

As many of these services have not previously been charged for, we have been unable to use a range of price elasticities of demand to ascertain the impact on volumes and fee income. We have used stylised scenarios of a 1% and 5% reduction in fee volumes against those fees that may be affected by the proposed fee increases, to calculate fee income. The baseline volumes are also uncertain as we do not currently charge fees for certain services – there is a considerable risk that realised fee income may fall outside of the specified range.

Direct impact on business (Equivalent Annual) £m			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefit: N/Q	Net: N/Q	No	N/A

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce banded time-related hearing fees at the High Court and Court of Appeal, based on the parties' expected hearing length

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
2011/12	2011/12	10			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Cost (nearest £5m) (Present Value)
Low	N/A	3	20
High	N/A	4	30
Best Estimate	Negligible	3	25

Description and scale of key monetised costs by 'main affected groups'

Transition costs projected are: costs of reissuing forms and guidance and changes to IT systems, expected to be under £0.5m.

The additional cost to court users in the High Court and Court of Appeal is estimated as £3-4m in the next financial year. These users include individuals, private companies and public sector and non-profit organisations (both claimants and defendants).

Other key non-monetised costs by 'main affected groups'

There may be an administrative burden as staff familiarise themselves with an altered fee-taking regime. There may be costs to legal professionals who represent clients at the High Court or Court of Appeal, if case volumes decrease. There should be minimal impact on the legal aid budget.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Benefit (nearest £5m) (Present Value)
Low	0	3	20
High	0	4	30
Best Estimate	0	3	25

Description and scale of key monetised benefits by 'main affected groups'

HMCTS fee income is expected to increase by £3-4m annually as a result of these increases. Taxpayers benefit by the same amount, as this represents a decreased burden on the taxpayer to fund the civil courts.

Other key non-monetised benefits by 'main affected groups'

A reduction in the "deadweight loss to society" caused by a reduction in the amount of UK taxpayer subsidy.

Key assumptions/sensitivities/risks

As many of these services have not previously been charged for, we have been unable to use a range of price elasticities of demand to ascertain the impact on volumes and fee income. We have used stylised scenarios of a 1% and 5% reduction in fee volumes to calculate fee income. The baseline volumes are also uncertain as we do not currently charge fees for certain services – there is a considerable risk that realised fee income may fall outside of the specified range.

Direct impact on business (Equivalent Annual)			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefit: N/Q	Net: N/Q	No	N/A

Summary: Analysis and Evidence

Policy Option 3

Description: Do both: increase certain civil court fees at the High Court and Court of Appeal and introduce time-related hearing fees at the High Court and Court of Appeal

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
2011/12	2011/12	10			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Cost (nearest £5m) (Present Value)
Low	N/A	12	90
High	N/A	14	105
Best Estimate	Negligible	13	100

Description and scale of key monetised costs by 'main affected groups'

Transition costs projected are: costs of reissuing forms and guidance, expected to be no more than and changes to IT systems, expected to be no more than £0.3m.

The additional cost to court users in the High Court and Court of Appeal Civil Division is estimated as between £12 m and £14 m in the next financial year. These users include individuals, private companies and public sector and non-profit organisations (both claimants and defendants).

Other key non-monetised costs by 'main affected groups'

There may be a minimal administrative burden of HMCTS staff familiarising themselves with the increased fees. There may be costs to legal professionals who represent clients at the High Court or Court of Appeal, if case volumes decrease. There should be minimal impact on the legal aid budget.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (nearest £1m) (excl. Transition) (Constant Price)	Total Benefit (nearest £5m) (Present Value)
Low	0	12	90
High	0	14	105
Best Estimate	0	13	100

Description and scale of key monetised benefits by 'main affected groups'

HMCTS fee income is expected to increase by between £12-14m annually as a result of these increases. Taxpayers benefit by the same amount, as this represents a decreased burden on the taxpayer to fund the civil courts.

Other key non-monetised benefits by 'main affected groups'

A reduction in the "deadweight loss to society" caused by a reduction in the amount of UK taxpayer subsidy.

Key assumptions/sensitivities/risks

As many of these services have not previously been charged for, we have been unable to use a range of price elasticities of demand to ascertain the impact on volumes and fee income. We have used stylised scenarios of a 1% and 5% reduction in fee volumes to calculate fee income. The baseline volumes are also uncertain as we do not currently charge fees for certain services – there is a considerable risk that realised fee income may fall outside of the specified range.

Direct impact on business (Equivalent Annual) £m			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefit: N/Q	Net: N/Q	No	N/A

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			April 2012		
Which organisation(s) will enforce the policy?			HMCTS		
What is the total annual cost (£m) of enforcement for these organisations?			Minimal		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/Q	Non-traded: N/Q	
Does the proposal have an impact on competition?			No		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/Q	< 20 N/Q	Small N/Q	Medium N/Q	Large N/Q
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any specific impact tests undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, click on the link for the guidance provided by the relevant department. (Double-click to open links in browser.)

	Impact	Page ref within IA
Statutory equality duties¹? Women Equality Unit: Gender Impact Assessment (PDF) Disability Rights Commission: Disability Equality Scheme Commission for Race Equality: Race equality impact assessment: a step-by-step guide	Yes	p.34
Economic impacts		
Competition? Competition Impact Assessment	No	p.34
Small firms? Small Firms Impact Test	Yes	p.34
Environmental impacts		
Carbon emissions? http://www.defra.gov.uk/environment/index.htm	No	p.35
Wider environmental issues? Guidance has been created on the Defra site	No	p.35
Social impacts		
Health and well-being? Health: Health Impact Assessment	No	p.35
Human rights? Ministry of Justice: Human Rights	No	p.35
Justice? http://www.justice.gov.uk/guidance/justice-impact-test.htm	Yes	p.35
Rural proofing? Commission for Rural Communities	No	p.35
Sustainability? Defra: Think sustainable	No	p.35

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2010, once the Equalities Bill comes into force.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Implementation).

No.	Legislation or publication
1	The Civil Proceedings Fees (Amendment) Order 2011 No.586 (L.2)
2	The Civil Proceedings Fees (Amendment) Order 2009 No.1498 (L.15)
3	The Civil Proceedings Fees (Amendment) Order 2008 No. 2853 (L.19)
4	The Civil Proceedings Fees Order 2008 No. 1053 (L.5)
5	Consultation paper – Civil Court Fees (CP 5/07) www.justice.gov.uk/docs/cp0507.pdf
6	Ministry of Justice judicial and court statistics 2009 http://www.justice.gov.uk/publications/judicialandcourtstatistics.htm

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains a saving emissions table that you will need to fill in if your measure has an impact on Carbon emissions.

Annual profile of monetised costs and benefits* - 2011/12 £m (nearest £1m)

Option 1, scenario 1 – 1% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	11	11	11	11	11	11	11	11	11
Total annual costs	Neg	11	11	11	11	11	11	11	11	11
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	11	11	11	11	11	11	11	11	11
Total annual benefits	0	11	11	11	11	11	11	11	11	11

Option 1, scenario 2 – 5% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	10	10	10	10	10	10	10	10	10
Total annual costs	Neg	10	10	10	10	10	10	10	10	10
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	10	10	10	10	10	10	10	10	10
Total annual benefits	0	10	10	10	10	10	10	10	10	10

Option 2, scenario 1 – 1% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	4	4	4	4	4	4	4	4	4
Total annual costs	neg	4	4	4	4	4	4	4	4	4
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	4	4	4	4	4	4	4	4	4
Total annual benefits	0	4	4	4	4	4	4	4	4	4

Option 2, scenario 2 – 5% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	3	3	3	3	3	3	3	3	3
Total annual costs	Neg	3	3	3	3	3	3	3	3	3
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	3	3	3	3	3	3	3	3	3
Total annual benefits	0	3	3	3	3	3	3	3	3	3

Option 3, scenario 1 – 5% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	14	14	14	14	14	14	14	14	14
Total annual costs	Neg	14	14	14	14	14	14	14	14	14
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	14	14	14	14	14	14	14	14	14
Total annual benefits	0	14	14	14	14	14	14	14	14	14

Option 3, scenario 2 – 10% change in fee volumes	2011/2	2012/3	2013/4	2014/5	2015/6	2016/7	2017/8	2018/9	2019/20	2020/21
Transition costs	Neg	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	12	12	12	12	12	12	12	12	12
Total annual costs	Neg	12	12	12	12	12	12	12	12	12
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	12	12	12	12	12	12	12	12	12
Total annual benefits	0	12	12	12	12	12	12	12	12	12

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction and background

- 1.1 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.
- 1.2 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 court within the Senior Courts of England and Wales, which also includes the High Court and Crown Court.
- 1.3 The High Court and Court of Appeal Civil Division are administered by Her Majesty's Courts & Tribunals Service ("HMCTS"). HMCTS came into being on 1 April 2011 following the integration of Her Majesty's Courts Service ("HMCS") and the Tribunals Service. HMCTS is an executive agency of the Ministry of Justice ("MoJ") which is responsible for the administration of the courts of England and Wales, the Probate Service and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.
- 1.4 Litigants² have paid a fee to make use of the civil courts in England & Wales since the 19th century. Originally user fees were paid directly to the judges of the courts, who retained them personally. With major reforms of public administration, including the establishment of the court system in broadly its modern form and the introduction of judicial salaries, fee setting powers eventually passed to the Lord Chancellor under Section 165 of the County Courts Act 1888. Hence, it has long been the case that civil justice is not publicly funded and that users must pay for the service that they use.
- 1.5 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 scheme³. 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.
- 1.6 As the long-term aim for court fees is that they should recover the full cost of providing the relevant service, minus any income foregone through fee remissions, this policy can be summarised as "full-cost pricing", rather than strict full-cost recovery. Full-cost pricing means that fees should be set at levels calculated to cover the overall cost of the system if paid in full in every case (i.e. if no fees were remitted). Full-cost pricing means that the taxpayer will continue to make a contribution to the cost of running the civil and family courts, through the fee remissions scheme.
- 1.7 Setting fees at levels that reflect the full cost of providing that service is complicated by a rapidly changing cost base within HMCTS. Over the 2011/12-14/15 Spending Review period, the volume of cases and the cost of the civil and family courts are expected to fall due to policy reasons and efficiency measures, compared to the status quo. These measures include:
 - 1.7.1. The court closures programme, through which around 150 courts throughout England and Wales will close. This is anticipated to bring savings of around £50m over the 2011/12-2014/15 spending review period.
 - 1.7.2. The promotion of alternative dispute resolution methods such as mediation, which aim to make the court the last resort for resolving disputes.
- 1.8 Due to these complexities, a move to full-cost pricing would be premature at this time – we could not risk recovering more than the cost of providing the service. For this reason, incremental moves to shift the cost of the courts service from the taxpayer to the user are the most viable option in the short term.

² A litigant is defined as a party involved in legal proceedings

³ The remissions system provides fee waivers or discounts for those on lower incomes

- 1.9 This impact assessment examines the options for reducing the current shortfall between fee income and the cost of running HMCTS through increases to fees in the High Court and in the Court of Appeal Civil Division.
- 1.10 This impact assessment 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.
- 1.11 The Ministry of Justice is committed to providing a long-term and sustainable strategy for funding the courts and probate service through user fees. The overall objectives are to ensure that the system:
- meets its financial target for cost recovery and net expenditure;
 - protects access to justice for those less well-off through a well-targeted scheme of fee remissions; and
 - remains viable when patterns of demand change, by achieving as close a match between income and costs as possible.

Problem under consideration

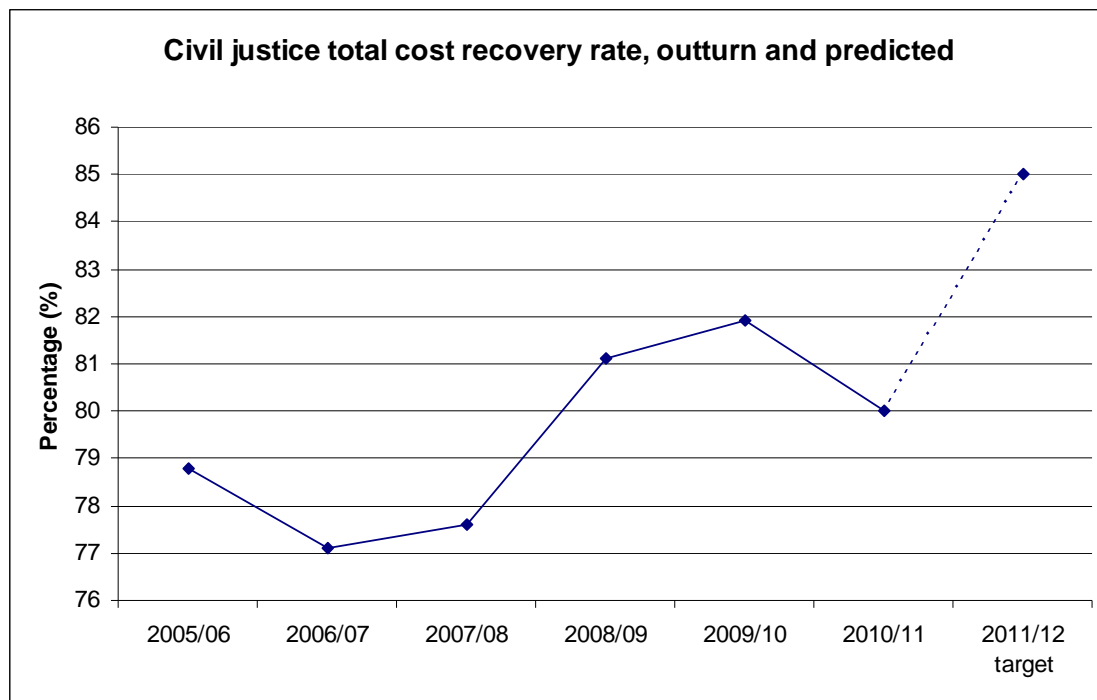
- 1.12 In 2010/11 the full cost of running the civil and family courts and probate service was £613m with an 80% cost recovery rate. Gross fee income for this period was approx £492 million in nominal prices; “gross” in this context means inclusive of the approximately £28m income which would have been recovered if all those who were given a fee remission had paid the fee. The total cost of running both the civil and family courts and probate service in England and Wales includes (but is not limited to) administrative and judicial salaries, accommodation costs, maintenance and IT costs.
- 1.13 The Ministry of Justice has a commitment to bring fee levels to 100% cost recovery by the end of the current spending review period in 2014/15, minus the cost of the remission system, but no more than 100%. This complies with HM Treasury’s guidance as set out in the document “Managing Public Money”.⁴ Chapter 6 of the document states that, except where there are strong public policy reasons, “It is government policy to charge for many publicly provided goods and services. This approach helps allocate use of goods or services in a rational way because it prevents waste through excessive or badly targeted consumption. ... The norm is to charge at full cost.” The proposals included in the accompanying consultation paper will increase the rate of cost recovery, reducing the subsidy currently provided by the taxpayer to HMCTS.
- 1.14 The overall fee income shortfall for HMCTS is calculated by taking the difference between gross fee income (as described above) and the total cost of civil, family and probate business (excluding the cost of providing the remissions system). In 2010/11 the shortfall was £121m.
- 1.15 The following graph illustrates the trend in the total cost recovery rate since the creation of HMCS in 2005/06⁵. Based on the information currently available, the graph also shows the expected cost recovery rate in 2011/12⁶. This cost recovery rate includes civil business in the magistrates’ courts (which are divided between criminal and civil work) and in the county court and High Court, as well as family and probate business. It is a gross recovery rate, i.e., it includes the income foregone or projected to be foregone to the remissions system.

⁴ www.hm-treasury.gov.uk/psr_mpm_index.htm

⁵ Her Majesty’s Courts Service (HMCTS) was established in April 2005. On 1st April 2011, HMCS merged with the Tribunals Service to form Her Majesty’s Courts & Tribunals Service (HMCTS).

⁶ Assumes (i) 2009/10 cost base; and (ii) volumes in 2010/11 will be the same as in 2011/12. Note that the Court of Protection was not part of the HMCTS cost base before 2009/10; the Court of Protection cost and income stream has therefore been included in the cost recovery rate from 2009/10 onwards.

Figure 1: HMCTS total cost recovery rate, outturn and predicted⁷



- 1.16 Progress was made in raising the total cost recovery rate between 2006/07 and 2009/10. Changes to the cost base meant that overall recovery levels dropped by 2 percentage points in 2010/11. A range of inflationary increases⁸ was introduced in April 2011; these are projected to offset this fall in the future, with the effect that recovery levels are expected to increase to 85% in 2011/12.
- 1.17 The income shortfall not recovered from fees is met by taxpayers as part of the HMCTS's budget funded through the Ministry of Justice resource budget. The taxpayer's contribution is made up of:
- potential fee income foregone through the fee remission scheme; and
 - fees which are set lower than full cost pricing levels.
- 1.18 Full cost pricing can only be achieved when HMCTS has a more detailed knowledge of its future cost base – there are a number of changes to the civil and family justice system over the next two years which will significantly affect this. These are:
- The court closures programme encompassing around 150 courts in England and Wales. It is estimated that this programme, from 2012-2013, will reduce HMCTS's running and maintenance costs by approx £50m over the 2011/12-2014/15 spending review period.
 - The Civil Justice Green Paper, published on 29 March 2011, which consults on changes to civil justice around increasing proportionality in use of the courts and streamlining processes.
 - The Family Justice Review, which published its interim report on 31 March 2011. This is aiming to improve the family justice system, with changes being implemented from 2012 onwards. The review includes a recommendation to charge private family court fees at full cost levels, which it is hoped will increase overall fee income.
 - The integration of the HMCS and the Tribunals Service into HMCTS from April 2011.
 - Proposed changes to/introduction of fees structures in various tribunals. Specifically, the Immigration and Asylum Chamber is planning to implement user fees from the end of 2011. A consultation on introducing fees for the Employment Tribunal and Employment Appeals Tribunal is planned for the second half of 2011.

⁷ HMCTS total cost recovery rate is defined as gross fee income divided by expenditure.

⁸ Fee increases intended only to adjust for the ongoing rise in the UK's general price level that occurs when annual inflation is positive.

Table 1: Proposed target fee income and expected costs for 2011/12 (rounded to nearest £1m)

Proposed 2011/12 Income and Cost Baseline	Volume of cases (000)	Gross Fees (£m)	Income foregone (remission) (£m)	Net Fees £m [Note 1]	Expenditure £m [Note 2]	Cost Recovery Rate (%)
Family	652	122	21	101	228	54%
High Court	288	33	2	31	49	67%
County	4,610	322	10	312	296	109%
Probate	408	19	0	19	15	129%
Magistrates - civil	3,487	19	0	19	20	95%
Total	9,445	515	33	482	608	85%

Figures should not be interpreted as precise and they may not sum exactly due to rounding.

Note 1: income target for 2011/12.

Note 2: uses cost outturn from 2010/11. Setting fee charges to ensure gross income matches the cost is always dependant on the cost base. Any decisions to raise fee charges will be dependant upon decisions made, during the Spending Review period, that affects the cost of the business

- 1.19 As shown in table 1 above, the High Court in England & Wales and the Court of Appeal Civil Division have a relatively low recovery rate, with the current fee structure not accurately reflecting the true cost of running the service. For 2011/12 it is projected that target gross fee income at the High Court, including District Registries and the Court of Appeal Civil Division, will be £32.7m compared to a cost of £48.5 m. The overall cost recovery rate will be approx 67%, including remitted income. This projected income gap is because the High Court tends to have lengthier hearings, and therefore higher average judicial costs than the county courts, but currently the High Court charges the same fees as the county courts.

Table 2: average hearing lengths for multi-track cases in civil jurisdictions in hours, 2009*⁹

Court	Average hearing length (hours)
County Court	3.8
High Court (sample from Queen's Bench)	19
Court of Appeal Civil Division	7.5

*calculated using a standard sitting day in court of 5 hours

- 1.20 As shown above, the average case in the High Court and Court of Appeal will spend far longer in court than the average case in the county courts system. These cases consume proportionally greater estates costs as well as judicial and administrative time. Based on a High Court judge's annual salary¹⁰, the cost of running a hearing in the High Court in 2009-2010 has been calculated at around £4,770 in 2011/12 prices¹¹. In comparison to this, there are several areas of work for which the unit cost exceeds the fee charge. Examples include:

- The fee for a hearing in the High Court is around £1,090¹². This is a one-off fee which is much lower than the unit costs of a High Court hearing (see paragraph 1.22). HMCTS is therefore under-recovering the cost of a large proportion of hearings held in the jurisdiction.
- The fee for a full appeal in the Court of Appeal is around £470. The average hearing length in the Court of Appeal is 7.5 hours, with at least one Lord Justice (and up to three) hearing in each case. The cost of providing one Lord Justice for this amount of time is around £1,430 in 2011/12 prices (in terms of judicial time only; HMCTS incurs additional costs of administrative time, shared estates costs etc). While there may be a case for saying that the lower civil courts should

⁹ Sources: Ministry of Justice Judicial and Court statistics 2009 chapters 1 & 6, and statistics from the Court of Appeal Civil Division. Figures for County Courts represent the average hearing length for fast and multi-track cases. Figures for the High Court, and Court of Appeal have been converted from days to hours, using the standard sitting day in court of 5 hours.

¹⁰ As given by Ministry of Justice's Judicial Salaries 2010-2011

¹¹ As shown below in table 3 the average hourly cost of a High Court Judge's time is around £250 per hour in 2011/12 prices (including national insurance and superannuation contributions) – we have multiplied this by the average hearing length in the High Court (19 hours) to obtain this figure.

¹² Civil Proceedings Fees (Amendment) Order 2011

share in the costs of the higher jurisdictions, as the latter set case law for the former, we propose to make a series of targeted increases in this jurisdiction. This is intended to shift the burden of financing the Court of Appeal from the taxpayer to the user, while preserving some of the contribution from the lower courts.

- The fee for an application on notice within proceedings is £80. The unit cost for this piece of work has been calculated at around £110 in 2011/12 prices.
- The fee for Schemes of Arrangement, part of the work of the Bankruptcy and Companies Court, is £155. The unit cost for this piece of work has been calculated at around £360 in 2011/12 prices.

1.21 We provide illustrative judicial costs of a typical case in each jurisdiction, based on a single member of judiciary hearing that case. However, up to three Lord Justices can hear a civil appeal, and multiple judges may also be used in the lower jurisdictions. The proposals covered by this impact assessment aim to reflect the greater costs of the higher courts.

1.22 The table below shows the escalating cost of judicial time spent in court with varying levels of judge.¹³ They show the wide difference in the cost to the courts service of providing work in the higher courts.

Table 3: Average costs of hearing, judicial time only, including national insurance contributions and superannuation costs¹⁴ (rounded to nearest £10), 2011/12 prices

Court	1 hour	1 day (5 hours)
County Court (Circuit Judge)	£190	£930
High Court (High Court Judge)	£250	£1,250
Court of Appeal Civil Division (Lord Justice)	£290	£1,430

Rationale

1.23 The Ministry of Justice aims to comply with HM Treasury guidance that “charges within and among central government organisations should be made at full cost including the standard cost of capital”.¹⁵ To this end, the Government intends to set fees for the civil and family courts at the correct level to fully fund the cost of the civil and family courts. In order to maintain the effective operation of this service, HMCTS must therefore control its costs and raise sufficient fee revenue.

1.24 The Government also considers that it is not fair for the UK taxpayer to continue to subsidise those fee paying users of the civil and family courts who can otherwise afford the full cost of their court cases. The goal is that by 2014/15 the full cost of the civil and family courts should be financed entirely by those parties who use the courts to resolve their dispute, where those users can afford to pay. Although the policy options outlined below will not in themselves achieve that goal, they would contribute toward the achievement of full cost recovery (net of remissions).

Affected Stakeholder Groups, Organisations and Sectors

1.25 The principal groups impacted by these proposals are:

- Litigants at the High Court in England & Wales – individuals, businesses or public sector third sector organisations
- Appellants at the Court of Appeal Civil Division – individuals, businesses or public sector or third sector organisations
- Defendants at the High Court in England & Wales or at the Court of Appeal Civil Division - individuals, businesses, public sector or third sector organisations
- HMCTS – administers the High Court in England & Wales and Court of Appeal Civil Division

¹³ Salaries as given by Ministry of Justice’s Judicial Salaries 2010-2011 based on 210 sitting days per year of five hours each

¹⁴ Based on average salaries of members of the judiciary in 2009/10, uplifted to reflect employer national insurance contributions (12%) and employer pension contributions (32%) – based on 210 sitting days annually. Uplifted to 2011/12 prices using HM Treasury’s GDP deflator.

¹⁵ Section 6.2.10 of HMT’s “Managing Public Money”.

- Taxpayers – the subsidy currently provided by UK taxpayers towards the running and operating costs of HMCTS would be reduced
- Legal Services Commission (LSC) – litigants or appellants who are eligible for legal aid have their fees paid for them by their legal representatives, who can reclaim the money from the LSC
- Legal services professionals.

2. Cost and Benefits

Description of options

- 2.1 This impact assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the “do-nothing” option. Impact assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot readily be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.
- 2.2 A number of different options to reduce the current taxpayer burden to subsidise the courts service has been considered. The consultation document for which this impact assessment has been developed is focusing on increasing fees at the higher courts, specifically civil fees at the High Court and fees at the Court of Appeal Civil Division. These are areas where providing the service is particularly cost-intensive and where fees currently fall far short of covering costs.
- 2.3 These proposals focus specifically on areas where the current fees structure does not reflect either the way the service is provided or the costs involved. We have grouped these into the following options based on a range of considerations: potential impacts, risks, costs and benefits, and possible variations in implementation dates. We feel this structure allows the most accurate appraisal of the potential impacts of the package of measures we will consult on. Options are as follows:
- Option 0 – “Do nothing”/base case.
 - Option 1 – Increase certain civil court fees at the High Court and Court of Appeal Civil Division.
 - Option 2 – Introduce banded time-related hearing fees at the High Court and Court of Appeal Civil Division – when a case is listed, a hearing fee would become payable based on the projected length of hearing. Fees would increase by band.
 - Option 3 – Do both: increase certain civil court fees at the High Court and Court of Appeal Civil Division and introduce time-related hearing fees at the High Court and Court of Appeal Civil Division.

Base Case / Option 0

- 2.4 Under the “do-nothing” base case, civil fees at the High Court and fees at the Court of Appeal Civil Division would remain unchanged.
- 2.5 Under this option, HMCTS's overall rate of cost recovery would remain approximately the same as projected in the next financial year, as long as there are no significant fluctuations in levels of demand. If fees remained unchanged in money terms over a long period, and assuming that the UK's general price level continues to rise over time, this would mean that the overall rate of cost recovery falls over time and that increasing amounts of subsidy would therefore be required from the taxpayer to help finance the same volume of court services in future years. Because the do-nothing option is compared against itself, its costs and benefits and necessarily zero, as is its Net Present Value (NPV)¹⁶.

¹⁶ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

- 2.6 In the absence of any changes to fees, the volume of cases in 2011/12 is expected to be approximately 68,000 at the High Court and 3,000 at the Court of Appeal Civil Division¹⁷. This is used as the baseline in future years. The Civil Justice Green Paper, published on 29 March 2011, outlines proposals to change to jurisdictional limits, streamline processes and increased proportionality in the court system. These proposals are expected to reduce the number of cases at the High Court by approximately 700 per year compared to the current baseline by 2012/13¹⁸.
- 2.7 The full year gross fee income target for the Civil and Family business and probate services for 2011/12 is approximately £515m which shows a £93m shortfall in income compared to the £608m cost. Although costs are expected to fall in light of efficiency savings proposed for the comprehensive spending review period (2011/12-14/15), it is highly likely that a gap between cost and fee income will remain in the short to medium term.

Option 1 – Increase existing fees in the civil jurisdictions of the High Court in England & Wales and Court of Appeal Civil Division to levels equivalent to the full cost of those services. Introduce a number of new fees for services which are not currently charged for, reflecting the cost of providing them.

Description of Option 1

- 2.8 This option is to make fee increases in the civil jurisdictions of the High Court and Court of Appeal civil division by increasing some existing fees and introducing a number of new fees. Where we are able to assess costs accurately, and where we do not consider it would reduce access to justice, we propose to set fees at levels that reflect the full cost of providing the services involved, excluding the cost of providing fee remissions.
- 2.9 The fees for money claims are banded, based on the sum that the claimant is seeking – these bands are designed in such a way that any claim in excess of £300,000 pays a set fee of £1,670. In 2009/2010, around 50% of claims in the High Court involved sums in excess of this amount. The proposal would introduce more bands so that if a claimant issues a claim for more than £300,000, the issue fee rises as the value of the claim rises. The highest fee payable would be £10,000 where a claimant issues a claim with a monetary value of greater than £1 billion. The following table sets out the current and proposed fees:

Number and description of fee	Current fee	Proposed fee
1.1 On starting proceedings (including proceedings issued after permission to issue is granted but excluding Claim Production Centre cases brought by Centre users or cases brought by Money Claim OnLine users) to recover a sum of money where the sum claimed:		
(a) does not exceed £300;	£35	£35
(b) exceeds £300 but does not exceed £500;	£50	£50
(c) exceeds £500 but does not exceed £1,000;	£70	£70
(d) exceeds £1,000 but does not exceed £1,500;	£80	£80
(e) exceeds £1,500 but does not exceed £3,000;	£95	£95

¹⁷ Ministry of Justice Judicial and Court Statistics 2009-2010 ch. 5, 6 and 7

¹⁸ See impact assessment on reforming civil jurisdiction limits attached to the Ministry of Justice's consultation paper "Solving disputes in the county courts" (www.justice.gov.uk/consultations/consultation-cp6-2011.htm)

(f) exceeds £3,000 but does not exceed £5,000;	£120	£120
(g) exceeds £5,000 but does not exceed £15,000;	£245	£245
(h) exceeds £15,000 but does not exceed £50,000;	£395	£395
(i) exceeds £50,000 but does not exceed £100,000;	£685	£685
(j) exceeds £100,000 but does not exceed £150,000;	£885	£885
(k) exceeds £150,000 but does not exceed £200,000;	£1,080	£1,080
(l) exceeds £200,000 but does not exceed £250,000;	£1,275	£1,275
(m) exceeds £250,000 but does not exceed £300,000;	£1,475	£1,475
(n) exceeds £300,000 but does not exceed £500,000.	£1,670	£1,800
(o) exceeds £500,000 but does not exceed £1,000,000.	£1,670	£2,300
(p) exceeds £1,000,000 but does not exceed £5,000,000.	£1,670	£3,400
(q) exceeds £5,000,000 but does not exceed £10,000,000.	£1,670	£4,500
(r) exceeds £10,000,000 but does not exceed £50,000,000.	£1,670	£5,500
(s) exceeds £50,000,000 but does not exceed £100,000,000.	£1,670	£6,500
(t) exceeds £100,000,000 but does not exceed £500,000,000.	£1,670	£7,500
(u) exceeds £500,000,000 but does not exceed £1,000,000,000	£1,670	£9,000
(v) exceeds £1,000,000,000 or is not limited	£1,670	£10,000

- 2.10 At the High Court, we also plan to increase 7 existing fees by up to £185 and to introduce one fee where a fee is not currently charged.
- 2.11 At the Court of Appeal Civil Division, we plan to increase 3 existing fees by up to £625 and introduce 5 fees which are not currently charged.
- 2.12 The full summary of proposals, including the applicable percentage increases, the current fee level and proposed fee levels, can be found at Annex B.
- 2.13 The majority of these fees are applicable to civil cases either in the High Court or the Court of Appeal Civil Division only. The exception to this is the model proposed for increased issue fees on claims over £300,000, which will be applicable both to county courts and the High Court.. However, the current jurisdictional limits state that no cases should be heard in the High Court where the value of that claim is less than £25,000 (or £50,000 in personal injury claims) – these levels also operate as de facto upper limits for county court money claims, with only 0.5% of cases exceeding these levels.¹⁹ For a litigant at the county court to be subject to these fees, they would have to issue a claim over £300,000 and the county court would have to accept it. Due to the de facto jurisdictional limit, litigants at the county courts would not be subject to these fee increases.

¹⁹ These limits are subject to a separate public consultation to increase both limits to £100,000; we do not expect these changes to increase the impact of the proposals within this consultation document. Source: Solving disputes in the County Courts, www.justice.gov.uk/downloads/consultations/ia-reforming-civil-jurisdiction-limits.pdf

Costs of Option 1

Transitional Costs

Costs to HMCTS

2.14 We expect to incur costs of approximately £5,000 for changes to HMCTS court publications, destroying old stock, and amendments to court IT systems have been estimated at up to £300,000. There may be some small costs related to court staff having to spend some time familiarising themselves with the new fees.

Ongoing Costs

Costs to HMCTS users

2.15 The additional cost of higher fees to certain court users in the High Court and appellants at the Court of Appeal Civil Division is estimated as £10-11m in 2011/12 prices. These users include individual litigants or appellants, businesses, public sector organisations or non-profit organisations. Those users at the High Court who begin proceedings which have a value greater than £300,000 would pay higher issue fees than at present, whereas those who bring claims of less than £300,000 would not be affected.

2.16 The total additional cost to court users of the increased fees is based on 2010/11 case volumes at the High Court including District Registries. Precise estimates of the responsiveness of HMCTS users to fee changes are not available, meaning that we cannot accurately predict the exact impact of the proposed fee changes to volumes.²⁰ To account for the possible effect on user behaviour of particular fee increases, we outline the gross additional costs to HMCTS users under 3 stylised scenarios. These scenarios are a 1% and 5% reduction in case volumes at the High Court and Court of Appeal.

Table 4: Additional costs to HMCTS users (rounded to nearest £1m)

Percentage change in case volumes at the High Court/ Court of Appeal	Net additional cost to HMCTS users (in 2011/12 prices)
-1%	£11 m
-5%	£10 m

2.17 While the behavioural impact on users remains uncertain, the available evidence suggests that it is likely to be small. Previous research²¹ published by the MoJ found that individual civil and family court users are not price sensitive because court fees only play a minor role in claimants' initial decision whether to use the court. The dominant factors are "getting a decision" and "getting justice". It follows that any demand response would be limited and that the sensitivities listed in the preceding table may be pessimistic.

2.18 To ensure that those individuals on low incomes continue to have access to justice, the MoJ provides a fee remission system. Users on low incomes may be entitled to a fee remission (full waiver or partial discount). Fee remissions are only available for individual users. There are three types of remissions giving a full or partial discount according to the applicant's income and other characteristics. Those users entitled to a full remission will not be affected by these proposals. Those users entitled to a partial remission may see an increase in the court fees payable to HMCTS and will be affected in a similar way to paying users. In 2010/11, there were 5,177 instances of fee remissions. Approx 90% of those were a full fee remission while the remaining 10% were partial remissions. Remission data are not collected centrally for the Court of Appeal

²⁰ Due to the lack of information on the possible reduction in demand following an increase in the fee, and in order to avoid spuriously accurate estimates, we have assumed that the 1% and 5% reductions apply across all new and increased fees. In practice, we would expect users to be more responsive to fee changes for some services and less for others. More information is available in the Assumptions/Risks section.

²¹ "What's cost got to do with it?", MoJ Research Series 4/07, June 2007 (www.justice.gov.uk/publications/docs/changing-court-fees.pdf)

but we estimate there were 195-260 instances of fee remissions, of which we assume 90% were full remissions and 10% were partial remissions.

- 2.19 As a result of these proposed fee increases, HMCTS users may address their disputes in different ways:
- They may pay for alternative resolution services which are not court-based
 - They may seek to resolve issues by themselves without reference to courts
 - They may pay for services which support self-resolution
 - They may decide not to tackle the issue at all. Those users who decide not to issue proceedings may incur costs if their legal dispute remains unresolved.
- 2.20 Some appellants at the Court of Appeal may issue their case at the High Court depending on where the judgement they are appealing against was made. If the original judgement was made at a county court or Tribunal then the appellant may lodge an appeal at the High Court, instead of at the Court of Appeal. If the original judgement was made at the High Court, the appellant does not have any alternatives to the Court of Appeal, except in exceptional circumstances where the UK Supreme Court may hear appeals against judgements made in the High Court. However, this is extremely rare.

Costs to defendants

- 2.21 Defendants could be individuals, businesses, public sector organisations or non-profit organisations. The monetary costs to defendants are included in the costs to HMCTS users outlined above. Parties are not currently required to give information when they pay a fee on whether they are a claimant or defendant. It is therefore not possible to separate out the monetary costs between claimants and defendants.
- 2.22 A party is responsible for all fees liable where they have initiated the action. While the claimant will be responsible for the majority of fees during the life of proceedings, there are some instances in which a defendant may be liable for fees. As cases at the High Court and Court of Appeal Civil Division deal with cases of high complexity, a defendant may seek to issue a counterclaim or an interlocutory order against the party that issued the claim.
- 2.23 The three fee changes which may affect defendants are:
- Increased issue fees in the High Court: these are payable at the same level for a counterclaim as for an originating claim. Defendants would only be affected by this increase if their counterclaim exceeded £300,000; a proposed model for increased issue fees is attached at annex B.
 - Introduction of an urgent application fee in the High Court, which is proposed to be £105.
 - Introduction of a fee for an interlocutory application in the Court of Appeal, which will apply to respondent claims as well as those issued by the claimant. This fee is proposed to be £235.
- 2.24 In the legal system in England & Wales, costs are transferable on a losing party pays basis. The losing party in a civil case is often liable to reimburse the winning party's costs (including court fees). Under these proposals, if a defendant loses a case, they may be liable to reimburse a higher level of fees. However, it has not been possible to quantify how much of the extra cost would be transferred in this way.

Costs to HMCTS

- 2.25 Remissions are fee waivers or discounts for those on lower incomes. The cost of the remissions scheme (in terms of foregone fee income) is financed by a taxpayer subsidy provided to HMCTS. Increasing fees causes the value of this subsidy to rise as more income is foregone through a full or partial fee remission. There are currently three types of remission:

- Remission 1 – a full remission based on whether the applicant is in receipt of passported benefits²²
 - Remission 2 – a full remission based on gross annual income, taking into account the number of dependent children and whether the applicant has a partner or not.
 - Remission 3 – a partial remission based on monthly household disposable income.²³
- 2.26 In 2010/11, there were 5,177 instances of fee remissions. Approx 90% of those were a full fee remission while the remaining 10% were partial remissions. Remission data are not collected centrally for the Court of Appeal but we estimate there were 195-260 instances of fee remissions, of which we assume 90% were full remissions and 10% were partial remissions²⁴. While there may be an increase in the amount of fee income foregone through the fee remissions scheme, this is not considered to be a net cost to HMCTS as any increase in the subsidy provided to HMCTS through the fee remissions scheme will be counterbalanced by a greater reduction in the taxpayer subsidy provided to users of the High Court or Court of Appeal overall.

Costs to Legal Services Commission (“LSC”)

- 2.27 Legal aid is a scheme that helps people pay for legal advice and is administered by the LSC. Legal aid includes the payment of court fees. Court fees are paid upfront by legal aid solicitors for clients who are in receipt of funding by the LSC for the purposes of the proceedings for which a certificate has been issued under the funding code²⁵, and then claimed back from the LSC when the case is finished. MoJ analysis using the Family Resources Survey (2008/09)²⁶ suggests that approximately 28% of the population is eligible for some type of legal aid. Importantly, legal aid is not available for all types of case, and many civil proceedings are not within scope for legal aid funding. The government has also consulted on and published a response paper for proposals to reform legal aid in England & Wales – which includes proposals to reduce the scope of legal aid funding.²⁷ For this reason, we expect the impact of these proposals on the legal aid budget to be minimal.

Costs to legal services professionals

- 2.28 As stated above, fee increases at the High Court and Court of Appeal may affect the number of cases issued at those courts. At the High Court in 2005, 94% of individual claimants and 98% of business claimants have full legal representation. In addition to this, 48% of individual defendants and 68% of business defendants have full legal representation²⁸. There would tend to be an impact on legal representatives insofar as HMCTS users react to these fee changes, so far we have outlined two stylised scenarios - a 1% and 5% reduction in volumes.
- 2.29 Average estimated cost bills (representing legal expenses including associated disbursements, e.g. barristers and experts fees) in the High Court in 2009 were around £50,000 in 2011/12 prices²⁹. In 2009, at the Court of Appeal average estimated cost bills (legal expenses including associated disbursements) were close to £20,000 at 2011/12 prices.

²² An applicant is in receipt of a passported benefits if they receive of income-based Jobseeker’s Allowance, Employment & Support Allowance, Income Support, Pension Credit Guarantee Credit and Working tax credit (provided that they do not receive Child Tax Credit).

²³ Monthly household disposable income is defined as household total monthly income minus housing costs, fixed allowances for general living expenses, whether the applicant has a partner and number of dependent children, child maintenance payments, child care expenses and payments under a court order.

²⁴ These figures assume that 15-20% of fees due at the Court of Appeal are granted a fee remission. We assume that 90% of these are full remissions and 10% are partial remissions (as is the case in the High Court in England & Wales).

²⁵ The funding code is the set of rules that the LSC uses to determine what individual cases the LSC will fund through civil legal aid - www.legalservices.gov.uk/civil/guidance/funding_code.asp

²⁶ The Family Resources Survey is a major cross-sectional study, sponsored by the Department for Work and Pensions (DWP). It provides facts and figures about the living conditions and resources of people in the UK -

<http://research.dwp.gov.uk/asd/frs/index.php?page=intro>

²⁷ www.justice.gov.uk/consultations/legal-aid-reform.htm

²⁸ DCA research series 2/05, ‘Litigants in person: unrepresented litigants in first instance proceedings’, Professor Richard Moorehead and Mark Sefton, March 2005

²⁹ Ministry of Justice Judicial and Court Statistics 2009 www.justice.gov.uk/publications/docs/assess-of-lit-costs-pub-funded-legal-services-jcs-2009-chp11.xls - estimated costs bills include associated disbursements such as barrister’s fees and expert fees. We have calculated an average across the High Court including Queen’s Bench Division, Chancery Division and the Admin Court

- 2.30 However, we do not expect a large impact on legal services professionals to materialise because there are various sources of demand for legal services, with litigation at the High Court only a small proportion of the overall legal services market. We consider that, where cases no longer proceed to the High Court or Court of Appeal, cases may be issued at alternative courts or alternative methods of dispute resolution may be used; it is therefore likely that both parties would continue to require legal representation. It is not expected that a reduction in caseload at the High Court or Court of Appeal would necessarily lead to an equivalent reduction in demand for legal services, nor that alternative markets do not already exist. To the extent that the market for legal services is affected by this policy proposal, it would adjust toward a new equilibrium that would limit and could potentially offset, any loss of income.
- 2.31 There may also be a cash flow impact on legal services firms who have to pay court fees upfront and claim them back as a disbursement from clients or the LSC when the case is finished. However, as these fees apply only in a limited number of jurisdictions, any impact on the legal profession is expected to be minimal.

Benefits of Option 1

Transition benefits

- 2.32 No transition benefits have been identified.

Ongoing benefits

Benefits to HMCTS

- 2.33 The benefits to HMCTS closely mirror the costs to HMCTS users. HMCTS – and taxpayers by extension – would benefit from an increase in net fee income of £10-11m in a full year (not accounting for any rise in remissions), in 2011/12 prices. Precise estimates of the responsiveness of HMCTS users to fee changes are not available, meaning that we cannot accurately predict the exact impact of fee changes on fee income.³⁰ To account for the effect on user behaviour of particular fee increases, we outline the gross additional fee income to HMCTS users under 2 stylised scenarios. These scenarios are a 1% reduction and a 5% reduction in fee volumes at the High Court and Court of Appeal. As stated above, these may be pessimistic in the light of previous MoJ research which found that civil and family court users are not significantly influenced by court fees.

Table 6: Additional fee income to HMCTS for varying changes in demand (rounded to nearest £1m)

Percentage change in fee volumes at the High Court/ Court of Appeal	Net additional fee income
-1%	£11 m
-5%	£10 m

- 2.34 As a result of these proposals, HMCTS users may decide to issue claims in a county court instead of at the High Court. Fees are currently set at the same level in both the county courts and at the High Court. If a litigant decides to issue a claim in the county court instead of at the High Court, there would be no net loss of fee income to HMCTS as claimants will pay the same fees as they would have previously, assuming that litigants issue the same types of cases as before.

Benefits to defendants

- 2.35 Defendants may also benefit if the overall level of cases declines as a result of these proposals. If fewer cases are brought at the High Court, then fewer defendants would have to prepare cases. Defendants would benefit from not having to incur as much time and expense in preparing and

³⁰ Due to the lack of information on the possible reduction in demand following an increase in the fee, and in order to avoid spuriously accurate estimates, we have assumed that the 5% and 10% [should this not be 1% and 5%?] apply across all new and increased fees. In practice, we would expect users to be more responsive to fee changes for some services and less for others. More information is available in the Assumptions/Risks section.

defending a case. While we do not hold defendant specific information, estimated average cost bills in 2009 were around £50,000 in the High Court and close to £20,000 in the Court of Appeal (in 2011/12 prices - this represents total legal expenses including accompanying disbursements).

Benefits to other service providers

- 2.36 If these proposals were implemented, court case volumes for the jurisdictions covered may fall. HMCTS users may seek to take advantage of alternative means of dispute resolution. This diversion of activity would have positive implications for the providers of alternative resolution services and products. This includes private companies which offer mediation, negotiation and commercial arbitration services.

Benefits to society

- 2.37 Given that services in the civil jurisdictions of the High Court and Court of Appeal Civil Division are currently being offered below the full cost of providing them, increasing fees would reduce the level of subsidy that taxpayers currently provide to users of the courts. Standard economic theory also proposes that moving toward full cost recovery reduces the amount of “deadweight loss” in a conventional market. In other words, total economic welfare³¹ would increase.
- 2.38 It is challenging to estimate the monetary gain to wider society from the proposed fee changes. This is due to uncertainty around the underlying customer demand and the nature of any “externalities” in this particular market. Externalities are third party (or spill-over) effects arising from the production and/or consumption of goods and services for which no appropriate compensation is paid. Externalities can be either positive or negative. While there may be positive externalities from the use of civil justice (in the development of case law and encouraging other parties to act within the law), there may also be negative externalities (excessive risk-aversion because individuals and companies fear litigation). The net effect of these possible externalities is considered to be broadly neutral.

Net Impact of Option 1

- 2.39 The increase in fee rates would reduce the subsidy paid by taxpayers to court users, other things being equal. These proposals would therefore represent a transfer of funds from court users to taxpayers. The increase in fees would not impact those who are entitled to means tested benefits and will have greatest impact on those individuals who are outside eligibility for legal aid or a fee remission, in particular businesses.
- 2.40 In the case of the proposed civil fee increases, the increased fees may incentivise court users to resolve issues without using the court system, potentially resulting in a reduced volume of court cases.

Enforcement and implementation

- 2.41 All fees introduced or increased by this option will be payable in advance of the service being provided. HMCTS’s general sanction for non-payment is that the service, where appropriate, will not be provided. This would continue to apply under the option being considered - the party will be advised of the fee due and the service will not be provided until payment has cleared or proof of remission is received.
- 2.42 The proposed date for implementation is April 2012. However, this is dependent on the outcome of the consultation to which this impact assessment applies.

Option 2 – Introduce banded time-related hearing fees at the High Court and Court of Appeal Civil Division

Description of Option 2

³¹ Total economic welfare is defined as the total benefit to consumers, producers and any other relevant members of society.

- 2.43 Once a case has been issued in the High Court and parties continue to hearing, the case is listed (i.e. given a hearing date) and claimants pay a hearing fee of £1,090. In the Court of Appeal, when a case has been granted permission to appeal the case will be listed for a full appeal and claimants pay a £465 fee. These fees are not dependent on the length of the hearing. In other words, there are implicit cross-subsidies between short and long hearings at present. HM Treasury guidance³² states: “In general, cross subsidies are not good practice, e.g., businesses subsidising individuals or large businesses subsidising small ones. They may foster inefficient or wasteful patterns of consumption.”
- 2.44 Prior to listing both parties to a case, as well as court staff, convene for a case management conference. Case management conferences give the parties an opportunity to discuss a number of issues related to the proceedings, such as the history of the case, required paperwork etc; this will usually include a discussion of how long the parties expect the hearing to last for (this is agreed upon so the Court’s listing officer is able to organise how cases are listed). Once an expected hearing time has been agreed between parties and confirmed by a member of HMCTS staff, this projected length of hearing is used by the listing officer to organise the listing process.
- 2.45 Under this option, a fee will be charged at the High Court and Court of Appeal Civil Division based on the projected length of hearing as agreed upon between parties and court staff at their case management conference. The proposed fees are outlined in table 7, and will become payable by the claimant before the case is listed. Once the fee is paid or proof of remission is provided, the case will be listed. If the fee is not paid or proof of remission not received, the claimants will be advised of the fee and the hearing will not commence until funds are cleared. If the parties agree an unrealistic projected hearing length or fail to come to agreement, a Judge will decide the projected hearing length on the parties’ behalf.

Table 7: proposed hearing fees at the High Court and Court of Appeal

Band (projected length of hearing)	Hearing fee
1 day	£1,090
2 – 3 days	£3,270
4 -5 days	£5,450
6-10 days	£8,175
11+ days	£10,900

- 2.46 If the case subsequently lasts longer than the expected hearing length, the claimant will not be liable for any additional hearing fees. Equally, if the actual hearing length of a case is lower than the expected hearing length, the claimant will not be able to apply for a refund of any fees paid.
- 2.47 The refund policy that currently applies will remain in place. When a case is allocated to a band and, after a hearing date has been fixed, the Court receives notice in writing from the party who paid the hearing fee that the case has been settled or discontinued then the following percentages of the fee will be refunded:
- (i) 100% if the court is notified more than 28 days before the hearing;
 - (ii) 75% if the court is notified between 15 and 28 days before the hearing; and
 - (iii) 50% if the court is notified between 7 and 14 days before the hearing
- 2.48 As an illustrative example, at a case management conference, both parties and the court listing officer agree that the projected length of hearing would be 5 days. The claimant would become liable for a fee of £5,450. The claimant would not be liable for any further hearing fee or refund if their hearing subsequently lasts longer or shorter than 5 days. If the claimant is successful at hearing, any fee paid would be awarded to the claimant against the defendant (in addition to any other costs and/or compensation). The claimant would be able to attain a refund of 100% if the parties settle more than 28 days before the hearing and the court is notified.

Costs of Option 2

³² Section 6.2.9, “Managing Public Money”, HM Treasury.

Transitional Costs

Costs to HMCTS

- 2.49 We expect to incur costs of approximately £5,000 for changes to HMCTS court publications, destroying old stock, and amendments to court IT systems have been estimated at no more than £300,000, in 2011/12 prices. There may be some small costs related to court staff having to spend some time familiarising themselves with the new fees.

Ongoing Costs

Costs to HMCTS users

- 2.50 The additional net cost to court users in the High Court and Court of Appeal Civil Division is estimated at £3-4m p.a. in 2011/12 prices. These users include individuals, private companies and public and third sector organisations.
- 2.51 While we expect the total cost to court users to be within the range presented above, these figures are uncertain. Some HMCTS users would decide that continuing with litigation was no longer worthwhile, given the extra expense.
- 2.52 Under this option, users at the High Court or Court of Appeal would bear the expected cost of bringing their case to a full hearing. Cases would be allocated to a track/band based on their complexity and fees would reflect the average cost of hearing time of similar types of cases.
- 2.53 All those users of the High Court or Court of Appeal where expected hearing length is greater than one day would face higher court fees overall as taxpayer subsidy is completely removed and hearing fees are charged according to the expected cost of the time used by that user.
- 2.54 In addition to this, users with lengthier and more complex cases would face larger increases than those with shorter cases as their fees would reflect the hearing time that these cases use. There is currently an implicit cross-subsidy between users in that users with shorter cases pay the same fees as users where cases are lengthier. These cross-subsidies would be reduced under this option. This means that HMCTS users with lengthier and more complex cases would pay a hearing fee that reflected the resources used during their proceedings. HMCTS users with relatively straightforward and shorter cases would face a banded hearing fee that is lower than for those users with more complex and lengthier hearings.
- 2.55 The MoJ provides a fee remission system so that individuals on low incomes continue to have access to justice. Those users on low incomes may be entitled to a fee remission (full waiver or partial discount). Fee remissions are only available for individual users. There are three types of remissions giving a full or partial discount according to the applicant's income and other characteristics. Those users entitled to a full remission will not be affected by these proposals. Those users entitled to a partial remission may see an increase in the court fees payable to HMCTS and will be affected in a similar way to paying users. Of the fees paid at the High Court in 2009/10, approximately 7% were granted a fee remission. In 2010/11, there were 5,177 instances of fee remissions at the High Court. Approx 90% of those were a full fee remission while the remaining 10% were partial remissions. Remission data are not collected centrally for the Court of Appeal, but we estimate there were 195-260 instances of fee remissions, of which we assume 90% were full remissions and 10% were partial remissions.
- 2.56 Under this option, HMCTS users would pay a fee that reflected the expected hearing length of a case and which would be refundable if the proceedings were settled a certain time before the hearing takes place. This means that there are incentives on both parties to make or accept formal settlement offers before the hearing takes place. There are also monetary incentives on parties to agree on an expected hearing length which is lower than they expect in reality. Since time-related hearing fees do not currently exist in the High Court or Court of Appeal, it is very difficult to make accurate estimates of the effect on user behaviour as a result of time-related hearing fees. Therefore, the monetary costs to HMCTS users outlined above are highly uncertain. As an illustrative figure, in High Court Chancery Division, approximately 26% of cases listed are settled out of court³³. Following the introduction of time-related hearing fees, it is likely

³³ Judicial and Court statistics 2009, Table 5.4 , Cases listed in London disposed of, by listing type, 2009

that the percentage of cases that settle pre-hearing across all divisions of the High Court would rise.

2.57 As a result of these proposed fee increases some users will address their disputes in different ways:

- They may pay for alternative resolution services which are not court-based,
- They may seek to resolve issues by themselves without reference to courts
- They may pay for services which support self-resolution
- They may decide not to tackle the issue at all. Those users who decide not to issue proceedings may incur costs if their legal dispute remains unresolved.

Some litigants may anticipate time-related hearing fees in the High Court and therefore decide to issue cases in the county courts, which would not be subject to these fees. This will only be an option for litigants where the county court and the High Court have concurrent jurisdiction (i.e. both courts have power to hear that case). In cases where the value of the claim is more than £25,000 (or £50,000 for personal injury claims³⁴), litigants are unlikely to be able to commence proceedings in a county court. Almost all cases over this value would be transferred to the High Court – only 0.5% of cases over these thresholds were heard in the county courts in 2010³⁵. While it is difficult to predict the extent to which litigants anticipate time-related hearing fees in their decision-making, we do not consider this impact to be material. However, we will attempt to gather more information on this potential effect during the consultation period through meetings with court user and business representative groups.

Costs to defendants

2.58 A party is responsible for all fees liable where they have initiated an action. The claimant will always be responsible for payment of the hearing fees up front as they are the party bringing the case. However, in the legal system in England & Wales, costs are transferable on a losing party pays basis. The losing party in a civil case is often liable to reimburse the winning party's costs (including court fees). Under these proposals, if a defendant loses a case, they may be liable to reimburse a higher level of fees.

2.59 Defendants could be individuals, businesses, public sector organisations or non-profit organisations. The monetary costs to defendants are included in the costs to HMCTS users outlined above. Parties are not currently required to give information when they pay a fee on whether they are a claimant or defendant. It is therefore not possible to separate out the monetary costs between claimants and defendants.

Costs to HMCTS

2.60 Remissions are fee waivers or discounts for those on lower incomes. The cost of the remissions scheme (in terms of foregone fee income) is financed by a taxpayer subsidy provided to HMCTS. Increasing fees causes the value of this subsidy to rise as more income is foregone through a full or partial fee remission. Further details of the remissions scheme are outlined in paragraph 2.23.

2.61 In 2010/11, there were 5,177 instances of fee remissions at the High Court. Approx 90% of those were a full fee remission while the remaining 10% were partial remissions. Remission data are not collected centrally for the Court of Appeal but we estimate there were 195-260 instances of fee remissions, of which we assume 90% were full remissions and 10% were partial remissions³⁶. While there may be an increase in the amount of fee income foregone through the fee remissions scheme, this is not considered to be a net cost to HMCTS as any increase in the subsidy provided to HMCTS through the fee remissions scheme will be counterbalanced by a greater reduction in the taxpayer subsidy provided to users of the High Court or Court of Appeal overall.

³⁴ These limits are also subject to a separate public consultation to increase both to £100,000. Solving disputes in the county courts, closed on 21st June 2011, www.justice.gov.uk/consultations/consultation-cp6-2011.htm

³⁵ Judicial and Court statistics 2010, table 1.8 www.justice.gov.uk/downloads/publications/statistics-and-data/courts-and-sentencing/county-courts-tables-chp1-2010.xls

³⁶ These figures assume that 15-20% of fees due at the Court of Appeal are granted a fee remission. We assume that 90% of these are full remissions and 10% are partial remissions (as is the case in the High Court in England & Wales).

2.62 In the current system, parties agree on their projected hearing lengths at case management conferences between the parties and court staff. Parties to a case currently have no incentive to mis-report their projected hearing length as hearing fees are not dependent on the length of hearing. We have obtained some indicative data from the Royal Courts of Justice Chancery Division in 2010/11 which shows that on average, actual hearing length is currently shorter than expected hearing length.

Table 8: Expected and actual hearing lengths in Royal Courts of Justice Chancery Division, 2010/11

Band	Expected hearing length (percentage of cases)	Actual hearing length (percentage of cases)
1 day	9%	30%
2-3 days	43%	21%
4-5 days	29%	18%
6-10 days	15%	21%
11+ days	6%	11%

Sources: *High Court Chancery Division Record of Trials (Final Hearings) Concluded 2010-11*, *High Court Chancery Division listing diary, 2010-11*

2.63 Given the financial interest that both parties would potentially have in agreeing on a projected hearing length, on average we can expect both parties to agree on a lower projected hearing length than they do currently. This would mean that parties may more accurately predict hearing length or that parties may under-estimate the projected length of hearing. If parties agree on an expected hearing length, and a member of HMCTS staff disagrees with this decision, a member of the judiciary may make this decision on the parties' behalf. HMCTS staff may disagree with parties' decisions on this matter more often, and parties may appeal against staff or judicial decisions, meaning that more judicial and/or administrative time may be spent resolving these problems.

2.64 If a member of HMCTS staff agrees with the decision that parties have come to but parties agree on a projected hearing length which is too short, problems may arise with cases over-running when they are listed. This cost has not been quantified.

2.65 Some litigants may anticipate time-related hearing fees at the High Court and decide to issue their claim in the county courts, which would not be subject to these fees. The High Court can only hear cases with a monetary value of greater than £25,000 (or £50,000 for PI claims³⁷). If the value of the case is greater than this limit, the claimant cannot effectively exercise choice to issue their claim in the county courts. While the extent to which litigants anticipate time-related hearing fees in their decision-making is difficult to predict, we do not consider this impact to be material. However, we will attempt to gather more information on this possible effect during the consultation period through meetings with court user and business representative groups; a question is already included in the consultation document on this subject.

Costs to Legal Services Commission ("LSC")

2.66 Legal aid is a scheme that helps people pay for legal advice and is administered by the LSC. Legal aid includes the payment of court fees. Court fees are paid upfront by legal aid solicitors for clients who are in receipt of funding by the LSC for the purposes of the proceedings for which a

³⁷ These limits are subject to a separate public consultation to increase both these limits to £100,000: "Solving disputes in the county courts", which closed on 21st June 2011, www.justice.gov.uk/consultations/consultation-cp6-2011.htm

certificate has been issued under the funding code³⁸, and then claimed back from the LSC when the case is finished. MoJ analysis suggests that approximately 28% of the population is eligible for some type of legal aid. Importantly, legal aid is not available for all types of case, and many civil proceedings are not within scope for legal aid funding. The government has consulted on and published a response paper for proposals to reform legal aid in England & Wales – which includes proposals to reduce the scope of legal aid funding. For this reason, we expect the impact of these proposals on the legal aid budget to be minimal.

Costs to legal services professionals

- 2.67 There would be an impact on legal services professionals in so far as an increased number of litigants decide to settle before their case goes to hearing. Under these proposals, both parties would have a stronger incentive to make or accept formal settlement offers in civil jurisdictions in the High Court or Court of Appeal. Since this proposal has not been piloted, there is no information on the sensitivity of pre-hearing settlement to fee charging. While we may reasonably expect the pre-hearing settlement rate in the High Court or Court of Appeal civil jurisdictions to increase, we are unable to quantify this at present.
- 2.68 However, we do not expect a significant impact on legal services professionals as there are various sources of demand for legal services, with litigation at the High Court only a small proportion of the overall legal services market. We consider that where cases no longer proceed to the High Court or Court of Appeal, cases may be issued at alternative courts or alternative methods of dispute resolution may be used; it is therefore likely that both parties would continue to require legal representation. It is not expected that a reduction in caseload at the High Court or Court of Appeal would necessarily lead to an equivalent reduction in demand for legal services. To the extent that the market for legal services is affected by this policy proposal, it would adjust toward a new equilibrium that would limit, if not entirely offset, any loss of income.
- 2.69 There may also be a cash flow impact on legal services firms who have to pay court fees upfront and claim them back as a disbursement from clients or the LSC when the case is finished. However, as these fees apply only in High Court jurisdictions, any impact on the legal profession is expected to be minimal.

Benefits of Option 2

Transition benefits

- 2.70 No transition benefits have been identified.

Ongoing benefits

Benefits to HMCTS

- 2.71 The benefits to HMCTS mirror the costs to HMCTS users. HMCTS – and taxpayers by extension – would benefit from an increase in gross fee income of £3-4m in a full year. Precise estimates of the responsiveness of HMCTS users to fee changes are not available, meaning that we cannot quantify the impact of the proposed fee changes on fee income at this time³⁹. To account for the possible effect on user behaviour of particular fee increases, we outline the gross additional fee income to HMCTS users under 2 stylised scenarios. These scenarios are a 1% and a 5% reduction in volumes at the High Court and Court of Appeal. As stated earlier, however, previous MoJ research suggests that any demand response on the part of court users is likely to be limited.

³⁸ The funding code is the set of rules that the LSC uses to determine what individual cases the LSC will fund through civil legal aid - www.legalservices.gov.uk/civil/guidance/funding_code.asp

³⁹ Due to the lack of information on the possible reduction in demand following an increase in the fee, and in order to avoid spuriously accurate estimates, we have assumed that the 1% and 5% reductions apply across all new and increased fees. In practice, we would expect users to be more responsive to fee changes for some services and less for others. More information is available in the Assumptions/Risks section.

Table 10: Additional fee income for varying changes in demand, 2011/12 prices (rounded to nearest £1m)

Percentage change in fee volumes at the High Court	Net additional fee income
-1%	£4m
-5%	£3m

- 2.72 As a result of these proposed fee increases some users will address their disputes in different ways. They may pay for alternative resolution services which are not court-based, may issue cases in county courts, may seek to resolve issues by themselves without reference to courts, may pay for services which support self-resolution, or may decide not to tackle the issue at all. Those users who decide not to issue proceedings may incur costs if their legal dispute remains unresolved.
- 2.73 If HMCTS users decide to issue claims in a county court instead of the High Court, and assuming that they continue to issue the same cases, there would be no net loss to HMCTS as a whole. This is because fees are currently set equally across the county courts and High Courts and where users decide to substitute from the High Court to county courts, HMCTS would receive the same amount of income as it did previously.
- 2.74 Appellants at the Court of Appeal may be able to appeal in other courts depending on where the original judgement was made. If the original judgement was made at a county court they may decide to appeal at the High Court. In very exceptional circumstances, if the original judgement was made at the High Court it may be possible for them to appeal at the UK Supreme Court.
- 2.75 While we expect the total benefit to HMCTS to be within the range presented above, these figures are uncertain. There are two substitution effects which may result in income being lower than expected. Some users may decide that their legal proceedings are no longer worthwhile, given the extra expense. Other users may increase their use of formal settlement offers before the hearing takes place as fees are refundable if the proceedings are settled before the hearing takes place (see refund policy above).
- 2.76 Since banded hearing fees do not currently exist in the High Court or the Court of Appeal, it is very difficult to make accurate estimates of the effect on user behaviour as a result of banded hearing fees. For this reason, the monetary benefits to HMCTS outlined above cannot be quantified at this time. As an illustrative figure, in High Court Chancery Division, approximately 26% of cases listed are settled out of court⁴⁰. Following the introduction of banded hearing fees, it is likely that the number of cases that settle pre-hearing across civil divisions of the High Court would rise. It follows that some users may face costs from worse/less fair legal outcomes in High Court hearings and that some users may accept formal settlement offers that they otherwise would not have.

Benefits to HMCTS users

- 2.77 Under these proposals, both parties would have a strong incentive to make or accept formal settlement offers in civil jurisdictions in the High Court or Court of Appeal. There may be benefits to both parties if cases are settled earlier, as both parties would face lower legal expenses and reduced time costs from continuing to litigate.

Benefits to defendants

- 2.78 The claimant will usually be responsible for the payment of hearing fees. However, in the legal system in England & Wales, costs are transferable on a losing party pays basis. If a party brings a claim to court and subsequently loses that case, that party could be liable for all the defendant's costs. If a party brings a claim to court and subsequently wins, the losing party could be liable for all the defendant's legal costs including court fees.

⁴⁰ Judicial and Court statistics 2009, Table 5.4 , Cases listed in London disposed of, by listing type, 2009

- 2.79 Under these proposals, both parties would have a strong incentive to make or accept formal settlement offers in civil jurisdictions in the High Court or Court of Appeal. There may be benefits to defendants if a claimant accepts a formal settlement offer that they otherwise would not have. There may also be benefits to both parties if cases are settled earlier, as both parties would face lower legal expenses and reduced time costs in continuing to litigate.
- 2.80 Defendants may benefit if the overall level of cases declines as a result of these proposals. If fewer cases are brought at the High Court or Court of Appeal, then fewer defendants would have to prepare cases. Defendants would benefit from not having to incur as much time and expense in preparing and defending a case. While we do not hold defendant specific information, estimated average cost bills in 2009 were around £50,000 at the High Court and close to £20,000 in the Court of Appeal at 2011/12 prices (this represents total legal expenses including accompanying disbursements).

Benefits to other service providers

- 2.81 If these proposals were implemented, court case volumes for the jurisdictions covered may fall. This might lead to HMCTS users selecting alternative means of dispute resolution. This diversion of activity would have positive implications for the providers of alternative resolution services and products. This includes private companies which offer mediation, negotiations, and commercial arbitration services.

Benefits to society

- 2.82 The wider social benefits if option 1 were implemented are similar to the social benefits outlined for option 1 (paragraphs 2.37-2.38). Uncertainty around the underlying customer demand and the nature of any externalities in this market means that it is challenging to estimate the overall monetary gain to wider society from these fee changes.

Enforcement and implementation

- 2.83 All fees introduced by this option will be payable in advance of the service being provided. HMCTS's general sanction for non-payment is that the service, where appropriate, will not be provided. This would continue to apply under the option being considered: the party will be advised of the fee due and a case will not be heard until payment has cleared or proof of remission is received.
- 2.84 The proposed date for implementation is April 2012. However, this is dependent on the outcome of the consultation to which this impact assessment applies.

Net Impact of Option 2

- 2.85 Time-related hearing fees would reduce the subsidy paid by taxpayers to court users, other things being equal. These proposals would therefore represent a transfer of funds from court users to taxpayers.
- 2.86 The increase in fees would not impact those who are entitled to means tested benefits and will have greatest impact on those individuals who are outside eligibility for legal aid or a fee remission, in particular businesses.
- 2.87 Time-related hearing fees may incentivise users of the High Court to resolve issues earlier or without recourse to the court system, potentially resulting in a reduced volume of court cases.

Option 3 – Do both: implement both Option 1 and Option 2

- 2.88 This option involves implementing both options 1 and 2: a) make fee increases in the civil jurisdictions of the High Court and in the Court of Appeal Civil Division by increasing some existing fees and introducing a number of new fees; and b) introduce banded time-related hearing fees in the High Court and in the Court of Appeal Civil Division. This option reflects the fact that options 1 and 2 are not mutually exclusive, and are separately justifiable. Both options

are areas of work where the fee structure does not currently reflect the cost to HMCTS of providing the service.

- 2.89 This option involves both introducing 15 new fees and increasing up to 7 existing fees at the High Court and introducing 10 new fees and increasing 3 existing fees at the Court of Appeal. The full summary of proposals, including the current fee level and proposed fee levels, can be found in annex B as per the previous options.

Costs of Option 3

Transitional Costs

Costs to HMCTS

- 2.90 We expect to incur costs of approximately £5,000 for changes to HMCTS court publications and destroying old stock, and changes to IT systems have been estimated at no more than £300,000 in 2011/12 prices. There may be some small costs related to court staff having to spend some time familiarising themselves with the new fees.

Ongoing Costs

Costs to HMCTS users

- 2.91 The costs to HMCTS users if both options are implemented are similar in detail to the costs outlined for option 1 (paragraphs 2.15-2.20) and option 2 (paragraphs 2.50-2.57). However, under this option the magnitude of additional fees paid by HMCTS users would be lower than simply adding the additional fees paid under options 1 and 2 as the cumulative impact of these proposals would be proportionately greater than simply implementing either option. We expect the additional financial cost to users would be £12-14m p.a. in 2011/12 prices. These figures are subject to considerable uncertainty (*please see risks and assumptions section later*) and we assume stylised volume reductions of 5% and 10%, although previous MoJ research suggests that any demand response is likely to be limited.
- 2.92 In addition to this, the cumulative reduction in volumes from implementing both options would be larger than simply adding together the reduction in demand in options 1 and 2.

Costs to HMCTS

- 2.93 The costs to HMCTS if both options are implemented would be similar in detail to the costs outlined for option 1 (paragraphs 2.25-2.26) and option 2 (paragraphs 2.60-2.65). While there may be an increase in the amount of fee income foregone through the fee remissions scheme, this is not considered to be a net cost to HMCTS as any increase in the subsidy provided to HMCTS through the fee remissions scheme will be counterbalanced by a greater reduction in the taxpayer subsidy provided to users of the High Court or Court of Appeal overall.

Costs to Legal Services Commission ("LSC")

- 2.94 The costs to the LSC if both options are implemented are similar in detail to the costs outlined for option 1 (paragraph 2.27) and option 2 (paragraph 2.66). We expect that the impact on the legal aid fund would continue to be minimal as most of the proceedings that take place in the civil jurisdictions of the High Court or Court of Appeal are not within scope for legal aid funding.

Costs to legal services professionals

- 2.95 The costs to legal services professions if both options are implemented are similar in detail to the costs outlined for option 1 (paragraphs 2.28-2.31) and option 2 (paragraph 2.67-2.69), but the existence of other markets for legal services means that any loss of income is likely to be mainly or completely substituted by alternative opportunities.

Transition benefits

- 2.96 No transition benefits have been identified.

Ongoing benefits

Benefits to HMCTS

2.97 The benefits to HMCTS – and taxpayers by extension – if both options are implemented are similar in detail to the benefits outlined for option 1 (paragraphs 2.33-2.34) and option 2 (paragraphs 2.71-2.76). However, under this option the magnitude of additional fees paid by HMCTS users would be lower than simply adding the additional fees paid under options 1 and 2 as the cumulative impact of these proposals would be proportionately greater than simply implementing either option. We expect the additional net fee income to HMCTS would be £12-14m p.a. in 2011/12 prices. These figures are subject to considerable uncertainty (*please see risks and assumptions section later*) and so we assume stylised volume reductions of 5% and 10%.

Benefits to other service providers

2.98 The benefits to other service providers if both options are implemented are similar in detail to the costs outlined for option 1 (paragraph 2.36) and option 2 (paragraph 2.81). However, under this option the benefit to other services providers would be larger than simply adding the additional benefit under options 1 and 2.

Benefits to society

2.99 The wider social benefit if both options are implemented is similar to that outlined for option 1 (paragraphs 2.37-2.38).

2.100 Uncertainty around customer demand and the nature of any externalities in this market means that it is challenging to estimate the overall monetary gain to society from these fee changes.

Net Impact of Option 3

2.101 The increase in fees and the introduction of time-related hearing fees would reduce the subsidy paid by taxpayers to High Court and Court of Appeal users, other things being equal. These proposals would therefore represent a transfer of funds from court users to taxpayers. The increase in fees would not impact those who are entitled to means tested benefits and will have greatest impact on those individuals who are outside eligibility for legal aid or a fee remission, in particular businesses.

2.102 The introduction of time-related hearing fees may incentivise High Court and Court of Appeal users to resolve issues earlier and without recourse to the court system, potentially resulting in a reduced volume of court cases.

Enforcement and implementation

2.103 All fees introduced by this option will be payable in advance of the service being provided. HMCTS's general sanction for non-payment is that the service, where appropriate, will not be provided. This would continue to apply under the option being considered - the party will be advised of the fee due and the relevant service will not be provided until payment has cleared or proof of remission is received.

2.104 The proposed date for implementation is April 2012. However, this is dependent on the outcome of the consultation to which this impact assessment applies.

Assumptions/Risks

2.105 In the main body of the options analysis above, the volume of fee applications has been adjusted to reflect reductions in demand for court services that might result from increasing fee levels. One of the key considerations is whether the proposed fee increases would lead to the full expected increases in fee income.

2.106 Other things being equal, the price elasticity of demand measures the responsiveness of customer demand to a change in the price of the good/service in question. It is especially

important to determine whether the demand for the good/service is elastic (i.e. if price increases by 1%, demand decreases by more than 1%), unit-elastic (i.e. if price increases by 1%, demand decreases by 1%) or inelastic (i.e. if price increases by 1%, demand decreases by less than 1%). This is because the impact on revenues will differ: if the demand is price-elastic, then revenues will decrease if prices increase; but if it is price-inelastic, then revenues will increase.

2.107 The impact of the proposed fee increases in the volume of court cases will depend on a number of factors, such as:

- The availability of substitutes – if there is no close substitute to the service provided by the court (or there is a perception that there is no close substitute), then demand will be less elastic. Claimants at the High Court may decide to issue their case in a county court if the fees are lower and if the county court has jurisdictional authority to hear that case. Where county courts do not have jurisdictional power to hear the relevant case, a litigant will have no alternatives available to them. Appellants at the Court of Appeal may be able to appeal in other courts depending where the original judgement was made. If the original judgement was made at a county court they may decide to appeal at the High Court. In very exceptional circumstances, if the original judgement was made at the High Court it may be possible for them to appeal to the UK Supreme Court.
- International substitutes – some of the cases heard at the High Court are high value, high complexity international business disputes. When parties issue a case, these applicants have a choice about which jurisdiction a case can be issued in. It is possible that increasing fees may encourage substitution effects in that cases are issued in overseas jurisdictions instead of in England & Wales. No information is currently collected on the characteristics of litigants at the High Court or Court of Appeal, so we cannot quantify how many cases could be heard internationally at this time.
- Fees as a proportion of total cost – if the court fees are a substantial proportion of the total cost of going to court (i.e. the cost of court fees and legal representation), then it is more likely that the court fees will have a big impact on the volume of court cases. Many of the cases at the High Court are high cost commercial litigation, where court fees are a small percentage of the legal expenses paid during the legal proceedings. In 2009 the average cost bill⁴¹ was around £50,000 in the High Court and close to £20,000 in the Court of Appeal, in 2011/12 prices⁴². It is considered as legal expenses are high relative to the proposed court fees; the impact on the volume of court cases will not be significant.
- The funding of the claimant – if the applicant pays for their own legal expenses, then they must bear the full costs of the fees (if they are not entitled to a fee remission). The claimant will therefore take into account the cost of the court fee when deciding whether to issue a claim. MOJ analysis using the Family Resources Survey (2008/09) suggests approx 28% of the adult population are eligible for some type of legal aid while many civil proceedings are not within scope for legal aid funding. These users would not be affected by the proposed fee increases.
- Whether the claimant is in receipt of a fee remission – those users on low incomes who are not in receipt of legal aid funding are entitled to a fee remission (full waiver or partial discount). There are three types of remissions giving a full or partial discount according to the applicant's income and other characteristics⁴³. In 2009/10 approximately 6% of those fees paid at the High Court received either a full or partial fee remission.
- The transferability of court fees – in the High Court and Court of Appeal fees are non-transferable on a losing-party pays basis. This means that litigants may be less likely to change their behaviour as a result of court fees as there is a possibility that they will be reimbursed by the losing party after the case has concluded.

2.108 Taking the above factors into consideration and after undertaking some initial modelling work to estimate the responsiveness of civil court volumes to fee changes, we have found no statistically significant effect of increasing fees on volumes. While there is some evidence that the price

⁴¹ A 'cost bill' represents average legal expenses and associated disbursements, e.g. barrister's and expert fees

⁴² Ministry of Justice, Judicial and Court statistics, Table 11.2 – average value of cost bill by jurisdiction of original case, p.213

⁴³ Remission 1 is a full remission based on whether the applicant is in receipt of a passported benefit, remission 2 is a full remission based on gross annual income, taking into account the number of dependent children and whether the applicant has a partner or not, remission 3 is a partial remission based on monthly household disposable income.

elasticity of demand for legal services is relatively inelastic at -0.4⁴⁴, we are unable to calculate the impact on volumes using this figure of price elasticity of demand because some proposed fees are not currently charged. We therefore apply stylised reductions of demand to reflect the impact of volumes of increased fees. These are a 1% and 5% reduction in volumes for options 1 and 2 and 5% and 10% reduction in volumes for option 3. As stated above, however, past MoJ research suggests that the impacts on court users from fee changes would be limited.

- 2.109 The best available evidence therefore appears to suggest that it is unlikely that these fee changes would cause volumes to fall by as much as 10%, as outlined above, because this assumes that volumes at the High Court and Court of Appeal are highly sensitive to fee changes. However, the MoJ recognises that there are still risks the court services in question will prove to be more price sensitive than we have outlined. In other words, revenues may fall because case volumes could decline by proportionately more than the fee level increases.
- 2.110 The estimates of fee income presented in the impact assessment use 2010/11 volumes where fee charges already exist; however, where fee charges are being introduced for the first time, we have sought to estimate volumes based on discussions with HMCTS operations. All volumes are based on volumes at the High Court including its District Registries. For time-related hearing fees we have estimated the number of cases in each band using information from HMCTS operations, including actual versus expected hearing lengths. There is a risk that the proportion of cases that fall into each time-related band are not constant and vary from year to year.
- 2.111 We assume that these volumes would remain constant for the purposes of costing these proposals. In reality, civil court volumes vary considerably from year to year – caused by both factors internal to MoJ/HMCTS and external factors, over which MoJ/HMCTS have no control. There is a considerable risk that the volumes used to calculate fee income will vary in the first year of implementation (2012/13) and that a different amount of fee income may be realised.
- 2.112 There are considerable risks that implementing any of the proposed options could cause the fee income generated to be lower than expected. Time-related hearing fees have not been trialled so we cannot assess how many additional cases will settle before the case reaches hearing, compared to the status quo. If the settlement rate increases significantly and cases volumes fall, this could pose risks to MoJ/HMCTS finances in the short term as fee income falls significantly compared to the costs of providing the service. In the longer term, MoJ will be able to adjust its cost base to reflect this reduction in volumes.
- 2.113 There is a risk that the way we have under-estimated the interaction effects between the two separate options in option 3, meaning that the fee income generated may be mis-stated. It is considered that fee income generated under option 3 may be substantially less than the sum of that generated under options 1 and 2 as the cumulative impact on volumes would be proportionately larger. We have modelled stylised reductions in volumes of 5% and 10% to reflect the interaction between these proposals; as we have no historical evidence on which to form a more precise analysis at this time. These therefore provide indicative estimates for Option 3.
- 2.114 Increasing or introducing new fees would cause the income foregone under HMCTS's fee remission scheme to rise as more people question their ability to pay than before. We estimate that there will be a rise in fee remissions of less than £1m under options 1 or 3 – we cannot estimate the impact of increased fee remissions under option 2 as these fees do not currently exist. There is no net cost to HMCTS resulting from this as any increase in fee remissions is counterbalanced by a greater reduction in taxpayer subsidy provided to users of the High Court and Court of Appeal. Equally, any increase in fees remitted is not a net benefit to HMCTS users as the reduction in taxpayer subsidy to these fees is reduced overall. We have therefore not included these impacts within the costs and benefits section.
- 2.115 On the 29th March 2011, MoJ published a consultation paper on 'Solving disputes in the county courts'.⁴⁵ This included a suite of proposals to change jurisdictional limits, streamline processes and increase proportionality in the court system. These proposals are expected to reduce the

⁴⁴ Gwartney, J.D., Stroup, R.L., Sobel, R.S., MacPherson, D., Economics: private and public choice, 2008, p.429. This is broadly consistent with previous MoJ research that court users' demand responsiveness is low.

⁴⁵ www.justice.gov.uk/consultations/consultation-cp6-2011.htm

baseline number of cases in the High Court by 700 from April 2012, but we have not accounted for this reduction in our fee income forecast.

- 2.116 This Impact Assessment does not quantify the impact on legal services professionals arising from these proposals. As litigation at the High Court or Court of Appeal is small in the broader context of the legal services market in England and Wales, we consider that, where cases no longer proceed to the High Court or Court of Appeal, cases may be issued at alternative courts or alternative methods of dispute resolution may be used. It is therefore unlikely that there would be a significant impact on the legal services industry as both parties would continue to require legal representation.
- 2.117 We have not quantified the impact of reduced litigation (if any) on the UK economy.

3. Specific Impact Tests

Equality Impact Assessment

3.1 An Equality Impact Assessment initial screening has been completed for these proposals.

Competition Assessment

3.2 The main sectors affected by the proposed policy are solicitors and individuals – we have considered the four key questions from the Office of Fair Trading Impact Assessment guidance for policymakers (August 2007) and assess that the proposed policy would have no disproportionate impact on solicitors or individuals. The conclusion is therefore that there are no anticipated impacts on competition, and hence that, a full competition assessment is not required. It is not considered that there would be any significant impact on competition.

Small Firms Impact Test

3.3 In assessing the potential impact of these proposals on small firms we have followed the Department for Business, Innovation and Skills' 'small firms impact assessment guidance' (January 2009). These proposals do not impose any new regulations⁴⁶ on small firms, who are already obliged to pay court fees if they proceed with litigation.

3.4 Small firms who proceed with litigation at the High Court or Court of Appeal Civil Division may incur extra expense from the proposed fee increases, depending on the type of case they pursue. The highest of these is £10,000 to issue a claim over £1bn in the High Court, and £10,900 if a case proceeds to a hearing which is projected to last more than two weeks either in the High Court or Court of Appeal. Currently no data are collected on the characteristics of users of the High Court in England and Wales or of the Court of Appeal, so we cannot quantify the impact on small firms at this time. However, we understand from liaising with operations staff that the number of small firms who issue a claim for over £1bn is small. From a sample of cases listed in the Chancery Division of the High Court we estimate that around 10% of cases will pay the highest band of hearing fee; for this reason we expect that the impact of these fees on small firms in the High Court will be small. In the Court of Appeal, we do not collect data on hearing length, but from operations staff we know anecdotally that very few hearings last long enough to be liable for the maximum level of proposed fees.

3.5 Where a small firm is a defendant who loses a case, costs (including any court fees paid) may be awarded against them. Consequently, if fees at the High Court and Court of Appeal Civil Division are increased then overall costs awarded against losing defendants may rise. However, it is considered that litigation remains a choice for a small firm, with costs recoverable from the other side if they lose.

3.6 Graduated issue fees and banded hearing fees are proportionate to the value and complexity of a case. As legal costs (solicitors' and barristers' fees, etc.) are also expected to increase as the value and complexity of a claim rises, it is expected that the fees in this jurisdiction would remain a small proportion of the legal costs which a firm might incur if it brought a case at the High Court.

3.7 To enable us to better understand the impact of these proposals on small firms, we intend to gather more information in this area during the consultation period. The data will be gathered in two ways:

- 1) by including a specific question in the consultation document asking respondents to provide evidence regarding the impact of the proposals on small and medium sized enterprises
- 2) by meeting with small business representatives during the consultation period in order to gather any evidence they may hold about small business use of the courts service and the impact of fee increases.

⁴⁶ Regulation being defined as a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government,

- 3.8 It is not considered that there is any scope to provide court fee exemptions for small or micro-firms. HM Treasury's Managing Public Money guidance states that there should not be different fee-charging regimes for corporate or individual users unless permitted or required by primary legislation. Moreover, one of the objectives of these proposals is that fees should reflect the cost of the services provided. Providing exemptions for businesses of any size to use HMCTS services would increase the burden on individual litigants at the High Court.

Carbon Assessment

- 3.9 It is not considered that these proposals would lead to a change in carbon emissions.

Other Environment

- 3.10 We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

Health Impact Assessment

- 3.11 We have identified no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health: a significant impact on any lifestyle related variables or that it will place a significant demand on any health and social care services. On this basis we do not believe a full health impact assessment is required.

Human Rights

- 3.12 These proposals have been assessed against the Ministry of Justice's ECHR obligations.
- 3.13 Any increase to court fees could potentially breach Article 6 of the ECHR (the right to a fair trial) as Article 6 stresses the importance of access to justice. There may be instances in which the proposed court fees could be considered unaffordable by some; however, HMCTS have a robust fee remissions scheme in place to ensure that those on lower incomes are able to afford access to these services and to protect access to justice for the most vulnerable in society. This risk is also mitigated by time-related hearing fees rising incrementally, as the value or complexity of the hearing increases. Individuals in receipt of legal aid funding will also have their court fees paid for them by the Legal Services Commission. We therefore consider that these processes safeguard access to justice for those on lower incomes and ensure that these proposals are compliant with MoJ's ECHR obligations.
- 3.14 The fee remissions scheme is currently under review in order to ensure that fee remissions are targeted at those who need them most; depending on the result of this review, which is consulting jointly with this piece of work, we will review in the final impact assessment whether these proposals have any implications for Article 6.

Justice Impact Test

- 3.15 The impact on the justice system has been assessed as part of the options analysis. The LSC fund meets the cost of court fees for those in receipt of legal aid. It is anticipated that the impact on legal aid costs would be minimal because the provision of legal aid for civil non-family proceedings is limited and the fees payable for family proceedings are not within the scope of this consultation. Money would be transferred from HMCTS to the LSC to fund this initiative.

Rural proofing

- 3.16 The proposals are not expected to have any significant rural impacts.

Sustainable Development

- 3.17 We do not consider that these proposals would have any significant impacts on sustainable development. Any potential impact on communities and equality groups will continue to be monitored through our equality impact assessment.

Privacy Impact Test (an MoJ-specific Impact Test)

3.18 It is not considered that these proposals will have any impact on the privacy of personal data as defined by the Data Protection Act 1998.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex A: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review:</p> <p>To evaluate the amount of fee income realised as a result of the proposed fee changes and assess the impact on case volumes. It is likely that we will be reviewing the policy of full-cost recovery of the services provided by HMCTS before 2015 as outlined in this impact assessment. In that event a PIR focusing only on these proposals will not take place.</p>
<p>Review objective:</p> <p>The post implementation review will analyse the impact in terms of income and case volumes of these fee changes. It will also check there was no negative impact on access to justice. However, once the outcomes of the Transforming Justice and Family Justice Review have become clear and any changes are made to the civil and family law processes, the need to increase fees will be considered again. It is likely that this will take place prior and in replacement of a review of these fee increases.</p>
<p>Review approach and rationale:</p> <p>The review approach will be a monitoring framework. The proposed fees should reduce the subsidisation of the service users by taxpayers (subject to the provision of fee remissions). Information on volumes of fees applications and income levels is currently collected by HMCTS and will be monitored in the period between implementation and the PIR.</p>
<p>Baseline:</p> <p>The current baseline is the projected fee income and case volumes predicted for 2011/12 if no changes were made. This baseline is 68,000 cases at the High Court and 3,000 at the Court of Appeal. The baseline cost of the High Court and Court of Appeal Civil Division is £49m (target in 2011/12) and net fee income of approx £31m (target in 2011/12).</p>
<p>Success criteria:</p> <p>Increase in net fee income of £3-14 m in financial year 2012/13 (in nominal prices).</p>
<p>Monitoring information arrangements:</p> <p>Court user feedback will be monitored through correspondence from the public 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 to see if there are any changes in case levels. Judicial statistics also provide indications of court user behaviour.</p> <p>For time-related hearing fees, a more comprehensive review will be required as this is an entirely new fee structure. The structure will be reviewed on an annual basis, with the predicted versus actual hearing lengths in both the High Court and Court of Appeal Civil Division monitored in order to gauge the effect of charging for hearings by time. This will be done by comparing fee volumes paid at each band to the records kept by listing staff at each jurisdiction affected.</p>

Reasons for not planning a PIR:

N/A

Annex B – Summary of proposals and proposed changes to fees order

High Court & Court of Appeal fees – summary of proposals

Option 1	
1	Add additional bands onto issue fees for money claims above the current maximum threshold of £300,000.
2	Increase the fee for issuing a Bill of Sale from £25 to £60.
3	Increase the fee for permission to apply for judicial review from £60 to £235.
4	Increase the fee for continuation of a judicial review from £215 to £235.
5	Increase the fee for Schemes of Arrangement from £155 to £340.
6	Increase the fee for applications on notice within proceedings in the High Court from £80 to £105.
7	Introduce a new fee of £105 for urgent applications in the High Court.
8	Expand the existing fee of £45 for an official certificate of the result of a search in the High Court to include the search itself.
9	Increase the current permission to appeal fee in the Court of Appeal Civil Division from £235 to £465.
10	Limit the fee for permission to appeal in the Court of Appeal Civil Division to a decision outside of a hearing, with an applicant liable for the full appeal fee of £1,090 – but no further appeal fee – if they request a hearing.
11	Introduce a separate fee of £465 for each ancillary application to an appeal in the Court of Appeal Civil Division.
12	Introduce fees of £45 (without notice or by consent) or £105 (on notice) in the Court of Appeal Civil Division for any request or application to which no other fee applies (including extension of time requests and other specific applications).
13	Introduce a listing fee of £110 in the Court of Appeal Civil Division.
14	Align the current appeal fee of £465 in the Court of Appeal Civil Division with the multi-track hearing fee in the lower civil courts of £1,090.
15	Charged the application fee of £465 in the Court of Appeal Civil Division for applications under CPR 52.17 to reopen final decisions.
Option 2	
16	Introduce banded hearing fees by projected time in the High Court.
17	Introduce banded hearing fees by projected time in the Court of Appeal Civil Division as per the model proposed for the High Court.

High Court and Court of Appeal - Proposed Fee Charges

Number and description of fee	Current fee	Proposed fee
1 Starting proceedings (High Court and county court)		
1.1 On starting proceedings (including proceedings issued after permission to issue is granted but excluding Claim Production Centre cases brought by Centre users or cases brought by Money Claim OnLine users) to recover a sum of money where the sum claimed:		
(a) does not exceed £300;	£35	N/A
(b) exceeds £300 but does not exceed £500;	£50	N/A
(c) exceeds £500 but does not exceed £1,000;	£70	N/A
(d) exceeds £1,000 but does not exceed £1,500;	£80	N/A
(e) exceeds £1,500 but does not exceed £3,000;	£95	N/A
(f) exceeds £3,000 but does not exceed £5,000;	£120	N/A
(g) exceeds £5,000 but does not exceed £15,000;	£245	N/A
(h) exceeds £15,000 but does not exceed £50,000;	£395	N/A
(i) exceeds £50,000 but does not exceed £100,000;	£685	N/A
(j) exceeds £100,000 but does not exceed £150,000;	£885	N/A
(k) exceeds £150,000 but does not exceed £200,000;	£1,080	N/A
(l) exceeds £200,000 but does not exceed £250,000;	£1,275	N/A
(m) exceeds £250,000 but does not exceed £300,000;	£1,475	N/A
(n) exceeds £300,000 but does not exceed £500,000.	£1670	£1800
(o) exceeds £500,000 but does not exceed £1,000,000.	N/A	£2,300
(p) exceeds £1,000,000 but does not exceed £5,000,000.	N/A	£3,400
(q) exceeds £5,000,000 but does not exceed £10,000,000.	N/A	£4,500

(r) exceeds £10,000,000 but does not exceed £50,000,000.	N/A	£5,500
(s) exceeds £50,000,000 but does not exceed £100,000,000.	N/A	£6,500
(t) exceeds £100,000,000 but does not exceed £500,000,000.	N/A	£7,500
(u) exceeds £500,000,000 but does not exceed £1,000,000,000	N/A	£9,000
(v) exceeds £1,000,000,000 or is not limited	N/A	£10,000
1.9(a) For permission to apply for judicial review.	£60	£235
Where the court has made an order giving permission to proceed with a claim for judicial review, there is payable by the claimant within 7 days of service on the claimant of that order:		
1.9(b) if the judicial review procedure has been started.	£215	£235
1.9(c) if the claim for judicial review was started otherwise than by using the judicial review procedure.	£60	£235
2 General Fees (High Court and county courts)		
2.3 On the occasion of fee 2.2 becoming payable; or where the claim is on the small claims track, within 14 days of the date of despatch of the notice (or the date when oral notice is given if no written notice is given) of the trial week or the trial date if no trial week is fixed a fee payable for the hearing of:		
(a) a case on the multi-track in the county court;	£1,090	N/A
(b) a case on the multi-track in the High Court where the trial is projected to last one day or less	N/A	£1090
(c) a case on the multi-track in the High Court where the trial is projected to exceed one day but not exceed three days	N/A	£3270
(d) a case on the multi-track in the High Court where the trial is projected to exceed three days but not exceed five days	N/A	£5450
(e) a case on the multi-track in the High Court where the trial is projected to exceed five days but not exceed 10 days	N/A	£8175
(e) a case on the multi-track in the High Court where the trial is projected to exceed 10 days	N/A	£10900
2.6 On an application on notice where no other fee is specified.	£80	£105

2.7 On an application by consent or without notice where no other fee is specified.		
(a) in the county court and High Court	£45	£45
(b) in the High Court where the application results in an urgent hearing	N/A	£105
3 Companies Act 1985(3), Companies Act 2006(4) and Insolvency Act 1986(5) (High Court and county court)		
3.5 On an application under the Companies Act 1985, the Companies Act 2006 or the Insolvency Act 1986 other than one brought by petition and where no other fee is specified.	£155	£340
FEES PAYABLE IN HIGH COURT ONLY		
10 Miscellaneous proceedings or matters		
Bills of Sale		
10.1 On filing any document under the Bills of Sale Acts 1878(11) and the Bills of Sale Act (1878) Amendment Act 1882(12) or on an application under section 15 of the Bills of Sale Act 1878 for an order that a memorandum of satisfaction be written on a registered copy of the bill.	£25	£60
Searches		
10.2 (a) On a search in any record, register or index held by the High Court; or in the High Court Funds Office (b) an official certificate of the result of a search for each name, in any register or index held by the court; or in the Court Funds Office, for an official certificate of the result of a search of unclaimed balances for a specified period of up to 50 years.	£45	£45
FEES PAYABLE IN COURT OF APPEAL ONLY		
13 Fees payable in appeals to the Court of Appeal		
13.1(a) Where in an appeal notice, permission to appeal is applied for:	£235	£465
on filing an appellant's notice; or		
where the respondent is appealing, on filing a respondent's notice.		

13.1(b) Where permission to appeal is not required or has been granted by the lower court (unless the applicant has paid fee 13.1(e):	£465	£1090
on filing an appellant's notice, or		
on filing a respondent's notice where the respondent is appealing.		
13.1(c) Where an extension of time is applied for as part of an appellant's notice or a respondent's notice		
on notice.	N/A	£105
by consent or without notice.	N/A	£45
13.1(d) On filing an application included within an appellant's notice or a respondent's notice where no other fee is specified	N/A	£465
13.1(e) On filing an application to seek permission for a decision on paper to be reconsidered at a hearing (pursuant to rule 52.3(4) of the Civil Procedure Rules).	N/A	£1090
13.1(f) On filing an appeal questionnaire (unless the applicant has paid fee 13.1(b) or 13.1(e)).	£465	£1090
13.2(a) On filing a respondent's notice where the respondent wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court.	£235	£465
13.2(b) On filing an application notice in which permission is sought to reopen a final appeal (pursuant to rule 52.17 of the Civil Procedure Rules)	N/A	£465
13.2(c) On an application within existing proceedings		
on notice where no other fee is specified.	N/A	£105
by consent or without notice where no other fee is specified.	N/A	£45
13.3 On filing an application notice.	£235	£465
Fee 13.3 is not payable for an application made in an appeal notice.		
13.4 On filing a listing questionnaire; or where the court fixes the trial date or trial week without the need for a listing questionnaire, within 14 days of the date of despatch of the notice (or the date when oral notice is given if no written notice is given) of the trial week or the trial date if no trial week is fixed."	N/A	£110

