

Title: <b>Enhanced Court Fees</b> IA No: MoJ222  Lead department or agency: <b>Ministry of Justice</b>  Other departments or agencies: <b>HM Courts and Tribunals Service</b>	Impact Assessment (IA)	
	Date: 14/1/2015	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary Legislation	
Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk		
<b>Summary: Intervention and Options</b>		RPC Opinion: N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value (2013/14 prices)	Business Net Present Value (2013/14 prices)	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?	
-£0.4 million	NA	NA	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

The income generated through fees charged in the civil courts in England and Wales now broadly covers the full costs of the service, less the cost of remissions, in line with Her Majesty's Courts & Tribunals' Service's (HMCTS) financial objective. Nevertheless, the overall net cost of operating HMCTS is still over £1 billion per annum. The policy of setting some fees above costs aims to contribute to HMCTS' financial position.

**What are the policy objectives and the intended effects?**

The aim of enhanced fees is:

- to protect access to justice by ensuring that the courts and tribunals are adequately resourced;
- to reduce the overall taxpayer subsidy for HMCTS.

The enhanced fee proposals set fees in excess of the costs of the activities to which they relate (i.e. some specific proceedings in the civil courts) in order to reduce the overall net costs of HMCTS to the taxpayer.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing. Maintain the current fee structure.


Option 1: Introduce enhanced charging for court services which recovers more than the cost of services in specific areas.

The Government has decided to pursue Option 1 as it will meet our policy objectives.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date:**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A		Non-traded: N/A

*I have read the Impact Assessment and I am satisfied that, (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:  Date: 16 January 2015

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce enhanced charging for court fees which recover more than the cost of services in specific areas.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.4	High: -0.4	Best Estimate: -0.4

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0.4	120	1,030

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

Transitional HMCTS costs, including costs of minor adjustments to court IT systems and costs of reissuing forms and guidance, are expected to be around £0.4 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £120 million per annum (in 2013/14 prices).

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

There may be some minor transitional costs related to HMCTS staff familiarising themselves with the changed fees. There could be an increased cost to HMCTS from processing more applications for fee remissions. Costs to court users from familiarisation are expected to be negligible. Successful claimants may incur cash flow costs as they would pay higher court fees upfront but only recover them once the case is settled.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	120	1,030

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

HMCTS would benefit from increased fee income after fee remissions have been applied of around £120 million per annum (in 2013/14 prices).

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

### Key assumptions/sensitivities/risks

Discount rate (%) 3.50

It has been assumed that fee changes will not affect court case volumes. Sensitivity analysis considers a 'low' 2 per cent reduction in case volumes compared to the baseline, a 'medium' 5 per cent reduction, and a 'high' 10 per cent reduction.

It has been assumed that there are no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees.

It has been assumed that there are no impacts on the legal services used to pursue or defend claims.

Rounding to the nearest £5m has been applied to the income figures.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m, 2009 prices:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits:	Net: NA	No	NA

## Annual profile of monetised costs and benefits - 2013/14 (nearest £5m<sup>1</sup>)

Option 1	Y <sub>1</sub> 2013/14	Y <sub>2</sub> 2014/15	Y <sub>3</sub> 2015/16	Y <sub>4</sub> 2016/17	Y <sub>5</sub> 2017/18	Y <sub>6</sub> 2018/19	Y <sub>7</sub> 2019/20	Y <sub>8</sub> 2020/21	Y <sub>9</sub> 2021/22	Y <sub>10</sub> 2022/23
<b>Transition costs</b>	-	-	0.4	-	-	-	-	-	-	-
<b>Annual recurring cost</b>	-	-	120	120	120	120	120	120	120	120
<b>Total annual costs</b>	-	-	120	120	120	120	120	120	120	120
<b>Transition benefits</b>	-	-	-	-	-	-	-	-	-	-
<b>Annual recurring benefits</b>	-	-	120	120	120	120	120	120	120	120
<b>Total annual benefits</b>	-	-	120	120	120	120	120	120	120	120

<sup>1</sup> The exception is the transition costs which are quantified to the nearest £0.1m.

# Evidence Base (for summary sheets)

## Background

1. Court fees are prescribed by the Lord Chancellor under statutory powers. Section 180 of the *Anti-social Behaviour, Crime and Policing Act 2014*, provides the Lord Chancellor with a specific power to prescribe fees which exceed cost (“enhanced fees”) so as to ensure that the courts and tribunals are adequately funded having considered the financial position of the courts and tribunals and the competitiveness of legal services. Specific enhanced fees must be introduced via a Statutory Instrument that is subject to the affirmative resolution procedure except where fee increases reflect changes in the value of money.
2. When setting fees, the Lord Chancellor is also under an existing duty (see s92 (3) Courts Act 2003) to have regard to the principle that access to the courts must not be denied. A remissions system of full or partial fee waivers is in place to ensure that access to justice is maintained for those individuals on lower incomes who would otherwise have difficulty paying a fee to use court services. Such individuals can therefore access court services free of charge or at a reduced rate.

## Rationale

3. The MoJ’s aim is that the courts and tribunals are adequately resourced in such a way that access to justice is protected while costs to the taxpayer are reduced. The policy aims are:
  - for specified proceedings, to charge enhanced fees so that users who can afford to, make a greater contribution towards the overall costs of HMCTS.
4. The Government response to the consultation, published along side this Impact Assessment, sets out the Government’s plans for charging enhanced fees and the policy rationale in more detail. This Impact Assessment assesses the impact of the Government’s preferred approach in light of the responses to this consultation and in light of further evidence that was obtained during the consultation period.

## Description of Options Considered

5. This Impact Assessment identifies both monetised and non-monetised impacts with the aim of understanding what the net impact might be from implementing the options described below.
  - Option 0 - (Base Case) Do nothing. Maintain the current fee structure.
  - Option 1 - Introduce enhanced charging for court services which recover more than the cost of services in specific areas.
6. The Government intends to implement Option 1 as this better meets the policy objectives.

## Affected Stakeholder Groups, Organisations and Sectors

7. These reforms will affect, primarily, individuals and businesses pursuing cases through the courts. In particular:
  - Court Users – those who use the civil court system;
  - HM Courts and Tribunals Service (HMCTS) – who operate the court system;
  - Taxpayers – who subsidise HMCTS as overall HMCTS income falls below overall HMCTS costs; and
  - The Legal Aid Agency (LAA) – who cover court fees where legal representatives are paid from the legal aid fund and where the case is lost by the legally aided party.

## Cost and Benefits of Options Considered

### Key Data and Assumptions

#### *Methodology*

8. We present annual costs and benefits in steady state throughout the Impact Assessment.
9. To calculate money claim fee income, we have assumed that claim values are equally distributed within each current fee band (i.e. we have used the arithmetic mid-point value for each claim band).
10. To calculate the income from proceedings in the High Court, we have used receipts data from the Royal Courts of Justice for the first five months of 2014/15 to give an annual income estimate for 2015/16 onwards.

#### *Trends*

11. We present both costs and fee income in 2013/14 prices. This assumes that fees are uplifted by CPI (Consumer Price Index) inflation each year.
12. We assume fee income is constant from 2015/16 onwards. However, as the implementation date is March 2015, we also expect to generate £10m of increased from enhanced fees in 2014/15. However, for ease of exposition, throughout this Impact Assessment we present annualised figures.

#### *Volumes*

13. Specified money claims: We estimate that around 1,110,000 specified money claims will be made during 2015/16. Of these we estimate that around 137,000 will be presented directly at a court centre, approximately 810,000 will be processed via the Claims Production Centre, and around 164,000 will be made using the Money Claims On Line (MCOL) facility.
14. Unspecified money claims: Around 133,000 unspecified money claims are expected to be issued during 2015/16.
15. High Court proceedings: In addition to these volumes, we estimate that around 7,500 cases will be issued in the Rolls Building during 2015/16. Of these we estimate that around 3,500 of these claims will be worth £200,000 or more.

#### *Refunds and Remissions*

16. We assume that there are no refunds of court fees.
17. We assume the remissions scheme introduced in October 2013 remains in place. We also assume that the income, capital and benefits (for those who would be eligible for fee remissions) thresholds increase with CPI inflation annually. This means that eligibility for fee remissions is unchanged.
18. We assume that the planned fee changes will not impact on those who are entitled to a full fee remission (e.g. individuals in receipt of particular benefits).

#### *Demand*

19. We assume that user demand will not change in response to planned fee rises (i.e. that court fee changes themselves will not change court case volumes). External and internal research conducted to date suggests that this assumption is reasonable:
  - Individuals and small businesses participating in published external research conducted on behalf of MoJ by Ipsos Mori<sup>2</sup> tended to view going to court as their only remaining option (having exhausted other possibilities) and, as such, emotional motivations tended to be their primary reason for taking their case to court. Users with legal representation tended to have little awareness of the costs, including court fees, and typically viewed court fees as a low proportion of their overall costs. Conversely, litigants in person were more aware of court fee levels as these were typically the sole costs they paid. Individuals with legal representation exhibited less sensitivity to price than those who were self-represented. When asked about specific hypothetical increases to court fees, participants felt that the proposed increases were affordable and would not have deterred them from going to court.

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<sup>2</sup> "The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants" MoJ (2014)

- 2013 MoJ published research<sup>3</sup> with bulk user organisations and solicitors, reported that increases in court fees would have minimal impact on the volume of cases they bring to court. This was because litigation was seen as a last resort, court fees were considered to be a small proportion of the overall cost of going to court and decisions to take cases to court were influenced by more by other factors.
- A 2007 MoJ published Research Paper<sup>4</sup> found that fees ranked as lower in importance than other considerations such as “getting justice”.
- Unpublished internal MoJ analysis on Civil Driver-Based Forecasts concluded that minor fee changes (at issue) that have occurred since 2000 do not appear to have had any statistically significant impact on historical caseload over and above the variation that is explained by changes in the other economic drivers (debt, GDP, interest rates).
- In general, when pursuing litigation, court fees represent a small proportion of the value of the claim and of the total legal costs involved (which, in successful civil cases can be transferred to the losing defendant). For example, using data submitted to the Jackson Review<sup>5</sup>, court fees amounted to less than one per cent of the value of a ‘typical’ personal injury or commercial claim worth more than £300,000, while the total legal costs, including court fees, were held to be ‘substantially less than, and were proportionate to, the sums at stake in the litigation’.
- Research for the MoJ conducted by the British Institute of International Comparative Law<sup>6</sup> suggested that court fees are not currently a determining factor in deciding whether and where to litigate. This study was largely based on the perceptions, fears and concerns of the research participants.

20. However, there is still a risk that demand for court services may fall as a result of court fee increases. Sensitivity analysis considers reductions in demand of 2 per cent (‘low’), 5 per cent (‘medium’) and 10 per cent (‘high’) compared to the baseline.

### **Option 0 (Base Case) Do nothing. Maintain current fees.**

#### **Description**

21. The base case option assumes the latest fee schedule introduced in April 2014 remains fully in place. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

### **Option 1 - Introduce enhanced charging for court fees which recover more than the cost of services in specific areas**

#### **Description**

22. In summary the reforms involve charging an issue fee of 5% of the value of the claim for money claims, both specified and unspecified (a detailed breakdown of the proposed new fee structure is presented in Annex A).

23. The current fee levels for claims worth £10,000 or less will, however, not change (because if the proposals were applied to such claims their fee would be lower than at present).

24. In addition fees will be capped at £10,000. This is equivalent to the fee which would apply to a money claim of £200,000. Over 99% of claims (excluding High Court proceedings) have a value of under £200,000.

#### *Discounts & counterclaims*

25. Currently, those who file claims electronically using the Secure Data Transfer (SDT) facility or Money Claims On Line (MCOL) pay a lower fee to issue proceedings. This discount reflects the administrative saving to HMCTS in processing the claim submitted electronically. Under Option 1 the

<sup>3</sup> “Potential impact of changes to court fees on volumes of cases brought to the civil and family courts” (MoJ, 2013)

<sup>4</sup> Source: What’s cost got to do with it? The impact of changing court fees on users (MoJ, 2007)

<sup>5</sup> *Review of Civil Litigation Costs: Preliminary Report*, May 2009. See Graph 7.1 (p66) and Chapter 7, paragraph 7.14 (p107).

<sup>6</sup> ‘Factors Influencing International Litigants’ Decisions to Bring Commercial Cases to London Based Courts’ (MoJ, 2014).

same fees and discounts will continue to apply to on line claims of £10,000 or less, while a 10% discount will continue to apply to those claims worth above £10,000.

26. Under current arrangements, the fee for issuing a counterclaim is the same as the fee for the principal claim. Under Option 1, this approach for counterclaims will continue.

## **Costs of Option 1**

### **Transitional Costs**

#### *Costs to HMCTS*

27. HMCTS expect to incur costs of approximately £5,000 for changes to court publications and destroying old stock while amendments to court IT systems are estimated at around £300,000 to £400,000. There may also be some small costs related to court staff having to familiarise themselves with the new fees. In summary, the transitional costs to HMCTS are expected to be around £400,000 in total.

#### *Costs to court users, legal services providers and the LAA*

28. Familiarisation and awareness costs might also be incurred by court users, their legal services providers and the LAA. These have not been monetised and are not expected to be significant.

### **Ongoing Costs**

#### *Costs to court users*

29. The total additional cost to court users of Option 1 is estimated to be around **£120 million per annum** in 2013/14 prices compared to the base case. This breaks down to around £35 million from specified money claims, around £40 million from unspecified money claims and around £45 million from cases in the High Court. All figures have been rounded to the nearest £5 million. (Some court users will benefit from fee remissions, whereby they are in effect exempt from paying fees. The above figures relate to the amount of extra fee income paid by court users after remissions have been provided).

30. Generally, court fees are paid upfront by the claimant but are normally recoverable from the defendant where the claimant wins. Therefore in most cases where Option 1 will apply, the extra costs will be met by unsuccessful claimants or by losing defendants. However, there may be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. However, due to large variations in the level of fees and the average length of the cases involved, we have not quantified this cash flow cost in this Impact Assessment.

#### *Costs to legal services providers*

31. There is a possibility that some legal services providers may experience cash flow costs if they pay any court fees up front and later claim these back from either their client or the LAA. This cost has not been quantified as we are unable to estimate how many cases have this arrangement nor the time before clients or the LAA pay their bill.

32. In addition, there may potentially be higher costs for those legal services providers who bring claims under a 'no win no fee' agreement because if the client loses the case, the legal services provider may bear the cost of the higher fee, depending on the nature of the 'no win no fee' agreement.

#### *Costs to LAA*

33. We do not anticipate that the changes will have a significant impact on the cost of legal aid. While support and assistance under the legal aid scheme includes the payment of court fees, the impact of these proposals is expected to be minimal as legal aid is not generally available for money claims.

## **Benefits of Option 1**

### **Transition benefits**

34. No transition benefits have been identified.

## Ongoing benefits

### *Benefits to HMCTS*

35. As a result of these enhanced fees HMCTS is expected to benefit from increased fee income of around **£120 million per annum** in 2013/14 prices, compared to the base case. This relates to the extra income received after remissions have been applied.

### *Benefits to wider society*

36. Increasing the fees in civil proceedings so that they exceed the cost of those proceedings will reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS. This would fall by the total increase in fee income after remissions have been applied.

## Net Impact of Option 1

37. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at around £400,000). Court staff, court users, legal services providers and the LAA are also expected to incur negligible costs from familiarising themselves with the new fee structure.

38. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £120 million per annum (in 2013/14 prices) after remissions have been applied.

## Risks and Sensitivity Analysis

39. The planned implementation date for the enhanced fees package is March 2015. Since the enhanced fees package requires legislative and operational changes there is a risk that the implementation date might slip. The figures in this Impact Assessment relate to increased income for the year 2015/16 onwards.

### *Sensitivity Analysis*

40. As discussed in the Key Assumptions section, the demand for court services is assumed not to change in response to the proposed changes to fees. However, if demand were to change as a result of the proposed fee changes, expected income from the proposals would be affected. We have modelled three theoretical situations (in addition to the baseline caseload trend which assumes changes in caseload which are not due to court fee changes) in which demand falls by 2%, 5% or 10% to give low, medium and high risk scenarios, the results of which are shown in table 1 below.

41. Table 1 shows that these changes to caseloads would have a significant impact on the anticipated annual income from the fee changes (after any fee remissions have been applied). At most, with a 10% fall in volumes, fee income from these proposals would fall from around £120 million to around £110 million. The following figures have been rounded to the nearest £5 million.

**Table 1: Incremental Net Income under different demand scenarios**

	Central caseload scenario with no demand change	Demand scenarios		
		Low demand fall (2%)	Medium demand fall (5%)	High demand fall (10%)
Estimated net income in 2013/14 prices (£m)	120	120	115	110
Difference in net income compared to central caseload scenario (£m)		0	5	10

## Enforcement and Implementation

42. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the case would not be permitted to proceed. This would continue to apply under the option being considered.



## **One In Two Out**

43. The Regulatory Framework Group has considered these reforms and decided that they do not constitute regulation. Therefore, these reforms are out of scope of the One In Two Out framework.

## Annex A: Schedule of fees to issue proceedings for money claims

Claim value				Current fee		New fee	
				Filed at a court centre	Filed via SDT/MCOL	Filed at a court centre	Filed via SDT/MCOL
Up to	£300			£35	£25	£35	£25
Greater than	£300	but no more than	£500	£50	£35	£50	£35
Greater than	£500	but no more than	£1,000	£70	£60	£70	£60
Greater than	£1,000	but no more than	£1,500	£80	£70	£80	£70
Greater than	£1,500	but no more than	£3,000	£115	£105	£115	£105
Greater than	£3,000	but no more than	£5,000	£205	£185	£205	£185
Greater than	£5,000	but no more than	£10,000	£455	£410	£455	£410
Greater than	£10,000	but no more than	£15,000	£550	£455	5% of the value of the claim	5% of the value of the claim, less 10%
Greater than	£15,000	but no more than	£50,000	£815	£610		
Greater than	£50,000	but no more than	£100,000	£910	£815		
Greater than	£100,000	but no more than	£150,000	£1,115	N/a		
Greater than	£150,000	but no more than	£200,000	£1,315	N/a		
Greater than	£200,000	but no more than	£250,000	£1,515	N/a	£10,000	N/a
Greater than	£250,000	but no more than	£300,000	£1,720	N/a	£10,000	N/a
	Greater than		£300,000	£1,920	N/a	£10,000	N/a

