

Title: <b>Enhanced Court Fees for Possession claims and for General Applications in civil applications</b> IA No: MoJ 043/2014  Lead department or agency: <b>Ministry of Justice</b>  Other departments or agencies: <b>HM Courts and Tribunals Service</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 14 <sup>th</sup> January 2015		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> mojfeespolicy@justice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			RPC Opinion: <b>N/A</b>

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?
			No   N/A

**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 is now broadly expected to cover the full costs of the service, less the cost of remissions, in line with Her Majesty's Courts & Tribunals' Service's (HMCTS) financial objectives. Nevertheless, the overall net cost of operating HMCTS is still over £1 billion per annum. The policy of setting some fees above costs ('enhanced fees') aims to further contribute to HMCTS' financial position. Following a recent consultation<sup>1</sup> the Government intends to introduce enhanced fees for money claims in the civil courts. In addition to this the Government is also consulting on introducing further enhanced fees in order to further support 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 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 further enhanced fees for Possession claims.

Option 2: Introduce further enhanced fees for General Applications in civil proceedings.

Option 3: Introduce both of the above Options. This is preferred as it will better 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, 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: 16 January 2015

<sup>1</sup> <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Increasing fees for all possession claims by £75

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Minimal	High: Minimal	Best Estimate: Minimal

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0.1	15	

### 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 up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £15 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 and from processing additional 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	15	

### 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 £15 million per annum (in 2013/14 prices).

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

N/A

### Key assumptions/sensitivities/risks

Discount rate (%)

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: N/A	Benefits: N/A	Net: N/A	No	N/A

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Increasing fees for *ex parte* general applications, or applications by consent, in civil proceedings by £50 and contested ('on notice') general applications in civil proceedings by £100

## FULL ECONOMIC ASSESSMENT

Price Base Year <b>2013/14</b>	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Minimal	High: Minimal	Best Estimate: Minimal

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>	0.1	35	

### 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 up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £35 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 and from processing additional 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.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>	0	35	

### 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 £35 million per annum (in 2013/14 prices).

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

N/A

### Key assumptions/sensitivities/risks

Discount rate (%)

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 be 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 2)

<b>Direct impact on business (Equivalent Annual) £m, 2009 prices:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs: N/A</b>	<b>Benefits: N/A</b>	<b>Net: N/A</b>	No	N/A

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Increasing the fee for possession claims by £75; increasing the fee for *ex parte* general applications and general applications made by consent in civil proceedings by £50; and increasing the fee for on notice/contested general applications in civil proceedings by £100.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Minimal	High: Minimal	Best Estimate: Minimal

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0.1	55	

### 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 up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £55 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 and from processing additional 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	55	

### 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 £55 million per annum (in 2013/14 prices).

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

N/A

### Key assumptions/sensitivities/risks

Discount rate (%)

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 3)

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

## 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
Transition costs	-		0.1							
Annual recurring cost	-	-	15	15	15	15	15	15	15	15
Total annual costs	-	-	15	15	15	15	15	15	15	15
Transition benefits	-	-	-							
Annual recurring benefits	-	-	15	15	15	15	15	15	15	15
Total annual benefits	-	-	15	15	15	15	15	15	15	15

Option 2	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
Transition costs	-		0.1							
Annual recurring cost	-	-	35	35	35	35	35	35	35	35
Total annual costs	-	-	35	35	35	35	35	35	35	35
Transition benefits	-	-	-							
Annual recurring benefits	-	-	35	35	35	35	35	35	35	35
Total annual benefits	-	-	35	35	35	35	35	35	35	35

Option 3	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
Transition costs	-		0.1							
Annual recurring cost	-	-	55	55	55	55	55	55	55	55
Total annual costs	-	-	55	55	55	55	55	55	55	55
Transition benefits	-	-	-							
Annual recurring benefits	-	-	55	55	55	55	55	55	55	55
Total annual benefits	-	-	55	55	55	55	55	55	55	55

<sup>1</sup> With the exception of transition costs which are given 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.

## Policy Rationale and Objective

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 the costs to the taxpayer are reduced. The policy aim is therefore:
  - 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. Our proposals are to introduce enhanced fees in the following specific areas:
  - Possession claims (i.e. proceedings for the recovery of land); and/or
  - General Applications made in civil proceedings.

## 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 including the enhanced fees for money claims which are due to be introduced soon.
  - Option 1 – Introduce enhanced fees for Possession claims.
  - Option 2 – Introduce enhanced fees for General Applications made in civil proceedings.
  - Option 3 – Introduce both Options 1 and 2.
6. The Government prefers Option 3 as this better meets the policy objectives.
7. The Government is not proposing to increase the fee for a General Application in civil proceedings in the following circumstances:
  - an application to extend or vary an injunction to protect someone from harassment or violence;
  - an application on behalf of a child or vulnerable adult for payments to be made out of funds held in court;
  - an application in insolvency proceedings. There is currently no power to charge an enhanced fee where fees are prescribed under s414 and s416 of the Insolvency Act 1986.
8. The consultation will also seek views on;
  - whether there are other circumstances in which General Applications in civil proceedings should not be subject to the proposed fee increases.

## Affected Stakeholder Groups, Organisations and Sectors

9. 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 Assumptions

#### *Methodology*

10. We present annual costs and benefits in steady state throughout the Impact Assessment.

#### *Trends*

11. We present both costs and fee income in 2013/14 prices<sup>2</sup>. This assumes that fees are uplifted by Consumer Price Index (CPI) inflation each year.
12. We assume fee income will be constant from 2015/16 onwards and we present annualised figures in this Impact Assessment.

#### *Volumes*

13. Possession claims: We currently estimate the following caseloads for 2015/16 (rounded to the nearest 5,000):
- Around 15,000 mortgage and rent repossession claims made directly at a court centre.
  - Around 175,000 mortgage and rent repossession claims made online.
  - Around 45,000 accelerated possession claims.
  - In total, this means that around 235,000 claims for possession are expected to be made.
14. General Applications: We currently estimate the following volumes will be made in civil proceedings during 2015/16 (rounded to the nearest 10,000):
- Around 370,000 General Applications made for money claims, both specified or unspecified.
  - Up to around 20,000 General Applications made in insolvency claims. This estimate is subject to some uncertainty.
  - The number of General Applications relating to injunctions for harassment and violence is not known with certainty but is considered to be very small (and, given that these forecast caseload figures have been rounded to the nearest 10,000, has been taken to be zero in this Impact Assessment).
  - Around 160,000 General Applications made in other civil proceedings.
  - In total, around 550,000 General Applications are expected to be made in civil proceedings.
15. General Applications are split between (i) applications which are made without notice to the opponent (*ex parte*), or which are made on notice but with the consent of the opponent; and (ii) applications on notice to the opponent which are contested :

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<sup>2</sup> Cost base in 2013/14 prices is £625 million

- Of the above total of around 550,000, around 300,000 General Applications are expected to be made *ex parte* or by consent.
- Of the above total of around 550,000, around 250,000 General Applications are expected to be contested.

### *Refunds & Remissions*

16. We assume that there are no refunds of court fees.
17. We assume that the remissions scheme introduced in October 2013 remains in place and the thresholds for income, capital and benefits (for those who would be eligible for remissions) are increased with CPI inflation annually. This implies that eligibility for remissions will be 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 or with few disposable assets).

### *Demand*

19. We assume that court 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 on behalf of the MoJ suggests that this assumption is reasonable:
  - Individuals and small businesses participating in published MoJ research conducted by Ipsos Mori<sup>3</sup> tended to view litigation as their only remaining option (having exhausted other possibilities) with emotional motivations tending to be their primary reason for taking their case to court. Users with legal representation tended to have little awareness of legal costs, including court fees, typically viewed court fees as a low proportion of these and exhibited less sensitivity to price than those who represented themselves as court fees were typically the sole costs they paid. However, when asked about specific hypothetical increases to court fees, the research participants felt they were affordable and would not deter them from going to court.
  - MoJ research published in 2013<sup>4</sup> found that increased court fees would have a minimal impact on the volume of cases bulk user organisations and solicitors would bring to court. Again 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 such decisions were influenced by more factors than cost alone.
  - A 2007 MoJ published Research Paper<sup>5</sup> found that fees ranked as lower in importance than other considerations such as “getting justice” when taking cases to the courts.
  - Unpublished internal MoJ initial analysis on Civil Driver-Based Forecasts concluded that the minor fee changes (at issue) that have occurred since 2000 do not appear to have had a statistically significant impact on historical caseloads over and above the variation that were explained by changes in wider economic drivers (e.g., 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>6</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>7</sup> suggested that court fees are not currently a determining factor in deciding whether and where

<sup>3</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 (MoJ (2014)

<sup>4</sup> “Potential impact of changes to court fees on volumes of cases brought to the civil and family courts” MoJ (2013)

<sup>5</sup> Source: What’s cost got to do with it? The impact of changing court fees on users (MoJ, 2007)

<sup>6</sup> *Review of Civil Litigation Costs: Preliminary Report*, May 2009. See Graph 7.1 (p66) and Chapter 7, paragraph 7.14 (p107).

<sup>7</sup> ‘Factors Influencing International Litigants’ Decisions to Bring Commercial Cases to London Based Courts’ (MoJ, 2014).



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 these court fee increases. Our sensitivity analysis therefore considers reductions in demand of 2 per cent ('low'), 5 per cent ('medium') and 10 per cent ('high') compared to the baseline for the case types affected.

### **Option 0 (Base Case) Do nothing. Maintain the current fee structure including enhanced fees for money claims**

21. The base case option assumes the latest fee schedule introduced in April 2014 remains fully in place and that enhanced fees for money claims are introduced in accordance with the consultation response relating to those proposals<sup>8</sup>. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV)<sup>9</sup>.

### **Option 1: Introduce enhanced fees for Possession claims**

22. Other than for proceedings brought to evict trespassers, proceedings for the recovery of land (where these concern residential property) are generally brought in two sets of circumstances:

- by mortgage lenders, where a borrower is in arrears on their mortgage payments; and
- by landlords, whose tenants have fallen into rent arrears.

23. The large majority of these proceedings are brought in the County Court. A claim for possession may only be brought in the High Court in exceptional circumstances where, for example, the case:

- involves complicated disputes of fact; or
- raises issues of law of wider public interest.

24. The fees currently charged to commence these proceedings were last increased on 22 April 2014, and represent the full cost of providing access to the courts. The current fees are:

- £480 to commence proceedings in the High Court
- £280 to commence proceedings in the County Court; and
- £250 to commence proceedings online using the Possessions Claims Online facility (PCOL).

25. This option would increase the fees charged in County Court and on-line proceedings by £75.

### **Costs of Option 1**

#### **Transitional costs**

##### *Transitional costs to HMCTS*

26. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be the same for all Options and are considered to be no greater than around **£0.1 million**.

##### *Transitional costs to court users and the LAA*

27. 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.

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<sup>8</sup> This consultation response can be accessed at: <https://consult.justice.gov.uk/digital-communications/court-fees-proposals-for-reform>.

<sup>9</sup> 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.

## Ongoing costs

### Costs to court users

28. The total additional cost to court users, if the increase in the Possession claim fee is implemented, is estimated to be around **£15 million per annum** in 2013/14 prices, compared to the base case. (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).
29. Because of the differences in the fees charged, Table 1 below provides a further breakdown of this income estimate between the two main types of possession claims.

**Table 1: Breakdown of additional by main possession claim type**

	<b>Additional income in 2013/14 prices (£m)</b>
<b>Proceedings commenced in the County Court</b>	<b>5</b>
<b>PCOL</b>	<b>10</b>
<b>All possession claims</b>	<b>15</b>

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 the reforms 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. These cash flow costs have not been monetised and are expected to be minimal per case given the scale of the fee increase.

### 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. Although case volumes are anticipated to remain the same in our baseline analysis, there may be possible implications for other costs. For example, it is possible that some claimants may at the margin reduce their spending on legal services to compensate for higher fees. Conversely the additional costs associated with losing a case and paying higher court fees may at the margin encourage parties to spend more on legal services. Given the scale of the proposed fee increase these effects are likely to be marginal, if they arise. Overall it has been assumed that spending on legal services providers is likely to remain the same following these fee changes.

### Costs to the LAA

33. We do not anticipate that the proposed changes will have a significant impact on the cost of legal aid. This is because the impacts of these proposals are expected to be minimal as legal aid is not generally available for proceedings to which these proposals apply.

## **Benefits of Option 1**

### Ongoing benefits

#### Benefits to HMCTS

34. As a result of the proposed enhanced fees HMCTS would benefit from an estimated increased fee income of around **£15 million per annum** in 2013/14 prices, compared to the base case. This relates to the extra income received after remissions have been applied.

## *Wider benefits to society*

35. Increasing 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**

36. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to around £100,000). 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.
37. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £15 million per annum (in 2013/14 prices) after remissions have been applied.

### **Option 2: Introduce enhanced charging for General Applications**

38. General Applications are applications made to the court within existing proceedings. They are brought in both civil and family proceedings and can cover a very wide set of circumstances including applications to amend pleadings in proceedings, vary directions, adduce fresh evidence, strike out claims or defences or to extend or vary the terms of an interim injunction.
39. These applications attract a generic fee: the fee for which no other fee is specified. The current fees, for both civil and family proceedings are:
- £50 where the application is made without notice to the other side, or the opponent has indicated that they consent to the application;
  - £155 where the application is on notice and contested.
40. Using our 2015/16 caseload estimates, we estimate that around 80 per cent of General Applications may occur in civil proceedings while the balance may be made in family cases. On the basis of the previous consultation on enhanced fees, the current proposals relate only to general applications in civil proceedings.
41. The current proposals are to raise General Application fees in civil proceedings:
- for an *ex parte* application, or an application by consent, by £50; and
  - for a contested hearing/on notice application by £100.
42. While we believe these fee increases are reasonable in most cases, there may be circumstances where they could create concerns about access to the courts. We therefore propose that General Applications made in certain proceedings should be exempt from the fee increases. These are:
- General Applications to extend or vary an injunction to protect someone from harassment or violence;
  - General Applications for payments made out of funds held by the court on behalf of children or vulnerable adults;
  - General Applications in insolvency proceedings.
43. It is possible that a rise in the fees for General Applications may lead to changes in case dynamics which result in fewer such applications being made during court proceedings. The potential impacts of a drop in the volume of General Applications are assessed in the sensitivity analysis section.

### **Costs of Option 2**

#### **Transitional costs**

##### *Transitional costs to HMCTS*

44. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are

expected to be the same for all Options and are considered to be no greater than around **£0.1 million**.

#### *Transitional costs to court users and the LAA*

45. 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*

46. The total additional cost to court users, if the increase in General Application fees is implemented, is estimated to be around **£35 million per annum** in 2013/14 prices, compared to the base case. (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).
47. Table 2 below provides a further breakdown of the above income estimate between the two types of general applications made in civil proceedings.

**Table 2: Breakdown of additional income between *ex parte* and contested general applications**

	<b>Additional fee income in 2013/14 prices (£m)</b>
<b>General applications made <i>ex parte</i> or by consent</b>	<b>10</b>
<b>Contested general applications</b>	<b>25</b>
<b><i>All general applications</i></b>	<b>35</b>

48. Generally, court fees are paid upfront by the person making the application but are normally recoverable in the litigation. Therefore in most cases where the reforms 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. These cash flow costs have not been monetised and are expected to be minimal per case given the scale of the fee increase.

#### *Costs to legal services providers*

49. 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.
50. 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 their agreement.
51. Although case volumes are anticipated to remain the same in the central analysis, there may be possible implications for other costs. For example, it is possible that some claimants may at the margin reduce their spending on legal services to compensate for higher fees. Conversely the additional costs associated with losing a case and paying higher court fees may at the margin encourage parties to spend more on legal services. Given the scale of the proposed fee increase these effects are likely to be marginal, if they arise. Overall it has been assumed that spending on legal services providers is likely to remain the same following these fee changes.

## *Costs to the LAA*

52. We do not anticipate that the proposed changes will have a significant impact on the cost of legal aid. This is because the impacts of these proposals are expected to be minimal because legal aid is not generally available for proceedings to which these proposals apply.

## **Benefits of Option 2**

### **Ongoing benefits**

#### *Benefits to HMCTS*

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

#### *Wider benefits to society*

54. Increasing 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 2**

55. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to around £100,000). 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.

56. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £35 million per annum (in 2013/14 prices) after remissions have been applied.

## **Option 3: Implement Options 1 and 2**

57. Option 3 is a cumulative option which would combine Option 1 and Option 2. As the proposals in these options do not overlap, their impacts are largely additive.

## **Costs of Option 3**

### **Transitional costs**

#### *Transitional costs to HMCTS*

58. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be the same for all Options, including for all Options combined, and are considered to be no greater than around **£0.1 million**.

#### *Transitional costs to court users and the LAA*

59. 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*

60. The total additional cost to court users from paying higher court fees is estimated to be up to around **£55 million per annum** in 2013/14 prices, compared to the base case. (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).

61. Generally, court fees are paid upfront by the claimant, or by the person making the application but are normally recoverable from the defendant where the claimant wins. Therefore in most cases where the reforms 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. These cash flow costs have not been monetised given the variations in the types of cases which will be affected by the increase.

#### *Costs to legal services providers*

62. 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.
63. Although case volumes are anticipated to remain the same in our baseline analysis, there may be possible implications for other costs. For example, it is possible that some claimants may at the margin reduce their spending on legal services to compensate for higher fees. Conversely the additional costs associated with losing a case and paying higher court fees may, at the margin, encourage parties to spend more on legal services. Given the scale of the proposed fee increase these effects are likely to be marginal, if they arise. Overall it has been assumed that spending on legal services providers is likely to remain the same following these fee changes.

#### *Costs to the LAA*

64. We do not anticipate that the proposed changes will have a significant impact on the cost of legal aid. This is because the impacts of these proposals are expected to be minimal as legal aid is not generally available for proceedings to which these proposals apply.

### **Benefits of Option 3**

#### **Ongoing benefits**

##### *Benefits to HMCTS*

65. As a result of the proposed enhanced fees HMCTS would benefit from an estimated increased fee income of up to **£55 million per annum** in 2013/14 prices, compared to the base case. This relates to the extra income received after remissions have been applied.

##### *Wider benefits to society*

66. Increasing 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.

### **Risks and sensitivity analysis**

67. As discussed in the Key Assumptions section above the demand for court services is assumed not to change in response to the proposed changes to fees. However, if demand were to change, the expected income from the proposals would be affected. To assess this risk, 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. These demand scenarios have been applied to our central baseline case volume figure and the results of this analysis are shown in table 3 below.
68. As table 3 shows, changes to caseload as a result of changes to fees would have a significant impact on the anticipated annual income from the fee changes included in the current consultation. At most, with a 10% fall in volumes when fees increase, income from these enhanced fees proposals would fall from around £55 million to around £45 million (a reduction of around £10 million compared to the central caseload scenario which assumes no fall in demand due to fee

risers). The following figures have been rounded to the nearest £5 million. They relate to extra income received after fee remissions have been taken into account.

**Table 3: Changes in fee income net of remissions 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 income net of remissions in 2013/14 prices (£m)	55	55	50	45
Difference compared to the central caseload scenario (£m)		0	5	10

## Enforcement and Implementation

69. 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 options being considered.

## One In Two Out

70. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation. This means they are out of scope of the One In Two Out framework.