

<p><b>Title:</b> <b>Court Fees. Cost recovery.</b></p> <p>IA No: MoJ221</p> <p>Lead department or agency: <b>Ministry of Justice</b></p> <p>Other departments or agencies: <b>HM Courts &amp; Tribunals Service</b></p>	<h2 style="margin: 0;">Impact Assessment (IA)</h2>
	<p><b>Date:</b> 02/12/2013</p>
	<p><b>Stage:</b> Consultation</p>
	<p><b>Source of intervention:</b> Domestic</p>
	<p><b>Type of measure:</b> Secondary legislation</p>
	<p><b>Contact for enquiries:</b> mojfeespolicy@justice.gsi.gov.uk</p>
<p><b>Summary: Intervention and Options</b></p>	<p>RPC Opinion: <b>Awaiting</b></p>

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

Total Net Present Value (2013/14 prices)	Business Net Present Value (2009 prices)	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£-0.5m	-£445m	£50m	No	NA

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

The Ministry of Justice (MoJ) does not recover the full cost of the civil court system (the civil and family courts). In 2012/13 a gross income of around £500m was generated against a cost of around £625m, creating a deficit totalling around £125m (2013/14 prices). With around £25m of income spent on remissions (fee waivers) the overall cost to the taxpayer was around £150m. The MoJ's 2010 Spending Review settlement includes a commitment to recover by 2014/15 the full cost of the civil court system through fees, excluding the cost of remissions. Government intervention is necessary to increase income from fees.

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

The MoJ's policy is that fees in HM Courts & Tribunal Service reflect the full cost of the services provided, while protecting access to justice for the less well off and reducing the taxpayer subsidy for the civil court system. The policy objectives for the reforms in this Impact Assessment are to ensure that fee income covers 100% of the cost of providing services, minus the income foregone from the remission system; except in specific cases where a policy decision has been made to continue to charge below cost. The proposals also seek to simplify the current fee structure to make it easier to understand and more straightforward to administer.

**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 a new fee model that moves close to full-cost recovery in the civil court system.

Option 1 is the preferred option as it will more closely meet our policy objectives.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** October 2015

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	Yes	Yes	Yes	Yes	Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

**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: 2 December 2013

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce a new fee model that moves close to full-cost recovery in civil and family courts.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.5	High: -0.5	Best Estimate: -0.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		105	875
High		110	910
Best Estimate	0.5	105	895

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

The total additional cost to court users is estimated to be around £105m per annum. Transition costs to HM Courts & Tribunal Service, including costs of minor adjustments to court IT systems, and reissuing forms and guidance, are expected to be no more than £0.5m.

Within this the cost to business users is around £50m per annum (2009 prices) from paying higher fees. These would be paid by unsuccessful claimants and by losing defendants.

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

There may be minimal transitional costs related to HM Courts & Tribunals Service staff familiarising themselves with the changed fees. Successful claimants would incur cash flow costs from paying higher fees upfront (but in most cases recovering them in due course from losing defendants). There could also be an increased cost to HM Courts & Tribunals Service in processing fee remissions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	105	875
High	Optional	110	910
Best Estimate	0	105	895

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

Ongoing benefits include increased net fee income to HM Courts & Tribunals Service (and reduced burden on the taxpayer) of around £105m per annum.

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

A simplified fee structure will make the system easier for users to understand and more straightforward for HM Courts & Tribunals Service staff to administer. In addition, having fees set to better reflect the cost of proceedings ensures that users consider the costs and benefits of bringing a case to court.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

It is assumed that fee changes will not affect case volumes. However due to external factors there is a degree of uncertainty around baseline caseload volumes so high and low estimates have been provided. The high scenario assumes caseload remains unchanged and the low applies recent decreases in trend to 2012/13 caseload. Our best estimate is the mid-point of the high and low scenarios. It has also been assumed that there is no net detrimental impact on outcomes for either civil or family court cases or access to justice. The impact figures only include those fees where HM Courts & Tribunals Service could extract the detailed data required from the case management systems. It has also been assumed that there would be no impacts on legal services used to pursue and to defend a claim.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m, 2009 prices:			In scope of OIOO?	Measure qualifies as
Costs: 50	Benefits:	Net: -50	No	NA

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

<b>Option 1</b>	<b>Y<sub>1</sub></b> 2014/15	<b>Y<sub>2</sub></b> 2015/16	<b>Y<sub>3</sub></b> 2016/17	<b>Y<sub>4</sub></b> 2017/18	<b>Y<sub>5</sub></b> 2018/19	<b>Y<sub>6</sub></b> 2019/20	<b>Y<sub>7</sub></b> 2020/21	<b>Y<sub>8</sub></b> 2021/22	<b>Y<sub>9</sub></b> 2022/23	<b>Y<sub>10</sub></b> 2023/24
<b>Transition costs</b>	0.5	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	80	105	105	105	105	105	105	105	105	105
<b>Total annual costs</b>	80	105	105	105	105	105	105	105	105	105
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	80	105	105	105	105	105	105	105	105	105
<b>Total annual benefits</b>	80	105	105	105	105	105	105	105	105	105

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<sup>1</sup> With the exception of Transition Costs which is given to the nearest £0.5m

# Evidence Base

## Background

1. Litigants 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 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.
2. Court fees are prescribed by the Lord Chancellor under statutory powers and they must comply with the general policy principles for statutory fee-charging services, as set out in HM Treasury's guidance '*Managing Public Money – Charges and Levies*', which states that fees should normally be set at full cost levels. Departures from the normal rule may be justified on a case by case basis, but the guidelines generally do not permit different users of the same service to be charged different fees, or allow users of one service to be charged a higher fee to subsidise the fee for users of a different service.
3. A fee remissions system (of fee waivers) is in place to ensure that access to justice is maintained for those individuals with limited financial means 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. A fee remission is a full or partial fee waiver of the fees that become payable when an individual uses these services.
4. The underlying fee policy of cost recovery and the need to raise income to meet financial targets are not in question in the consultation paper. The proposals in the consultation paper set out our approach to achieving cost recovery in the civil court system. The proposals also seek to start to simplify the current fee structure to make it easier to understand and more straightforward to administer. The 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. This document assesses the impact of our proposed approach.

## Rationale

5. The government's overall aim is to reduce taxpayer subsidy of the court system by ensuring that fee income covers the cost of providing court services, minus the cost of the remissions system (fee waivers).<sup>2</sup> The remissions system exists to ensure that access to justice is maintained for court users who would otherwise have difficulty paying a court fee; these users can be awarded a full or partial waiver of their fee, depending on their financial circumstances.<sup>3</sup> The cost of the remissions system is met from the Ministry of Justice budget.
6. Calculations to determine the cost of the services provided in the civil court system have been made under the assumption that all fees would be paid in full in every case. The term "cost recovery" therefore refers to the setting of fees at the cost price calculated before fee remissions are taken into account.
7. The government believes that this policy offers a fairer deal to the taxpayer, as their contribution is targeted where it is most needed (that is, at ensuring access to justice for those who cannot afford to pay), whilst individual court users pay for the service they receive where they have the means to do so.
8. The current fee system divides services according to the area of law under which the court work is performed rather than by the nature of the service provided. As such, the various parts of the civil

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<sup>2</sup> The principle of full-cost recovery has featured in a number of previous consultation documents. See: 'Fees in the High Court and Court of Appeal Civil Division' [CP15/2011]; 'Civil Court Fees 2008' [CP31/08]; 'Civil and Family Court Fee Increases' [CP(L)24/05]; 'Civil Court Fees' [CP5/07]; 'Public Law Family Fees Consultation Paper' [CP32/07]; and 'Civil Court Fees' [CP10/04]

<sup>3</sup> See the recent MoJ fee remissions consultation and consultation response for more information: <https://consult.justice.gov.uk/digital-communications/fee-remissions-court-tribunals>

court system have been seen as distinct entities for the purpose of setting fees. Fees have developed incrementally, which has led to different fee-charging structures in each area, and these have been reported as distinct entities in the annual accounts of HM Courts & Tribunals Service.<sup>4</sup>

9. However, the government considers that these traditional distinctions do not properly reflect the way the court system operates today, nor the way it will increasingly operate in the future. For example, many administrative processes which were undertaken in local courts now take place in shared administration centres or online. Many courts are co-located, with different types of cases sharing the same back offices, court rooms and staff. With so many shared costs, the government believes it would be artificial to continue to consider the cost of each type of activity in each jurisdiction in isolation.
10. Therefore, when setting fees, we have looked at the costs of the civil court system as a whole, focusing on the cost of activities and processes which are common to all courts, such as issue or hearing, wherever they occur.
11. In addition to proposals for cost recovery, our aim is also to reduce the complexity of the current fee charging system by having fewer fee charging points, as well as common fees for similar processes across all jurisdictions. The fee changes proposed in the consultation paper are intended as a step towards that goal.

### **Policy Objectives**

12. The policy objectives are to:

- Design a coherent fee charging system that is easy to understand and administrate;
- Maximise fee income at or as close as possible to full cost levels, within the '*Managing Public Money – Charges and Levies*' guidelines;
- Ensure the system remains viable when patterns of demand change, by achieving as close a match between income and costs as possible; and
- Support our wider policy aims. For example, encouraging the use of mediation, digital access to services, and in a way which encourages users to settle their claims earlier.

### **Description of Options Considered**

13. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact might be from implementing these options.
  - Option 0 - (Base Case) Do nothing. Maintain the current fee structure.
  - Option 1 - Introduce a new fee model that moves close to full-cost recovery in the civil court system.
14. The government's preferred option is Option 1. We welcome views on the proposals during the consultation period.

### **Affected Stakeholder Groups, Organisations and Sectors**

15. The following principal groups are likely to be affected by the proposals:

- Court Users – those who use the civil court system;
- HM Courts & Tribunals Service – who administer the civil court system;
- Taxpayers – the subsidy currently provided by the UK Exchequer towards the running and operating costs of HM Courts & Tribunals Service; and
- Legal Aid Agency (LAA) – 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 LAA.

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<sup>4</sup> HM Courts and Tribunals Service is an executive agency of the Ministry of Justice. An executive agency is a semi-independent organisation set up by the government to carry out some of their responsibilities instead of a government department.

16. These changes will affect, primarily, individuals and businesses pursuing cases through the courts and local authorities pursuing public law family proceedings. The fee changes for family proceedings will affect individual users of the service and local authorities who issue care and supervision proceedings. Fee changes in civil proceedings will affect both individuals and organisations. While alternatives to court, such as mediation, are available for many types of cases, in some there are no alternatives to using the civil court system.

## **Cost and Benefits of Options Considered**

### **Key Assumptions**

#### *Methodology*

17. To model the income from proposed fee regimes we have combined outputs from costing and case progression analysis, taking into account remissions and changes to caseload volumes.

#### *Trends*

18. We have modelled two scenarios to assess the potential change in baseline caseload. Our high scenario assumes that baseline caseload stays at 2012/13 levels. The low scenario applies recent trends in baseline caseload to 2012/13 volumes; a 10% fall in specified money, 3% fall in unspecified money claims and a 4% decline in divorce petitions. We have presented the mid-point of these estimates throughout this Impact Assessment.

19. We present both costs and income in 2013/14 prices. This assumes that fees are uplifted by inflation each year.

20. We assume that costs are constant at 2012/13 cost levels, £625 million per year in 2013/14 prices. We also assume that fee income is constant from 2015/16 onwards.

#### *Refunds*

21. We assume that there are no refunds of court fees.

#### *Remissions*

22. We assume that the remissions scheme introduced in October 2013 is in place and that the remissions thresholds are adjusted for inflation annually.

#### *Demand*

23. 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. Qualitative evidence conducted to date suggests that this assumption is reasonable:

- 2013 MoJ internal qualitative research (published alongside this impact assessment) 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, as litigation was seen as a last resort, decisions to take cases to court were influenced more by other factors, and court fees were considered to be a small proportion of the overall cost of going to court .among those who used legal representation.
- 2007 MoJ Research Paper<sup>5</sup> found that fees ranked as lower in importance than other considerations such as “getting justice”.
- Internal 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).

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

- In general, when pursuing litigation, court fees also tend to be significantly lower than costs of legal services providers. For example using data collected as part of the Jackson Review<sup>6</sup>, average litigation costs were over £800,000 for one side in commercial proceedings. Court fees can also be transferred to the defendant by successful claimants.

24. We sensitivity test this assumption in the risks section of this Impact Assessment.

#### *Fees*

25. Individual fees in this Impact Assessment are presented in 2012/13 prices. We assume that these will be inflated to 2013/14 prices when we respond to the consultation.

#### *Legislation*

26. We assume that the legislation to allow enhanced fee charging will be in place by 2015/16.

### **Option 0 (Base Case) Do nothing. Maintain the current fee structure**

#### *Background*

27. In 2011/12 and 2012/13, the Ministry of Justice recovered only part of the cost of the civil court system. Figures in HM Courts & Tribunals Service Annual Report and Accounts 2012/13 showed a gross deficit, before the cost of remissions is taken into account, of £115 million (in 2013/14 prices).

28. To support the review of fees, we have revised the accounting policies used to divide costs between the different HM Courts & Tribunals Service operations. This is the first major review of accounting policies in this area for over 10 years. The new costing approach better reflects the direct costs of providing services to courts users, and ensures that all users makes a fair contribution to the wider costs of the justice system.

29. Using the new costing approach, the gap between costs and fees is £125 million (in 2013/14 prices). The main reason for the increase in this gap is due to the revised method of apportioning costs, which uses data on sitting days/hours to apportion shared costs between criminal and civil business, rather than splitting costs based on set percentages.

#### *Description*

30. Under the “do-nothing” base case, we would continue with the current fee charging structure.

31. The following graph illustrates the trend in the total cost recovery rate since the creation of HM Courts & Tribunals Service in 2005/06<sup>7, 8</sup>. This rate includes civil business in the magistrates’ courts (which are divided between criminal and civil work) and in the county court, High Court and Court of Appeal Civil Division as well as family and probate business. It is a gross recovery rate, i.e. it does not include the income foregone to the remissions system.

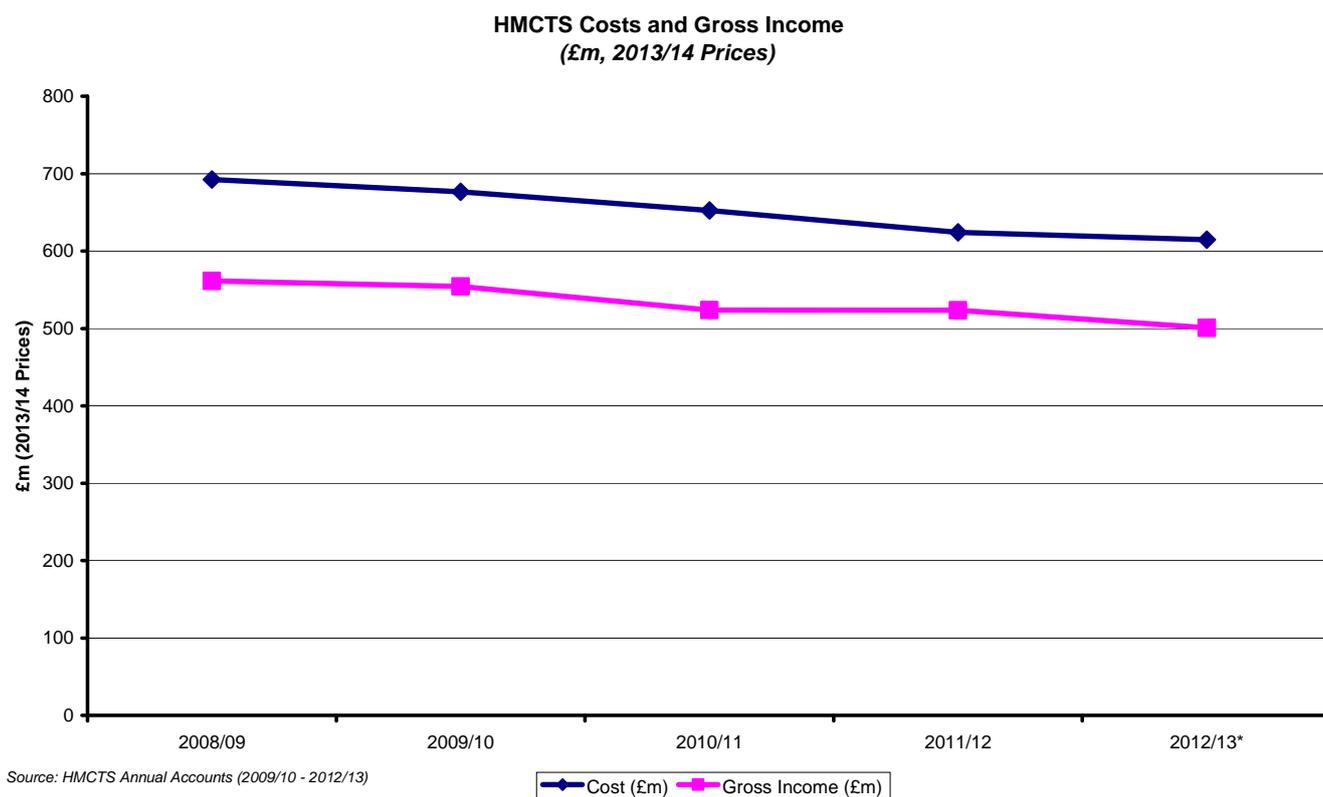
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<sup>6</sup> Appendix 9, *Review of Civil Litigation Costs: Preliminary Report*, May 2009.

<sup>7</sup> HM Courts & Tribunals Service was established in April 2005. On 1<sup>st</sup> April 2011, HM Courts Service merged with HM Tribunals Service to form HM Courts & Tribunals Service.

<sup>8</sup> 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 HM Courts & Tribunals Service 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: Gross Costs and Income (2008/09 – 2012/13)**



32. The graph shows that limited progress has been made in raising the total cost recovery rate between 2006/07 and 2012/13. A range of inflationary increases were introduced in April 2011 which has offset changes to the cost base which otherwise would have seen overall recovery levels drop. Costs are expected to fall through efficiencies, which should help reduce the current gap of around £125m (excluding remissions of £25m).

33. If fees were not increased, then MoJ / HM Courts & Tribunals Service would need to consider major cost-cutting options and reduce spending significantly on its service. This would risk compromising court performance and service to customers. Subsequently, increased amounts of subsidy would be required from the Exchequer to help finance the same volume of court services in future years.

**Option 1 - Introduce a new fee model that moves close to full-cost recovery in civil and family courts**

*Description*

**Background**

34. The 2010 Spending Review settlement announced savings of 23% to the MoJ's net budget of £8.3bn. Following further announcements in the Autumn Budget Statements of 2011 and 2012 and the 2013 Spring Budget Statement, this increased to a 26% saving in real terms. This is equivalent to well over £2.5bn annual savings to the department's budget by 2014/15.

35. HM Courts & Tribunals Service continues to reduce spending overall, with net operating costs falling from £1,429m to £1,325m between 2011/12 and 2012/13. HM Courts & Tribunals Service will make further reductions to operating costs in the coming years, which will help to close this gap between costs and fees. However, the government considers the development of an effective cost recovery policy to be an essential factor in meeting the cost of running the court service, which in turn will contribute towards savings in the net cost to the taxpayer.

## The cost of the civil court system

36. Costs in the civil court system are spread across a number of areas - including, but not limited to:

- salaries and expenses for court staff and the judiciary;
- salaries and expenses of managers providing support and direction to front-line staff;
- accommodation (court and office buildings) and furnishings; and
- information technology and telephone systems.

37. These shared costs totalled £625m in 2012/13 (in 2013/14 prices).

39. In our review of accounting policies, we have looked again at how we allocate or apportion these different types of costs between the different HM Courts & Tribunals Service operations:

- Some costs are easily attributable to a particular type of activity. These “direct” costs represent the staff and judicial time associated with a particular case type or stage. Such costs are calculated by the minute, and are not uniform: for example, a judicial minute for a High Court judge is more expensive than that for a Magistrate. Some cases will require considerable judicial input, while others may require more administrative time. The government believes it is right that, as far as possible, these costs should be met by the user; we therefore propose to directly represent these costs in the fee charged.
- All other costs (“indirect” costs) are less easy to attribute to specific types of cases or activities. Courts are located throughout England and Wales so that they are accessible to all who may wish to bring a case, and the infrastructure necessary to deliver an effective civil court system (e.g. IT and estates) benefits all who use the system. Even when a case is resolved quickly (for example, a money claim which is undefended), it is the existence of a fully functioning judicial system – namely, a system where a case can be defended, argued in front of the judiciary, appealed and enforced – that gives the claim its worth. The government therefore believes that all those who issue a court case benefit equally from the existence of the civil justice system as a whole, and should share in contributing towards its indirect costs. For this reason, the government has divided the indirect costs of the system between all cases that are issued.

40. This system of apportioning costs means that all who bring a case contribute towards the overall costs of the civil justice system.

41. For the purpose of setting fees, the government has grouped together similar activities to give a fee based on their average cost, wherever they occur. This includes, for example, grouping together the cost of issuing non-money civil cases and private law family cases, and grouping together all general applications.

42. We have retained the current tiered structure of fees for certain types of claims (e.g. money claims), where the fee rises incrementally according to the value of the claim. This structure ensures that the costs of money claims are spread according to the value of the claim so that the fees for lower-value claims are not higher than the value of the claim itself, which could inhibit access to the justice system.

## Implementation

45. Subject to the outcome of this consultation, it is anticipated that the proposed fee changes will be implemented through secondary legislation to come into force in Spring 2014.

46. Were these changes to be implemented, the government expects that they would generate approximately £610 million in gross income against a cost base of £625 million, therefore reducing taxpayers’ contributions to the cost of running the civil court service by £105 million per annum.

## Proposals

47. The fees affected by these proposals are currently governed by six Statutory Instruments.<sup>9</sup> These are:

- The Civil Proceedings Fees Order 2008
- The Family Proceedings Fees Order 2008
- The Magistrates' Courts Fees Order 2008
- The Non-Contentious Probate Fees Order 2004
- The Court of Protection Fees Order 2007
- The Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011

48. Annex A contains a full list of the fees currently charged in each of these areas, along with our proposed changes. A summary of the key fee changes is provided below.

### Issue Fees

49. In order to better reflect the shared costs and processes involved in issuing cases (see paragraph 41 above), we propose to group together all non-money civil issues in the county court (e.g. insolvency cases and possession claims) with private law family case issues (i.e. Children Act (such as child contact and residence orders), divorce and ancillary relief cases).

50. Grouping the fees in this way and charging at full cost creates a standard issue fee of £270. This fee will be charged in all cases included in this grouping - with the exception of certain types of family law cases and debtor petitions in bankruptcy proceedings, where fees will be retained at their current levels (see paragraphs 57 and 58 below). In the case of proceedings seeking a non-molestation or occupation order, it is proposed to no longer charge a fee at all in order to assist victims of domestic abuse.<sup>10</sup>

51. Issue fees for money claims will remain at their current levels for cases with a value up to £1,500; to ensure that the fees charged are not higher than the value of the claim itself. Fee changes for money claims above £1,500 are expected to generate overall cost recovery in money claims.

52. A standard discount of 10% will be made for applications made online or through the bulk centre, to reflect the lower cost of these channels.

### Post Issue Fees

53. At present, additional fees are charged to those who pursue specific types of cases within the civil court system (largely money claims) whose cases proceed beyond the issue stage. These fees are charged at the allocation, listing and hearing stages.

54. In order to simplify the process the government proposes to abolish the fees charged at the allocation stage and instead to include allocation costs in the issue fee. In a similar vein, the listing fee will be incorporated into the hearing fee.

55. The hearing fees charged for small claims, fast track or multi-track hearings will be maintained at current levels. At the fast and multi tracks levels, our assessment of costs has shown that current fee levels are set above cost. It is proposed that the legislative powers, which are included in legislative proposals relating to Enhanced fees (which are subject to a separate impact assessment), will be used to maintain these fees at current levels.

56. Most private law family cases also involve a hearing, which is considered similar in its cost to the multi track hearing process. A fee will not be charged for these hearings.

57. The policy decision to retain fees at current levels rather than to charge at full cost for certain types of family cases at issue and hearing; namely certain cases brought under section 8 of the Children Act 1989, ancillary relief and adoption cases reflects the fact that such cases are often brought by people going through difficult circumstances - for example, those who are seeking a court decision relating to contact or financial arrangements for their child, or who are settling financial arrangements following the breakdown of a marriage. These issues can be complex, and the

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<sup>9</sup> This includes all published amendments to these SIs.

<sup>10</sup> The cost of removing this fee is not included in the NPVs as the impact is anticipated to be less than £5m.

progress of a case (particularly where a child is involved) is often directed by the judge, who is bound to act in the interest of the child.

58. Retaining family fees at their current levels and not charging for non-molestation and occupation orders will, of course, have an impact on our full-cost recovery plans. By choosing not to charge the full cost of these processes to the user, the government must instead forgo potential fee income, which is a key reason why the proposals fall short of achieving full cost recovery.

#### Public law family cases

59. Public law cases are generally brought by local authorities, and cover matters such as care orders, supervision orders and emergency protection orders. At present, local authorities are required to pay two fees in these cases: an issue fee of £3,320 and, where applicable, a hearing fee of £2,155. Where cases are resolved at an early stage, a refund of £1,360 can be made against the issue fee.
60. To simplify the process a single issue fee of £2,000 will be charged at the start of proceedings, with no final hearing fee and no refunds if a case is resolved at an early stage. This is consistent with the changes to the Public Law Outline (PLO), which aims to support the proposed 26-week time limit for public law family cases.

#### General Applications

61. General applications are additional processes that can be issued by a court user alongside a case. They are used across the civil court system and can be made at any time during the lifetime of the case; examples can include applications for parties to file further documents in the proceedings, applications to set aside judgments, or an application to join additional parties to a case.
62. In order to standardise the approach to the fees charged for general applications and other applications made within proceedings a standard fee of £150 for general applications which require a hearing (an application on notice) or £50 for those which don't (an application by consent or without notice) will be charged across all courts, where no other fee is specified. These fees will also apply to Children Act applications made within proceedings in family cases. In such cases, this change will result in a majority of users paying a lower fee than at present, and this is in contrast to our proposals to charge £215 when such an application is made to issue a case.

#### Judicial Review

63. Judicial review is a process by which individuals, businesses and others can ask a court to review the lawfulness of a decision, action or omission of a public body.
64. Current fees for the judicial review are below cost. Financial modelling has calculated that these fees do not recover the full cost of these processes. The government therefore proposes to increase fees for judicial review to their full cost prices, involving an increase from £60 to £135 for an application and £215 to £680 for a hearing or an oral renewal, with the hearing fee waived if an oral renewal is successful.

#### Probate

65. Probate is the service whereby the courts give a person or persons the authority to administer a deceased person's estate, where this estate has a value of over £5,000 and does not concern jointly-held assets.
66. Financial modelling shows that these fees are below cost. We therefore propose to increase the fees to full-cost levels so that an application for grant of probate will increase from £60 to £150, with the additional fee for a personal probate application maintained at £60.

#### Court of Appeal (Civil Division)

67. The civil division of the Court of Appeal hears appeals from all divisions of the High Court and, in some instances, from the County Court and certain tribunals.
68. The fees currently charged in the Court of Appeal are laid out in the Civil Proceedings Fees Order. At present, two fees are charged: one, set at £235, for permission to appeal; another, set at £465, for a hearing once permission has been granted. Financial models suggest that these fees are currently charged below full-cost level, which has been calculated at £1,270 for permission to appeal and £10,000 for a hearing.

69. The government believes that charging such high fees may prohibit some from accessing the Court of Appeal and instead, the government proposes to increase the fees whilst maintaining them below full-cost levels. The fees proposed are £465 for permission to appeal and £1,090 for a hearing.
70. The government also proposes to introduce a charge for an oral renewal hearing. An oral renewal will involve a hearing of the arguments for appeal and involves judicial time. The government considers that the fee structure here should reflect that used for judicial review, which has a similar process. The hearing fee of £1,090 will be charged for an oral renewal, with no further hearing fee charged if permission is granted. Further fee changes in the Court of Appeal are set out at Annex A.

### Court of Protection

71. The Court of Protection is a specialist court which makes specific decisions, or appoints other people to make decisions, on behalf of people who lack the capacity to do so for themselves.
72. Current fees are set out in the Court of Protection Fees Order. Two main fees are currently charged: one of £400 for an application or an appeal, and one of £500 for a hearing. Hearing and appeal fees broadly achieve full-cost recovery. However the issue fee for simple applications is too high and a lower fee of £220 is proposed for simple applications, with a £400 fee retained for complex cases. Other minor fee changes are proposed for applications within proceedings and other general applications (see Annex A).

## **Costs of Option 1**

### **Monetised Costs**

### **Transitional Costs**

#### *Costs to HM Courts & Tribunals Service*

73. We expect to incur costs of approximately £5,000 for changes to HM Courts & Tribunals Service court publications and destroying old stock. 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 Court Users:*

74. The total additional cost to court users of the increased court fees is estimated to be around £105m per annum in 2013/14 prices.<sup>11</sup> Those users who are currently eligible for legal aid or a fee remission will not be affected by the increases.
75. There are some court users that will see their fee fall as a result of these proposals. The total estimated cost to court users of £105m therefore nets off these financial savings. The key areas where this applies are:
- As set out in paragraphs 59 and 60 above, local authorities pay fees to bring applications under the Children Act 1989 to cover matters such as care orders, supervision orders and emergency protection orders. The fee charged for bringing an application under section 31 of the Children Act will change to a single issue fee of £2,000 which is less than the current issue fee. This will simplify the administrative process and is anticipated to lead to financial savings.
  - The government's proposal to standardise its approach to the fees charged for general applications and other applications made within proceedings by charging a standard fee wherever such applications are made (i.e. £150 for general applications which require a hearing or £50 for those which do not) will include Children Act applications made within proceedings in family cases. Under this proposal applications made within proceedings will be lower than our proposals to charge £215 when these applications are made to issue a case.

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<sup>11</sup> Inflationary uplifts specified by the Treasury have been applied to the fee order

- In order to streamline the administration process, the government proposes to no longer charge a separate listing fee (currently £110) and has instead incorporated the costs in the listing process into the costs of a hearing. In a similar vein, the government proposes to abolish the fees charged at the allocation stage and instead to include allocation costs in the issue fee. Court users whose cases reach the hearing stage would therefore only pay one fee (a hearing fee).

76. In many civil cases, court costs including court fees are paid upfront by the claimant but are normally recoverable from the losing defendant in civil cases where the claimant wins. Therefore many increased court fees will be met by either unsuccessful claimants or losing defendants.

77. A separate analysis is provided later in this Impact Assessment (see paragraph 94) on the specific impacts on business court users.

#### *Costs to the Taxpayer*

78. Our modelling suggests that the proposed fee increases will lead to a negligible increase (less than £2m, and is shown as £0m when rounding to the nearest £5m) in the cost of remissions to the taxpayer. The increase is negligible because the fees that are set to increase as part of these proposals have not historically attracted high levels of remissions<sup>12</sup>.

### **Non Monetised Costs**

#### *Costs to Court Users*

79. In many civil cases, court costs including court fees are paid upfront by the claimant but are normally recoverable from the losing defendant in civil cases where the claimant wins. Therefore increased court fees will be met by either unsuccessful claimants or losing defendants.

80. There would therefore be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. This cost has not currently been quantified but we will explore how best to calculate this during the consultation

#### *Costs to the Taxpayer*

81. There is a possibility that eligible users, who previously would not have considered applying for remissions, will now consider applying as higher fees make them more likely to question their ability to pay. This cost has not been quantified but is expected to be negligible because we estimate (see business impacts section at paragraph 94) that around half of the users facing higher fees will not be individuals.

#### *Costs to Legal Aid Agency (“LAA”)*

82. 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 LAA for the purposes of the proceedings for which a certificate has been issued under the funding code; they are then claimed back from the LAA when the case is finished. The impact of these proposals on the LAA is expected to be minimal as Legal Aid is predominantly only available for public law family matters where the types of fees paid are largely unchanged. We therefore do not anticipate that the changes will have a significant impact.

### **Benefits of Option 1**

#### **Transition benefits**

83. No transition benefits have been identified.

#### **Ongoing benefits**

#### **Monetised**

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<sup>12</sup> See HMCTS annual accounts 2012/13. Remissions in civil cases were £5m whereas in family cases remissions were £20m.

*Benefits to HM Courts & Tribunals Service*

84. As a result of the increased fees it is estimated that HM Courts & Tribunals Service will benefit from an increased fee income of around £105m per annum in 2013/14 prices compared to the base case.

*Benefits to Court Users*

85. Our modelling suggests that the proposed fee increases will lead to a negligible increase (less than £2m, and is shown as £0m when rounding to the nearest £5m) in the level of remissions received by court users. The increase is negligible because the fees that are set to increase as part of these proposals have not historically attracted high levels of remissions<sup>13</sup>.

**Non-monetised**

*Benefits to Court Users*

86. There is a possibility that eligible users, who previously would not have considered applying for remissions, will now consider applying as higher fees make them more likely to question their ability to pay. This benefit has not been quantified, but is expected to be negligible because we estimate (see business impacts section at paragraph 94) that around only half of the users facing higher fees will be individuals, and of those, we expect a small proportion to be eligible for remissions (see footnote 12 and 13).

*Benefits to Society*

87. Given that fees do not currently recover the full cost of the civil court system, increasing fees closer to full cost recovery would reduce the level of subsidy that taxpayers currently provide the courts. A simplified fee structure and a reduction in the number of fee charging points may benefit society by making the fees easier to understand for users and easier for court staff to administrate.

**Net Economic Impact of Option 1**

88. The increase in fee revenue generated by these proposals reduces the subsidy paid by taxpayers to court users, other things being equal. Therefore, the overall net economic impact will be the minimal transition costs associated with implementing the new fee regime (which is currently estimated as £0.5m) along with (the expected negligible) non monetised costs of processing more fee remissions.

**Summary Impacts of Option 1**

89. The proposed fee changes should improve the cost recovery position:

**Table 1: Steady State Gross Recovery of IA Options**

*All Figures are rounded to the nearest £5m, 2013/14 prices*

	Cost	Gross Income			Gross Recovery Rate		
		High	Midpoint	Low	High	Midpoint	Low
Do nothing*	625	510	500	495	-115	-125	-130
Option 1	625	620	610	600	-5	-15	-30
Additional Income from Option 1		110	105	105			

\* In steady state the base case includes fee changes implemented in July 2013

90. Under our key assumptions, specifically i) on midpoint caseload and ii) costs remaining fixed, gross cost recovery is expected to be -£15m in steady state as a result of these proposals. As paragraph 32 of this Impact Assessment states, costs are expected to fall through efficiencies, so we think it is prudent to target a fee income below the current cost of the service. Further, as paragraph 58 states, there are some processes for which we have chosen not to charge full cost.

<sup>13</sup> See HM Courts & Tribunals Service annual accounts 2012/13. Remissions in civil cases were £5m whereas in family cases remissions were £20m.

91. The proposals are expected to generate increased fee income of around £105m, of which around £65 million (2013/14 prices) would come from business users. In addition successful claimants may incur cash flow costs as they would pay higher court fees upfront but only recover them once the case is settled.
92. It is possible that the proposed fee increases may incentivise court users to resolve issues without using the court system, potentially resulting in a reduced volume of court cases. We assume that this will not occur based on current research (see key assumptions). Nevertheless, the potential impacts of a drop in caseload as a result of our fee changes are assessed in the sensitivity analysis undertaken below.
93. The fee changes would not impact those who are entitled to a full remission of their fee and will have greatest impact on those individuals that are outside eligibility for a full fee remission or legal aid.

## Business Impacts

### Section 1: Impact on business court users

94. The volumes of cases affected by cost recovery fees proposals are shown in the table below. In estimating business impacts, we have used current court case volumes as research suggests that the proposed changes in court fees should not affect the volume of cases taken to court, as discussed in paragraph 23. This will be examined further over the consultation period.
95. We currently do not possess detailed statistics on what proportion of claimants and of defendants are businesses. This will be explored further over the consultation period. In the absence of this data we have made the following illustrative assumptions. These are based in part upon advice from HM Courts & Tribunals Service court staff who issue claims;
- Specified money claims and Royal Courts of Justice (RCJ) claims – 50% of claimants are businesses, 25% of defendants are businesses. Whilst businesses issue around half of all such claims, many of these claims relate to personal debt, hence only around a quarter of defendants are assumed to be businesses.
  - Unspecified money claims – 20% of claimants are businesses, 80% of defendants are businesses, e.g. insurers. The majority of these claims are compensation claims pursued by individuals against insurers.
  - All other civil claims – 50% of claimants are businesses, 50% of defendants are businesses. These figures reflect the view that some claimants and some defendants in other civil cases are likely to be businesses, and in the absence of specific evidence 50% has been assumed.
  - Other claims – 50% of some claimants are businesses, 50% of defendants are businesses. These figures reflect the view that some claimants and some defendants in other cases are likely to be businesses, and in the absence of specific evidence 50% has been assumed.

	<b>Volume of cases with Business as claimant</b>	<b>Volume of cases with Business as defendant</b>
<b>Specified Money</b>	335,445	167,722
<b>Unspecified</b>	34,391	137,565
<b>Royal Courts of Justice</b>	6,713	3,357
<b>All other civil</b>	174,340	174,340
<b>Other</b>	201,345	201,345
<b>TOTAL</b>	<b>752,234</b>	<b>684,329</b>

96. It has been assumed that 80% of cases result in the claimant being successful, either at the final hearing or beforehand if the case is settled earlier. This reflects the fact that the vast majority of cases do not reach a final hearing, and that many cases are not pursued by claimants unless they consider that settlement is probable. This assumption will be explored further over the consultation period.

97. It has been assumed that court case outcomes and court case durations will not be affected by the increase in court fees. This assumption will be explored further over the consultation period.

98. Business court user costs take the following form:

- Business claimant wins the case: This applies to 601,787 businesses in total (268,356 specified money cases, 27,513 unspecified money cases, 5,370 RCJ cases, 139,472 other civil cases plus 161,076 other cases). The court fee is passed on to the losing defendant. The business claimant would incur cash flow costs from having paid a higher court fee upfront and recovering it from the losing defendant once the case is settled. The size of this cash flow cost would be determined by (a) court case duration; (b) the total amount of higher court fees paid; (c) the return which could have been made on this cash over this period had the claimant business used it for other purposes. These cash flow costs will be explored further over the consultation period.
- Business claimant loses the case: This applies to 150,447 businesses in total (67,089 specified money cases, 6,878 unspecified money cases, 1,343 RCJ cases, 34,868 other civil cases plus 40,269 other cases). The losing business claimant would meet the higher court fee.
- Business defendant wins the case: This applies to 136,866 businesses in total (33,544 specified money cases plus 27,513 unspecified money cases plus 671 RCJ cases plus 34,868 other civil cases plus 40,269 other cases). There would be no increase in costs for defendant businesses.
- Business defendant loses the case: This applies to 547,463 businesses in total (134,178 specified money cases plus 110,052 unspecified money cases plus 2,685 RCJ cases plus 139,472 other civil cases plus 161,076 other cases). The losing business defendant would meet the higher court fee. However the losing business defendant would be regarded as 'non compliant' for One-in-Two-out purposes.

99. In conclusion 697,910 cases would involve a business paying the higher court fee (201,267 specified money cases plus 4,028 RCJ cases plus 116,930 unspecified money cases plus 174,340 other civil cases plus 201,345 other cases). The total sum of increased court fees from these cases would be £65m per annum (in 2013/14 prices).

100. To calculate Business Net Present Value and Equivalent Annual Net Cost to Business (EANCB), we deflate business impact figures to restate impacts in 2009 prices, according to published guidance. In doing so, Business Net Present Value is calculated as -£445 million and EANCB as £50 million.

## *Section 2: Impact on legal services providers*

101. Although case volumes are anticipated to remain the same, there may be changes to other costs. If a defendant is likely to lose a case and so have to pay a higher court fee, they may reduce their spending on legal services to compensate. Conversely the prospect of losing a case and paying a higher court fees may make both sides willing to spend more on legal services. In the absence of evidence on these behavioural impacts it has been assumed that spending on legal services providers will remain the same. This is being explored further over the consultation period. Any impact on legal services providers as a result of changes to spending on legal services would be a secondary impact.

## **Enforcement and Implementation**

102. 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. This would continue to apply under the option being considered.

## **Risks and sensitivity analysis**

### *Optimism bias*

103. To address the fact that when appraising there is a tendency to be overly optimistic we have built a 3 month delay into our estimate of the project's implementation date. We therefore propose to model implementation of the cost recovery package as July 2014 rather than April 2014. This

means we estimate income in 2014/15 to be 75% of steady state income, as three months of income will be foregone due to the delay in implementation.

### *Sensitivity Analysis*

104. As discussed in the assumptions section in paragraphs 17-26, the demand for court services is assumed not to change in response to the proposed changes. 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 caseload trend) in which demand falls by 2%, 5% or 10% to give low, medium and high risk scenarios, the results are shown in the table below.

Estimated additional income (£m, 2013/14 prices)	Demand Scenarios		
	Low	Medium	High
	95	80	60

### **One-in-Two-out**

105. Under these proposals, fees would not be applied in a wider range of circumstances nor to a wider range of court users. There would be no changes to who is required to pay court fees. The court services and processes to which the fees relate would not be changed. Court case outcomes should not change.

106. The intention is not to change the behaviour of court users; indeed the aim is to retain current court case volumes. The objective is simply to raise the price of court services where they are set below cost. Evidence collected by MoJ, as discussed in paragraph 23, shows that increased court fees in these three areas are unlikely to affect the decision to go to court.

107. Court fees are initially paid by the claimant. In civil proceedings, costs (including court fees) are normally recoverable from the defendant if the defendant loses. In civil cases where the losing party is the defendant they would be regarded as 'non-compliant' for One-in-Two-out purposes. The losing defendant may be an individual or may be a business, depending upon the nature of the case. Where the winning claimant recovers the court fee in due course from the losing defendant the winning claimant may incur cash flow costs from the court fee being higher.

108. In family cases both parties would be individuals not businesses. In family proceedings the normal rule is that each side should pay its own costs.

109. Given that the scope of fee charging would not be changed in any way, and that the proposed fee charging aims to have no impact on court user behaviour, the cost recovery fee proposals in this Impact Assessment fall out of scope of One-in-Two-out as they do not impose additional regulation.

### **Equalities Impact Test**

110. Annex B sets out our analysis of the equalities impact of these proposals.

### **Small and Micro Business Assessment**

111. It is likely that some small and micro businesses which bring cases to the civil courts or which are defendants in civil claims will be affected by our policy proposal as they will now have to pay a higher issue fee to bring a case to court, or may be passed this higher fee in due course if they are the losing defendant. Losing defendants would be classed as 'non-compliant'. Successful claimants would also incur cash flow costs as they would pay the higher court fees upfront but only recover them once the case has been settled. However, if the case progresses to the listing or hearing stage, businesses will benefit as listing fees have been removed.

112. For claims up to £1,500 the issue fees and all subsequent fees are unchanged, this represents 25% of all specified money claims issued. The biggest issue fee rise is £200, which applies to claims above £5,000.
113. In order to further mitigate the effects on small firms and micro businesses, we could consider producing user guides or information campaigns to ensure that these businesses know how they will be affected. These possibilities are being considered further over the consultation period.
114. Fee remissions apply to sole traders as well as individuals so they may not have to pay court fees. Fee remissions do not apply to other businesses and there are no plans to change this. The mitigations identified above should be of benefit to small and micro businesses.

## Annex A: Full list of current and proposed fees (subdivided by fee order)

### Civil Proceedings Fees Order 2008

		Current	Proposed	Further information (if required)
	<b>MONEY CLAIMS: ISSUE FEE</b>			
1.1(a)	Does not exceed £300	£35	£35	
1.1(b)	Exceeds £300 but does not exceed £500	£50	£50	
1.1(c)	Exceeds £500 but does not exceed £1,000	£70	£70	
1.1(d)	Exceeds £1,000 but does not exceed £1,500	£80	£80	
1.1(e)	Exceeds £1,500 but does not exceed £3,000	£95	£110	
1.1(f)	Exceeds £3,000 but does not exceed £5,000	£120	£200	
1.1(g)	Exceeds £5,000 but does not exceed £15,000	£245	£445	
1.1(h)	Exceeds £15,000 but does not exceed £50,000	£395	£595	
1.1(i)	Exceeds £50,000 but does not exceed £100,000	£685	£885	
1.1(j)	Exceeds £100,000 but does not exceed £150,000	£885	£1,085	
1.1(k)	Exceeds £150,000 but does not exceed £200,000	£1,080	£1,280	
1.1(l)	Exceeds £200,000 but does not exceed £250,000	£1,275	£1,475	
1.1(m)	Exceeds £250,000 but does not exceed £300,000	£1,475	£1,675	
1.1(n)	Exceeds £300,000, or not limited	£1,670	£1,870	
	<b>MONEY CLAIMS (CPC): ISSUE FEE</b>			
1.2(a)	Does not exceed £300	£15	£25	
1.2(b)	Exceeds £300 but does not exceed £500	£30	£35	
1.2(c)	Exceeds £500 but does not exceed £1,000	£55	£60	
1.2(d)	Exceeds £1,000 but does not exceed £1,500	£65	£70	
1.2(e)	Exceeds £1,500 but does not exceed £3,000	£75	£100	
1.2(f)	Exceeds £3,000 but does not exceed £5,000	£85	£180	
1.2(g)	Exceeds £5,000 but does not exceed £15,000	£190	£400	
1.2(h)	Exceeds £15,000 but does not exceed £50,000	£310	£535	
1.2(i)	Exceeds £50,000 but does not exceed £100,000	£550	£795	
	<b>MONEY CLAIMS ONLINE: ISSUE FEE</b>			
1.3(a)	Does not exceed £300	£25	£25	

		Current	Proposed	Further information (if required)
1.3(b)	Exceeds £300 but does not exceed £500	£35	£35	
1.3(c)	Exceeds £500 but does not exceed £1,000	£60	£60	
1.3(d)	Exceeds £1,000 but does not exceed £1,500	£70	£70	
1.3(e)	Exceeds £1,500 but does not exceed £3,000	£80	£100	
1.3(f)	Exceeds £3,000 but does not exceed £5,000	£100	£180	
1.3(g)	Exceeds £5,000 but does not exceed £15,000	£210	£400	
1.3(h)	Exceeds £15,000 but does not exceed £50,000	£340	£535	
1.3(i)	Exceeds £50,000 but does not exceed £100,000	£595	£795	
<b>RECOVERY OF LAND: ISSUE FEE</b>				
1.4(a)	High Court	£465	£465	
1.4(b)	County Court	£175	£270	
1.4(c)	County Court (online)	£100	£240	
<b>OTHER FEES</b>				
1.5	Any other remedy (High Court)	£465	£465	
	Any other remedy (County Court)	£175	£270	
1.6	Filing proceedings against an unnamed party	£45	£50	
1.8(a)	Permission to issue proceedings	£45	£50	
1.8(b)	Assessment of costs (under Part 3, Solicitors Act 1974)	£45	£50	
<b>JUDICIAL REVIEW</b>				
				<b>The fees proposed at 1.9(a), (b) and (c) would also apply to fees 1.1, 1.2 and 1.3 (respectively) in the Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011</b>
1.9(a)	Permission to apply	£60	£135	
1.9(b)	Permission to proceed	£215	£680	This fee would also be payable for an oral renewal. If the oral renewal was successful, no further fee would be payable.
1.9(c)	Permission to proceed (claim not started by JR procedure)	£60	£135	
<b>GENERAL FEES: HIGH COURT AND COUNTY COURT</b>				
2.1(a)	Allocation fee: Small claims track (exceeding £1,500)	£40	£0	

		Current	Proposed	Further information (if required)
2.1(b)	Allocation fee: Fast track and multi-track	£220	£0	
2.2	Listing fee	£110	£0	
2.3(a)	Hearing fee: Multi-track case	£1,090	£1,090	
2.3(b)	Hearing fee: Fast-track case	£545	£545	
2.3(c)(i)	Hearing fee: Small claims case (does not exceed £300)	£25	£25	
2.3(c)(ii)	Hearing fee: Small claims case (exceeds £300 but not £500)	£55	£55	
2.3(c)(iii)	Hearing fee: Small claims case (exceeds £500 but not £1,000)	£80	£80	
2.3(c)(iv)	Hearing fee: Small claims case (exceeds £1,000 but not £1,500)	£110	£110	
2.3(c)(v)	Hearing fee: Small claims case (exceeds £1,500 but not £3,000)	£165	£165	
2.3(c)(vi)	Hearing fee: Small claims case (exceeds £3,000)	£325	£325	
2.4	Appellant's/respondent's notice (High Court)	£235	£235	
2.5(a)	Appellant's/respondent's notice (County court-small claims)	£115	£115	
2.5(b)	Appellant's/respondent's notice (County court-other claims)	£135	£135	
2.6	General application (on notice)	£80	£150	
2.7	General application (by consent/without notice)	£45	£50	
2.8	Application for summons or order for witness to attend court	£40	£50	
2.9	Application to vary a judgement or suspend enforcement	£40	£50	
2.10	Issue of a certificate of satisfaction	£15	£15	
	<b>BANKRUPTCY/INSOLVENCY</b>			
3.1(a)	Petition for bankruptcy (presented by debtor)	£175	£175	
3.1(b)	Petition for bankruptcy (presented by creditor/other person)	£220	£270	
3.2	Petition for an administration order	£175	£270	
3.3	Any other petition	£220	£270	
3.4(a)	Request for a certificate of discharge from bankruptcy	£70	£70	
3.4(b)	Copy of a certificate of discharge from bankruptcy	£5	£10	
3.5	Insolvency – other application	£155	£270	
3.6	Winding up fee	£155	£155	
3.7	Voluntary winding up fee	£35	£50	
3.8	Notice of intention to appoint administrator	£35	£50	
3.9	Submission of nominee's report	£35	£50	
3.10	Filing insolvency documents	£35	£50	

		Current	Proposed	Further information (if required)
3.11	Application within proceedings (by consent/without notice)	£35	£50	
3.12	Application within proceedings (with notice)	£70	£150	
3.13	Search of bankruptcy and company records (County Court)	£45	£45	
<b>COPY DOCUMENTS</b>				
4.1(a)	Copy of a document (10 pages or less)	£5	£10	
4.1(b)	For each subsequent page	50p	50p	
4.2	Copy of a document in electronic form (for each copy)	£5	£10	
<b>DETERMINATION OF COSTS (Senior/County Court)</b>				
5.1	Where the party filing the request is legally aided	£195	£195	
5.2(a)	Amount does not exceed £15,000	£325	£325	
5.2(b)	Exceeds £15,000 but does not exceed £50,000	£655	£655	
5.2(c)	Exceeds £50,000 but does not exceed £100,000	£980	£980	
5.2(d)	Exceeds £100,000 but does not exceed £150,000	£1,310	£1,310	
5.2(e)	Exceeds £150,000 but does not exceed £200,000	£1,635	£1,635	
5.2(f)	Exceeds £200,000 but does not exceed £300,000	£2,455	£2,455	
5.2(g)	Exceeds £300,000 but does not exceed £500,000	£4,090	£4,090	
5.2(h)	Exceeds £500,000	£5,455	£5,455	
5.3	Issue of default costs certificate	£60	£60	
5.4	Appeal (detailed assessment proceedings)	£205	£205	
5.5	Request/application to set aside a default costs certificate	£105	£105	
<b>DETERMINATION (IN THE SENIOR COURT) OF COSTS OCCURRED IN THE COURT OF PROTECTION</b>				
6.1(a)	Where the amount of costs does not exceed £3,000	£110	£110	
6.1(b)	All other cases	£220	£220	
6.2	Appeal (detailed assessment proceedings)	£65	£65	
6.3	Request/application to set aside a default costs certificate	£65	£65	
<b>ENFORCEMENT (HIGH COURT)</b>				
7.1	Sealing a writ of execution/possession/delivery	£60	£60	

		Current	Proposed	Further information (if required)
7.2	Application for order for debtor/other person to attend court	£50	£50	
7.3(a)	Application for third party debt order/appointment of a receiver	£100	£100	
7.3(b)	Application for a charging order	£100	£100	
7.4	Application for a judgement summons	£100	£100	
7.5	Request/application to register a judgement or order Permission to enforce an arbitration award Certified copy of a judgement or order for use abroad	£60	£60	
<b>ENFORCEMENT (COUNTY COURT)</b>				
8.1(a)	Issue of warrant of execution against goods (non-CCBC)	£100	£100	
8.1(b)	Issue of warrant of execution against goods (CCBC cases)	£70	£70	
8.2	Request for attempt of execution of warrant at new address	£30	£30	
8.3	Application to require judgement debtor to attend court	£50	£50	
8.4(a)	Application for a third-party debt order	£100	£100	
8.4(b)	Application for a charging order	£100	£100	
8.5	Application for a judgement summons	£100	£100	
8.6	Issue of a warrant of possession/warrant of delivery	£110	£110	
8.7	Application for an attachment of earnings order	£100	£100	
8.8	Consolidated attachment of earnings/administration order	*	*	*10p in every £1 (or part of £1) of the money paid in respect of debts due to creditors
8.9	Application for enforcement of an award of a sum of money or any other decision made by any court, tribunal, body or person*	£40	£40	*(decisions taken anywhere outside the High Court or a county court)
8.10	Request for an order to recover a specified road traffic debt	£7	£7	
8A.1	Request for service by a bailiff	£100	£100	
<b>SALE (COUNTY COURT)</b>				
9.1	Removing goods to a place of deposit	*	*	*The reasonable expenses incurred
9.2	Advertising a sale by public auction	*	*	*The reasonable expenses incurred
9.3	Appraisalment of goods	*	*	*5p in every £1 (or part of £1) of the appraised value
9.4	Sale of goods	*	*	*15p in every £1 (or part of £1) of the amount realised by the sale, or such other sum as the district judge may consider to be justified

		Current	Proposed	Further information (if required)
9.5	No sale – execution withdrawn, satisfied or stopped	*	*	*10p in every £1 (or part of £1) or the value of the goods seized, the value to be the appraised value where the goods have been appraised or such other sum as the district judge may consider to be justified
<b>FEES PAYABLE IN THE HIGH COURT ONLY</b>				
10.1	Bills of sale	£25	£25	
10.2	Official certificate of the result of a search (for each name)	£45	£45	
10.3	Search, in person, of court records (per 15 minutes)	£7	£10	
<b>JUDGE SITTING AS AN ARBITRATOR</b>				
10.4(a)	Appointment of a judge of the Commercial Court	£2,390	£2,390	
10.4(b)	Appointment of a judge of the Technology & Construction Court	£1,860	£1,860	
10.5(a)	Hearing before a judge of the Commercial Court	£2,390	£2,390	
10.5(b)	Hearing before a judge of the Technology & Construction Court	£1,860	£1,860	
<b>ADMIRALTY</b>				
11.1	Issue of a warrant for the arrest of a ship or goods	£220	£220	
11.2	Sale of ship or goods (minimum fee)	£200	£200	(Minimum fee)
	<b>PLUS:</b> for every £100/fraction of £100 up to £100,000	£1	£1	
	<b>PLUS:</b> for every £100/fraction of £100 exceeding £100,000	50p	50p	
11.3	Entering a reference for hearing by the Registrar	£70	£70	
<b>PAYABLE IN HIGH COURT AND COURT OF APPEAL ONLY</b>				
12.1	Affidavit	£11	£11	
12.2	For each exhibit referred to	£2	£2	
<b>PAYABLE IN THE COURT OF APPEAL ONLY</b>				
13.1(a)	Application - permission to appeal/extension of time	£235	£465	
13.1(b)	Permission to appeal is not required or has been granted	£465	£1,090	This fee would also be payable for a renewed application for leave to appeal. If this was successful, no further fee would be payable.

		Current	Proposed	Further information (if required)
13.1(c)	Appellant/respondent filing an appeal questionnaire	£465	£1,090	
13.2	On filing a respondent's notice	£235	£465	
13.3	On filing an application notice	£235	£465	
	Additional application	*	£465	*New fee
	General application (on notice)	*	£150	*New fee
	General application (by consent/without notice)	*	£50	*New fee

### Family Proceedings Fees Order 2008

		Current	Proposed	Further information (if required)
	<b>ISSUE FEES</b>			
1.1	Where no other fee is specified	£245	£245	
1.2	Application for divorce/nullity of marriage or civil partnership	£410	£410	
1.3	Application for matrimonial or civil partnership order	£365	£365	
1.4	Non-molestation/occupation order	£75	£0	
1.5	Amendment of application for matrimonial/civil partnership order	£95	£95	
1.6	Answer to application for matrimonial/civil partnership order	£245	£245	Contested divorce
1.7	Application for an order of assessment of costs	£40	£50	
1.8	Application for parental order	£215	£215	
	<b>PROCEEDINGS UNDER THE CHILDREN ACT 1989</b>			
2.1(a)	Parental responsibility (section 4(1)(c) or (3), 4A(1)(b) or(3))	£215	£215	
2.1(b)	Parental responsibility (section 4ZA(1)(c) or (6))	£215	£215	
2.1(c)	Guardians (section 5(1) or 6(7))	£215	£215	
2.1(d)	Section 8 orders (section 10(1) or (2))	£215	£215	
2.1(e)	Enforcement orders (section 11J(2))	£215	£215	
2.1(f)	Compensation for financial loss (section 11O(2))	£215	£215	
2.1(g)	Change of child's surname, or removal from jurisdiction while residence order in force (section 13(1))	£215	£215	
2.1(h)	Special guardianship orders (section 14A(3) or (6)(a), 14C(3) or 14D(1))	£170	£215	
2.1(i)	Secure accommodation order (section 25)	£180	£215	

		Current	Proposed	Further information (if required)
2.1(j)	Change of child's surname, or removal from jurisdiction while care order in force (section 33(7))	£180	£215	
2.1(k)	Contact with child in care (section 34(2), (3), (4) or (9))	£180	£215	
2.1(l)	Education supervision order (section 36(1))	£180	£215	
2.1(m)	Variation or discharge etc of care and supervision orders (section 39)	£180	£215	
2.1(n)	Child assessment order (section 43(1))	£180	£215	
2.1(o)	Emergency protection orders (sections 44, 45 and 46)	£180	£215	
2.1(p)	Warrant to assist person exercising powers under emergency protection order (section 48)	£180	£215	
2.1(q)	Recovery order (section 50)	£180	£215	
2.1(r)	Warrant to assist person exercising powers to search for children or inspect premises (section 102)	£180	£215	
2.1(s)	Applications in respect of enforcement orders (paragraph 4(2), 6(2), 7(2) or 9(2) of Schedule A1)	£95	£95	
2.1(t)	Amendment of enforcement order by reason of change of address (paragraph 5(2) of Schedule A1)	£95	£95	
2.1(u)	Financial provision for children (paragraph 1(1) or (4), 2(1) or (5), 5(6), 6(5), (7) or (8), 8(2), 10(2), 11 or 14(1) of Schedule 1)	£215	£215	
2.1(v)	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2)	£180	£215	
2.1(w)	Extension of supervision order (paragraph 6 of Schedule 3)	£180	£215	
2.1(x)	Extension or discharge of education supervision order (paragraph 15(2) or 17(1) of Schedule 3)	£180	£215	
2.2(a)	Application for proceedings under Section 31 of Act	£3,320	£2,000	
2.2(b)	Hearing for proceedings under Section 31 of Act	£2,155	£0	
2.3(a)	Appeal relating to 2.1(a) to 2.1(g) and 2.1(u)	£215	£215	
2.3(b)	Appeal relating to 2.1(h)	£170	£215	
2.3(c)	Appeal relating to 2.1(i) to 2.1(r), 2.1(v) to 2.1(x) and 2.2	£180	£215	
2.4	Appeal against a contribution order	£180	£215	
<b>ADOPTION AND WARDSHIP</b>				
3.1	Application/permission to apply for adoption	£170	£170	
3.2	Application for a placement order (under Section 22)	£455	£455	

		Current	Proposed	Further information (if required)
3.3	Application to the High Court	£170	£170	
	<b>APPLICATIONS IN PROCEEDINGS</b>			
4.1	Application (without notice)	£45	£50	
4.2	Application for decree nisi, conditional order, separation order	£50	£50	
4.3	Application (on notice) (unless otherwise listed)	£80	£150	
4.4	Application for a financial order	£255	£255	Ancillary relief
5.1	Filing an appeal notice from a district judge to a judge	£125	£125	
	<b>SEARCHES</b>			
6.1	Search of central index of decrees absolute/final orders	£65	£65	
6.2	Search of central index of parental responsibility agreements	£45	£45	
6.3	Search of index of decrees absolute/final orders	£45	£45	
	<b>COPY DOCUMENTS</b>			
7.1(a)	Copy of a document (10 pages or less)	£5	£10	
7.1(b)	For each subsequent page	50p	50p	
7.2	Copy of a document in electronic form (for each copy)	£5	£10	
	<b>DETERMINATION OF COSTS</b>			
8.1	Where the party filing the request is legally aided	£195	£195	
8.2	Where the amount of the costs claimed:			
8.2(a)	Amount does not exceed £15,000	£325	£325	
8.2(b)	Exceeds £15,000 but does not exceed £50,000	£655	£655	
8.2(c)	Exceeds £50,000 but does not exceed £100,000	£980	£980	
8.2(d)	Exceeds £100,000 but does not exceed £150,000	£1,310	£1,310	
8.2(e)	Exceeds £150,000 but does not exceed £200,000	£1,635	£1,635	
8.2(f)	Exceeds £200,000 but does not exceed £300,000	£2,455	£2,455	
8.2(g)	Exceeds £300,000 but does not exceed £500,000	£4,090	£4,090	
8.2(h)	Exceeds £500,000	£5,455	£5,455	
8.3	Issue of default costs certificate	£60	£60	

		Current	Proposed	Further information (if required)
8.4	Appeal (detailed assessment proceedings)	£205	£205	
8.5	Request/application to set aside a default costs certificate	£105	£105	
	<b>REGISTRATION OF MAINTENANCE ORDERS</b>			
9.1	Application for a maintenance order to be registered	£45	£50	
9.2	Application for a maintenance order to be sent abroad	£45	£50	
	<b>ENFORCEMENT</b>			
10.1	Application to question a judgement debtor or other person	£50	£50	
10.2	Application for a third party debt order/appointment of a receiver	£100	£100	
10.3	Application for a charging order	£100	£100	
10.4	Application for a judgement summons	£100	£100	
	<b>FEES TAKEN TO A COUNTY COURT ONLY</b>			
11.1	Request for service by a bailiff of any document	£110	£110	
	<b>ENFORCEMENT IN THE COUNTY COURTS</b>			
12.1	Application for enforcement of a judgement or order	£100	£100	
12.2	Request for attempt at execution of a warrant at a new address	£30	£30	
12.3	Issue for a warrant of possession or a warrant of delivery	£110	£110	
12.4	Application for an attachment of earnings order	£100	£100	
	<b>SALE</b>			
13.1	Removing goods to a place of deposit	*	*	*The reasonable expenses incurred
13.2	Advertising a sale by public auction	*	*	*The reasonable expenses incurred
13.3	Appraisalment of goods	*	*	*5p in every £1 (or part of £1) of the appraised value
13.4	Sale of goods	*	*	*15p in every £1 (or part of £1) of the amount realised by the sale, or such other sum as the district judge may consider to be justified

		Current	Proposed	Further information (if required)
13.5	No sale – execution withdrawn, satisfied or stopped	*	*	*10p in every £1 (or part of £1) or the value of the goods seized, the value to be the appraised value where the goods have been appraised or such other sum as the district judge may consider to be justified
<b>FEES TAKEN IN THE HIGH COURT ONLY</b>				
<b>ENFORCEMENT</b>				
14.1	Sealing a writ of execution/possession/delivery	£60	£60	
14.2	Request/application to register a judgement or order Permission to enforce an arbitration award Certified copy of a judgement or order for use abroad	£60	£60	
<b>AFFIDAVITS</b>				
15.1	Taking an affidavit/affirmation/attestation upon honour	£10	£11	
15.2	For each exhibit referred to and required to be marked	£2	£2	

### Magistrates' Courts Fees Order 2008

		Current	Proposed	Further information (if required)
1.1	Application for JP to perform function not on court premises	£50	£50	
<b>APPEALS</b>				
2.1	Application to state a case for the opinion of the High Court	£500	£500	
2.2(a)	Appeal (Section 20, Child Support Act 1991)	£160	£160	
2.2(b)	Appeal (deduction from earnings order)	£95	£95	
2.3	Appeal - proceedings under Schedule 5, Licensing Act 2003	£400	£400	
2.4	Appeal (no other fee specified)	£200	£200	
<b>CERTIFICATES AND CERTIFIED DOCUMENTS</b>				
3.1	Request for certificate of refusal to state a case	£100	£100	
3.2	Request for a certificate of satisfaction	£15	£15	
3.3	Request for a certified copy of a memorandum of conviction	£60	£60	

		Current	Proposed	Further information (if required)
3.4	Request for certificate/certified document (no fee specified)	£60	£60	
	<b>LIABILITY ORDERS</b>			
4.1	Council tax proceedings	£3	£3	
4.2	Application for liability order (Child Support Act 1991)	£40	£40	For each liability order
	<b>COPY DOCUMENTS</b>			
5.1(a)	Copy of a document (10 pages or less)	£5	£10	
5.1(b)	For each subsequent page	50p	50p	
5.2	Copy of a document in electronic form (for each copy)	£5	£10	
6.1	Application for an order for financial provision	£215	£215	
7.1	Application for a declaration of parentage	£365	£365	
	<b>PROCEEDINGS UNDER THE CHILDREN ACT 1989</b>			
8.1(a)	Parental responsibility (section 4(1)(c) or (3), 4A(1)(b) or(3))	£215	£215	
8.1(b)	Parental responsibility (section 4ZA(1)(c) or (6))	£215	£215	
8.1(c)	Guardians (section 5(1) or 6(7))	£215	£215	
8.1(d)	Section 8 orders (section 10(1) or (2))	£215	£215	
8.1(e)	Enforcement orders (section 11J(2))	£215	£215	
8.1(f)	Compensation for financial loss (section 11O(2))	£215	£215	
8.1(g)	Change of child's surname, or removal from jurisdiction while residence order in force (section 13(1))	£215	£215	
8.1(h)	Special guardianship orders (section 14A(3) or (6)(a), 14C(3) or 14D(1))	£170	£215	
8.1(i)	Secure accommodation order (section 25)	£180	£215	
8.1(j)	Change of child's surname, or removal from jurisdiction while care order in force (section 33(7))	£180	£215	
8.1(k)	Contact with child in care (section 34(2), (3), (4) or (9))	£180	£215	
8.1(l)	Education supervision order (section 36(1))	£180	£215	
8.1(m)	Variation or discharge etc of care and supervision orders (section 39)	£180	£215	

		Current	Proposed	Further information (if required)
8.1(n)	Child assessment order (section 43(1))	£180	£215	
8.1(o)	Emergency protection orders (sections 44, 45 and 46)	£180	£215	
8.1(p)	Warrant to assist person exercising powers under emergency protection order (section 48)	£180	£215	
8.1(q)	Recovery order (section 50)	£180	£215	
8.1(r)	Cancellation, variation or removal or imposition of condition of registration of child minder or day carer (section 79K)	£180	£215	
8.1(s)	Applications in respect of enforcement orders (paragraph 4(2), 6(2), 7(2) or 9(2) of Schedule A1)	£95	£95	
8.1(t)	Amendment of enforcement order by reason of change of address (paragraph 5(2) of Schedule A1)	£50	£95	
8.1(u)	Warrant to assist person exercising powers to search for children or inspect premises (section 102)	£180	£215	
8.1(v)	Financial provision for children (paragraph 1(1) or (4), 2(1) or (5), 5(6), 6(5), (7) or (8), 8(2), 10(2), 11 or 14(1) of Schedule 1)	£215	£215	
8.1(w)	Approval of court for child in care of local authority to live abroad (paragraph 19(1) of Schedule 2)	£180	£215	
8.1(x)	Extension of supervision order (paragraph 6 of Schedule 3)	£180	£215	
8.1(y)	Extension or discharge of education supervision order (paragraph 15(2) or 17(1) of Schedule 3)	£180	£215	
8.1(z)	Appeals concerning foster parenting (paragraph 8(1) of Schedule 8)	£180	£215	
8.2(a)	Application for proceedings under Section 31 of Children Act 1989	£3,320	£2,000	
8.2(b)	Hearing for proceedings under Section 31 of Children Act 1989	£2,155	£0	
9.1	Application for a parental order	£215	£215	
	<b>ADOPTION AND CHILDREN ACT 2002</b>			
10.1	Application/request for permission to apply	£170	£170	
10.2	Application for a placement order (section 22)	£455	£455	
	<b>CHILDREN AND ADOPTION ACT 2006</b>			
11.1	Application for a warning notice to be attached to a contact order	£50	£50	

		Current	Proposed	Further information (if required)
	<b>FAMILY PROCEEDINGS</b>			
12.1	Application (on notice) (no other fee specified)	£80	£150	
12.2	Application (without notice/by consent) (no other fee specified)	£45	£50	
	<b>LICENCES</b>			
13.1	Request for licence/consent/authority (no other fee specified)	£25	£25	
13.2	Application for renewal/variation of an existing licence	£25	£25	
13.3	Application for the revocation of licence (no other fee specified)	£25	£25	
	<b>OATHS</b>			
14.1	On taking attestation of a constable or special constable	£10	£10	
14.2	For every oath (etc) where no other fee is specified	£25	£25	
	<b>OTHER CIVIL PROCEEDINGS</b>			
15.1	Commencing proceedings where no other fee is specified	£200	£200	
15.2(a)	Application for leave/permission to commence proceedings (no other fee specified)	£100	£100	
15.2(b)	Proceedings where leave/permission has been granted	£100	£100	
15.3	Contested hearing	£500	£500	
	<b>WARRANTS</b>			
16.1	Application for a warrant of entry	£18	£20	
16.2	Application for any other warrant (no other fee specified)	£75	£75	
	<b>COMMITMENT</b>			
17.1	Application for a warrant of commitment	£240	£240	
17.2	Warrant of commitment (Child Support Act 1991)	£240	£240	
18.1	Application for non-molestation/occupation order	£75	£0	

## Non-Contentious Probate Fees Order 2004

		Current	Proposed	Further information (if required)
1	Application for a grant of probate	£45	£150	
2	Personal application fee	£60	£60	
3.1	Duplicate/second grant for same deceased person	£20	£20	
3.2	Grant for an estate exempt from Inheritance Tax	£10	£10	
4	Application for the entry or extension of a caveat	£20	£20	
5	Application for a standing search	£6	£6	
6	Deposit of wills	£20	£20	
7	Inspection of will/other document retained by the registry	£20	£20	
	<b>COPY DOCUMENTS</b>			
8(a)	Copy of a document (10 pages or less)	£6	£10	
8(b)	For each subsequent page	£1	50p	
8(c)	Copy of a document in electronic form (for each copy)	£6	£10	
8(d)	Search of the index	£4	£4	
	<b>OATHS</b>			
9.1	For each deponent to each affidavit	£6	£11	
9.2	For marking each exhibit	£2	£2	
10	Determination of costs	*	*	*See Civil Courts Order Section 5
11	Settling documents	£12	£12	

## Court of Protection Fees Order 2007

		<b>Current</b>	<b>Proposed</b>	<b>Further information (if required)</b>
	Simple application fee	*	£220	*New fee
	Application fee (all other applications)	£400	£400	
	Appeal fee	£400	£400	
	Hearing fee	£500	£500	
	Copy of a document (10 pages or less)	£5	£10	
	For each subsequent page	50p	50p	
	General application (on notice)	*	£150	*New fee
	General application (by consent/without notice)	*	£50	*New fee

# Annex B

## Equality assessment for cost recovery

### 1. Policy objective:

- 1.1 The policy objectives for the reforms in this Impact Assessment are to ensure that fee income covers 100% of the cost of providing services, minus the income foregone from the remission system; except in specific cases where a policy decision has been made to continue to charge below cost.
- 1.2 The proposals also seek to simplify the current fee structure to make it easier to understand and more straightforward to administer.
- 1.3 The government believes that this policy offers a fairer deal to the taxpayer, as their contribution is targeted where it is most needed.

### 2. Equality duties

- 2.1 Under the Equality Act 2010 section 149, Ministers and the Department are under a legal duty to have 'due regard' to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups; and to foster good relations between different groups.
- 2.2 Having 'due regard'<sup>1</sup> needs to be considered against the nine "protected characteristics" under the Equality Act: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

### 3. Methodology for Analysis

- 3.1 To assess whether the preferred option has a differential impact on the protected groups (outlined above) a population pool has been defined. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be defined too widely.
- 3.2 We have defined the population pool as those who are most likely to pay one or more of the fees set to increase in the proposals - i.e. issue fees for probate and money claims, the application fee for judicial review, the grouped single issue fee and the fee for bringing an appeal. Full listings of fee changes can be seen in Annex B.
- 3.3 We have drawn on the Familyman data<sup>2</sup>, statistics published by the Office of National Statistics and statistics published by the Ministry of Justice to assess proportional differences in the protected characteristics of this pool, identifying the groups positively and negatively impacted. However, due to the limitations in the data available in some cases we have had to make assumptions about the likely impact on people with protected characteristics based on the type of cases they may be pursuing.

### 4. Direct Discrimination

- 4.1 Our initial assessment is that the introduction of fees proposed in the preferred option are not directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all

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<sup>1</sup> Under section 149 of the Equality Act 2010, the Department has a legal duty to have 'due regard' to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and foster good relations between different groups.

<sup>2</sup> Familyman is a case management system for family cases, collected by HM Courts & Tribunals Service.

claimants irrespective of whether or not they have a protected characteristic: there is no less favourable treatment because of a protected characteristic.

## 5. Indirect Discrimination

- 5.1 Our initial assessment, based on the limited information available, is that the increases in fees under the preferred option are unlikely to amount to indirect discrimination under the Equality Act 2010. This is because the government considers the preferred option (if implemented) to be a proportionate means of achieving a legitimate aim, that of ensuring that fee income covers the cost of providing court services.
- 5.2 To mitigate any risk of discrimination when implementing the preferred option, the HM Courts & Tribunals Service remissions system is available to those with low capital and on low incomes. This means that the proposal may have a financial impact on individuals or groups of individuals, but will not deny access to justice or the opportunity to reach an agreed settlement for individuals who fall within the meaning of the Equality Act 2010.
- 5.3 Whilst the proposals have some implications on the protected characteristics of individuals seeking access to justice, these will impact on different equality groups differently, in so far as they have varying income profiles. It is accepted that as some of the equalities groups are disproportionately represented in lower income brackets, more individuals in these groups would therefore be affected if it were it not for the remissions scheme, which mitigates the effects on those with the lowest incomes and ensures that no-one is denied access to justice by raising court fees.

## 6. Impact on users in the civil court system

- 6.1 Due to the nature of the proposals included in this consultation, any impact on different groups will primarily be financial. Data on court users who will be affected by the proposal has been collected where possible. However, the government acknowledges that it does not collect comprehensive information about court users generally, and specifically information regarding protected characteristics. This limits government understanding of the potential equality impacts of the proposals for reform. An attempt to collect further information on the demographics of users in these cases has been undertaken, but data is limited.

Fees groups affected:

*Probate:*

- 6.2 Whilst we do not have any data on probate case numbers, we acknowledge that there may be differential impacts on women from increases in probate fees. Period life expectancy at birth in the UK in 2008 to 2010 was 78.1 years for males and 82.1 years for females,<sup>3</sup> which means that on average women live longer than men. Therefore we consider a potential for more women to be affected by an increase in probate fees, as they are more likely to out-live their male partners and have to apply for probate for non-joint assets.

*Money Claims:*

- 6.3 We assume that 50% of all specified money claim cases are issued by businesses, such as banks, credit card companies and utility companies. We assume that the remainder are issued by individuals but due to a lack of data surrounding claimants we can not say whether these individuals have protected characteristics.
- 6.4 As there is little data available regarding claimants for unspecified money claims we have been unable to conduct analysis of these. Within unspecified money claims a small proportion of claims are for personal injury cases, which means the claimants may have a disability; therefore it may be fair to assume that more people with disabilities could be affected by the

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<sup>3</sup> Office of National Statistics; <http://www.statistics.gov.uk/hub/population/deaths/life-expectancies>

increase in fees. However if individuals win the case, the costs (including court fees) are normally transferred to the losing party.

#### *Judicial Review:*

6.5 In 2012, 76% of judicial review cases were for immigration and asylum claims.<sup>4</sup> It is therefore reasonable to assume that these proposals have the potential to adversely affect more people with the protected characteristics of race and religion/belief. There may also be other adverse impacts on protected groups: for example, if non-governmental organisations bring fewer challenges to court due to an increase in fees, those with protected characteristics who might have benefited from the results of those cases will no longer benefit from them.

#### *Other fees:*

6.6 There are a number of other fee increases proposed, which are set out in full at Annex A. However, due to our limited data availability, we have not been able to make any assumptions on the potential impacts of a fee increase in these areas.

### **7. Mitigation**

7.1 We do not consider the impact of these proposals to amount to a particular or substantial disadvantage. Therefore, we consider the proposal and any resulting impacts of the proposal to remain a proportionate means of achieving a legitimate aim: to reduce taxpayer subsidy of the court system by ensuring that fee income covers the cost of providing court services, minus the cost of the remissions system.

7.2 There is income disparity between different parts of the population; however, the fee remissions scheme is available to all those who have low capital and are in receipt of prescribed state benefits, or whose gross incomes fall below certain levels. The remissions system ensures that those who can afford to pay their fee do so, but those who cannot pay the fee are not prevented from accessing the court as a result of these proposals. For this reason, we do not anticipate that the proposals are likely to have any equality impacts on low-income groups; however, we will use the consultation period to gather further evidence.

### **8. Equalities Questions**

8.1 We have asked for more information on potential equalities impacts through questions in the consultation.

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<sup>4</sup> The latest MoJ publication covering Judicial Reviews can be found in chapter four of Court Statistics Quarterly: [www.gov.uk/government/publications/court-statistics-quarterly-jan-mar-2013](http://www.gov.uk/government/publications/court-statistics-quarterly-jan-mar-2013)