

Title: Fees Increase in the United Kingdom Supreme Court Lead department or agency: Ministry of Justice Other departments or agencies: United Kingdom Supreme Court	Impact Assessment (IA)
	IA No: MOJ 081
	Date: 10/03/2011
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Olubiyi Ayodeji 020 3334 5263	

Summary: Intervention and Options

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

The UK Supreme Court (UKSC) is the highest Court in the United Kingdom and hears appeals, for the whole of the UK in civil cases, and for England, Wales & Northern Ireland in criminal cases. The government considers that the fee charged for Permission to Appeal (PTA) applications does not reflect the amount of work required to process and determine, and that the time lag in implementing adjustments to fees to take account of inflation is too lengthy.

Government intervention is required because the Lord Chancellor is statutorily responsible for the fees instrument which prescribes fees charged in the Court.

What are the policy objectives and the intended effects?

The policy objectives are to:

- ensure that access to justice must not be denied
- ensure a proper balance between the cost of the UKSC borne by Court users and the generality of users of the Civil Justice system

The intended effects of the proposed fee changes are to:

- ensure that the PTA fee in the Court is more reflective of the costs of dealing with PTA applications
- reduce the time lag in implementing inflationary fee increases
- recover a greater proportion of the cost of civil business of the court through fees

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0 - Do nothing – retain current fee levels at the UK Supreme Court and leave unchanged current process for adjusting fees to account for inflation

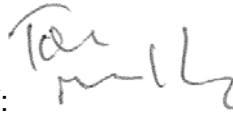
Option 1 - Increase the fee for PTA and introduce the discretionary power for UKSC to recommend that the Lord Chancellor increase fees to reflect CPI inflation since the date that they were last increased, without conducting a public consultation.

Option 1 is the preferred option since a higher PTA fee will better reflect the work undertaken in dealing with these applications. Giving the Lord Chancellor the discretion to increase fees in line with CPI inflation from the date that it was last increased without requiring a public consultation, would reduce the time lag in implementing fee changes.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

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

A handwritten signature in black ink, appearing to read 'Tom Kelly'.

Signed by the responsible SELECT SIGNATORY:

Date: 21/03/2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Increase permission to appeal fee from £800 to £1000 (25%) increase and introduce discretionary power to implement inflationary increases in fees based on CPI and the date of last increase.

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

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	Minimal	£55,000	N/A

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

Transition costs to the UKSC will be negligible as what will be involved are the addition of a page addendum to the Fees Order and an update of information on the website. There would be ongoing costs including costs to UKSC users of approx £55k if volumes are not affected (£52k if volumes fall by 1%).

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

There would be ongoing costs to users who may not bring cases to UKSC and who may incur costs from more frequent fee increases. There would be ongoing costs to UKSC from a potential increase in remissions and admin costs of more frequent inflationary increases. There may be social costs if fewer appeals are heard at UKSC. There may be possible costs to the LSC if the appellant is in receipt of legal aid and there may be minimal costs to legal services professionals who represent appellants.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	£55,000	N/A

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

There would be ongoing benefits to UKSC of approx £55k if volumes are not affected (£52k if volumes fall by 1%).

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

There would be benefits to UKSC from reducing the time lag in implementing inflationary fee increases. There would be benefits to UKSC users from a potential increase in fee remissions, although this is expected to be minimal. There would be social benefits as the relative amount of taxpayer subsidy is reduced, generating 'economic welfare' improvements, although these are likely to be small given the expected lack of demand response for this policy proposal.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The change to fees is not expected to significantly affect the volumes of cases. However, for illustrative purposes, in addition to our central scenario (0% reduction), we outline a sensitivity of a 1% reduction in volumes. It has also been assumed that there is no net detrimental impact on outcomes in cases heard at UKSC or access to justice. There is also a risk that significant reductions of volumes of caseload at UKSC may also impact on fee income paid at later stages of the appeals process. The level of case flow is based on figures from the first year of the Court's operation. This is also the case about UKSC's running costs. There is a risk that reductions in caseload would have adverse implications for fee income.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: 0	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	01/07/2011				
Which organisation(s) will enforce the policy?	UK Supreme Court				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/Q	< 20 N/Q	Small N/Q	Medium N/Q	Large N/Q
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	Yes	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

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

No.	Legislation or publication
1	Constitutional Reform Act 2005 - http://www.legislation.gov.uk/ukpga/2005/4/contents
2	Fees in the United Kingdom Supreme Court - www.justice.gov.uk/consultations/fees-uk-supreme-court-consultation.htm
3	The Supreme Court Fees Order 2009 - http://www.legislation.gov.uk/uksi/2009/2131/contents/made
4	

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Evidence Base

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

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£000's) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost	55	55	55	55	55	55	55	55	55	55
Total annual costs	55	55	55	55	55	55	55	55	55	55
Transition benefits										
Annual recurring benefits	55	55	55	55	55	55	55	55	55	55
Total annual benefits	55	55	55	55	55	55	55	55	55	55

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

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment examines the options for increasing fees at the UK Supreme Court. It examines the proposal to increase the application fee for Permission to Appeal (PTA) charged at the UK Supreme Court and also the introduction of a discretionary power for the Lord Chancellor to increase all fees charged at the Court to take account of annual inflation, based on the Consumer Prices Index (CPI)²
- 1.2 The United Kingdom Supreme Court (UKSC) was established by Part 3 of the Constitutional Reform Act (“CRA”) 2005 and opened on 1 October 2009, replacing the Appellate Committee of the House of Lords as the highest court in the United Kingdom. UKSC is explicitly separate from both Government and Parliament.
- 1.3 UKSC hears appeals on arguable points of law of the greatest public importance, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases. Additionally, it hears cases on devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006. The latter jurisdiction was transferred to the Supreme Court from the Judicial Committee of the Privy Council³.
- 1.4 Section 52 of the CRA allows the Lord Chancellor with the agreement of HM Treasury to prescribe fees payable in respect of anything dealt with by the Supreme Court. The Lord Chancellor is statutorily obliged to consult certain senior judges and key organisations about the Fees Order. The fees payable at the Court and the provisions for fee exemptions are set out in The Supreme Court Fees Order 2009, an Order made by the Lord Chancellor, which came into force on the same day. The remissions policy is consistent with the Civil Proceedings fees Order 2008 No. 1053.

2. Problem under consideration

- 2.1 The existing fee structure was based on assumptions made using data obtained from the Appellate Committee of the House of Lords, which the Court replaced. Good management of public services necessitates the maintenance of an oversight of fee levels and operational costs. Over a year on since its opening with actual operating costs now available and against the background of constrained financial resources and a challenging financial settlement, it is now considered appropriate to consult on a limited fees increase.
- 2.2 It is Government policy that all fees should be set, so far as possible, at levels that reflect the cost of providing that service⁴. UKSC, as well as being the final Court of Appeal, plays an important role in the furtherance and development of UK law. Therefore, it is considered that the benefits of Supreme Court rulings accrue not only to users of the Supreme Court but more widely to all users of the Civil Justice system.
- 2.3 HM Treasury agreed with all the jurisdictions of the UKSC that the civil costs in the Supreme Court should be borne by both Supreme Court users and the generality of litigants bringing civil cases in England, Wales and Northern Ireland. In addition, a contribution is paid by the Scottish Government towards the running costs of the Court. We do not consider that fees have been set at a level that has prohibited access to justice.
- 2.4 Having an appropriate system of fees in place is important to ensure that the Court is able to face its current financial and operational challenges and that it remains accessible to all in delivering the service that its users require. In practice this has meant that the Supreme Court recovers the cost of civil cases through a combination of fees and contributions made from Her Majesty’s Courts Service,

² CPI (Consumer prices index) is used by the Bank of England to target inflation. It accounts for the changes in the price level of a representative ‘basket’ of consumer goods and services purchased by households

³ The JCPC is the court of final appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee. It is co-located with the UKSC and both Courts utilise the same Justices.

⁴ Paragraph 6.12, HM Treasury, ‘Managing Public Money’, http://www.hm-treasury.gov.uk/d/mpm_ch6.pdf

the Northern Ireland Court Service and the Scottish Government. This agreed policy is not itself a matter for consultation.

2.5 The present process for fee changes is that the UK Supreme Court makes a recommendation to the Lord Chancellor, who is statutorily responsible for fee changes. This process currently requires a public consultation and formal government response to consultation. This is arguably a lengthy and burdensome process and it means that it can take approximately 9 months to implement fee changes.

2.6 As the table below shows, UKSC's overall costs are expected to fall as agreed for the four years covered by the 2010 Spending Review period. Meanwhile volumes are expected to remain broadly constant over this period. This means that the costs per unit are likely to fall through efficiency savings. The table also shows the contributions received from the jurisdictions in the first year and what is expected from each of them over the next four years. These figures were factored into the UKSC Spending Review settlement and this fees consultation exercise is not expected to change the agreed contributions⁵.

Table 1: UKSC projected and actual operating costs and income, 2009-15

	Oct 2009 to Sept 2010 (ACTUAL)	Apr 2011 to Mar 2012	Apr 2012 to Mar 2013	Apr 2013 to Mar 2014	Apr 2014 to Mar 2015
	£,000	£,000	£,000	£,000	£,000
Judicial Salary & Expenses	3,600	3,700	3,700	3,400	3,400
Depreciation	1,041	1,041	1,041	1,041	1,041
Other costs	8600	8,092	8174	8016	8002
Total Gross Costs	13,241	12,833	12,915	12,457	12,443
Contributions from Jurisdictions	(5,969)	(6,102)	(6,415)	(6,141)	(6,331)
Fees & Wider Market Initiatives	(967)	(695)	(705)	(735)	(735)
Net Running Costs⁶	6,305	6,036	5,795	5,580	5,377

2.7 The determination of the proportion of Supreme Court's running costs that are expended on conducting civil cases are based on the following facts from its first actual year of operations:

- Civil cases constituted 90%⁷ of the caseload at the Court in its first year. This was higher than the originally envisaged level of 80% with only 10% of the caseload in this period being criminal cases.
- In 2009-2010 the percentage split of cases between the UKSC and the Judicial Committee of the Privy Council (JCPC)⁸ was 70% to 30%. This was an increase from the initially estimated split of 60% to 40%.⁹ This means that more time is spent on UKSC cases at the Supreme Court than originally envisaged.
- The proportion that relates to the judicial aspects of the work of the Justices of the Court is estimated at 95% in its first year. The remaining 5% related to non-judicial related work by the Justices such as giving lectures and honouring speaking engagements. This has been taken into account while isolating civil costs. This means that 59.9% of their time is likely to be spent on civil work in the Supreme Court.¹⁰

⁵ UKSC fee income reflected in the table is based on current fees.

⁶ Net running costs are met from central income received following the annual bid for resources.

⁷ Figures provided by the UK Supreme Court

⁸ The JCPC is the court of final appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee. It is co-located with the UKSC and both Courts utilise the same Justices.

⁹ Figures provided in 2009 by the Judicial Office of the House of Lords and JCPC based on sitting and programmed days in the House of Lords and JCPC

¹⁰ 95%x70%x90% = 59.85%

Rationale

- 2.8 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are clear failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of fairness (e.g. to reallocate goods and services to the more needy groups in society).
- 2.9 Positive externalities exist when the marginal social benefit of consumption of a good exceeds the marginal private benefit (i.e. consumption of a good could generate external benefits that may be under-valued by the market). Where positive externalities exist, the good or service in question may be under-consumed if users pay the full cost of the service. In this context, the socially optimal outcome may be where the government subsidises the price of that service. The government considers that there are positive externalities from the cases heard at the UKSC as the benefits accrue not only to users of UKSC but more widely to users of the civil justice system.
- 2.10 Notwithstanding this argument, it is considered that the relative subsidy that users currently enjoy, should be reduced so that there is better balance between the cost borne by users and the generality of the users of the civil justice system. While the Government does not seek to remove public subsidy for UKSC, it is considered that where users are able to, they should pay a larger contribution towards the cost of Permission-to-Appeal (PTA) applications.
- 2.11 There may also be arguments for enabling the Lord Chancellor to update the UKSC fee order to reflect changes in the price level since the date that it was last increased. If the overall price level continues to rise, then in the absence of changes to UKSC's fee order, the real value of fees will tend to fall over time. The current procedure for updating fees (explained in paragraph 2.4) requires a public consultation and formal government response. It is considered that the procedure for updating fees to reflect inflation is too lengthy and burdensome. If the real value of the fee falls significantly relative to the cost, a time lag in increasing fees can lead to financial problems for UKSC, given that the contributions from other areas are fixed, in each financial year.

Affected Stakeholder groups, Organisations and Sectors

- UK Supreme Court
- UK Supreme Court users
- Judiciary
- Legal services professionals
- All users of the civil courts in the United Kingdom
- General public

3. Description of options

Option 0: “Do-nothing”/ Base Case

- 3.1 Under the “do-nothing” base UKSC fees would remain unchanged and public consultation would continue to be required each time a change to the fee structure is undertaken.
- 3.2 In the period October 2009 to September 2010, fees & wider market initiatives accounted for £976,000 against a cost base of £13.2 million¹¹ (approx 8% cost recovery).
- 3.3 Assuming that the UK's general price level continues to rise over time, then this would mean that fees would fall in real terms. It is likely that the rate of cost recovery would decline over time and that increasing amounts of subsidy would therefore be required from the Exchequer to help finance the same volume of UKSC services in future years. Costs per case are expected to fall over the CSR10 period, in light of efficiency savings proposed. .

¹¹ Total gross costs including judicial salary & expenses, depreciation and other costs, this figure is total income gross of any fee remissions

3.4 Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV)¹².

Option 1: Increase permission to appeal (PTA) fees by 25% and enable UKSC to increase fees based on the last date of increase

3.5 It is proposed that the fee charged for applications for Permission to Appeal (PTA) be increased to better reflect the amount of work undertaken by the Justices and their staff to process and determine the PTAs. All other fees charged at the Court are to remain the same.

3.6 It is also proposed that UKSC be permitted to increase its fees to take account of the change in the price level, based on the CPI index from the date that they were last increased, without having to undertake a public consultation process. UKSC would make a recommendation to the Lord Chancellor who would use this discretionary power to increase fees paid at UKSC to account for CPI inflation. If CPI inflation were negative, fees would either have to remain fixed in nominal terms or a full public consultation process would have to be undertaken to reduce them. A full public consultation would continue to be required if UKSC planned to increase fees at a rate greater than CPI inflation since they were last increased.

3.7 Any fee changes would be achieved by laying a new Statutory Instrument which would amend previous fees orders. The Lord Chancellor would be able to use this power at his discretion and the position will be reviewed at least every three years. As and when the fees are increased an amended fee structure that takes into consideration CPI inflation since the last increase will be published by the Court.

Table 2: UKSC current and proposed fee schedule

APPLICATION FOR PERMISSION TO APPEAL	Current fee	Proposed fee
File Application for Permission	£800	£1000
File notice of objection (Respondent)	£160	£160
APPEAL		
Filing notice of intention to proceed with appeal (following grant by UKSC of permission to appeal)	£800	£800
Filing notice of appeal (where permission granted by court below or not required)	£1600	£1600
Filing acknowledgement (respondent)	£320	£320
Filing Statement and appendix. Filing notice of appeal is ready to list.	£4820	£4820
OTHER FEES		
Review of Registrar's decision	£1,500	£1,500
Application to intervene	£800	£800
Other procedural applications	£350	£350
Opposition to procedural applications	£150	£150
Copying charge (documents up to 10 pages)	£5	£5
Copying each subsequent page	50p each	50p each

¹² The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

Copying to CD or other electronic format	£5	£5
Certified documents (other than final order for which there is no charge)	£20	£20
Application for detailed assessment of costs	2.5% Sum Claimed	2.5% Sum Claimed

Costs of Option 1

Transitional costs

Costs to UKSC:

3.8 There would be minimal costs to the UKSC as an addition of a page addendum to the Fees Order and an update of information on their website will be required.

Ongoing costs

Costs to UKSC users:

3.9 The total additional cost to court users of the increased PTA fees is estimated to be £55k for a full financial year (based on actual and forecast volumes for 2010/11), compared to the base case. For the purposes of illustration, if we experience a drop in volumes by 1% the additional cost to users would be £52k, other things being equal. Unfortunately, uncertainty around the price responsiveness of court services to fee changes means that we cannot specify the exact impact on volumes. Those users who are eligible for legal aid or a fee remission will not be affected by the increases. The introduction of the proposed fee increases may result in a decrease in the number of applications being made in PTA's. Demand is not expected to reduce significantly the fee changes implemented in 2009 had no impact on the volume of work presented to or dealt with by the Court.

Table 3: Costs to users of the United Kingdom Supreme Court

Percentage demand change	Projected fee numbers	Projected fee income ¹³	Projected additional costs to UKSC users
0%	275	£275,000	£55,000
-1%	272	£272,000	£52,000

3.10 In the presence of inflation, fees fall in real terms unless they are updated to reflect changes in the price level regularly. Enabling UKSC to undertake inflationary increases, based on CPI from the date that they were last increased, without the need for public consultation could lead to more frequent updates to the fees order. UKSC users may also face costs from more frequent updates to fees. More frequent inflationary updates to the fees order would reduce the benefit that UKSC users currently enjoy when the real level of fees fall.

Costs to UKSC:

3.11 Raising fees may lead to an increase in fee remissions in that customers are more likely to question their ability to pay than before. Since the Court was opened, approximately 2.2% of cases at UKSC received a full or partial fee remission. It is expected that there may be an increase in the value of fee remissions but this impact is likely to be minimal. The remission scheme will continue to provide a robust means of access to justice as court users who face financial hardship because of fees can apply for the fee to be waived in full or part.

3.12 As the fee structures have not changed, there should not be any additional ongoing costs for the administration of the increased fees.

3.13 If UKSC has the ability to adjust fees to account for inflation, without the need for public consultation, there might be more frequent updates to the UKSC fees order. The costs of these updates to the UKSC are expected to be minimal.

¹³ Projected fee income figures do not take account of any income foregone from fee remissions or exemptions

3.14 Although it is not expected that demand would be significantly reduced by these proposals, if volumes were to be affected, UKSC may incur costs from reduced income from fees later in the appeal process. It is considered that the likelihood of this is very low therefore this impact has not been quantified.

Costs to Legal Services Commission (“LSC”):

3.15 Legal aid includes the payment of court fees. Court fees are paid upfront by legal aid solicitors for clients who are in receipt of funding by the LSC for the purposes of the proceedings for which a certificate has been issued under the funding code, and the claimed back from the LSC when the case is finished. The impact of these proposals are expected to be minimal given that Legal Aid is predominantly only payable for non-civil matters to which the majority of these fee increases relate.

Costs to legal services professionals:

3.16 Although volumes are not expected to be significantly reduced and legal professionals who deal with civil cases at UKSC may see a decrease in the number of applications being made, other thing being equal. There may also be an impact on smaller firms of solicitors who have to pay PTA fees upfront and claim them back from the LSC when the case is finished. Any impact on the legal profession is considered to be minimal.

Social costs:

3.17 UKSC, as well as being the final court of appeal, plays an important role in the furtherance and development of UK law. There are positive externalities from cases heard at UKSC, in the sense that all court users and the general public are affected by the outcomes of appeals and cases heard at UKSC. If the volumes of UKSC cases were to fall as a result of the increase in PTA fees, then by implication the benefits that all court users and the general public currently enjoy would be reduced.

Benefits of Option 1

Transitional benefits

3.18 No transitional benefits have been identified

Ongoing benefits

Benefits to UKSC

3.19 Under these proposals HMCS would benefit from an estimated increased fee income of £55k in a full year ignoring the offsetting rise in remissions. If caseload were to be reduced by 1%, this benefit would be approximately £52k

Table 4: Benefits to the United Kingdom Supreme Court

Percentage demand change	Projected fee numbers	Projected fee income¹⁴	Projected additional income
0%	275	£275,000	£55,000
-1%	272	£272,000	£52,000

3.20 In the presence of inflation, fees fall in real terms unless they are updated to reflect changes in the price level regularly. Enabling UKSC to undertake inflationary increases, based on CPI from the date that they were last increased, without the need for public consultation could lead to more frequent updates to the fees order. UKSC would benefit from more frequent updates to fees. More frequent inflationary updates to the fees order would reduce the costs that UKSC currently face when the real level of fees fall.

¹⁴ Projected fee income figures do not take account of any income foregone from fee remissions or exemptions

Benefits to UKSC users:

3.21 Raising fees may lead to an increase in fee remissions in that customers are more likely to question their ability to pay than before. As a result of these proposals, it is expected that court users may benefit from additional fee remissions. Since the Court was opened, approximately 2.2% of cases have involved either full or partial fee remissions. Given this experience to date, this benefit is considered to be minimal.

Benefits to society:

3.22 Given that UKSC services (as a whole) are currently being offered below the full cost of providing them, increasing fees would reduce the level of subsidy that taxpayers currently provide to users of the courts and probate registries. This represents a net gain for society overall because the over-consumption of services and associated “deadweight loss” falls as fee rates move closer to the levels implied by full cost-recovery. Unfortunately, uncertainty around the underlying customer demand for these court services as fee rates change means that we cannot estimate the monetary net gain to society.

3.23 The increase in fee rates reduces the subsidy paid by taxpayers to court users, other things being equal. The increase in fees would not impact those who are entitled to means tested benefits and will have greatest impact on those individuals that are outside eligibility for legal aid or a fee remission. In the case of the proposed PTA increases, the increased fees may encourage court users to resolve issues without using the court system, potentially resulting in a reduced volume of court cases. However, given that we expect no demand response from this fee change, one would expect this benefit to be small.

Enforcement and Implementation

3.24 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.

Assumptions/Risks

3.25 In the main body of the options analysis above, the volumes of fees applications have not been adjusted to reflect a reduction in demand for court services that would result from increasing fee levels. The main issue at stake is whether the proposed fee increases would lead to the expected increases in fee income. Other things being equal, the own price elasticity of demand measures the responsiveness of customer demand to a change in the price of the good in question.

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

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

- The availability of substitutes – if there is no close substitute to the service provided by the court (or there is a perception that there is no close substitute), then demand will be less elastic.
- The nature of the claim – if the service provided is a necessity, then demand will be less elastic.
- Fees as a proportion of total cost – if the court fees are a substantial proportion of the total cost of going to court (i.e. the cost of court fees and legal representation), then it is more likely that the court fees will have a big impact on the volume of court cases.
- The funding of the applicant – if the applicant is privately funded, then they must bear the full costs of the fees, and the applicant will take into account the cost of the court fee when deciding whether to issue a claim. The privately funded applicant might substitute away from court and towards cheaper alternatives such as mediation. On the other hand, if the applicant

is legally aided, the magnitude of the court fee will not impact on the likelihood of issuing a claim, as they will not be liable for the cost.

- The transferability of court fees – if the fees are non-transferable and the cost must be borne by the claimant independently of whether they win the case, then the fees are more likely to impact on the volume of court cases.

3.28 Taking these factors into consideration, and especially as it is considered that fees are a low relative to total legal expenses in UKSC cases, it is not expected that these fee increases would substantially impact the volumes of cases. However, for illustrative purposes and given the uncertainty around the price elasticities of demand for the court services in question, this section sets out what happens to projected case volumes and projected income across a central scenario and sensitivity scenario (i.e., volume reductions of 0% and 1% respectively), holding all other variables constant. This is set out in the table below:

Table 5: Percentage demand changes and projected additional income, based on different scenarios

Percentage demand change	Projected volumes	Projected income¹⁵	Projected additional income¹⁶
0% (central scenario)	275	£275,000	£55,000
-1% (sensitivity)	272	£272,000	£52,000

3.29 The main risk to the proposals is that the court services in question will prove to be price elastic. In other words, revenues will fall because case volumes will decline by proportionately more than the fee level increases.

3.30 There is also a risk that overall fee income could be affected if caseload is significantly reduced. This is because the fees paid at later stages of the appeal process may fall. It is considered that the likelihood of this risk is low and the magnitude has not been quantified.

¹⁵ Projected fee income figures do not take account of any income foregone from fee remissions or exemptions

¹⁶ Compared to the base case/ do-nothing option

3. Specific Impact Tests

Equality Impact Assessment

An Equality Impact Assessment initial screening has been completed and is attached at Annex B

Competition Assessment

It is not considered that there would be any impact on competition.

Small Firms Impact Test

If a small firm brings a case to the UK Supreme Court, they would have to pay the same fees as large firms or individuals. Appellants are not required by the court rules to provide information that would make it possible to classify them as belonging to a particular group. It is therefore impossible to estimate the effect in isolation on the small business sector. Businesses in general, only pursue litigation when it is economical to do so, taking account of the likelihood of success. The fees paid for court proceedings are ultimately recoverable from the losing party, so the impact on the small business sector depends on the outcome of their case.

Carbon Assessment

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

Other Environment

It is not considered that these proposals would have any other environmental impacts.

Health Impact Assessment

It is not considered that these proposals would have any significant impact on health.

Human Rights

These proposals are compliant with Human Rights Act (1998).

Justice Impact Test

The impact on the justice system has been assessed as part of the options analysis. The LSC fund meets the cost of court fees for those in receipt of legal aid. It is anticipated that there may be an increase to legal aid costs but that this will be minimal given that legal aid for civil non-family proceedings is limited.

Rural proofing

It is not considered that there would be any specific rural impacts from these proposals.

Sustainable Development

It is not considered that there would be any impact on sustainable development from these proposals.

Privacy Impact Test (an MoJ Specific Impact Test)

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

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

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

<p>Basis of the review: The fee structure at the UKSC will be reviewed at least every 3 years.</p>
<p>Review objective: To ensure there is proper balance between the costs borne by users of the Court and those by the generality of those using the civil justice system, while maintaining access to justice.</p>
<p>Review approach and rationale: A monitoring framework of fee levels will be established including: the costs of dealing with civil cases at the Court, the impact of the fee remission policy, and any impact on court usage. Any further rises, over and above CPI inflation, will be continue to be subject to statutory consultation</p>
<p>Baseline: The current civil caseload of the Court is 275. This represents 90% of the Court's business.</p>
<p>Success criteria: The policy will be successful if the costs of the Court are borne equitably between court users and the generality of those who use the civil justice system while maintaining access to justice.</p>
<p>Monitoring information arrangements: The Court has its own workload measurement system</p>
<p>Reasons for not planning a PIR: N/A</p>