

Title: Immigration and Asylum Chamber Full Cost Recovery IA No: MoJ005/2016 RPC Reference No: N/A Lead department or agency: MOJ Other departments or agencies: HM Courts and Tribunals Service	Impact assessment (IA)				
	Date: 14/04/2016				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Secondary Legislation				
Contact for enquiries: Paul Norris 0203 334 3220 mojfeespolicy@justice.gsi.gov.uk					
Summary: Intervention and Options				RPC Opinion: N/A	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
-£2m	NK	NK	Not in scope	N/A
What is the problem under consideration? Why is government intervention necessary? While the running costs of the Immigration and Asylum Chamber (IAC) were £94 million in 2014-15, only £7 million in income was received, so representing a net cost to the taxpayer of around £87 million. The Government is committed to delivering a balanced budget by 2018/19 and to do so, the Ministry of Justice (MoJ) needs to continue to manage its finances sensibly.				

What are the policy objectives and the intended effects? The MoJ's overall policy aim is that the courts and tribunals are resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore, for specific proceedings within the IAC, to charge fees at cost recovery levels so that users meet the full cost of the IAC.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option. The following options are considered: <ul style="list-style-type: none"> • Option 0: Do Nothing. • Option 1: Increase fees for the First Tier Appeal stage in the IAC to full cost recovery levels. • Option 2: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal, Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages in the IAC. The Government's preferred option is to implement Options 1 and 2 as these best meet the policy objective.
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Will the policy be reviewed? It will not be reviewed. If applicable, set review date:					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent)				Non-traded:	
				N/A	

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

Signed by the responsible Minister: _____ **Date:** _____

Summary: Analysis and Evidence

Policy Option 1

Description: Increase fees for the First Tier Appeal stage (paper and oral applications) in the IAC to full cost recovery levels.

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: -0.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	1	18	155
High	0.1		35	301
Best Estimate	0.1		26	228

Description and scale of key monetised costs by ‘main affected groups’

HM Courts and Tribunals Service (HMCTS) would face one-off transitional costs of less than £0.1 million from implementing the proposed changes. Tribunal users will bear the cost of the new fees, paying an additional £26 million a year for First Tier paper and oral applications in the IAC.

Other key non-monetised costs by ‘main affected groups’

Appellants may face a cash flow cost as fees are initially paid upfront although after a judgement takes place, and if a decision is in the appellant’s favour, the respondent may then be required to repay the fee. There will also be some minor familiarisation costs for tribunal users and their legal representatives.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	18	155
High	0		35	301
Best Estimate	0		26	228

Description and scale of key monetised benefits by ‘main affected groups’

HMCTS will receive £26 million a year in additional income from the fee increase. This will help to cover the full cost of the First Tier appeal stage in the IAC, thus reducing the cost to the taxpayer.

Other key non-monetised benefits by ‘main affected groups’

HMCTS may experience lower running costs if a lower volumes of cases go to the tribunal.

Key assumptions/sensitivities/risks

- Our central scenario is based on the assumption that fee changes will cause a 20 per cent fall in demand. Sensitivity analysis considers the impact of a zero per cent and a 40 per cent fall in caseloads. In this analysis, our best case (zero percent) scenario is based on evidence of changes in caseloads following the introduction of fees in the IAC in 2011, while the worst case (a 40 per cent fall) draws on caseload evidence following the introduction of enhanced fees for money claims. Our central estimate is the mid-point of these two figures. The drop in caseload is assumed to be because individuals choose to no longer bring a claim as a result of the higher fees.
- It has also been assumed that there will be no detrimental impact on tribunal case outcomes, on access to justice and on the legal services used to pursue or defend claims from the increase in fees.
- The central scenario does not take into account any changes in behaviour due to cases being issued early to avoid paying the new fees. The implications of this potential ‘pull through’ effects is that the first year fee income estimates may be slightly overestimated. This is considered in the sensitivity analysis.

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
N/A	N/A	N/A	N/A

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal stage, Upper Tribunal Permission to Appeal stage and Upper Tribunal Appeal stage in the IAC.

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: -2	Best Estimate: -1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.5	1	8	71
High	1.5		14	119
Best Estimate	1.0		11	95

Description and scale of key monetised costs by ‘main affected groups’

HMCTS would face one-off transitional costs of around £1 million from implementing the proposed changes. Users will bear the cost of the new fees, paying an additional £11 million a year for First Tier Permission to Appeal, Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages in the IAC.

Other key non-monetised costs by ‘main affected groups’

Appellants may face a cash flow cost as fees are initially paid upfront although after a judgement takes place, and if a decision is in the appellant’s favour, the respondent may then be required to repay the fee. There will also be some minor familiarisation costs for tribunal users and their legal representatives.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	8	71
High	0		14	118
Best Estimate	0		11	94

Description and scale of key monetised benefits by ‘main affected groups’

HMCTS will receive an extra £11 million a year from the fee increases. This will cover the full costs of the First Tier permission to appeal and Upper Tribunal parts of the IAC and so reduce the cost to the taxpayer.

Other key non-monetised benefits by ‘main affected groups’

HMCTS may experience lower running costs with lower volumes of cases reaching the court process.

Key assumptions/sensitivities/risks

- Our central scenario is based on the assumption that fee changes will cause a 20 per cent fall in demand. Sensitivity analysis considers the impact of a zero per cent and a 40 per cent fall in caseloads. In this analysis, our best case (zero percent) scenario is based on evidence of changes in caseloads following the introduction of fees in the IAC in 2011, while the worst case (a 40 per cent fall) draws on caseload evidence following the introduction of enhanced fees for money claims. Our central estimate is the mid-point of these two figures. The drop in caseload is assumed to be because individuals choose to no longer bring a claim as a result of the higher fees.
- It has also been assumed that there will be no detrimental impact on tribunal case outcomes, on access to justice and on the legal services used to pursue or defend claims from the increase in fees.
- The central scenario does not take into account any changes in behaviour due to cases being issued early to avoid paying the new fees. The implications of this potential ‘pull through’ effects is that the first year fee income estimates may be slightly overestimated. This is considered in the sensitivity analysis

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	
N/A	N/A	N/A	N/A

Evidence Base

A. Background

The Immigration and Asylum Chamber

1. The Immigration and Asylum Chamber (IAC) deals with appeals relating to individuals who have had their application for asylum refused or have been denied permission to come to the UK or to vary the terms of their current leave to remain in the UK by the Home Office.
2. Individuals who dispute these decisions can bring an appeal to the First-tier Tribunal of the IAC. This is referred to as the First-tier appeal (FTA) stage, and involves an application followed, in most instances, by either a paper or oral hearing and a decision made by a judge.
3. If the losing party believes there has been an error of law in the decision at the FTA stage they can apply for permission to appeal to the Upper Tribunal. The losing party must apply for permission to appeal, firstly to the First-tier Tribunal (this is referred to as the First-tier permission application (FTPA) stage), and, if they are rejected, can apply for permission to appeal in the Upper Tribunal (known as the Upper Tribunal permission application (UTPA) stage). A judge will decide a permission to appeal application on the papers, rather than at an oral hearing.
4. If the losing party at the FTA stage is granted permission to appeal at either the FTPA or the UTPA stage then their appeal moves to the Upper Tribunal appeal (UTA) stage, which involves another judge making a decision following a further hearing or the case being remitted back to the First-tier Tribunal for a new decision.

The Principle of Cost Recovery

5. The principle of charging fees in the courts and tribunals is a long established one, and it is a means by which the Government ensures that those who use the service provided make a financial contribution. It was on this basis that fees were introduced into the First-tier Tribunal of the IAC for the first time in 2011 under the statutory power contained at section 42 of the Tribunals, Courts and Enforcement Act 2007.
6. The fees set under this statutory power were only set for the FTA stage and were £80 for a decision on the papers and £140 for an oral hearing. There were no fees charged for either of the permission to appeal stages (FTPA and UTPA) or for an appeal in the Upper Tribunal (the UTA stage). Under these fees, the income generated in 2014-15 (net of remissions and exemptions) was around £7 million, which was around 8 per cent of the total cost of the IAC¹.
7. Guidance published by Her Majesty's Treasury *Managing Public Money*² sets out that where those who use a public service are charged a fee to access it those fees should normally be set at a level designed to recover the full costs of the service. In July 2015 the Government published a consultation document seeking views on a proposal to double the fees currently charged at the FTA stage, with the aim of achieving around 25 per cent cost recovery in the First-tier Tribunal³. In December 2015 the Government indicated it was planning to proceed with that proposal.
8. However, the Government has now reconsidered that decision and is consulting again on plans to move to full cost recovery levels in both the First-tier Tribunal IAC and Upper Tribunal IAC.

¹ The total operating cost for the Immigration and Asylum Chamber was £94 million in 2014-15. This excludes the cost judicial review hearings heard in the Upper Tribunal.

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

³ The total operating cost for the First-tier Tribunal was £84 million in 2014-15

B. Policy Rationale and Objective

9. The Ministry of Justice's (MoJ's) aim is that the courts and tribunals are adequately resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore, for specific proceedings within the IAC, to charge fees at cost recovery levels so that users of the system make a greater contribution towards the overall costs of the IAC.

C. Affected Stakeholder Groups, Organisations and Sectors

10. These reforms would primarily affect individuals pursuing cases through the IAC. A list of all the main groups that would be affected are show below:
 - Appellants within the Tribunals in England and, in some cases, Wales, Northern Ireland and Scotland.
 - Defendants within the Tribunals in England and, in some cases, Wales, Northern Ireland and Scotland.
 - HM Courts and Tribunals Service (HMCTS): the body that administers the Tribunal Service.
 - Legal services providers.
 - Taxpayers: through a reduction in the subsidy currently provided by the UK Exchequer towards the running and operating costs of HMCTS.

D. Description of Options Considered

11. As outlined above the Government initially considered an option of moving towards 25 per cent cost recovery in the First-tier Tribunal. When consulting on that proposal there was an indication that the Government would revisit the position with regards to the Upper Tribunal in due course. That initial option would have resulted in fees of £160 for a paper determination and £280 for an oral hearing. However, the Government has now decided to consult on the option of seeking full cost recovery.
12. The following three options are considered:
 - **Option 0: Do nothing.** Maintain the current fee charging structures in the IAC.
 - **Option 1: Increase fees to full cost recovery levels for the First Tier Appeal stage in the IAC.** Under this option fees would increase from £80 to £490 for paper applications and from £140 to £800 for oral hearings.
 - **Option 2: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal, Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages in the IAC.** Under this option fees would be introduced at £455 at the FTPA stage, £350 at the UTPA stage and £510 at the UTA stage.
13. The consultation also proposes to remove the exemptions relating to the right of appeal that no longer exists, and to consider extending the list of fee exemptions to include those who have received a visa fee waiver from the Home Office. It also re-states the intention to extend the list of exemptions to include those appealing decisions to revoke their refugee or humanitarian protected status.
14. The Government's preferred approach is to implement options 1 and 2 as they best meet the policy objectives.

E. Costs and Benefits

15. This Impact Assessment (IA) identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing the proposed fees. The costs and benefits of each proposal are compared to Option 0, the Do Nothing case, where the fees are maintained at their current level.

Key data sources

16. The assessment of costs and benefits in this IA is based on the following key sources of evidence:
- Internal management information provided by HMCTS, which comprises of data on administrative and judicial timings, the number of fee exemptions and remissions and volumes for each case type; and
 - HMCTS finance data which outlines income and expenditure across the tribunals for each financial year.

Methodology

17. We used the above data to model unit costs for five different case types using the assumptions and methodology described below. The five different case types are listed below, but described in more detail in Section A above:
- FTA application for a hearing on papers;
 - FTA application for an oral hearing;
 - FTPA;
 - UTPA; and
 - UTA.
18. In establishing the appropriate fees for the different case types we first mapped the cost of staff salaries, judicial salaries, lay member costs, interpreter costs and other fixed costs and support costs to five cost drivers – administrative timings, judicial timings, lay member timings, interpreter timings and case starts.
19. We also assigned the average resource spent on each case type to the five case types shown in paragraph 177. This was broken down by the five cost drivers described in the previous paragraph. The number of hours spent per case type was then multiplied by the volume of cases to calculate the total time spent on each case type.
20. From this we divided the total cost of each cost driver by the total resource spent to work out a unit cost per hour for each cost driver. These unit costs were then multiplied by the number of hours spent on each case type to work out the total unit cost of each which are shown in Table 1. These total unit costs are the basis for the proposed fees on which we are consulting.

Table 1: Total Unit Cost and Proposed Fee Level⁴

Stage	Unit Cost/ Fee
FTA - Oral	£800
FTA - Paper	£490
FTPA	£455
UTPA	£350
UTA	£510

Refunds

⁴ Unit costs and proposed fees are rounded to the nearest £5.

21. Fee refunds are available in limited circumstances in the First-tier Tribunal, however, the Government did indicate in the July 2015 consultation⁵ that it intended to clarify the refunds policy alongside changes to fees and exemptions. For simplicity, in this IA we have assumed that there are no refunds of tribunal fees in the IAC.

Remissions and Exemptions

22. The First-tier Tribunal offers a fee remissions and exemptions scheme that is separate from the HMCTS fee remissions scheme used for other claim types. Appellants can be exempted from a fee if they are appealing certain types of decision such as an appeal against a deprivation of citizenship decision. Alternatively, they may be entitled to a remission if, for example, they are on asylum support or receiving financial support from a local authority under section 17 of the Children's Act 1989. The Lord Chancellor also has a power to remit or reduce fees where he is satisfied that there are exceptional circumstances that justify doing so.
23. The fees presented in Table 1 are designed to cover the full cost of the IAC (First Tier and Upper Tier), including income from those appellants who are eligible for remissions and exemptions. However, the figures presented in the rest of this IA are net of remissions and exemptions, and so do not necessarily correspond to the fee levels required for full cost recovery.
24. As mentioned above, we are consulting on making changes to the current exemptions. These would remove any exemptions relating to rights of appeal that no longer exist, and extend the current exemptions to include a new exemption for those appealing decisions to revoke their refugee or humanitarian protected status and to include a new exemption for those who received a visa fee waiver from the Home Office.
25. Extending the list of exemptions may mean the total number of individuals who pay the fee is lower than forecast, and this may reduce income for HMCTS. However, we do not currently have enough information on the number of appellants who would be eligible for this remission, so we have assumed there is no change in the level of remissions and exemptions. We have also assumed, for simplicity, the same remissions and exemptions scheme would operate in the First-tier Tribunal and Upper Tribunal of the IAC. We will attempt to refine this assumption during the consultation period, and, if a decision is taken to extend the scheme, we will present this in the consultation response IA.
26. Table 2 shows the total volume of applications, the total number of remission and exemptions and the total number of people who paid a full fee at each stage in the IAC.

Table 2: Case volumes at each stage in the IAC

Stage	Total applications	Total remitted and exempted⁶	Total who paid full fee	Other⁷
FTA - Oral	77,170	26,844	45,675	4,651
FTA - Paper	14,351	829	11,702	1,819
FTPA	30,642	11,261	17,709	1,672
UTPA	15,218	6,089	8,357	773
UTA	9,194	3,401	5,287	506

Demand

27. Tribunal volumes are based on 2014-15 HMCTS management information data, which are shown in Table 2 above.

⁵ *The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals*

⁶ As no fees are charged for the FTPA, UTPA, and UTA stages the volume remitted and exempted is estimated, using the remission and exemption rate for the FTA stage.

⁷ Other includes those who received a partial remission, unknown cases and cases closed without a fee being paid.

28. Tribunal user demand may change in response to planned fee rises, because fees will affect an individual's internal assessment of whether to bring a claim. The fee changes may mean that individuals now decide that it is not in their interest to bring a claim. This effect is known as the price elasticity of demand. Section G of this IA models three scenarios that consider the impact on additional fee income from reductions in demand of 20 per cent and 40 per cent, as well as a 'best case' scenario where user demand (behaviour) is not affected by fee increases. Our central estimate assumes a fall in demand of 20 per cent which is the mid-point between our 'best case' and 'worst case' scenarios.
29. Our 'worst case' scenario models a fall in demand of 40 per cent. This figure has been informed by the changes in caseloads experienced by money claims following the introduction of enhanced fees in March 2015. Although it is too early to say what the full effect of enhanced fees for money claims is, the percentage change used in this IA compares the average volumes for four case types⁸ in the six months prior to the fee increase with average volumes in the six months after the fee increase.

Net Present Value

30. The Net Present Value (NPV) is calculated over a ten-year period, under the assumption that the proposed fees do not increase in line with inflation. As such it probably underestimates nominal fee income, as the existing powers to increase fees in line with inflation are likely to be applied at various points during this ten-year period. However, inflation should also drive up the income of applicants, so the financial burden of fees will not increase in real terms.

Option 0: Do Nothing – Maintain the current fee structure

31. Under the Do Nothing option the proposals highlighted in Options 1-2 would not be implemented and the current fee structure will be maintained. As the Do Nothing is compared to itself the costs and benefits are necessarily zero, as is its NPV. This option is used as the baseline against which all other options are compared.
32. Under the current fees, if all applications were required to pay a fee (i.e. there was no remissions or exemptions policy), total income to HMCTS would be around £12m. However, after the volume of fee remissions and exemptions are accounted for, total income is estimated to be just over £7m.

Option 1: Increase fees at the First Tier Appeal stage of the IAC to cost recovery levels

Costs of Option 1

Transitional costs

Transitional costs to HMCTS

33. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be less than **£0.1 million**, but we will further refine this estimate over the consultation period.

Transitional costs to tribunal users and legal services providers

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

Ongoing costs

Costs to tribunal users

⁸ The case types used are Specified Money Claims >£50,000 in the County Court, Unspecified Money Claims >£50,000 in the County Court, Specified Money Claims <£200,000 in the High Court, and Specified Money Claims >£200,000 in the High Court.

35. Multiplying the volume of claims who paid a fee shown in Table 2 by the proposed fees shown in Table 1, we estimate IAC users will pay between an additional £18 million and £35 million a year.
36. Under our central assumptions, the total additional cost to users of the FTA stage of the IAC is estimated to be around **£26 million per annum** compared to the base case. This figure is the net amount of extra fee income paid by tribunal users after remissions have been provided. It is assumed that around 38 per cent of fees would be remitted or exempted, giving a total of up to £25 million per annum.
37. Tribunal fees are usually paid upfront by the claimant. The MoJ proposes to allow the cost of fees to be recoverable from the defendant where the claimant wins. Therefore, in most cases where the reforms apply, the extra costs will be met by unsuccessful appellants or by losing defendants.
38. There may, however, be a cash flow cost to successful appellants or their legal aid representatives as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are not expected to be significant.

Benefits of Option 1

Ongoing benefits

Benefits to HMCTS

39. The benefit to HMCTS is an expected increase in income of between £18 million and £35 million a year, with a central estimate of £26 million.
40. If volumes fall, then there may also be a benefit to HMCTS by way of reduced running costs.

Wider benefits to society

41. Option 1 is expected to reduce the net costs of operating the IAC and, therefore, reduce the level of public subsidy required. This subsidy will fall by the total increase in fee income after remissions have been applied.

Net impact of Option 1

42. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at less than £0.1 million). Tribunal staff, tribunal users and legal services providers are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.
43. On an ongoing basis the proposals are expected to generate additional increased fee income for HMCTS of around £26 million per annum after remissions and exemptions have been applied. As the benefit to HMCTS will be offset by the additional cost to court users, **the net economic impact is estimated to be minimal.**

Option 2: Introduce fees for the First Tier Permission to Appeal, Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages of the IAC at cost recovery levels

Transitional costs

Transitional costs to HMCTS

44. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be between £0.5 million and £1.5 million, **with a central estimate of £1.0 million.** However, we will refine this estimate during the consultation period.

Transitional costs to tribunal users and legal services providers

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

Ongoing costs

Costs to tribunal users

46. There was previously no fee charged to the tribunal user to use FTPA and UTPA services. However, Option 2 proposes introducing fees of £455 for the FTPA stage of the IAC, £350 for the UTPA stage and a fee of £510 for the UTA stage.
47. The fees proposed under Option 2 are estimated to cost tribunal users between £8million and £14 million a year, **with a central estimate of £11 million**. This is broken down as:
- FTPA – between £5 million and £8 million a year, with a best estimate of £6 million.
 - UTPA – between £2 million and £3 million a year, with a best estimate of £2 million.
 - UTA – between £2 million and £3 million a year, with a best estimate of £2 million.
48. This figure is the net amount of extra fee income paid by tribunal users after remissions have been provided. It is assumed that around 42 per cent of fees would be remitted or exempted at the FTPA stage and 44 per cent at the UTPA and UTA stages, giving a total of up to £10 million per annum.
49. Tribunal fees are usually paid upfront by the claimant. The MoJ proposes to allow the cost of fees to be recoverable from the defendant where the claimant wins. Therefore, in most cases where the reforms apply, the extra costs will be met by unsuccessful appellants or by losing defendants.
50. However, there may be a cash flow cost to successful appellants or their legal aid representatives as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are not expected to be significant.

Benefits of Option 2

Ongoing benefits

Benefits to HMCTS

51. The benefit to HMCTS is an expected increase in income of between £8 million and £14 million a year, with a central estimate of £11 million.
52. If volumes fall, then there may also be a benefit to HMCTS by way of reduced running costs.

Wider benefits to society

53. Option 2 is expected to reduce the net costs of operating the IAC and, therefore, reduce the level of public subsidy required. This subsidy will fall by the total increase in fee income after remissions and exemption have been applied.

Net impact of Option 2

54. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at between £0.5 and £1.5 million). Tribunal staff, tribunal users and legal services providers are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.
55. On an ongoing basis the proposals are expected to generate additional increased fee income for HMCTS of around £26 million per annum after remissions and exemptions have been applied. As

the benefit to HMCTS will be offset by the additional cost to court users, **the net economic impact is estimated to be minimal.**

F. Summary of Recommendation

56. The preferred option is to implement Options 1 and 2. This is expected to deliver additional fee income to HMCTS of between £26 million and £49 million a year. Under the central scenario where demand is expected to fall by 20 per cent, the combined proposals are expected to generate additional fee income to HMCTS of around **£37 million per annum**. This figure will be offset by costs to appellants of the same amount.

G. Sensitivity Analysis

Elasticity of demand impact

57. As discussed in Section E above, the demand for IAC services may fall when fees are introduced or existing fees are raised. If demand were to change, the expected income from the proposals would be affected.

58. To assess this risk, we have modelled three theoretical situations in which demand:

- is unaffected by the increase in fees;
- falls by 20 per cent; and
- falls by 40 per cent.

59. These scenarios have been applied to our baseline case volume figures and the results are shown in Table 3. They show the impact on estimated additional annual income from the proposed fee changes.

60. As the table shows, if there was a 20 per cent fall in demand, net additional income would be £37 million, £11 million less than if there were no change in demand. If a 40 per cent fall in demand occurs, net additional income would be £26 million, a further £11 million less than if there were a 20 per cent fall in demand.

Table 3: Additional net fee income under different demand scenarios

	No change in demand	20% fall in demand	40% fall in demand
First Tier Appeal	£35m	£26m	£18m
First Tier Permission to Appeal	£8m	£6m	£5m
Upper Tier Permission to Appeal	£3m	£2m	£2m
Upper Tier Appeal	£3m	£2m	£2m
TOTAL	£49m	£37m	£26m

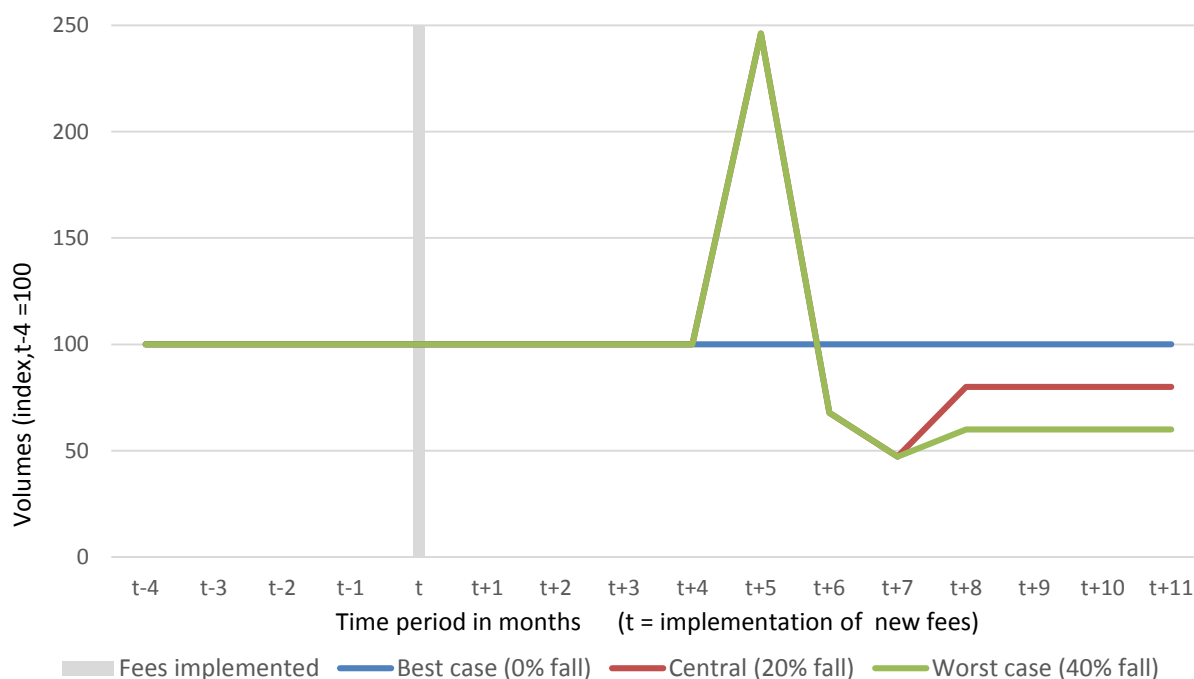
The ‘pull-forward’ effect

61. Before a planned fee increase, there is also a risk that consumers will bring their case forward to avoid paying the new or increased fee. This can create a distortion – or blip – in caseloads, followed by a trough in the following months. Demand should then return to normal levels, taking into account any decrease in volume resulting from any price elasticity effects discussed above.

62. In the IAC, however, there is a slightly different process, as fee charging is based on the date of the decision to grant an individual’s asylum, permission to come to the UK or to vary the terms of their current leave to remain in the UK is made by the Home Office. Therefore, the spike in applications will first be seen by the Home Office before filtering through to the IAC.

63. The spike in caseloads for the Home Office is assumed to happen in the period immediately before the new fees are introduced (i.e. period 't-1'). Assuming that, in cases where an individual's application is refused, it takes six months to reach the First-tier Tribunal IAC from initial application to the Home Office, then the spike in cases received in the IAC would occur after the new fees are implemented (i.e. period 't+5'), with a dip in caseloads following this.
64. Figure 1 illustrates this pull-through effect. It has been modelled based on the spike in claims seen for money claims above £50,000 (specified and unspecified) in the County Court and money claims in the RCJ where, in the month prior to the introduction of enhanced fees for these claims in March 2015 there was a pre-issue spike of around 150 per cent. After any pre-issue spike in cases the trough in caseload has been assumed to last for approximately two to three months before returning to the steady state level (after adjusting for the effects of any price elasticity of demand).
65. In our central demand forecasts, where caseloads fall by 20 per cent, once volumes return to 80 per cent of their earlier level, a 'cap' is reached; for the 40 per cent reduction in demand forecast, this 'cap' is reached quicker. Where there is no change in demand, we assume there is no blip effect as users will not be incentivised to bring their claims forward to avoid future fee increase. This would occur if the demand for tribunal services were perfectly price inelastic, which represents our 'best case' scenario.

Figure 1: The pull-forward of cases in the IAC



Note: "t" refers to the period where fees were introduced or increased. The diagram is for illustrative purposes only.

66. Figure 1 is purely for illustrative purposes, to demonstrate how tribunal users may respond to the fee adjustments and therefore how the Home Office's caseload may vary.
67. In the period where there is a spike in caseload for HMCTS (period 't+5'), we assume a spike in claims of around 150 per cent as appellants bring their case forward to avoid paying the fee. This spike is assumed to increase income in period t+5 by £1 million. In the following year, we assume a blip in volumes for two months, before cases reach their new steady state in period t+8. If volumes follow our central scenario (i.e. the red line) then additional income is estimated to be around £2 million less (around 6 per cent less) than if there was no blip in caseloads. Subsequent year's income would not be subject to a blip effect and so estimated income would return to steady state levels.
68. This spike in First-tier appeals may also feed through into the other stages of the appeals process (i.e. permission to appeal and Upper Tribunal appeals). Therefore, we may also see a similar, but less pronounced, effect on volumes in these later stages. This could reduce the amount of income received by HMCTS in the first year after implementation. We do not currently have the data to

assess this impact, but would not expect it to be significant because the volume of cases in these later stages are fewer than for First-tier appeals, and the fees are less substantive. We will use the consultation period to better evaluate this potential impact.

H. Enforcement and Implementation

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

I. Monitoring and Evaluation

70. The MoJ continuously monitors the impact of all fee changes both in terms of the impact on case volumes and in respect of their success in generating the anticipated levels of income.

J. One In Three Out

71. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation