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|---|--|
| <p>Title: Enhanced Court Fees for high value Money Claims and all other Civil Court fees currently set at or below full cost recovery levels IA No: MoJ 009/2015 Lead department or agency: Ministry of Justice Other departments or agencies: HM Courts and Tribunals Service</p> | <h2 style="margin: 0;">Impact Assessment (IA)</h2> <p>Date: 21 July 2015</p> <p>Stage: Consultation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Secondary Legislation</p> <p>Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk</p> |
| Summary: Intervention and Options | RPC Opinion: N/A |

| Cost of Preferred (or more likely) Option | | | | | |
|---|---|--|---|----|-----|
| Total Net Present Value (2013/14 prices) | Business Net Present Value (2013/14 prices) | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as Two-Out? | | |
| | | | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">No</td> <td style="width: 50%; text-align: center;">N/A</td> </tr> </table> | No | N/A |
| No | N/A | | | | |

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

The income generated through fees charged in the civil and family courts in England and Wales is now broadly expected to cover the full costs of the service, less the cost of remissions, in line with Her Majesty's Courts & Tribunals' Service's (HMCTS) financial objectives. The introduction of above cost recovery fees for money claims in civil courts ('enhanced fees') will further support HMCTS' financial position. Likewise, the further proposals to charge enhanced fees to issue possession claims in the County Court, make general applications in civil proceedings and file divorce petitions will also provide further support. Nevertheless, the overall net cost of operating HMCTS is still over £1 billion per annum.

What are the policy objectives and the intended effects?

The MoJ's long term aim is to protect access to justice by ensuring that the courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy for HMCTS. The government believes that the proposals set out in this Impact Assessment would contribute towards this objective.

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: Raise the cap for money claim fees to at least £20k (excluding Personal Injury claims).
 Option 2: Increase all civil court fees which are currently set at full cost recovery levels by 10 per cent.
 Option 3: Introduce both of the above options. This is preferred as it would better meet our policy objectives.

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

| | | | | | | |
|--|-----------------------|-----------------------|---|---------------------|----------------------|---------------------|
| Does implementation go beyond minimum EU requirements? | N/A | | | | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro Yes | < 20 Yes | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Small Yes</td> <td style="width: 33%; text-align: center;">Medium Yes</td> <td style="width: 33%; text-align: center;">Large Yes</td> </tr> </table> | Small Yes | Medium Yes | Large Yes |
| Small Yes | Medium Yes | Large Yes | | | | |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | Traded: N/A | | Non-traded: N/A | | | |

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

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Raise the cap to money claim fees from £10k to £20k (excluding personal injury claims)

FULL ECONOMIC ASSESSMENT

| | | | | | |
|----------------------------|-------------------------|----------------------------|---------------------------------------|---------------|------------------------|
| Price Base Year 2014/15 | PV Base Year 2015/16 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Minimal | High: Minimal | Best Estimate: Minimal |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|---|--|-------------------------------|
| Low | 0.1 | 22 | |
| High | 0.1 | 27 | |
| Best Estimate | 0.1 | 25 | |

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

Transitional HMCTS costs, including costs of minor adjustments to court IT systems and costs of reissuing forms and guidance, are expected to be up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £25 million per annum (in 2014/15 prices).

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

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

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|---|--|----------------------------------|
| Low | 0 | 22 | |
| High | 0 | 27 | |
| Best Estimate | 0 | 25 | |

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

HMCTS would benefit from increased fee income after fee remissions have been applied of around £25 million per annum (in 2014/15 prices).

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

N/A

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Our fee income estimates are based on our latest 2015/16 caseload forecast. However, due to external factors there is a degree of uncertainty around baseline caseload volumes. To quantify this risk, and in addition to our central forecasts, fee income estimates have also been provided for scenarios where overall caseload volumes are either 10 per cent higher or 10 per cent lower than we currently forecast.

It has also been assumed that fee changes would not affect court case volumes. However, we have conducted a sensitivity analysis which considers a 10 per cent and a 20 per cent reduction in caseloads in response to a fee increase. We also assume that there would be no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees and no impacts on the legal services used to pursue or defend claims. Annual income estimates have been rounded to the nearest £1m.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: 10 per cent uplift on all civil court fees currently set at full cost recovery levels

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-------------------------|----------------------|----------------------|---------------------------------------|---------------|------------------------|
| Price Base Year 2014/15 | PV Base Year 2015/16 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Minimal | High: Minimal | Best Estimate: Minimal |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|---|--|----------------------------|
| Low | 0.1 | 9 | |
| High | 0.1 | 11 | |
| Best Estimate | 0.1 | 10 | |

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

Transitional HMCTS costs, including costs of minor adjustments to court IT systems and costs of reissuing forms and guidance, are expected to be up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £10 million per annum (in 2014/15 prices).

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

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

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|---|--|-------------------------------|
| Low | 0 | 9 | |
| High | 0 | 11 | |
| Best Estimate | 0 | 10 | |

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

HMCTS would benefit from increased fee income after fee remissions have been applied of around £10 million per annum (in 2014/15 prices).

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

N/A

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Our fee income estimates are based on our latest 2015/16 caseload forecast. However, due to external factors there is a degree of uncertainty around baseline caseload volumes. To quantify this risk, and in addition to our central forecasts, fee income estimates have also been provided for scenarios where overall caseload volumes are either 10 per cent higher or 10 per cent lower than we currently forecast.

It has also been assumed that fee changes would not affect court case volumes. However, we have conducted a sensitivity analysis which considers a 10 per cent and a 20 per cent reduction in caseloads in response to a fee increase. We also assume that there would be no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees and no impacts on the legal services used to pursue or defend claims. Annual income estimates have been rounded to the nearest £1m.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Raise the fee cap to issue money claims to £20k and uplift all other civil court fees by 10 per cent

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-------------------------|----------------------|----------------------|---------------------------------------|---------------|------------------------|
| Price Base Year 2014/15 | PV Base Year 2015/16 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Minimal | High: Minimal | Best Estimate: Minimal |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|---|--|----------------------------|
| Low | 0.1 | 31 | |
| High | 0.1 | 38 | |
| Best Estimate | 0.1 | 35 | |

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

Transitional HMCTS costs, including costs of minor adjustments to court IT systems and costs of reissuing forms and guidance, are expected to be up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £35 million per annum (in 2014/15 prices).

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

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

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|---|--|-------------------------------|
| Low | 0 | 31 | |
| High | 0 | 38 | |
| Best Estimate | 0 | 35 | |

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

HMCTS would benefit from increased fee income after fee remissions have been applied of around £35 million per annum (in 2014/15 prices).

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

N/A

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Our fee income estimates are based on our latest 2015/16 caseload forecast. However, due to external factors there is a degree of uncertainty around baseline caseload volumes. To quantify this risk, and in addition to our central forecasts, fee income estimates have also been provided for scenarios where overall caseload volumes are either 10 per cent higher or 10 per cent lower than we currently forecast.

It has also been assumed that fee changes would not affect court case volumes. However, we have conducted a sensitivity analysis which considers a 10 per cent and a 20 per cent reduction in caseloads in response to a fee increase. We also assume that there would be no detrimental impacts on court case outcomes nor on access to justice from any increase in court fees and no impacts on the legal services used to pursue or defend claims. Annual income estimates have been rounded to the nearest £1m.

BUSINESS ASSESSMENT (Option 3)

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

Annual profile of monetised costs and benefits* - 2014/15 (nearest £5m¹)

| Option 1 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Transition costs | 0.1 | - | - | - | - | - | - | - | - | - |
| Annual recurring cost | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 |
| Total annual costs | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 |
| Transition benefits | - | - | - | - | - | - | - | - | - | - |
| Annual recurring benefits | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 |
| Total annual benefits | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 |

| Option 2 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Transition costs | 0.1 | - | - | - | - | - | - | - | - | - |
| Annual recurring cost | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Total annual costs | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Transition benefits | - | - | - | - | - | - | - | - | - | - |
| Annual recurring benefits | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| Total annual benefits | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |

| Option 3 | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Transition costs | 0.1 | - | - | - | - | - | - | - | - | - |
| Annual recurring cost | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Total annual costs | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Transition benefits | - | - | - | - | - | - | - | - | - | - |
| Annual recurring benefits | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |
| Total annual benefits | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 | 35 |

¹ With the exception of transition costs which are given to the nearest £0.1m.

Evidence Base (for summary sheets)

Background

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

Policy Rationale and Objective

3. The MoJ's aim is that the courts and tribunals are adequately resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore:
 - for specified proceedings, to charge enhanced fees so that users who can afford to, make a greater contribution towards the overall costs of HMCTS.
4. Our proposals are to introduce additional enhanced fees in the following specific areas:
 - all money claims with the exception of Personal Injury (PI) claims and/or
 - all civil court fees which are currently still set at (or below) full cost recovery levels.

Description of Options Considered

5. This Impact Assessment identifies both monetised and non-monetised impacts with the aim of understanding what the net impact might be from implementing the options described below.
 - Option 0 – (Base Case) Do nothing. Maintain the current fee structure.
 - Option 1 – Raise the fee cap for money claims (excluding PI claims) to £20k.
 - Option 2 – Introduce enhanced fees for all civil fees which are still currently set at (or below) full cost recovery levels by raising their current levels by 10 per cent.
 - Option 3 – Introduce Options 1 and 2 above.
6. The Government prefers Option 3 as this better meets the policy objectives.

Affected Stakeholder Groups, Organisations and Sectors

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

Cost and Benefits of Options Considered

Key Assumptions

Methodology

8. We present annual costs and benefits in steady state throughout this Impact Assessment. All estimates are annualised figures in 2014/15 prices.
9. To make our estimates of additional fee income for the general uplift in civil court fees which are currently at or below cost recovery levels, we have used our most recent caseload forecasts. These are multiplied by the proposed change in the fee and then an estimated figure for remissions is deducted. For our estimates of increasing the fee cap for money claims, we have used information from various sources to estimate the number and value distribution of these claims and have also deducted an estimate for the expected level of fee remissions.

Trends

10. Our best fee income estimates were calculated using the latest available caseload forecast, and are based on the assumption that these will be constant from 2015/16 onwards.

Volumes

Money claims

11. Following the introduction of enhanced fees in March 2015, the fees for making money claims worth more than £10,000 have been set at 5% of the value of the claim while the maximum fee payable is currently capped at £10k. Our proposal is to raise this maximum fee cap to at least £20k which would, therefore, only affect money claims worth £200k or above. For the purposes of this Impact Assessment we have worked on the assumption that the cap will be raised to £20,000.
12. To address concerns that raising the fee cap from £10k to at least £20k might have adverse impacts on access to justice, our proposal is that the increase in the cap will not apply to claims for personal injury, including clinical negligence and other similar claims (e.g., Mesothelioma).
13. Current court management information systems do not always allow us to distinguish PI claims from other money claims. Nevertheless, for the purposes of this Impact Assessment we assume that 90 per cent of the unspecified money claims made in the County Court are PI claims, and all PI claims brought to the Royal Court of Justice (RCJ) are dealt with in the Queen's Bench Division where information is available to allow the number of these claims to be determined.
14. We currently estimate that the following volumes of money claims being initiated per annum (rounded to the nearest 5,000 if above 100,000 or to the nearest 1,000 if below 100,000):
 - Around 1,100,000 specified money claims are expected to be made in the County Court; of these, fewer than 1,000 (0.1%) are expected to be valued £200k or above.
 - Around 120,000 unspecified money claims are expected to be made in the County Court.
 - Up to around 7,000 money claims are expected to be made in the Royal Court of Justice and the Rolls Building; of these, around 4,000 (57%) are claims of £200k or above. In addition, we estimate that approximately 4,000 of these are dealt with in the Queen's Bench Division, and that of these around 52% are PI claims². (Figures may not sum due to rounding.)
 - In total, we estimate that our proposal would affect 5,000 money claims not including those for personal injury.
15. Likewise, the current court management systems do not allow us to make precise estimates of the values and volumes of money claims worth above £200k as these all pay the current maximum issue fee. Thus, to estimate the additional fee income from raising the money claims cap to £20k we have drawn on a range of sources (including published statistical data, individual case files, and court management information systems) to determine the number and value of money claims

² Source: Ministry of Justice (2015), *Civil Justice Statistics Quarterly, January to March 2015*, The Appellate Courts tables: 2014.

whose likely value falls between £200k and £400k (who would pay a higher issue fee under a £20,000 cap depending on the precise value of the claim) as well as the overall volume of money claims worth over £400k who will all pay an issue fee set at the value of the new fee cap.

All civil court fees which are currently set at full cost recovery levels

16. We currently estimate the following caseloads for the proceedings which will be impacted by this option (rounded to the nearest 5,000):
- Around 130,000 civil proceedings commenced in the County Court excluding possession claims and money claims.
 - Around 300,000 applications for an enforcement order in the County Court.
 - Around 5,000 applications for an enforcement order in the High Court.
 - Approximately 20,000 applications for judicial review including to the Upper Tribunal (Immigration and Asylum Chamber).
 - Around 5,000 applications for determination of costs.
 - Around 5,000 applications for permission to appeal to the Court of Appeal.
 - Around 15,000 civil proceedings initiated in the Magistrates' Court.
 - Around 45,000 bills of sale issued in the Queen's Bench Division of the High Court.
 - Annual volumes for the remainder of the affected fees are estimated to be lower than 1,000.
17. Annex C of the Consultation document provides a comprehensive list of all the fees which would be impacted by this option.
18. Due to external factors there is a degree of uncertainty around these baseline caseload volumes and, therefore, high and low demand scenarios have also been provided. These correspond to a 10 per cent increase and a 10 per cent decrease across all case types, respectively.

Refunds & Remissions

19. We assume that there are no refunds of court fees.
20. We assume that the remissions scheme introduced in October 2013 remains in place. This implies that eligibility for remissions would be unchanged.
21. We assume that the planned fee changes would not impact on those who are entitled to a full fee remission (e.g. individuals in receipt of particular benefits or with few disposable assets).

Demand

22. We assume that court user demand would not change in response to planned fee rises (i.e. that court fee changes themselves would not change court case volumes). External and internal research conducted to date on behalf of the MoJ suggests that this assumption is reasonable:
- Individuals and small businesses participating in published MoJ research conducted by Ipsos Mori³ tended to view litigation as their only remaining option (having exhausted other possibilities) with emotional motivations tending to be their primary reason for taking their case to court. Users with legal representation tended to have little awareness of legal costs, including court fees, typically viewed court fees as a low proportion of these and exhibited less sensitivity to price than those who represented themselves as court fees were typically the sole costs they paid. However, when asked about specific hypothetical increases to court fees, the research participants felt they were affordable and would not deter them from going to court.
 - MoJ research published in 2013⁴ found that increased court fees would have a minimal impact on the volume of cases bulk user organisations and solicitors would bring to court. Again

³ "The role of court fees in affecting users' decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants" MoJ (MoJ (2014)

⁴ "Potential impact of changes to court fees on volumes of cases brought to the civil and family courts" MoJ (2013)

litigation was seen as a last resort, court fees were considered to be a small proportion of the overall cost of going to court and such decisions were influenced more factors than cost alone.

- A 2007 MoJ published Research Paper⁵ found that fees ranked as lower in importance than other considerations such as “getting justice” when taking cases to the courts.
- In general, when pursuing litigation, court fees represent a small proportion of the value of the claim and of the total legal costs involved (which, in successful civil cases can be transferred to the losing defendant). For example, using data submitted to the Jackson Review⁶, court fees amounted to less than one per cent of the value of a ‘typical’ personal injury or commercial claim worth more than £300,000, while the total legal costs, including court fees, were held to be ‘substantially less than, and were proportionate to, the sums at stake in the litigation’.
- Research for the MoJ conducted by the British Institute of International Comparative Law⁷ suggested that court fees are not currently a determining factor in deciding whether and where to litigate. This study was largely based on the perceptions, fears and concerns of the research participants.

23. However, there is still a risk that the demand for court services may fall as a result of these court fee increases. Our sensitivity analysis therefore considers reductions in demand of 10 per cent and 20 per cent compared to the baseline forecast for the case types affected.

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

24. The base case option assumes the latest fee schedule introduced in April 2014 remains fully in place with the exception of the fees for money claims which were last increased in March 2015. In addition, it assumes that the enhanced fee charging proposed in relation to possession claims, general applications made in civil proceedings and divorce petitions will be in place by the time that the proposals discussed in this Impact Assessment come into effect in 2015/16.

25. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV)⁸.

Option 1: Raise the money claim fee cap to £20k (excluding personal injury)

26. The fee currently charged to issue money claims was last changed in March 2015. For claims worth more than £10,000 it was set at 5 per cent of the claim value and capped at £10,000. This means that:

- The fee to issue money claims worth more than £10k but less than £200k is equal to 5 per cent of the actual value of the claim; and
- The fee to issue money claims worth £200k or above is capped at £10k.

27. Our proposal is to increase the cap to at least £20k and the resulting fee structure would be as follows:

- The fee to issue money claims worth less than £200k would remain unchanged (i.e. for those worth £10k or more, equal to 5 per cent of the actual value of the claim);
- The fee to issue money claims of a value of between £200k and £400k would be equal to 5 per cent of the value of the claim; and
- The fee to issue money claims of £400k or above would be £20k.

28. The proposed changes would not affect personal injury claims, and therefore the fees to commence this type of claim would continue to be capped at £10,000.

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

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

⁷ 'Factors Influencing International Litigants' Decisions to Bring Commercial Cases to London Based Courts' (MoJ, 2014).

⁸ 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.

Costs of Option 1

29. All cost estimates are based on the assumptions discussed in paragraphs 8 to 23 above.

Transitional costs

Transitional costs to HMCTS

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

Transitional costs to court users and the LAA

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

Ongoing costs

Costs to court users

31. Under our central assumptions, this option would generate an additional income of around **£25 million per annum** compared to the base case. (Some court users would benefit from fee remissions whereby they are in effect exempt from paying fees. The above figures relate to the amount of extra fee income paid by court users after remissions have been provided).
32. To assess the impact of any wider changes in the environment which might affect the baseline forecast Table 1, below, provides our 'central' fee estimates for the case types in Option 1 alongside estimates which adjust this for a 10 per cent increase or a 10 per cent fall in demand.

Table 1: Best, low and high scenario fee income estimates for Option 1

| | Additional income (in 2014/15 prices, £m) | | |
|-------------------------|---|---------|--------------|
| | 10% Increase | Central | 10% Decrease |
| Money claims over £200k | 27 | 25 | 22 |

33. Table 1 shows that were overall caseloads to be 10 per cent higher than our central forecast, the total income from this fee change would be £2m higher. Conversely, were the overall caseloads to be 10 per cent less than forecast the extra fee income from this change would be £3m lower.

34. Generally, court fees are paid upfront by the claimant but are normally recoverable from the defendant where the claimant wins. Therefore, in most cases where the reforms apply, the extra costs would be met by unsuccessful claimants or by losing defendants. However, there may be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are expected to be minimal.

Costs to legal services providers

35. There is a possibility that some legal services providers may experience cash flow costs if they pay any court fees upfront and later claim these back from either their client or the LAA. This cost has not been quantified as we expect these to be a small part of the legal costs associated with such cases.

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

Costs to the LAA

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

Benefits of Option 1

38. All estimates are based on the assumptions discussed in paragraphs 8 to 23 above.

Ongoing benefits

Benefits to HMCTS

39. As a result of the proposed enhanced fees, under our central assumptions HMCTS would benefit from an additional fee income of around **£25 million per annum** compared to the base case. This relates to the extra income received after remissions have been applied.

Wider benefits to society

40. Our proposal is expected to reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS. This would fall by the total increase in fee income after remissions have been applied.

Net impact of Option 1

41. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to around £0.1 million). Court staff, court users, legal services providers and the LAA are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.

42. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £25 million per annum after remissions have been applied. As the benefit to HMCTS would be offset by the additional cost to court users, the **net economic impact is estimated to be minimal**.

Option 2: Apply a 10 per cent uplift on all other civil court fees

43. Our proposal is to introduce enhanced fee charging for all civil court proceedings which were last changed in April 2014. These include:

- proceedings in Court of Appeal;
- judicial review;
- initiating proceedings other than possession or money claims;
- civil proceedings in the magistrates' courts;
- appeals to the County Court and High Court; and
- proceedings for the assessment of costs and enforcement.

Costs of Option 2

Transitional costs

Transitional costs to HMCTS

44. As with Option 1, we anticipate the total one-off transitional costs for HMCTS will be no greater than around **£0.1 million** in total.

Transitional costs to court users and the LAA

45. As with Option 1, any familiarisation and awareness costs which might be incurred by court users, their legal services providers and the LAA have not been monetised and are not expected to be significant.

Ongoing costs

Costs to court users

46. Under our central assumptions the total additional cost to court users, if the fee changes included in this option are implemented, is estimated to be around **£10 million per annum** compared to the base case. (Some court users would benefit from fee remissions, whereby they are in effect exempt from paying fees. The above figures relate to the amount of extra fee income paid by court users after remissions have been provided).

47. To assess the impact of any wider changes in the environment which might affect the baseline forecast Table 2, below, provides our 'central' estimates for the fee types in Option 2 alongside estimates which adjust this for a 10 per cent increase or a 10 per cent fall in demand.

Table 2: Best, low and high scenario fee income estimates for Option 2

| | Additional income (in 2014/15 prices, £m) | | |
|----------------------|---|---------|--------------|
| | 10% Increase | Central | 10% Decrease |
| All other civil fees | 11 | 10 | 9 |

48. Table 2 shows that were overall caseloads to be 10 per cent higher than our central forecast, the total income from the fee changes would be £1m higher. Conversely, were the overall caseloads to be 10 per cent less than forecast the extra fee income from these changes would be £1m lower.

49. Generally, court fees are paid upfront by the person making the application but are normally recoverable in the litigation. Therefore in most cases where the reforms apply, the extra costs would be met by unsuccessful claimants or by losing defendants. However, there may be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are expected to be minimal.

Costs to legal services providers

50. As with option 1, we have not monetised the cash flow costs which may be incurred by legal services providers if they pay any court fees up front and later claim these back from either their client or the LAA. We were also unable to quantify any potential impacts on legal providers' volume of business; however we do not anticipate these impacts to be significant.

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

Costs to the LAA

52. Although some of these fees will be liable to be paid via legal aid, we do not anticipate that the proposed changes will have a significant impact on this area.

Benefits of Option 2

53. All estimates are based on the assumptions discussed in paragraphs 8 to 23 above.

Ongoing benefits

Benefits to HMCTS

54. As a result of the proposed enhanced fees, under our central assumptions HMCTS would benefit from an estimated increased fee income of around **£10 million per annum** compared to the base case. This relates to the extra income received after remissions have been applied.

Wider benefits to society

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

Net impact of Option 2

56. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to around £0.1 million). Court staff, court users, legal services providers and the LAA are also expected to incur negligible costs from familiarising themselves with the new fee structure.

57. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £10 million per annum after remissions have been applied. As the benefit to HMCTS would be offset by the additional cost to court users, the **net impact is estimated to be minimal**.

Option 3: Implement Options 1 and 2

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

Costs of Option 3

Transitional costs

Transitional costs to HMCTS

59. The one-off transitional costs for HMCTS are expected to be no greater than around **£0.1 million**.

Transitional costs to court users and the LAA

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

Ongoing costs

Costs to court users

61. Under our central assumptions the total additional cost to court users from paying higher court fees is estimated to be up to around **£35 million per annum**⁹ compared to the base case. (Some court users would benefit from fee remissions, whereby they are in effect exempt from paying fees. The

⁹ Figures may not sum due to rounding.

above figures relate to the amount of extra fee income paid by court users after remissions have been provided).

62. To assess the impact of any wider changes in the environment which might affect the baseline forecast Table 3, below, provides our 'central' estimates for the fee types in Option 3 alongside estimates which adjust this for a 10 per cent increase or a 10 per cent fall in demand.

Table 3: Best, low and high scenario fee income estimates for Option 3

| | Additional income (in 2014/15 prices, £m) | | |
|-------------------------|---|-----------|--------------|
| | 10% Increase | Central | 10% Decrease |
| High value money claims | 27 | 25 | 22 |
| All other civil fees | 11 | 10 | 9 |
| <i>Total</i> | <i>38</i> | <i>35</i> | <i>31</i> |

*Figures may not sum due to rounding

63. Table 3 shows that were overall caseloads to be 10 per cent higher than our central forecast, the total income from the fee changes would be £3m higher. Conversely, were the overall caseloads to be 10 per cent less than forecast the extra fee income from these changes would be £4m lower.

64. Generally, court fees are paid upfront by the claimant, or by the person making the application but are normally recoverable from the defendant where the claimant wins. Therefore in most cases where the reforms apply, the extra costs would be met by unsuccessful claimants or by losing defendants. However, there may be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised given the variations in the types of cases which would be affected by the increase.

Costs to legal services providers

65. We have not monetised the cash flow costs which may be incurred by legal services providers if they pay any court fees up front and later claim these back from either their client or the LAA. We were also unable to quantify any potential impacts on legal providers' volume of business; however we do not anticipate these impacts to be significant.

Costs to the LAA

66. We do not anticipate that the proposed changes would have a significant impact on the cost of legal aid for the reasons explained for Options 1 and 2.

Benefits of Option 3

67. All estimates are based on the assumptions discussed in paragraphs 8 to 23 above.

Ongoing benefits

Benefits to HMCTS

68. As a result of the proposed enhanced fees, under our central assumptions HMCTS would benefit from an estimated increased fee income of up to **£35 million per annum** compared to the base case. This relates to the extra income received after remissions have been applied.

Wider benefits to society

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

Net impact of Option 3

- 70. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to around £0.1 million). Court staff, court users, legal services providers and the LAA are also expected to incur negligible costs from familiarising themselves with the new fee structure.
- 71. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £35 million per annum after remissions have been applied. As the benefit to HMCTS would be offset by the additional cost to court users, the **net impact is estimated to be minimal**.

Risks and sensitivity analysis

- 72. As discussed in the Key Assumptions section above the demand for court services is assumed not to change in response to the proposed changes to fees. Nonetheless, if demand were to change, the expected income from the proposals would be affected.
- 73. To assess this risk, we have modelled two situations, in addition to our central caseload forecast, in which demand falls by 10 per cent or 20 per cent. These demand scenarios have been applied to our central baseline case volume figure and the results of this analysis are shown in Table 4 below. The following figures have been rounded to the nearest £1 million and relate to extra income received after fee remissions have been taken into account.
- 74. As Table 4 shows, changes to caseload as a result of changes to fees would have a significant impact on the anticipated annual income from the fee changes included in the current consultation. At most, with a 20 per cent fall in volumes when fees increase, income from these enhanced fees proposals would fall from around £35 million to around £28 million (a reduction of around £7 million compared to the central caseload scenario which assumes no fall in demand due to fee rises).

Table 4: Changes in fee income net of remissions under different demand scenarios

| | Central caseload scenario with no demand change | Demand fall | |
|---|---|--------------------------|------------------------|
| | | Medium demand fall (10%) | High demand fall (20%) |
| Estimated net additional income in 2014/15 prices (£m) | 35 | 31 | 28 |
| Difference in gross income compared to central caseload scenario (£m) | | 3 | 7 |

*Figures may not sum due to rounding

Enforcement and Implementation

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

One In Two Out

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