

Title: <b>Enhanced Court Fees for Possession Claims, General Applications in Civil Applications and Divorce Petitions</b> IA No: MoJ007/2015  Lead department or agency: <b>Ministry of Justice</b>  Other departments or agencies: <b>HM Courts and Tribunals Service</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 21 July 2015		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> mojfeespolicy@justice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: N/A</b>

Cost of Preferred (or more likely) Option			
Total Net Present Value (2013/14 prices)	Business Net Present Value (2013/14 prices)	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?
			No   N/A

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

The income generated through fees charged in the civil 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 aim of the recent introduction of 'enhanced' court fees (i.e., those greater than the costs to HMCTS of providing the service) for money claims in the civil courts is to further support HMCTS' financial position. Nevertheless, the overall net cost of operating HMCTS is still over £1 billion per annum. The policy of introducing enhanced fees for possession claims made in the County Court, general applications made in civil proceedings and for issuing divorce petitions aims to further contribute to HMCTS' financial position.

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

The aim of enhanced fees is:

- to protect access to justice by ensuring that the courts and tribunals are adequately resourced;
- to reduce the overall taxpayer subsidy for HMCTS.

The enhanced fee proposals set fees in excess of the costs of the activities to which they relate in order to reduce the overall net costs of HMCTS to the taxpayer.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing. Maintain the current fee structure.  
 Option 1: Introduce enhanced fees for Possession Claims in the County Court, General Applications made in civil proceedings and for issuing Divorce Petitions

The Government has decided to pursue Option 1 as it will best 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.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> 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:** Increasing the fee for possession claims in the County Court by £75; increasing the fee for *ex parte* general applications and general applications made by consent in civil proceedings by £50; increasing the fee for on notice /contested general applications in civil proceedings by £100; and increasing the fee for issuing a divorce petition to £550.

## 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	57	
High	0	70	
Best Estimate	0.1	64	

### 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 £64 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	57	
High	0	70	
Best Estimate	0	64	

### 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 £64 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 will not affect court case volumes. However, we have conducted a sensitivity analysis which considers a 10 per cent reduction, and a 20 per cent reduction in caseloads in response to a fee increase. We also assume that there will 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

## Annual profile of monetised costs and benefits - 2014/15 (nearest £1m<sup>1</sup>)

Option 1	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Transition costs</b>	0.1	-	-	-	-	-	-	-	-	-
<b>Annual recurring cost</b>	64	64	64	64	64	64	64	64	64	64
<b>Total annual costs</b>	64	64	64	64	64	64	64	64	64	64
<b>Transition benefits</b>	-	-	-	-	-	-	-	-	-	-
<b>Annual recurring benefits</b>	64	64	64	64	64	64	64	64	64	64
<b>Total annual benefits</b>	64	64	64	64	64	64	64	64	64	64

<sup>1</sup> With the exception of the 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. In January 2015, the Government consulted on introducing enhanced fees for possession claims made in the County Court and for General Applications made in civil proceedings (subject to three exemptions set out in paragraph 28). The Government response to that consultation, published alongside this Impact Assessment, sets out the Government's plans for charging enhanced fees and the policy rationale in more detail. This Impact Assessment assesses the impact of the Government's preferred approach in light of the responses to this consultation and in light of further evidence that was obtained during the consultation period.
5. In December 2013, as part of an earlier consultation on enhanced court fees, the Government proposed increasing the fee payable to issue divorce proceedings. In its response in January 2015 the Government stated that it did not intend to proceed with this for the time being. The Government now intends to proceed with a more limited increase as it contributes to meeting the overall policy objective.

## Description of Options Considered

6. 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 – Introduce enhanced fees for possession claims made in the County Court, General Applications made in civil proceedings and to issue a divorce petition.
7. The Government intends to implement Option 1 as this better meets the policy objectives.

## Affected Stakeholder Groups, Organisations and Sectors

8. These reforms will affect, primarily, individuals and businesses pursuing cases through the courts. In particular:
  - Court Users – those who use the civil court system and those who apply for a divorce petition in the family court;
  - 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*

9. We present annual costs and benefits in steady state throughout the Impact Assessment.
10. To make our estimates of additional fee income for Possession claims and Divorce, 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 General Applications, which arise across a wide range of case types, we have used data on case progression to estimate the frequency with which such applications are made in all the civil case types in which these are made. We then multiply this number by the changed fees and deduct an estimate for the impact of remissions.

#### *Trends*

11. Our best fee income estimates were calculated using the latest 2015/16 caseload forecast, and are based on the assumption that the revised fee income levels will be constant from 2015/16 onwards. All estimates in this Impact Assessment are annualised figures in 2014/15 prices.

#### *Volumes*

12. Possession claims: We currently estimate the following volumes of claims will be made in the County Court in 2015/16 (rounded to the nearest 5,000):
  - Around 15,000 mortgage and rent repossession claims made directly at a court centre.
  - Around 125,000 mortgage and rent repossession claims made online.
  - Around 35,000 accelerated possession claims.
  - In total, this means that around 175,000 claims for possession are expected to be made.
13. General Applications: We currently estimate the following volumes will be made in civil proceedings during 2015/16 (rounded to the nearest 10,000):
  - Around 360,000 General Applications made for money claims commenced in the County Court, both specified and unspecified.
  - Up to around 10,000 General Applications made in insolvency claims commenced in the County Court, and around 10,000 General Applications made in insolvency proceedings commenced in the Bankruptcy and Companies Court.
  - The number of General Applications relating to injunctions for harassment and violence is not known with certainty but is considered to be very small (and, given that these forecast caseload figures have been rounded to the nearest 10,000, has been taken to be zero in this Impact Assessment).
  - Around 180,000 General Applications made in other civil proceedings
14. In total, around 540,000 General Applications are expected to be made in civil proceedings not including those specified in paragraph 28 below. General Applications are split between (i) applications which are made without notice to the opponent (*ex parte*), or which are made on notice but with the consent of the opponent; and (ii) applications on notice to the opponent which are contested :
  - Of the above total of around 540,000, around 300,000 General Applications are expected to be made *ex parte* or by consent.

- Of the above total of around 540,000, around 240,000 General Applications are expected to be contested.
15. Divorce petitions: We currently estimate that around 110,000 divorce proceedings will be issued in 2015/16 (rounded to the nearest 5,000).
16. Due to external factors there is a degree of uncertainty around these baseline caseload volumes, and therefore high and low scenario estimates 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*

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

### *Demand*

20. We assume that court user demand will not change in response to planned fee rises (i.e. that court fee changes themselves will not change court case volumes). External and internal research conducted to date on behalf of the MoJ suggests that this assumption is reasonable:
- Individuals and small businesses participating in published MoJ research conducted by Ipsos Mori<sup>2</sup> tended to view litigation as their only remaining option (having exhausted other possibilities) with emotional motivations tending to be their primary reason for taking their case to court. Users with legal representation tended to have little awareness of legal costs, including court fees, typically viewed court fees as a low proportion of these and exhibited less sensitivity to price than those who represented themselves as court fees were typically the sole costs they paid. However, when asked about specific hypothetical increases to court fees, the research participants felt they were affordable and would not deter them from going to court.
  - MoJ research published in 2013<sup>3</sup> found that increased court fees would have a minimal impact on the volume of cases bulk user organisations and solicitors would bring to court. Again litigation was seen as a last resort, court fees were considered to be a small proportion of the overall cost of going to court and such decisions were influenced by more factors than cost alone.
  - A 2007 MoJ published Research Paper<sup>4</sup> 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 Review<sup>5</sup>, court fees amounted to less than one per cent of the value of a ‘typical’ personal injury or commercial claim worth more than £300,000, while the total legal costs, including court fees, were held to be ‘substantially less than, and were proportionate to, the sums at stake in the litigation’.
  - Research for the MoJ conducted by the British Institute of International Comparative Law<sup>6</sup> 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.

<sup>2</sup> “The role of court fees in affecting users’ decisions to bring cases to the civil and family courts: a qualitative study of claimants and applicants” MoJ (MoJ (2014)

<sup>3</sup> “Potential impact of changes to court fees on volumes of cases brought to the civil and family courts” MoJ (2013)

<sup>4</sup> Source: What’s cost got to do with it? The impact of changing court fees on users (MoJ, 2007)

<sup>5</sup> *Review of Civil Litigation Costs: Preliminary Report*, May 2009. See Graph 7.1 (p66) and Chapter 7, paragraph 7.14 (p107).

<sup>6</sup> ‘Factors Influencing International Litigants’ Decisions to Bring Commercial Cases to London Based Courts’ (MoJ, 2014).

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

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

22. The base case option assumes the fee schedule introduced in April 2014 remains fully in place with the exception of enhanced fees for money claims which were introduced in March 2015. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV)<sup>7</sup>.

### **Option 1: Introduce enhanced fees for possession claims in the County Court, General Applications in Civil Proceedings and for issuing a Divorce Petition**

#### **Description**

##### *Possession Claims*

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

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

24. Under this option, the fees charged in the County Court and for on-line proceedings will increase by £75.

##### *General Applications in Civil Proceedings*

25. General Applications are applications made to the court within existing proceedings. They are brought in both civil and family proceedings and can cover a very wide set of circumstances including applications to amend pleadings in proceedings, vary directions, adduce fresh evidence, strike out claims or defences or to extend or vary the terms of an interim injunction.

26. These applications currently attract a generic fee: the fee for which no other fee is specified. The current fees for both civil and family proceedings are:

- £50 where the application is made without notice to the other side (*ex parte*) or where the opponent has indicated that they consent to the application;
- £155 where the application is on notice and contested.

27. Under this option, the fees charged for general applications in civil proceedings will increase by:

- for an *ex parte* application, or an application by consent, by £50; and
- for a contested hearing/on notice application by £100.

28. General Application fees in family proceedings will not be increased and, as indicated in the Consultation document, the Government will not be increasing the fees for General Applications made in civil proceedings in certain circumstances. These are:

- General Applications to extend or vary an injunction to protect someone from harassment or violence;
- General Applications for payments made out of funds held by the court on behalf of children or vulnerable adults;

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<sup>7</sup> The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

- General Applications in insolvency proceedings.

### *Divorce Proceedings*

29. The current fee for issuing a petition for divorce is £410. Under the preferred option, it will rise to £550.

## **Costs of Option 1**

### **Transitional costs**

#### *Transitional costs to HMCTS*

30. 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*

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*

32. Under our central assumptions the total additional cost to court users from paying higher court fees is estimated to be up to around **£64 million per annum** compared to the base case. (Some court users will benefit from fee remissions, whereby they are in effect exempt from paying fees. The above figures relate to the amount of extra fee income paid by court users after remissions have been provided).

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

34. To assess the impact of any wider changes in the environment which might affect the baseline forecast Table 1, below, provides our 'central' estimates for the fee types in the preferred option alongside estimates which adjust this for a 10 per cent increase or a 10 per cent fall in demand.

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

	Additional income (in 2014/15 prices, £m)		
	10% increase	Central	10% decrease
All Possession Claims in the County Court	14	13	12
All General Applications made in Civil Proceedings	42	39	35
Divorce Petitions	13	12	11
<b>Total</b>	<b>70</b>	<b>64</b>	<b>57</b>

\* Figures may not sum due to rounding

35. Table 1 shows that were overall caseloads to be 10 per cent higher than our central forecast, the total income from the fee changes would be £6m higher. Conversely, were the overall caseloads to be 10 per cent less than forecast the extra fee income from these changes would be £7m lower.



### *Costs to legal services providers*

36. 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*

37. We do not anticipate that the proposed changes will have a significant impact on the cost of legal aid. In the case of divorce proceedings, this is because this fee is not normally claimable while, for Possession claims, the fee is not usually paid by the legally-aided party. General applications are made in a range of proceedings, some of which are funded by legal aid. We have not quantified this impact as the effect is not expected to be large (i.e., less than £1 million per annum).

## **Benefits of Option 1**

### **Ongoing benefits**

#### *Benefits to HMCTS*

38. As a result of the proposed enhanced fees, under our central assumptions HMCTS would benefit from an estimated increased fee income of up to **£64 million per annum** compared to the base case. This relates to the extra income received after remissions have been applied.

#### *Wider benefits to society*

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

## **Net impact of Option 1**

40. 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.

41. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £64 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**

42. 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 in response to a fee increase, the expected income from the proposals would be affected.

43. To assess this risk, we have modelled two scenarios (in addition to the baseline caseload trend which assumes changes in caseload which are not due to court fee changes) in which demand falls by either 10 per cent or 20 per cent. These demand scenarios have been applied to our central baseline case volume estimate. The results of this analysis are shown in Table 2 below. The figures in Table 2 have been rounded to the nearest £1 million and relate to extra income received after fee remissions have been taken into account.

44. As Table 2 shows, changes to caseload as a result of changes to fees would have a significant impact on the anticipated annual income from the preferred fee changes. At most, with a 10 per cent fall in volumes when fees increase, income from these enhanced fees proposals would fall from around £64 million to around £50 million (a reduction of around £13 million compared to the central caseload scenario which assumes no fall in demand due to fee rises).

**Table 2: Changes in fee income net of remissions under different demand scenarios**

	Central caseload scenario with no demand change	Demand fall	
		10% demand fall	20% demand fall
Estimated additional income in 2014/15 prices (£m)	64	56	50
Difference in additional income compared to central caseload scenario (£m)		7	13

\*Figures may not sum due to rounding

## Enforcement and Implementation

45. 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

46. 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.