

Title: Introducing Fees in Employment Tribunals and the Employment Appeal Tribunal IA No: MoJ002/2024 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MOJ) Other departments or agencies: HM Courts and Tribunal Service (HMCTS)	Impact Assessment (IA)			
	Date: 29 January 2024			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: mojfeepolicy@Justice.gov.uk				

Summary: Intervention and Options **RPC Opinion:** Not Applicable

Cost of Preferred (or more likely) Option (in 2024/25 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£0.5m	NA	NA	Not a regulatory provision

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

The Employment Tribunals (ETs) and Employment Appeal Tribunal (EAT) provide legally binding decisions on employment law disputes. Neither claimants nor appellants are required to pay towards the running costs of either tribunal, meaning that the costs of administering these tribunals incurred by HMCTS are currently entirely borne by the taxpayer. In 2022/23, the direct running cost of the ET and EAT was around £80 million. We are proposing to introduce modest fees in the ET and EAT to reduce the cost burden on taxpayers and ensure that users are paying towards the running cost of this service. This will put ET and EAT users on broadly the same footing as other HMCTS users who already pay fees, thereby ensuring cross-jurisdictional consistency. Specifically, we are proposing to introduce a £55 issue fee, payable by the claimant on bringing a claim to the ET, and a £55 appeal fee, payable by the appellant upon lodging an appeal in the EAT. Following the 2017 Supreme Court judgment, particular attention has been given to ensure the newly proposed fees are proportionate, affordable and simple for users to understand. Government intervention, through changes to secondary legislation, is required to improve both efficiency and equity within the court system. By charging fees in the ETs and EAT, subject to fee remissions, additional resource can be generated for HMCTS and ET users will be treated on more equal terms with other fee-paying users of the courts and tribunals.

What are the policy objectives of the action or intervention and the intended effects?

The objective of this proposal is to reduce the cost to taxpayers by introducing fees to cover a portion of the cost of Employment Tribunals and the Employment Appeal Tribunal, while ensuring that access to justice is protected. Fees are to be set at a modest level to ensure that they are affordable, simple and proportionate, so users are not deterred by the cost of bringing a claim or by appealing an ET decision.

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

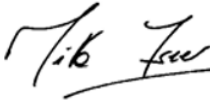
The following options were considered:

- Option 0: Do nothing. Maintain the present no-fee regime for Employment Tribunals and the Employment Appeal Tribunal.
- Option 1: Introduce a £55 issue fee for all Employment Tribunal claims and a £55 fee for appeals to the Employment Appeal Tribunal. Where a claim is brought by multiple claimants, the fee would remain at £55 and 'the claimant' would be treated as a single entity.

Option 1 is the preferred option as it achieves the policy objective of ensuring that taxpayers are not responsible for providing all the funding for Employment Tribunals and Employment Appeal Tribunal, but that the Tribunal remains accessible for all.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
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: 04/01/2024

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce a £55 issue fee for all Employment Tribunal claims and a £55 fee for appeals to the Employment Appeal Tribunal. Where a claim is brought by multiple claimants, the fee would remain at £55 and 'the claimant' would be treated as a single entity.

FULL ECONOMIC ASSESSMENT

Price Base Year 24/25	PV Base Year 24/25	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.5m	High:	Best Estimate: -£0.5m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.5m	£1.2m	£10.6m
High			
Best Estimate	£0.5m	£1.5m	£13.1m

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

In real terms, the best estimate of the average annual ongoing cost to ET and EAT claimants from the introduction of fees is £1.5m, in 2024/25 prices. The low estimate for the average annual ongoing cost is £1.2m. This low estimate includes optimism bias of 20% to account for uncertainty on future demand. In nominal terms, the cost is expected to be £0.6m - £0.7m in 2024/25 (assuming implementation in November 2024) and £1.3m - £1.7m p.a. from 2025/26 onwards. HMCTS is currently expected to incur an estimated £0.5m in transitional costs during the first year of implementation from amendments to IT systems and issuing staff and public guidance. Therefore, the Net Present Cost (NPC) of our best estimate is £13.1m over 10 years, representing both the direct transfer from tribunal users to HMCTS and the additional transition costs associated with introducing this policy.

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

There may also be familiarisation and awareness costs incurred by individuals and legal service providers who use the tribunals service. These costs are expected to be minor and so have not been monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		£1.2m	£10.1m
High			
Best Estimate	£0m	£1.5m	£12.6m

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

The ongoing benefit to HMCTS of introducing ET and EAT fees is estimated to be in the range £1.2m-£1.5m (annual average in 2024/25 prices, including/excluding optimism bias respectively). In nominal terms, fee income is expected to be £0.6m - £0.7m in 2024/25 and £1.3m - £1.7m p.a. from 2025/26 onwards. The Net Present Benefit (NPB) of our best estimate is £12.6m over 10 years, representing a direct transfer from tribunal users to HMCTS. This results in a Net Present Value (NPV) of -£0.5m for our best estimate, resulting from the additional transition costs incurred during the first year of implementation.

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

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<ul style="list-style-type: none"> Volumes are based on the number of ET cases received and the number of appeals to the EAT, in 2022/23. It is assumed that the income remitted from the Help with Fees scheme for ET single claimants is in line with the current remission rate for low value civil money claims in the county court jurisdiction. For income remitted for multiple claimants we have assumed the income remission rate is a third of a single claimant. The implementation date is assumed to be November 2024. It is assumed that the introduction of the fee does not impact demand as the fee is of a low monetary amount and in line with similar costs already faced by claimants and is well below the monetary award received by the vast majority of successful claimants (according to 2013 and 2018 Survey of Employment Tribunal Applications). However, 20% optimism bias (reduction) has been applied to the main volumes to account for uncertainty in how demand may change in the future. 		

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

A. Background

1. Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT) have been established to provide the public with a simple and accessible forum to resolve disputes that emerge in their workplace. They are designed to be more informal than the courts, so as to enable users to prepare and present their cases without requiring legal representation. ETs and the EAT now have jurisdiction to determine over 70 different types of claims, providing just and certain solutions to disputes arising from employment situations.
2. ET claims¹ can be classified into two broad categories:
 - a. Single claims – a claim brought by an individual against one or more related respondents on the same or similar grounds, or
 - b. multiple claims – a claim brought by at least two or more individuals against one employer or more related respondents on the same or similar grounds.
3. The EAT hears appeals against any decision made by the ET on a point of law. An appeal can be made against any decision of a tribunal at any time during the course of the claim through the ET, though most appeals relate to the final judgment of the ET. An appeal must generally be made to the EAT within 42 days of the ET decision in question. Either party in an ET claim can appeal to the EAT. The party that brings the appeal is called the appellant and the other party to the appeal is the respondent. The appellant can therefore be either the employer or the employee.
4. Under the current system, people seeking to bring a claim to ET must first inform ACAS of their intention to do so. For most claimants, ACAS offers an early conciliation service which aims to settle disputes without the need to take the claim to the ET. This service is free of charge and would remain so under the proposal examined in this impact assessment. If the dispute cannot be resolved through early conciliation, the claimant can then lodge a claim at the ET.
5. Fees in civil, family and tribunal cases are an important source of funding for the courts and tribunals, and a reasonable means of making resources available to secure access to justice. Under section 92 of the Courts Act 2003 and section 42 of the Tribunals, Courts and Enforcement Act 2007, the Lord Chancellor has the power to prescribe fees in respect of anything dealt with by the courts and tribunals. This helps to ensure he fulfils his statutory duty to ensure an efficient and effective courts system.²
6. The general legal principle, set out in HMT's Managing Public Money guidance³, is that fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval. The only court fees that may be set at a level that exceeds costs are those set under the enhanced court fee power (section 180 of the Anti-social Behaviour, Crime and Policing Act 2014), and employment tribunal fees are not set under this power.

Problem under consideration

¹ The number of claims accounts for all individuals bringing forward a claim. This means that every claimant involved in a case, whether a single claimant or multiple claimants, are accounted for in this figure. For single claimants, their single claim then becomes one case, while for multiple claimants, their multiple claims are combined into one case.

² S1(1) Courts Act 2003 – "The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates' courts, and that appropriate services are provided for those courts." See also s6A Promissory Oaths Act 1868 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

³ 'Managing Public Money', Chapter 6 (Fees, Charges and Levies). July 2013.

7. At present, taking a claim to an ET or appealing to the EAT is free of charge and therefore entirely funded by the taxpayer. The combined direct 2024 cost of ET and EAT was around £80 million in 2022/23.
8. ET and EAT fees were previously introduced in July 2013, whereby claims were categorised into 'Type A' or 'Type B' claims, with different fees payable dependent on the type of claim brought. The total fee in Type A claims (e.g. holiday pay) was £390 (£160 issue fee; £230 hearing fee) while the fee in Type B claims (e.g. discrimination) was £1,200 (£250 issue fee; £950 hearing fee). However, in 2017 they were found by the UK Supreme Court (UKSC) to be unlawful and were quashed.
9. The 2018 Survey of Employment Tribunals Applications (SETA)⁴ found that for claimants who had been successful at employment tribunal and were awarded a sum of money 4%⁵ were awarded less than £500, with the overall median value of financial compensation received by claimants successful at a hearing being £5,000. Other claimants however sought non-monetary awards. As the 2018 SETA report includes a period of time where ET fees were charged, we also looked at the 2013 SETA⁶ report. The 2013 SETA report found that for claimants successful at employment tribunal and awarded a sum of money, the median value of compensation was £3,000, and of those awarded money, 9% were awarded less than £500. Therefore, it is critical that fees are not set at a level that could render pursuing low value or non-monetary claims irrational and futile.
10. The Government is therefore proposing simple, modest fees in recognition of the need to ensure fees remain both affordable and proportionate to the remedy sought by a claimant, which were two key issues flagged in the 2017 UKSC judgment when considering access to justice. The issue of ensuring affordability is particularly acute in ETs given the limited time available to claimants to bring a claim and pay any fee (typically 3 months to bring a claim and up to 28 days to pay the fee). The issue of proportionality is important when considering the overall level of fee, due to the breadth of remedies sought by ET claimants.
11. Under the current proposal, we propose introducing two fees:
 - a. A £55 issue fee for each claim made to the ET, payable by the claimant(s).
 - b. A £55 appeal fee for each application to appeal a decision of the ET at the EAT, payable by the appellant(s)
12. As part of our duty to protect access to justice, and as with other court and tribunal jurisdictions, financial support will be available in relation to the fees via the Help with Fees (HwF) scheme for those who meet the eligibility requirements. As of 27 November 2023, the HwF scheme has been made more generous, targeting financial assistance at those most in need and provide the greatest value for money for the taxpayer. It is intended that the HwF scheme will be extended so that it is available for individuals who bring proceedings in an ET or in the EAT. Those eligible for the scheme will be able to apply for fee remission for their ET or EAT fee should they be introduced. For individuals who are not eligible for the HwF scheme but are still unable to afford the fee and where the payment would cause undue financial or other hardship, the Lord Chancellor's Exceptional Power to remit fees will also be available.

B. Policy Rationale and Objectives

Rationale

⁴ <https://assets.publishing.service.gov.uk/media/5f06c2e3e90e0712d0206e99/survey-employment-tribunal-applications-2018-findings.pdf>

⁵ This proportion is based on the SETA respondents who stated how much they were awarded, and so excluded respondents who stated they did not know how much they were awarded.

⁶ <https://assets.publishing.service.gov.uk/media/5a749243e5274a410efd0aa6/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf>

13. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way the markets operate or there are strong enough failures in existing Government interventions where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to certain groups in society).
14. In this instance, the primary rationale for intervention is efficiency: charging fees in the ET and EAT will ensure that users are paying towards the running cost of this service and will deliver more resources for HMCTS. There is also an equity rationale as the introduction of fees will ensure that ET and EAT users are treated on more equal terms with other fee-paying users of the courts and tribunals.

Policy Objectives

15. The associated policy objectives for introducing ET and EAT fees are threefold.
16. First, charging fees in ETs and the EAT is consistent with our approach to charging fees in other courts and tribunals. Chapter 6 of the HM Treasury Handbook Managing Public Money outlines the general policy principles on the setting of fees by public sector organisations. It states that the standard approach is to set charges and fees to recover full costs, but gives Ministers discretion to set them at a lower level. This is intended to make sure that the Government “neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise”. While recovering the full cost of the service might not always be possible, it is right that those service users who can afford to pay a fee for the service they receive, do so. This helps protect access to justice for everyone by making resources available for the efficient and effective running of our courts and tribunals service.
17. Second, these tribunals are similar to civil courts as they act as independent adjudicators with the power to make legally binding decisions in a dispute between two parties. Indeed, there are certain claims, usually those that relate to payments claimed under the employment contract (i.e. ‘breach of contract’ claims) that can be made in either the civil courts or the ETs. Users in the civil courts in England & Wales, and the separate Scottish civil courts, have charged fees for such claims for many years. Introducing fees will therefore place ET users on the same footing.
18. Third, establishing a fee structure will also enable HM Courts and Tribunal Service (HMCTS) to recover some of the cost of administering the tribunal from users where they can afford to pay a fee, in part or in full. This helps protect access to justice for everyone by making resources available to the tribunal and reduces the cost to the taxpayer. This would also ensure consistency in our approach with other fee-charging courts and tribunals.
19. Therefore, charging modest fees in ETs and the EAT will help generate resources to reinvest into the service, reduce the costs to the taxpayer and bring the tribunal in line with Government policy on fee-charging generally. Modest fees might also help encourage parties to consider early conciliation as a means of resolving their dispute without taking their claim to an ET.

C. Description of Options Considered

20. To meet the policy objectives, the following options are considered in this IA:
 - **Option 0 – Do nothing. Maintain the present no-fee regime for Employment Tribunals and the Employment Appeal Tribunal.**
 - **Option 1 – Introduce a £55 issue fee for all Employment Tribunal claims and a £55 fee for appeals to the Employment Appeal Tribunal. Where a claim is brought**

by multiple claimants, the fee would remain at £55 and ‘the claimant’ would be treated as a single entity.

21. Option 1 is the Government’s preferred option as it best meets the policy objectives.

Option 0

22. Under the “Do Nothing” option, the current no-fee regime for access to ETs and the EAT would be maintained. The whole cost of the system would be borne by taxpayers.

Option 1

23. Under this option a regime of fees would be introduced that would include (a) a £55 issue fee for each claim made to the ET, and (b) a £55 appeal fee for each application to appeal a decision of the ET at the EAT.

24. Where a claim is brought by multiple claimants, the fee would remain at £55 and ‘the claimant’ would be treated as a single entity. The cost of the fee could therefore be divided among all the claimants involved as agreed between parties. It would be a matter for the claimants to agree between themselves whether the fee should be split between each claimant and by what proportion.

D. Affected Stakeholder Groups, Organisations and Sectors

25. The options assessed in this IA will primarily affect the users of ETs. A list of the main groups affected is shown below:

- ET claimants;
- EAT appellants;
- HMCTS – who operate the ET and EAT service;
- Taxpayers – who subsidise HMCTS (as overall HMCTS income falls below its overall costs);
- Legal services providers and the advice sector – who provide services to HMCTS users; and
- The Ministry of Justice – who sponsor HMCTS.

E. Cost and Benefit Analysis

26. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

27. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

28. The costs and benefits of each option are compared to Option 0, the counterfactual or “do nothing” scenario, where no fees are charged in ETs and the EAT. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

29. On an ongoing basis, ET and EAT fees shift resources between HMCTS and HMCTS users, representing a net transfer from users who will pay ET issue fees and EAT appeal fees.

However, given the transition costs incurred by HMCTS in the first year of implementing the policy, the NPV of Option 1 is estimated as -£0.5m. The transition costs include updating IT systems and issuing staff and public guidance.

30. This IA assumes a 10-year appraisal period, a price and Present Value (PV) base year of 2024/25. As detailed in paragraph 35, an Optimism Bias of 20% is applied. Total estimated income estimates are rounded to the nearest £0.1m.

Methodology and key assumptions

31. The impacts described in this IA are based on modelling and assumptions. These are described below. The analysis assumes an implementation date of November 2024.

Volumes.

32. The fee income for Option 1 has been assessed using ET cases issued⁷ volumes for 2022/23, the latest date for which financial year volumes are available. Cases issued volumes are sourced from published statistics⁸.
33. In 2022/23, c.33,000 cases were issued in the ET. Case volumes have been used in the analysis rather than claim volumes, as the latter counts everyone within a multiple case, and the fees will only be charged per application to the ET not per claimant. The income estimates in this IA have been calculated by multiplying the 2022/23 case volumes by the proposed fees subject to a reduction to account for fee remissions (see below).
34. The volume of appeals to the EAT used in the modelling is based upon the number of appeal applications received by the EAT in 2022/23, which was c.1,400. It is assumed that only one appeal fee is paid per application to appeal an ET decision, payable by the party bringing the appeal.
35. For the 10-year period covered by this IA, the modelling assumes that the volume of ET cases will be the same as those for 2022/23. The volume of ET cases has fluctuated over time and is expected to continue to do so over the next 10 years. Due to this volatility, the modelling assumes a fixed level of cases and applies optimism bias (reduction) of 20% to the volumes to make allowances for the possibility that volumes could be lower than expected.
36. A discussion of the risks and sensitivities regarding estimates for volumes can be found at section F.

Fee Remissions

37. For the purposes of this IA, we have taken into account fee remissions when calculating the estimated net fee income. For income from single ET claims we have used a remission rate of 12%. This is the rate that applies to small value money claims (less than £750) in the county civil jurisdiction and was chosen as these are the closest related case type to ET in terms of the fee amount. Our analysis of the ratio between successful remission awards for multiple claim cases under the previous ET fee regime suggests that they qualified for remissions one third as often as did single claim cases. Therefore, we have assigned these multiple claim cases an income remissions rate of 4% (i.e. one third of the 12% of income remitted for single claim cases) under the current HwF scheme to determine income from multiple ET claims.

⁷ We are using 'cases issued' as a capsule term to cover both single ET claims and multiple claim cases. Multiple claim volumes are not appropriate to use for this IA as it is a count of each individual within the multiple case, whereas the fee is paid by the entire group (so they would not each be paying the £55 fee). The Tribunal Statistics publication team use the term 'multiple claim case' to describe claims that are grouped as multiples, and are processed administratively and managed judicially together.

⁸ Tribunal Statistics Quarterly: April to June 2023, <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023>, Main Tables, table ET_1

38. Appeals to the EAT can be made by either the employee or the employer. As employers are not eligible for the HwF scheme, we have used a remission rate of 12% (as used for single ET claimants) for 80% of the EAT appeals volume. We have assumed the remaining 20% will be employer appeals (the proportions used are based on published statistics⁹).

Demand

39. It is assumed that the introduction of the fee does not lead to a reduction in demand for the ET or the EAT as the fee has been set at a modest level which is expected to be affordable to claimants and does not render claims seeking low value or non-monetary awards futile. The evidence for this assumption is discussed in more detail in the ‘risks and sensitivity analysis’ section below.

Estimated fee income

40. We estimate fee income under two scenarios. The best fee income estimate is based on 2022/23 ET and EAT case/appeal volumes, and the low scenario is a 20% reduction of the 2022/23 volumes, converted into income by multiplying the volume with the fee amount.

41. Table 1 gives the nominal estimated income from the proposed fee introduction under both the best and the low-income scenarios. Income estimates are rounded to the nearest £0.1million.

42. The impact of introducing ET and EAT fees is expected to generate an additional £1.3m-£1.7m per annum (£0.6m-£0.7m in 2024/25 as the fees are assumed to be introduced in November 2024) depending upon the volume of ET and EAT applications.

Table 1: Estimated nominal income from proposed fees

	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	Total	Average
Low estimate	£0.6m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£12.6m	£1.3m
Best estimate	£0.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£15.8m	£1.6m

43. Table 2 shows the additional income adjusted for expected inflation. As fees do not keep track with inflation the annual average income will fall over time when measured in 2022/23 prices

Table 2: Estimated real-terms income from proposed fees

	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	Total	Average
Low estimate	£0.6m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£1.2m	£1.2m	£1.2m	£1.2m	£11.8m	£1.2m
Best estimate	£0.7m	£1.7m	£1.6m	£1.6m	£1.6m	£1.6m	£1.5m	£1.5m	£1.5m	£1.5m	£14.8m	£1.5m

Option 1: Introduce a £55 issue fee for all Employment Tribunal claims and a £55 fee for appeals to the Employment Appeal Tribunal. Where a claim is brought by multiple claimants, the fee would remain at £55 and ‘the claimant’ would be treated as a single entity.

Costs of Option 1

Transitional costs

HMCTS

⁹ <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023> , annual EAT tables, Table E_12

44. HMCTS is expected to incur one off costs from making amendments to IT systems, and costs related to tribunal staff having to spend some time familiarising themselves with the new fees, as well as public guidance. These costs have currently been estimated at around £0.5m in 2024/25 prices.

HMCTS users and providers of legal services

45. There may be familiarisation and awareness costs incurred by individuals and legal service providers who use tribunal services where the fees are being changed. These costs have not been monetised, but are expected to be minor.

Ongoing costs

Users of HMCTS services

46. The fee changes are assumed to be introduced in November 2024. Under the best estimate we estimate that HMCTS service users could see their costs increase by £0.7m in 2024/25 and £1.7m (£1.3m in the low estimate) per annum from 2025/26 in nominal prices.

Benefits of Option 1

Transitional benefits

47. No transitional benefits are expected.

Ongoing benefits

HMCTS and Taxpayers

48. As a result of the overall fee changes, under the best estimate we estimate that HMCTS could benefit by £0.7m in 2024/25 and £1.7m per annum from 2025/26 in nominal prices (£0.6m and £1.3m, respectively in the low estimate).

Net impact of Option 1

49. HMCTS is expected to incur transitional costs from implementing the new fees (see paragraph 44). Individuals and legal service providers are expected to incur negligible costs from familiarising themselves with the new fee structure.

50. On an ongoing basis, the overall changes in fees are expected to result in an increase in funding for HMCTS of £1.3m - £1.7m in nominal prices from 2025/26 (see Table 1). This benefit to HMCTS would be offset by the cost to HMCTS users, so the ongoing net impact of this option would be minimal. The overall net impact of Option 1 is -£0.5m (the transitional costs to HMCTS).

F. Assumptions, Risks and Sensitivity Analysis

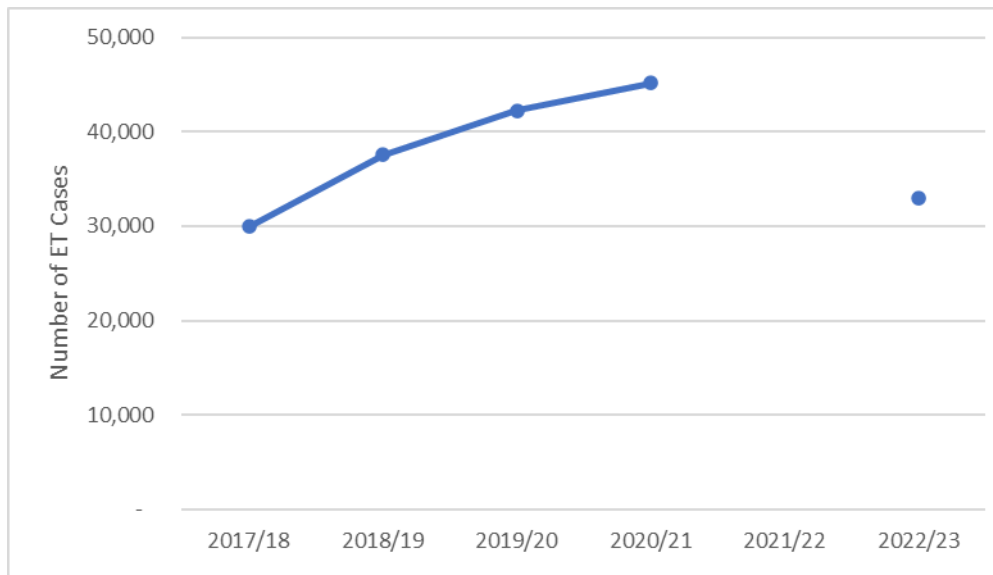
51. As the impacts described in this IA are based on certain assumptions, there are also some associated risks. These risks, and their potential impacts, are described below.

Volumes

52. Chart 1 shows the volume of cases issued since the previous fees were quashed in 2017. The annual volume of cases issued with the ET were initially gradually rising to a peak of c.45,000 cases in 2020/21. Case data for the full financial year in 2021/22 is not available due to Employment Tribunals transitioning to a new database ('Employment Case Management', 'ECM') during March 2021 to May 2021. For the first full year since the case

management change, 2022/23, there were c.33,000 ET cases, a decrease compared to the previous three years (years 2018/19 to 2020/21).

Chart 1: Annual volume of ET cases, from 2017/18¹⁰ to 2022/23



Source: Tribunal Statistics Quarterly, Table ET_1, total cases.

Note: Case volumes for 2021/22 unavailable (see paragraph 52). Also, 'total' refers to sum of single claim and multiple claim cases.

53. We have chosen to use the volume from 2022/23 for the analysis in this IA, rather than use an average over the more recent years, to ensure volumes in the future are comparable. Following the migration of the case management system in 2021/22, quality guidance provided in the published statistics¹¹ state that caution should be used when comparing figures before and after the 2021/22 migration. Any future volumes recorded will be more aligned to the 2022/23 figure, as it is the only recorded volume since the change of system. Additionally, the legacy impacts of Covid-19 on the use of ETs is uncertain, which may be impacting the 2022/23 data and causing a lower volume of cases to be recorded within ETs and the EAT. There is a risk the future volumes may be higher, or the 2022/23 levels may be the new norm. We are being conservative in using the lower more recent figure.
54. Additionally, the published volumes in 2022/23 slightly underestimate the volume of cases in the ET, due to a further case management transition from 'ECM' to 'Reform ECM' in September 2022. The number of cases excluded from the 2022/23 figures is minimal (less than 2,000 cases) and therefore it is not expected to have a significant impact on the quality of case volume data used for modelling purposes.
55. Due to the volume issues mentioned in paragraphs 52 and 53, and the potential demand uncertainty for ET and EAT in the future, a reduction of 20% has been applied to the 2022/23 fee volumes to create Option 1's low estimate. This is to account for uncertainty in the future volume of, including demand for, ET and EAT subject to the introduction of fees. The reduction in volumes then feeds through to fee income. The optimism bias of 20% has the effect of reducing the estimated fee income by c. £0.4m p.a. for each full year of the policy change (see Table1).

¹⁰ The previous ET fee regime were abolished on 26 July 2017

¹¹ See <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023/tribunal-statistics-quarterly-april-to-june-2023>.

56. Although the estimates of income are based on 2022/23 volumes, future volumes could be higher or lower than these. A sensitivity analysis was carried out to demonstrate how the income would vary if fee volumes were 10% higher or lower than those in 2022/23. The sensitivity analysis was carried out on the best estimate (i.e., excluding optimism bias).

57. Table 3 and Table 4 below show the impact of the sensitivity analysis on the best estimate. Introducing ET and EAT fees is expected to increase funding for HMCTS under all the volume scenarios considered. In real values, average annual additional funding contribution varies between £1.3m over 10 years in the case of volumes being 10% down on 2022/23 levels, to £1.6m for the case where volumes are 10% above 2022/23 levels. This is based on the best estimate scenario.

Table 3: Sensitivity to changes in case volumes, annual nominal best estimate fee income, £millions

	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	Total	Average
Low estimate	£0.6m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£1.5m	£14.2m	£1.4m
Best estimate	£0.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£1.7m	£15.8m	£1.6m
High estimate	£0.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£1.8m	£17.4m	£1.7m

Table 4: Sensitivity to changes in case volumes, real value best estimate fee income, £millions

	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32	2032/ 33	2033/ 34	Total	Average
Low estimate	£0.6m	£1.5m	£1.5m	£1.5m	£1.4m	£1.4m	£1.4m	£1.4m	£1.3m	£1.3m	£13.3m	£1.3m
Best estimate	£0.7m	£1.7m	£1.6m	£1.6m	£1.6m	£1.6m	£1.5m	£1.5m	£1.5m	£1.5m	£14.8m	£1.5m
High estimate	£0.8m	£1.8m	£1.8m	£1.8m	£1.7m	£1.7m	£1.7m	£1.7m	£1.6m	£1.6m	£16.3m	£1.6m

Demand

58. The introduction of ET fees in July 2013, outlined in paragraph 8, was linked with a substantial drop in the volume of cases. In contrast, under the current proposal, there is not expected to be a significant change in volumes of cases as a result of the new fee.

59. The issue fee of £55 is considered affordable due to claimants already paying similar amounts to this fee for other costs associated with bringing a claim, and these have not prohibited people from bringing the claim. Unlike these other areas of expenditure, such as travel costs, more vulnerable claimants could be entitled to remission of the associated ET or EAT fee through the HwF scheme, or by Lord Chancellor, in exceptional circumstances.

60. The 2018 Survey of Employment Tribunal Applications (SETA) report¹² found that the personal costs claimants incurred when taking a claim to the ET were of a similar value to the proposed fees. 33% incurred communication costs with a median value of £50 and 36% incurred travel costs with a median value of £60. As the proposed fee lies within the range of costs already incurred, we assess that a fee of £55 is proportionate for claimants.

61. Claimants may also have their fee paid by a third party. In 2018, 17% of claimants reported that a third party, such as a trade union, had paid the issue fee for their claim.

¹² Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899048/survey-employment-tribunal-applications-2018-findings.pdf

62. The 2018 SETA report found that the median annual pay for claimants in full-time permanent jobs was £28,000, which was slightly higher than for employees nationally in full-time permanent jobs (£27,000). As the 2018 SETA report includes a period of time where ET fees were charged, we also looked at the 2013 SETA report. The 2013 SETA report found median pay of claimants (£23,600) in full-time permanent jobs to be close to, although slightly below, the national average at that time (£25,000). The £55 issue fee is therefore expected to be affordable to the majority of claimants; although the HwF scheme is available to those on a low income or in receipt of certain benefits, and with a low level of capital.
63. Given the time limits for bringing an ET claim, claimants generally have 3 months (or 6 months in claims about redundancy or equal pay) to make arrangements to pay the issue fee.

Remissions

64. The estimated income from introducing ET and EAT fees is sensitive to the rate of remissions via the HwF scheme.
65. For the purposes of this IA, we estimate net fee income, taking into account the current HwF scheme. Net income has been estimated using 2022/23 remission rates calculated using the latest HwF management information available.
66. We have assumed that 12% of fee income from single ET claimants and 4% of fee income from multiple claimant cases (cases with two or more claimants) will be remitted under the HwF scheme. The 12% is based on the remission rate of a similar case type in the County Court that already has fees, money claims of less than £750. These were deemed to be the closest to ET in relation to the fee amount (civil money claims up to £1k has a fee of up to £70). For the rate for multiple claimants the single claimant rate was adjusted by the ratio of multiple to single successful awards under the previous fee regime (a third).
67. The overall remission rate from the previous fee regime was not used in this modelling because eligibility for a remission increases with the value of the fee, and so remission rates under the two fee regimes are not comparable. For the previous fee regime 31% of fee income was remitted on average over the three years the fees were in place¹³, and the fees set ranged from £160 and £950, depending on the complexity of the case, the number of claimants and whether it was an issue or hearing fee.
68. EAT appeal fee income is also net of fees remitted with a 12% remission rate, but with an additional step to account for appellants who are employers and therefore not eligible for the HwF scheme. The remission rate has been used for the income from 80% of appeals to the EAT, with the remaining 20% of income not having any remission reduction¹⁴. These proportions are based on published statistics for 2021/22 and 2022/23 that show 80% of EAT appeals heard at preliminary hearing are employees, and the remaining 20% are employers¹⁵.

G. Wider Impacts

Equalities

69. For the equalities impact of the proposal, please see the Equality Statement that is published alongside this impact assessment.

Better Regulation

¹³ Percentage based on HMCTS Annual Accounts for 2014/15 to 2016/17, fees remitted as a proportion of fees charged

¹⁴ Unincorporated businesses such as sole trader employers are eligible for Help with Fees (HwF) scheme, however we deemed the number of sole traders appealing ET decisions to be minimal

¹⁵ See <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023>

70. This measure is not classed as a regulatory provision.

Potential Implications for trade

71. There are no expected implications for international trade arising from the introduction of fees.

H. Enforcement and Implementation

72. 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 application would not be permitted to proceed. This would continue to apply under the options being considered.

I. Monitoring and Evaluation

73. The Ministry of Justice 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.