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| <b>Title:</b><br><b>Improving Cost Recovery in the Civil Courts</b>                                   | <b>Regulatory Impact Assessment (RIA)</b>  |
|   | <b>Date:</b> September 2019  |
|   | <b>Type of measure:</b> Secondary Legislation  |
| <b>Lead Department or Agency:</b><br><b>Department of Justice (DoJ)</b>                               | <b>Stage:</b> Final  |
|   | <b>Source of intervention:</b> Domestic NI   |
| <b>Other departments or agencies:</b><br><b>Northern Ireland Courts and Tribunals Service (NICTS)</b> | <b>Contact details:</b> Consultation Co-ordinator<br>NICTS Fee Review Team           |
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### Summary Intervention and Options

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

NICTS, in common with all Government Departments, is required to adopt a standard approach to setting charges and fees for public services. The policy on setting charges and fees is set out in guidance published by the Department of Finance (DoF) in Managing Public Money (NI) (MPM (NI)); fees should cover the full cost associated with providing each service (sometimes referred to as the full cost recovery method). In 2017, following a review of court fees NICTS revealed that recovery of costs had fallen to 73%. A public consultation was carried out alongside Justice Committee scrutiny and this resulted in a series of increases in civil and family court fees set by legislation - 10%, 7.5% and 5% for the years 2017/18, 2018/19 and 2019/20. Business case approval was obtained from DoF in January 2017.

The increase introduced in April 2017 has already improved recovery rates; at the end of 2017/18 cost recovery has shown a marked improvement, from 73% to 83%. The cost recovery position at the end of 2018/19 was also reported at 80%.

However, NICTS will still not achieve full cost recovery from these measures and this means there is a continuing shortfall that is presently subsidised by DoJ and by taxpayers.

Government intervention is therefore considered necessary and NICTS has proposed that the shortfall in cost recovery should come from continuing to search for efficiencies throughout the organisation alongside further increases to existing court fees, and the introduction of some new fees.

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

The key objectives of this proposed increase in existing court fees and introduction of new court fees are:

- to maximise fee income at, or as close as possible to, full cost recovery levels; as is laid down in MPM (NI);
- to ensure that the fee charging system is fair, easy to understand and cost effective to administer;
- to ensure the cost recovery model remains viable when patterns of demand change; and,
- to protect access to justice through a system of exemptions and remissions.

NICTS ran a public consultation exercise, from 10 December 2018 to 25 February 2019. The consultation document outlined why the fee proposals are necessary. In summary it set out the proposal to increase fees in the context of the current position of under-recovery, diminishing financial resources and falling business volumes. NICTS's main aim is to strive to meet the full cost recovery requirements.

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

NICTS has considered a list of options on how best to resolve this issue. These include:

1. Status Quo – Do not increase fees above those introduced by the 2017 Fees Amendment Orders; and,
2. Increase the 2019/20 planned fee increase from 5% uplift (introduced by the 2017 Fees Amendment Orders) to 10%, increase the fees for searches of the Register of Judgments in the Enforcement of Judgments Office (EJO) to reflect the same rates charged for similar searches within NICTS, create a number of new fees for work that is carried out by NICTS but for which no fee exists, and, make a number of changes to the existing Exemption and Remission policy to ensure it remains fit for purpose.

NICTS has selected Option 2 as the **preferred approach** on the basis that it brings the cost of civil and family court business closest to ensuring compliance with MPM (NI) whilst maintaining access to justice. This meets the objectives of the policy.

The specific detail and fee schedules of each proposal are outlined in the analysis of consultation responses to which this impact assessment accompanies.

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| <p><b>Will the policy be reviewed?</b> Yes - on a regular basis in order to monitor the levels of income raised, any changes in the volume of business, which could indicate an adverse impact on access to justice; and further changes to the cost recovery position.</p> | <p><b>If applicable, set review dates:</b> A full Post Project Evaluation (PPE) will be carried out in September 2021.</p> |
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| Potential savings generated from Preferred (or more likely) Option                                  |  |   |  |   |
|---|--|---|--|---|
| Total net savings generated from the change introduced  | Total savings to NICTS per year  |   | Annual cost for implementation by Regulator  |   |
| Approximately £4.12m by the end of 2021/22 (2019/20 prices), taking into account transitional costs | Approximately £2.33m in income generation per year (2019/20 prices), before transitional costs |   | £0.38m (2019/20 prices)  |   |
| <b>Does Implementation go beyond minimum EU requirements?</b>                                       |  |   | <b>NO</b> <input checked="" type="checkbox"/>  | <b>YES</b> <input type="checkbox"/>   |
| Are any of these organisations in scope?  | <b>Micro</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>            | <b>Small</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | <b>Medium</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | <b>Large</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |

**The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.**

Approved by: 

Date: 04/09/2019

Summary: Analysis and Evidence

Option 2

**ECONOMIC ASSESSMENT**

| <b>Costs (£m)</b>    | <b>Total Transitional (Policy)</b><br>(2019/20 prices) 3 Years | <b>Average Annual (recurring)</b><br>(excl. transitional) (2019/20 prices) | <b>Total Cost</b><br>(Present Value, 2019/20 prices) |
|----------------------|--|--|--|
| <b>Best Estimate</b> | <b>£0.97m</b>  | <b>N/A</b>   | <b>£0.93m</b>  |

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

Overall benefits will be achieved from the proposals through the generation of additional fee income, although this will be offset by some unavoidable costs. Transitional costs for NICTS will include the cost of minor adjustments to court IT systems along with some administrative requirements, such as the need to re-issue forms and publish further guidance to court users. There are also costs associated with resourcing the team responsible for taking forward the work on court fees – this team was formed specifically to look at the civil and family fee charging regime across NICTS. The costs associated with implementing this policy have been estimated over the next 3 years and are summarised in the table above.

The total additional cost to court users (private individuals, businesses and other organisations) who initiate court proceedings is estimated in the Benefits Table overleaf.

It is also worth highlighting that a large proportion of our customers do not want to be at court. Whether it is defendants or victims in criminal cases; victims of domestic violence; people going through family breakdown/divorce and parents of children involved in care proceedings. Even in civil proceedings, generally most customers do not relish the idea of coming to court. Court is viewed very much as a last option; fees in many cases account for a small percentage of overall legal costs; based on our preliminary findings NICTS does not believe the policy changes will have a material impact on either business or the volume of work being brought to court.

Key groups affected are as follows:

**Individuals**

**Businesses (including insurance companies)**

**Legal Profession (including law searcher companies)**

**Government**

**Legal Services**

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

With respect to the main affected groups, there are few non-monetised costs that are envisaged and these include inadequate communication between NICTS and stakeholders as well as a lack of knowledge and understanding surrounding the policy changes. NICTS has mitigated these through the public consultation process; key stakeholders have been contacted by email and/or letter seeking their views on the proposals contained within the consultation. Meetings with key stakeholders were also held to discuss the rationale behind the consultation proposals. Furthermore, NICTS will contact key stakeholders in advance of the implementation of these measures.

| Benefits (£m) | Total<br>(Policy)<br>(constant price) | Transitional<br>3<br>Years | Average Annual (recurring)            | Total Benefit                    |
|---------------|---------------------------------------|----------------------------|---------------------------------------|----------------------------------|
|               |                                       |                            | (excl. transitional) (constant price) | (Present Value, constant prices) |
| Low           | N/A                                   |                            | £2.33m                                | £4.88m                           |
| High          | N/A                                   |                            | £2.40m                                | £4.97m                           |
| Best Estimate |                                       |                            | Low Estimate                          | Low Estimate                     |

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

An increase in court fees will result in additional fee income for NICTS which should help bridge the gap between the levels of income raised and the costs associated with the provision of services in civil and family courts; this will allow NICTS to continue to strive to achieve the full cost recovery requirements as laid down in MPM (NI).

By attempting to close the current gap between income and costs (c£5.8m), these proposals should help to reduce the financial burden on DoJ and ultimately the taxpayer, as they are required to make up the shortfall in funding. This policy continues to support the principle that those who use the courts should, wherever possible, pay for the services provided.

The additional income (benefit) for NICTS is estimated over the next 3 years and summarised in the Benefit Table above. The total **additional** benefit/savings are forecast in the range of £4.88m to £4.97m (constant prices, discounted) depending on the volume of business over that period; this assumes that all proposals are implemented. *Such benefits/savings to NICTS represent an additional cost to court users.* The financial impact on all court users and businesses in particular, is considered at Section 7.

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

A Supreme Court judgment in England and Wales regarding Employment Tribunal and Employment Appeal Tribunal fees (R (on the application of UNISON) (Appellant) -v- Lord Chancellor (Respondent)) declared the fees in question unlawful. However, the Court also accepted that charging court fees can be viewed as a means to achieve a legitimate aim, so long as there is a degree of proportionality employed. The Court stated,

“Fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice.”

NICTS recognises that there will be an impact on various user groups of the civil and family court system. However, from an economical viewpoint the application of full cost recovery is to correct for ‘externalities’. Externalities exist where the user of a service does not bear the full cost or benefit that they create for others as a result of their activity; as a consequence this leads to an inefficient allocation of scarce court resources.

NICTS is mindful that not every court case creates a net social cost (some indeed no doubt create a social benefit) and that access to justice should not be prevented on the grounds of inability to pay. As such, NICTS currently subsidises (50%) a number of fees in the family and children’s arenas and, applications arising from domestic violence related matters are taken out of the charging regime altogether. In all, this subsidy accounts for around £0.9m per annum. In addition, the availability of the Exemption and Remission Policy allows for access to justice to be maintained for those who cannot afford or experience difficulty in paying the required court fee (nearly 400 applicants received assistance with fees in 2018/19).

Taking all of this into account, NICTS has determined that if court fees are set correctly then, the aim of full cost recovery whilst maintaining access to justice is justified in that it achieves an economic objective via the best allocation of scarce court resources. It also achieves an equality objective by the ongoing subsidisation of some family and children court fees and with the availability of the exemption and remission scheme; the achievement of both these objectives is considered to enhance access to justice overall, rather than cause any impairment.

## **Key Assumptions, Sensitivities, Risks**

In 2018/19 income generated from civil and family fees was approximately £22.6m with the cost of running the courts £28.4m. In all this represented an annual shortfall in funding of c£5.8m. Despite a 10% increase in fees in 2017/18, business volumes increased by 2% and income rose by 8.5% in 2017/18; although it is worth pointing out that this increase must be viewed over a general decline in NICTS business since 2013/14, and 2017/18 was a year of unusually high business volumes (mostly attributed to the Small Claims Court and License Renewals). There has been no evidence that the fee increases introduced so far have resulted in a drop in cases being brought into the court system. Where there has been any reduction in business volumes between 2017/18 and 2018/19, these reductions were either in areas in which 2017/18 business volumes were unusually high (despite a 10% fee increase), or, business volumes have been on a general downward trend for several years (including those years prior to any fee increases).

In terms of those civil and family cases which are non-monetary in nature, court is generally seen as a last resort for individuals. NICTS conducted a court user survey in 2018, in which 72% of respondents stated that if fees were higher; it still would not have made a difference in their decision to go to court.

NICTS accepts that, due to external factors, there is some degree of uncertainty around future caseload volumes and therefore the associated amount of income generated from fees. Two estimates have been prepared, a high estimate and a low estimate: the “high” estimate assumes that over the period 2019/20 to 2021/22 business volumes and case types will remain largely unchanged, while the “low” estimate assumes a continuing decline in business volumes over the same period, as part of a longer term trend.

NICTS considers the “low” estimate to be more realistic and has used this scenario as the basis for estimating the additional benefits of the proposals within the consultation paper. It is not anticipated that the proposals alone will cause a noticeable reduction in the volume of cases coming to court. For the majority of court users, initiating court proceedings is considered to be the final option and therefore it would seem that the fees in many cases do not play a significant part in the decision to go to court; fees also represent a very small percentage of the overall legal costs in any proceedings. Based on evidence, NICTS does not believe an increase in fees will have a material impact on business levels.

Business volumes and other related changes will be closely monitored throughout the life of the project and, in particular, at the end of each financial year when final annual business figures become available. It will be at that point when assumptions will be reviewed and outcomes re-assessed and, where necessary, adjustments made to ensure that no over-recovery of costs can occur.

In terms of specific assumptions, sensitivities and risks for each option these are expanded upon in subsequent sections of this document.

## **Cross Border Issues**

### **How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland)**

NICTS is not alone in seeking to increase fees. The European Commission for the Efficiency of Justice has confirmed that payment of court fees is now a key characteristic of the justice system in many states in Europe: the tax payer is not the only one to finance the system, as the court user is also required to contribute.

#### **Cost recovery of civil and family business overall in other jurisdictions:**

England & Wales – in 2018/19 this was 114% (78% for family business and 133% for civil business)<sup>1</sup>.

Scotland – in 2016/17 and 2017/18 cost recovery was 87% for civil business, with consultation proposals approved to increase fees further from April 2018 to April 2021 in line with Office for Budget Responsibility Consumer Price Inflation Forecasts<sup>2</sup>.

#### **Comparable fees for searches of the Register of Judgments in the Enforcement Judgments Office:**

NICTS Searches (Probate, Divorce – Decree Absolute, Bankruptcy, Queen’s Bench & Chancery) - £26 online and £40 office search in 2019/20, (including the additional 5% general fee increase).

There is no directly comparable service in other jurisdictions; the process for recovering unpaid debt in England, Wales and Scotland works in a very different way. Search fees in other jurisdictions can range from £11 to £65 depending on the type of search being undertaken.

#### **Comparable fees for Lis Pendens and Vacate Lis Pendens:**

Land and Property Services (LPS) Land Registry Fee - £90 when registered via office or £70 online.

It is not possible to make a direct comparison with other jurisdictions as each one adopts a slightly different approach to “lis pendens” type actions. In Northern Ireland the purpose of a Lis Pendens is to put a potential purchaser on notice of litigation but it does not prevent a sale. In the other jurisdictions, this does not apply and an injunction is the preferred option. The fees vary greatly between jurisdictions. The ROI charges €25 for both Lis Pendens and Vacate Lis Pendens, England and Wales charge £100 or £255, depending on whether or not the parties are on notice; Scotland charges £168.

#### **Comparable fees for Case Management Review Hearings in the High Court:**

NICTS introduced processes to support the efficient management of proceedings – and there is currently no fee applied to cover the administrative and judicial costs associated with the new processes. It is not possible to make a direct comparison with other jurisdictions in this area as each jurisdiction adopts a different approach in managing cases through the court.

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<sup>1</sup> Source: HMCTS Annual Report and Accounts 2018/19

<sup>2</sup> Source: Scottish Courts and Tribunals Annual Report and Accounts 2017/18

## **Evidence Base**

### **1.0 Problem under consideration**

NICTS, in common with all Government Departments, is required to adopt a standard approach to setting charges and fees for public services. This is known as the full cost recovery method. NICTS is required to charge fees associated with business in the civil and family courts and, in doing so, is obliged to set fees to reflect the full cost of providing these services. This obligation is laid down in Chapter 6, Fees Levies and Charges, of MPM (NI).

Signs are positive that cost recovery is improving, particularly following the increase in fees put in place in April 2017. The cost recovery position has increased, climbing to 80% at the end of 2018/19 year.

It has been accepted that the first phase of increases in court fees was an interim measure to deliver an immediate improvement in cost recovery, and NICTS made it clear that further increases would be necessary as it attempted to achieve full cost recovery; cost recovery is 80%, which means that DoJ and ultimately taxpayers are required to subsidise the remaining 20%.

NICTS is obliged to consider further options to move towards a full cost recovery position.

### **2.0 Rationale for intervention**

NICTS has reviewed all relevant costs and income streams. Due to the ever challenging financial position in recent years NICTS has made a concerted effort to reduce costs, and achieve efficiencies across the organisation. The achievements of NICTS were clearly documented in the consultation paper "Improving Cost Recovery in the Civil Courts", but it is worth highlighting some of these again. For example, there has been a significant reduction in staff complement of 16% plus a further reduction of 6% in staffing levels through Departmental restructuring. Efficiencies have been achieved through an 89% reduction in leased accommodation through the relocation of staff, alongside a move to shared services, and a reduction in contract expenditure.

Despite these efficiencies NICTS still faces cost pressures, particularly in the context of inflationary constraints as well as lines of expenditure which are not directly controllable, such as judicial salaries and central NICTS HR services etc. That aside, NICTS has an obligation to ensure the best allocation of scarce public resources; charging court fees is a common approach adopted by other court systems worldwide in order to correct for externalities as well as generating income to fund the administration of civil and family justice; both of these effectively contribute to access to justice.

### **3.0 Policy Objective**

In considering an increase in court fees, NICTS will seek to achieve a number of policy objectives:

- to maximise fee income at, or as close as possible to, full cost levels;
- to ensure that the fee charging system is fair, easy to understand and cost effective to administer;
- to ensure the cost recovery model remains viable when patterns of demand change; and,
- to protect access to justice through a system of fee exemptions and remissions.

### **4.0 Policy Options under consideration**

NICTS has recently entered the discovery stage of the NICTS Transformation Portfolio, and this will consider:

- The provision of a modern and affordable Courts and Tribunals Service;
- The most effective service delivery model for court and tribunal business for the next ten years;
- The development of a physical court estate that supports service delivery models;
- The use of digital and other online service delivery channels; and,
- Achieving a sustainable financial operating environment for court and tribunal services and providing the necessary support network for NICTS staff working in a changing environment.



The NICTS Transformation Portfolio will pave the way to a modern NICTS. It will allow NICTS to re-base its running costs. In the interim, it is necessary for NICTS to take action to address the shortfall in its budget by looking at proposals to achieve full cost recovery resulting in further increases in court fees.

### **Option 1, Status Quo – Do not increase fees above those introduced by the 2017 Fees Amendment Orders**

Given the significant and widening gap between costs and fee income, this option would mean that no change over and above the currently planned increases will be considered. Under this option the current recovery position was 80% at the end of 2018/19. Failure to address the cost recovery position will lead to further pressures on an already challenging budget position; and NICTS will be unable to drive forward its key strategic objectives.

#### ***Benefits***

From the taxpayer's perspective, there are no additional benefits arising from this option; court users would continue to enjoy fees that are set at a level below full cost recovery.

#### ***Costs***

Leaving the fee structure as it is would mean that fees for civil business would continue to fall short of the associated costs. This will place further strain on the NICTS budgetary position at a very challenging time. Any shortfall in civil fees would have to be met from within the DoJ and ultimately the taxpayer. Despite the obvious improvement, the status quo option fails to comply with MPM (NI) policy and does not achieve full cost recovery for civil and family court business.

**Option 2 - Increase the 2019/20 planned fee increase from 5% uplift (introduced by the 2017 Fees Amendment Orders) to 10%, increase the fees for searches of the Register of Judgments in the Enforcement of Judgments Office (EJO) to reflect the same rates charged for similar searches within NICTS, create a number of new fees for work that is carried out by NICTS but for which no fee exists, and, make a number of changes to the existing Exemption and Remission policy to ensure it remains fit for purpose.**

This option would involve increasing civil and family court fees by an additional 5% on 1<sup>st</sup> October 2019, aligning the fee for searching the EJO Debt Register with the fees charged for other NICTS search facilities, introducing new fees for services currently provided but for which no fee currently exists, and, make a number of changes to the existing NICTS Exemption and Remission policy.

#### ***Benefits***

This option is estimated to increase cost recovery to approximately 87% by the end of 2020/21 (in comparison to the current position of 80% for the status quo), potentially generating c£2.2m additional income (constant prices, discounted) per annum once fully implemented. Although this would not return NICTS to full compliance with MPM (NI) policy, the additional income generated would further improve its cost recovery performance.

The proposed changes to the Exemption and Remission policy will help to ensure the policy is used properly and reasonably, therefore helping to ensure judicial and court resources are used effectively and efficiently.

#### ***Costs***

The cost recovery position will improve by the end of 2020/21, and this will show further evidence of compliance with MPM (NI) policy, as fee levels increase across all areas of civil and family business. These additional 'costs' will transfer to the court user. The Exemption and Remission Policy will continue to be made available for those in need, as will subsidised fees and civil legal aid. As for Option 1, any shortfall in civil fees would continue to be met by DoJ and the taxpayer. This position maintains the principle that those who use the courts continue to pay for the services received, and it maximises cost recovery within project timescales whilst maintaining access to justice.

## **5.0 Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach)**

NICTS has used data held on court systems on 'issuing parties' in order to estimate the proportion of civil and family court proceedings which are initiated by different user groups, including businesses. It is the issuing party who will pay the court fee and other legal costs associated with initiating court proceedings. The data on issuing parties has been applied to fee data in order to estimate the financial impact on users. It is important to note that NICTS have not been able to access accurate information indicating the party ultimately responsible for covering the cost of civil court proceedings (including insurance companies who indemnify individuals). Therefore NICTS has opted to structure the RIA on an issuing participant basis.

### Overall Impact of proposals

A summary of the court user analysis is presented at Annex A. For some business areas, for example, online searches (particularly with respect to EJO searches in terms of who the search is conducted on behalf of and is estimated to ultimately pay the fee), information on the user group is not recorded on court systems, so it has been necessary to apply a number of assumptions; and this has resulted in the apportionment of financial data across business users on a pro rata basis.

In terms of the overall impact of the fee increase, and introduction of new court fees, the information at Annex A indicates that individuals are the largest group of court users and account for 54% of fee income received through the civil and family courts. Government bodies represent the second highest court user group, with 26% of the court fees generated coming from this area.

NICTS estimates that the remaining approximately 20% of users belong to the businesses community, and the financial impact on this group if the preferred option were to be selected, is estimated at c£0.43m per annum (constant prices, discounted), once fully implemented.

### EJO Register of Judgments - Search Fees

Annex B details the impact of the increase in the EJO search fee based on the average number of searches between 2012/13 and 2017/18. It shows that the key users of the service were businesses (law searchers, solicitors and Government).

Law searchers and solicitors account for over 90% of business volumes, however there is some evidence that the fee is passed directly on to clients; the impact on businesses would appear to be a cash flow issue. NICTS estimates that, if the preferred option is selected then the incremental impact on businesses will be c£0.91m per annum (constant prices, discounted) once fully implemented. It is important to note the increase in the search fee is necessary to align the cost of provision of search fees across the organisation; the impact on businesses is most likely from a cash flow perspective only and it is expected that firms will pass on any increase directly to their clients; so any real financial impact will likely fall to the end consumer.

### Introduction of New Court Fees

Annex C details the impact brought about by creating a number of new fees for work which is carried out by NICTS but for which no fee currently exists. The impact of these proposals on the business sector is estimated to be an additional £38k (constant prices, discounted) per annum from 2020/21 onwards; this estimate is included in the overall impact outlined in Annex A.

Further analysis in relation to business usage and the impact of the policy proposals is included in Section 7.

It should be noted that the data held on issuing parties is sourced from information that has been recorded on NICTS systems for administrative purposes. NICTS considers this a reasonable approach for the purposes of analysing court users and estimating the proportions of fees paid by different user groups, including businesses.

## 6.0 Risks and Assumptions

### Consultation on NICTS fee increase proposals

NICTS ran a public consultation exercise, from 10 December 2018 to 25 February 2019. A wide range of stakeholders were notified about the consultation, including business representative bodies and institutions. In all 16 responses were received, these are detailed in the analysis of consultation responses document to which this impact assessment accompanies.

In preparing the range of options for consideration a number of assumptions have been made:

- a range of options have been selected based on the policy objectives listed in the consultation document;
- as laid down in MPM (NI), each option should aim at working towards fully recovering the cost of providing the services of civil and family court business;
- There will be no price sensitive effect on business volumes, as preliminary findings to date have shown no impact on business volumes and,
- The future forecast of income levels has been determined using a five year income forecast model, with adjustments made, where known, for future business fluctuations. For example, the ongoing reform of legal aid will directly impact on levels of income generated in certain areas of the Courts. There may be further cost efficiencies necessitated by DoJ as part of future budget rounds. The volume of business and the demand for civil court services could be higher or lower, this is all out-with the control of NICTS.

A number of risks have been identified in relation to the proposals. These are summarised in the table below:

| <b>Risk</b>  | <b>Description</b>  |
|--|---|
| Movement in the volume of fees paid and income generated | <p>If there is a significant reduction in the number of civil and family cases, then the amount of fees collected will reduce; this will clearly impact on the level of income generated, adversely impacting on the cost recovery positions (if costs remain unchanged).</p> <p>Countermeasures to address: NICTS will continue to monitor income and volume trends on an ongoing basis in order to inform any further necessary action going forward. It will also continue to review costs to ensure any savings that can be realised are implemented.</p>                     |
| Full cost under-recovery                                 | <p>If NICTS fails to generate enough income to attain a full cost recovery position, then it will continue to be in breach of MPM (NI).</p> <p>Countermeasures to address this: NICTS will continue to monitor income and business volume trends. NICTS will also review all court fees and seek to identify further areas where fees can be introduced for services provided but for which no fee exists. Costs will also be closely scrutinised to ensure that they are controlled and contained and, where further efficiencies can be achieved, they will be implemented.</p> |
| Lack of support from key stakeholders                    | <p>This is the second wave of increases that NICTS will have introduced in the last three years. There is a risk that key stakeholders will not engage with NICTS or withdraw their support from the policy proposals.</p> <p>Countermeasures to address this: NICTS has carried out a full public consultation and also met with several key stakeholders to discuss the rationale between the proposals. The analysis of consultation responses document outlines this in more detail.</p>  |
| Increase in fees could lead to increases in legal aid    | <p>Overall these proposals, if fully implemented, are estimated to have a minor impact on the legal aid budget (estimated to be approximately £60k per</p>  |

|   |   |
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| expenditure   | <p>annum). NICTS will continue to work with Legal Services Agency (NI) (LSANI) officials to fully assess the financial impact.</p> <p>Countermeasures to address this: NICTS will continue to monitor business volumes and ensure that work is completed to assess any financial impact on the legal aid budget.</p>  |
| Ease of implementation  | <p>This is one of the project objectives. If a fee increase is approved changes will need to be made in legislation as well as on internal systems and in communicating increases to all court users.</p> <p>Countermeasures to address this: NICTS has put in place an implementation plan, to include Awareness Seminars for operational staff as well as taking forward an effective communication campaign to advise the public; it will access legal support in order to put in place the necessary legislative changes. This will help ensure the successful and timely roll out of the policy.</p>   |
| <p>Unison v Lord Chancellor [2017] UKSC 51 Judgment regarding Employment Tribunal and Employment Appeal Tribunal court fees charged in HMCTS where fee increases were deemed to be unlawful</p> | <p>NICTS has taken cognisance of the Supreme Court Judgment. It has also conducted some broad affordability research on the NI population which found that, although median household disposable incomes were on a downward trend in real terms since 2008/09, they have recovered over the past few years to reach a new high in 2017/18. Additionally since 2008/09 and, taking into account the most recent round of court fee increases, the total fee increase is predicted to be less than the forecast cumulative increase in Consumer Price Inflation (CPI) by the end of 2019/20. Therefore, from this perspective, court fees have actually decreased in real terms. NICTS Exemption and Remission Policy is in place with the specific objective of facilitating access to justice for those on specific passported benefits or in financial hardship. Civil legal aid and subsidised fees will also remain in place.</p> <p>Despite a 10% increase in fees, business volumes increased by 2% and income rose by 8.5%; although it is worth pointing out that this increase must be viewed over a general decline in NICTS business since 2013/14 and 2017/18 was a year of unusually high business volumes (mostly attributed to the Small Claims Court and License Renewals). There has been no evidence that fee increases introduced so far have resulted in a drop in cases being brought into the court system. Where there has been any reduction in business volumes between 2017/18 and 2018/19, these reductions were either in areas in which 2017/18 business volumes were unusually high (despite a 10% fee increase), or, business volumes have been on a general downward trend for several years (including those years prior to any fee increases).</p> <p>NICTS do not believe that the proposed fee increases will undermine the right of access to the civil and family courts, the proposals do support a legitimate aim and are proportionate between the means employed and the aim sought to be achieved. The Human Rights Impact Assessment connected to this consultation further details this conclusion.</p> |

## **7.0 Direct Costs and Benefits to business**

### **Business Impact/Small Business Impact**

NICTS has estimated that the financial impact of increasing court fees on all court users will be approximately £2.18m to £2.24m (constant prices, discounted) per annum once fully implemented. It is estimated that approximately 20% of court fees are paid for by the business community, so there will be a financial impact on businesses, estimated in the region of £0.43m (constant prices, discounted) per annum from 2020/21 onwards (this being an estimate of the additional court fees paid by businesses once the increases and new court fees are implemented). Data held by NICTS on issuing participants confirms that business users are more prevalent in certain areas such as Small Claims, Licensing, Chancery and EJO.

There is anecdotal evidence to suggest that business users within the Chancery and EJO areas tend to be larger businesses, such as banks and other financial lending institutions. However, NICTS is not able to split the business impact between small, medium and larger businesses as information is neither collected nor held in that manner. There is currently no facility that will enable NICTS to identify such categories using current systems. In respect of the increase of the search fee for the register of judgments some law searcher respondents (who identified themselves as small businesses) contended that the original proposals of immediately linking the fee to bankruptcy search fees would impact their cash flow. In considering this NICTS has opted to mitigate this impact by introducing the fee increase for this on a staged basis (keeping in mind that the fee is in many cases eventually passed onto the end client).

NICTS acknowledges that the proposals could cause cash flow issues for solicitors as court fees must be paid in order to take forward proceedings. A number of solicitors pay fees using prepaid accounts. If court fees increase, or additional fees are introduced, then such prepaid accounts will need to be 'topped up' more frequently. For court users who are legally aided, there is provision for the solicitor to apply for an interim payment, in certain circumstances, from the Legal Aid fund to help alleviate cash flow burdens. This kind of provision is likely to continue.

NICTS introduced an Exemption and Remission Policy in 2007 with the aim of strengthening safeguards to protect access to justice. It should be noted that fee remissions can be applied to sole traders, in addition to individuals, so in theory this provides a safeguard to a particular grouping within the small business category.

The benefits to business of the proposals are more difficult to articulate; but, if the cost of civil court business is met by users of the service rather than through general government funding, then the overall burden to the taxpayer (including business taxation) is lessened. So the proposals are (indirectly) beneficial to businesses that do not use court services. Furthermore as outlined on page 4 (and as per *Unison v Lord Chancellor* [2017] UKSC 51), if court fees are set proportionately in pursuit of a legitimate aim, this could be viewed as a justifiable way of resourcing the justice system, effectively securing access to justice for all its users (including businesses).

## **8.0 Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)**

It should be noted that there will be no change to the groups of court users who are required to pay fees; nor will the court services and processes to which the fees relate, be substantially changed. NICTS recognises that the payment of fees is unpopular and that an increase in court fees will have an impact on court users and other stakeholders including:

*Individuals:* NICTS estimates the largest user group of the Civil and Family Courts is private individuals who are legally represented by a solicitor. In court business areas such as family, divorce and probate, individuals make up the vast majority of court users. Individuals will continue to be protected by Legal Aid coverage, the NICTS Exemption and Remission Policy, and also by the subsidies NICTS offers in some specific areas (e.g. domestic violence). NICTS has completed equality impact screening on the proposals and concluded that, at this time, there is no evidence to suggest the proposed increase to court fees will have any disproportionate impact on Section 75 categories.

*Businesses:* NICTS acknowledges that an increase in court fees will have an impact on businesses within Northern Ireland, but this is not expected to be significant. As per Section 7 above, the annual impact is estimated to be an additional £0.43m per annum (constant prices, discounted), over and above that brought about by the most recent round of court fee increases.

*Other Organisations:* public sector bodies are also court users and are liable to cover the cost of court fees. For example, Land & Property Services (DoF) use the courts and EJO to pursue and enforce unpaid rates bills. The proposed fee increases will therefore indirectly increase public expenditure. Note a separate assessment has been completed in respect of Legal Aid, see below.

*LSANI:* The policy changes are estimated to have a small impact on the legal aid budget (approximately an additional £60k per annum, on top of the 3 year average of circa £420k dedicated to court fees via the legal aid fund). To put this into context, as per the Legal Services Agency Northern Ireland (LSANI) Annual Accounts, 2017/18 civil legal aid expenditure was approximately £41m.

*NICTS:* as indicated in earlier sections, the proposals will enable NICTS to move towards a full cost recovery position and therefore secure a more stable financial position with less reliance on Departmental funding.

*Rural Community:* Preliminary analysis has indicated that approximately 28% of civil and family court users can be classified as rural (the remaining 72% being classified as urban). Therefore, the rural community represents the minority of court users and given the geographic spread of courthouses across Northern Ireland (in terms of physical access to the court system), as well as the availability of the Exemption and Remission Policy, NICTS does not anticipate that the rural community in particular will be disproportionately impacted by the proposals.

*Taxpayer:* the current under recovery position in the civil courts means this service is being partly funded by the taxpayer (via DoJ). The proposals would aim to reduce the annual 'unfunded' pressures, so that ultimately the court users would meet the full cost of using the Courts and Tribunals Service (after allowing for agreed subsidises).

## **9.0 Implementation and Monitoring Arrangements**

NICTS's preferred option is to implement further increases to existing court fees and introduce new fees in October 2019. Court fees are currently set out under the Fees (Amendment) Orders (Northern Ireland) 2017; any changes will require an update to this Secondary Legislation.

In addition to the legislation, NICTS will make changes to their operating systems (Integrated Court Operating System and Enforcement of Judgments Management System) to ensure that the new fee regime is introduced in all areas at the correct time. This will be coupled with awareness training across NICTS fee earning business areas. From an operational level, newly introduced and increased fees could result in some minor procedural adjustments at court offices and public counters.

NICTS recognises the importance of ensuring that robust monitoring and evaluation systems are in place following any fee increase. A benefits realisation plan is in place and specific actions include:

- a review of the effectiveness of the policy in achieving its objectives (detailed on page 1);
- monitoring the levels of fee income and cost recovery performance;
- monitoring user demand (volumes);
- monitoring the level of applications made under the Exemption and Remission Policy; and
- a search for any unintended consequences.

The monitoring and evaluation will be conducted and reported regularly, both internally and externally by NICTS.

With regard to enforcement, the majority 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.

## Annex A – Estimate of Court Fees Paid per annum by Court User Groups

### TOTAL FEE AMOUNT PAID BY CATEGORY

#### Total Impact - Discounted, 2019/20 Prices

| Status Quo Option (000's) | % Split     | 2019/20        | 2020/21        | 2021/22        | Total          |
|---------------------------|-------------|----------------|----------------|----------------|----------------|
| Business                  | 20%         | £4,403         | £4,030         | £3,713         | <b>£12,146</b> |
| Government                | 26%         | £5,770         | £5,282         | £4,867         | <b>£15,918</b> |
| Individuals               | 54%         | £12,144        | £11,117        | £10,243        | <b>£33,504</b> |
| <b>Total</b>              | <b>100%</b> | <b>£22,316</b> | <b>£20,429</b> | <b>£18,823</b> | <b>£61,568</b> |

#### Total Impact - Discounted, 2019/20 Prices

| Preferred Option (000's) | % Split     | 2019/20        | 2020/21        | 2021/22        | Total          |
|--------------------------|-------------|----------------|----------------|----------------|----------------|
| Business                 | 20%         | £4,553         | £4,412         | £4,143         | <b>£13,108</b> |
| Government               | 26%         | £5,967         | £5,782         | £5,430         | <b>£17,179</b> |
| Individuals              | 54%         | £12,559        | £12,169        | £11,428        | <b>£36,157</b> |
| <b>Total</b>             | <b>100%</b> | <b>£23,080</b> | <b>£22,363</b> | <b>£21,001</b> | <b>£66,444</b> |

#### Incremental Impact - Discounted, 2019/20 Prices

| Preferred Option (000's) | % Split     | 2019/20     | 2020/21       | 2021/22       | Total         |
|--------------------------|-------------|-------------|---------------|---------------|---------------|
| Business                 | 20%         | £151        | £382          | £430          | <b>£962</b>   |
| Government               | 26%         | £197        | £500          | £563          | <b>£1,260</b> |
| Individuals              | 54%         | £415        | £1,052        | £1,185        | <b>£2,653</b> |
| <b>Total</b>             | <b>100%</b> | <b>£763</b> | <b>£1,934</b> | <b>£2,178</b> | <b>£4,875</b> |

Source: Integrated Court Operating System (ICOS), Enforcement of Judgments Office System (JEMS)<sup>3</sup>

Data based on current future income forecasts. Estimates in future years are discounted values in 2019/20 prices.

Note: Figures are rounded.

<sup>3</sup> Analysis is based on data held on the NICTS operating systems which record the category of issuing participants/customer group. This data has been recorded for administrative purposes and is not part of NICTS official statistics (therefore it has not been validated by the NICTS to ensure accuracy). The data on issuing participants/customer group has been combined with data on fee receipts in order to estimate the proportion of court fees (and fee increases) which will be incurred by businesses and other court users.



## Annex B – Cash Flow Analysis for EJO Register of Judgments Search Fees

### TOTAL FEE AMOUNT PAID BY CATEGORY

#### Total Impact - Discounted, 2019/20 Prices

| Option 1 (000's) | % Split     | 2019/20     | 2020/21     | 2021/22     | Total         |
|------------------|-------------|-------------|-------------|-------------|---------------|
| Business         | 99%         | £745        | £707        | £670        | <b>£2,121</b> |
| Government       | 1%          | £10         | £9          | £9          | <b>£29</b>    |
| Individuals      | 0%          | £0          | £0          | £0          | <b>£0</b>     |
| <b>Total</b>     | <b>100%</b> | <b>£755</b> | <b>£716</b> | <b>£679</b> | <b>£2,150</b> |

#### Total Impact - Discounted, 2019/20 Prices

| Preferred Option (000's) | % Split     | 2019/20     | 2020/21       | 2021/22       | Total         |
|--------------------------|-------------|-------------|---------------|---------------|---------------|
| Business                 | 99%         | £779        | £1,285        | £1,583        | <b>£3,647</b> |
| Government               | 1%          | £10         | £17           | £21           | <b>£49</b>    |
| Individuals              | 0%          | £0          | £0            | £0            | <b>£0</b>     |
| <b>Total</b>             | <b>100%</b> | <b>£789</b> | <b>£1,302</b> | <b>£1,604</b> | <b>£3,696</b> |

#### Incremental Impact - Discounted, 2019/20 Prices

| Preferred Option (000's) | % Split     | 2019/20    | 2020/21     | 2021/22     | Total         |
|--------------------------|-------------|------------|-------------|-------------|---------------|
| Businesses               | 99%         | £34        | £578        | £913        | <b>£1,525</b> |
| Government               | 1%          | £0         | £8          | £12         | <b>£20</b>    |
| Individuals              | 0%          | £0         | £0          | £0          | <b>£0</b>     |
| <b>Total</b>             | <b>100%</b> | <b>£34</b> | <b>£586</b> | <b>£926</b> | <b>£1,546</b> |

Note: Figures are rounded.

## Annex C – Estimate of Fee Income Generated from Creation of New Court Fees

| Proposed Introduction of New Fee Structures – Preferred Option (£ 000's) | Court User   | % Split     | 2019/20     | 2020/21     | 2021/22     | Total       |
|--|--------------|-------------|-------------|-------------|-------------|-------------|
| Case Management Review Hearings and Commercial Transfer Fee              | Business     | 10%         | £20         | £39         | £37         | <b>£95</b>  |
|  | Government   | 1%          | £2          | £4          | £3          | <b>£9</b>   |
|  | Individuals  | 88%         | £173        | £328        | £311        | <b>£813</b> |
|  | <b>Total</b> | <b>100%</b> | <b>£196</b> | <b>£372</b> | <b>£353</b> | <b>£921</b> |
| Lis Pendens/Vacate Lis Pendens   | Business     | 45%         | £1          | £1          | £1          | <b>£4</b>   |
|  | Government   | 0%          | £0          | £0          | £0          | <b>£0</b>   |
|  | Individuals  | 55%         | £1          | £2          | £2          | <b>£4</b>   |
|  | <b>Total</b> | <b>100%</b> | <b>£2</b>   | <b>£3</b>   | <b>£3</b>   | <b>£8</b>   |
| <b>Total</b>   | Business     |             | £21         | £40         | £38         | <b>£99</b>  |
|  | Government   |             | £2          | £4          | £3          | <b>£9</b>   |
|  | Individuals  |             | £174        | £330        | £313        | <b>£817</b> |
|  | <b>Total</b> |             | <b>£197</b> | <b>£374</b> | <b>£354</b> | <b>£925</b> |

Note: Figures are rounded.