

Title: Reduce court fees where HMCTS is currently over-recovering. IA No: MoJ060/2020 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS)	Impact assessment (IA)			
	Date: 6 July 2020			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: mojfeespolicy@Justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
£0	N/A	N/A	Not in scope	Not a regulatory provision

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

The Ministry of Justice (MoJ) has undertaken a review of the fees charged for proceedings in the civil and family courts compared with the costs of those proceedings. This review, using data for 2018/19, identified a number of fees charged in the County Court, Family Court, Magistrates' Court, Probate and High Court (for a full list see Annex A) that are currently set above the full costs of those proceedings without the necessary parliamentary authority. Prompt Government intervention is necessary to reduce these fees to cost-recovery level using the power to set fees (s. 92 Courts Act 2003).

What are the policy objectives and the intended effects?

The policy objective is to set fees at full cost recovery level for these proceedings and applications, and the intended effect of the policy is therefore to reduce the fees for those affected services to cost-recovery level.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option.

The following options are considered in this Impact Assessment (IA):

- Option 0: Do Nothing. Maintain the current fee structure.
- Option 1: Reduce court fees where HMCTS is currently over-recovering.

The Government's preferred option is to implement Option 1. The fees which are the subject of the Statutory Instrument (SI) are currently above cost without explicit Parliamentary authority and immediate action is necessary to ensure the fees are prescribed lawfully. To deliver this, an SI is necessary to reduce the fees to the correct level.

Will the policy be reviewed? Fees are regularly reviewed as part of the internal ongoing monitoring process. If applicable, set review date: N/A

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 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: Chris Philp Date: 7/7/2020

Summary: Analysis and Evidence

Policy Option 1

Description: Reduce court fees where MoJ are currently over-recovering.

Price Base Year 2020/21	PV Base Year 2020/21	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1	N/A	N/A
High			N/A	N/A
Best Estimate	£0		N/A	£0

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

The ongoing cost to MoJ from lowering the fees is estimated to be around £1.3m-£1.6m per annum (annual average in 2020/21 prices). This is lost income that would have been received from court users, but as it represents a direct transfer from HMCTS to court users it does not form part of the NPV.

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

There are 9 fees where the cost of service has been obtained by grouping that fee with another or by estimating the cost using a similar service. Volumes are not available for these fees and so the loss of income cannot be monetised for these particular fees.

There may be some minor transitional costs to HMCTS (from making minor adjustments to IT systems and reissuing forms and guidance). There may also be costs related to familiarisation with the reduced fees for HMCTS staff, legal professionals, and customers. These costs cannot be monetised, but are expected to be minimal.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1	N/A	N/A
High			N/A	N/A
Best Estimate	0		N/A	None

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

On an on-going basis, users of these court services would benefit from the lower fees by around £1.3m-£1.6m per annum (annual average in 2020/21 prices).

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

None.

Key assumptions/sensitivities/risks

- The loss of income is based upon fee volumes for 2018/19. These will fluctuate over the appraisal period and will be particularly affected by court closures during the Covid-19 pandemic and the social distancing measures in place in 2020/21. As fee volumes are uncertain a range of 10% above and below 2018/19 volumes has been modelled.
- As the fee changes are of low monetary value and are generally incurred once a case has been issued it is assumed that the fee changes will not impact on demand.
- The fees have been set to their estimated cost in 2020/21 and rounded down to the nearest whole pound. HMCTS planning inflation rates have been used to uprate the 2018/19 unit costs to 2020/21.
- It is assumed that there will be no change to the fee levels over the appraisal period.
- Remissions have been applied to the estimates of gross income.

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

Evidence Base

A. Background

1. HM Courts and Tribunals Service (HMCTS) delivers a benefit for courts users and the general public by providing a place where people can enforce and defend their rights. A large number of people use the services of HMCTS every year. Whether it be disputing parents in a family court, a vulnerable witness to a crime, or someone appealing a benefits decision, people interact with HMCTS at some of the most difficult times in their lives.
2. Fees are an important source of funding for the courts, and a reasonable means of making resources available to secure access to justice. This is because an effective court service needs to be funded appropriately in order to protect access to justice in the longer term. Under s92 of the Courts Act 2003, the Lord Chancellor has the power to prescribe fees which helps to ensure he fulfils his statutory duty to ensure *an efficient and effective courts system*.¹
3. Within HMCTS, there are over 300 separate fees charged for civil and family proceedings in the courts of England and Wales. Because the Ministry of Justice (MoJ) takes access to justice seriously it therefore conducts reviews of court fees and has undertaken an exercise to map each fee to the cost of that particular service using volume and cost data for 2018/19. This mapping exercise has identified a number of fees which have recovered above cost without the necessary Parliamentary approval.
4. The Government has decided to reduce these fees to cost-recovery level. This is driven by the general legal principle that court fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval. Presently, the only fees that may be set at a level that exceeds costs are those set under the enhanced fee power (section 180 of the Anti-social Behaviour, Crime and Policing Act 2014).
5. Annex A provides full details of the fees which are currently set above full cost recovery levels. In summary, these fees relate to:
 - i. Certain proceedings in the County, Family and Magistrates Courts;
 - ii. Probate proceedings: settling documents, applications for the entry or extension of a caveat, and a standing search.
 - iii. Issue of a warrant for the arrest of a ship or goods.

This IA is concerned with those fees where, following a review of costs, it has been identified that HMCTS is charging above cost without Parliamentary approval.

6. This Impact Assessment (IA) describes the impacts of the proposed fee changes.

B. Policy Rationale and Objectives

7. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
8. In this case however, the principal rationale for intervention is legal compliance. The fees charged by HMCTS are driven by the general legal principle that court fees should not be set at a level that exceeds

¹ 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.

the cost of the service provided without express Parliamentary approval. If no action is taken, the Government would therefore be acting unlawfully.

9. Likewise, the normal rule, set out in *Managing Public Money*², is that fees to access public services should be set at a level designed to recover the full cost, but no more, of those services. Our review of unit costs based on the 2018-19 accounts has identified that some of these fees are above cost.
10. Our policy objective is therefore to ensure that these fees are set in accordance with the legislation under which they are made (i.e. section 92 of the Courts Act 2003). Full details of the changes are set out in Annex A.

C. Description of Options Considered

11. To meet these policy objectives, the following options are considered in this Impact Assessment (IA):

- **Option 0 – Do Nothing. Maintain the current fee structure.**
- **Option 1 – Reduce court fees to full cost-recovery level for those services for which HMCTS is currently over-recovering.**

12. Option 1 is the Government's preferred option as immediate action is required to regularise the currently unlawful fees.

Option 0

13. Under the Do Nothing option the current fee structure would remain in place.

14. While the fees under consideration for change were set on a lawful basis in line with data available at that time, the latest HMCTS costs analysis shows they are currently set above full cost recovery levels without express Parliamentary approval. If no action is taken, the Government would therefore be acting unlawfully.

Option 1

15. Under this option, a new fee structure will be introduced at cost-recovery level for the services set out in Annex A.

16. These fee changes are driven by the general legal principle that court fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval.

17. The new fees have been set at expected cost recovery levels for 2020/21. HMCTS inflation planning rates have been used to uprate the cost of service that has been mapped to each fee for 2018/19.

D. Affected Stakeholder Groups, Organisations and Sectors

18. The options assessed in this IA will primarily affect users of the services where fees are changing. A list of all the main groups that would be affected is shown below:

- HMCTS users – those who use the services for which fees in Annex A are changed. Such court users include individuals, Local Authorities, and businesses;
- HMCTS – who operate the services;
- Taxpayers – who subsidise HMCTS as overall HMCTS income falls below its overall costs;
- Legal services providers – who provide services to users of HMCTS;
- MoJ – who sponsor HMCTS (which provides the services for which fees are charged).

² 'Managing Public Money', Chapter 6 (Fees, Charges and Levies). July 2013.

E. Cost and Benefit Analysis

19. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
20. 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 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.
21. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario, where fees are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

Key Assumptions

22. The impacts described in this IA are based on modelling and assumptions. These are described below. The risks associated with these assumptions are described in section F.

Methodology

23. Each fee charged in the civil courts in England and Wales has been mapped to the respective cost of that service for 2018/19. For some fees it has not been possible to estimate a direct cost and volume and so the fee has been mapped to a cost that includes that fee amongst another fee(s); in some other cases the cost has been approximated using the cost of a similar service that is directly mapped to a different fee.
24. The cost of the service (“unit cost”) in 2018/19 has been uprated using HMCTS planning rates of inflation to create a “2020/21 unit cost”. The fees listed in annex A have been found to be over recovering when compared with this unit cost and will be reduced to 2020/21 recovery levels. These unit costs and fee levels can all be viewed in annex A.
25. The change in fee income from Option 1 has been assessed using volumes for 2018/19. In order to calculate the impact on HMCTS fee income, the change in fee has been multiplied by the expected volumes of users of the service for each fee that is to change. Where a fee has been grouped or approximated by another fee it is not possible to assign a volume to this fee.
26. Volumes are expected to vary over the appraisal period. The reduction in court services during the 2020/21 Covid-19 social distancing measures is likely to lead to a particular reduction in volumes for some fees, although it is difficult to know at this stage the impact this could have on volumes in the longer-term. Due to the uncertainty in the volumes for the respective fees, a 10% range has been applied to the 2018/19 volumes.
27. The results are presented using a ten-year appraisal period to show the impacts in steady state.

Remissions

28. We assume that the current fee remissions scheme will remain in place and that eligibility for remissions remains unchanged.
29. A remissions rate has been applied to account for instances where court users are exempt from paying a fee. Income is not collected in these cases and thus it is subtracted from the total income. Remissions have been estimated according to the overall remission rate for a court and the proportion of individuals (rather than organisations) estimated to be paying a particular fee, as remissions are generally only available to individuals. The remission rates have been calculated from 2018/19 data. The remission rates are assumed to remain constant at 2018/19 levels over the ten-year appraisal period.

Fee Income

30. Table 1 gives the loss in fee income from the new fees for a range of scenarios. If volumes remain at 2018/19 levels then the loss of fee income would be £1.6m; this ranges from £1.4m to £1.8m if volumes were to increase or decrease by 10% from their 2018/19 base.

31. Table 1 gives the nominal annual income from the fees to be changed. As fees do not keep track with inflation the annual average will fall over time when measured in 2020/21 prices.

Table 1: Annual Nominal Income from fees to be amended, £millions

Fee Volume	Income at current Fees	Income with revised Fees	Lost Income
2018/19 Volume	£3.7	£2.1	£1.6
10% reduction	£3.4	£1.9	£1.4
10% increase	£4.1	£2.4	£1.8

Net Present Value

32. The NPV is calculated over a ten-year period, under the assumption that the proposed fees do not increase in line with inflation. The fee changes are not included in the overall NPV as they represent a transfer payment between the individuals who use court services and HMCTS.

Option 1 – Reduce fees to cost-recovery levels for those services for which HMCTS is currently over-recovering.

Costs of Option 1

Transitional costs

HMCTS

33. HMCTS is expected to incur minor costs from amendments to IT systems, staff guidance and publications for the public. There may also be costs related to HMCTS staff having to familiarise themselves with the new fees. These are expected to be minimal and have not been monetised.

HMCTS users and the providers of legal services

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

Ongoing costs

MoJ

35. The fee changes will be introduced on 3 August 2020. We estimate that MoJ will face a loss in income of £1m-£1.2m in 2020/21, the first eight months of the fee change, and £1.3m-£1.6m per annum after that (averaged over the remaining 9 years of the appraisal period and in 2020/21 prices).

Benefits of Option 1

Transitional Benefits

36. No transitional benefits are expected.

Ongoing benefits

Users of HMCTS services

37. As a result of the fee changes, we estimate that HMCTS users will benefit by around £1m-£1.2m in 2020/21, the first eight months of the fee change, and £1.3m-£1.6m per annum after that (averaged over the remaining nine years of the appraisal period and in 2020/21 prices).

Net impact of Option 1

38. HMCTS is expected to incur small transitional costs from implementing the new fee amounts. Individuals and legal service providers are expected to incur negligible costs from familiarising themselves with the new fee structure.
39. On an ongoing basis the change in fees is expected to result in a loss of fee income of around £1.3m-£1.6m in 2020/21 prices. This cost to MoJ will be offset by the benefit to HMCTS users, and therefore the ongoing net impact of this proposal is expected to be minimal.

F. Risks and Sensitivity Analysis

40. 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.

Demand

41. Court user behaviour (demand) may change in response to changes in court fees. Most of the fee changes considered in this IA are of low monetary value (<£50) and so are not expected to lead to a significant rise in demand. In addition, many of the fees to be changed are for applications within proceedings or enforcement and would be charged once a case is in process, rather than at issue, and so are less likely to impact on the decision to proceed.
42. There are two fees where the reduction is over £100: “on the issue of a warrant for the arrest of a ship or goods”, a reduction from £225 to £18; and “On the filing of a request for detailed assessment where the party filing the request is legally aided”, a reduction from £200 to £94. These fee reductions are not expected to lead to a rise in demand due to the nature of the fees in question. In the case of the “warrant for the arrest of a ship or goods”, the current fee (£225) would probably be very small in proportion to the value of the claim and so would not be expected to affect the decision to proceed. In the case of the second fee, the “detailed assessment where the party filing the request is legally aided”, this would come at the end of a case and would be covered under legal aid so it is unlikely that the current fee is acting as a deterrent.

G. Enforcement and Implementation

43. 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.

H. Monitoring and Evaluation

44. These fees were identified as over-recovering as part of the monitoring framework implemented by the MoJ to ensure that fees are charged at the correct level. The MoJ will continue to conduct these reviews in future.

I. Better Regulation

45. This measure is not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and so does not score against the department's business impact target.

J. Equality impacts

46. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

47. In line with our obligations under the Public Sector Equality Duty (PSED) our assessment is that the proposed changes to fees are unlikely to result in any discrimination, particularly since the reductions would apply equally to all court users and be unlikely to result in any particular disadvantage. The setting of fees at full cost recovery level for the proceedings and applications in scope will reduce fees for all those using the affected services. We do not consider the proposals are likely to have a particular effect on advancing equality of opportunity or fostering good relations.

Annex A: Schedule of fees set above cost without Parliamentary approval

Fee	Description	Current Fee	Unit Cost 18/19	Unit Cost 20/21	Proposed Fee	Volume 18/19
Civil Proceedings Fees Order 2008						
2. General Fees (High Court and County Court)						
2.6	Application for summons or order for witness to attend court	£50	£21	£22	£21	26,365
2.7	Application to vary a judgment or suspend enforcement	£50	£14	£14	£14	9,711
2.8	Issue of a certificate of satisfaction	£15	£13	£14	£14	76,338
3. Companies Act 1985, Companies Act 2006 and Insolvency Act 1986 (High Court and County Court)						
3.9	Submission of nominee's report	£50	£34	£35	£35	n/a
3.10	Filing insolvency documents	£50	£34	£35	£35	n/a
11. Fees Payable In Admiralty Matters in the Admiralty Registrar and Marshal's Office						
11.1	Issue of a warrant for the arrest of a ship or goods	£225	£18	£19	£18	n/a
Family Proceedings Fees Order 2008						
2. Applications under the Children Act 1989 or, where specified, the Social Services and Well-being (Wales) Act 2014						
2.1(u)	Amendment of enforcement order by reason of change of address (paragraph 5(2) of Schedule A1)	£95	£69	£72	£72	n/a
9. Determination of Costs						
9.1	On the filing of a request for detailed assessment where the party filing the request is legally aided	£200	£90	£94	£94	n/a
12. Enforcement						
12.2	Application for a third party debt order/appointment of a receiver	£100	£74	£77	£77	n/a
12.3	Application for a charging order	£100	£37	£39	£38	n/a
12.4	Application for a judgment summons	£100	£70	£74	£73	n/a
12.5	Application for an attachment of earnings order - Family	£100	£33	£35	£34	n/a
15. Service						
15.1	Request for service by a bailiff of document (see order for exceptions)	£110	£44	£46	£45	1,849
Magistrates' Courts Fees Order 2008						
2.2	Appeal (deduction from earnings order)	£100	£19	£19	£19	8
4.2	Application for liability order (Child Support Act 1991)	£40	£24	£26	£25	17,577
Non-Contentious Probate Fees Order 2004						
4	Application for the entry or extension of a caveat	£20	£3	£3	£3	5,582
5	Application for a standing search	£10	£3	£3	£3	2,184
11	Settling documents	£12	£4	£4	£4	9,874

Note: unit costs have been rounded to the nearest whole pound; fees have been rounded down rather than up to the nearest pound, to avoid over-recovery; where a fee has been grouped or approximated by another fee it is not possible to assign a volume to this fee and this is recorded as n/a in the table.