

<b>Title:</b> <b>Court Fee Increases 2023-2024 –Uplifting fees by inflation.</b>	<b>Regulatory Impact Assessment (RIA)</b>
	<b>Date: 9 October 2023</b>
	<b>Type of measure:</b> Secondary Legislation
<b>Lead department or agency:</b> <b>Department of Justice (DoJ)</b>	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic NI
<b>Other departments or agencies:</b> <b>Northern Ireland Courts and Tribunals Service (NICTS)</b>	<b>Contact details:</b> <a href="mailto:feeconsultation@courtsni.gov.uk">feeconsultation@courtsni.gov.uk</a>

## Summary Intervention and Options

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

NICTS in accordance 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)). The guidance states that fees set by Government Departments should cover the full cost associated with providing a particular service – often referred to as the ‘full cost recovery method.’

The last increase to Civil and Family court fees in Northern Ireland was four years ago in October 2019<sup>1</sup> and at that time, in response to the public consultation that accompanied the increase, NICTS stated that it was our long-term intention to move to annual inflationary uplifts to court fees. However, the impact of the Covid-19 Pandemic prevented the planned increase in fees being implemented, meanwhile costs within the agency have continued to rise due to increasing inflationary pressures.

NICTS aims to achieve full cost recovery from the fees charged across civil and family court services, however cost recovery for 2022-23 continues to fall short of this target at c83%, resulting in the DoJ and the taxpayer having to subsidise this shortfall.

Government intervention is therefore considered necessary to address this shortfall along with the associated implications for DoJ and the taxpayer. NICTS is aware that increasing fees by a level that would keep pace with inflation would require a significant increase to civil fees and therefore, whilst considering the implications of the wider economic climate, NICTS proposes a phased approach with an increase to all court fees (excluding variable fees) of 9% during the 2023-24 year followed by a further 9% in 2024-25.

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

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

- To improve the financial sustainability of the justice system by maximising cost recovery and affordability by end 2025-26
- To increase revenue from court fees while still ensuring affordability for users.
- Continue to support access to justice for low-income individuals.

In the consultation response report that accompanied the last fee increase in October 2019, NICTS pledged to move towards annual inflationary uplifts to court fees. However, due to the impact of the Covid-19 Pandemic, the planned increase in fees was delayed and the Agency’s costs have continued to rise with inflation since 2019. As a result, an uplift in fees is now overdue. To ensure they could provide feedback on the fee increase in 2023-24, NICTS wrote to key stakeholders, outlining why the fee increases are necessary. In summary, stakeholder engagement set out the proposal to increase fees in the context of the current position of under-recovery, diminishing financial resources and rising costs facing the agency given recent inflationary pressures. NICTS’ main aim is to strive to meet the full cost recovery requirements whilst ensuring access to justice for all court users.

<sup>1</sup> Prior to this NICTS introduced fee increases in two phases; Phase 1 resulted in annual increases of 10%/7.5%/5% applied over the period 2017 to 2019 and Phase 2 applied a further 5% increase in October 2019.

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

NICTS has considered several options on how best to resolve the issue of under-recovery. These following options are considered in this Impact Assessment:

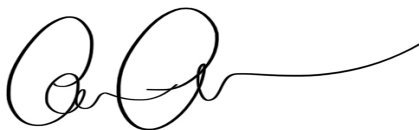
- **Option 1** – Status Quo – fees will remain at current rates, as introduced by the 2019 Fees Amendment Orders.
- **Option 2** – Do something - A two-year phased increase in the fees charged for civil and family court business (excluding variable fees) with a 9% uplift on fees to be applied from 1 November 2023 and a further 9% uplift from 1 October 2024.

Option 2 is the preferred option given that the fees are set at such a level that they comply as much as possible with MPM (NI) policy whilst maintaining access to justice via the availability of the NICTS Exemption and Remission Policy, and the payoff structures have not been affected in such a way as to render it futile/irrational to pursue court cases. This meets the objectives of the policy.

<b>Will the policy be reviewed?</b> Yes – on a regular basis to monitor the levels of income raised as well as 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.	<b>If applicable, set review date:</b> A full Post Project Evaluation (PPE) will be carried out in September 2026
--	---

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 £7.2m additional income generated (2023-24 prices) by the end of 2025-26,	Approximately £3.6m additional (2023-24 prices) income generation per annum by end 2025-26.		N/A as inflationary uplift only	
<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> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Small</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Medium</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Large</b> 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: 9 October 2023

**Glyn Capper  
Acting Director**

## Summary: Analysis and Evidence

Description: **Option 2 (preferred option)**

### ECONOMIC ASSESSMENT

<b>Costs (£m)</b>	<b>Total Transitional (Policy)</b>		<b>Average Annual (recurring)</b>	<b>Total Cost</b>
	(constant price)	Years	(excl. transitional) (constant price)	(Present Value)
<b>Best Estimate</b>	<b>N/A</b>		<b>N/A</b>	<b>N/A</b>
<p><b>Description and scale of key monetised costs by ‘main affected groups’</b></p> <p>Overall, benefits will be achieved from the proposal through the generation of additional fee income to fund the civil and family courts. However, this will result in additional costs to private individuals, businesses and other organisations who initiate court proceedings; the cost to court users is the same as the benefit to NICTS and is estimated in the Benefits Table below. It is also worth highlighting that a large proportion of our customers, irrespective of their role in the proceedings or the court venue, do not necessarily want to be involved in court proceedings. Whether they are defendants or victims in criminal cases, victims of domestic violence, families navigating breakdown/divorce or parents of children involved in care proceedings. Even in civil proceedings, generally most court users do not relish the idea of coming to court. Court is viewed very much as a last resort.</p> <p>Based on our preliminary findings and given that court fees in many cases account for a small percentage of overall legal costs, NICTS does not believe the policy changes will have a material impact on either business or the volume of work being brought to court.</p> <p>Key groups affected are court users as follows:</p> <ul style="list-style-type: none"> <li>- Individuals</li> <li>- Business (including insurance companies)</li> <li>- Legal Profession</li> <li>- Government organisations (including Legal Services Agency NI)</li> </ul> <p>There will be some transitional costs to NICTS from adjusting the IT systems for the new fees. These are expected to be minor at no more than £3,000; such costs are relatively low and are not included in this Economic Assessment which estimates costs and benefits to the nearest hundred thousand.</p>				
<p><b>Other key non-monetised costs by ‘main affected groups’</b></p> <p>With respect to the main affected groups, the non-monetised costs are the potential for inadequate communication between NICTS and stakeholders and a potential lack of knowledge and understanding surrounding policy changes. NICTS has taken effort to mitigate these non-monetised costs through the stakeholder engagement process; key stakeholders - the Law Society of NI, the Bar NI, the Legal Services Agency NI, the Lady Chief Justice - have been written to and their views on the proposals have been sought. Meetings with key stakeholders were also held to discuss the rationale behind the fee proposals. Furthermore, NICTS will contact key stakeholders in advance of the implementation of these measures.</p>				
<b>Benefits (£m)</b>	<b>Total Transitional (Policy)</b>		<b>Average Annual (recurring)</b>	<b>Total Benefit</b>
	(constant price)	Years	(excl. transitional) (constant price)	(Present Value)
<b>Best Estimate</b>	<b>N/A</b>		<b>N/A</b>	<b>£7.2m</b>

### **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£5m), 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. The 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 three years and is summarised in the Benefits Table above. The total additional income is expected to be c£7.2m depending on the volume of business over the period, assuming 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 in 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 Tribunals 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 that:

*“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 the economic viewpoint the application of full cost recovery is to correct for externalities. Externalities exist in this case 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 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 family and children’s cases and, applications arising from domestic violence related matters are taken out of the charging regime altogether. On average, NICTS provides financial assistance to over 11,000 applications annually.

Taking all of this into account, NICTS has determined that, if court fees are set correctly, 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 NICTS Exemption and Remission Policy; the achievement of both these objectives is considered to enhance access to justice overall, rather than cause any impairment.

The implementation of the increase to court fees will generate additional income ensuring that NICTS are recovering more of their associated costs by the end of 2025-26. This will enhance the financial stability of the NICTS facilitating in better resource allocation whilst ensuring that public funds are expended judiciously and so will enhance compliance with MPM (NI).

Additionally, through the implementation of increased court fees, a substantial portion of funding required for the NICTS operations will be sourced from fees paid by court users. This re-distribution of financial responsibility will lead to a reduced reliance on the taxpayer which will contribute to a more equitable distribution of costs associated with legal proceedings as well as mitigating any potential risk of cuts in NICTS’ service delivery because of reduced funding pressures.

## Key Assumptions, Sensitivities, Risks

In 2022-23, revenue generated from civil and family fees was approximately £25m with the full cost of running the civil and family courts at £30m. In all, this represented an annual shortfall of £5m. The cost recovery achieved in 2019-20 was 76% however, the cost recovery would have deteriorated significantly to 61% by the end of the 2019-20 if the previous fee increases had not been implemented. It is recognised that while the Phase 1 fee increases had a positive effect and allowed for the deterioration of the cost recovery position to be stymied, further action was required in order to achieve full cost recovery.

The Phase 2 changes to court fees were established to generate additional income and resulted in an improved cost recovery of 73% by 2021-22 financial year. Whilst Phase 2 increases helped alleviate the shortfall in cost recovery, the cost recovery rate of 2022-23 was 83%.

Increasing inflationary pressures and associated running costs have increased the costs associated with running the courts. Therefore, NICTS deems it necessary to increase fees by 9% in 2023-24 and by a further 9% in 2024-25 to alleviate these inflationary pressures and to bring the NICTS closer to achieving full cost recovery.

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. In terms of those civil and family cases which are non-monetary in nature, court is generally seen as a last resort. NICTS conducted a court user survey in 2018, in which 72% respondents stated that if fees were higher, it would still not have made a difference in their decision to go to court. These findings are to be expected as we can think of court services as having an *inelastic price elasticity of demand* because of the necessary nature of court services. Goods or services that are deemed as necessities often have an inelastic price elasticity of demand meaning that as the price or cost of these necessary goods/services increases, there will be a *less* than proportional reduction in the demand for these goods and services.

NICTS accepts that, due to external factors, there is some degree of uncertainty around future caseload volumes and consequently uncertainty as to the expected levels of income generated from fees. Covid-19 had a significant impact on the volumes of business being brought to court in 2020-21 and 2021-22.

As such, the 2022-23 volumes shown in [Annex 1](#) have been used as the basis for estimating the additional benefits of the proposal.

Business volumes and other related changes will be closely monitored throughout the life of the project and at the end of each financial year when final 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 risk for each option these are expanded upon in subsequent sections of this document.

## BUSINESS ASSESSMENT

<b>Direct Impact on business (Equivalent Annual)</b>			
<b>Costs: £0.7m (23/24 prices)</b>	<b>Benefits: N/A</b>		

## Cross Border Issues

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

NICTS is not alone in seeking to increase court fees. In 2022 the Scottish Government announced a 3-year increase of 2% each year to court fees in the Scottish Court Service over the period up to 2025. Similarly, in 2021 Ministry of Justice (MOJ) launched a consultation "Increasing selected court fees and Help with Fees income thresholds by inflation" which aimed to uplift selected court fees with Consumer Price Index (CPI) inflation from August 2016 through to August 2021. Following the consultation, court fees in England and Wales were increased in September 2021. The MOJ has recently announced plans to launch a consultation in November 2023 which will propose inflation-based increases of 10% to most HMCTS fees.

# Evidence Base

## 1 - 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 set out in Chapter 6, Fees and Levies Charges of MPM (NI).

Signs are positive that the cost recovery is improving, particularly following the increase in fees put in place in 2019, with the cost recovery position of 2022-23 of 83%.

It has been accepted that the first and second phases of fee increases were an interim measure to deliver an immediate improvement in cost recovery, however NICTS made it clear that further increases would be necessary as it attempted to achieve full cost recovery. Cost recovery is currently 83% and because of increasing inflationary pressures this proposed fee increase seeks to address the DoJ and ultimately taxpayers subsidising the remaining funding gap.

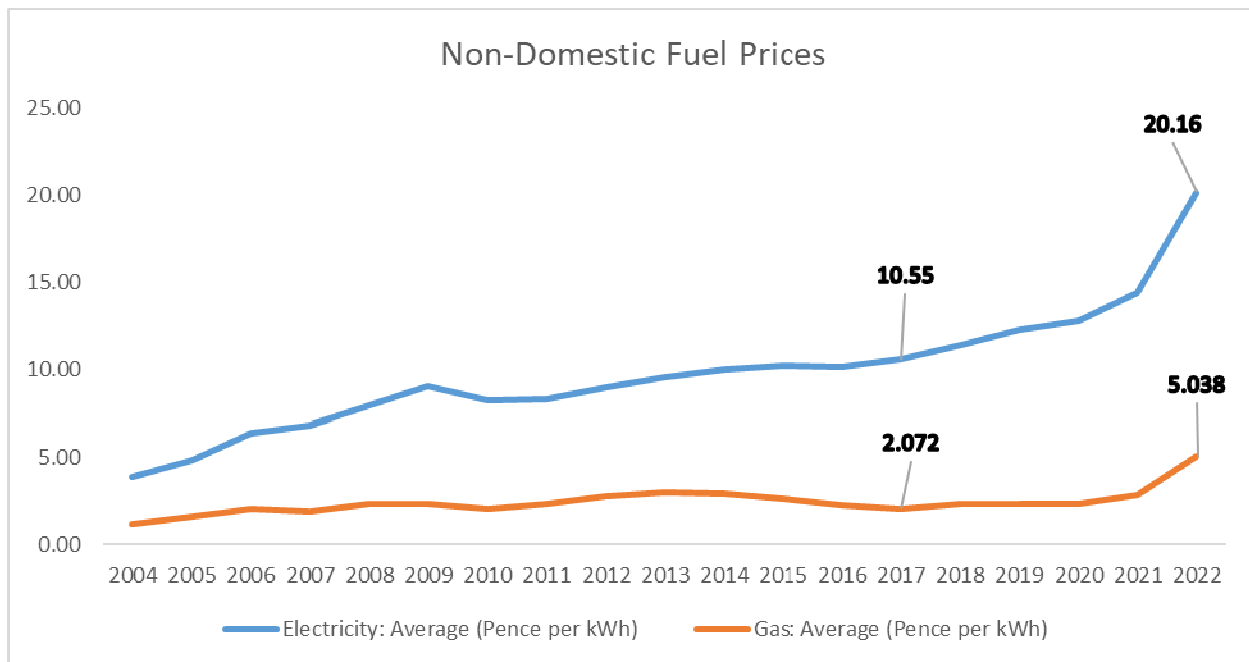
NICTS is obliged to consider further options to move towards a full cost recovery position.

## 2 - Rationale for intervention

NICTS has reviewed all relevant costs and income streams. Due to the ever-challenging financial position in recent years as a result of inflationary pressures, and lines of expenditure which are not directly controllable such as judicial salaries and central NICSHR services, NICTS has made concerted efforts to reduce costs and achieve efficiencies across the organisation. Despite these efforts NICTS faces ongoing cost and budget pressures most notably in contracted out services such as IT and court security, judicial and staff salaries, and energy costs.

As is seen in Figure 1, there has been a significant increase in non-domestic fuel prices. From 2017, electricity and gas prices in pence per kWh increased from 10.55p and 2.07p respectively to 20.16p and 5.04p respectively in 2022. This increase measured a 91% and 143% in the price of electricity and gas respectively from 2017 to 2022. This undoubtedly puts significant pressure on NICTS when considering the delivery of services within financial baselines.

Figure 1

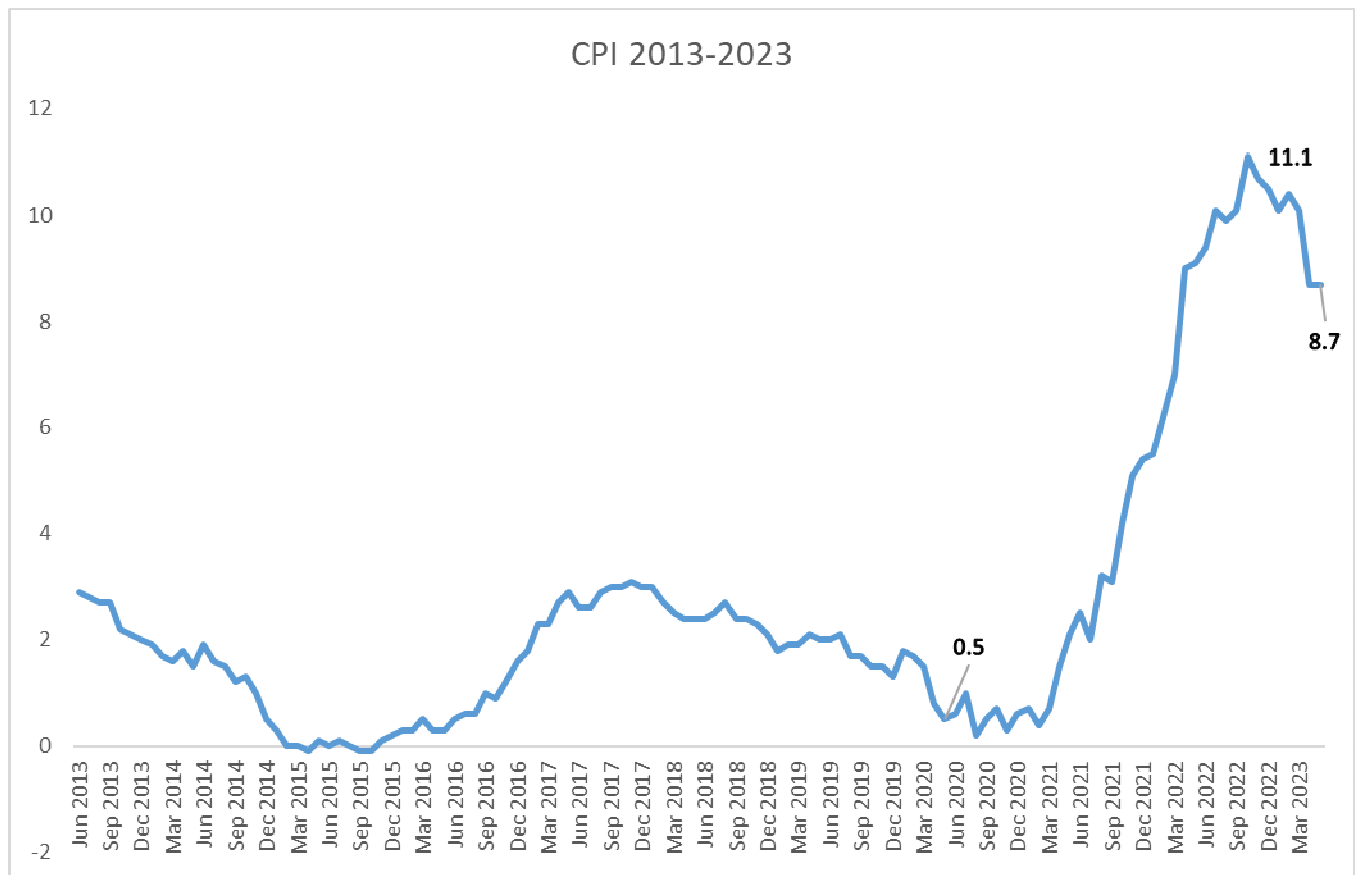


Source: [Gas and electricity prices in the non-domestic sector - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/gas-and-electricity-prices-in-the-non-domestic-sector)

Similarly, we can see that there has been a significant increase in CPI inflation as shown in Figure 2. Increasing from 0.5% in May 2020 to a high of 11.1% in October 2022, falling to 8.7% in May 2023. Although the CPI rate is beginning to fall, this CPI rate is still significantly above pre Covid CPI rates and continues to apply significant pressures on NICTS. 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 to correct for externalities as well as generating income to fund the administration of civil and family justice, both of which effectively contribute to access to justice.

**Figure 2**



Source: [Inflation and price indices - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/inflation-and-price-indices)

### 3 - Policy Objectives

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

- To improve the financial sustainability of the justice system by maximising cost recovery and affordability by end 2025-26;
- To increase revenue from court fees while still ensuring affordability for users; and
- Continue to support access to justice for low-income individuals.

### 4 - Policy Options under consideration

Civil and family court fees in Northern Ireland were last increased four years ago in 2019. At that time, in response to the consultation report that accompanied the increase, NICTS stated its long-term intention to move toward annual inflationary uplifts to court fees.

However, the impact of the Covid pandemic and the pressure on resourcing, prevented the planned increases to fees being taken forward and, since 2019, costs in NICTS continue to rise due to inflation.

NICTS aims to achieve full cost recovery from the fees charged across civil and family court services; the cost recovery rate for 2022-23 was 83%.

To increase fees by a level that would keep pace with inflation would require a significant increase of c20%. Therefore, recognising the wider economic climate, NICTS proposes a phased approach, with an increase to all court fees (except variable fees) of 9% on 1 November 2023, followed by a further increase of 9% on 1 October 2024. Some other minor changes to court fees in the areas of licensing and probate will also be actioned. The final options are detailed as follows:

### **Option 1 – Status Quo– fees will remain at current rates, as introduced by the 2019 Fees Amendment Orders.**

This option would mean no change to the current fee structure. Under this option, the current recovery position which was 83% at the end of 2022-23, would deteriorate with increasing inflationary prices. Given current inflationary pressures, 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 incur fees that are set at a level below 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 funding would have to be met from within the DoJ and ultimately the taxpayer and may impact on the provision of court services. The status quo option fails to comply with MPM (NI) policy and does not improve the cost recovery for civil and family court business.

### **Option 2 – A two-year phased increase in the fees charged for civil and family court business (excluding variable fees); 9% to be applied from 1 November 2023 and a further 9% from 1 October 2024.**

#### **Benefits**

This option is estimated to achieve a cost recovery of 93% by the end of 2025-26; an improvement on the current position of 10 percentage points. This option would generate additional income of approximately £4m<sup>2</sup> per annum from 2025-26 onwards and makes significant contributions to achieving compliance with MPM (NI) as well as reducing the financial burden on the taxpayer. Additionally, by excluding increases on variable fees, this will reduce the impact of increasing fees on the cash flow of the legal profession, thereby addressing a key concern.

#### **Costs**

While this option makes a significant contribution to achieving better compliance with MPM(NI), the additional costs associated with this option will be transferred to the court user thereby possibly adversely affecting users' affordability. In order to mitigate this, the NICTS Exemption and Remission Policy will remain available for those who face difficulty paying court fees. As for Option 1, any shortfall in funding would continue to be met by the taxpayer.

#### **Summary of Options Appraisal**

Option 2 is the preferred option given that fees are set at such a level to comply as far as is possible with MPM (NI) policy without preventing access to justice.

## **5 - 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' to estimate the proportion of civil and family 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 to estimate the financial impact on users. It is important to note that NICTS has not been able to access precise information indicating the party ultimately responsible for covering the cost of 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**

Option 2 is the preferred option and the impact of this increase on a selection of commonly paid court fees is summarised in a table attached at [Annex 2](#). For example, the cost of a probate grant would increase from the current fee of £261 to £310 by October 2024.

A summary of the court user analysis is presented in [Annex 3](#). In terms of the overall impact of the fee increase, the information at [Annex 3](#) 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.

---

<sup>2</sup> £3.6m discounted 2023-24 prices



NICTS estimates that the remaining approximately 20% of users belong to the business community, and the financial impact on this group, if the preferred option were to be selected, is estimated at £0.7m per annum once fully implemented.

## 6 - Risks and Assumptions

Following the consultation response report that accompanied the last fee increase in October 2019, NICTS pledged to move towards annual inflationary uplifts to court fees. However, due to the impact of the Covid-19 pandemic, the planned increase in fees was delayed and costs have continued to rise with inflation since 2019.

To ensure that stakeholders could provide feedback on the potential fee increase in 2023-24, NICTS wrote to key stakeholders - the Law Society of NI, the Bar NI, the Legal Services Agency NI, the Lady Chief Justice - outlining the proposals and the likely impact on commonly paid court fees. Any comments received have been taken into consideration when developing fee proposals.

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

- As laid down in MPM(NI), each option should aim at working towards recovering the cost of providing the services of civil and family court business, and;
- There will be no price sensitive effect on business volumes, as preliminary findings to date have shown no impact on business volumes.
- Future income has been estimated using the latest financial forecasts prepared by NICTS, based largely on the assumption that current levels of demand continue across all areas of civil and family court business.
- There may also be demand for cost efficiencies necessitated by DoJ as part of future budget rounds and the volumes of business and demand for Civil Court business could be higher or lower, this is all out of the control of NICTS.

Risks have been identified in relation to the proposals which are summarised in the table below:

Risk	Description
<b><i>Fees result in decline for court service and could be perceived as unlawful</i></b>	<p>If the increase in fees results in a decline in demand for court services, this could prevent access to justice and may be deemed unlawful.</p> <p><b>Countermeasures to address:</b> NICTS will continue to monitor income and volume trends on an ongoing basis in order to inform any necessary action going forward.</p> <p>A Human Rights Impact Assessment has been conducted and concluded the proposed increase to fees is lawful and will not impair access to justice.</p> <p>Furthermore, this line of work is determined to comply with the guidance issued by the Secretary of State as part of the Northern Ireland (Executive Formation etc) Act 2022 (legislation.gov.uk). This is because the proposal is not 'major' and seeks to maintain public services as sustainably and efficiently as possible, and failure to implement would result in the loss of an opportunity to improve public finances.</p>
<b><i>Cost recovery performance is not significantly improved</i></b>	<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). Future demand for court services is inherently uncertain and therefore income generated, and cost recovery performance, could fluctuate.</p> <p><b>Countermeasures to address this:</b> Sensitivity analysis has been completed to determine the impact of increases costs and inflation together with fee income being higher or lower than expected and how the evaluation of each option would change as a result of the cost recovery achieved.</p>
<b><i>Fee increases place additional burden on Legal Aid Fund</i></b>	<p>Overall, this proposal, once fully implemented is estimated to have a minor impact on the legal aid budget. NICTS will continue to work with Legal Services Agency NI officials to fully assess the financial impact.</p> <p><b>Countermeasures to address this:</b> Business volumes will be monitored, and a legal aid impact assessment has been undertaken. There will also be additional mitigation as a result of the options being considered, one of which is to exclude variable taxation fees from a general fee increase.</p>

## 7 - 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 £3.6m 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 £0.7m per annum from 2025-26 onwards (this being an estimate of the additional court fees paid by businesses once the increases in court fees are implemented).

NICTS acknowledges that the proposal could cause cash flow issues for solicitors as court fees must be paid up front to take forward proceedings. The majority of solicitors pay court fees on behalf of their client using prepaid accounts. If court fees increase, 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.

The NICTS Exemption and Remission Policy was introduced in 2007 with the aim of strengthening safeguards to protect access to justice; this policy will remain in place. 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 proposal 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. Therefore, the proposals are indirectly beneficial to businesses that do not use court services. Furthermore, as outlined above, at page 5 (*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 users including businesses.

## 8 - Wider Impacts

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 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, the majority of whom are 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 offer in some specific areas (e.g. applications for protective orders arising from 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 expected to be an additional £0.7m per annum, once fully implemented.

**Other Organisations:** Public sector bodies are also court users and are liable to cover the cost of court fees. For example, Land & Property Services use the courts and the Enforcement of Judgments Office 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.

**Legal Services Agency Northern Ireland (LSANI):** The fee changes are estimated to have a small impact on the legal aid budget at approximately an additional £100k per annum, once fully implemented. The LSANI Annual Accounts 2022-23 show that expenditure on civil legal aid services was approximately £49m.

**NICTS:** As indicated in earlier sections, the proposals will enable NICTS to move toward a full cost recovery position and therefore secure a more stable financial position with less reliance on any additional 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 would be disproportionately impacted by the proposals.

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

## **9 - Implementation and Monitoring Arrangements**

NICTS' preferred option is to implement a phased increase to existing court fees (excluding variable fees), with a 9% increase applied in November 2023 followed by a further 9% increase in October 2024.

Court fees are currently set out under the Fees (Amendment) Orders (Northern Ireland); any changes will require an update to this Secondary Legislation. In addition to this legislation, NICTS will make changes to their operating systems to ensure that the new fee regime is introduced in all areas at the correct time.

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

- a review of the effectiveness of the policy in achieving its objectives
- 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 of 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 1 - Business Volumes

Overall Civil and Family	2019-20	2020-21	2021-22	2022-23
Cases Received	49,777	30,409	37,762	42,035
Case Disposed	38,537	23,904	35,965	36,749
Cost £'000	£30,483	£29,774	£29,564	£29,960
Fee Income £'000	£23,246	£18,941	£21,508	£24,875
Deficit £'000	£7,237	£10,833	£8,056	£5,085
Cost Recovery	76%	64%	73%	83%

## Annex 2 - Impact of proposed increases on a selection of NICTS fees

Description	Current fee	Nov 2023	Oct 2024
		Revised fee (increase 9%)	Revised fee (increase 9%)
Search Fee	£26	£28	£31
Family Proceedings (Magistrates' Court)	£65	£71	£77
Civil Bill - between £1k - £5k	£216	£235	£256
Civil Bill - greater than £5k	£242	£264	£288
Probate Grant	£261	£284	£310
Writ of Summons	£261	£284	£310
Hearing Fee (Certificate of Readiness)	£327	£356	£388
Divorce Proceedings (County Court) <sup>3</sup>	£686	£747	£815

<sup>3</sup> The combined cost of 3 separate applications/fees to court – initial application (petition), hearing (set down) and decree absolute.

## Annex 3 – Estimate of court fees paid by Court User Group

User Group	% Split <sup>4</sup>
Business	20%
Government	26%
Individuals	54%
Total	100%

### ESTIMATE OF FEES PAID BY CATEGORY

#### Total Impact - Discounted, 2023-24 Prices

Status Quo Option (000's)	% Split	2023/24	2024/25	2025/26	Total
Business	20%	£5,158	£4,984	£4,815	£14,957
Government	26%	£6,705	£6,479	£6,260	£19,444
Individuals	54%	£13,927	£13,456	£13,001	£40,383
Total	100%	£25,790	£24,918	£24,075	£74,783

#### Total Impact - Discounted, 2023-24 Prices

Preferred Option 2 (000's)	% Split	2023/24	2024/25	2025/26	Total
Business	20%	£5,314	£5,538	£5,538	£16,390
Government	26%	£6,908	£7,199	£7,199	£21,306
Individuals	54%	£14,347	£14,953	£14,951	£44,251
Total	100%	£26,569	£27,690	£27,688	£81,947

#### Incremental Impact - Discounted, 23-24 Prices

Preferred Option 2 (000's)	% Split	2023/24	2024/25	2025/26	Total
Business	20%	£156	£554	<b>£723</b>	£1,433
Government	26%	£203	£721	£939	£1,863
Individuals	54%	£420	£1,497	£1,951	£3,868
Total	<b>100%</b>	£779	£2,772	<b>£3,613</b>	<b>£7,164</b>

<sup>4</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.