

<p>Title: Enhanced Court Fees IA No: MoJ222</p> <p>Lead department or agency: Ministry of Justice</p> <p>Other departments or agencies: HM Courts & Tribunals Service</p>	<p>Impact Assessment (IA)</p> <p>Date: 29/11/2013</p> <p>Stage: Consultation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Primary legislation</p> <p>Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk</p>
Summary: Intervention and Options	RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option

Total Net Present Value (2013/14 prices)	Business Net Present Value (2009 prices)	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?	
-£0.5 million	-£475 million	£55 million	No	NA

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

The Ministry of Justice (MoJ) does not recover the full cost of the civil court system (the civil and family courts). In 2012/13 a gross income of £500 million was generated against a cost of £625 million, creating a deficit totalling £125 million (in 2013/14 prices). With £25 million of income spent on remissions (fee waivers), the overall cost to the taxpayer was £150 million. Government intervention is necessary to set fees at a level that recovers more of the cost of the civil court system (civil and family courts) (net of remissions), to set fees above cost in specified circumstances to reduce the taxpayer burden for the cost of remissions, and to ensure the continued operation of an effective court system.

What are the policy objectives and the intended effects?

The MoJ's long term aim is to protect access to justice by ensuring that the courts and tribunals are properly resourced while reducing the taxpayer subsidy for the civil court system. The policy objectives are: (i) first, ensuring that fee income covers the cost of providing court services, minus the income foregone to the remission (fee waiver) system. (ii) Secondly, recovering more than cost in specified circumstances ("enhanced fees"). This Impact Assessment focuses only on the enhanced charging proposals, i.e. point (ii) above. A separate Impact Assessment has been produced for our cost recovery proposals, i.e. point (i) above.

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

Option 0: Do nothing in addition to implementing the new fee model that achieves close to cost recovery in civil and family courts.

Option 1: Introduce enhanced charging for court services which recovers more than the cost of services in specific areas.

Option 1 is the preferred option as it will meet our policy objectives.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** October 2015

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 28/11/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce enhanced charging for court fees which recover more than the cost of services in specific areas.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.5	High: -0.5	Best Estimate: -0.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.5	200	1,540
High	0.5	210	1,600
Best Estimate	0.5	205	1,570

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

The total additional cost to court users is estimated at £190 million per annum (in 2013/14 prices). Transition costs, including costs of minor adjustments to court IT systems, and reissuing forms and guidance, are expected to be no more than £0.5 million. The increases in fee levels will increase the cost of remissions to the taxpayer. We estimate that the cost of additional remissions would be £15 million per annum. Therefore the total cost is £205 million (anomalies in total figures are due to rounding). Within this, the cost to business court users is £55 million from paying higher fees (in 2009 prices). These would normally be paid by unsuccessful claimants and by losing defendants in civil proceedings.

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

There may be minimal transitional costs related to HM Courts & Tribunals Service staff familiarising themselves with the changed fees. Successful claimants would incur cash flow costs from paying higher fees upfront (but recovering them in due course from losing defendants). There could also be an increased cost in processing fee remissions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	200	1,540
High	Optional	210	1,600
Best Estimate	0	205	1,570

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

Ongoing benefits include increased net fee income to HM Courts & Tribunals Service (and reduced burden on the taxpayer) of £190 million per annum. As the increase in fees may also increase the uptake of remissions, court users would benefit from up to £15 million paid towards their court fees through the remissions system. Anomalies in total figures are due to rounding.

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

Key assumptions/sensitivities/risks

Discount rate (%) 3.50

It is assumed that fee changes will not affect case volumes. However due to external factors there is a degree of uncertainty around baseline caseload volumes so high and low estimates have been provided. The high scenario assumes caseload remains unchanged and the low applies recent decreases in trend to 2012/13 caseload. Our best estimate is the mid-point of the high and low scenarios. It has also been assumed that there is no net detrimental impact on outcomes for either civil or family court cases or access to justice. The impact figures only include those fees where HM Courts & Tribunals Service could extract the detailed data required from the case management systems. We assume that there would be no impact on legal services used to pursue and to defend a claim. We assume that the cost recovery proposals are in place, and that the legislation to allow enhanced fee charging has received Royal Assent.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m, 2009 prices:			In scope of OIOO?	Measure qualifies as
Costs: 55	Benefits:	Net: -55	No	NA

Annual profile of monetised costs and benefits* - 2013/14 (nearest £1m)

Option 1	Y₁ 2014/15	Y₂ 2015/16	Y₃ 2016/17	Y₄ 2017/18	Y₅ 2018/19	Y₆ 2019/20	Y₇ 2020/21	Y₈ 2021/22	Y₉ 2022/23	Y₁₀ 2023/24
Transition costs	-	0.5	-	-	-	-	-	-	-	-
Annual recurring cost	-	205	205	205	205	205	205	205	205	205
Total annual costs	-	205	205	205	205	205	205	205	205	205
Transition benefits	-	-	-	-	-	-	-	-	-	-
Annual recurring benefits	-	205	205	205	205	205	205	205	205	205
Total annual benefits	-	205	205	205	205	205	205	205	205	205

Evidence Base (for summary sheets)

Background

1. Litigants have paid a fee to make use of the civil courts in England & Wales since the 19th century. Originally, user fees were paid directly to the judges of the courts, who retained them personally. With major reforms of public administration, including the establishment of the court system in broadly its modern form and the introduction of judicial salaries, fee setting powers eventually passed to the Lord Chancellor under Section 165 of the County Courts Act 1888. Hence, it has long been the case that civil justice is not publicly funded and that users must pay for the service that they use.
2. Court fees are prescribed by the Lord Chancellor under statutory powers and they must comply with the general policy principles for statutory fee-charging services, as set out in HM Treasury's guidance '*Managing Public Money – Charges and Levies*', which states that fees should normally be set at full cost levels. Departures from the normal rule may be justified on a case by case basis, but the guidelines generally do not permit different users of the same service to be charged different fees, or allow users of one service to be charged a higher fee to subsidise the fee for users of a different service. The government believes that there is a strong rationale for departing from this principle, and introducing enhanced fees for certain court proceedings which exceed the cost of delivering them. For this reason, we are seeking a power to allow us to do so in the *Anti-social Behaviour, Crime and Policing Bill*, which is currently before Parliament. The clause would require specific enhanced fees to be introduced via a Statutory Instrument..
3. A fee remissions system (of fee waivers) is in place to ensure that access to justice is maintained for those individuals on lower incomes who would otherwise have difficulty paying a fee to use court services. Such individuals can therefore access court services free of charge or at a reduced rate. A fee remission is a full or partial fee waiver of the fees that become payable when an individual uses court services.
4. The MoJ's long term aim is that the courts and tribunals are properly resourced so that access to justice is protected, while reducing the cost of these services to the taxpayer. The related policy objectives are: (i) first, ensuring that fee income covers close to the cost of the civil court system, minus the income foregone to the remission (fee waiver) system. (ii) to charge enhanced fees at a level that exceeds the cost of the proceedings to which they relate, so that users who can afford to make a greater contribution to the costs of the court system.
5. The accompanying consultation paper sets out our proposals for how this could be achieved. The consultation paper will seek views and further evidence on the proposals included. The consultation period will be used to undertake further research on fees and to fill any evidence gaps, where applicable. This document assesses the impact of our proposed approach in relation to point (ii) above. A separate Impact Assessment has been produced for the cost recovery option, i.e. point (i) above.

Rationale

6. The civil court system plays a vital role in our democracy. It provides access to justice for those who need it, helping to maintain social order and supporting the proper functioning of markets and of the economy, including enabling commercial rights and agreements to be clarified and asserted. They:
 - provide the right environment for business and commerce to flourish, giving people the confidence to enter into business, safe in the knowledge that the commercial arrangements they agree will be recognised and enforced by the courts;
 - deal with matters affecting families, from protecting children at risk of harm to making arrangements for couples who are separating; and
 - deal with those accused of committing crimes, acquitting the innocent and convicting and punishing the guilty
7. Our existing policy is that fees should be set at a level to recover the costs of the civil court system less the cost of remissions which are borne by the taxpayer. In 2012/13 the deficit for the civil court

system was around £125 million (excluding remissions of £25 million) in relation to gross court costs of around £625 million (in 2013/14 prices).

8. Until now, the courts have been operating at less than full cost recovery, which has diverted resources from other areas of operations. It is critical that the courts are properly funded if they are to continue to provide access to justice, whilst contributing to the ongoing development of a more efficient, modernised court service.
9. At the same time, the government has made reducing the fiscal deficit a top priority, in order to set the economy on course for growth. Under the terms of its Spending Review settlements of 2010 and 2013, the Ministry of Justice is committed to reducing its budget by over a third by 2015/16. The courts, and those who use them, must make a contribution to reducing public spending.
10. Achieving this outcome in this environment involves some difficult choices: there is a limit to how much can be achieved through spending cuts alone.
11. For these reasons, the government believes that it is fair and proportionate for those who can afford to pay should contribute more to the costs of the courts so that access to justice is preserved, and the cost to the taxpayer is reduced.

Policy Objectives

General principles for fee charging

12. Providing access to justice remains the critical objective underpinning the government's approach to reform of HM Courts & Tribunals Service generally, and to the reform of fees specifically.
13. All court users will, in future, be expected to contribute more to the costs of providing court services where they can afford to do so. Fee remissions will continue to be provided for those who qualify, so that access to justice is not denied.
14. This also applies more widely in other parts of the court system. We are separately considering how convicted criminals might contribute more to the costs of the criminal courts.
15. The establishment of HM Courts and Tribunals Service as a single, integrated, organisation has provided the opportunity for efficiency reforms. Since 2010, in relation to the whole court system (criminal, civil and family), we have;
 - closed 138 under utilised courts;
 - reduced staff by over 3,500; and
 - centralised work and functions to save money.
16. We will continue to look for further opportunities to integrate common services, including estates, IT, finance and HR, to minimise cost (in particular indirect costs and overheads) and maximise flexibility and efficiency.

Transition

17. The government intends to move towards this position in discrete stages.
18. First, we want to move from the current deficit in the civil court system to a position under which the fees we charge reflect the full cost of providing that service, with some exceptions.
19. We are separately introducing legislation to enable us to charge enhanced fees which are not limited to the costs of providing services.
20. Finally, the Lord Chancellor announced in March 2013 that we are looking at options to enable HM Courts & Tribunals Service to increase revenue, raise the investment required to modernise our facilities and put the service we provide on a sustainable footing. In his announcement, the Secretary of State committed to update Parliament in due course once any proposals have been developed.
21. Our proposals for achieving this are set out in the accompanying consultation paper.

Description of Options Considered

22. This Impact Assessment identifies both monetised and non-monetised impacts with the aim of understanding what the net social impact might be from implementing these options.
23. Option 0 - (Base Case) Do nothing in addition to implementing the new fee model that achieves close to full-cost recovery in the civil court system.
24. Option 1 - Introduce enhanced charging for court services which recover more than the cost of services in specific areas.
25. The government's preferred option is Option 1. We welcome views on these proposals during the consultation period.

Affected Stakeholder Groups, Organisations and Sectors

26. The following groups are likely to be affected by the proposals:
 - Court Users – those who wish to use the civil court system;
 - HM Courts & Tribunals Service – who administer the civil court system;
 - Taxpayers – the subsidy currently provided by the UK Exchequer towards the running and operating costs of HM Courts & Tribunals Service; and
 - Legal Services Agency (LAA) – litigants or appellants who are eligible for legal aid have their fees paid for them by their legal representatives, who can reclaim the money from the LAA.
27. These changes will affect, primarily, individuals and businesses pursuing cases through the courts. The fee changes for divorce proceedings will affect individual users of the service. Fee changes in civil proceedings will affect individuals and organisations using the courts. Alternatives to court, such as mediation and arbitration, are available in most civil proceedings subject to these proposals.

Cost and Benefits of Options Considered

Key Assumptions

Methodology

28. To model the income from proposed fee regimes we have combined output from costing and case progression analysis, taking into account remissions and changes to caseload volumes.
29. To calculate money claim fee income, we assume claims are equally distributed within each current fee band.

Trends

30. We have modelled two scenarios to reflect baseline caseload uncertainty. Our high scenario assumes that caseload stays at 2012/13 levels. The low scenario applies recent trends in caseload to 2012/13 volumes; 10% fall in specified money, 3% fall in unspecified money claims and a 4% decline in divorce petitions. We present the mid-point of these two estimates throughout this Impact Assessment.
31. We present both costs and income in 2013/14 prices¹. This assumes that fees are uplifted by inflation each year.
32. We assume that costs are constant at 2012/13 cost levels; £625 million per year (2013/14 prices). We also assume that fee income is constant from 2015/16 onwards.

Refunds

33. We assume that there are no refunds of court fees.

Remissions

34. We assume that the remissions scheme introduced in October 2013 is in place and that the remissions thresholds are adjusted for inflation annually.

Demand

¹ Cost base in 2013/14 prices is £625 million

35. We assume that user demand will not change in response to planned cost and enhanced fee rises i.e. that court fee changes themselves will not change court case volumes. Qualitative evidence conducted to date suggests that this assumption is reasonable:

- 2013 MoJ internal qualitative research (see annex published alongside this impact assessment) with bulk user organisations and solicitors reported that increases in court fees would have minimal impact on the volume of cases they bring to court, as litigation was seen as a last resort, decisions to take cases to court were influenced more by other factors, and court fees were considered to be a small proportion of the overall cost of going to court among those who used legal representation..
- 2007 MoJ Research Paper² found that fees ranked as lower in importance than other considerations such as “getting justice”.
- Internal analysis on Civil Driver-Based Forecasts: concluded that minor fee changes (at issue) that have occurred since 2000 do not appear to have had any statistically significant impact on historical caseload over and above the variation that is explained by changes in the other economic drivers (debt, GDP, interest rates).
- In general, when pursuing litigation, court fees also tend to be significantly lower than costs of legal services. For example using data collected as part of the Jackson Review³, average litigation costs were over £800,000 for one side in commercial proceedings compared with the court fees that would have been incurred of around £3,000. The normal rule is that both legal services costs and court fees can also be transferred to the losing defendant by successful claimants in civil (but not family) proceedings.

36. We sensitivity test this assumption in paragraph 106.

Royal Courts of Justice

37. We also assume that all specified and unspecified money claims in the Royal Courts of Justice (Rolls Building and Queen’s Bench) have a value of over £200,000. Given that there is likely to be a wider range of claim sizes, we apply optimism bias to this assumption, as discussed in paragraph 104.

Fees

38. Individual fees in this Impact Assessment are presented in 2012/13 prices. We assume that these will be inflated to 2013/14 prices when we respond to the consultation.

Legislation

39. We assume that the cost recovery proposals (see accompanying Impact Assessment) are in place, including legislation to allow enhanced fee charging, by the time that the enhanced fee proposals would come into effect in 2015/16.

Option 0 (Base Case) Do nothing. Maintain the new fee model that moves close to full-cost recovery in the civil court system.

Description

40. For the purposes of assessing the impact of our proposals for enhanced fees, the ‘do nothing’ base case option assumes that the proposals for cost recovery (as set out in the consultation paper) have been implemented in full. For further details see the accompanying Impact Assessment for cost recovery. Therefore, under the “do-nothing” base case option we would continue with the proposed cost recovery fee charging structure.
41. Under this option, HM Courts & Tribunals Service’s overall rate of cost recovery would remain approximately the same in 2015/16, as long as there are no significant fluctuations in levels of demand.
42. Based on the mid-point of these scenarios, the cost recovery proposals are expected to increase income by **£105 million** per annum compared to the position before cost recovery is introduced from 2015/16 onwards.

² Source: What’s cost got to do with it? The impact of changing court fees on users (MoJ, 2007)

³ Appendix 9, *Review of Civil Litigation Costs: Preliminary Report*, May 2009.

43. Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV)⁴.

Option 1 - Introduce enhanced charging for court fees which recover more than the cost of services in specific areas

Description

44. The normal rule, set out in *Managing Public Money*,⁵ is that when public bodies charge for providing services, the fees charged should be set at a level designed to recover the full cost of providing those services.
45. The government believes, however, that there is a strong rationale for departing from the normal policy in some cases. For certain proceedings before the courts in England and Wales we believe that there is strong case for setting fees at a level above the cost of the activities to which they relate (“enhanced fees”). We are seeking a general power which would allow the Lord Chancellor to do so in the *Anti-social Behaviour, Crime and Policing Bill*, which is currently before Parliament.
46. The clause sets out the purpose of charging enhanced fees, which is to ensure that the courts are adequately funded. When setting fees, the Lord Chancellor is under an existing duty (see s.92(3) Courts Act 2003) to have regard to the principle that access to the courts must not be denied. That duty will continue – and, in addition, he would also be required to have regard to:
- the overall financial position of the courts and tribunals; and
 - the competitiveness of legal services.
47. Our proposals for cost recovery are designed to ensure that income from the civil court system moves closer to the costs of providing those services, less the cost of remissions, which are borne by the taxpayer. However, we need to go further to reduce the net costs of the courts to the taxpayer. In these circumstances, we believe it is reasonable that those who use the courts should make a greater contribution to the costs of running these services where they can afford to do so.
48. Our proposals are to introduce enhanced fees in the following specific areas (a detailed breakdown of the proposed structure is at Annex A):
- money claims (both specified and unspecified);
 - commercial proceedings; and
 - divorce proceedings.

Specified Money Claims

49. To protect access to justice and to reduce the burden on the taxpayer, the government believes that users should make a greater contribution to the cost of the court service. To achieve this, we believe that it is fairer to charge users a fee for the issue of a specified money claim which more closely reflects the value of these proceedings to those who bring them.
50. Our proposal is therefore to charge a fee for the issue of a specified money claim which represents 5% of the value of the claim, subject to a minimum and (potentially) maximum fee. We believe that a fee of 5% of the value of the claim is the appropriate proportion to apply in these cases, as:
- at this level, the fee remains a small proportion of the overall value of the debt. Our research suggests that this would not result in litigation becoming disproportionately expensive; and
 - it results in higher fees being paid for higher value claims.
51. This proposal would generate an expected **£45 million** in additional income for the operation of the courts.

⁴ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

⁵ <https://www.gov.uk/government/publications/managing-public-money> (published July 2013)

Minimum and maximum fees

52. If these proposals were applied to all money claims, certain types of claim (i.e. those of around £10,000 and below) would pay a lower fee than under the cost recovery proposals. Given the current financial climate, in which there is a pressing need to reduce the net cost of the courts to taxpayers, we do not believe that it would be justifiable to reduce any fee. We therefore propose that the fee for a claim of £10,000 or less should remain unchanged from the fees proposed in our cost recovery plans.
53. It is also the case that the proposal could result in very high issue fees for higher-value claims and, in a small number of very high-value claims, the fee charged could be substantial. For example, a claim valued at £20 million would pay an issue fee of £1 million, and a claim valued at £1 billion would result in an issue fee of £50 million. At these levels, we accept that litigation would become prohibitively expensive.
54. Our research suggested that a cap would be required to provide certainty over the costs of litigation, and to prevent fees for high-value cases becoming too expensive. Some debt agencies suggested that they would introduce their own internal cap on the cost of cases, above which cases would be deemed too expensive to pursue.
55. The government agrees that it is appropriate to set a cap on fees. The majority of claims in which proceedings are issued are for claims valued at £5,000 or below, and 98% of claims (excluding those issued in the Rolls Building) have a value of under £200,000. For this reason, we believe the maximum issue fee should be £10,000 (equal to the fee which would apply to a claim worth £200,000).

Discounts

56. Currently, those who use the Claims Production Centre or Money Claims Online (MCOL) pay a lower fee to issue proceedings. This reflects the administrative saving to HM Courts & Tribunals Service in processing the claim through these channels.
57. Under the proposals for cost recovery, we propose to rationalise the discounts for using these channels:
- the current discounts for money claims online would to apply for all online and bulk claims issued for £1,500 or below; but
 - there would be a 10% discount for claims over £1,500 (up to the maximum value of £100,000).
58. Under our enhanced fees proposals the fee for a claim of £10,000 or less will attract the same fee as under the cost recovery proposals (see paragraph 52). We also propose that the same approach should be applied to the fees charged for claims issued online and that claims of £10,000 or less issued online or through the Claims Production Centre should attract the same discounted fee as under our cost recovery proposals. Claims of more than £10,000 issued online or through the Claims Production Centre (up to the maximum of £100,000) would attract a fee of 5% of the value of the claim, less a discount of 10%.

Counterclaims

59. Under the current arrangements, the fee for issuing a counterclaim is the same as the fee for the principle claim. Under these proposals for enhanced fees, the same approach would apply to counterclaims.

Unspecified Money Claims

60. There are some 175,000 unspecified money claims issued each year in the civil courts. Under the current arrangements, the same fee regime applies to both specified and unspecified money claims. The fee to issue proceedings for an unspecified money claim is based on an estimate of the value of the claim provided by the claimant.
61. The only difference between specified and unspecified claims is that there is an element of uncertainty in the quantum being sought in an unspecified claim because, for example, it includes an element of damages to be assessed. In principle, therefore, we think that it is reasonable to apply the same approach to unspecified claims as proposed for specified claims. In particular, we do not believe that it would be reasonable or fair to distinguish between proceedings and to charge a

different fee solely on the basis that the value could not be precisely determined when the proceedings were issued.

62. Our proposal is that the fee to issue an unspecified claim (e.g. personal injury) should be the same as for a specified money claim; charging an issue fee of 5% of the upper value of the unspecified claim for claims above £10,000, up to a cap of £10,000. Claims less than £10,000 would pay the issue fee charged under the full cost proposals. Using the 2012 distribution of unspecified money claims, we calculate the issue fee for the midpoint of each fee band and use these to calculate an average fee; this provides an estimate of **£55 million** additional income per annum compared to the base case. During the consultation, views will also be sought on whether the fee structure, and specifically the maximum fee, in unspecified money claims should be set at the same level as for specified money claims, or whether the maximum fee should be set at a lower level of £5,000. This would reduce the estimate of income from unspecified money claims by £10 million per annum to **£45 million per annum** compared to the base case.

Specific fees for commercial proceedings

63. Commercial proceedings in London are heard in the Rolls Building which brings together in one place the work of the Admiralty and Commercial Court, the Technology and Construction Court, and the Chancery Division of the High Court. In the disputes brought to these jurisdictions, particularly those heard in the Admiralty and Commercial Court, there are significant sums of money at stake. They often involve large multi-national organisations or wealthy individuals. These are parties who have chosen to have their commercial affairs governed by English law, and to have their disputes decided through the English courts.
64. The Rolls Building is the largest specialist centre for the resolution of financial, business and property litigation anywhere in the world. It is a state-of-the-art facility, with 31 court rooms and three super courts, with modern IT and video conferencing facilities and 55 consultation rooms available to litigants and their legal advisers. The cases are managed and decided by Judges who are specialists in this area of law.
65. There are around 7,000 claims issued each year in the Rolls Building, of which around 1,200 are listed for hearing, generating income of under £5 million. In 2012, in the Admiralty and Commercial Court, 76% of the proceedings issued involved at least one foreign party.
66. The government has invested heavily in the Rolls Building to provide a modern and efficient environment for resolving commercial disputes. This investment has done much to cement London's unrivalled reputation as the world's leading dispute resolution centre. A major survey on international arbitration reported that while corporations generally prefer to use their national law in a contract, evidence suggests where this is not possible English Law is by far the most popular choice, thus supporting London's position as the most preferred and widely used seat for Arbitration and the role of our courts in international litigation.⁶ The value of legal exports to the UK economy is estimated to be worth approximately £4 billion per annum.⁷
67. In these disputes, particularly those heard in the Commercial Court, significant sums of money are at stake. They often involve large multi-national organisations or wealthy individuals. These are parties who have chosen to have their commercial affairs governed by English law, and to have their disputes decided through the English courts. However, these cases are subject to the same fee regime as any other money claim brought before the civil courts.
68. Under our proposals for cost recovery, a case in the Commercial Court which proceeded to trial would attract:
- an issue fee of £1,870 (assuming the value of the claim is more than £300,000); and
 - a hearing fee of £1,090.
69. Under our proposals for increasing fees for money claims the issue fee for commercial proceedings would increase to 5% of the value of the claim, up to a maximum fee of £10,000. One option would be for commercial proceedings to be subject to the same fee structure as standard money claims. However, the government believes that, for this specific group of cases, litigants obtain a much

⁶ Queen Mary University School of International Arbitration (2010), '2010 International Arbitration Survey: Choices in International Arbitration'. Surveyed 136 international corporations.

⁷ Figure derived from The Pink Book, 2012, ONS (in 2012 prices)

greater benefit from being able to litigate their disputes through the UK courts. We believe that it is reasonable that those bringing these types of proceedings should make a greater contribution to the costs of maintaining the courts. The government has developed two alternative proposals to achieve this outcome:

- **(a) Higher maximum fee** – We propose to apply a higher cap to commercial proceedings. For standard money claims, our proposal is to apply a maximum fee of £10,000 to a specified money claim, and either £5,000 or £10,000 for unspecified claims. With a £10,000 cap for both specified and unspecified money claims estimated income from the Royal Courts of Justice is **£60 million per annum** compared to the base case. However, we believe that it would be fair to increase the maximum fee for commercial proceedings (whether specified or not) to reflect the fact that the sums at stake in these proceedings are typically much higher than in standard litigation. Our proposal is therefore to raise the ceiling on the fee to issue commercial proceedings to either: £15,000 (the fee applicable to a claim of £300,000); or £20,000 (the fee applicable to a claim of £400,000). This does not include Queen’s Bench proceedings. We estimate that this will increase income to **£70 million or £85 million per annum respectively** compared to the base case.
- **(b) Hearing fees for proceedings in the Rolls Building** – Alternatively, we propose that the maximum issue fee should be the same as specified money claims (£10,000) and a hearing fee should instead be charged which better reflects the amount of resource consumed. Our proposal is to charge a fee for a hearing, trial of a preliminary issue, or substantive trial of the claim, at the rate of **£1,000 per day**. This is estimated to generate income of **£5 million per annum** compared to the base case.

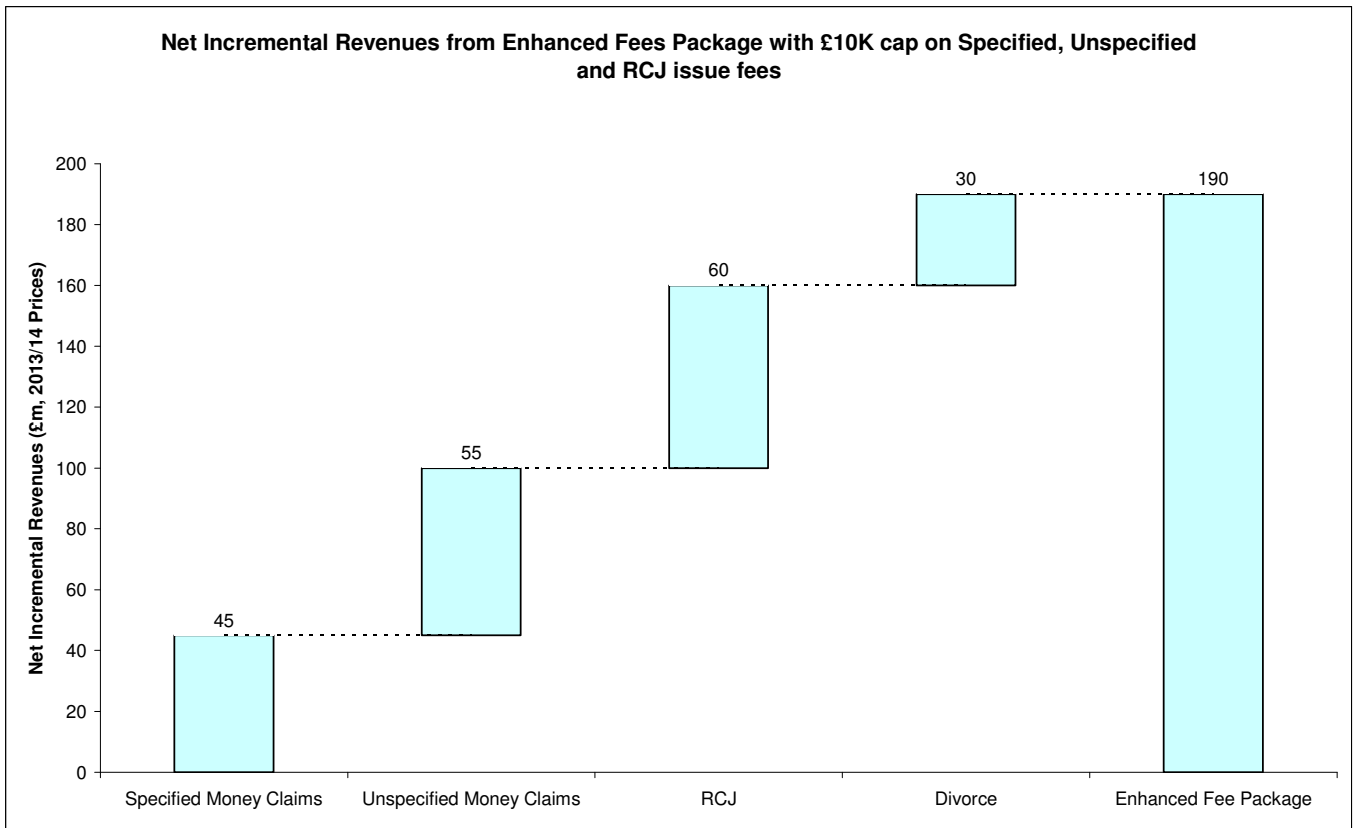
Under both proposals, the intention is to apply the issue fee to all money claims pursued in the Rolls Building (i.e. money claims in the Commercial and Admiralty Court, the Technology and Construction Court, and the Chancery Division). They would also apply to same proceedings where they are undertaken at regional District Registries. However, under this proposal, the proposed enhanced fees would not apply to other (i.e. non-money) types of proceeding, including, for example, possession claims, insolvency petitions and bankruptcy proceedings. The consultation seeks views on whether the enhanced fees proposals should apply to proceedings in the Mercantile Court. It is also proposed that the same fee structure should apply to all commercial money claims, both specified and unspecified. See Annex C for further details.

70. In quoting the £190m additional income from these proposals, we assume that the £10,000 cap applies for all money claims.

Divorce proceedings

71. There were around 120,000 divorce petitions filed in 2012/13. Most of these, around 95%, are not defended and proceed unchallenged to the dissolution of the marriage.
72. Under the cost recovery proposals the fee for a divorce petition would remain unchanged at £410. However, we believe that divorcing couples would be prepared to pay a much higher fee to complete the dissolution of the marriage. We believe that it is right that those who can afford to pay more should do so to ensure that the courts are properly funded. Fee remissions would continue to be available for those who qualify.
73. For these reasons, and given the financial imperative to reduce the costs of the courts to the taxpayer, we think it is reasonable that those who seek a petition for a divorce should pay an enhanced fee to do so.
74. We estimated that the cost of an uncontested divorce was around £270. The government’s view is that the fee for a divorce petition should be set at a level above costs. Specifically, we believe that those petitioning for divorce would be prepared to pay considerably more than the cost of the petition in order to secure the legal dissolution of their marriage.
75. Our proposal is that the fee should be £750. This is estimated to increase income by **£30 million per annum** compared to the base case.

Figure 1: Graph showing estimated income by case type from enhanced fee package (with £10,000 cap for all money claims)



Costs of Option 1

Transitional Costs

Monetised Costs

Costs to HM Courts & Tribunals Service

76. We expect to incur costs of approximately £5,000 for changes to HM Courts & Tribunals Service court publications and destroying old stock. Amendments to court IT systems have been estimated at up to £300,000. There may be some small costs related to court staff having to spend some time familiarising themselves with the new fees.

Ongoing Costs

Monetised Costs

Costs to Court Users

77. The total additional cost to court users of enhanced fees is estimated to be around **£190 million per annum** in 2013/14 prices, assuming a £10,000 cap is applied to all money claims, compared to the base case.

78. A separate analysis is provided later in this Impact Assessment (see paragraph 95) on the specific impacts on business court users.

Costs to the Taxpayer

79. As a result of fee increases, we expect the total cost of fee remissions to increase by **£15 million per annum**. This is because fee changes will lead to a higher level of eligibility for fee remissions.

Non-Monetised Costs

Costs to Court Users

80. In civil cases, court fees are paid upfront by the claimant but are normally recoverable from the losing defendant in civil cases where the claimant wins. Therefore increased court fees will be met by either unsuccessful claimants or losing defendants.
81. There would therefore be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. This cost has not currently been quantified but we will explore how best to calculate this during the consultation.

Costs to the Taxpayer

82. There is a possibility that eligible users, who previously would not have considered applying for remissions, will now consider applying as higher fees make them more likely to question their ability to pay. This cost has not been quantified.

Costs to Legal Aid Agency ("LAA")

83. Legal aid includes the payment of court fees. Court fees are paid upfront by legal aid solicitors for clients who are in receipt of funding by the LAA for the purposes of the proceedings for which a certificate has been issued under the funding code; they are then claimed back from the LAA when the case is finished. In terms of enhanced fees, the impact of these proposals is expected to be minimal given that Legal Aid is predominantly only payable for public law family matters and in family proceedings where domestic violence can be demonstrated. We do not anticipate that the changes will have a significant impact on the cost of legal aid.

Benefits of Option 1

Transition benefits

84. No transition benefits have been identified.

Ongoing benefits

Monetised Benefits

Benefits to Court Users

85. As a result of these proposals, it is expected that court users would benefit from additional fee remissions of **£15 million** per annum compared to the base case.

Benefits to HM Courts & Tribunals Service

86. As a result of the proposed enhanced fees HM Courts & Tribunals Service would benefit from an estimated increased fee income of **£190 million** per annum in 2013/14 prices, compared to the base case.

Non-Monetised Benefits

Benefits to Court Users

87. There is a possibility that eligible users, who previously would not have considered applying for remissions, will now consider applying as higher fees make them more likely to question their ability to pay. This cost has not been quantified.

Benefits to Society

88. Given that fees do not currently recover the full cost of the civil court system, increasing fees to more than full cost recovery would reduce the level of subsidy that taxpayers currently provide the courts.

Net Impact of Option 1

89. The overall net economic impact will be the minimal transition costs associated with implementing the new fee regime (which is currently estimated as £0.5 million).
90. The proposals are expected to generate increased fee income of around £190 million, of which around £70 million would come from business users (in 2013/14 prices). In addition successful claimants may incur cash flow costs as they would pay higher court fees upfront but only recover them once the case is settled.
91. It is possible that higher fees may incentivise court users to resolve issues without using the court system, potentially resulting in a reduced volume of court cases. We assume that this will not occur based on current research (see key assumptions section at paragraphs 28-39). Nevertheless, the potential impacts of a drop in caseload as a result of our fee changes are assessed in the sensitivity analysis undertaken below.
92. The proposed fee changes would not impact on those who are entitled to a full fee remission e.g. those in receipt of certain benefits but will have greatest impact on those individuals that are outside eligibility for legal aid or a fee remission.

Enforcement and Implementation

93. 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. This would continue to apply under the option being considered.

Business Impacts

Section 1: Impact on business court users

94. The volumes of cases affected by enhanced fees proposals are shown in the table below⁸. These volumes are the same as current court case volumes (2012/13) as research suggests that the proposed changes in court fees should not affect the volume of cases taken to court, as discussed in paragraph 35. This will be examined further over the consultation period.

	Total volume of cases affected by fee changes (2012/13 volumes)
Specified Money	106,285
Unspecified Money	89,439
Royal Courts of Justice	13,426
Divorce	123,902
TOTAL	333,053

95. Not all cases involve some businesses pursuing cases as claimants and other businesses acting as defendants. We currently do not possess detailed statistics on what proportion of claimants and defendants are businesses in each of the categories identified above. This will be explored further over the consultation period. In the absence of this data we have made the following illustrative assumptions. These are based in part upon advice from HM Courts & Tribunals Service court staff who deal with the issuing of proceedings:

- Specified money claims – 50% of claimants are businesses, 25% of defendants are businesses. Whilst businesses issue around half of all such claims, many of these claims relate to personal debt, hence only around a quarter of defendants are assumed to be businesses.
- Unspecified money claims – 20% of claimants are businesses, 80% of defendants are businesses, e.g. insurers. The majority of these claims are compensation claims pursued by individuals against insurers.
- Divorce – all claimants and all defendants are individuals.

⁸ We have calculated these volumes assuming that claims are at the midpoint of existing money claim fee bands.

	Volume of cases with Business as claimant	Volume of cases with Business as defendant
Specified Money	53,143	26,571
Unspecified	17,888	71,552
Royal Courts of Justice	6,713	3,357
Divorce	0	0
TOTAL	77,743	101,479

96. It has been assumed that 80% of cases result in the claimant being successful either at the final hearing or beforehand if the case is settled earlier or not defended. This reflects the fact that the vast majority of cases do not reach a final hearing and that many cases are not pursued by claimants unless they consider that settlement is probable. This assumption will be explored further over the consultation period.
97. It has been assumed that court case outcomes and court case durations will not be affected by the increase in court fees. This assumption will be explored further over the consultation period.
98. Business court user costs take the following form:
- Business claimant wins the case: this applies to 62,195 businesses in total (42,514 specified money cases, 14,310 unspecified money cases, plus 5,370 RCJ cases). The court fee is passed on to the losing defendant. The business claimant would incur cash flow costs from having paid a higher court fee upfront and recovering it from the losing defendant once the case is settled. The size of this cash flow cost would be determined by (a) court case duration; (b) the total amount of higher court fees paid; (c) the return which could have been made on this cash over this period had the claimant business used it for other purposes. These cash flow costs will be explored further over the consultation period;
 - Business claimant loses the case: this applies to 15,549 businesses in total (10,629 specified money cases, 3,578 unspecified money cases plus 1,343 RCJ cases). The losing business claimant would meet the higher court fee;
 - Business defendant wins the case: this applies to 20,296 businesses in total (5,314 specified money cases plus 14,310 unspecified money cases plus 671 RCJ cases). There would be no increase in costs for defendant businesses; and
 - Business defendant loses the case: This applies to 81,183 businesses in total (21,257 specified money cases plus 57,241 unspecified money cases plus 2,685 RCJ cases). The losing business defendant would meet the higher court fee. However the losing business defendant would be regarded as 'non compliant' for One-in-Two-out purposes.
99. In conclusion 96,732 cases would involve a business paying the higher court fee (31,886 specified money cases plus 4,028 RCJ cases plus 60,819 unspecified money cases). The total sum of increased court fees from these cases would be £70 million per annum (in 2013/14 prices).
100. To calculate Business Net Present Value and Equivalent Annual Net Cost to Business (EANCB), we deflate business impact figures to restate impacts in 2009 prices in line with published guidance. In doing so, Business Net Present Value is calculated at -£475 million and EANCB as £55 million.

Section 2: Impact on legal services providers

101. Although case volumes are anticipated to remain the same, there may be changes to other costs. If a defendant believes that the prospect of successfully defending the claim is low and that he or she will therefore have to reimburse the claimant a higher court fee, they may reduce their spending on legal services to compensate. Conversely the prospect of losing a case and paying a higher court fee may make both sides willing to spend more on legal services. In the absence of evidence on

these behavioural impacts it has been assumed that spending on legal services providers will remain the same. This is being explored further over the consultation period. Any impact on legal services providers as a result of changes to spending on legal services would be a secondary impact.

Risks and sensitivity analysis

Optimism Bias

- 102. The default assumption we make in this Impact Assessment is that all cases in the Rolls Building and Queen's Bench Division are for claims greater than £200,000 and attract the highest possible fee, which is an optimistic assumption. We have therefore applied an optimism bias to the RCJ income estimates which adjusts for not all of the cases being in the top money claim bands.
- 103. The planned implementation date for the enhanced fees package is July 2014. Since the enhanced fees package requires several legislative and operational changes we have assumed additional contingency with an optimism bias on implementation. As a result we have modelled changes effective from March 2015 (i.e. a delay of 8 months).

Sensitivity Analysis

- 104. As discussed, in paragraph 35, we believe that demand for court services is unlikely to change in response to the proposed changes. However, if demand were to change, expected income from the proposals would be affected. We have modelled three theoretical situations (in addition to the caseload trend) in which demand falls by 2%, 5% or 10% to give low, medium and high risk scenarios, the results are shown in the table below.

Estimated income in 2013/14 prices (£m)	Best Estimate	Demand Scenarios		
		Low	Medium	High
Specified Money Claims	45	40	35	30
Unspecified Money Claims	55	50	45	40
RCJ	60	60	55	50
Divorce	30	30	25	25

One-in-Two-out

- 105. Under these proposals, fees would not be applied in a wider range of circumstances nor to a wider range of court users. There would be no changes to who is required to pay court fees. The court services and processes to which the fees relate would not be changed. Court case outcomes should not change.
- 106. The intention is not to change the behaviour of court users; indeed the aim is to retain current court case volumes. The objective is simply to raise the price of court services, in areas where there is an untapped increased willingness to pay more, without changing the scope of court fees in any way. Evidence collected by MoJ, as discussed in paragraph 35, shows that increased court fees for money claims are unlikely to affect the decision to go to court.
- 107. Court fees are initially paid by the claimant. In civil proceedings, costs (including court fees) are normally recoverable from the defendant if the defendant loses. In civil cases where the losing party is the defendant they would be regarded as 'non-compliant' for One-in-Two-out purposes. The losing defendant may be an individual or may be a business, depending upon the nature of the case. Where the winning claimant recovers the court fee in due course from the losing defendant the winning claimant may incur cash flow costs from the court fee being higher.
- 108. In divorce cases both parties would be individuals not businesses. In family proceedings the normal rule is that each side should pay its own costs.
- 109. Given that the scope of fee charging would not be changed in any way, and that the proposed fee charging aims to have no impact on court user behaviour, the enhanced fee proposals in this Impact Assessment fall out of scope of One-in-Two-out as the change in the level of fees does not result from an expansion in the scope of regulatory activity.
- 110. In addition, the proposals in this Impact Assessment are out of scope of One-in-Two-out because they relate to primary legislation which provides for enabling powers which themselves have no direct

impact on business. Direct impacts on business will only arise once secondary legislation (affirmative resolution) is made under these enabling powers. At that stage, a further impact assessment for RPC approval would be produced.

Equalities Impact Test

111. Annex C sets out our analysis of the equalities impact of these proposals.

Small and Micro Business Assessment

112. It is likely that some small and micro businesses which bring cases to the civil courts or which are defendants in civil claims will be affected by our policy proposals as they may now have to pay higher court fees. As explained above this would be so if they unsuccessfully pursued a claim or if they were the losing defendant. If the latter they would be regarded as 'non-compliant'. Successful claimants would also incur cash flow costs as they would pay the higher court fees upfront but only recover them once the case has been settled.

113. These effects will be partly mitigated as for claims up to £10,000 the issue fees are unchanged⁹ from cost recovery proposals (94% of all specified money claims issued, excluding those issued in the Rolls Building). Only high value claims have seen significant increases in issue fees, in any case the issue fee will only be 5% of the value of the claim. There is also a cap of £10,000 to protect businesses.

114. In order to further mitigate the effects on small firms and micro businesses, we could consider producing user guides or information campaigns to ensure that these businesses know how they will be affected. These possibilities are being considered further over the consultation period.

115. Fee remissions apply to sole traders as well as individuals so sole traders may not have to pay the increased fees. Fee remissions do not apply to larger businesses and there are no plans to change this. The mitigations identified above should be of benefit to small and micro businesses.

⁹ Assuming that claims are at the midpoint of existing money claim fee bands.

Annex A: Schedule of proposed fees (Money Claims)

Type of Fee	Current Fee	Cost recovery	Enhanced fee charging			
			£5,000 cap (Unspecified money claims only)	£10,000 cap	£15,000 cap (Commercial proceedings only)	£20,000 cap (Commercial proceedings only)
1. Money claims						
Does not exceed £300	£35	£35	£35	£35	£35	£35
Exceeds £300 but does not exceed £500	£50	£50	£50	£50	£50	£50
Exceeds £500 but does not exceed £1,000	£70	£70	£70	£70	£70	£70
Exceeds £1,000 but does not exceed £1,500	£80	£80	£80	£80	£80	£80
Exceeds £1,500 but does not exceed £3,000	£95	£110	£110	£110	£110	£110
Exceeds £3,000 but does not exceed £5,000	£120	£200	£200	£200	£200	£200
Exceeds £5,000 but does not exceed £15,000	£245	£445	N/a	N/a	N/a	N/a
Exceeds £5,000 but does not exceed £10,000	N/a	N/a	£445	£445	£445	£445
Exceeds £10,000 but does not exceed £15,000	N/a	N/a	5% of the value of the claim	5% of the value of the claim	5% of the value of the claim	5% of the value of the claim
Exceeds £15,000 but does not exceed £50,000	£395	£595	5% of the value of the claim	5% of the value of the claim	5% of the value of the claim	5% of the value of the claim
Exceeds £50,000 but does not exceed £100,000	£685	£885	£5,000	£5,000	£5,000	£5,000
Exceeds £100,000 but does not exceed £150,000	£885	£1,085	£5,000	£5,000	£5,000	£5,000
Exceeds £150,000 but does not exceed £200,000	£1,080	£1,280	£5,000	£10,000	£10,000	£10,000
Exceeds £200,000 but does not exceed £250,000	£1,275	£1,475	£5,000	£10,000	£10,000	£10,000
Exceeds £250,000 but does not exceed £300,000	£1,475	£1,675	£5,000	£10,000	£10,000	£10,000
Exceeds £300,000 but does not exceed £400,000	£1,670	£1,870	£5,000	£10,000	£15,000	£15,000
Exceeds £400,000	£1,670	£1,870	£5,000	£10,000	£15,000	£20,000

Type of Fee	Current Fee		Cost recovery fee	Enhanced fee charging
	CPC	MCOL		
2. Claims issued through the production centre and Money Claims Online				
Does not exceed £300	£15	£25	£25	£25
Exceeds £300 but does not exceed £500	£30	£35	£35	£35
Exceeds £500 but does not exceed £1,000	£55	£60	£60	£60
Exceeds £1,000 but does not exceed £1,500	£65	£70	£70	£70
Exceeds £1,500 but does not exceed £3,000	£75	£80	£100	£100
Exceeds £3,000 but does not exceed £5,000	£85	£100	£180	£180
Exceeds £5,000 but does not exceed £15,000	£190	£210	£400	N/a
Exceeds £5,000 but does not exceed £10,000	N/a	N/a	N/a	£400
Exceeds £10,000 but does not exceed £15,000	N/a	N/a	N/a	5% of the value of the claim, less 10% discount
Exceeds £15,000 but does not exceed £50,000	£310	£340	£535	
Exceeds £50,000 but does not exceed £100,000	£550	£595	£795	

Annex B: Examples of comparative fees for commercial proceedings

	1 day trial £	5 day trial £	10 day trial £
Current fees¹			
Issue	1,870	1,870	1,870
Hearing	<u>1,090</u>	<u>1,090</u>	<u>1,090</u>
	<u>2,960</u>	<u>2,960</u>	<u>2,960</u>
Option 1 : £10k maximum fee with hearing fee			
Issue (up to)	10,000	10,000	10,000
Hearing	<u>1,000</u>	<u>5,000</u>	<u>10,000</u>
	<u>11,000</u>	<u>15,000</u>	<u>20,000</u>

¹ Assumes full cost recovery proposal are implemented

Option 2(i): £15 k maximum fee

Issue (up to)

Hearing

	1 day trial £	5 day trial £	10 day trial £
Issue (up to)	15,000	15,000	15,000
Hearing	<u>1,090</u>	<u>1,090</u>	<u>1,090</u>
	<u>16,090</u>	<u>16,090</u>	<u>16,090</u>
Issue (up to)	20,000	20,000	20,000
Hearing	<u>1,090</u>	<u>1,090</u>	<u>1,090</u>
	<u>21,090</u>	<u>21,090</u>	<u>21,090</u>

Option 2 (ii): £20 k maximum fee

Issue (up to)

Hearing

	1 day trial £	5 day trial £	10 day trial £
Issue (up to)	15,000	15,000	15,000
Hearing	<u>1,090</u>	<u>1,090</u>	<u>1,090</u>
	<u>16,090</u>	<u>16,090</u>	<u>16,090</u>
Issue (up to)	20,000	20,000	20,000
Hearing	<u>1,090</u>	<u>1,090</u>	<u>1,090</u>
	<u>21,090</u>	<u>21,090</u>	<u>21,090</u>

Annex C – Equalities Assessment

1. Policy Aim

- 1.1 The Ministry of Justice's long term aim is protect access to justice by ensuring that the courts are adequately resourced.
- 1.2 The objectives to achieve this are to ensure that those users who can afford to contribute more towards the costs of the courts should do so.
- 1.2 The proposals for enhanced fees build upon the separate proposals to achieve cost recovery in the courts of England and Wales. Cost recovery is the subject of a separate assessment (see the accompanying Impact Assessment ref: MoJ 221).

2. Equality duties

- 2.1 Under the Equality Act 2010 section 149, Ministers and the Department are under a legal duty to have 'due regard' to; eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups and to foster good relations between different groups.
- 2.2 Having 'due regard'¹ needs to be considered against the nine "protected characteristics" under the Equality Act – race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

3. Methodology for Analysis

- 3.1 To assess whether the proposal has a differential impact on the protected groups (outlined above) a population pool has been defined. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be defined too widely.
- 3.2 We have defined the population pool as those who are most likely to pay one or more of the fees set to increase in the proposals i.e. issue fees for money claims and divorce.
- 3.3 We have drawn on data from the Familyman² to assess proportional differences in the protected characteristics of this pool; identifying the groups positively and negatively impacted. However, due to the limitations in the data available in some cases we have had to make assumptions about the likely impact on people with protected characteristics based on the type of cases they may be pursuing.

4. Direct Discrimination

- 4.1 Our initial assessment is that the introduction of fees proposed in the preferred option are not directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all claimants irrespective of whether or not they have a protected characteristic or whether they have a particular protected characteristics; there is no less favourable treatment because of a protected characteristic.

5. Indirect Discrimination

¹ Under section 149 of the Equality Act 2010, the Department has a legal duty to have 'due regard' to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and foster good relations between different groups.

² Familyman is a case management system for family cases, collected by HM Courts & Tribunals Service 2013

- 5.1 Our initial assessment, based on the limited information available, is that the increases in fees in the preferred option are unlikely to amount to indirect discrimination under the Equality Act 2010. This is because the Government considers that the preferred option, if implemented, would be likely to be a proportionate means of achieving a legitimate aim.
- 5.2 To mitigate any risk of discrimination when implementing the preferred option, the HM Courts & Tribunals Service remission system is available to those on low incomes. This means that if the proposal has any financial impact on individuals or groups of individuals then it can be accessed, so the proposals will not deny access to justice or the opportunity to reach an agreed settlement for individuals who fall within the meaning of the Equality Act 2010.
- 5.3 Whilst there are some implications of the proposals on the protected characteristics of individuals seeking access to justice, these will impact on different equality groups differently in so far as they have varying income profiles. It is accepted that as some of the equalities groups are disproportionately represented in lower income brackets, they would therefore be disproportionately affected if it were it not for the remissions scheme which mitigates the effects on those with the lowest incomes and ensures that no one is denied access to justice through raising court fees.

6 Impact on users in the civil court system

- 6.1 Due to the nature of the proposals included in this consultation, any impact on different groups would primarily be financial. Data on court users who would be affected by the proposal have been collected where possible. However, the government acknowledges that it does not collect comprehensive information about court users generally, and specifically information regarding protected characteristics. This limits the Government's understanding of the potential equality impacts of the proposals for reform. An attempt to collect further information on the demographics of users of these cases has been undergone but data is limited.

Fees groups affected:

Divorce:

- 6.2 In the preferred option, divorce fees would increase resulting in a direct cost to the court user. Familyman data indicates that women initiate around 65% of divorce petitions and men 35% of petitions. This means that more women would be affected by a rise in the fee. However women with low capital and low income will be protected by the remissions system.

Money Claims:

- 6.3 We assume that 50% of specified money claims cases are issued by businesses, such as banks, credit card companies and utility companies. We assume that the remainder are issued by individuals but due to a lack of data surrounding claimants we can not say whether these individuals have protected characteristics.
- 6.5 Within unspecified money claims a small proportion of people bringing personal injury claims may have a disability, and it may therefore be fair to assume that more people with disabilities will be affected by the increase in fees. Due to data availability analysis of these impacts has been difficult to model.
- 6.6 In money claims, the court will usually order the losing party to reimburse the successful parties' court fees.

7. Mitigation

- 7.1 We do not consider that the impact of these proposals amounts to a particular or substantial disadvantage. Therefore, we consider the proposal and any resulting impacts of the proposal to remain a proportionate means of achieving a legitimate aim – to maintain access to justice while reducing the cost of the courts to the taxpayer.

7.2 There is income disparity between different parts of the population, however, the fee remission scheme is available to all those who have low capital and are in receipt of prescribed state benefits, or whose gross incomes fall below certain levels. The remission system ensures that those who can afford to contribute to the cost of their fee should do so, but that those who cannot pay the fee should not be prevented from accessing the court as a result. For this reason we do not anticipate that the proposals will have any equality impacts on the low income groups; however, we will use the consultation period to gather further evidence.

8. Equalities Questions

8.1 We have asked for more information on potential equalities impacts through questions in the consultation.