



# Summary: Analysis & Evidence

# Policy Option 1

**Description:** 10 per cent uplift on all civil court fees currently set at full cost recovery levels

## FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.1	High: -0.1	Best Estimate: -0.1

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	1	-0.7	-6.3
High	0.1		7.5	64.7
Best Estimate	0.1		5.9	47.2

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

Transitional HMCTS costs, including those of minor adjustments to court IT systems and of reissuing forms and guidance, are expected to be up to £0.1 million. The total additional ongoing cost to court users from paying increased fees, after fee remissions have been applied, is estimated to be around £5.9 million per annum (in 2014/15 prices).

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

There may be some minor transitional costs related to HMCTS staff familiarising themselves with the changed fees and from processing additional fee remissions. Costs to court users from familiarisation are expected to be negligible.

Successful claimants may face a cost in terms of a cash flow problem. Fees are initially paid upfront by both parties. After the settlement or judgement takes place and a decision is reached, the unsuccessful party will then repay the fee for the other claimant.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1	-0.7	-6.3
High	0		7.5	64.7
Best Estimate	0		5.9	47.2

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

HMCTS would benefit from increased fee income after fee remissions have been applied of around £3.4 million per annum (in 2014/15 prices).

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

There may be a benefit to HMCTS by way of reduced running costs.

### Key assumptions/sensitivities/risks

- Our fee income estimates use our latest 2015/16 caseload forecast. However, there is always a degree of uncertainty around caseload volumes when court fees rise. To quantify this risk we present four scenarios. Our best case scenario assumes no reduction in caseloads; our central – or best estimate – scenario assumes a two per cent reduction in caseloads, with two further worst case scenarios of a five per cent and 10 per cent reduction. As our central forecast reflects evidence from previous fee reforms, we believe this is the most appropriate scenario on which to base our overall fee income estimates.
- It has also been assumed that there will be no detrimental impacts on court case outcomes, on access to justice and no impacts on the legal services used to pursue or defend claims from the increase in fees.
- The central scenario does not take into account any changes in behaviour where claims are issued early to avoid paying the higher fees. The implications of this potential 'pull through' effect are that first year steady state figures for fee income may be slightly overestimated. This issue is considered in the sensitivity analysis.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m, 2009 prices:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A		

## Evidence Base (for summary sheets)

### A. Background

1. Court fees are prescribed by the Lord Chancellor under statutory powers. Section 180 of the *Anti-social Behaviour, Crime and Policing Act 2014*, provides the Lord Chancellor with a specific power to prescribe fees which exceed cost ('enhanced fees') so as to ensure that the courts and tribunals are adequately funded having considered the financial position of the courts and tribunals and the competitiveness of legal services. Specific enhanced fees must be introduced via a Statutory Instrument that is subject to the affirmative resolution procedure except where fee increases reflect changes in the value of money.
2. When setting fees, the Lord Chancellor is also under an existing duty (see s92 (3) Courts Act 2003) to have regard to the principle that access to the courts must not be denied. A remissions system of full or partial 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.
3. Further, in the original consultation proposals the Government proposed to increase the maximum fee for starting proceedings for the recovery of money to £20,000 or higher. Having reviewed the responses to the consultation, the Government has decided not to go forward with this proposal at this time. Therefore this impact assessment focuses on the proposal that will be implemented, namely, the 10% uplift on all civil fees not affected by any other specific proposal.

### B. Policy Rationale and Objective

4. The Ministry of Justice's (MoJ) aim is that the courts and tribunals are adequately resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore, for specified proceedings, to charge enhanced fees so that users who can afford to make a greater contribution towards the overall costs of HMCTS.

### C. Description of Options Considered

5. This Impact Assessment (IA) identifies both monetised and non-monetised impacts with the aim of understanding what the net impact might be from implementing the options described below.
  - **Option 0 – Do Nothing. Maintain the current fee structure.**
  - **Option 1 – Introduce enhanced fees for all civil fees which are still currently set at (or below) full cost recovery levels by raising their current levels by 10 per cent.**
6. The Government's preferred option is Option 1, as this better meets the policy objectives.

### D. Affected Stakeholder Groups, Organisations and Sectors

7. These reforms would affect, primarily, individuals and businesses pursuing cases through the courts. In particular:
  - Court Users – those who use the civil court system;
  - HM Courts and Tribunals Service (HMCTS) – who operate the court system;
  - Taxpayers – who subsidise HMCTS as overall HMCTS income falls below overall HMCTS costs; and
  - The Legal Aid Agency (LAA) – who cover court fees where they are liable to be paid from the legal aid fund.

## E. Cost Benefit Analysis

### Key Assumptions

#### *Methodology*

8. We present annual costs and benefits in steady state throughout this IA, although the sensitivity analysis does look at the impact of any pull-forward of cases in the first year to avoid the higher fees (see section below on blip effect). All estimates are annualised figures in 2014/15 prices.
9. To estimate additional fee income for the general uplift in civil court fees which are currently at or below cost recovery levels, we have used our most recent caseload forecasts (i.e. September 2015). These are multiplied by the proposed change in the relevant fee and then an estimated figure for remissions has been deducted.
10. Since the previous consultation IA, there have been updates to caseload volumes and changes in methodology in order to more accurately forecast fee income. The implications of this are seen in the 'no change in demand' forecast scenarios. Previously, additional fee income was estimated as £10 million per annum; now the same scenario forecasts additional income to be £7.5m.

#### *Volumes*

11. We currently estimate the following caseloads for the proceedings impacted by the general 10% uplift to fees (rounded to the nearest 5,000):
  - Around 110,000 civil proceedings commenced in the County Court excluding possession claims and money claims.
  - Around 300,000 applications for an enforcement order in the County Court and High Court.
  - Around 50,000 bills of sale issued in the Queen's Bench Division of the High Court.
  - Approximately 20,000 applications for judicial review to the Admin Court and to the Upper Tribunal (Immigration and Asylum Chamber).
  - Around 15,000 civil proceedings initiated in the Magistrates' Court.
  - Around 5,000 applications for determination of costs.
  - Around 5,000 applications for permission to appeal to the Court of Appeal.
  - Annual volumes for the remainder of the affected fees are estimated to be less than 1,000.
12. Annex A provides a comprehensive list of all the fees which would be impacted by this option.

#### *Demand*

13. Court and tribunal user demand may change in response to planned fee rises. This effect is known as the price elasticity of demand. In order to assess this potential impact, the IA models four scenarios that consider reductions in demand of two, five and 10 per cent, as well as a 'best case' scenario where user demand (behaviour) is not affected by fee increases.
14. The central and worst case scenarios account for the risk that increasing fees might cause a reduction in caseload. The best estimate of a two per cent fall in demand<sup>1</sup> has been chosen after taking into account a number of factors such as:
  - the overall size of fee increase;
  - the size of fee relative compared to the value of the remedy sought; and
  - the size of fee compared to other costs incurred.

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<sup>1</sup> This estimated two per cent fall in demand is smaller than the five per cent fall estimated for Tribunal caseloads (as seen in the "Introduction of fees to the Property Chamber, First Tier Tax Chamber, Upper Tier Tax Chamber and the General Regulatory Chamber" IA). This is because court users will experience an increase in existing fees, rather than the introduction of new fees. This is in contrast with Tribunal fees.

15. As the size of the new fee is likely to be relatively small in comparison to the overall value of the claim, the price elasticity is assumed to be relatively small.
16. Research carried out by the MoJ and recent experience suggest demand is relatively insensitive to fee changes, so we believe it is highly unlikely that caseloads will fall by 10 per cent. However, to account for the small possibility that court fees are more elastic than expected we have included this scenario as our worst estimate.

#### *Refunds & Remissions*

17. We assume that there are no refunds of court fees.
18. We assume that the remissions scheme introduced in October 2013 remains in place. This implies that eligibility for remissions would be unchanged.
19. We assume that the planned fee changes would not impact on those who are entitled to a full fee remission (e.g. individuals in receipt of particular benefits or with few disposable assets).

#### *Net Present Value*

20. The Net Present Value (NPV) is calculated over a ten-year period, under the assumption that fees do not increase in line with inflation. In this way, it likely underestimates nominal fee income, as the existing powers to increase fees in line with inflation is likely to be applied at various points during the ten-year period. However, inflation should also drive up the income of applicants, so the financial burden of fees will not increase in real terms. Fees are not included in the overall NPV as they represent a transfer payment between claimants and HMCTS.

### **Option 0 – Do Nothing. Maintain the current fee structure including enhanced fees for money claims**

21. The base case option assumes the latest fee schedule introduced in April 2014 remains fully in place with the exception of the fees for money claims, which were last increased in March 2015. It also assumes the enhanced fee charging proposals for possession claims, general applications made in civil proceedings and divorce petitions will be introduced alongside this option.
22. Because this ‘Do Nothing’ option is compared against itself, its costs and benefits are necessarily zero, as is its NPV<sup>2</sup>.

### **Option 1: Apply a 10 per cent uplift on all other civil court fees**

23. Our proposal is to introduce enhanced fee charging for all civil court proceedings which were last changed in April 2014. These include:
  - proceedings in Court of Appeal;
  - judicial review;
  - initiating proceedings other than possession or money claims;
  - civil proceedings in the magistrates’ courts;
  - appeals to the County Court and High Court; and
  - proceedings for the assessment of costs and enforcement.

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<sup>2</sup> 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.

## **Costs of Option 1**

### **Transitional costs**

#### *Transitional costs to HMCTS*

24. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be less than **£0.1 million**.

#### *Transitional costs to court users and the LAA*

25. There may be familiarisation and awareness costs incurred by court users, their legal services providers and the LAA, but these have not been monetised and are not expected to be significant.

### **Ongoing costs**

#### *Costs to court users*

26. Multiplying the volumes of the affected fees (paragraph 11) by the proposed change in fees (Annex A), we estimate the costs to court users to be between -£0.7 million and £7.5 million, with a central estimate of £5.9 million (see Table 2). These figures are net of remissions as court users who qualify for a remission are exempt from paying fees. We estimate remissions to be around £0.1 million.

**Table 1: Central, best and worst scenario fee income estimates for Option 1**

	<b>No Change in Demand</b>	<b>2% fall in demand</b>	<b>5% fall in demand</b>	<b>10% fall in demand</b>
<b>County Court – Fees to issue civil proceedings</b>	£3.1m	£2.4m	£1.4m	-£0.3m
<b>County Court – Enforcement fees</b>	£2.7m	£2.1m	£1.2m	-£0.3m
<b>County Court – Costs Assessment</b>	£0.2m	£0.1m	£0.1m	£0.0m
<b>Queen’s Bench Bill of Sales</b>	£0.1m	£0.1m	£0.1m	£0.0m
<b>Judicial Review (Admin Court and Upper Tier Immigration Tribunal)</b>	£0.6m	£0.5m	£0.3m	-£0.1m
<b>Court of Appeal</b>	£0.4m	£0.3m	£0.2m	£0.0m
<b>Magistrates Court</b>	£0.3m	£0.3m	£0.2m	£0.0m
<b>Other</b>	£0.2m	£0.0m	£0.0m	£0.0m
<b>Total</b>	£7.5m	£5.9m	£3.4m	-£0.7m

*Note: Totals may not sum due to rounding*

27. Generally, court fees are paid upfront by the person making the application but are normally recoverable in the litigation by the successful party. Therefore in most cases where the reforms apply, the extra costs would be met by unsuccessful claimants or losing defendants. However, there may be a cash flow cost to successful claimants as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are expected to be minimal.

#### *Costs to legal services providers*

28. There is a possibility that some legal services providers may experience cash flow costs if they pay any court fees upfront and later claim these back from either their client or the LAA. This cost has

not been quantified as we expect these to be a small part of the legal costs associated with such cases.

29. There may be other potential costs to legal services providers as claimants may, at the margin, reduce their spending on legal services to compensate for higher fees. There may also be a reduction in spending on legal services if the volume of cases drops. Conversely, the additional costs associated with losing a case and paying higher court fees may, at the margin, encourage parties to spend more on legal services.
30. There may, potentially, be some higher costs for those legal services providers who bring claims under a 'no win no fee' agreement because if the client loses the case, the legal services provider may bear the cost of the higher fee, depending on the nature of their agreement.
31. Given the other costs involved with such case, we have assumed these effects are likely to be small if they arise. Overall, it has been assumed that spending on legal services providers is likely to remain the same following these fee changes.

#### *Costs to the LAA*

32. Although some of these fees will be liable to be paid via legal aid, we do not anticipate that the proposed changes will have a significant impact on this area.

### **Benefits of Option 1**

#### Ongoing benefits

##### *Benefits to HMCTS*

33. As a result of the proposed changes to fees, we estimate HMCTS would benefit from an estimated increased fee income of between -£0.7 million and £7.5 million per annum compared to the base case. Our central estimate is £5.9 million. As with the costs to claimants this extra income is net of remissions, which are estimated to be around £0.1 million.
34. There may also be a benefit to HMCTS by way of reduced running costs. If fees deter some claimants from appealing in the Courts, and instead those applicants find alternative means of dispute resolution, the Courts will process fewer cases resulting in lower costs.

##### *Wider benefits to society*

35. Increasing fees in civil proceedings so that they exceed the cost of those proceedings would reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS. This would fall by the total increase in fee income after remissions have been applied.

### **Net impact of Option 1**

36. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to £0.1 million). Court staff, court users, legal services providers and the LAA are also expected to incur negligible costs from familiarising themselves with the new fee structure.
37. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £5.9 million per annum after remissions have been applied. As the benefit to HMCTS would be offset by the additional cost to court users, the **net impact is estimated to be minimal**.

## **F. Risks and sensitivity analysis**

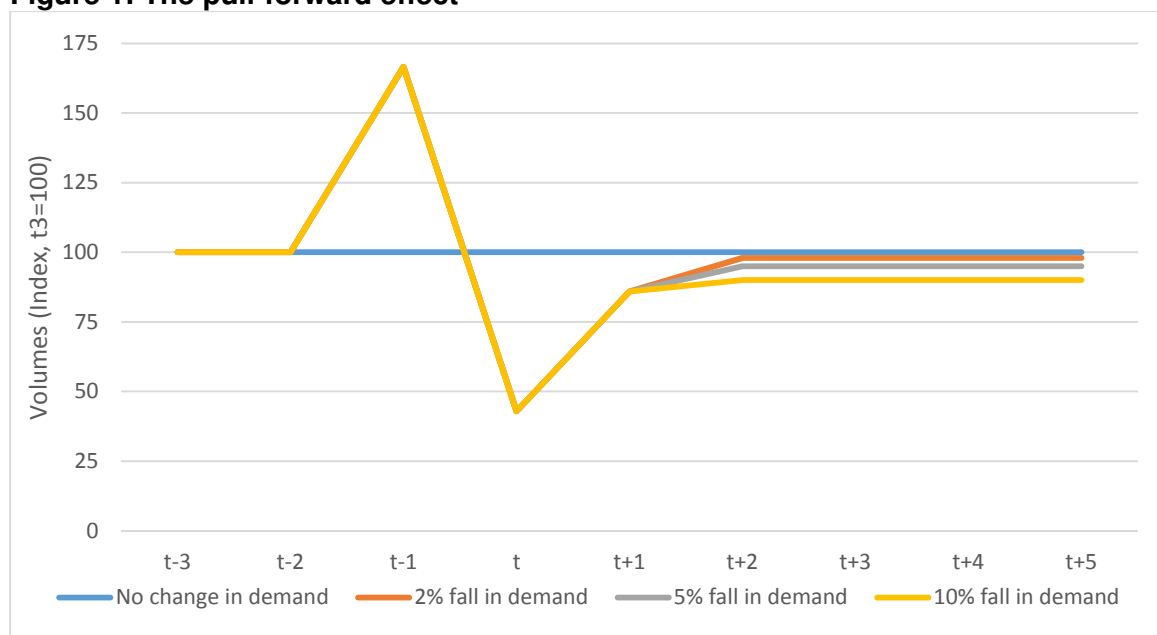
#### *Elasticity of demand impact*

38. There is a risk, presented in the key assumptions section that court demand may change in response to the proposed increases in fees presented under Option 1. The estimates presented in Section E try to account for this uncertainty, but if demand were to fall by more expected income to HMCTS would be lower. For every 1% fall in caseload, net income to HMCTS would be expected to fall by around £0.8m million.
39. The central scenario models a two per cent fall in demand. This is an adjustment from the previous consultation IA, where the best estimate assumed no change in demand. This change was due to two factors. Firstly, recent experience from introducing enhanced fees for money claims suggests that court user demand is relatively price inelastic, but that there may be some change in demand in response to fee increases. Secondly, the MoJ held internal discussions to consider the likely impact of fee increases on future caseloads. It is expected the actual number of cases will fall somewhere between zero and two per cent; any fall in demand over that is thought to be unlikely.

*The pull-forward effect*

40. Before a planned fee increase, there is a risk that consumers will bring their case forward to avoid paying the new or increased fee. This can create a distortion – or blip – in caseloads, followed by a trough in the following months. Demand should then return to its steady state, taking into account any decrease in volume due to price elasticity effects.
41. Figure 1 illustrates this pull-through effect. It has been modelled based on the spike in claims seen for lower value unspecified money claims, where, in the month prior to the introduction of enhanced fees for these claims, there was an issue spike of around 67%. After the initial spike in cases the trough in caseload is assumed to last approximately two to three months (depending on the price elasticity) before returning to the steady state level.
42. In the central demand forecasts, once volumes return to 95 per cent of their normal level, a ‘cap’ is reached; for the 10 per cent reduction in demand forecast, this ‘cap’ is reached quicker. Where there is no change in demand, we assume there is no blip effect as users will not be deterred by the future price increase. This is based on the assumption that the demand for court services are perfectly price inelastic, representing a best case scenario.

**Figure 1: The pull-forward effect**



Note: “t” refers to the period where fees were introduced or increased. The diagram is for illustrative purposes only.



43. If the spike in claims in the period immediately before fees are increased is 67 per cent, and there is a resulting fall in caseloads in the following quarter, then fee income under Option 1 is expected to increase by £5.5 million in the best estimate scenario. By factoring in this risk, HMCTS would lose out on £0.3 million of additional fee income in year one – this is around six per cent of additional income. Subsequent year’s income would return to the steady state, delivering an annual additional income of £5.9 million in the central scenario. Table 2 summarises these figures.

**Table 2: Additional net fee income in year 1 after accounting for the pull forward effect**

	<b>No Change in Demand</b>	<b>2% fall in demand</b>	<b>5% fall in demand</b>	<b>10% fall in demand</b>
<b>10% General Uplift</b>	£7.5m	£5.5m	3.2m	-£0.7m

## **G. Enforcement and Implementation**

44. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the case would not be permitted to proceed. This would continue to apply under the options being considered.

## **H. One In Two Out**

45. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation. This means they are out of scope of the One In Two Out framework.

## Annex A: Schedule of revised fees

46. Table A.1 below shows all the fees affected by the 10% general uplift:

Table A.1: 10% general uplift

	Current	New
<b>Civil Courts and Magistrates Courts</b>		
<b>Other fees</b>		
Any other remedy (High Court)	£480	£528
Any other remedy (County Court)	£280	£308
Filing proceedings against an unnamed party	£50	£55
Permission to issue proceedings	£50	£55
Assessment of costs (under Part 3, Solicitors Act 1974)	£50	£55
<b>Judicial Review</b>		
Permission to apply	£140	£154
On request to reconsider at a hearing a decision on permission	£350	£385
Permission to proceed	£700	£770
Permission to proceed (claim not started by JR procedure)	£140	£154
<b>Determination of costs (Senior/County Courts)</b>		
Where the party filing the request is legally aided	£200	£220
Amount does not exceed £15,000	£335	£369
Exceeds £15,000 but does not exceed £50,000	£675	£743
Exceeds £50,000 but does not exceed £100,000	£1,005	£1,106
Exceeds £100,000 but does not exceed £150,000	£1,345	£1,480
Exceeds £150,000 but does not exceed £200,000	£1,680	£1,848
Exceeds £200,000 but does not exceed £300,000	£2,520	£2,772
Exceeds £300,000 but does not exceed £500,000	£4,200	£4,620
Exceeds £500,000	£5,600	£6,160
Issue of default costs certificate	£60	£66
Appeal (detailed assessment proceedings)	£210	£231
Request/application to set aside a default costs certificate	£110	£121
<b>Enforcement (High Court)</b>		
Sealing a writ of execution/possession/delivery	£60	£66
Application for order for debtor/other person to attend court	£50	£55
Application for third party debt order/appointment of a receiver	£100	£110
Application for a charging order	£100	£110
Application for a judgement summons	£100	£110
Request/application to register a judgement or order Permission to enforce an arbitration award or Certified copy of a judgement or order for use abroad	£60	£66
<b>Enforcement (County Court)</b>		
Issue of warrant of execution against goods (CCBC and Money Online cases)	£70	£77
Issue of warrant of execution against goods (non-CCBC)	£100	£110
Request for attempt of execution of warrant at new address	£30	£33

	<b>Current</b>	<b>New</b>
Application to require judgement debtor to attend court	£50	£55
Application for a third-party debt order	£100	£110
Application for a charging order	£100	£110
Application for a judgement summons	£100	£110
Issue of a warrant of possession/warrant of delivery	£110	£121
Application for an attachment of earnings order	£100	£110
Application for enforcement of an award of a sum of money or any other decision made by any court, tribunal, body or person*	£40	£44
Request for an order to recover a specified road traffic debt	£7	£8
Request for service by a bailiff	£100	£110
<b>Payable in the High Court only</b>		
Bills of sale	£25	£28
Official certificate of the result of a search (for each name)	£45	£50
Search, in person, of court records (per 15 minutes)	£10	£11
<b>Payable in High Court and Court of Appeal only</b>		
Affidavit	£11	£12
<b>Payable in the Court of Appeal only</b>		
Application – permission to appeal/extension of time	£235 (£480)	£528*
Permission to appeal is not required or has been granted	£465 (£1,090)	£1,199*
Appellant/respondent filing an appeal questionnaire	£465 (£1,090)	£1,199*
On filing a respondent's notice	£235 (£480)	£528*
On filing an application notice	£235 (£480)	£528*
<b>New fees to be introduced in Court of Appeal</b>		
Reconsideration of a decision on permission for a hearing	(£545)	£600*
Additional application	(£480)	£528*
General application – ex parte/by consent	(£50)	£100**
General application – on notice	(£155)	£255**
<b>Civil Proceedings within Magistrates' Courts</b>		
Commencing proceedings where no other fee is specified	£205	£226
Application for leave/permission to commence proceedings (no other fee specified)	£105	£116
Proceedings where leave/permission has been granted.	£105	£116
Contested hearing	£515	£567
<b>Upper Tribunal (Immigration and Asylum Chamber)</b>		
Permission to apply	£140	£154
On request to reconsider at a hearing a decision on permission	£350	£385
Permission to proceed	£700	£770
Permission to proceed (claim not started by JR procedure)	£140	£154

\*The fees in brackets were the levels that were intended after the April 2014 changes. These changes have not yet been made but the 10% uplift has been applied to the fees at their intended levels.

\*\*Fees increased by £100 to match general application fees in civil and family proceedings