

Title: Reduce court fees where the Ministry of Justice are currently over-recovering. IA No: MoJ010/2018 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS)	Impact assessment (IA)	
	Date: 03/07/2018	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary Legislation	
Contact for enquiries: mojfeespolicy@Justice.gov.uk		
Summary: Intervention and Options	RPC Opinion: N/A	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
£-0.2M	N/A	N/A	Not in scope	N/A

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

The Ministry of Justice (MoJ) has undertaken a review of the fees charged for proceedings compared with the costs of those proceedings. The review has identified a number of fees charged in the Court of Protection, Magistrates' Courts, High Court and insolvency proceedings (for a full list see Annex A), that are currently set above the full costs of those proceedings without the necessary parliamentary authority. Government intervention is therefore necessary to reduce these fees to cost-recovery level using the power to set fees (s. 92 Courts Act 2003, s. 54 Mental Capacity Act 2005 and ss. 414 and 415 Insolvency Act 1986).

What are the policy objectives and the intended effects?

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

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

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

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

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

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

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

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

Signed by the responsible Minister: Lucy Frazer Date: 3/7/18

Summary: Analysis and Evidence

Policy Option 1

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

Price Base Year 2018/19	PV Base Year 2018/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -£0.2m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
Best Estimate	£0.2m			

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

Transitional costs to HMCTS (from making minor adjustments to IT systems and reissuing forms and guidance) are expected to be up to £0.2m.

The ongoing cost to MoJ from lowering the fees is estimated to be around an average of around £9m per annum (annual average in 2018/2019 prices). This represents a direct transfer from HMCTS to court users.

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

There may be some minor transitional costs related to familiarisation with the reduced fees for HMCTS staff, legal professionals, and customers.

These costs cannot be monetised and are expected to be minimal.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1		
High				
Best Estimate	0			

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

On an on-going basis, users of these court services would benefit from the lower fees by around £9m per annum (annual average in 2018/19 prices).

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

None.

Key assumptions/sensitivities/risks

It is assumed that these fee changes will not result in a change in demand for services.

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

Evidence Base

A. Background

1. HM Courts and Tribunals Service (HMCTS) delivers a benefit for the direct courts users as well to the general public by providing a place where people can enforce and defend their rights. A large number of people use the services of HMCTS every year. Whether it be disputing parents in a family court, a vulnerable witness to a crime, or someone appealing a benefits decision, people interact with HMCTS at some of the most difficult times in their lives.
2. Fees are an important source of funding for the courts and tribunals, and a reasonable means of making resources available for the justice system to secure access to justice. This is because an effective court and tribunal service needs to be funded appropriately in order to protect access to justice in the longer term. HMCTS is a large organisation, and there are well over 300 separate fees charged for civil and family proceedings in the courts of England and Wales. Under the Courts Act 2003, the Lord Chancellor has a statutory duty to ensure *an efficient and effective* courts and tribunal system.¹
3. The Ministry of Justice (MoJ) takes access to justice seriously and has therefore been conducting a thorough review of court fees. In the course of this review, the MoJ have identified a number of fees which were inadvertently set above cost without the necessary Parliamentary approval. We are now taking the necessary steps to reduce these fees to full cost recovery level.
4. Annex A provides full details of the fees which are currently set above full cost recovery levels. In summary, these are:
 - i. Application and Appeal fees in the Court of Protection (CoP)
 - ii. General applications in insolvency proceedings;
 - iii. Certain civil proceedings in the magistrates' court, principally applications for Council Tax Liability Orders (CTLO's);
 - iv. High Court judges sitting as arbitrators.
5. The Government has decided to reduce these fees to cost-recovery level. This is driven by the general legal principle that courts and tribunals fees should not be set at a level that exceeds the cost of the service provided without express parliamentary approval. Presently, the only fees that may be set at a level that exceeds costs are those set by way of affirmative SI using an 'enhanced' fee setting power set out in section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014.
6. We have undertaken a review of the unit costs of proceedings in the courts and tribunals, which has identified that certain fees exceed costs without prior parliamentary authority. Full details are set out at Annex A. Most of these fees were last amended in 2014, when the intention was that they should reflect the full cost of the services provided.
7. The current fees charged in the Court of Protection were set in 2007. At the time, those fees were set on the basis that they were below the full cost of those proceedings. The review of unit costs has confirmed that the application and appeal fees in the Court of Protection remain above cost.
8. The Government is now taking action to comply with legislation. This Impact Assessment (IA) sets out the options for doing this.

¹ S1(1) Courts Act 2003 – "The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates' courts, and that appropriate services are provided for those courts." See also s6A Promissory Oaths Act 1868 containing the oath sworn by the Lord Chancellor on taking office to, amongst other things, "ensure the provision of resources for the efficient and effective support of the courts" for which the Lord Chancellor is responsible.

B. Policy Rationale and Objectives

9. The normal rule, set out in *Managing Public Money*², is that fees to access public services should be set at a level designed to recover the full cost, but no more, of those services. The intention, when these fees were last prescribed, was that they should be set at or below full cost recovery levels but our review has identified that some of those fees are, in fact, above full cost recovery levels without parliamentary authority.
10. The Government has therefore decided to reduce those fees to full cost recovery levels so that they are set in accordance with the legislation under which they are made (i.e. section 92 of the Courts Act 2003, s. 54 Mental Capacity Act 2005 and ss. 414 and 415 Insolvency Act 1986). Full details of the changes are set out at Annex A.

C. Description of Options Considered

11. To meet these policy objectives, the following two options are considered in this IA:

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

Option 0

12. Under the Do Nothing option the current fee structure would remain in place. The fees under consideration for change are currently above full cost recovery levels without express parliamentary approval. If no action is taken, the Government would continue to collect these fees unlawfully.

Option 1

13. Under this option, a new fee structure will be introduced at cost-recovery level for the services set out in Annex A.
14. These fee changes are driven by the general legal principle that courts and tribunals fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval.
15. Option 0 is not therefore a viable option, and the Government's preferred approach is to implement Option 1 as immediate action is required to regularise the currently unlawful fees.

D. Affected Stakeholder Groups, Organisations and Sectors

16. These options assessed in this IA will primarily affect users of the services where fees are changing. A list of all the main groups that would be affected is show below:
 - HMCTS users – those who use the services for which fees in Annex A are changed. Such court users include individuals, Local Authorities, and businesses;
 - HMCTS – who operate the services;
 - Taxpayers – who subsidise HMCTS as overall HMCTS income falls below its overall costs;
 - Legal services providers – who provide service to users of HMCTS;
 - MoJ – who sponsor HMCTS (which provides the services for which fees are charged).

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

E. Cost and Benefit Analysis

17. This IA identifies both monetised and non-monetised impacts on individuals, groups, and businesses in England and Wales, with the aim of understanding what the overall impact on society might be from implementing the options described above. The costs and benefits of Option 1 are compared to the Do Nothing or 'baseline' case (option 0), where Court and Tribunals fees are maintained at their current levels. As the Do Nothing option is compared to itself, the costs and benefits are necessarily zero as is its net present value (NPV).

Key Assumptions

18. It is important to note that the impacts described in this IA are based on modelling and a number of assumptions and so cannot be regarded as firm predictions. These assumptions are briefly described below. The risks associated with these assumptions are described in section F.

Methodology

19. To estimate the change in fee income from Option 1, we have used MoJ internal data for usage volumes of court services from 2016/17, which is the most recent data available. We have assumed that these volumes will remain constant at the 2016/17 levels for a ten-year appraisal period.

20. In order to calculate the impact on HMCTS fee income, the change in fees has been multiplied by the expected volumes of users of the services, for each fee that is to change.

21. We present the results using a ten-year appraisal period to show the impacts in steady state.

Demand

22. Court user behaviour (demand) may change in response to changes in court fees. Applications for Council Tax Liability Orders (CLTO's), which are made by Local Authorities (LAs), account for the majority (c90) of the excess fee income generated by over-recovering fees (see Annex A).

23. However, the current fee for CTLO's is low and we believe it represents a small proportion of the overall expenditure incurred by LAs in making these applications. We understand that the fee is typically passed onto the debtor. Therefore, we do not expect the current fee has deterred LAs from bringing applications. On that basis, we estimate that the impact of fee changes on court demand is likely to be nil or negligible. This is discussed further in Section F.

Limited Access and Remissions

24. We assume that the current fee remissions scheme will remain in place and that eligibility for remissions remains unchanged.

Net Present Value

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

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

Costs of Option 1

Transitional costs

HMCTS

26. HMCTS is expected to incur costs of approximately £0.2m for making amendments to IT systems, staff guidance and publications for the public. There may also be costs related to HMCTS staff having to familiarise themselves with the new fees.

HMCTS users and the providers of legal services

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

Ongoing costs

MoJ

28. Because of the fee changes described in Annex A, we estimate that MoJ will face a loss in income of around £9m per annum (averaged over a ten-year appraisal period and in 2018/19 prices).

Benefits of Option 1

Transitional Benefits

29. No transitional benefits are expected.

Ongoing benefits

Users of HMCTS services

30. As a result of the fee changes, we estimate that HMCTS users will benefit by around £9m per annum (averaged over a ten-year appraisal period and in 2018/19 prices).

Net impact of Option 1

31. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to £0.2m). Individuals and legal service providers are expected to incur negligible costs from familiarising themselves with the new fee structure.

32. On an ongoing basis the change in fees is expected to result in a loss on fee income of around £9m per year. This cost to MoJ will be offset by the benefit to HMCTS users, and therefore the ongoing net impact of this proposal is expected to be minimal.

F. Risks and Sensitivity Analysis

33. As the impacts described in this IA are based on certain assumptions, there are also some associated risks. These risks, and their potential impacts, are described below.

Volumes

34. There are potential behavioural effects that may occur as a result of reducing these fees. In theory, a reduction in the price of court services could be expected to lead to an increase in demand.
35. However, as was described in paragraphs 23 - 24, the cases where MoJ is currently over-recovering fees are predominantly CTLOs, and we expect any demand response to be nil or negligible. This is because the fee is small relative to overall expenditure incurred on these types of application by LAs and the benefit derived from issuing a CTLO (i.e. the ability to take legal action to collect unpaid tax) outweighs the current cost.
36. The next most significant fee which MoJ is currently over-recovering is from the charges in insolvency proceedings. We would similarly expect the estimated benefits to users to outweigh the current cost and that cost is not the key driver for court users in these cases. Therefore, we would also expect any demand response in insolvency proceedings to be nil or negligible.
37. Any changes in volumes are likely to have some impact on unit costs, so the MoJ will implement a monitoring framework to ensure that fees are being charged at the correct level in future.
38. Regardless of any potential changes in volume, the on-going net impact of changing fees remains zero as the cost to MoJ is offset by the benefit to HMCTS users.

Push Back Effect

39. There is the possibility of a 'push-back' effect whereby users may delay their use of court services and wait for the new lower fee. The impact of this would be a reduction in demand just before the new fee is introduced, and an increase just after the fee change.
40. Given the majority of over-recovered costs involve CLTO's, the MoJ does not expect the fee change to have any impact on timings and volumes of these services. Therefore, the overall impact of any 'push-back' effect is expected to be negligible.

G. Enforcement and Implementation

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

H. Monitoring and Evaluation

42. The MoJ are implementing a monitoring framework to ensure that fees are charged at the correct level in future.

I. Business Impact Target (BIT)

43. This measure does not qualify as a regulatory provision as it amends fees as defined under the Small Business Enterprise and Employment Act 2015. It will therefore not be in scope of the BIT.

Annex A: Schedule of fees set above cost without Parliamentary approval (based on 2016/17 costs and volumes)

Fee description	Current Fee £	Estimated unit cost £	Cost recovery rate %	Total amount of over - recovery £
1. Court of Protection proceedings				
Application	400	385	104%	448,000
Appeal	400	320	125%	2,000
<i>Total Court of Protection proceedings</i>				<i>450,000</i>
2. Insolvency proceedings				
General applications (on notice)	155	95	163%	204,000
General applications (ex parte or by consent)	50	25	200%	261,000
<i>Total Insolvency proceedings</i>				<i>464,000</i>
3. Magistrates' Courts proceedings				
Council Tax Liability Orders	3	0.50	616%	7,900,000
Warrant of commitment in proceedings under the Child Support Act 1991	245	45	520%	48,000
Appeal – Licensing Act 2013	410	70	686%	79,000
Application to state case for High Court	515	155	332%	9,000
Appeal – other	205	70	300%	150,000
Attendance of a Justice	50	30	167%	4,000
Certificate - memorandum of conviction	60	25	240%	4,000
Certificate - other	60	25	240%	42,000
<i>Total Magistrates' Courts</i>				<i>8,237,000</i>

Fee description	Current Fee £	Estimated unit cost £	Cost recovery rate %	Total amount of over - recovery £
4. High Court proceedings				
Judge sitting as an arbitrator (Technology and Construction Court)	2,455	1,800	136%	5,000
Judge sitting as an arbitrator (Administrative Court)	2,455	2,275	108%	36,000
<i>Total High Court</i>				<i>41,000</i>
Total All				£ 9,191,000