

<b>Title:</b> Courts and Tribunals fee remissions Impact Assessment: Uplift Help with Fees Income Thresholds with Inflation <b>IA No:</b> MoJ003/2021 <b>RPC Reference No:</b> <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> HM Courts and Tribunals Service (HMCTS)	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 31/08/2021			
	<b>Stage:</b> Implementation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
<b>Contact for enquiries:</b> mojfeespolicy@justice.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	N/A

**What is the problem under consideration? Why is government action or intervention necessary?**

Court fees are necessary to fund the cost of running Her Majesty's Courts and Tribunal Service (HMCTS) and accounted for £724m in income against £2bn in running costs for HMCTS in 2019/20. Because court fees are not updated by inflation on a routine basis, the government has proposed that a select number of fees are increased in line with historical Consumer Price Index (CPI) inflation (backdated to August 2016), to account for increased running costs of HMCTS. HMCTS provides fee remissions (full or partial fee waivers) under the 'Help with Fees' (HwF) scheme to those users of its fee charging services who have minimal savings and who are on a low income or in receipt of certain benefits. As it is being proposed to increase selected fees by historical inflation, HwF income thresholds will also be increased by historical CPI with owner occupiers' housing costs (CPIH) backdated to 2016, to ensure that access to justice is maintained for those on the lowest incomes. Government intervention is required because the Ministry of Justice sets the income thresholds in the HwF means test.

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objective is to ensure that access to justice is maintained for individuals who have limited savings and who are in receipt of certain benefits or who are on a low income, alongside the proposed increase to selected court fees. The intended effect is to raise the income threshold for determining eligibility for HwF so that a greater number of eligible court users receive a full or partial remission of their court fee than would otherwise have been the case had the thresholds not been updated. We will also be aligning the UK Supreme Court (UKSC) remission scheme income thresholds to ensure consistency with HwF.

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

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

- Option 0: Do Nothing. Maintain the current HwF scheme
- Option 1: Uplift the income threshold, couple and child premiums used in the HwF means test in line with inflation, backdated to August 2016.

**The Government's preferred option is to implement Option 1. This will expand eligibility to HwF, making court fees more affordable for those on a low income.**

<b>Will the policy be reviewed? yes If applicable, set review date: Month/Year</b>					
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible : Minister Chris Philp Date: 02/09/2021

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Uplift the income threshold, couple and child premiums used in the HwF means test in line with inflation, backdated to August 2016.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year 21/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	£6	Optional
Best Estimate	N/A	£5	

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

The changes to the HwF income thresholds are expected to cost HMCTS £6-7m p.a. in lost fee income. This equates to an annual average of £5-6m after conversion to real prices. The 'high' estimate includes a 20% optimism bias to account for uncertainty in the modelling. As this represents a transfer from HMCTS to taxpayers, it is not included in the NPV.

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

There will be costs to HMCTS to update both staff guidance and guidance for the public, and to update the online services and calculators used. There will also be familiarisation costs to solicitors and supporting organisations, such as Citizen's Advice. These are expected to be minor as it is only the income thresholds of the scheme that are changing.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	£6	Optional
Best Estimate	N/A	£5	

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

The proposed changes to the HwF scheme are expected to increase the value of fee remissions by around £6-7m p.a.; this is £5-6m per annum after conversion to real prices.

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

None

Key assumptions/sensitivities/risks	Discount rate (%)
<p>The following assumptions have been made when estimating the impacts in this IA:</p> <ul style="list-style-type: none"> <li>The estimates of costs and benefits are approximations that have been calculated using income and benefit data provided to us by the Department for Work and Pensions (DWP).</li> <li>Eligibility is calculated under the current system and the proposed system using an average fee for each jurisdiction.</li> <li>The proportional change in eligibility is applied to current remissions to estimate the additional amount of fee income remitted from the proposed policy.</li> <li>The DWP data has been weighted to make it more representative of court users using available data on the characteristics of court users. However, as the income of civil court claimants is not recorded, the estimates here are an approximation and actual income foregone may be higher or lower than that reported here.</li> <li>Income thresholds have been inflated using CPIH.</li> <li>The analysis uses fee remissions in 2019/20 as a baseline.</li> </ul>	

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base

## A. Background

1. HM Courts and Tribunals Service (HMCTS) delivers a benefit for courts users and the general public by providing a place where people can enforce and defend their rights. A large number of people use the services of HMCTS every year. Whether it be separated 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 in civil and family cases are an important source of funding for the courts, and a reasonable means of making resources available to secure access to justice. Under s92 of the Courts Act 2003, the Lord Chancellor has the power to prescribe fees in respect of things done by the courts, which helps to ensure he fulfils his statutory duty to ensure *an efficient and effective* courts system.<sup>1</sup>
3. However, court fees should not prevent anyone from obtaining access to justice and so the Help with Fees (HwF) scheme offers a full or partial fee remission for court users on a low income and with only a small amount of savings. The UK Supreme Court operate their own remissions scheme which has the same income and capital thresholds as HwF. In order to keep consistency across these schemes, the income thresholds will be updated to match HwF.
4. Usually only individuals can apply for HwF, with the exception of sole traders (people who run their own business). To qualify for HwF, the applicant must have savings and investments below a set amount ('capital threshold'), and then either be in receipt of a qualifying benefit or have a gross monthly income below a certain threshold. The capital threshold varies with the applicant's age and the value of the fee, as set out in the HwF guidance and the underlying statutory provisions. The qualifying benefits are: Pension Credit (guarantee credit), Income-based Jobseeker's Allowance (JSA), Income-related Employment and Support Allowance (ESA), Income Support, Scottish Legal Aid (Civil Claims), and Universal Credit (if earnings <£6,000pa).
5. If an applicant is not in receipt of a qualifying benefit, then that person's gross monthly household income, which may include income from non-passported benefits, must be at or below a set threshold. The threshold is currently £1,085 for a single person or £1,245 for a couple. £245 is added onto this threshold for each dependent child. If the applicant's income is below the threshold, they will be eligible for a full remission. If the applicant's income is above the threshold, they may receive a partial remission; £5 is deducted from the remission award for every £10 of income above the threshold.
6. If the applicant has a gross monthly income of more than £5,085 (£5,245 for a couple), then they are automatically ineligible. £245 can be added onto this for every dependent child.
7. A number of benefits can be disregarded from gross income for the purposes of the HwF assessment, including Housing Benefit and the housing element of Universal Credit. The full list of these disregarded benefits can be found at Annex A.
8. The HwF scheme (and UKSC scheme) as it stands was introduced in October 2013. Court fees are not annually inflated, nor are the income thresholds used to test eligibility for HwF. This means that both fees and the income thresholds used to test eligibility for a remission have been falling in real terms over time.
9. This Impact Assessment (IA) assesses the impact of uplifting the existing HwF income thresholds using the Consumer Price Index with owner occupiers' housing costs (CPIH), backdated to August 2016. It should be considered alongside IA MoJ002/2021 which proposes uplifting selected fees with

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<sup>1</sup> S1(1) Courts Act 2003 – "The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates' courts, and that appropriate services are provided for those courts." See also s6A Promissory Oaths Act 1868 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

the Consumer Price Index (CPI) backdated to August 2016, or the date they were last amended if later, and IA MoJ004/2021 which assess the two proposals together.

10. The proposal to increase HwF, if implemented, would involve amendments to the HwF rules set out at Schedule 2 of each fee order and the UKSC remission rules set out in Schedule 2 of The Supreme Court Fees Order 2009.

## **B. Policy Rationale and Objectives**

11. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
12. In this case the reason for intervening is equity (fairness): to ensure that all individuals are able to afford court fees so they are therefore not prevented from accessing the justice system. As the government is proposing to uplift selected court fees by inflation (see IA MoJ002/2021), backdated to August 2016 or the date of the last fee change if later, it is right that the income thresholds for HwF eligibility should also be uplifted, meaning more applicants are able to access the HwF scheme.
13. The objective of this policy is to ensure that the court system is properly funded, whilst at the same time ensuring that those on low incomes can still obtain access to justice.

## **C. Description of Options Considered**

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

- **Option 0 – Do Nothing. Maintain the current HwF scheme.**
- **Option 1 – Uplift the income threshold, couple and child premiums used in the HwF means test in line with inflation, backdated to August 2016.**

15. Option 1 is the Government's preferred option to meet the policy objectives.

### **Option 0**

16. Under the "do nothing" option the current HwF scheme would remain unchanged.
17. If the current HwF scheme were to remain in place, the increase to fees would still lead to an increase in fee income remitted as the value of the fee is a determinant of the remission a person receives, whether they receive a full or partial remission. However, as household incomes rise over time the number of people eligible for a remission, and the value of the remission (all else being equal), would gradually fall.

### **Option 1**

18. Under this option, the HwF income thresholds would be uplifted in line with CPIH inflation, backdated to August 2016 through to the start of the 2021/22 financial year. The methodology to uplift HwF income thresholds is consistent with the methodology used to uplift selected court fees (see IA MoJ002/2021), with the exception that CPIH inflation has been used and thresholds have been rounded to the nearest five pounds<sup>2</sup>. The CPIH index has been used to inflate the thresholds, rather than CPI, as it includes

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<sup>2</sup> CPIH figures for March are used, consistent with the methodology to inflate fees.

owner occupiers' housing costs which are relevant to individuals applying for HwF. The inflationary increase was calculated using 8 months of inflation as measured by the CPIH annual rate from August 2016 to March 2017, another 12 months to March 2018, and so forth until March 2021<sup>3</sup>. When the consultation was published, HwF thresholds had to be inflated using a forecast for the inflationary increase for Q1 2021. The publication of March 2021 CPIH data means that it is now possible to base the increased thresholds on CPIH outturns, increasing the inflation rate from 7.5% to 8%.

19. The current and proposed thresholds are given in Table 1, below. No changes are proposed to the capital thresholds or the passporting arrangements.

**Table 1: Current and proposed monthly HwF income thresholds**

	<b>Single Threshold</b>	<b>Couple Premium</b>	<b>Child Premium</b>
<b>Current</b>	£ 1,085	£ 160	£ 245
<b>Proposed</b>	£ 1,170	£ 175	£ 265

20. The current HwF scheme has an upper income threshold, above which no remission is awarded, as described in paragraph 6. This upper threshold will remain at £4,000 plus the relevant threshold in Table 1, meaning that for a single person the cap will rise from £5,085 to £5,170 and for a couple it will rise from £5,245 to £5,345

21. The new thresholds will apply to all fees in the Civil and Family Courts and Tribunals where the current HwF scheme is applicable. The new thresholds will also apply to the UK Supreme Court fee remissions scheme. However, this is not expected to affect the value of remissions awarded by the UKSC as in practice, due to the nature of the cases involved and the limited number of applications for remission received, the UKSC assesses means on a case by case basis, rather than applying the HwF means-test.

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

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

- Court users – those who use the Civil, Family courts and Tribunals where a court fee is charged. Normally just individuals are eligible for HwF, although sole traders are also eligible;
- HMCTS – who operate the services;
- Taxpayers – who subsidise HMCTS;
- Legal services providers – who provide services to users of HMCTS;
- Support organisations – such as Citizen’s Advice or Support through Court, who provide advice and assistance to vulnerable HMCTS users;
- MoJ – who sponsor HMCTS (which provides the services for which fees are charged);
- The UKSC – who can award fee remissions under Schedule 2 of The Supreme Court Fees Order 2009. The Income thresholds in this scheme are aligned with HwF and to ensure consistency above the schemes, will also be uplifted.

## **E. Cost and Benefit Analysis**

23. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

24. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society

<sup>3</sup> Figures for CPIH annual rates can be found at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>.

might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

25. The costs and benefits of each proposal are compared to Option 0, the counterfactual or “do nothing” scenario, where HwF income thresholds are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

**Methodology**

26. The aim of the analysis was to estimate the amount of additional fee income that would be ‘remitted’ as a result of the increase to the HwF income thresholds. The approach taken to model this was to estimate the increase in the proportion of fee income due that would be remitted (‘remission rate’) for the main jurisdictions where fees are remitted and apply these rates to the total fees due using 2019/20 data. ‘Remission rates’ refer to the proportion of total fee income due that is refunded/not-charged, rather than the proportion of claimants that get a remission.

27. HMCTS data allows us to calculate the proportion of total fee income due across all fees that is currently ‘remitted’. However, HMCTS does not collect data on claimant’s income and earnings and so it is not possible to know exactly how many more court users might receive a remission (and how much they would receive), as a result of the policy change. This is therefore estimated using a version of the Department for Work and Pensions’ (DWP) Policy Simulation Model (PSM). The PSM is representative of the general population and includes full income and benefit information. More details on the PSM are given in Annex B.

28. An overview of the how the modelling is done is outlined in the steps below, with more detail given in Annex B.

**Step 1:** Eligibility for a fee remission, and the size of this remission, is tested for each household in the PSM using an average fee. This is done for the baseline (Option 0) and Option 1.

**Step 2:** The weights in the PSM are adjusted to make the sample more representative of court users. This is done using information on the characteristics of court users, see Annex B.

**Step 3:** The outputs from the PSM modelling are scaled down to align to the actual remission rates calculated from HMCTS data. It is then possible to estimate how much more of gross income is remitted under Option 1 compared with Option 0. This is the additional cost to HMCTS.

29. Steps 1 to 3 are carried out for the four main fee areas where remissions are awarded, with an appropriate average fee and weighting used for each. The areas are: County Civil, High Court, Divorce and Private Family Law. These four categories of fee covered 95% of HwF awards in 2019/20. Table 2 gives the current remission rates calculated from HMCTS data and the expected remission rates under Option 1 for these four fee categories.

**Table 2: Proportion of total fee income due that is remitted (‘remission rate’) in Option 0 and Option 1; 2019/20**

<b>Jurisdiction and fee band</b>	<b>Current remission rate (19/20 data)</b>	<b>Remission Rates under Option 1</b>
County Civil	17%	18%
Divorce Application Fee	20%	22%
Private Family Law Application Fees	25%	27%
High Court	26%	28%

*Note: 2019/20 remission rates have been calculated using HwF management information and gross fee income. In the county civil jurisdiction, case types where income is only received from organisations (e.g. mortgage repossession) are excluded. Public family law is excluded as these fees are paid by public bodies.*

30. Remission rates calculated from the PSM will be higher than actual remission rates, as a share of fee income will be paid by organisations (who are not eligible), or paid under a ‘no win, no fee’ arrangement, and because some eligible claimants may not apply. That is why the remission rates calculated in the PSM are aligned to current HMCTS remission rates, rather than remission rates calculated from the PSM being used directly in the modelling.

#### Optimism Bias

31. A 20% optimism bias has been applied to the main estimate, giving an upper bound of £7m p.a. as the additional amount of fee income that might be remitted.

#### Volume of Remissions

32. Table 3 gives the amount of fee income that was remitted in 2019/20 by jurisdiction under the current HwF scheme, and the estimated amount under Option 1. The table shows that in 2019/20 £92.7m of fee income was remitted. This is estimated to rise to £98.2 - £99.3m under the proposed option; an increase of £5.5 - £6.6m. Optimism bias has been applied to the central estimate to give a range for the remission under option 1.

33. 2019/20 is considered to be a good approximation for subsequent years, as neither fees nor HwF thresholds are annually uplifted with inflation. However, it is possible that the remission rate may rise due to the current economic climate.

**Table 3: Fee Income remitted; baseline and current option (2019/20), £millions**

<b>Jurisdiction and fee band</b>	<b>Current Remission (2019/20)</b>	<b>Remission under Option 1</b>	<b>Increase in Remission</b>
County Civil	£54.2	£57.5 - £58.2	£3.4 - £4
Divorce Application Fee	£13.5	£14.2 - £14.3	£0.7 - £0.9
Private Family Law Applications Fees	£3.1	£3.3	£0.2
High Court	£17.1	£18.1 - £18.3	£1.0 - £1.1
Court of Protection	£1.6	£1.7	£0.1
Probate	£0.0	£0.0	£0.0
Civil Magistrates	£0.0	£0.0	£0.0
Tribunals	£1.9	£2.0	£0.1
Remaining Family Fees	£1.3	£1.4	£0.1
<b>Total</b>	<b>£92.7</b>	<b>£98.2 - £99.3</b>	<b>£5.5 - £6.6</b>

34. There are five fee categories not included in the PSM modelling as in 2019/20 they made up just 5% of total HwF awards: the Court of Protection, Civil Magistrates, Probate, Tribunals and family fees not already covered. To estimate the increase in the amount of fee income remitted in these five jurisdictions, the overall increase in the amount of fee income remitted for County Civil, High Court, Divorce and Private Family – an increase of 6% - was applied to these five jurisdictions.

## Assumptions and Risks

35. The modelling approach rests on a number of assumptions which mean the estimated additional cost of option 1 could be higher or lower than estimated above. The key assumptions that could particularly affect the estimated cost are:
- **Average fees:** as the value of a remission is dependent on the fee being paid, the use of weighted average fees means that actual remissions rates will vary from those estimated by actual fees paid.
  - **Weighting:** while the PSM has been weighted to reflect the characteristics of court users (see details in Annex B), this is not as robust as full income/benefit information on court applicants, and so the gross incomes of court users will differ from that estimated by the model.
  - **Take-up:** as the model estimates the increase in remissions by adjusting the current remission rates by the proportional change in eligibility in the PSM dataset, the model implicitly assumes that the 'take-up rate' does not change. The 'take-up rate' refers to the proportion of individuals eligible for a court fee remission that actually apply for a remission. As we do not know what proportion of eligible individuals currently 'take-up' a remission, it is not possible to estimate how this might change. However, as Option 1 is a marginal change to the HwF scheme, take-up is not expected to be significantly altered.
  - **Current Remissions:** the modelling assumes that the amount of fee income currently remitted (Option 0) will remain relatively stable in absence of the changes proposed here. It is possible that the current financial climate may lead to an increase in remissions, and this is something that will be monitored.

## Demand

36. It is possible that by expanding eligibility to the HwF scheme, the reduction in the fee payable could incentivise some individuals to issue a court application who may not have done so otherwise. However, we consider this to be a low risk as option 1 is a marginal adjustment to the income thresholds and so a shift in demand is unlikely.

## Net Present Value (NPV)

37. Table 4 shows the additional cost to HMCTS over a 10 year appraisal period. The changes to HwF are expected to cost HMCTS £6-7m per annum in foregone fee income; the cost is £3m in 2021/22 as the policy is expected to be introduced in October 2021.
38. As the HwF thresholds will not continue to rise with inflation, the additional cost to HMCTS will fall over-time in real terms. Table 4 shows the additional cost to HMCTS after accounting for inflation, using the GDP deflator. The real, annual average cost to HMCTS is £5-6m.

**Table 4: Additional cost of HwF scheme over 10 year appraisal period, £millions**

	2021/ 22	2022/ 23	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	Ann al Avera ge
<b>Nominal Cost</b>											
Main	-£3	-£6	-£6	-£6	-£6	-£6	-£6	-£6	-£6	-£6	-£5
High	-£3	-£7	-£7	-£7	-£7	-£7	-£7	-£7	-£7	-£7	-£6
<b>Cost in real prices</b>											
Main	-£3	-£6	-£5	-£5	-£5	-£5	-£5	-£5	-£5	-£5	-£5
High	-£3	-£7	-£7	-£6	-£6	-£6	-£6	-£6	-£6	-£6	-£6



39. The cost to HMCTS represents a net transfer to individuals who will now pay lower court fees. The NPV is therefore £0.

### **Option 1 – Uplift the income threshold, couple and child premiums used in the HwF means test with inflation, backdated to August 2016**

#### **Costs of Option 1**

##### Transitional costs

###### *HMCTS*

40. HMCTS is expected to incur minor costs from amending guidance, the public online application form, the staff online application and HwF calculators used by staff.

###### *HMCTS users, providers of legal services and support organisations*

41. 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. Support organisations, such as Citizen's Advice and Support through Court, may also incur familiarisation costs and will need to amend any guidance and staff training documents.

###### *UK Supreme Court*

42. There will be familiarisation and awareness costs to the UK Supreme Court, who will need to familiarise themselves with the revised thresholds and amend any guidance. The costs associated with making these changes are expected to be minor.

##### Ongoing costs

###### *HMCTS, MoJ, Taxpayers*

43. As shown in Table 4 above, the ongoing cost to HMCTS (and therefore to the MoJ and the general taxpayer) is £3m in 2021/22, rising to £6-7m per annum from 2022/23 onwards.

#### **Benefits of Option 1**

##### Transitional Benefits

44. No transitional benefits are expected.

##### Ongoing benefits

###### *Users of HMCTS services*

45. As a result of the fee changes, we estimate that HMCTS users will benefit by around £3m in 2020/21, the first six months of the fee change, and £6m-£7m from 2022/23 onwards.

## **F. Risks and Sensitivity Analysis**

46. The main risks associated with this analysis are discussed in paragraph 35 above. We have not conducted sensitivity analysis and have chosen instead to model the impact of uncertainty via the use of optimism bias.

## **G. Enforcement and Implementation**

47. A HwF application is required at each stage of the case where a fee is payable including where a hearing fee may be applicable. The applicant can apply to get some, or all of their money back if they have paid a fee in the last 3 months. However, the applicant must have been eligible when they paid the fee.

## **H. Wider Impacts**

### **Equality impacts**

48. A separate equalities assessment has been produced for the options assessed in this IA.

### **Better Regulation**

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

## **I. Monitoring and Evaluation**

50. Help with Fee awards will be monitored using HwF Management Information.

## **Annex A: Disregarded Benefits**

- Armed Forces Independence Payment (AFIP)
- Attendance Allowance
- Back to Work Bonus
- Bereavement Allowance
- Budgeting Advances paid under Universal Credit
- Budgeting Loan
- Carer's Allowance
- Carer Element of Universal Credit
- Childcare Element of Working Tax Credit
- Childcare Element of Universal Credit
- Cold Weather Payment
- Constant Attendance Allowance
- Direct payments made under Community Care, Services for Carer and Children's Services
- Disability Living Allowance (DLA)
- Disabled and Severely Disabled elements of Child Tax Credit
- Disabled and Severely Disabled Child elements of Working Tax Credit
- Disabled and Severely Disabled Child elements of Universal Credit
- Exceptionally Severe Disablement Allowance
- Financial support under an agreement for the foster care of a child 14
- Funeral Payment
- Housing Benefit
- Housing Credit Element of Pension Credit
- Housing Element of Universal Credit
- Industrial Injuries Disablement Benefit
- Independent Living Fund payments
- Limited Capability for Work Element of Universal Credit
- Personal Independence Payment (PIP)
- Any pension paid under the Naval, Military and Air forces etc (Disablement and Death) service Pension Order 2006
- Severe Disablement Allowance
- Short Term Benefit Advances (STBAs)
- Universal Credit Advances
- Widowed Parent's Allowance

## Annex B: Modelling the increase in fee income remitted

This Annex provides more details on the DWP data used to estimate the change in fee income remitted between Option 0 and Option 1 and more details on how the data is weighted to make it more representative of court users.

### DWP Income and Benefits Data

1. The DWP Policy Simulation Model (PSM) is a household dataset giving detailed information on household composition, earnings, other income, and benefits. It is representative of the general population. The PSM is based upon the 2017/18 Family Resources Survey but gives information on income and benefits in 2022/23 prices.
2. The information on households' income and benefits is prior to the Covid-19 pandemic and so it is likely that the number of households in receipt of Universal Credit has increased. However, this is not expected to have a significant impact on HwF eligibility.
3. The PSM dataset does not include the full list of benefits that can be disregarded from income in the HwF means-test, and so only the following have been included: War Pension, Attendance Allowance, Severe Disablement Allowance, Housing Credit, Carer's Allowance, Personal Independence Payment, Disability Living Allowance, and Winter Fuel Payment. The Housing Element of Universal Credit is also disregarded from gross income, but this is capped at the maximum amount of Universal Credit received by the benefit unit.

### Weighting the PSM

4. Each household in the PSM data will have a weight – together, these weights act to make the dataset representative of the general population. However, court users may differ, not just from the general population, but may also differ across jurisdictions. The weights in the PSM are therefore adjusted to make the sample better reflective of court users.
5. The Civil Court Users Survey (CCSU) (2014/15) found that the “profile of individual claimants matches the general population of adults (aged 16 or older) reasonably closely”, although claimants were found slightly more likely to be male, aged 45 or over and self-employed. The weights in the PSM dataset have therefore been adjusted to match the age profile of court users as reported in the CCSU and the proportion that are self-employed. Gender was not used to re-weight the data due to the difficulty of assigning a gender to a benefit unit. This weight is used when calculating remission rates in County Civil and High Court.
6. To calculate remission rates in the family jurisdiction, alternative weights were calculated. For the divorce application fee, the weights in the DWP data were adjusted to match the age profile of those divorced in 2018, using ONS published statistics. However, accurately assessing applicant's income for the divorce fee is particularly difficult due to the changing nature of their household income and circumstances.
7. For Private Family Law fees, an alternative weight was developed to try to match the income distribution of households in the DWP dataset with that of Private Family Law claimants. Data on the postcodes of Private Family Law claimants in 2019 was matched to ONS data giving an ‘income deprivation’ score for each Local Super Output Area<sup>4</sup>. This was used to analyse the proportion of Private Family Law claimants falling within each percentile of income deprivation in order to give a proxy distribution for income. The gross income of households in the PSM was then equalised and ranked so that the PSM weights could be adjusted to match the proxy income distribution of Private Family Law applicants.
8. A similar approach was considered for county court claimants, but this was not considered robust enough to use in the final modelling due to the difficulty in removing organisations from the County Court claimant dataset.

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<sup>4</sup> Using this approach it was possible to match 96% of postcodes to an income deprivation score.

9. For each jurisdiction, a best attempt has been made to re-weight the PSM data to reflect the characteristics or incomes of court users. However, none of these are a substitute for actual income information on court claimants and, in the case of the County Court, the CCUS is now several years old. In the case of the family jurisdiction, postcode is only a proxy for income. There therefore remains a risk that eligibility and income foregone is higher or lower than estimated here.