

Title: Overarching Impact Assessment: Uplifting selected court fees and HwF income thresholds by inflation IA No: MoJ004/2021 RPC Reference No: Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS)	Impact Assessment (IA)			
	Date: 31/08/2021			
	Stage: Implementation			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Summary: Intervention and Options	Contact for enquiries: mojfeespolicy@justice.gov.uk			
	RPC Opinion: 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?

This Impact Assessment brings together a package of measures intended to increase funding for HM Courts and Tribunal Service (HMCTS) while maintaining access to justice for individuals with a low income. It brings together the impacts of two policies detailed in two separate impact assessments: Impact Assessment MoJ002/2021, covering the policy to uplift selected court fees with Consumer Price Index (CPI) inflation from August 2016 or the date of the last fee change if later; and Impact Assessment MoJ003/2021, the policy to uplift the income thresholds used in the Help with Fees (HwF) means-test with CPI including owner occupiers' housing costs (CPIH), also backdated to August 2016.

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

The policy objective is to increase funding to support the running costs of HMCTS, while ensuring 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. The intended effect is to ensure that courts and tribunals are adequately resourced and to reduce the overall taxpayer subsidy for HMCTS, whilst simultaneously raising the income threshold determining eligibility for HwF so that a greater number of claimants receive a full or partial remission from their court fee.

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 and leave court fees unchanged.
- Option 1: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later) and uplift the income threshold (including couple and child premiums) used in the HwF means-test with inflation backdated to August 2016.

The Government's preferred option is to implement Option 1 as it will reduce the subsidisation required by the taxpayer and will ensure HMCTS can continue to deliver access to justice for all.

Will the policy be reviewed? yes If applicable, set review date: Month/Year				
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
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

Chris Philp

Date:

02/09/2021

Summary: Analysis & Evidence

Policy Option 1

Description: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later) and uplift the income threshold (including couple and child premiums) used in the HwF means-test 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		£12m	Optional
High	Optional			Optional
Best Estimate	N/A		£17m	N/A

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

The combined changes to court fees and HwF are expected to cost court users £13-£20m p.a. in additional fee spend; £7-£10m in 2021/22. This equates to an annual average of £12-£17m when measured in constant prices. As this represents a net transfer from court users to HMCTS, the NPV is zero.

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

HMCTS is expected to incur costs from amendments to IT systems, staff guidance and publications for court users. There will also be familiarisation costs to HMCTS, as well as solicitors, court users, and supporting organisations, such as Citizen's Advice. These costs are not expected to be substantial.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		£12m	Optional
High	Optional			Optional
Best Estimate			£17m	

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

The combined changes to court fees and HwF are expected to raise £13-20m p.a. in additional fee income; £7-£10m in 2021/22. This equates to an annual average of £12-17m after conversion to constant prices.

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

None.

Key assumptions/sensitivities/risks	Discount rate (%)
<ul style="list-style-type: none"> This IA brings together the costs/benefits of uplifting selected court fees and the HwF income thresholds with inflation. The changes to HwF will result in a loss of income for HMCTS as more of current fee income is remitted and will reduce the potential income from the inflationary increases to the fees being inflated. This IA summarises the total income from the package once all of these changes are accounted for. Details of assumptions/sensitivities and risks for the modelling under-pinning the two policy options can be found in IA MoJ002/2021 and IA MoJ003/2021. 	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: n/a			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.¹
3. The general legal principle, set out in HMT's Managing Public Money guidance², is that fees should not be set at a level that exceeds the cost of the service provided without express Parliamentary approval. The only court fees that may be set at a level that exceeds costs are those set under the enhanced court fee power (section 180 of the Anti-social Behaviour, Crime and Policing Act 2014).
4. However, court fees should not prevent anyone from receiving access to justice and so the Help with Fees (HwF) scheme offers a full or partial fee remission for court users who are in receipt of certain benefits or who are 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.
5. Court fees are not annually inflated, nor are the income thresholds that are used to test eligibility for HwF. This means that both the value of the fees and the income thresholds in the HwF scheme have been falling in real terms over time.
6. To address this issue, this Impact Assessment (IA) summarises the total impacts of the two separate changes to court fees:
 - a. Uplift 128 court fees in line with historical Consumer Price Index (CPI) inflation from the date they were last changed (capped at August 2016). This increase is limited to fees which are under-recovering compared to their 'unit cost' (estimated cost of the service) or are enhanced, meaning they are already allowed to legally recover more than the cost of the service. More details on this policy and the fees to be amended can be found in IA MoJ002/2021.
 - b. Uplift the income thresholds in the HwF means-test with CPI including owner occupiers' housing costs (CPIH) inflation backdated to August 2016, including the couple and child premiums.
7. A consultation paper, "Increasing selected court fees and Help with Fees income thresholds by inflation" was published on 22 March 2021. It invited comments on the proposals discussed above – that is, on the proposal to increase selected court fees and HwF income thresholds by inflation.
8. The consultation period closed on 17 May 2021. We received 89 responses, the majority of which came from legal services companies and local authorities. A consultation response has been published alongside this impact assessment.³

B. Policy Rationale and Objectives

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 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

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

³ The response can be found at <https://consult.justice.gov.uk/>

9. 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, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as 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).
10. The rationale for intervention in this instance is both efficiency and equity. A properly funded court system, which everyone can access, is essential to ensure that access to justice and the rule of law are maintained. Therefore, the rationale of this policy is to ensure proper funding for the court system, while at the same time ensuring that those on the lowest incomes can still obtain access to justice.
11. The associated policy objectives are increasing selected fees in line with inflation, backdated to August 2016, to help recover the additional running costs of HMCTS. At the same time increasing the income thresholds used to test eligibility for a fee remission in line with historical inflation, backdated to August 2016, will help to ensure that access to justice is maintained for those on a low income.

C. Description of Options Considered

12. To meet these policy objectives, the following options are considered in this Impact Assessment (IA):

- **Option 0: Do Nothing. Maintain the current HwF scheme and leave court fees unchanged.**
- **Option 1: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later) and uplift the income threshold (including couple and child premiums) used in the HwF means-test with inflation backdated to August 2016.**

13. Option 1 is the Government's preferred option to protect access to justice and maintain a well-run court system.

Option 0

14. Under the "Do Nothing" option, the court fees and the HwF scheme would remain unchanged. As the real value of these fees has fallen since 2016, this option would represent a decline in the resources available to HMCTS.

Option 1

15. Under this option, 128 fees will be increased in line with CPI inflation, backdated to August 2016 through to the start of the 2021/22 financial year⁴; an increase of 7.8%. Fees will be rounded to the nearest whole pound, although fees set solely under the section 92 power, and which are therefore not authorised to recover above unit cost, will not be increased above their unit cost. The CPI increase is slightly higher than the figure used in the consultation as this was based on a forecast for 2021 Quarter 1. The publication of CPI figures for March 2021 mean it is now possible to inflate fees using CPI actuals.

16. More details on the policy and which fees are to be increased can be found in IA MoJ002/2021. Table 1 below provides a summary of the number of affected fees, by fees order.

Table 1: Fees affected, by fees order

Fees Order	Number of fees
The Civil Proceedings Fees Order 2008 No 1053	66
Family Proceedings Fees Order 2008 No 1054	42

⁴ CPI inflation for the year to March of each year is used.

Magistrates' Courts Fees Order 2008 No 1052	17
Court of Protection Fees Order 2007 No 1745	3
Total	128

17. Under Option 1, the HwF income thresholds will also be inflated using CPIH inflation, backdated to August 2016 through to the start of the 2021/22 financial year. Full details of this policy can be found in IA MoJ003/2021, but the current and proposed thresholds are given in Table 2, below.
18. The CPI is used to uplift the fees as this is a recognised measure of the general increase to prices and is a good measure of the inflation experienced by HMCTS. To uplift HwF, CPIH is used as this includes owner occupiers' housing costs which is applicable to individuals applying for HwF.
19. The HwF thresholds are slightly higher than those presented in the consultation which used a forecast for 2021 Quarter 1. The publication of CPIH figures for March 2021 means it is now possible to inflate the thresholds using CPIH actuals.

Table 2: Current and proposed HwF Thresholds

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

20. 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

21. 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 services for which fees are changed (all fees listed in IA MoJ002/2021). Court users include, among others, individuals, Local Government Authorities, landlords, debt management and utility companies. It also includes unsuccessful defendants who are ordered to pay their opponent's costs, including court fees, at the conclusion of proceedings.
 - 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 service users;
 - MoJ – who sponsor HMCTS (which provides the services for which fees are charged).
 - UK Supreme Court – 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 across the schemes, will also be uplifted.

E. Cost & Benefit Analysis

22. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
23. 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 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.
24. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario, where fees and 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).
25. The changes are expected to come into force in September, and so costs and benefits are assessed from 1st October 2021.
26. Replacing estimates of the change in the CPI to March 2021, with the actual outturn has resulted in changes to some fees as well as the HwF thresholds; this is discussed in paragraphs 15 and 19. The details of the fee changes and the fee amounts can be found in Impact Assessment MOJ002/2021. The estimated income from the overall package is higher than the consultation Impact Assessment because electronic payment data has been used to supplement the recorded volumes of fees paid (obtained from case management systems), used to estimate income from the fee change. This means that it is possible to estimate fee income for some fees where previously it had not been possible.

Methodology and key assumptions

27. The expected income raised from increasing 128 court fees in line with inflation is detailed in IA MoJ002/2021, and the anticipated cost of changing the HwF income thresholds is detailed in IA MoJ003/2021. However, the proposed changes to HwF will also reduce the income raised from increasing court fees as the amount remitted on the additional fee income will be higher than if HwF were left unchanged.
28. This IA therefore calculates the income from raising court fees, taking account of the proposed changes to HwF when calculating net income (that is, income raised from court fees after remissions). It then summarises the total income raised once both policies have been accounted for.
29. IA MoJ003/2021 gives a ‘remission rate’, the percentage of total fee income due that is remitted, for the main jurisdictions in county civil and family. These remission rates are summarised in table 3, below.

Table 3: Proportion of gross fee income remitted, before and after changes to HwF

	Current remission rate	Estimated remission rate, after changes to HwF
County Civil	-17%	-18%
Divorce Application Fee	-20%	-22%
Private Family Law Application Fee	-25%	-27%
High Court	-26%	-28%
Court of Protection	-15%	-16%
Civil Magistrates	-0.2%	-0.3%
Remaining Family Fees	-9%	-10%

30. The remission rates in table 3 are used in the inflating fees modelling to calculate what proportion of the additional income raised from the inflated fees is remitted. It is not possible to calculate an exact remission rate for every individual fee; instead the remission rate for the jurisdiction that a fee is allocated to (in the fees register) is used. For example, the same remission rate is applied to all Court of Protection fees, even though in practice these will vary. Net income from Option 1, to inflate fees, may therefore be higher or lower than estimated here. Remissions are not applied to fees paid solely by organisations or local authorities, such as public law fees, as these customers are not eligible for HwF.
31. The higher remission rates that follow the changes to HwF have only a small impact on the net income expected from each of the fee changes which, after rounding, is unchanged at £20-25m per annum. The net income before and after the changes to HwF, split by the fees order, is given in table 4 below.

Table 4: Additional net fee income before and after changes to HwF, £m per annum

Fees Order	Net Income (without changes to HwF)	Net Income (with changes to HwF)
The Civil Proceedings Fees Order 2008 No 1053	£12.7 - £15.9	£12.6 - £15.8
Family Proceedings Fees Order 2008 No 1054	£6.9 - £8.6	£6.8 - £8.5
Magistrates' Courts Fees Order 2008 No 1052	£0.5 - £0.6	£0.5 - £0.6
Court of Protection Fees Order 2007 No 1745	£0.1-£0.2	£0.1 - £0.2
Total	£20.2 - £25.3	£20.1 - £25.1

Annual Costs/Benefits

32. Table 5 shows the estimate of annual income from the package of changes to fees and HwF income thresholds, broken down into its component parts. The table shows that the fee increases are expected to raise £23-29m per annum; this falls to £20-25m once remissions have been applied to these fees. This modelling uses remission rates that take account of the proposed changes to HwF.
33. The changes to HwF are expected to reduce current fee income by £6-7m per annum. Bringing the package together is therefore expected to raise £13-20m per annum.

Table 5: Estimated annual income from fee changes, £millions

	Main Estimate	Low Estimate
Gross Income from inflating fees	£29	£23
Net Income (after remissions) from Inflating fees (with changes to HwF)	£25	£20
Cost of changes to HwF to current fees	-£6	-£7
Final Package	£20	£13

Note: numbers may not sum due to rounding

34. It is anticipated that the changes will come into force in October 2021. Optimism bias of 20% has been applied to the expected income from changes to fees, and to the expected cost of the changes to HwF income thresholds due to uncertainty in both fee volumes, and to account for risks and uncertainties in the modelling. Full details of assumptions/sensitivities and risks for the modelling underpinning the two policy options can be found in IA MoJ002/2021 and IA MoJ003/2021.

Net Present Value

35. Table 6 shows the additional income to HMCTS over the 10 year appraisal period from Option 1. The changes to fees and HwF are expected to raise £13-20m per annum in additional income; this is £7-10m in 2021/22 as Option 1 is expected to be introduced in October 2021.
36. As the HwF income thresholds will not continue to rise with inflation, the benefit to HMCTS will fall over-time in real terms. Table 6 shows the benefit to HMCTS after accounting for inflation, using the GDP deflator. The annual average income to HMCTS measured in constant prices is £12-17m.

Table 6: Additional income from changes to fees, and HwF, over 10 year appraisal period, £million.

	2021/ 22	2022/ 23	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028 /29	2029 /30	2030/ 31	Annual Average
Nominal Cost											
Main	£10	£20	£20	£20	£20	£20	£20	£20	£20	£20	£19
Low	£7	£13	£13	£13	£13	£13	£13	£13	£13	£13	£13
Real, discounted cost											
Main	£10	£20	£19	£19	£18	£18	£18	£17	£17	£16	£17
Low	£7	£13	£13	£13	£13	£12	£12	£12	£12	£11	£12

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

Option 1: Uplift selected court fees by inflation, backdated to August 2016 (or date of last fee change, if later) and uplift the income threshold (including couple and child premiums) used in the HwF means-test with inflation backdated to August 2016.

Costs of Option 1

Transitional costs

HMCTS

38. HMCTS is expected to incur costs from amendments to IT systems, staff guidance and publications for court users. There may also be costs related to HMCTS staff having to familiarise themselves with the new fees. These have not been monetised and are not expected to be substantial, with further assessment being undertaken to determine the process for handling the fee changes.

Court users, providers of legal services and support organisations

39. 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. These costs are expected to be minor.

UK Supreme Court

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

Ongoing costs

HMCTS users

41. HMCTS users will benefit from the changes to HwF by around £6-7m per annum. However, the increases to court fees will cost users an estimated £20-25m per annum in higher court fees once remissions, including changes to the scheme, are accounted for. The net cost to users is therefore estimated at £13-20m per annum.

Benefits of Option 1

Transitional Benefits

42. No transitional benefits are expected.

Ongoing benefits

HMCTS, MoJ, Taxpayers

43. The increase to certain court fees is expected to generate an additional £20-25m per annum in fee income once remissions, including changes to the scheme, are accounted for. However, the changes to HwF income thresholds are expected to cost HMCTS £6-7m per annum. The net benefit to HMCTS (and therefore to the MoJ and the general taxpayer) is therefore estimated at £13-20m per annum.

F. Risks and Sensitivity Analysis

44. As set out in the individual IAs, optimism bias of 20% has been applied to the main estimates to account for risks and uncertainties. In the case of the impact of HwF, a 20% optimism bias has been applied to the main estimate to account for uncertainties in the modelling of how eligibility will change following the rise in the HwF income thresholds. In the case of the income from inflating 128 court fees, a reduction of 20% has been applied to the main estimate to account for uncertainty in the future volume of demand for court services. These risks and uncertainties are set out in full in the individual Impact Assessments: Impact Assessment MoJ002/2021 and Impact Assessment MoJ003/2021.
45. The estimated income from inflating court fees is particularly sensitive to the volume of applicants and demand for court services. As set out in Impact Assessment MoJ002/2021, the estimates of income are based upon 2018/19 volumes for the individual fees, but it is likely that future volumes will be higher or lower than these. A sensitivity analysis was carried out to demonstrate how the income would vary if fee volumes were 10% higher or lower than those in 2018/19; additional funding contribution varies by £2m per annum compared with the best estimate scenario. This sensitivity has not been applied to the estimated cost of amending the HwF scheme, as this is less sensitive to small changes in volumes.

G. Wider Impacts

Equality Impacts

46. A separate equalities assessment has been produced for this proposal.

Better Regulation

47. 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.

H. Monitoring and Evaluation

48. The Ministry of Justice continually monitors its fee income and applications for remissions and will review the impact that the proposed changes will have on fee income and remissions.