

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Court Fees, Cost recovery	
Lead Department/Agency	Ministry of Justice	
Stage	Final	
IA number	MoJ221	
Origin	Domestic	
Expected date of implementation (and SNR number)	SNR 7	
Date submitted to RPC	19/02/2014	
RPC Opinion date and reference	27/03/2014	RPC13-MOJ-1959
Overall Assessment	GREEN	
Estimate of the Equivalent Annual Net Cost to Business (EANCB)	N/A	
<p>RPC comments</p> <p>The IA is fit for purpose. The Department has provided a comprehensive assessment of the proposal to raise fees for the provision of court services closer to full cost recovery.</p> <p>The SaMBA is fit for purpose. The Department is not proposing to exempt small and micro businesses fully from the proposal. However the policy has been designed in a way which will mitigate some of the effects.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>“The Ministry of Justice (MoJ) does not recover the full cost of the civil court system (the civil and family courts). In 2012/13 a gross income of around £505m was generated against a cost of around £630m, creating a deficit totalling around £125m (2013/14 prices). With around £25m of income spent on remissions (fee waivers) the overall cost to the taxpayer was around £150m. The MoJ’s 2010 Spending Review settlement includes a commitment to recover, by 2014/15, the full cost of the civil court system through fees, excluding the cost of remissions. Government intervention is necessary to increase income from fees.”</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>“The MoJ’s policy is that fees in HM Courts & Tribunal Service reflect the full cost of the services provided, while protecting access to justice for the less well off and reducing the taxpayer subsidy for the civil court system. The policy objectives for the reforms in this Impact Assessment are to ensure that fee income covers 100% of the cost of providing services, minus the income foregone from the remission system; except in specific cases where a policy decision has been made to continue to charge below cost. The proposals also seek to simplify the current fee structure to make it easier to understand and more straightforward to administer.”</i></p>		

Comments on the robustness of the OITO assessment

The Department explains in its IA that the intention of the proposed increase in fees is not to change behaviour, rather to “...raise the price of court services where they are set below cost” (paragraph 114 of the IA). The policy is therefore out of scope of OITO as it represents an increase to fees and charges without a change in the scope of regulatory activity. The Department’s assessment appears to be reasonable and is consistent with current One-in, Two-out methodology (paragraph 1.9.8 vii (‘Fees and charges’) of the Better Regulation Framework Manual).

Comments on the robustness of the Small & Micro Business Assessment (SaMBA)

The proposals regulate business and are intended to come into force after 1 April 2014. Therefore the SaMBA is applicable.

The SaMBA is sufficient. The Department explains in its IA that “*It is likely that some small and micro businesses which bring cases to the civil courts, or which are defendants in civil claims, will be affected by our policy proposal, as they will now have to pay a higher issue fee to bring a case to court...*” (paragraph 118 of the IA).

The Department has not been able to obtain detailed statistics on the proportion of small and micro businesses that issue or defend claims in the civil courts. While there is no proposal to create a specific exemption for small and micro businesses, the Department sets out in its IA how the design of the policy will ensure that the impacts on small and micro businesses are reduced. The Department has made the assumption that small and micro businesses tend to make claims for smaller amounts using Money Claims Online (MCOL) for claims of up to £1,500. It also explains that issue fees will not change and allocation and listing fees will be removed (paragraph 121 of the IA). Small and Micro businesses would benefit mostly from the changes to fees. Where fees do increase, it is for higher value claims which the Department believes are more likely to be made by larger businesses or individuals. In addition, the Department explains that fees associated with claims for up to £1,500 made by businesses using MCOL will continue to receive a 10% discount, and sole traders will also continue to access current fee remissions.

The Department is also proposing to refresh guidance to help small and micro businesses who will be affected by the proposals. This is in direct response to a study of court users which showed that current guidance is less than clear (paragraph 127 of the IA).

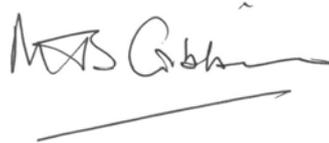
One aspect the Department does highlight is that smaller businesses may face a particular burden in terms of cash flow relating to upfront costs of making a claim (paragraph 128). The Department explains that if a small or micro business is successful in their claim, they can apply for a costs order – which is likely to include the cost of court fees – from a losing defendant. Winning claimants will then be able to obtain a reimbursement for fees. The IA would benefit from further discussion on the effect changes in fees may have on smaller businesses and their

cash flows, and to what extent they may take the decision not to pursue claims from the outset.

Quality of the analysis and evidence presented in the IA

Fees and charges. The Department has set out clearly in its IA how it is increasing fees for the provision of court services to match more closely full cost recovery. This will raise around £110 million a year from court users, of which around £50 million will come from business.

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal line extending to the right below the name.

Michael Gibbons, Chairman