

<b>Title:</b> The single Family Court  <b>IA No:</b> MOJ140  <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> 16/04/2012		
	<b>Stage:</b> Enactment		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Jack Reynolds, Ministry of Justice, 4.19, 102, Petty France, London. <b>Tel:</b> 020 3334 3561			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Not Quantified	£m	£m	No
			NA

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

The legislation and rules around the allocation of cases (i.e. whether a case can be heard in the family proceedings court, the county court or high court and by what level of the Judiciary) in the courts currently dealing with family proceedings are complex and inflexible and may lead to an inefficient allocation of resources. In addition the system can be difficult to navigate for families using the courts.

Government intervention is required because the change requires legislation.

**What are the policy objectives and the intended effects?**

The policy objectives are to: clarify and simplify family court case allocation procedures; rationalise and modernise the existing court structure; and allow greater flexibility in allocating judicial and other resources (both in the immediate and longer term). The intended effects are that the system will be easier for the public to understand and navigate and that HMCTS and the Judiciary will be able to adjust case allocation procedures to adapt to changes in workload, case type and the nature of cases.

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

Two options have been considered:  
Option 0: Do Nothing  
Option 1: Introduce enabling Legislation for the single Family Court, to include power to make provision in secondary legislation relating to the allocation and transfer of proceedings within the Family Court.  
The preferred option is to implement option 1. This should reduce the complexity of the application procedure for applicants to the court and should allow increased efficiency in the court service in the future.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Within 5 years of implementation.  
Month/Year

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.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**



Signed by the responsible Minister: \_\_\_\_\_ Date: 07/05/2012

# Summary: Analysis & Evidence

# Policy Option 1

Description: Introduce enabling Legislation for the single Family Court

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Not Quantified

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£600 000		
High	£3 million		
Best Estimate		Not Quantified	Not Quantified

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

Implementing this reform will require changes to the court's IT system. Early estimates suggest the cost of this will be in the range of £600 000 to £3 million.

We don't currently collect statistics on the number of cases which are rejected through being made to the wrong tier of the court. As a result we can't monetise the ongoing cost to the main affected groups.

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

Familiarisation costs for the Judiciary, HMCTS and legal professionals.

There may be some additional resources costs to HMCTS from allocating to a different court building where an application is received at a court building within the new Family Court that doesn't have the appropriate level of judiciary, according to the allocation provision, to hear the case.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	£0	Not Quantified	Not Quantified

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

We don't currently collect statistics on the number of cases which are rejected through being made to the wrong tier of the court. As a result we can't monetise the benefits to the main affected groups.

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

Family court users may benefit from reduced time costs associated with not searching for information on the correct court to send their case to and from not having to re-apply to a different court if their application is rejected.

HMCTS may experience reduced resource costs associated with not rejecting applications because they are sent to the wrong court building.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The single Family Court measure includes the provision giving the Lord Chief Justice the power to make rules on the distribution of business and the allocation of cases between judges within the Family Court. We have assumed that, on day one of the creation of a single Family Court, this rule-making power will be exercised in such a way as to not affect in which building and by which level of the judiciary cases are heard. However, we envisage that this power will, at some point, be exercised in a way which will change the way that cases are allocated between the different levels of the judiciary. Any changes to the allocation process which result from this will be assessed separately if appropriate.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	NA

## **Evidence Base (for summary sheets)**

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#### **1. Introduction**

The Family Justice Review (FJR) was commissioned in 2010 by the Secretaries of State for Justice and for Education and the Welsh Government. The FJR was invited to undertake a comprehensive review of the system of family justice in light of increasing pressures on the system and growing concerns that the system was not delivering effectively for children and families. It fulfilled a Coalition Agreement to conduct a comprehensive review of family law in order to increase the use of mediation when couples break up and to look at how best to provide greater access rights to non-resident parents and grandparents

David Norgrove was appointed as the independent chair of the Review Panel.

In March 2011, the review published its interim report, in which they sought views on a series of proposals for reform of the family justice system. The consultation closed in June 2011, having received over 600 responses.

The Review Panel considered the consultation responses, and on 3 November 2011 published its final report. This made 134 recommendations to make improvements across the family justice system including tackling delays in public law cases, encouraging separating parents to reach their own agreements about the future care of their children and their finances, and improving outcomes for children.

On 6 February 2012 the Government published its formal response to the Review, setting out its programme of reform for family justice.

The FJR recommended and the Government accepted several changes to the way family law cases are processed in the court. This included the establishment of a single family court to replace the current structure.

Family law includes matrimonial and civil partnership causes and financial disputes arising out of marriage and civil partnership breakdown, proceedings relating to children, both private law (for example, arrangements for residence and contact following breakdown of family relationships) and public law (where the state intervenes in family life for the protection of children), proceedings for the adoption of children, the making of non-molestation orders and occupation orders concerning family home rights and declarations of marital or civil partnership status, parentage or legitimacy and proceedings for the enforcement of the court's orders.

Family law has developed iteratively; it is wide-ranging and often complex. Putting in place this legislation will potentially enable the courts system to administer the law in a more efficient, flexible and responsive way. This reform is an administrative one which will make no changes to substantive family law.

Family proceedings are currently heard by the High Court, the county courts and the magistrates' courts. Magistrates' courts sitting for the purpose of hearing family proceedings are known as family proceedings court.

The High Court is a single court comprising three Divisions. Family proceedings in the High Court are assigned to the Family Division. Cases in the High Court are heard by judges or district judges of the High Court and district judges of the principal registry of the Family Division. An appeal from a decision of a High Court judge would be heard by the Court of Appeal. An appeal from a decision of a district judge of the High Court would be heard by a High Court judge.

County courts are courts with entirely civil jurisdiction, each serving a particular geographical area.<sup>1</sup> Not all county courts can deal with the full range of family business. For example, certain county courts are designated as one or more of the following: divorce county courts, civil partnership county courts, care centres (dealing with public law children's cases) adoption centres, inter-country adoption centres and forced marriage county courts. Cases in the county courts are heard by county court (circuit) judges and district judges (county court). An appeal from a decision of a circuit judge would be heard by the Court of Appeal. An appeal from a decision of a district judge (county court) would be heard by a circuit judge.

Magistrates' courts are primarily criminal courts. However, they also exercise some civil and family law jurisdiction. Generally, public law Children Act 1989 proceedings (such as applications for care or supervision orders) must be commenced in the magistrates' courts. They also have jurisdiction to hear private law children's proceedings (such as applications for contact with a child under section 8 of the Children Act 1989), applications for injunctions under Part 4 of the Family Law Act 1996 (Family Homes and Domestic Violence) and a limited jurisdiction to hear financial disputes arising from family breakdown. Cases in the family proceedings courts are heard by a district judge (magistrates' courts) sitting alone or with one or two lay magistrates or by a Bench of two or three lay magistrates. An appeal from a decision of a magistrates' court sitting as a family proceedings court would be heard in a county court by a circuit judge.

The Family Justice Review highlighted that users found negotiating this system complex and recommended that to make the family courts more accessible, there should be a single point of entry.

This change is likely to affect the following groups:

HM Courts and Tribunal Service and the Judiciary

Families who use the family courts

Legal professionals working in the Family courts

Charities and other voluntary groups working in family justice

In 2011 approximately 130,000 people applied for a divorce, approximately 30,000 children were involved in public law applications and approximately 110,000 children were involved in private law applications.<sup>2</sup>

## **Economic Rationale**

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

In this case intervention may be justified on efficiency grounds. The current system may be confusing for users and may lead to wasted time for users working out which court to apply to or in having their application rejected for applying to the wrong tier of the court. The new system may also save time for court staff as they will not have to reject applications sent to the wrong court (although they may incur additional time costs from allocating applications to the correct level of the judiciary within the single Family Court structure).

## **2. Cost and Benefits**

This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from

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<sup>1</sup> The Crime and Court Bill will also include measures to create a single County Court. This would mean that there would be no geographical jurisdictional boundaries for the county courts. There would be only one County Court exercising jurisdiction over the whole of England and Wales. The single County Court will sit in different centres within various locations providing County Court users with the opportunity to use any County Court.

<sup>2</sup> Figures are provisional

implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity (fairness), either positive or negative.

### **Base Case / Option 0**

Where cases are currently heard is dependent upon a mixture of primary and secondary legislation.

For example, matrimonial proceedings for divorce, judicial separation or nullity of marriage may only be dealt with in the High Court or a county court which is designated by the Lord Chancellor as a divorce county court. Proceedings for the dissolution of a civil partnership or for a separation or nullity order in respect of a civil partnership may only be dealt with in the High Court or a county court designated by the Lord Chancellor as a civil partnership county court. Allocation of proceedings under the Children Act 1989 and Part 4 of the Family Law Act 1996 (Family Homes and Domestic Violence) is determined by the Allocation and Transfer of Proceedings Order 2008 made by the Lord Chancellor, after consulting the Lord Chief Justice. Allocation of judiciary to family proceedings in the county courts is determined by Directions made by the President of the Family Division, after consulting the Lord Chancellor, in accordance with section 9 Courts and Legal Services Act 1990.

Rules of court governing the practice and procedure to be followed in family proceedings in the High Court, county courts and magistrates' courts are now contained in one statutory instrument – the Family Procedure Rules 2010, as amended. However, as proceedings in the magistrates' courts for the variation or enforcement of orders for the payment of money made or registered in a magistrates' courts are not 'family proceedings' for the purposes of making rules, provision for such proceedings are made in separate rules of court made by the Lord Chief Justice.

Respondents to the Family Justice Review consultation stated that the current system was confusing and difficult to navigate. Currently a user wishing to submit an application for financial arrangements following a divorce would need to take his application to a court building containing a High Court or a county court designated by the Lord Chancellor as a divorce county court. If the user wasn't aware of this they may attempt to submit their application to a court building which only contains a Family Proceedings Court. If they did this their application would be refused and they would have to re-submit their application to a court building which contained the correct courts to deal with divorce. We do not collect information on how often applications are rejected because they are sent to the incorrect court building.

Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV)<sup>3</sup>.

### **Option 1 – Legislation to create a single family court jurisdiction**

We intend to introduce legislation to create a single Family Court. This legislation will provide that, with the exception of a limited category of matters which will remain in the exclusive jurisdiction of the High Court, all family proceedings will be dealt with in the Family Court and will replace the current system where family cases may be heard in the family proceedings courts, the county courts or the High Court.

In addition, this legislation will allow the Lord Chief Justice, with the consent of the Lord Chancellor to make rules providing for the distribution of business and the allocation of cases between different levels of the Judiciary within the Family Court

To some extent, the desired end of increased flexibility for the courts could be achieved through amendments to the primary powers to make provision for allocation (such as powers in the Part 4 of the Family Law Act 1996 or the Children Act 1989) so that they relate to all family proceedings. This could be accompanied by a review of procedures for the distribution of work amongst the judiciary by means of listing and ticketing arrangements.

However we have chosen not to follow this option. While the measure could increase the flexibility of case allocation, it would do nothing to improve the desired aim of simplicity for the user. Instead, users

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<sup>3</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.

would still be faced with the existing layers of court with no single point of entry. Given that either change would require primary legislation, we believe that the creation of the single Family Court is a simpler and more effective means of achieving the twin aims of simplicity for the user and increased flexibility for HMCTS and the judiciary.

## **Costs**

The creation of a single Family Court will require changes to the court's IT system. Under the current system orders are issued in the name of the individual courts, for example, the Leicester Family Proceedings Court. The creation of a single Family Court would mean that the current titles of the courts were no longer correct. As a result, we will need to adjust the IT system to ensure that orders are issued in the name of the Family Court rather than in the name of the existing courts. Early estimates suggest that making these changes would cost in the range of £600 000 to £3 million.

HMCTS, the Judiciary, Legal professionals and charities working in family cases will experience some familiarisation costs associated with learning about the new process and updating leaflets and guidance. We expect any training costs to be minor and to be included in business-as-usual training.

HMCTS may incur minor ongoing staff costs associated with sending papers to another court building within the Family Court structure. Under the changes individuals will be able to apply to any location of the Family Court. However if there is not the right level of judiciary in the court building, HMCTS will need to send the papers to a different court building which does have the right level of judiciary. We can not predict how many cases this will apply to and therefore can not quantify this cost.

We do not anticipate an ongoing impact on legal professionals as the substantive process of dealing with case will not change because of this legislation.

## **Benefits**

Family court users may benefit from reduced time costs associated with not searching for information on the correct court to send their case to. Additionally, whichever location of the Family Court an application is sent to, it will now be accepted and will be allocated to the appropriate level of judiciary in accordance with the current allocation criteria. This may reduce delay in accessing the courts for these individuals. This change should make the process of applying for an order in family proceedings simpler than it is currently.

HMCTS may experience reduced staff time costs associated with not rejecting applications that have been sent to a court that cannot hear the case. We cannot predict how many cases this will apply to and therefore cannot quantify this benefit.

## **Net Impact**

Family court users may benefit from a simpler system and may incur less time costs associated with submitting their application to court.

HMCTS will experience some staff time savings associated with not rejecting applications that have been sent to a court that cannot hear the case.

There will be some transitional costs associated with this change in terms of familiarisation costs for staff and IT costs in making changes to the court's IT system.

We envisage that the clause which gives the Lord Chief Justice the power to make rules on the distribution of business of the family court among judges will affect the way that cases are allocated between the different levels of the judiciary. While we do not yet have the details of how this will work, the new rule-making power is designed to allow HMCTS and the Judiciary to respond to quickly changing case volumes. This may help improve efficiency in the Family Court and reduce delay by changing the allocation process for cases. However, the details of any changes to the allocation process will be developed by HMCTS and the Judiciary and will be assessed separately if appropriate.

## **Risks and Assumptions**

We have assumed that on day one of this new measure the new rule-making power to deal with the distribution of cases will be exercised in a way such that cases will be heard in the same place as they are now. The details of how this power may be used differently in the future are still being developed but we envisage that this will affect the way that cases are allocated between the different levels of the

judiciary in the Family Court. Any changes to the allocation process which result from this will be assessed separately.

We have assumed that legal professionals do not provide specific advice to clients regarding which court to send their application to (rather, that the legal professionals just ensure that the correct court is selected) and that the level of work (and therefore cost) will not change as a result of this legislation.

### **One in One Out.**

The One-in, One-out (OIOO) rule applies to any rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government. It means that that no new primary or secondary UK legislation which imposes regulation on business or civil society organisations can be brought in without the identification of existing regulations with an equivalent value that can be removed.

We have assessed this change as out of scope for one in one out purposes. The legislation is not regulatory and is unlikely to have any direct effects on businesses. Lawyers working in family justice may experience minor transitions cost from familiarising themselves with changes in the law but we consider this to be part of business-as-usual costs.

## **Specific Impact Tests**

### **Statutory equality duties**

On the basis of initial screening we do not anticipate that the single Family Court will have a disproportionate impact on equalities issues on any of the main groups identified in equalities legislation. If it has any impact, the single Family Court should actually support compliance with statutory equality duties given its aim of increasing the accessibility of services.

However, the single Family Court measure includes the provision giving the Lord Chief Justice the power to make rules on the distribution of business and the allocation of cases between judges within the Family Court. The details of this allocation are still being developed but we envisage that this will affect the way that cases are allocated between the different levels of the judiciary. This change to the way in which cases are allocated could lead to cases being allocated to different locations than they currently are.

It will be important to ensure that in any future reallocation or transfer of cases that reasonable adjustments are made for those court users with disabilities to ensure they continue to receive access to justice. The potential adverse equalities impacts from increased travel costs from future court reallocation or transfer in relation to those on lower incomes (gender, ethnicity, disability and age) will also need to be considered. HMCTS will be proportionately undertaking an EIA in the operational delivery of these proposals.

### **Competition Assessment**

We do not expect any ongoing impacts on businesses from this legislation and therefore we do not expect any impact on competition.

### **Small Firms Impact Test**

We do not expect any ongoing impacts on businesses from this legislation and therefore we do not expect any ongoing impact on small firms.

### **Carbon Assessment**

We have assumed that on day one of this new measure cases, the new rule-making power on distribution of business in the Family Court will be exercised in a way which will mean that cases will be heard in the same place as they are now. As such we do not expect any change in travel to court and no impact on carbon emissions.

However, the power may be exercised in a different way in the future. The details of this are still being developed but we envisage that this will affect the way that cases are allocated between the different levels of the judiciary. This change to the way in which cases are allocated could lead to cases being allocated to different levels of judiciary (sitting in different locations) than they currently are. Any changes to the allocation process will be assessed separately if necessary.

### **Other Environment**

As above, we do not expect any impact on other environmental factors.

### **Health Impact Assessment**

We have assessed the policy using the following screening questions.

- Will the policy have a significant impact on human health by virtue of its effects on the following wider determinants of health? : Income; crime; environment; transport; housing; education; employment; agriculture; social cohesion.
- Will there be a significant impact on any of the following lifestyle related variables? : Physical activity; diet; smoking, drugs or alcohol use; sexual behaviour; accidents and stress at home or work?

- Is there likely to be a significant demand on any of the following health and social care services? : Primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; health protection and preparedness response?

We have identified no significant impact on health as a result of this legislation

### **Human Rights**

The policy is compliant with the Human Rights Act.

### **Justice Impact Test**

The impacts on the justice system are covered in the main evidence base of the impact assessment.

### **Rural proofing**

We do not expect that people living in rural areas will be disproportionately affected. However it is possible that, if they choose to submit their application to the Family Court in person (rather than by post) they may benefit if there is now a court building within the Family Court structure which is closer to them that can accept the application.

### **Sustainable Development**

The Government has committed to five principles of sustainable development:

- Living within environmental limits;
- Ensuring a strong, healthy and just society;
- Achieving a sustainable economy;
- Promoting good governance;
- Using sound science responsibly.

We have not identified any significant impact on sustainable development.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

<p><b>Basis of the review:</b> The Government is committed to reviewing the effects of all policy proposals following implementation and the review will be in line with that commitment. The review will be focused on operational impact of the changes and will need to be conducted once the details of the new allocation power are established.</p>
<p><b>Review objective:</b> The review will be intended as a proportionate check that the policy outcome is being achieved.</p>
<p><b>Review approach and rationale:</b> HMCTS, with MoJ support, will conduct a review of the operational impact of the policy. This will be based on feedback on the experience of stakeholders involved in the system, including judges, court staff and court applicants.</p>
<p><b>Baseline:</b> This has already been identified in respect of Option 0.</p>
<p><b>Success criteria:</b> Success will be determined by the experience of applicants, and respondents and of HMCTS staff and the judiciary. It will be assessed through stakeholder feedback</p>
<p><b>Monitoring information arrangements:</b> Stakeholder feedback on the impacts of the proposals will be collected on an ad hoc basis.</p>
<p><b>Reasons for not planning a PIR:</b> Not applicable.</p>

Add annexes here.

DRAFT