 <b>Regulatory Policy Committee</b>	<b>Opinion</b>	
<b>Impact Assessment (IA)</b>	Enhanced Court Fees	
<b>Lead Department/Agency</b>	Ministry of Justice	
<b>Stage</b>	Consultation	
<b>IA Number</b>	MoJ222	
<b>Origin</b>	Domestic	
<b>Expected date of implementation (and SNR number)</b>	SNR 8	
<b>Date submitted to RPC</b>	03/12/2013	
<b>RPC Opinion date and reference</b>	14/01/2014	RPC13-MOJ-1958
<b>Overall Assessment</b>	<b>RED</b>	
<p><b>RPC comments</b></p> <p>The IA is not fit for purpose. The Department needs to make clear whether the proposal will result in the Court Service raising more funds than is necessary to cover their costs.</p>		
<p><b>Background (extracts from IA)</b></p> <p><b>What is the problem under consideration? Why is government intervention necessary?</b></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 £500 million was generated against a cost of £625 million, creating a deficit totalling £125 million (in 2013/14 prices). With £25 million of income spent on remissions (fee waivers), the overall cost to the taxpayer was £150 million. Government intervention is necessary to set fees at a level that recovers more of the cost of the civil court system (civil and family courts) (net of remissions), to set fees above cost in specified circumstances to reduce the taxpayer burden for the cost of remissions, and to ensure the continued operation of an effective court system.”</i></p> <p><b>What are the policy objectives and the intended effects?</b></p> <p><i>“The MoJ’s long term aim is to protect access to justice by ensuring that the courts and tribunals are properly resourced while reducing the taxpayer subsidy for the civil court system. The policy objectives are: (i) first, ensuring that fee income covers the cost of providing court services, minus the income foregone to the remission (fee waiver) system. (ii) Secondly, recovering more than cost in specified circumstances (“enhanced fees”). This Impact Assessment focuses only on the enhanced charging proposals, i.e. point (ii) above. A separate Impact Assessment has been produced for our cost recovery proposals, i.e. point (i) above.”</i></p>		

**Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options**

*Enhanced Fees.* The IA explains that the civil court system currently represents a burden of £150 million to the exchequer (cover sheet and paragraph 7 of the IA), and that this will be reduced by £105 million moving to full cost recovery for fees that are not waived. This leaves a total burden of £45 million. The narrative in the IA suggests that the purpose of enhanced fees is to reduce, or perhaps eliminate, this burden. However the IA also says that the policy will increase net fee income to HM Courts and Tribunal Service by £190 million ('Summary: Analysis & Evidence', page 2 of the IA). This suggests that enhanced fees will result in HM Courts and Tribunal Service raising more in fees than it spends in costs. The IA must clearly explain why £190 million is required and, if HM Courts and Tribunal Service will be generating a surplus, this must be clearly reflected in the IA and the Department must explain what this additional revenue will be used for.

*Impact of Higher Fees on Demand.* The IA contains insufficient discussion of the risks that fees above cost move demand below the economically efficient level. For example, when discussing the cost of divorce proceedings the IA states that "*we believe that those petitioning for divorce would be prepared to pay considerably more than the cost of the petition*" (paragraph 72 of the IA) without any supporting evidence or discussion of the risk. The IA should discuss any risks associated with a reduction in demand for court services and will need to provide evidence based estimates of any effect at final stage.

*Options.* The IA contains only a single option ('Summary: Analysis & Evidence', page 2 of the IA), introducing enhanced fees. While this is reasonable, it is not clear whether the Department is considering various possible levels for the different fees that would raise the same total revenue in different ways, for example a fee that goes up more slowly but with a higher cap. The IA should clearly explain how the proposed fee level was arrived at and whether other possible fee levels are being considered.

*Identification of Market Failure and Criteria.* The Department has not set out clearly the market failure the proposal is attempting to remedy. While the Department explains the need for a fee waiver system it is not clear why this must be funded by other users of the courts system. The IA has not identified any negative externalities from use of the courts so it is not clear why users should be charged above costs simply because they are able to pay. The IA should clearly set out the rationale for intervention, supported by appropriate evidence.

**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 and therefore the SaMBA is applicable.

The SaMBA is sufficient for this stage of policy development. The Department explains that "*It is likely that some small and micro businesses which bring cases to*

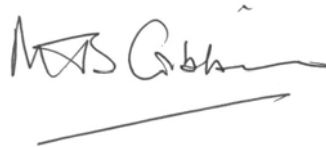
*the civil courts or which are defendants in civil claims will be affected by [the Department's] policy proposal as they will now have to pay a higher issue fee to bring a case to court..."* (paragraph 111 of the IA). However, while the Department is not proposing to exempt small and micro businesses from the increase in fees, the Department says that *"...to further mitigate the effects on small firms and micro businesses, we could consider producing user guides or information campaigns to ensure that these businesses know how they will be affected. These possibilities are being considered further over the consultation period."* (Paragraph 113 of the IA.)

The Department should specifically seek the views of small and micro businesses during consultation and update the IA accordingly to explain clearly how the impact of the increase in fees on these entities will be mitigated.

**Comments on the robustness of the OITO assessment.**

While the Department have correctly identified the impact on business of the proposal it is not clear if the proposal to go beyond full cost recovery relates to regulatory enforcement and compliance activity, and therefore whether it meets the criteria for exemption from OITO. Therefore, the Committee is unable to confirm the OITO status as set out in the Department's impact assessment. The Department will need to confirm the correct way to treat enhanced fees for OITO purposes at final stage.

**Signed**

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal line underneath it.

**Michael Gibbons, Chairman**