

# Improving Cost Recovery in the Civil Courts

Northern Ireland Courts and Tribunals Service

Response to Consultation



September 2019

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## INTRODUCTION

1. Northern Ireland Courts and Tribunals Service (NICTS) would like to thank all those who took the time to consider and respond to the proposals contained in the consultation paper on 'Improving Cost Recovery in the Civil Courts'.

## BACKGROUND TO THE CONSULTATION

2. The consultation was published on 10 December 2018 and sought views on proposals to further improve cost recovery in the civil and family courts. The consultation period ended on 25 February 2019 following a short extension; the consultation lasted for 11 weeks.
3. The consultation paper set out the rationale for the court fee proposals. Responses to the consultation paper were captured using the Consultation Response Form and views were also sought in relation to the Draft Impact Assessments, all of which can be found on Department of Justice (DoJ) website<sup>1</sup>.

## PROPOSALS

4. The consultation sought views on four proposals regarding fee charging practices for the delivery of civil and family court business. The proposals were as follows:
  - **Proposal 1** - doubling the planned fee increase from a 5% uplift to a 10% uplift to be applied to all existing fees from 1 April 2019;
  - **Proposal 2** - an increase in the fees currently charged by NICTS for searches of the Register of Judgments within the Enforcement of

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<sup>1</sup> <https://www.justice-ni.gov.uk/consultations/improving-cost-recovery-civil-courts>

Judgments Office (EJO), so as to align this to the search fees charged in other areas of NICTS business;

- **Proposal 3** - the creation of a number of new fees for work that is carried out by NICTS but for which no fee currently exists. This included the introduction of a fee for a Review Hearing in the High Court, additional fees within the Small Claims Court and a fee for the Lis Pendens procedure; and
- **Proposal 4** - to make a number of changes to the existing Exemption and Remission Policy to ensure that it remains fit for purpose and continues to assist those who meet the qualifying criteria (those on certain 'passported' benefits or in financial hardship).

### Why are further court fee proposals being proposed?

5. NICTS is not recouping the full cost of the civil and family court services it provides; like other public sector organisations, NICTS is required to charge for services on the basis of full cost recovery<sup>2</sup>. The fee increases approved in 2017 were introduced at that time as an interim measure, to provide an immediate improvement to the cost recovery position (which was 73% at the end of 2016/17). Cost recovery performance has improved to 80% during 2018/19. However the fact remains that further fee changes are necessary to enable NICTS to improve its cost recovery performance and also provide the Agency with a sustainable long term funding source.
6. NICTS has achieved significant savings in its operating costs over the last eight years and remains committed to driving down costs, ensuring a high level of efficiency and a quality service throughout the courts.

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<sup>2</sup> Managing Public Money Northern Ireland – Chapter 6

7. NICTS is committed to ensuring that court services are adequately funded through departmental funding which comes ultimately from the taxpayer and also other sources of income, most notably court fees. If fees are not increased as proposed, then NICTS will have to look to the DoJ for additional funding or implement cuts to services, to balance its budget. Such cuts are likely to result in delays to the service delivered by NICTS meaning that cases may take longer to process through the courts.
  
8. The Government's policy remains that civil court fees should be set to reflect the cost of the service provided. Where they can afford to do so, litigants using the civil courts, rather than the taxpayer, should meet these costs. However, the Department also places a strong emphasis on ensuring that access to justice is not inhibited whilst seeking to achieve the financial objective of cost recovery. NICTS provides help with court fees to individuals who cannot afford to pay them. In addition, the DoJ also provides civil legal aid for those who qualify, to help ensure access to justice is not prevented on the grounds of ability to pay.

## CONSULTEES

9. The consultation paper was issued to over 400 individuals and organisations and published on the DoJ website. Notice of the launch of the consultation was provided to organisations directly involved with the court process such as legal professionals, organisations in the justice system, the judiciary and organisations with an interest in consumer, legal or welfare issues.
  
10. Stakeholders were invited to respond to the consultation by downloading and completing the Consultation Response Form on the DoJ website or responding online via NI Direct (Citizen Space).

## OVERVIEW OF RESPONSES

11. We received 16 responses to the consultation. Where respondents gave permission, a list of those who responded to the consultation is provided at **Annex A**.
  
12. Not all respondents answered all of the questions set out in the response form. Some respondents commented on matters that were indirectly relevant to the consultation. A table detailing the category of respondents and the number of responses received is provided below:

Category	Number of responses received
Legal organisations (including legal firms)	5
Law search businesses	5
Insurers/insurance organisations	3
Campaigning organisations/NDPBs	2
Individuals	1

## CONSULTATION RESPONSES

13. This report includes a summary of the responses received to the NICTS consultation. The four proposals were listed in the Consultation Response Form, together with the main issues raised by the respondents and NICTS response to these. NICTS overall conclusions and the way forward can be found on page 27.

### **Proposal 1 - Doubling the planned fee increase from a 5% uplift to a 10% uplift to be applied to all existing fees from 1 April 2019**

#### **Consultation Response**

14. We received comments from nine respondents in relation to Proposal 1. Of these, three expressed the view that the civil justice system should be funded by the state rather than litigants and that any detrimental impact on access to justice needed to be considered.
15. Two respondents commented that the proposed increase in fees was significantly above the current rate of inflation. In addition, three respondents expressed disappointment that an increase in court fees had already been agreed in 2017 and, despite this, NICTS was now proposing to increase fees further.
16. Two respondents also believed that the proposed fee increases would be used to offset reductions in NICTS budget.
17. Three respondents noted the NICTS Transformation Portfolio and sought clarification on the impact this could have on the future running costs of the court system.

## **NICTS Response**

18. NICTS acknowledges the wider benefit to society resulting from the outcome of some civil cases. However, this alone is not sufficient justification for the civil courts being completely funded by taxpayers as it is the individuals, companies or organisations which bring cases to court that largely stand to benefit.
19. The public purse is not unlimited and taxpayers expect their governments to ensure the most efficient use of public resources. Therefore, provided that court fees are set proportionately and achieve a legitimate aim, there is justification for charging in the civil courts; NICTS believes that the proposals are proportionate. The rationale for setting court fees to achieve a legitimate aim is further supported by *Unison v Lord Chancellor* [2017] UKSC 51; “Fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice.”
20. Within the NI civil court system, children and family cases are partially subsidised, domestic violence cases are fully subsidised and help is also provided with court fees for those who cannot afford to pay them. These measures are in addition to civil legal aid provided by the Legal Services Agency NI (LSANI) which is also funded by the taxpayer. NICTS is seeking to recoup the costs of civil and family business *after* allowing for such subsidised fees within the family courts, court fee exemptions and remissions. This ensures the objective of maintaining access to justice while still working towards full cost recovery and compliance with MPM (NI).
21. There has been no evidence that fee increases introduced so far have resulted in a drop in cases brought to court. Where there has been any reduction in business volumes between 2017/18 and 2018/19, these reductions were either in areas in which 2017/18 business volumes were



unusually high, or business volumes had been on a general downward trend for several years. In terms of civil and family cases, court is generally seen as a last resort for individuals. NICTS conducted a court user survey in 2018, in which 72% of respondents stated that if fees were higher; it would not have made a difference in their decision to go to court.

22. The majority of court fees are set at an affordable rate and usually represent a small fraction of the overall litigation costs and the value of the claim.
23. Although the proposals, if implemented, would reduce reliance on funding from the overall NICTS and Departmental budget, this is not the primary objective of these proposals.
24. In 2017 NICTS announced a three year plan to increase court fees. Prior to this court fees had remained static since 2007. NICTS estimates that since 2007, taking into account the current policy proposals, court fees will still be less than the cumulative projected increase in inflation<sup>3</sup> by the end of 2019/20. Therefore, from this perspective, court fees will have decreased in real terms over the period 2007 to 2020.
25. The NICTS Transformation Portfolio is undertaking a detailed review of the court system in Northern Ireland and is divided into three distinct areas: maximising the use and provision of digital services; assessing the availability and quality of NICTS estate; and determining the optimum business operating model. The objective of the Transformation Programme is to ensure that in the future NICTS has a more responsive system that makes better use of available resources, including technology and is delivering better outcomes for court users, particularly for children and young people, whilst continuing to promote access to justice. Due to the long term nature of such a programme

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<sup>3</sup> Consumer Price Inflation

the associated costs are capital in nature and will be funded by the DoJ. Additional income from court fee increases will not be used to fund the Transformation Portfolio.<sup>4</sup>

26. NICTS will continue to look at ways of removing costs and achieving value for money; research and analysis is ongoing across all areas of the business to identify where improvements can be made and what further changes can be made. However, the fact remains that NICTS must strive to comply with the principal of full cost recovery as laid down in MPM (NI).
  
27. It is expected that any large scale changes to the court operating model will have an impact on the future costs of running the courts. Keeping this in mind, volumes and other related changes will continue to be monitored quarterly by NICTS and particularly, at the end of each financial year. It will be at that point when assumptions will be reviewed and reassessed and, where necessary, adjustments made to ensure that there is no adverse impact on access to justice.

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<sup>4</sup> Although the start-up costs (also known as capital costs) of the NICTS Transformation Portfolio will not be funded through court fees, it should be noted that in the longer term any resultant depreciation cost implications of the NICTS Transformation Portfolio associated with civil and family business will be recouped from court fees, but this will be smoothed out over a longer time period.

**Proposal 2 - An increase in the fees currently charged by NICTS for searches of the Register of Judgments within the Enforcements of Judgments Office (EJO), aligning this to the search fees charged in other areas of NICTS business (online fee £26, office fee £40)**

**Background**

28. NICTS charges fees for searching the Register of Judgments (the Register) maintained by the Enforcement of Judgments Office (EJO).
  
29. The Register contains information about all applications for the enforcement of judgments that have been accepted. The Register of Judgments is used to establish if an individual or company has had a judgment against them registered for enforcement and whether that judgment remains unsatisfied. There are two main reasons for searching the Register:
  - Firstly, in matters such as conveyancing (the process of transferring legal ownership of property or land from one person to another); the Register contains specific details of Enforcement Orders issued by EJO, such as an Order Charging Land, which is important in land or property transactions. The search provides information prior to entering into a contractual agreement with another party, for example, a mortgage agreement.
  - Secondly, the Register provides useful information for creditors allowing them to make a better informed decision on the likelihood of recovering debt where one or more judgments have already been registered for enforcement against a debtor and remain unsatisfied.
  
30. NICTS has proposed the fee for searching the Register should be aligned to the fees charged in other areas of NICTS business, for example Bankruptcy searches.

### **Consultation Response**

31. We received comments from 11 respondents in relation to Proposal 2. Seven respondents raised concerns at the scale of the proposed increase (four respondents quoted a 160% increase in online search fees) with three stating that the impact on small law searcher firms could potentially put them out of business.
  
32. Two respondents considered that the current online search system was not flawless and, without improvements, the proposed fee increase could not be justified. One respondent also stated that customers with conveyancing requirements should not pay more in order for the government to align the fee with other search fees which they considered were too high. Two respondents claimed that fees for equivalent searches in other jurisdictions are a lot cheaper and fees in Northern Ireland should be similar.
  
33. Two respondents thought that it would be appropriate to introduce a discount for high volume users, such as law searchers, while two respondents had no objection to the alignment of fees with those charged in other areas of NICTS business.

### **NICTS Response**

34. In absolute terms the proposed fee increase is £15 which, in the context of a property transaction, is marginal; the standardised property price in Northern Ireland is currently £137k. Assuming a 10% deposit for most property purchases, this would indicate that affordability of the fee is unlikely to be an issue as it is such a small proportion of the total cost of a property purchase (including other disbursement outlays involved in the conveyancing process).
  
35. NICTS considers there are a number of options available to law searcher businesses to minimise the cash flow impact of an increase in the search fee. Whether a law searcher business receives payment for outlay on search fees

in advance as the case progresses or, bears the cost until completion, is a private financial business decision between the law searcher and their client.

36. With regard to the comments made about system performance issues, NICTS is currently working with the IT provider to fully understand any issues and to examine what measures can be taken to improve the search facility, thereby maximising the value for money the system can offer to its users. In addition, we would recommend all users follow NICTS guidance when conducting searches. For example, entering the forename as well as the surname into a search has been proven to enhance search times by reducing the number of results returned.
37. In England, Wales and Scotland the main source of conveyancing search information is The Registry Trust. This is a private sector organisation, therefore NICTS cannot comment on its charging policies, but would highlight that charging for services is a requirement that is placed on NICTS as per MPM (NI), so long as this does not prevent access. NICTS does not believe that access will be prevented because of an increase in the search fee.
38. NICTS has considered the suggestion of a discount being offered to high volume users of the service, and with reference to MPM (NI) which states “the same charge should apply to all users of a defined category of service. The policy might be to charge at a uniform rate for all varieties of a service; or different fees may be set for objectively different categories of service costing different amounts to provide”. Furthermore MPN (NI) indicates that it is normally not permitted to differentiate charges for different types of customers e.g. less for personal consumers and more for businesses.
39. As well as considering all comments made by respondents during the consultation period, NICTS has further engaged with key stakeholders and listened to their concerns. Following this NICTS has decided not to increase

the fee to the full amount on 1 October 2019, but to take a phased approach to the increase over the next couple of years.

### **Proposal 3 - Proposed New Fees – Fee for a Review Hearing in the High Court, Small Claims Court Proposals and Lis Pendens Proposals**

#### **(a) Fee for a Review Hearing in the High Court**

##### **Background**

40. In Northern Ireland, civil justice is administered mainly by the County Courts and the High Court. County Courts deal with cases of lesser value, substance, importance and complexity, while the High Court handles more substantial or complex cases. The High Court is comprised of three divisions, each handling different types of business; they are called Chancery Division, Queen’s Bench Division and Family Division.
41. The Queen’s Bench Division deals with civil claims involving tort (including personal injury claims, accidents at work and clinical negligence) breach of contract and defamation, commercial actions and judicial reviews.
42. In recent years a number of procedural changes have been introduced within the High Court to encourage the early exchange of information about civil legal claims to assist the parties involved in litigation to reach expeditious resolution of their disputes. An example of a procedural change within the QBD is Practice Direction 1/2008<sup>5</sup> which came into operation in 2008. The Practice Direction requires court staff to arrange for actions to be listed for review before the Master nine months after an appearance has been entered (13 months for clinical negligence claims). Prior to the introduction of the Practice

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<sup>5</sup> Practice Direction 1/2008 – QBD Personal Injury Litigation General Practice Direction

Direction parties were required to issue a Summons or Notice of Motion<sup>6</sup>, and pay the relevant fee, to have the matter listed before a Master.

43. These processes support the efficient management of civil proceedings via the early involvement of a judicial officer in planning the progress of a case, controlling the discovery process and scheduling hearings and other litigation events. However, there is currently no fee applied to cover the administrative and judicial costs associated with the review process prescribed by PD 1/2008. Similarly there is no provision to apply a fee to cover review hearings in other business areas.
44. In order to recover the costs associated with the review process and future case management arrangements, NICTS proposed the introduction of a new fee for Review Hearings.

### **Consultation Response**

45. In relation to Proposal 3 (a), we received comments from 11 respondents. Seven respondents were of the opinion that this proposal could substantially add to the costs of High Court actions and therefore act as a deterrent to those seeking judicial intervention where it is necessary, having an unintended consequence of placing further strain on the court system. They also argued that this could have a financial impact on solicitors' firms in terms of cash flow. In particular, five respondents said the fees would impact most on insurance companies through increased legal costs and would result in increased insurance premiums for the general public.
46. Respondents also noted that review hearings are often arranged at the court's discretion for minor or routine matters and are often brief, especially for non-

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<sup>6</sup> NICTS acknowledges the process to issue a Summons/Notice of Motion is not redundant, but there has been a significant reduction as a consequence of case management.

compliance on behalf of the defendant; charging a fee for such hearings was argued to be disproportionate for the plaintiff, even if the fees can be recovered at the end of the case. One respondent suggested that consideration should be given to limiting the number of reviews per case or providing a party the right to object to the need for a review if this proposal was to be taken forward. Two respondents further highlighted the distinction between review hearings at the courts discretion and those at a party's request, suggesting that a fee should only be applicable to the latter.

47. The practicalities of the proposals were also queried by three respondents with respect to how fees would be collected, who should pay the fee, what would happen if the fee is not paid and the rules for recovery.

### **NICTS Response**

48. Insurance premiums tend to reflect the size of the damages awarded and, as court fees make up only a small proportion of the overall cost of litigation, the knock on effect should not be overstated.
49. Having carefully considered the points raised in the consultation responses and from meetings with key stakeholders, NICTS has decided that it is necessary to introduce a fee for Review Hearings in the High Court but the fee will apply only to the first case management review hearing (CMRH) in QBD<sup>7</sup> actions. This will include, but is not restricted to, personal injury litigation (reviews prescribed by PD1/2008<sup>8</sup>) and reviews in clinical negligence claims (which are listed within 13 months of receipt of the writ).
50. The fee will also apply to any new case management regime that may emerge from the recommendations in Sir John Gillen's report on the review of [Civil Justice](#) or, as a consequence of, judicial directions in other business areas.

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<sup>7</sup> Excluding Commercial Hub Actions and Judicial Reviews

<sup>8</sup> <https://judiciaryni.uk/judicial-decisions/practice-direction-1-2008>



51. Claims brought to the High Court tend to be of higher value, complex or specialist; NICTS considers a fee for the first review hearing is proportionate and will go some way to recovering the administrative and judicial costs associated with the review process.
52. There are many benefits of case management for parties involved in litigation; court appointed CMRH avoid cases remaining dormant in the system, often result in actions being disposed prior to a court hearing or help to ensure actions are progressed in a timely manner towards hearing.
53. The CMRH fees will be set at the same level as the equivalent fees for an ex parte application (before a Master £195, before a Judge £261). While NICTS acknowledges that these fees are higher than the cost of a Summons or Notice of Motion, the assessment has taken into account that, in most actions, there are a minimum of three review hearings.
54. The plaintiff will be liable for paying the fee in advance of the CMRH and NICTS will request fee payment when issuing notification of the listing date. Where an early review is requested by one of the parties, it will be the party requesting the review who will be liable for paying the fee. Failure to pay the fee will be brought to the attention of the Judge/Master and the court may also defer issuing any court order pending receipt of the fee.
55. NICTS does not propose to apply the CMRH fee to cases which are admitted to the Commercial Hub on the basis that a fee for transferring an action to the Hub already applies. However, as PD 01/2019 makes provision for case management by a Judge, NICTS proposes that the transfer fee, currently

£186<sup>9</sup>, should be aligned to the proposed fee for a CMRH before a Judge, and increased to £261.

56. NICTS will continue to monitor both income and costs and, if necessary, will consider the introduction of a further fee where more than three CMRH are required in any proceedings.
57. NICTS is committed to working with the legal profession to identify what options are available to solicitors to minimise the impact these would have on cash flow. For example, solicitors could require their clients to pay the court fees directly. In addition, for those clients who are legally aided, there is provision for the solicitor to apply, in certain circumstances, for an interim payment from the Legal Aid budget to help alleviate cash flow problems. We understand that this facility is regularly used.
58. For most cases, the fee for a CMRH will not be required until nine months after the writ has been issued. This is in line with the payment of most other court fees which are spread out over the life of a case; this “pay as you go” basis again helps to alleviate cash flow issues. In addition, the CMRH fee will also fall under the scope of the NICTS Exemption and Remission policy.

## **(b) Small Claims Court Proposals**

### **Background**

59. The Small Claims Court in Northern Ireland provides a relatively informal procedure within the County Court for determining commercial and consumer cases up to a claims limit of £3k subject to certain exclusions. Examples of

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<sup>9</sup> The Court of Judicature (Amendment) Order (Northern Ireland) 2017, Section 1, Item 6

small claims cases include claims for debts, faulty goods, for unsatisfactory workmanship and for damage to property<sup>10</sup>.

60. NICTS proposed a number of changes to the fee structure within the Small Claims Court including discounted fees for online applications, the introduction of a hearing fee, the introduction of a fee for applications in existing cases which are considered by a judge and the introduction of an administrative fee for amending errors.

### **Consultation Response**

61. We received comments from six respondents in relation to Proposal 3 (b). One respondent agreed that online applications should be encouraged. However another respondent considered that even with the 5% discount for online applications, the additional new fees could risk imposing a greater burden on court users and that this would be exacerbated if the Small Claims Court was also excluded from the scope of the NICTS Exemptions and Remissions policy.
62. One respondent raised concerns regarding the impact of the new fees within the private rented sector. It was suggested that tenants within this sector are largely unprotected and could ultimately resort to Small Claims Court to recover debts.
63. On the proposal to introduce an administrative fee for errors, two stakeholders likened it to tax on the legally inexperienced, commenting that it was unfair and went against the spirit of the small claims process.

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<sup>10</sup> Source: [https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Small%20Claims%20Guide\\_0.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/Small%20Claims%20Guide_0.pdf)

## **NICTS Response**

64. Having considered the consultation responses NICTS has decided that the Small Claims Court will remain within the scope of the Exemption and Remission policy.
65. In addition to the comments from respondents, NICTS recognises the substantial investment which would be required to upgrade the current IT system to incorporate new fees online. Given the wider scope of work covered by the NICTS Transformation Portfolio, the proposals for additional fees within the Small Claims Court are not going to be pursued at this juncture. It would be NICTS long term intention to introduce additional fees for small claims cases which require judicial input, but this would be scheduled to run alongside future IT investment in the small claims online system.

### **(c) Lis Pendens Proposal**

#### **Background**

66. The term *lis pendens* is Latin for “litigation pending” and refers to a legal burden registrable against land or property which is the subject of litigation in the High Court and County Court. Such litigation can relate to disputes over land and property, for example in a divorce; they must involve a claim made or disputed by one of the parties to an interest in the land/property in question. The key purpose of registering a ‘Lis Pendens’ is to put a potential purchaser of property or land on notice of the litigation relating to the property.
67. NICTS proposed to introduce a new fee of £90, for the certification, by a court officer, of the forms required to register a pending action in relation to land in the Land Registry (or the Registry of Deeds) or to vacate such a registration.

### **Consultation Response**

68. We received comments from three respondents in relation to Proposal 3 (c). One respondent was concerned that the introduction of a new fee could affect those caught up in family law litigation, particularly when a Lis Pendens may need to be registered quickly to protect the parties involved.
69. One respondent queried whether the proposal would apply to the entire process or upon initial registration and then on vacating. They also questioned whether the fees earned would cover the cost of the changes required.
70. Another respondent confirmed that they had no objection to this fee being introduced and aligned with comparable applications dealt with by the courts.

### **NICTS Response**

71. The proposal for the introduction of a fee for Lis Pendens is for a single fee of £90, based on fees paid for similar processes across the organisation and in Land Registry. The fee will be payable for the certification by the court officer that there is a pending court action (for the purpose of registration) and will cover the certification that an action has concluded (for the purpose of vacating a registration).
72. The processes and staff are already in place for dealing with this type of application but NICTS are currently providing this service free of charge. Therefore the introduction of a fee will not impact on the current service provided or incur additional costs to NICTS.
73. The fee for Lis Pendens will fall under the scope of the NICTS Exemption and Remission policy.

## **Proposal 4 - Exemption and Remission Policy – a number of suggestions have been put forward to ensure the continued effectiveness of the policy**

### **Background**

74. NICTS introduced an Exemption and Remission Policy (the policy) in 2007, with the aim of ensuring that an individual's inability to pay a court fee did not impact adversely on their ability to access justice. The aim of the policy was to help those in need by providing either an exemption or a remission from the payment of court fees.
  
75. The policy has two components:
  - i. An exemption from paying a court fee can be granted if the applicant is in receipt of a qualifying benefit, for example Universal Credit.
  - ii. A remission (either full or partial) from paying a court fee can be granted on the grounds of financial hardship or some other reasonable cause. NICTS 'means test' every application for a remission.
  
76. In the past six years the policy has provided assistance to over 400 applicants annually. Although the fee income foregone through the operation of the policy is relatively small, the overall cost in administrative and judicial time is much greater. NICTS data shows that an unusually high proportion of the fees waived under the policy could be traced to a small number of personal litigants which seems to be disproportionate across the operation of the policy as a whole.
  
77. Furthermore, it was noted that in some instances a court user could have a number of cases running concurrently, with court fees either exempted or remitted, as a result of the user meeting the existing qualifying criteria. This could suggest that, with no restrictions in place on the number of applications that can be granted or cases supported in any one period/financial year, the policy is potentially open to abuse.

78. NICTS therefore put forward a number of suggestions with the overall aim of introducing a degree of control while still providing assistance to court users.

### **Consultation Response**

79. There were ten respondents who provided comments in respect of the policy and six of these considered it to be an important means of providing access to justice to those who do not qualify for legal aid or cannot afford court fees; they were therefore opposed to the abolition of the policy. However, six respondents were supportive of introducing reasonable measures to control usage.

80. There was no overall consensus on how the policy could be improved; but the introduction of a cap on the number of cases that could be supported by the policy at any one time was the most popular and supported by four respondents. However one respondent was strongly opposed to the introduction of a cap.

81. Respondents were generally not supportive of excluding specific areas of court business from the scope of the policy such as the Small Claims Court or Probate due to the impact on access to justice. One respondent did see merit in excluding certain fees such as photocopying, copy documents and search fees from the scope of the policy.

82. Other potential improvements suggested by respondents were the introduction of a merit test and excluding vexatious litigants<sup>11</sup> from availing of the policy. Two respondents felt the policy was not being used to its full potential and more needed to be done by NICTS to generate awareness. One respondent

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<sup>11</sup> Vexatious litigants are individuals who are subject to an order of the High Court preventing them from instituting or continuing any legal proceedings without leave of the High Court because they have persistently and without reasonable grounds instituted vexatious legal proceedings. The Attorney General for NI has the power to apply for such an order under section 32 of the Judicature (Northern Ireland) Act 1978.

considered the application process to be time consuming for both applicants and court staff and suggested there should be a review of the way the scheme is administered including consideration of online applications.

### **NICTS Response**

83. NICTS agrees that the policy is an important means of providing access to justice and therefore does not intend to abolish it. However, NICTS does intend to make some changes to the scope and eligibility criteria of the policy to ensure its continued effectiveness.
84. Following full consideration of the consultation responses, NICTS intends to implement the following changes to the policy:
- a. Vexatious litigants who are subject to an order of the High Court under section 32 of the Judicature (Northern Ireland) Act 1978 will no longer be able to have their court fees waived or remitted when applying to the court for leave (permission) to commence or continue with legal proceedings. However, if permission is granted by the court (a High Court Judge) to bring proceedings, NICTS will refund the court fee, provided the person was entitled to assistance at the time the fee was paid; and,
  - b. The policy will not apply to photocopying, copy documents and search fees.
85. Over the coming months NICTS will look at further ways of improving the policy, including examining the income threshold necessary to be eligible for help.
86. NICTS considers that these measures will help to ensure the continued effectiveness of the policy and protect public resources without compromising the original policy intention of ensuring access to justice. The policy is not heavily used with less than 500 applications per annum. NICTS anticipates



that the number of individuals who will be affected by the changes above will be a very small proportion of users of the policy.

87. NICTS will continue to promote awareness of the policy in court offices, on our website and through stakeholder engagement. New customer materials will be prepared and staff will receive further training in the administration of the policy. The suggestion of online applications has merit but given the relatively small volume of applications under the policy the costs associated with implementing an online system would outweigh the benefits at this time.

## **Draft Impact Assessments**

### **Consultation Response**

88. We received comments from six respondents in relation to the Draft Impact Assessments.
89. The additional cash flow burden for solicitors' practices was highlighted and it was recommended that the Regulatory Impact Assessment (RIA) should concentrate on the totality of the fee proposals across these businesses and their ability to absorb the outlays.
90. Respondents from the insurance sector contended that they were a major stakeholder and that the statistics on court users contained within the Regulatory Impact Assessment (RIA) were misleading as a large number of actions were contended to ultimately fall to be funded from a paying party who will often be indemnified by an insurer.
91. One respondent highlighted the relatively lower disposable household incomes in Northern Ireland compared to the rest of the United Kingdom. On that basis it was argued that there could be an increasing section of the population who do not qualify for exemptions but cannot afford payment of court fees, particularly regarding cases with multiple and/or variable fees.

## **NICTS Response**

92. NICTS is committed to working with the Law Society to identify what options are available to solicitors to minimise the impact.
  
93. NICTS has not been able to access accurate information indicating the party ultimately responsible for covering the cost of civil court proceedings including insurance companies who indemnify individuals. Therefore NICTS has opted to structure the RIA on an issuing participant basis.
  
94. NICTS has conducted an affordability analysis; this demonstrates that NI median disposable household incomes were at an all-time high in 2016/17 with a further subsequent increase in 2017/18. This was carried out using Family Resources Survey (FRS) statistics and was cited in the consultation documentation including the RIA.
  
95. NICTS recognises that in many cases more than one court fee will be incurred. Indeed, the court fee charging model is built upon fees for initiating proceedings and then fees for secondary proceedings which are required. NICTS has assessed the average number of court fees paid across a number of types of proceedings, including family proceedings, over the past three years. In many types of court business for example, small claims and civil bills only one or two fees are paid over the lifetime of a case. Higher numbers were apparent in family cases where fees are often subsidised, but it is noted that such cases often span a number of years. Therefore, the payment of court fees would be spread out over the same period of time on a “pay as you go” basis; this assists with cash flow and affordability.

## CONCLUSIONS AND WAY FORWARD

96. Having fully considered the views of those who responded to the consultation and those who provided further information during stakeholder meetings, NICTS intends to proceed with the following changes to the fee structure:

- i. Apply a further 5% uplift to all existing fees;
- ii. Increase the fees for searches of the Register of Judgments from £11 to £12 (online search) and from £24 to £26 (office search). This will be followed by further phased increases to align the search fees to what is charged in other NICTS business areas, but over a longer time period than originally proposed;
- iii. Introduce fees for a Case Management Review Hearing in the High Court of £261 (before a Judge) and £195 (before a Master)<sup>12</sup>;
- iv. Increase the fee for transferring an action to the Commercial List from £186 to £261;
- v. Introduce a fee of £90 for the Lis Pendens procedure; and
- vi. Implement a range of measures to improve the effectiveness of the NICTS Exemption and Remission Policy (as detailed on pages 24-25).

97. NICTS intends to work towards implementing these changes on 1 October 2019. This is dependent on the preparation and making of the necessary statutory rules to amend the Fees Orders. Once the statutory rules are made, NICTS will notify regular customers and other stakeholders, as well as updating relevant customer materials.

98. Further increases to the search fees for the Register of Judgments will be applied as follows: the fee will increase to £20 on 1 April 2020 and £26 on 1 April 2021 so aligning the fee to similar fees charged in other NICTS business areas.

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<sup>12</sup> The fee will apply to the first case management review hearing in Queen's Bench Division actions (excluding Commercial Hub and Judicial Review actions)

99. NICTS is mindful of the concerns raised by each consultation response. However, NICTS believes that the implementation of the modified changes outlined above is the most proportionate means of achieving the legitimate aim of cost recovery. Established measures, including the NICTS exemption and remission policy will remain in place thereby ensuring that access to justice is not prevented on the grounds of ability to pay. Together these changes to court fees are estimated to generate additional annual income of up to £2.5m and bring about further improvements to the Agency's cost recovery position.
100. Notwithstanding this package of changes to court fees, NICTS will still not reach a position of full cost recovery by 2021/22. It is therefore intended to keep the cost recovery position under review in the context of what will be a changing financial and operational environment over the coming years. NICTS will continue to monitor the impact of changes to court fees and wider courts reform. It is NICTS long term intention to move towards annual inflationary uplifts to court fees, in parallel to changes in specific areas such as new fees, or addressing inconsistencies within the fee structure.

### **Equality Screening Form**

101. Taking into account the final policy intentions, NICTS has determined that a full Equality Impact Assessment (EQIA) is screened out on the basis that the policy changes are unlikely to disproportionately affect any Section 75 categories and that there are mitigating measures in place.

### **Regulatory Impact Assessment**

102. Taking into account the final policy intentions, NICTS estimates that the incremental impact on businesses will be approximately £0.5m per annum (circa 20% of the total additional impact) once fully implemented.

## **Legal Aid Impact Assessment**

103. The changes to court fees will have a small impact on the legal aid budget, estimated to be £60k per annum; to put this into context, as per the LSANI Annual Accounts, 2018/19 Civil Legal Aid expenditure was approximately £44m.

104. If you require further information regarding the consultation or this summary of responses please contact:

Civil Fee Review  
Finance Branch  
Northern Ireland Courts & Tribunals Service  
Laganside House  
23-27 Oxford Street  
BELFAST  
BT1 3LA

Telephone: 028 90728899  
Email: [FeeConsultation@courtsni.gov.uk](mailto:FeeConsultation@courtsni.gov.uk)

## **ANNEX A LIST OF RESPONDENTS**

Association of British Insurers

Association of Personal Injury Lawyers

G. Paxton Law Searchers Limited

Housing Rights

L.T. Byrne Law Searchers Limited

Lawlink

Martin Breslin t/a The Law Search Company

McMahon & Co Law Searchers

Murlands Solicitors

NFU Mutual

Northern Ireland Housing Executive

The Bar of Northern Ireland

The Forum of Insurance Lawyers

The Law Society of Northern Ireland

Truesearch Limited

Zurich Insurance



## **ANNEX B REVISED 2019/20 FEE SCHEDULES**



Annex B - 201920  
Schedule of Fees.DOC



Department of  
**Justice**

[www.justice-ni.gov.uk](http://www.justice-ni.gov.uk)

