

## Equality Statement

### 1. Introduction

- 1.1. This Equality Statement considers the impact of the Government's proposals to increase fees for certain proceedings against the duties in the Equality Act 2010. The proposals as set out in the document, *the Consultation on fee proposals for grants of probate*<sup>1</sup> is to introduce a banded fee structure for applications for the grant a grant of probate.
- 1.2. These fee changes will set fees above cost recovery levels and are therefore made under the enhanced fee charging power provided by section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014. This power enables the Lord Chancellor to, by order, prescribe fees in excess of cost of the proceedings to which they relate.
- 1.3. During the consultation period we will consider these impacts further and will update our equalities considerations with any relevant research submitted in response to our equalities question.

### 2. Policy objective:

- 2.1. *The Consultation on fee proposals for grants of probate*, sets out the background to, and rationale for, introducing the non-contentious probate fee changes. The main policy objectives are:
  - to make sure that HM Courts and Tribunals Service ('HMCTS') is adequately resourced; and
  - to reduce the net cost of the courts and tribunals to the taxpayer.
- 2.2. In this way, we will reduce public spending while at the same time making sure that we are providing a properly funded service so that access to justice is protected.

### 3. Equality duties

- 3.1. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
  - eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
  - advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
- 3.2. In carrying out this duty Ministers and the department must pay "due regard" to the nine "protected characteristics" set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

### 4. Summary

- 4.1. Consideration has been given to the impact of the proposed fee increases on applicants against the statutory obligations under the Act. These are outlined

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below. We have considered the impact on executors and personal representatives, who pay the fee upfront.

- 4.2. **Direct discrimination:** Our assessment is that the proposed increases in fees would not be directly discriminatory within the meaning of the Act as they would apply to all parties affected and are not considered to result in people being treated less favourably because of their protected characteristic.
- 4.3. **Indirect discrimination:** Based on the limited data available to us, we do not believe that individuals with protected characteristics would be particularly disadvantaged by these proposals. We consider, even if there was any impact, that this would be mitigated because of the availability of the fee remissions scheme. Our assessment is that this would be the case even if persons applying for non-contentious probate are taken out of the general HMCTS fee remissions scheme, as is proposed at chapter 1. This is because the Lord Chancellor would retain the power to defer or remit fees in full or part in exceptional cases. Further, alongside these proposals, we are also proposing to increase the value of the estate threshold, below which no fee is payable for the grant of probate, from £5,000 to £50,000, which will have the effect of lifting 30,000 estates out of the requirement to pay a fee which will save lower value estates up to £215 each based on the current fee for a personal application.
- 4.4. Moreover, the fee would be proportionate to the estate involved and recoverable from the estate. In the event that there is indirect discrimination, it is our view that these proposals are a proportionate means of achieving the legitimate aim of protecting access to justice whilst making sure that HMCTS continues to be properly funded, in the long term.
- 4.5. **Discrimination arising from disability and duty to make reasonable adjustments:** We do not consider that the proposals will result in any discrimination for individuals who share the protected characteristic of disability. We will continue, however, to monitor any potential impacts and provide reasonable adjustments for claimants with disabilities to make sure that appropriate support is provided in protecting access to justice.
- 4.6. **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
- 4.7. **Advancing equality of opportunity:** We have considered how these proposals may impact on the duty to advance equality of opportunity by meeting the needs of those making an application for a grant of probate, who share a particular protected characteristic, where those needs are different from the needs of those who do not share that particular protected characteristic. We consider that the fee remission scheme will help to make sure that equality of opportunity is advanced for those claimants making an application for a grant of probate who share particular protected characteristics. We consider that this will be the case even if such applications are taken out of the general HMCTS fee remissions scheme, as the Lord Chancellor's power to defer or remit fees in full or part will remain in place. The Lord Chancellor will be able to exercise this power where there are exceptional circumstances for doing so.
- 4.8. **Fostering good relations:** We do not consider that there is scope within the policy of setting and charging court and tribunal fees to promote measures that foster good relations. For this reason, we do not consider that these proposals are relevant to this obligation.

## 5. Mitigation

- 5.1. As set out in chapter 1 of the consultation document, we are proposing to remove grant of probate applications from the general fee remissions scheme. If it is decided that this proposal should be taken forward, the discretionary power of the Lord Chancellor to grant exceptional remissions would remain in place as a safeguard where the payee simply cannot afford to pay the fee.
- 5.2. Alongside these proposed increases, as set out above, we are also proposing to increase the threshold, below which no fee is payable for an application. This will have the effect of lifting an additional 30,000 estates out of the requirement to pay a fee, saving the lowest value estates £215 each. It is also important to note that in most cases, the applicant will be able to recover the fee from the estate and, moreover, the fee charged to the applicant will always be proportionate to the value of the estate.

## 6. Equality Impact analysis

- 6.1. Due to the limitations in the data in some cases, we have only been able to look at the protected characteristics of individual applicants bringing proceedings in the County Court. Although it is acknowledged that the protected characteristics of those making an application for a grant of probate to the Probate Service may differ and, indeed our County Court data only covers individual applicants, rather than others who may be affected by these proposals, we consider it to be the best available and the data serves as a good comparator.
- 6.2. Therefore, using the data that is available from the civil court user survey<sup>2</sup>, we have looked at the characteristics of a representative sample of individual court users<sup>3</sup>. We have then compared the results with all adults aged 16 and above – see Table 1 below. The following findings were found to be statistically significant:
  - **Sex:** Male court users appear to be over-represented among the affected groups when compared to all adults aged 16 and over.
  - **Age:** Individuals aged between 45 and 74 years old are also over-represented.
  - **Race:** Individuals from an Asian or Asian British background, and those from a Black or Black British background are over-represented
  - **Disability:** Those with physical or mental health problems appear to be under-represented.
- 6.3. Finally, as the equality duty is an ongoing duty, we will continue to monitor and review these proposals for any potential impacts on persons with protected characteristics and make sure that access to justice is maintained.

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<sup>2</sup> <https://www.gov.uk/government/publications/civil-court-user-survey-2014-to-2015>

<sup>3</sup> These include individuals who commence money claims and possession claims in the County Court, and exclude businesses.

<b>Table 1: Demographic profile of individual claimants</b>		
	<b>All claimants</b>	<b>Comparison group: All adults aged 16 and over</b>
	<b>%</b>	<b>%</b>
<b>Sex</b>		
Male	56	47
Female	44	53
<b>Age</b>		
16 to 24	2	15
25 to 34	15	15
35 to 44	20	18
45 to 54	25	17
55 to 64	20	15
65 to 74	14	11
75 and over	5	9
<b>Race</b>		
White	80	90
Asian/Asian British	14	5
Black//Black British	4	2
Mixed/Chinese/Other	3	3
<b>Health</b>		
Any physical or mental health problem	25	36
<b>Annual income (claimant +partner)</b>		
Under £10,000	16	n/a
£10,000 - £12,999	9	n/a
£13,000 - £14,999	4	n/a
£15,000 - £20,999	16	n/a
£21,000 - £39,999	30	n/a
£40,000 - £59,999	12	n/a
£60,000 - £79,999	6	n/a
£80,000 or over	7	n/a
<b>Receipt of state benefits</b>		
Any	24	n/a
None	76	n/a
<i>Bases: All claimants</i>		
<i>Gender</i>	<i>2,105</i>	
<i>Age</i>	<i>2,101</i>	
<i>Ethnicity</i>	<i>2,009</i>	
<i>Income</i>	<i>1,742</i>	
<i>Benefits</i>	<i>1,861</i>	
<i>Health</i>	<i>2,048</i>	

Sources:

Data on claimants from the *Civil Court User Survey 2014/15 - Individual claimants*  
Data on gender, age and ethnicity of the adult population from Census data 2011  
Data on health of adult population from <http://www.ons.gov.uk/ons/rel/ghs/opinions-and-lifestyle-survey/adult-health-in-great-britain--2013/index.html>