

Equality Statement

1. Introduction

- 1.1. This Equality Statement considers the impact of the Government's proposals to increase fees in the First-tier Tribunal (Immigration and Asylum Chamber) and the Upper Tribunal (Immigration and Asylum Chamber).
- 1.2. The proposals are set out in the consultation document *Immigration and Asylum Tribunal Fees: Proposals for the First-tier Tribunal and Upper Tribunal*.
- 1.3. The specific proposals are:
 - To increase the fees charged in the First-tier Tribunal to full cost recovery levels for the appeals in which we charge fees;
 - To introduce fees for permission to appeal applications (whether made in the First-tier or Upper Tribunal) at full cost recovery levels;
 - To introduce fees for appeal hearings in the Upper Tribunal at full cost recovery levels.
- 1.4. The proposals would be implemented by way of the fee setting power contained in section 42 of the Tribunals, Courts and Enforcement Act 2007.

2. Policy objective:

- 2.1. The normal rule, as set out in HMT's *Managing Public Money*¹, is that where those who use a public service are charged a fee to access them, those fees should be set at a level designed to recover the full costs of the service. Charging less than full cost represents a subsidy by the taxpayer.
- 2.2. In July 2015 the Government launched a consultation to seek views on a proposal to double the fees currently charged in the Immigration and Asylum Chamber of the First-tier Tribunal in an aim to move towards 25% cost recovery. We responded to this consultation in December 2015 indicating our intention was to implement the proposal.
- 2.3. In light of the current financial challenge that the Government faces to eliminate the deficit in this Parliament it no longer feels that a taxpayer subsidy can be justified with regards to the cost of immigration and asylum proceedings either in the First-tier or the Upper Tribunal.
- 2.4. Therefore we are no longer proceeding with the proposal aimed at 25% cost recovery and instead will re-consult on a proposal to recover the full cost of those proceedings for which we charge in the First-tier Tribunal from people who use the tribunal. Additionally, for the first time, we propose to introduce fees for applications for permission to appeal to the Upper Tribunal (whether made in the First-tier or Upper Tribunal) and for appeal hearings in the Upper Tribunal. These fees will also be set at full cost recovery levels. This is a vital part of the Government's plan to make sure that Her Majesty's Courts and Tribunals are properly funded now and into the future.
- 2.5. At the same time we propose to consult on further extension to the exemptions scheme.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

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. Paying “due regard” needs to be considered against the nine “protected characteristics” under 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 against the statutory obligations under the Act. These are outlined below.
- 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 claimants and are not considered to treat people less favourably because of their protected characteristic.
- 4.3. **Indirect discrimination - Immigration and Asylum Chambers:** Our assessment, based on the information available, is that there is likely to be over representation of people from Black, Asian and minority ethnic backgrounds within FTT service users (more information is set out at table 1 below). Therefore it is more likely that individuals with these protected characteristics could potentially be put at a particular financial disadvantage when applying to the Immigration and Asylum Chambers since they will now have to pay more fees for services than previously.
- 4.4. To the extent that increased fee levels would put individuals sharing a protected characteristic at a particular disadvantage, the Government believes this is justifiable. The fees will be set at such a level as to recover the true cost of providing the service, in line with the general principle set out in *Managing Public Money*. The general HMCTS remissions scheme does not apply to appeals in either the First-tier or the Upper Tribunal due to the difficulty in assessing income and capital when appellants are based abroad, although we know from survey data collected that around 40% of fees are paid on the appellant’s behalf by a third party. There are, however, a number of exemptions to help protect access to justice for the most vulnerable. More detail on the exemptions system is set out at paragraph 5 below, including our intention to consult of further ideas for fee exemptions.
- 4.5. The Government believes that this represents a proportionate means of achieving the legitimate aim of protecting access to justice whilst making sure that HMCTS continues to be funded properly, and with a greater contribution made by those who use the service. It also broadly reflects the position that has already been established in other jurisdictions such as the civil and family courts.

- 4.6. ***Discrimination arising from disability and duty to make reasonable adjustments:*** We do not consider that the proposals will treat disabled persons unfavourably because of something arising in consequence of their disability. Insofar as this policy may adversely affect claimants with disabilities, we believe that the proposals would be a proportionate means of achieving the legitimate aim of protecting access to justice whilst making sure that HMCTS continues to be funded properly, and with a greater contribution made by those who use the service. We will continue to monitor any potential impacts and provide reasonable adjustments for claimants with disabilities to make sure that appropriate support is provided.
- 4.7. ***Harassment and victimisation:*** We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
- 4.8. ***Advancing equality of opportunity:*** We have considered how these proposals may impact on the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it by meeting the needs of those bringing proceedings subject to fee increases who share a particular characteristic, where those needs are different from the needs of those who do not share that particular characteristic. We do not consider that these fees will have any detrimental impact on the advancement of equality of opportunity.
- 4.9. HMCTS also offers appellants the opportunity to request an interpreter where English is not their first language and data collected from an optional questionnaire completed by 13,266 users over the past 4 years indicates that this offer is taken up in just over 15% of cases.
- 4.10. ***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 between persons who share a relevant protected characteristic and persons who do not. For this reason, we do not consider that these proposals are relevant to this obligation.

5. Mitigation

- 5.1. Within the Immigration and Asylum Chambers of both the First-tier and Upper Tribunals the general HMCTS remissions scheme does not apply for the reasons set out above (although it does apply for judicial review proceedings brought in the Upper Tribunal). A specific set of exemptions therefore currently applies in the First-tier Tribunal which remove the requirement to pay fees in certain circumstances. Following the removal of appeal rights in the Home Office's Immigration Act 2014 the relevant exemptions fall into two broad categories:

Appeal types for which we do not charge

- appeals against a decision made under section 40 of the British Nationality Act 1981 (deprivation of citizenship); and
 - appeals against a decision made under regulation 19(3) of the Immigration (European Economic Area) Regulations 2006 (a decision to remove an EEA national or the family member of such a national).
- 5.2. As part of the December 2015 consultation response we undertook to add an additional type of appeal to the list of those for which we do not charge fees

following strong support from respondents to the consultation. We remain committed to that proposal and therefore any fee increase will be accompanied by a provision to add appeals against the revocation of a person's refugee or humanitarian protection status to the list of appeals for which we do not charge.

Appellants that do not pay a fee as a result of being in receipt of certain financial support

- those in receipt of asylum support (where the Home Office has already assessed a person as requiring financial assistance);
- those in receipt of legal aid (where income has already been assessed as part of the legal aid award); and
- those in receipt of support under section 17 of the Children Act 1989 (where a Local Authority has already assessed that the household requires additional funding to make sure the child within that household is not put at risk).

5.3. We also committed in our December 2015 consultation response to extend the scope of the protection of children exemptions to parents of, and those with parental responsibility for, children receiving financial support from local authorities under section 17 of the Children Act 1989 (which we are already doing in practice) and also to provide an exemption for children who are being housed by a Local Authority under section 20 of the Children Act 1989.

5.4. In addition to these exemptions, the Lord Chancellor currently has a power to reduce or remit fees in full or part where he considers there are exceptional circumstances which justify doing so and a power to defer fees where an appeal is brought on the grounds that the appellant's removal from or requirement to leave the UK would breach the UK's obligations under the Refugee Convention or Qualification Directive. There is also a broad provision that no fee shall be payable where any convention or treaty to which the United Kingdom is a signatory provides that to be the case.

5.5. As part of the consultation around the introduction of fees for appeals in the Upper Tribunal we are consulting on extending the exemption scheme that applies in the First-tier Tribunal to apply equally in the Upper Tribunal. In addition, we are also consulting on extending the list of exemptions. The Home Office operates a visa fee waiver system for those people applying to come to or remain in the United Kingdom. This is something that the Government considers could potentially provide a model for a fee exemption for appellants bringing appeals before the Immigration and Asylum Chambers of the First-tier and Upper Tribunal. Therefore our consultation is seeking views on creating an additional exemption based on the Home Office waiver scheme and on whether there are other proportionate and administratively practicable exemptions that should be considered.

5.6. The consultation will also ask respondents for their views on the equalities impacts of these proposals from a range of equalities stakeholders.

6. Analysis of Tribunal Users and potential impacts

6.1. Since the introduction of fees in the First-tier Tribunal (Immigration and Asylum Chamber) in 2011 HMCTS have attempted to improve their understanding of those who use the Chamber by asking them to complete an optional questionnaire when they lodge their appeal.

- 6.2. Given that completing the survey is optional and has only been completed by 13,266 appellants over the past 4 years the information generated by it has some limitations. The data only covers those who responded to the survey and not all respondents completed every question. These responses will not necessarily be representative of the Tribunal users who chose not to complete the survey.
- 6.3. It should also be recognised that this information only gives us details as to the characteristics of appellants in the First-tier Tribunal. It does not collect information relating to appellants to the Upper Tribunal. We have made an assumption that the breakdown of appellants who take their appeals on to the Upper Tribunal will be similar to the sample of appellants in the First-tier Tribunal in the absence of any evidence to contrary. It does, however, give us a snapshot of Tribunal users' protected characteristics and some indication of the likely equality impacts. The data, collected between January 2012 and February 2016, is set out in table 1 below.

Table 1: Breakdown of appellant to the First-tier Tribunal (Immigration and Asylum Chamber) by protected characteristic.

	% of individuals
(a) Sex	
Adult male	53
Adult female	47
(b) Marital Status	
Married	60
Divorced	5
Never Married	35
(c) Race	
White	9
Black	32
Asian	46
Chinese	2
Mixed	4
Other	8
(d) Religion	
Buddhist	3
Christian	40
Hindu	8
Muslim	37
Sikh	4
Other	4
No religion	4
(e) Disability	
Disabled	5
Non-Disabled	95

(f) Age	
Under 16	6
16-24	13
25-34	35
35-44	23
45-54	12
55-64	6
65+	5
<i>Percentages rounded to the nearest full percent</i>	

6.4. The results reported in Table 1 can be summarised as follows:

- **Sex:** from the survey respondents, a slightly higher proportion of men than women bring appeals.
- **Marital Status:** A majority (60%) of the appellants coming to the Tribunal are married.
- **Race:** A majority (92%) of the appellants coming to the Tribunal who responded to the optional survey were of Black and Minority ethnic backgrounds.
- **Religion:** The most common religions among appellants that answered the survey were Christian and Muslim.
- **Disability:** Only 5% of those who responded to the Survey disclosed that they had a disability or long term health problem
- **Age:** Individuals between the ages of 25 and 34 are most likely to bring appeals before the Tribunal.

6.5. The data collected in the survey also gives us an indication as to likely nationalities of the appellants, by providing data relating to the most common first languages declared by appellants. Only 25% of respondents to the survey declared that English was their first language. Among the 75% of respondents to the survey who listed a language other than English there was a wide range of languages. The most common were Urdu, Punjabi, Bengali, French, Yoruba, Hindi, Tamil, Russian and Farsi which points to Asian nationalities being particularly over-represented among those likely to be affected.

6.6. In summary, and on the basis of the data supplied above and our assumptions, we conclude that there is a risk of indirect discrimination due to the potential for financial disadvantage from the over-representation of individuals with the protected characteristic of race among the persons that make applications within this tribunal. As explained above we believe our proposals constitute a proportionate means of achieving our legitimate policy aim. Although the fee remissions system is not applicable here, there are a number of exemptions which exist to make sure that access to justice is protected. Further, we have already committed to extending these exemptions alongside any fee increase and are consulting on further exemptions as set out in paragraph 5.5.

6.7. We will also take the opportunity in the consultation to seek further information on the potential equality impacts of the fees proposals and other suggestions for possible mitigation strategies where equality impacts do exist. We will

consider the responses received in due course and update the Equality Statement in the light of these as necessary.