

## 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 Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals*<sup>1</sup> are:

- to introduce or raise fees within the Tax, Property, General Regulatory and Immigration and Asylum Chambers;
- to increase all other civil fees by 10% namely:
  - proceedings in Court of Appeal;
  - judicial review;
  - initiating proceedings other than possession or money claims;
  - civil proceedings in the magistrates' courts;
  - appeals to the County Court and High Court;
  - proceedings for the assessment of costs and enforcement; and
  - proceedings in the Lands Tribunal.

1.2. The fee increases for the 10% uplift will set fees above cost recovery levels and are therefore subject to the enhanced charging power provided by section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014 to prescribe fees in excess of cost. The fee proposals for the tribunals, Property, Tax and General Regulatory Chambers are subject to section 42 of the Tribunals, Courts and Enforcement Act 2007.

### 2. Policy objective:

2.1. In the Government Response, *The Government Response to Part 2 of the Consultation on Reform of Court Fees and Further Proposals for Consultation*<sup>2</sup>, it sets out the background to, and rationale for, introducing enhanced fees. The main policy objectives are:

- to ensure that the courts and tribunals are 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 ensuring that access to justice is protected for those who need it.

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting\\_documents/Government%20response%20to%20consultation%20on%20enhanced%20fees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf](https://consult.justice.gov.uk/digital-communications/further-fees-proposal-consultation/supporting_documents/Government%20response%20to%20consultation%20on%20enhanced%20fees%20and%20consultation%20on%20further%20fees%20proposals%20web.pdf)

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/396887/cm8971-enhance-fees-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396887/cm8971-enhance-fees-response.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 result in people being treated 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 with certain protected characteristics. Therefore it is more likely that individuals with these protected characteristics could potentially face particular disadvantage when applying to the Immigration and Asylum Chambers. In particular for the protected characteristic of sex (women) and for race (applicants from certain countries as outlined in the initial equality impact assessment<sup>3</sup>) are likely to be over-represented. There is evidence however, to suggest that income is not an overriding factor for those that have chosen to make their application, and therefore increasing fees within an existing regime should not affect their decision.
- 4.4. If it were however, established that in some cases (where fee levels had increased) these effects constituted a particular disadvantage for an individual applicant, the fees are below cost recovery and represent a proportionate means of achieving the legitimate aim of protecting access to justice whilst making sure that HMCTS continues to be funded properly.
- 4.5. Within this tribunal, the remissions scheme is not applicable due to the difficulty of applying income and capital tests to those who may be based outside the United Kingdom. Although, as mentioned above, cost of an application is not an overriding factor for applicants, to make sure that access to justice is protected and that any indirect discrimination would be mitigated, there are a set of

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<sup>3</sup> [https://consult.justice.gov.uk/digital-communications/fee-remissions-immigration-asylum/supporting\\_documents/iatfeeremissionseia.pdf](https://consult.justice.gov.uk/digital-communications/fee-remissions-immigration-asylum/supporting_documents/iatfeeremissionseia.pdf)

exemptions which remove the requirement to pay fees. These exemptions fall into two broad categories:

- Appellants that are in receipt of certain financial support; and
  - Appellants appealing ‘state initiated action.’ This was to cover circumstances where the state was seeking to remove someone from the country.
- 4.6. Furthermore the Lord Chancellor has a power to defer or remit fees in full or part where he considers there is an exceptional reason for doing so.
- 4.7. **Indirect discrimination – Other proposals:** Based on the limited data available to us, it is possible that some individuals with protected characteristics (*sex, race, disability and, age*) may face particular disadvantage when bringing certain types of proceedings subject to these proposals. We do consider, however, that any impact would be mitigated by the availability of fee remissions and, in limited circumstances, legal aid. Overall we consider the policies to be a proportionate means of achieving the legitimate aim of protecting access to justice whilst making sure that HMCTS continues to be funded properly.
- 4.8. **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. Insofar as this policy may 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. We will continue 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.
- 4.9. **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
- 4.10. **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 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 consider the availability of fee remissions will help to ensure equality of opportunity is advanced for those claimants bringing proceedings who share particular protected characteristics.
- 4.11. **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

### *Fee Remissions Scheme / “Help with Fees”*

- 5.1. The fee remissions scheme or “Help with Fees” is designed to protect access to justice. Eligibility for a fee remission is based on an individual’s ability to pay, and the scheme is targeted towards those in households on low incomes who are in receipt of certain state benefits. Eligibility is also subject to an assessment of the

value of the applicant's disposable capital assets (e.g. savings) with a higher threshold applying to those aged over 61 years of age.

- 5.2. Further if the applicant is not eligible for a remission through the means tests, it does not automatically rule out eligibility as a remission can be granted if the applicant is likely to experience exceptional hardship due to payment of a fee. Exceptional hardship is defined as having a significant impact on your day-to-day life, for example, being unable to pay your rent or non-payment of an essential service. This is further outlined within the public guidance EX160A<sup>4</sup>.
- 5.3. The applicant may also appeal any decision or refusal for appeal, and have the application reconsidered alongside any new evidence or information.

#### *Immigration and Asylum Chamber*

- 5.4. As set out in paragraphs 4.5 and 4.6 above, the fee remissions scheme is not available in the first-tier tribunal immigration and asylum chamber. There are however, exemptions in place to make sure access to justice is preserved and the use of the Lord Chancellor's power to defer or remit a fee.
- 5.5. The first category exempts appellants in receipt of certain financial support, specifically:
  - those in receipt of Asylum Support (were 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 (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).
- 5.6. The second category of exemptions was originally put in place to exempt appellants from paying fees to appeal against "state initiated action." This was largely to cover circumstances where the state was seeking to remove someone from the country. A lot of these appeal rights however, have now been removed by the Immigration Act 2014.
- 5.7. Under the new provisions, the exemptions only apply to people appealing against a decision to deprive them of their citizenship or a European national appealing against removal under the European Economic Area Regulations 2006. A new appeal right was also introduced: the right to appeal against the revocation of refugee and humanitarian protection status. This would qualify as "state initiated action" and is comparable with the deprivation of citizenship appeals for which we do not charge. Within the consultation, we proposed introducing an exemption under this category and it is the intention now that we will be going forward with this proposal.
- 5.8. Further we are taking this opportunity to make changes which we have previously committed to in respect of exemptions for people supported under the Children Act 1989. The current exemption applies to people who are receiving

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<sup>4</sup> Available at: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>

support under section 17. This section imposes a duty on local authorities to safeguard and promote the welfare of children within their area who are in need and we are clarifying that this can be a person in receipt of that support for the benefit of the child (normally the person with parental responsibility) in addition to the child itself. We will also extend this exemption to also include people who are supported under section 20 where it is the duty of the local authority to provide accommodation to a child who has no available carer (person with parental responsibility) to provide accommodation for them.

#### *Analysis of Court and Tribunal Users*

- 5.9. As we only have limited data on the characteristics of court and tribunal users we assume any adult in England & Wales is equally likely to go to either. In reality, certain groups are more likely than others to go to a court or tribunal and eligibility within these groups is also likely to vary. Whilst we acknowledge the limitations of this approach, we consider it is the best available.
- 5.10. Therefore to assess whether the fee remissions scheme helps meet our obligations, we have used survey household income data<sup>5</sup> to look at the household distribution of income of individuals with certain protected characteristics. This splits the population into five equally sized groups ('quintiles') with those in the bottom quintile being in households with the lowest incomes while those in the top quintile have the highest. The data has also been adjusted for the size of the household and takes housing costs into account. It does not however, allow us to assess the impact on eligibility of the disposable assets test and so probably overstates eligibility for fee remissions.
- 5.11. As this data shows that individuals living in households in the bottom quintile are the most likely to be in receipt of state benefits (see DWP, 2015, Chart 2.5, p29) we can use the distribution of individuals within this quintile to help assess the extent to which the fee remission scheme protects those with protected characteristics. The available data allows us to do this for sex race, disability and age. We present the results in Table 1 below.

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<sup>5</sup> DWP (2014) Households Below Average Income: An Analysis of the Income Distribution 1994/5-2013/14.

<b>Table 1: Distribution of Income by Protected Characteristics</b>						
<b>% Individuals</b>	<b>Net equivalent of disposable household income (after housing costs)</b>					
	<b>Bottom quintile</b>	<b>Second quintile</b>	<b>Middle quintile</b>	<b>Fourth quintile</b>	<b>Top quintile</b>	<b>All (millions)</b>
<b>Sex</b>						
Adult male	18	17	20	22	23	24.1
Adult female	19	20	20	21	21	25.5
<b>Race*</b>						
White	18	20	21	21	21	55.7
Mixed / Multiple ethnic groups	36	23	16	13	12	7.2
Indian	23	19	19	19	20	1.6
Pakistani	44	30	14	7	6	1.1
Bangladeshi	50	33	9	4	4	0.4
Chinese	49	10	12	14	15	0.3
Any other Asian background	37	23	12	14	13	0.6
Black/ African/ Caribbean/ Black British	39	24	16	14	8	1.8
Other ethnic group	41	19	13	14	12	0.8
<b>Disability</b>						
Disabled	25	24	22	17	11	11.9
Non- Disabled	19	19	19	21	22	51.7
<b>Age*</b>						
16-24	28	20	18	20	14	5.4
25-29	19	19	21	24	17	4.1
30-39	20	16	18	21	25	8.3
40-49	18	17	20	21	25	9.2
50 to Retirement Age	19	15	17	21	27	10.8
Pensioners	13	24	25	21	17	11.9
<b>All Individuals</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>63</b>
Source: MoJ calculations based on DWP (2015) Households Below Average Income 2013-14, Tables 3.1db, 5.2db, and 6.1db AHC.						
* By age and ethnicity of head of household, non-white households based on a three year rolling average.						

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

- **Sex:** Males and females appear equally eligible for either a full or partial fee remission. This is because eligibility is usually based on an assessment of household income
- **Race:** Those living in households headed by someone from a non-white ethnic group are twice as likely to live in a household in the bottom quintile compared to those headed by someone from a white ethnic background. In particular ethnic groups with Bangladeshi and Chinese backgrounds feature predominantly in the bottom quintile;
- **Disability:** Adults with a disability are more likely than the average to live in a household in the bottom quintile compared to adults with no disability;
- **Age:** Individuals aged 16 to 24 are more likely to live in low income households and so are more likely to qualify for a fee remission.

5.13. In summary, and on the basis of the data supplied above and our assumptions, we conclude that the fee remission system is likely to provide protection to a higher proportion of individuals with the protected characteristics of race, disability and age subject to the limitation on data on disposable capital assets.

## **6. Potential equalities impacts of enhanced fee proposals on users in the civil court system and mitigations.**

- 6.1. Any impact on different groups will primarily be financial and data on court and tribunal users who would be affected by these proposals has been collected where possible. The Government however, acknowledges that it does not collect comprehensive information about court and tribunal users generally, and specifically information regarding protected characteristics.
- 6.2. For this analysis, we have looked at the equality impacts of the proposals by each key affected fee group. We then made a cumulative assessment to determine whether, across the whole package there were any equality impacts.

### *Key groups affected*

- 6.3. To assess whether the proposed fee increases would have a differential impact on the protected groups (outlined above) a population pool has been defined. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be too broad.

### *Immigration and Asylum Chamber*

- 6.4. As outlined in section 5, there is a risk of indirect discrimination due to the protected characteristics of the persons that make applications within this tribunal. 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 intend to amend the exceptions list to include appeals against decisions to revoke refugee and humanitarian protection status as introduced by the Immigration Act 2014.

### *Tax, Property and General Regulatory Chambers*

- 6.5. We are aware that there would be an initial impact on people where fees are being introduced for the first time within the tribunals. The fees proposed however, are well below full cost and fee remissions are available in these tribunals like in the civil courts.
- 6.6. Also there will be power, in some tribunals, for a non-remitted fee to be reimbursed to the successful party. Where that power does not exist, we propose to introduce it into the tribunals and will ask the Tribunal Procedure Committee to consider making the necessary rule changes.

### *General Increase*

- 6.7. The proposals for the general increase of 10% on certain civil fees are in line with the objectives to maintain an adequately resourced courts and tribunals systems and to reduce the net cost to the taxpayer.
- 6.8. Fee remissions will continue to be available and make sure that those who cannot afford a fee are not prevented from accessing justice.

### ***Equality Impact analysis***

- 6.9. Due to the limitations in the data in some cases, we have only been able to look at the protected characteristics of individual claimants, and therefore the analysis does not cover the protected characteristics of those working in businesses initiating proceedings or those of the losing defendants who will normally be ordered by the court to pay the other party's reasonable costs. Although it is acknowledged that staff within these businesses may have protected characteristics, there is no data available to conduct any analysis. In addition, the survey only covers proceedings commenced in the County Court.
- 6.10. Therefore using the data that is available from the civil court user survey<sup>6</sup>, we have looked at the characteristics of a representative sample of individual court users<sup>7</sup>. We have then compared the results with all adults aged 16 and above – see Table 2 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.

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<sup>6</sup> <https://www.gov.uk/government/publications/civil-court-user-survey-2014-to-2015>

<sup>7</sup> These include individuals who commence money claims and possession claims in the County Court, and exclude businesses.



6.11. 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.

<b>Table 2: 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>