

Equalities Statement; consultation proposals for fee increases

1. Introduction

1.1 This Equality Statement considers the impact of the Government's proposals to increase fees for certain proceedings in relation to the duties in the Equality Act 2010. The proposals are:

- to introduce or raise fees within the Tax, Property, General Regulatory and Immigration and Asylum Chambers;
- to increase the cap for all money claims (except personal injury claims) to at least £20,000; and
- 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 current fees for the court proceedings are, with the exception of proceedings in the Court of Appeal, set at full cost. In tribunals, there is limited cost recovery through fees as either the fees are currently set below cost or fees are not charged.

2. Policy objective:

2.1 The Government proposals for raising fees for these proceedings are contained in the Government Response to the consultation on enhanced fees in possession claims, general applications in civil proceedings and for divorce petitions. The Response 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 and promote the economic recovery while at the same time ensuring that access to justice is protected for those who need it.

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 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.
- 3.3 The Ministry of Justice (MoJ) has a legal duty to consider how the policy proposals are likely to affect those people with protected characteristics and, in particular, to take proportionate steps to mitigate or justify the most negative effects and advance the positive ones.

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 equally to all claimants irrespective of whether or not they have a protected characteristic. We do not consider that the proposals would 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 could be some disadvantage to those applying to the Immigration and Asylum Chambers, in particular women and applicants from certain countries (as outlined in the initial equality impact assessment¹). 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. Additionally, any risk is mitigated by some of the remedial action outlined below. Within this first-tier 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. For this reason and to ensure that access to justice is protected, for this tribunal, there are a set of exemptions which remove the requirement to pay fees. These exemptions fall into two broad categories:
- Appellants who 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.
- 4.4 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.

¹ https://consult.justice.gov.uk/digital-communications/fee-remissions-immigration-asylum/supporting_documents/iatfeeremissionseia.pdf

- 4.5 **Indirect discrimination – Other proposals:** based on the limited data available to us, it is possible that some groups with protected characteristics (gender, ethnic group, disability, age) may feature disproportionately among those bringing certain types of proceedings subject to these proposals. As part of the consultation we will seek more information on any possible equality impacts from those who respond. We do consider, however, that any impact would be mitigated by the availability of fee remissions. In general terms we consider the policies to be a proportionate means of achieving a legitimate aim.
- 4.6 **Discrimination arising from disability and duty to make reasonable adjustments:** insofar as this policy may affect claimants with disabilities, we believe that the proposals would be a proportionate means to achieve a legitimate aim. We will continue to provide reasonable adjustments for claimants with disabilities to ensure 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 might impact on the duty to advance equality of opportunity by meeting the needs of those bringing proceedings subject to enhanced fees 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 would help to ensure equality of opportunity is advanced for those bringing proceedings with protected characteristics, if these measures were to be introduced.
- 4.9 **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

- 5.1 The fee remissions scheme 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 There are two main ways by which a fee remission can be obtained. The first is that, where the applicant is receiving one of the following specified benefits, they are entitled to a full remission:
- income-based jobseeker's allowance;
 - income-related employment and support allowance;
 - income support;
 - universal credit – with a gross annual earnings of less than £6,000;
 - state pension guarantee credit; or

- Scottish civil legal aid.
- 5.3 The second way by which a full or part fee remission can be obtained is based on the applicant's (or household's) gross monthly income with adjustments made for the number of dependent children in the household.
- 5.4 Further if the applicant is not eligible for a remission based on their assessed capital and income, the Lord Chancellor has a power to remit fees in exceptional circumstances. Further details are provided in the EX160 form and within the public guidance EX160A.²
- 5.5 An exceptional circumstance would be where an unexpected event has occurred which has seriously affected the applicant's ability to pay a court or tribunal fee. Although there is no strict criteria on what this may be, some examples provided within the EX160A include:
- Payment of a fee would mean non-payment of an essential service or utility bill; or
 - The applicant has personal responsibility for caring for a dependent adult and that care can only be paid from their own resources; or
 - The applicant has suffered unexpected and sudden personal and financial loss or expense due to the death of a close family member or dependent relative.
- 5.6 The applicant may also appeal any decision or refusal for appeal, and have the application reconsidered alongside any new evidence or information.
- 5.7 Further, as set out in paragraphs 4.3 and 4.4 above, the standard fee remissions scheme is not available in the First-tier tribunal (immigration and asylum chamber). There are however, provisions in place to ensure access to justice is preserved through the fee exemptions policy and the use of the Lord Chancellor's power to defer or remit a fee.
- 5.8 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 the best available.
- 5.9 To assess whether the fee remissions scheme helps meet our obligations, we have used survey household income data³ 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. These data have also been adjusted for the size of the household and take housing costs into account. However, it does not allow us to assess the impact on eligibility of the disposable assets test and so probably overstates eligibility for fee remissions.

² Available at: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>

³ DWP (2014) Households Below Average Income: An Analysis of the Income Distribution 1994/5-2013/14.

5.10 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 gender, ethnic group, disability and age. We present the results in Table 1.

Table 1: Distribution of Income by Protected Characteristics						
% Individuals	Net equivalised disposable household income					
	(after housing costs)					
	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	All (millions)
Gender						
Adult male	18	17	20	22	23	24.1
Adult female	19	20	20	21	21	25.5
Ethnic Group*						
White	18	20	21	21	21	55.7
Non-White	36	23	16	13	12	7.2
Disability						
Disabled	25	24	22	17	11	11.9
Non-Disabled	19	19	19	21	22	51.7
Age*						
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	23	25	21	19	12
All Individuals	20	20	20	20	20	63

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.

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

- **Gender:** 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
- **Ethnic Group:** 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;
- **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 remission in fees.

5.12 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 ethnicity, 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. Data on court and tribunal users who would be affected by these proposals has been collected where possible. However, the Government acknowledges that it does not collect comprehensive information about court and tribunal users generally, and specifically information regarding protected characteristics.

6.2 We first analyse the equality impacts of the proposals by each key affected fee group. We then make a cumulative assessment to determine whether, across the whole package there are 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 defined too widely.

Tribunals

6.4 We are seeking views on the following proposals to:

- introduce fees within the Tax Chamber;
- increase fees within the Property Chamber;
- introduce fees in the General Regulatory Chamber; and
- increase fees in the Immigration and Asylum Chamber.

6.5 The above proposals would affect those who bring claims to the Tax, Property, General Regulatory and Immigration and Asylum Chambers.

6.6 There is little evidence on the profile of such claimants. Analysis of HMRC internal management information from the period 2009-2014 gives an indicative profile of those involved in HMRC appeals: 54% were companies, 19% were private individuals, 9% were local authorities, 4% were non-profit organisations and 14% were classified as 'other'. This provides us some indication of the status of users of the Tax Tribunal.

6.7 We are aware that there would be an initial impact on people when the fees are introduced into tribunals where a fee did not exist before but, overall, the fees that are proposed to be introduced are in general, well below full cost.

- 6.8 Fee remissions are also available within the tribunals (as in civil courts) and there is also power for fees, in some tribunals, to be reimbursed to the successful party by the unsuccessful party. Where that power does not exist, we propose to introduce that power in those tribunals.
- 6.9 In regards to the increased fees in the Immigration and Asylum Chamber, an initial equality impact assessment⁴ was conducted in December 2012. Within this consultation, we are asking stakeholders for more evidence on this point so the potential impacts can be fully explored.

Higher Cap for Money Claims

- 6.10 We are proposing to raise the cap for all money claims to at least £20,000 i.e. those claims over £200,000 would not have their fee capped at £10,000 as they do currently but the fee will continue to be 5% of the value of the claim up to a maximum cap of £20,000 (the fee payable for a claim of £400,000). We think that those who can afford to pay should do so whilst remaining proportionate to the value of the amounts in dispute.
- 6.11 Further as outlined in Section 5, the remissions scheme provides access to the courts and tribunals for those who were unable to afford to pay.

General Increase

- 6.12 Our proposals are to seek a general increase of 10% on all other civil fees, 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
- 6.13 These increases are in line with the two main objectives for these proposals are to ensure that courts and tribunals are adequately resourced and to reduce the net cost to the taxpayer.
- 6.14 Also as outlined in Section 5, the remissions scheme will be available for those who cannot afford the court fee.

⁴ https://consult.justice.gov.uk/digital-communications/fee-remissions-immigration-asylum/supporting_documents/iatfeeremissionseia.pdf

Equality Impact analysis

6.15 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 businesses initiating proceedings or losing defendants who will be normally be ordered by the court to pay the other party's reasonable costs. In addition, the survey only covers proceedings commenced in the County Court. We are therefore seeking views on the potential equality impacts arising from our proposals.

6.16 Using data from a forthcoming survey⁵ of civil court users, we have looked at the characteristics of a representative sample of individual court users⁶. 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:

- **Gender:** Male court users appear to be over-represented among the affected groups when compared to all adults aged 16 and over.
- **Age:** Individuals aged 45 and over are also over-represented.
- **Ethnic group:** Individuals from an Asian or Asian British background are over-represented.
- **Disability:** Those with physical or mental health problems appear to be under-represented.

⁵ Findings from the survey are yet to be published and may be subject to revision. Therefore they must be treated with caution.

⁶ These include individuals who commence money claims and possession claims in the County Court, and exclude businesses.

Table 2: Demographic profile of individual claimants		
	All claimants	Comparison group: All adults aged 16 and over
	%	%
Gender		
Male	56	49
Female	44	51
Age		
16 to 24	2	14
25 to 34	15	17
35 to 44	20	17
45 to 54	25	17
55 to 64	20	14
65 to 74	14	11
75 and over	5	9
Ethnicity		
White	80	88
Asian/Asian British	14	6
Black/Black British	4	3
Mixed/Chinese/Other	3	2
Health		
Any physical or mental health problem	25	36
Annual income (claimant +partner)		
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
Receipt of state benefits		
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* (forthcoming)
 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>