

Equalities Statement: increases to fees for possession claims, general applications in civil proceedings and divorce.

1. Introduction

- 1.1 This Equality Statement considers the impact of the Government's plans to increase court fees for certain proceedings in relation to the duties in the Equality Act 2010. The plans are:
- to increase the fee for an application for the recovery of land made in the County Court by £75;
 - to increase the fee for a general application made in civil proceedings by £50 for an application made without notice, or by consent; and by £100 for an application made on notice which is contested; and
 - to increase the fee to file a matrimonial order and civil partnership order to £550
- 1.2 The current fees for these proceedings are set at full cost or above and any increase would therefore need to be made using the powers at section 180 of the *Anti-social Behaviour Crime and Policing Act 2014* to prescribe fees in excess of cost.

2. Policy objective:

- 2.1 The Government plans for raising fees for these proceedings are contained in the Government Response to the consultation on enhanced fees. This 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 is likely to affect those people with protected characteristics 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 plans would result in people being treated less favourably because of their protected characteristic.
- 4.3 **Indirect discrimination:** our assessment, based on the information available, is that the increase in fees for possession claims and general applications within civil proceedings is unlikely to amount to indirect discrimination under the Act as no group of people with any protected characteristic is particularly disadvantaged.
- 4.4 The increase in divorce fees however, does appear to have a greater impact on women, as 61 per cent of applications for matrimonial orders (or civil partnership orders) are made by women (see Table 3 below). Nonetheless, we consider that this impact is mitigated by the availability of fee remissions. Furthermore, we consider the policy to be a proportionate means of achieving a legitimate aim.
- 4.5 **Discrimination arising from disability and duty to make reasonable adjustments:** insofar as this policy may affect claimants with disabilities, we believe that the plans are 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.
- 4.6 **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation as a result of implementing these plans.
- 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 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 helps to ensure equality of opportunity is advanced for those bringing proceedings with protected characteristics.
- 4.8 **Fostering good relations:** we do not consider that there is scope within the policy of setting and charging court fees to promote measures that foster good relations. For this reason, we do not consider that these plans are relevant to this obligation.

5. Mitigation – the 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

- 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 Furthermore, when calculating household income within the context of an application for a remission, eligibility is assessed dependent on whether the applicant is a single person or a couple. An applicant is defined as single if:
- they are living without a partner, relying on their own income, with or without dependent children; or
 - the proceedings involve a contrary interest.
- 5.5 Proceedings that involve a contrary interest include divorce.
- 5.6 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.¹
- 5.7 An exceptional circumstance could include where an unexpected event has occurred which means that paying the fee would cause undue financial hardship. Examples 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

¹ Available at: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf>

- 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.
- 5.8 There is also information to suggest that remission rates (i.e. proportion of fee income allocated to remissions) are higher in family proceedings than in civil ones. 2014/15 Q3 estimates are above 7% and below 2% for family and civil cases as a whole, respectively. Please note that these figures refer to the County Court only, and that we do not have full data on which proceedings the remissions occur.
- 5.9 In order to assess whether the fee remissions scheme helps meet the Departments obligations, we have used data from the DWP's *Households Below Average Income Survey*² 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 capital test and for this reason, it is likely that the survey overstates eligibility for fee remissions.
- 5.10 As 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.
- 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. However, when members of the household have a contrary interest in the proceedings, as is the case for individuals filing matrimonial orders or civil partnership orders, they are assessed on their individual means. In these circumstances, the applicant with the lowest income is more likely to qualify for a fee remission. Due to differences in gender earnings, this is more likely to be a female member³;
 - **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;

² DWP (2015) Households Below Average Income: An Analysis of the Income Distribution 1994/5-2013/14.

³ See ONS (2014) Annual Survey of Hours and Earnings, 2014 Provisional Results, Figure 8. <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2014-provisional-results/stb-ashe-statistical-bulletin-2014.html>

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.

- **Disability:** Adults with a disability are more likely as the average to live in a household in the bottom quintile compared to adults with no disability;
- **Age:** Those living in households headed by someone 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 generally to provide protection to a higher proportion of individuals with the protected characteristics of ethnicity disability and age. It also affords protection on the grounds of sex (where eligibility is assessed on individual rather than household means). Both are, however, subject to the limitation on data on disposable capital assets.

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

- 6.1 Any impact on different groups will primarily be financial. Data on court users who would be affected by these plans has been collected where possible. However, the Government acknowledges that it does not collect comprehensive information about court users generally, and specifically information regarding protected characteristics.
- 6.2 We first analyse the equality impacts of the plans 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 fee 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

Possession claims

- 6.4 Our plans is to increase the fee for a possession claim in the County Court by £75, raising the fee:
- from £280 to £355 for a paper application; and
 - from £250 to £325 for a claim filed using Possession Claims Online.
- 6.5 Initially the impact of the fee increase would be borne by people and organisations bringing possession claims. However, the normal rule is that the court will order the losing party to meet the claimant's reasonable costs, including any court fees he or she has incurred. As recent court data shows that claimants are successful in around 75 per cent of possession claims we anticipate that in a large number of cases the costs will be added to the debt and be borne by the defendant.

General applications

- 6.6 Our plan is to increase fees for most general applications in civil proceedings:
- from £50 to £100 for ex parte applications, or applications made by consent; and
 - from £155 to £255 for applications on notice and which are contested.
- 6.7 Under the government's plans, applications made in certain types of proceedings would be exempt from the fee increase. These are:
- applications made by a victim to extend or vary the terms of an injunction providing protection from harassment;
 - applications made on behalf of a child or other vulnerable applicant for funds to be paid out of monies held in court; and
 - applications made in proceedings under the insolvency and companies administration.

- 6.8 General applications may be made by either side in proceedings, and in most cases the costs, including fees, will be determined by the outcome of the substantive litigation. The impact may therefore be borne by any party involved in proceedings in which a general application is made.

Divorce proceedings

- 6.9 Our plan is to increase the fee to commence divorce proceedings from £410 to £550.
- 6.10 The fee increase would be borne solely by the individuals filing matrimonial orders or civil partnership orders as they are the ones responsible for paying the associated fee.

Equality Impact analysis

Possession claims and general applications in civil proceedings

- 6.11 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 defendants or businesses initiating proceedings.
- 6.12 Using data from a forthcoming survey⁴ of civil court users, we have looked at the characteristics of a representative sample of those who commence possession claims and, more generally, all individual claimants⁵. 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 over⁶.
 - **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 also appear to be under-represented.

⁴ Findings from the survey are yet to be published and may be subject to revision. Therefore they must be treated with caution.

⁵ These include individuals who commence money claims and possession claims, and exclude businesses.

⁶ This result is only statistically significant for all claimants as the base size for possession claimants is too small to provide statistical significance.

<i>Income</i>	165	1,742
<i>Benefits</i>	183	1,861
<i>Health</i>	200	2,048

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>

Female	45	44	51
Age			
16 to 24	0	2	14
25 to 34	11	15	17
35 to 44	18	20	17
45 to 54	21	25	17
55 to 64	28	20	14
65 to 74	19	14	11
75 and over	3	5	9
Ethnicity			
White	69	80	88
Asian/Asian British	18	14	6
Black//Black British	9	4	3
Mixed/Chinese/Other	4	3	2
Health			
Any physical or mental health problem	13	25	36
Annual income (claimant +partner)			
Under £10,000	7	16	n/a
£10,000 - £12,999	5	9	n/a
£13,000 - £14,999	*	4	n/a
£15,000 - £20,999	6	16	n/a
£21,000 - £39,999	34	30	n/a
£40,000 - £59,999	18	12	n/a
£60,000 - £79,999	14	6	n/a
£80,000 or over	16	7	n/a
Receipt of state benefits			
Any	14	24	n/a
None	86	76	n/a
<i>Bases: All claimants</i>			
<i>Gender</i>	204	2,105	
<i>Age</i>	204	2,101	
<i>Ethnicity</i>	197	2,009	

Divorce proceedings

6.13 In order to assess whether the plan to increase divorce fees would have a disproportionate impact on individuals with certain protected characteristics, we have considered the data on the gender of those filing matrimonial orders or civil partnership orders. This is published quarterly by the Ministry of Justice⁷, and, to the best of our knowledge, constitutes the only available information on the protected characteristics of those commencing divorce proceedings.

6.14 We have compared the above data with the equivalent for all adults aged 16 and above. Results are shown in Table 3 below. Assuming that a certain group will be disproportionately represented if the difference in percentage points is equal or greater than 5, we have found the following:

- **Gender:** Women appear to be over-represented among those filing matrimonial orders (or civil partnership orders) when compared to all adults aged 16 and over.

	Individuals filing matrimonial orders or civil partnership orders	Comparison group: All adults aged 16 and over
	%	%
Gender		
Male	39	49
Female	61	51

Source:

Ministry of Justice, *Family Court Statistics Quarterly: October to December 2014*, March 2015.

⁷ Ministry of Justice, *Family Court Statistics Quarterly: October to December 2014*, March 2015.