

Equality Statement

1. Introduction

1.1. This Equality Statement considers the impact of the Government's plans to increase fees for certain proceedings against the duties in the Equality Act 2010. The changes consist of a new banded structure of fees for a grant of representation, commonly known as a grant of probate. This was previously set out in the *Consultation on fee proposals for grants of probate*¹ and the Government responded to this consultation in February 2017. The Commons Committee debate was held on 19 April. On 21 April, we confirmed that changes to probate fees would not go ahead before the General Election. However, this Government has subsequently revised the fees proposed and reduced all the fees that will be payable, particularly for higher bands. The new fees will be:

Estate value	Application Fee
Less than £50,000 or exempt from requiring probate	£0
£50,000 - £300,000	£250
£300,000 - £500,000	£750
£500,000 - £1m	£2,500
£1m - £1.6m	£4,000
£1.6m - £2m	£5,000
Above £2m	£6,000

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, by order, to prescribe fees in excess of cost of the proceedings to which they relate.

2. Policy objective:

2.1. The main policy objectives are:

- it is right to introduce a more progressive fee scheme for those using the service and ask for a greater contribution from estates that can afford to pay, thereby reducing the net cost of the courts and tribunals to the taxpayer.
- it is necessary to fund the wider justice system to ensure an efficient and effective service from our courts and tribunals.

2.2. In this way, we will reduce public spending while at the same time making sure that those who can afford to do so make a greater contribution to providing a properly funded service so that access to justice is protected.

2.3. The Government is investing over £1bn to transform the courts and tribunals service so that it is fit for the digital age. The vision of the reform is to modernise and upgrade the justice system so that it works even better for everyone. As part

¹ <https://consult.justice.gov.uk/digital-communications/fee-proposals-for-grants-of-probate/>

of these reforms, we are implementing changes to the Probate Service to improve the service and experience of the user. This is part of the HMCTS Reform Programme and separate legislation sets out those details. Overall, that SI will reduce the burden on those who are grieving by, amongst other things, ensuring faster processing times, allowing for assisted digital support and ensuring the public or their representatives can initiate cases online.

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. In the initial equalities statement, we specifically considered the impact on personal representatives (executor or administrators), who pay the fee upfront. We used data from the Civil Court User Survey, as no data is routinely collected on personal representatives and this was seen to be the only data set that could be used as a proxy at the time. On further review, we do not consider that this data set is appropriate or meaningful for these purposes. As set out previously, a personal representative can be anyone over 18 years old, and there is no reason to believe that the data from the Civil Court User Survey is likely to have any significant relevance for this separate group of people. This makes it difficult to determine what the impact of these proposals is likely to be. As reform and digitalisation of the Probate Service continues, including the introduction of an online application form, we will be able to collect this type of data more consistently.
- 4.2. We also recognise that as the fee paid is recoverable from the estate, increased fees will have an impact on the beneficiaries of an estate. Beneficiaries can be any identifiable person or organisation, including family members, friends and charities. We do not collect any data on beneficiaries, and as with personal representatives, do not have any data that could be used as a proxy to help us assess the impact of these proposals on beneficiaries.
- 4.3. None of the responses to the consultation (on the previous banded fee model) provided any substantive data or evidence on the impacts these plans may have on those with protected characteristics. Overall, and in the absence of any data that we can meaningfully use to assess the characteristics of either personal representatives or beneficiaries, we do not consider that these proposals would be discriminatory.
- 4.4. **Direct discrimination:** Our assessment is that the planned increases in fees are not directly discriminatory within the meaning of the Act, as they will apply to all

parties affected (both as a personal representative and beneficiary) and are not considered to result in people being treated less favourably because of their protected characteristic.

- 4.5. **Indirect discrimination:** We do not believe that individuals with protected characteristics would be particularly disadvantaged by these plans, and if there is any unexpected impact, this will be mitigated by the availability of the Lord Chancellor's exceptional power to remit fees. Although we plan to remove persons applying for probate from the general HMCTS fee remissions scheme, the Lord Chancellor will retain the power to remit fees in full or part in exceptional cases. We also plan 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 take an additional 25,000 estates out of the requirement to pay any probate fee². This will save lower value estates up to £215 each, based on the current fee for a personal application.
- 4.6. Moreover, the new fees are proportionate to the estate in question and the cost is recoverable from the estate. In the event that there is unexpected indirect discrimination, we believe that these changes to fees are a proportionate means of achieving the legitimate aim of protecting access to justice, by asking for a greater contribution from estates that can afford to pay and thereby making sure that HMCTS continues to be properly funded in the long term.
- 4.7. **Discrimination arising from disability and duty to make reasonable adjustments:** We do not consider that the planned changes 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 users with disabilities to make sure that appropriate support is provided in protecting access to justice.
- 4.8. **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation in implementing these changes.
- 4.9. **Advancing equality of opportunity:** We have considered how these planned changes might 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 power to remit fees will help to make sure that equality of opportunity is advanced for those persons making an application for a grant of probate who share particular protected characteristics. We consider that this will be the case even when such applications are taken out of the general HMCTS fee remissions scheme, as the Lord Chancellor's power to 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.
- 4.10. **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. For this reason, we do not consider that these changes are relevant to this obligation.

² Calculated by MOJ internal analysis, based on probate estate projects data provided by HMRC.

5. Mitigation

- 5.1. As set out in Chapter 2 of the consultation response, we plan to remove grant of probate applications from the general fee remissions scheme. The discretionary power of the Lord Chancellor to grant exceptional remissions will, however, remain in place as a safeguard where the payee simply cannot afford to pay the fee. We will be publishing a document entitled *Guidance on Ways to Pay*, which helps representatives navigate the various options for help with paying probate fees to ensure no one is denied a grant or probate due to inability to pay.
- 5.2. It is also important to note that the applicant will be able to recover the fee from the estate (according to HMRC data³, the average estate is 25% cash) and, moreover, the fee charged to the applicant will always be proportionate to the value of the estate.
- 5.3. We acknowledge that with regard to the impact on beneficiaries, there is no mitigation as the fee will need to be paid out of the estate, but the fee will never be more than 0.5% of the total value of the estate, which we consider a proportionate and small cost in comparison to the overall benefit received.

6. Equality Impact analysis

- 6.1. Finally, as the equality duty is an ongoing duty, we will continue to monitor and review the fees changes for any potential impacts on persons with protected characteristics and will make sure that access to justice is maintained.

³ Inheritance Tax Statistics, available here:

<https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-124-assets-in-estates-by-range-of-net-estate-and-tax-due>