

Equalities Assessment

Introduction

This paper sets out our assessment of the likely impact of the changes to certain court fees following a review of unit costs. Ministers have decided to reduce those fees to full cost recovery levels to ensure that fees are set lawfully and in accordance with the statutory powers set out in the Courts Act 2003, the Mental Capacity Act 2005 and the Insolvency Act 1986.

Full details of the changes to fees are set out Annex A.

Public Sector Equality Duty

Section 149 of the Equality Act 2010 (the Act) requires public authorities, in the exercise of their functions, to have due regard to the need to:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics under the Act are: gender, race, disability, age, religion or belief, marriage and civil partnership, gender reassignment and sexual orientation. Furthermore, pregnancy and maternity status is a protected characteristic for the purposes of advancing equality of opportunity and fostering good relations.

Data

We do not routinely collect data on the protected characteristics of those who bring or are involved in proceedings before the Court of Protection, or who bring or are involved in civil proceedings in the High Court and in the magistrates' courts, or who bring or are involved in insolvency proceedings. In civil cases, the court has the power to make an order for costs in favour of the successful party. Such orders will also include the reimbursement of reasonable expenses incurred, including court fees. It is therefore the case that the changes to fees for civil proceedings will also have an impact on defendants and respondents to those proceedings. Detailed statistical information on the protected characteristics of these groups is not collected either. We have not therefore been able to undertake a detailed analytical assessment of the impact of the reduction in fees for these applications and proceedings.

Limited information is available on the age and gender of people on whose behalf proceedings are brought in the Court of Protection. This is set out in the table at Annex B. In the Court of Protection, court fees are normally paid out of the estate of the protected person.

Assessment under the Public Sector Equality Duty

Our assessment considers the impact of these fee changes in relation to each of the duties under the Act as set out above.

The courts have an important role to play in enforcing rights, and in particular the enforcement of anti-discrimination rights. Access to the courts and tribunals therefore has an important role to play in eliminating discrimination, harassment, victimisation and other prohibited behaviours, advancing equality of opportunity and fostering good relations. Nevertheless, the applications and proceedings to which the reduction in fees relates do not involve the vindication of anti-discrimination rights and we therefore consider that they are unlikely to have any impact in relation to those duties. The main impact is therefore likely to be the financial impact of these changes to fees on those who pay them, or are ordered to reimburse those who paid.

The assessment considers the impact of the provision, criterion or practice (PCP), in this case the reduction in these court fees, in relation to protected characteristics against each of the duties.

1.(a) Eliminating discrimination

The reduced fees will apply to all people and organisations making applications and bringing proceedings. There is therefore no direct discrimination as a result of the PCP.

There may be indirect discrimination where PCP would result in people with a protected characteristic suffering a disadvantage when compared with people who do not share that characteristic.

As set out earlier, we do not hold detailed statistical information about the protected characteristics of the claimants and respondents in respect of these applications and proceedings. We do not therefore know whether the PCP will have a disparate impact in relation to certain protected characteristics. Furthermore, for most of the proceedings subject to fee reductions there is no reason to infer that people with certain characteristics are more likely to be affected by the changes compared with those who do not share those characteristics. For this reason, in most cases we do not consider that the PCP would have a disproportionate impact on people with a protected characteristic compared with people who do not share that characteristic.

We do have limited data for people involved in proceedings before the Court of Protection. Those data indicate that people on whose behalf those proceedings are brought (the estate of whom the fee is normally paid from) are likely to be older and female. Around 68%¹ of people affected are over the age of 60, compared with 24%² of the general population of England and Wales; and 55% of the people affected are women, compared with 51% of the population. The changes are therefore expected to have a greater impact on people with these characteristics, compared with people who do not share them.

Furthermore, these proceedings are brought on behalf of people who do not have the mental capacity to make decisions about their financial affairs or their welfare, and in most cases, the fees are paid from the estate of that person. We therefore consider that the PCP insofar as it relates to proceedings before the Court of Protection is likely to have a disproportionate impact in relation to disability, and specifically mental health disability.

¹ See Annex B.

² *Estimates of the population for the UK, England and Wales, Scotland and Northern Ireland, Mid 2017*, Office for National Statistics (ONS)

We have therefore gone on to consider whether there would be indirect discrimination for those who bring proceedings, or make applications to, the Court of Protection. The impact of the PCP on people involved in proceedings before the Court of Protection would be that they will pay less to bring proceedings in future and would be entitled to apply for a refund where they have been overcharged. We do not therefore consider that those users would suffer a disadvantage and for this reason, we do not consider that the PCP amounts to indirect discrimination for proceedings in the Court of Protection.

It is possible that the PCP may have a disproportionate impact in relation to other protected characteristics of users of the Court of Protection; or that our assumption that there is no disproportionate impact in relation to other users of the civil courts affected by the PCP were wrong. We have therefore also gone on to consider whether it would amount to indirect discrimination if there was a disproportionate impact in relation to a particular protected characteristic.

We do not consider that it would amount to indirect discrimination for reasons similar to those set out above. If it were the case that people with certain protected characteristics were more likely to bring the proceedings or make applications to which the PCP applies, they would not suffer a disadvantage because they would, in future, be required to pay less than the current fee to bring the same proceedings; and they would be entitled to seek a refund where they have been over charged.

If, however, people with certain protected characteristics were under-represented among the group of people who bring the proceedings or make applications to which the PCP applies, it could be argued that they would not benefit to the same extent from the fee reductions, compared with people who do not share those characteristics. That would apply, for example to people aged under 65 or men on whose behalf proceedings were brought in the Court of Protection. In those circumstances, we do not consider that they would suffer a disadvantage and this would not therefore represent indirect discrimination. Nevertheless, if it were found that people with certain protected characteristics did suffer a disadvantage which amounted to indirect discrimination in these circumstances, we consider that any such discrimination might be mitigated to some extent by the availability of fee remissions, and that any remaining indirect discrimination would be justified by the need to act lawfully in collecting fees.

1.(b) Eliminating harassment, victimisation and other conduct prohibited under the Act.

For the reasons set out above, we consider that the reduction in these court fees is unlikely to have any impact on the elimination of harassment, victimisation or other prohibited conduct.

2. Advancing Equality of Opportunity

For the reasons set out above, we do not consider that the PCP is likely to have any impact in respect of advancing equality of opportunity.

3. Fostering good relations

For the same reasons, we do not consider that the PCP is likely to have any impact in relation to fostering good relations between people who have certain protected characteristics, and those who do not share those characteristics.

Conclusion

Our overall conclusion is that:

- There is no direct discriminations from the PCP;
- We do not consider that the PCP is indirectly discriminatory, but that if there were any such discrimination it would be justified as a means of ensuring that fees are charged lawfully;
- We do not consider that there is likely to be any impact from this PCP in relation to eliminating harassment, victimisation and other prohibited conduct; advancing equality of opportunity or fostering good relations.

Bill Dowse

Date: 2 July 2018

Annex A: Schedule of fees

Fee description	Current Fee £	Revised fee £
1. Court of Protection		
Application fee	400	385
Appeal fee	400	320
2. Insolvency proceedings		
General applications (on notice)	155	95
General applications (ex parte or by consent)	50	25
3. Magistrates court's proceedings		
Council Tax Liability Orders	3	0.50
Warrant of commitment in proceedings under the Child Support Act 1991	245	50
Appeal – Licensing Act 2013	410	70
Application to state case for High Court	515	155
Appeal – other	205	70
Attendance of a Justice	50	30
Certificate - memorandum of conviction	60	25
Certificate - other	60	25
4. High Court proceedings		
Judge sitting as an arbitrator (Technology and Construction Court)	2,455	1,800
Judge sitting as an arbitrator (Administrative Court)	2,455	2,275

Annex B: Data on characteristics of people involved in proceedings before the Court of Protection

Court of Protection Case Records Database: 1st April 2017 to 31st March 2018

Age Group	Number of P	%	Male P	Female P
0-10	199	0.67%	121	78
10-20	1114	3.74%	723	391
20-30	2243	7.54%	1472	771
30-40	1610	5.41%	1025	585
40-50	1704	5.72%	1022	682
50-60	2623	8.81%	1582	1041
60-70	2635	8.85%	1474	1161
70-80	4917	16.52%	2163	2754
80-90	8673	29.14%	2883	5790
90-100	3945	13.25%	959	2986
100-110	103	0.35%	14	89
110/120	0	0.00%	0	0
total	29766	100.00%	13438	16328
			45.15%	54.85%