

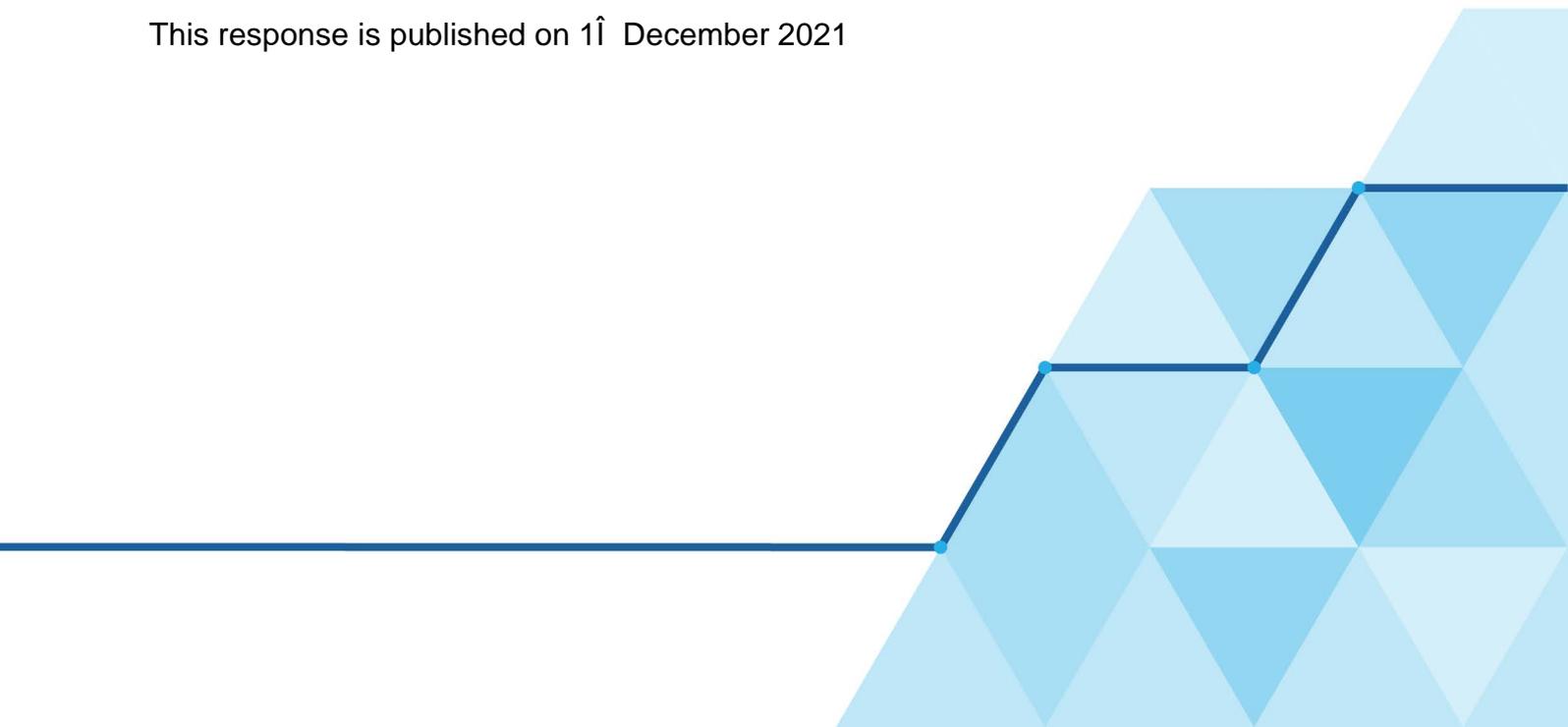


Ministry
of Justice

Court and Tribunal Fees

**The Government response to the
consultation on “Aligning the Fees for
Grants of Probate to Cost Recovery”**

This response is published on 1st December 2021





Ministry
of Justice

Court and Tribunal Fees

The Government response to the consultation “Aligning the Fees for Grants of Probate to Cost Recovery”

Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

Contents

Introduction and contact details	3
Complaints or comments	3
Overview	4
Background	4
Summary of responses	5
Responses to specific questions	6
Impact Assessment, Equalities and Welsh Language	11
Impact Assessment	11
Equalities	11
Welsh Language	11
Conclusion and next steps	12
Consultation principles	13
Annex A – List of respondents	14

Court and Tribunal Fees

The Government response to the consultation on “Aligning the Fees for Grants of Probate to Cost Recovery”

Introduction and contact details

This document is the post-consultation report for the consultation paper “Aligning the Fees for Grants of Probate to Cost Recovery”.

It will cover:

- the background to the report and summary of the responses
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Fees Policy Team** at the address below:

Fees Policy Team

Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: mojfeespolicy@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from mojfeespolicy@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address

Overview

Background

1. The case for regularly reviewing the way we charge court fees is based on the need to ensure that Her Majesty’s Courts and Tribunals Service (HMCTS) is funded properly whilst protecting the vital principle of access to justice. Access to justice is crucial to the maintenance of an effective and functioning democracy, helping to uphold social order and underpinning an effective economy.
2. The probate service is an important part of the work that HMCTS does. It manages the process by which individuals are able to demonstrate their authority to deal with the property, money and other possessions (an “estate”) of the deceased after their death. It seeks to ease the burden of people who are grieving, by making the process of applying for probate as straightforward as possible. The Government maintains its commitment to ensure the efficient and effective running of the probate system, while protecting access to justice and minimising the burden on the taxpayer.
3. The consultation paper “Aligning the Fees for Grants of Probate to Cost Recovery” was published on 8 July 2021 and was open for eleven weeks until 23 September 2021. It invited comments on the proposal by the Ministry of Justice to align the fee payable for probate applications with the cost of providing that service for all users. This would result in a fee increase to £273 for both professional users (£155) and non-professional users (£215). The proposal had three objectives, which were:
 - to bring the fee structure into alignment with HM Treasury’s Managing Public Money principles, where the same fee should be charged for all users of the same service;
 - to set the fee at a level that recovers the cost of providing the service, which would better align with the standard approach to charging fees under Managing Public Money principles;
 - and to protect access to justice by ensuring that courts and tribunals are adequately resourced in accordance with the Lord Chancellor’s statutory and constitutional duty, while also reducing the overall taxpayer subsidy to HMCTS.
4. This proposal is expected to make a significant contribution to the Ministry of Justice’s financial plans for 2022–23 and beyond. We estimate that in a typical year, the proposal will raise an additional £23–25m for the courts and tribunals service.
5. The consultation sought views from users of the probate service, the legal profession, the judiciary, the advice sector and all those with an interest in the work of HMCTS. The consultation sought views on three questions in relation to the proposal.

Summary of responses

6. A total of 24 responses to the consultation paper were received. The majority of responses came from the legal sector, either individual firms or practitioners, or membership bodies representing a legal profession.
7. The majority of responses agreed with the general principle of the proposal, that is to raise the fee for probate applications to cover the cost to HMCTS of the service provided. Respondents were split on the question of whether to maintain a discounted fee for applications from professional probate applicants. The main argument provided for maintaining a discounted fee related to the quality of the service provided by practitioners, especially for vulnerable applicants and for those with complex estates. It was argued that deterring individuals from seeking professional support with their probate application by removing the discount would lead to more errors in applications received by the probate service. Most respondents agreed that the proposal would not have a disproportionate effect on individuals with protected characteristics.
8. We are grateful to all those who responded to the consultation and for the points they have raised. Our response to the consultation questions is provided below, as well as our proposed next steps. The Government believes the consultation provides strong support for progressing with the proposal to increase probate fees to cost, and will seek to implement the change early next year.

Responses to specific questions

Question 1: Do you agree that the fee payable for a grant of representation should be the same for all users, regardless of whether the application is from a professional probate practitioner or a personal applicant?

9. We received 24 responses to this question, with 12 (50%) respondents agreeing with the proposal to align the fees for applications submitted by professional probate practitioners and personal applicants. These respondents felt that it is equitable for all categories of users who benefit from the same service to be charged the same amount.
10. The other 12 (50%) respondents disagreed with the question and argued that a lower fee for applications submitted by professionals should be maintained. The entirety of these responses came from probate practitioners and professional associations. The majority of these responses were based on the view that applications submitted by professional applicants are faster and consequently cheaper to process. This is because, according to this view, professional applicants will require less assistance from HMCTS staff during the process of preparing an application, and are less likely to submit applications containing mistakes, on account of their knowledge and expertise. Many of the respondents who relied on this argument questioned the accuracy of our cost assessment, which found the cost of processing applications submitted by professional and non-professional applicants to be roughly equal.
11. A number of respondents raised the important and valuable service that probate professionals provide to their clients, including assistance with compiling the application and verifying the accuracy of the information submitted.

Government’s response

12. The lower fee for professional applications was originally charged to reflect the lower cost that was required from the probate service to process them. Based on recent cost recovery exercises undertaken by the Ministry of Justice, the cost of processing professional and non-professional applications is now broadly equivalent. As such, the Government believes that there is no longer a justification for maintaining a lower fee for professional applicants. No other court or tribunal fee has a discount for applications submitted by professional applicants. We believe that we should bring the probate fee in line with all other fees by charging a single fee for all categories of applicant. In doing so, we will follow the Managing Public Money principle of charging the same fee to all users of a service.

13. In respect of the queries around our approach to calculating costs, our proposed figure of £273 was calculated on the basis of a unit costing exercise conducted using 2018/19 data. This exercise took into account the direct cost of processing applications as well as the overheads required to run the probate service to arrive at a single figure reflecting the unit cost of processing a probate application. This exercise showed that there was a limited difference in cost to HMCTS between processing professional and personal applications. The fee of £273 resulted from the average cost emerging from this unit costing exercise, uprated by CPI inflation to 2020/21 prices.
14. One response queried the use of 2018/19 data as that period corresponded with the launch of the pilot for the new online system for practitioners, which might have skewed the costs associated with processing professional applications. For comparison, we have considered the unit costs of the year before the introduction of the pilot, 2017/2018, and found that the difference in processing costs between professional and personal applications during that period was similarly estimated at £4, which is comparable to the £5 difference registered in 2018/19. This suggests that the converging costs of processing professional and personal applications pre-dates the introduction of the pilot for the online service, and it is therefore unlikely that the pilot impacted our cost assessment exercise.
15. The unit costing exercise only takes into account costs incurred by HMCTS, and does not take into account wider costs and benefits received by others for a particular service. In particular, the Government acknowledges the value of the service provided by professional probate practitioners to their clients, especially for those with complex estates or those who are not confident in navigating the application process. Those who would benefit from professional support in going through the probate process should continue to do so. However, the unit costing exercise shows that there is limited corresponding benefit at this stage to HMCTS in reduced costs from professional applications. The Government believes that offering a discount where there is no underlying basis in cost would not be a justifiable deviation from MPM principles.

Question 2: Do you agree with the proposal to raise the fee payable for probate applications to recover the cost of providing the service? Please give reasons for your answer.

16. We received 22 responses to this question, with the majority (15 respondents – 68.18%) of respondents agreeing, in principle, that the fee payable for probate applications should be set to recover the cost of providing the service as the service should be self-financing. These respondents considered our proposal a reasonable means to end the current funding deficit, and subsequent taxpayer subsidy, of the probate application process.
17. By contrast, 7 respondents (31.8%) disagreed with the proposed fee increase.

18. Many respondents raised concerns about the quality of the service currently provided rather than disagreeing with the proposal per se. Complaints included reports of delays and long waiting times, mistakes in the grants issued, as well as technical issues with the online system and difficulties in contacting probate staff. A number of respondents suggested issuing some form of reimbursement for delays.
19. Some responses raised queries in relation to the costing methodology, and whether £273 is an accurate reflection of the cost of processing a probate application, given that the cost assessment exercise was based on 2018/2019 data.

Government’s response

20. The Government welcomes the broad support offered by respondents to the principle of setting the probate application fee to cost recovery. We also recognise the strength of the concerns raised about ensuring the highest quality of service to those going through the process.
21. We acknowledge that waiting times from the submission of a probate application to the issuance of the grant have recently increased, in particular in light of the impact of the pandemic on court operations and on volume of applications received. We have taken steps to rectify this. From April to June 2021, the average waiting time for online applications (76% of all applications) from receipt of the will to probate being granted was 3.3 weeks, one week quicker compared to the same period the year before. For more straightforward applications that do not get stopped, grants are issued extremely swiftly, with a current waiting time of 1.3 weeks.
22. We continue to review and track the common reasons for stopped applications, which provides us with opportunities to change systems and processes to reduce the volume of applications paused. For example, we are adding new questions around the condition of the will into the online application journey, having found it to be one of the top 5 reasons for stopping a case. We have also focused on reducing our outstanding stopped applications. Since June, we’ve reduced the outstanding caseload for these by about a third.
23. We are aware that around 3% of grants need reissuing due to official and customer errors. We are working to resolve this by developing a mandatory quality assurance step in the issuance process. In addition, we have routine daily random grant issue checks in place to provide immediate feedback and coaching to staff for continuous improvement.
24. We have continued to increase resource in our contact centre to address the high demand for staff contact. This has recently seen significant improvements to service levels, with an average call waiting time of less than 12 minutes through the August –

September 2021 period. We expect these improvements to the service not only to remain consistent, but to continue to progress in the future, building a better and more efficient probate service.

25. In respect of the queries received regarding the accuracy of our cost estimate for the proposed fee, the figure was arrived at via the cost assessment exercise described above at paragraph 13. In particular, the 2018/19 data on which we relied is the latest available estimate of unit costs, and we believe that a cost assessment exercise based on more recent data may have been skewed by the impact of the pandemic on volumes and costs. We then updated the figure resulting from this unit costing exercise by CPI inflation, to 2020/21 prices. The proposed fee is therefore based on our current best reasonable estimate of cost, which will we continue to monitor. Should our assessment of costs change in the future, the fee will be reviewed and adjusted as necessary.

Question 3: Do you consider whether the proposal will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact?

26. We received 16 responses to this question, with 4 (25%) respondents arguing that the proposed alignment could adversely impact individuals with protected characteristics.
27. Three responses argued that older and/or bereaved individuals are more likely to be vulnerable and need professional support to navigate the probate process. These responses noted that those applicants will be particularly impacted by the removal of the lower fee for professional practitioners, as this may increase the overall cost to them of the probate application process, or discourage them from seeking professional advice altogether.
28. One response referred to applicants with less means to pay the fee as particularly affected by the fee increase, as the proposal does not involve a banded fee dependent on estate value.

Government’s response

29. Although no evidence was provided in support in the responses to the consultation, the Government carefully considered the suggestion that the proposal will disproportionately affect individuals with protected characteristics or low-income households. An updated equality statement is published alongside this consultation response.
30. As fees are ultimately recoverable from the estate, the impact of the fee change will fall on those to whom the estate is bequeathed. We have considered evidence from an analysis of the Wealth and Assets Survey 2014–2016 on the distribution of inheritances

Court and Tribunal Fees

The Government response to the consultation on “Aligning the Fees for Grants of Probate to Cost Recovery”

broken down by age, income and wealth. From this analysis, we note that individuals aged 55 to 64 were the most likely to receive an inheritance, and also on average received the largest inheritances. Therefore, while it is likely that people in the 55 to 64 age range will be more likely to have to pay the increased probate fee, it is also the case that this group is better able to afford the fee.

31. Moreover, any impact would be mitigated by various safeguards that ensure the fee will remain affordable. It will remain the case that no fee will be payable for estates valued below £5,000. The Government’s Help with Fees (HwF) scheme will remain available to users on a low income and with small amounts of savings who are unable to pay the fee. Successful applicants may receive a partial or total remission to their fee. For those who do not qualify for HwF but still feel they are unable to afford the fee, a remission can also be granted in exceptional circumstances. This is considered on a case-by-case basis by officers of the court.
32. Thanks to these existing safeguards, vulnerable clients who could benefit from the assistance of a professional will continue to be able to access the services of a probate professional, as the cost of the fee will ultimately be recouped from the inheritance, which will always be greater than the probate fee itself.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

33. A formal Impact Assessment has been prepared for this proposal and has been published alongside this document.

Equalities

34. Under the Equality Act 2010, the Government is required, as part of policy development, to consider the equalities impact of our proposal. In summary, public authorities subject to the equality duty must have regard to the following when exercising their functions:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

35. For the purposes of the equality assessment the relevant protected characteristics under the Equality Act are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.

36. An Equality Statement has been prepared for this proposal and has been published alongside this document.

Welsh Language

37. This proposal, if implemented, would also impact those who speak the Welsh Language. This proposal includes changes to fees which also impacts users of the courts who speak the Welsh Language, although should not impair their understanding of fees disproportionately.

38. A Welsh version of this document can be found at: <https://www.gov.uk/government/consultations/aligning-the-fees-for-grants-of-probate-to-cost-recovery>. A Welsh language copy of the Impact Assessment and the Equality Statement will be provided on request.

Conclusion and next steps

39. The Lord Chancellor has a constitutional duty to ensure that access to the courts is not denied, and to ensure that the courts and tribunals can operate effectively and efficiently. In order to meet these goals, it is vital that HMCTS continues to be funded properly.
40. The Government has considered all of the responses to the consultation very carefully. Overall, the Government agrees with the majority of the responses to this consultation, who believe there is no justification for maintaining probate fees below cost, thereby relying on a public subsidy of the probate application process. We believe that the modest fee increase suggested in our proposal is a reasonable means to achieve proper funding of the system whilst easing the cost to the taxpayer. We anticipate that the alignment of probate fees to cost recovery will generate an additional £23m–£25m per annum in a typical year.
41. We acknowledge the concerns raised by respondents on the performance of the service currently provided as we emerge from the pandemic. As noted in paragraphs 21 – 24, HMCTS is currently working on a number of initiatives with the aim of improving the service provided, which have already resulted in a significant reduction of waiting times and stopped applications in the last 12 weeks. We are keen to continue working closely with practitioners to receive feedback on performance and address any further issues which arise.
42. Given the overall positive response to the consultation, and in light of the steps we are taking to improve the probate service and the experience for users, we believe it is right to go ahead with implementing our proposal. We further believe that this proposal does not disproportionately impact individuals with protected characteristics. Therefore, the Government intends to legislate to align the fee payable for probate applications with the cost of providing that service to all users, as set out in the consultation. This would result in a fee increase to £273 for both professional users (currently £155) and non-professional users (£215). These changes will be given effect by amending the Non-Contentious Probate Fees Order 2004, which sets out the fees payable for probate applications in England and Wales. We intend to make these changes early in the new year.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A – List of respondents

Stephen Pett (Allied Professional Will Writers Ltd.)

Sally Runnacles (Farnfields Solicitors)

Charles Neal (Bell & Buxton)

Alison Greatbanks (HSW Solicitors)

Ian Gillard (P G Owen Ltd Chartered Accountants)

The Society of Licensed Conveyancers

John Stevenson MP on behalf of the All-Party Parliamentary Group on Inheritance and Intergenerational Fairness

Karen Shakespeare (Baron Shakespeare Solicitors)

The Association of Accounting Technicians

Mark Dunkley (Shakespeare Martineau)

The Devon and Somerset Law Society Non-Contentious Business Sub-Committee, Probate Working Group

Katie Carter (Green Wright Chalton Annis Solicitors)

UK Probate

The Association of Consumer Support Organisations

The Law Society

The Liverpool Law Society’s Non-Contentious Business Committee.

The Bar Council

The Surrey Law Society

STEP

The Association of Corporate Trustees

Solicitors for the Elderly

Richard Lane (Thomson Webb & Cornfield Solicitors)

2 Members of the public responding in a personal capacity



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Alternative format versions of this report are available on request from MoJ Fees Policy (mojfeespolicy@justice.gov.uk).