

Equality Statement

1. Introduction

- 1.1. This Equality Statement considers the impact of the Government's proposals to increase fees in the First-tier Tribunal (Immigration and Asylum Chamber) and the Upper Tribunal (Immigration and Asylum Chamber).
- 1.2. The fee proposals that we now intend to implement were set out in the consultation document *Immigration and Asylum Tribunal Fees: Proposals for the First-tier Tribunal and Upper Tribunal*.
- 1.3. The specific proposals were:
 - to increase the fees charged in the First-tier Tribunal to full cost recovery levels for the appeals in which we charge fees;
 - to introduce fees for permission to appeal applications (whether made in the First-tier or Upper Tribunal) at full cost recovery levels; and
 - to introduce fees for appeal hearings in the Upper Tribunal at full cost recovery levels.
- 1.4. These proposals are subject to the fee setting power contained in section 42 of the Tribunals, Courts and Enforcement Act 2007.

2. Policy objective:

- 2.1. The normal rule, as set out in HM Treasury's (HMT) *Managing Public Money*¹, is that where those who use a public service are charged a fee to access them, those fees should be set at a level designed to recover the full costs of the service. Charging less than full cost represents a subsidy by the taxpayer.
- 2.2. In April, the Government published a consultation document which sought views on reforming the fees charged in the Immigration and Asylum Tribunals. Under the current arrangements, we recover significantly less than the full costs of the Immigration Tribunals: we do not currently charge any fees for appeals in the Upper Tribunal, which cost an estimated £11m in 2015/16, and in the same year, £7m was recovered in fees from the First-tier Tribunal, compared with running costs of around £75m.
- 2.3. The consultation proposed raising fees to full cost levels, in line with the normal HMT policy. Whilst we acknowledge that a majority of respondents disagreed with the proposed increases, we remain of the view that it is unreasonable to expect the taxpayer to subsidise access to this tribunal. Therefore, we intend to proceed with the reforms to ensure that in future those who use the immigration and asylum tribunals, where they are subject to a fee, should pay the cost of the service they receive.
- 2.4. In addition, the Government has decided to extend the current fee exemption scheme and apply it equally to both the First-tier and Upper Tribunal. More information on this can be found at section 5 of this document.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

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. 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.

4. Summary

- 4.1. Consideration has been given to the impact of the proposed fee increases against the statutory obligations under the Act and to the responses provided by respondents to the consultation. 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 to all claimants and do not treat people less favourably because of their protected characteristic.
- 4.3. **Indirect discrimination:** Our assessment, based on the information available, is that there is likely to be over representation of people from Black, Asian and minority ethnic backgrounds within the First-tier Tribunal service users (more information is set out at table 1 below). Therefore it is more likely that individuals with these protected characteristics could potentially be put at a particular financial disadvantage when applying to the Immigration and Asylum Chambers since they will now have to pay more fees for services than previously.
- 4.4. To the extent that increased fee levels would put individuals sharing a protected characteristic at a particular disadvantage, the Government believes this is justifiable. The fees will be set at such a level as to recover the true cost of providing the service, in line with the general principle set out in *Managing Public Money*. There is a system of fee exemptions to help mitigate any impact of fees on access to justice and to protect the most vulnerable. More detail on the exemptions system is set out at section 5 below, including how the Government intends to extend the scheme.
- 4.5. Some respondents to the consultation acknowledged the existence of the fee exemptions but argued that because the HM Courts & Tribunals Service (HMCTS) remissions scheme that applies in other jurisdictions does not apply here, this could, in itself, give rise to an accusation of indirect discrimination because users of this tribunal are at a disadvantage as compared to users of other courts and tribunals. We believe that the different approach to remissions is justified due to the difficulty in assessing assets held abroad and in applying a standard threshold across countries with vastly different living standards.

- 4.6. Overall, the Government believes that these proposals represent a proportionate means of achieving the legitimate aim of protecting access to justice by making sure that HMCTS continues to be funded properly with a greater contribution made by those who use the service. It also broadly reflects the position that has already been established in other jurisdictions such as the civil and family courts.
- 4.7. ***Discrimination arising from disability and duty to make reasonable adjustments:*** We do not consider that the proposals will treat disabled persons unfavourably because of something arising in consequence of their disability. Insofar as this policy may adversely affect claimants with disabilities, we believe that the proposals are a proportionate means of achieving the legitimate aim of protecting access to justice by making sure that HMCTS continues to be funded properly with a greater contribution made by those who use the service. We will continue to monitor any potential impacts and provide reasonable adjustments for claimants with disabilities to make sure that appropriate support is provided.
- 4.8. ***Harassment and victimisation:*** We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
- 4.9. ***Advancing equality of opportunity:*** We have considered how these proposals may impact on the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. We do not consider that these fees will have any detrimental impact on the advancement of equality of opportunity.
- 4.10. We do, however, make sure that we meet the needs of those who share a particular characteristic whose needs are different to those who do not share that protected characteristic. For example, HMCTS offers appellants the opportunity to request an interpreter where English is not their first language and data collected from an optional questionnaire completed by 13,266 users over the past 4 years indicates that this offer is taken up in just over 15% of cases.
- 4.11. ***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 between persons who share a relevant protected characteristic and persons who do not. For this reason, we do not consider that these proposals are relevant to this obligation.

5. Mitigation

- 5.1. The general HMCTS remissions scheme does not apply to the Immigration and Asylum Chambers of both the First-tier and Upper Tribunals for the reasons set out above (although it does apply for judicial review proceedings brought in the Upper Tribunal). A specific set of exemptions therefore currently applies in the First-tier Tribunal which remove the requirement to pay fees in certain circumstances. Following the removal of certain appeal rights in the Immigration Act 2014 the relevant exemptions fall into two broad categories:

Appeal types for which we do not charge

- appeals against a decision made under section 40 of the British Nationality Act 1981 (deprivation of citizenship); and

- appeals against a decision made under regulation 19(3) of the Immigration (European Economic Area) Regulations 2006 (a decision to remove an EEA national or the family member of such a national).
- 5.2. As part of the December 2015 consultation response, we undertook to add an additional type of appeal to the list of those for which we do not charge fees following strong support from respondents to the consultation. We remain committed to this proposal and have therefore announced that provision will be made, alongside these increases, to add appeals against the revocation of a person's refugee or humanitarian protection status to the list of appeals for which we do not charge.

Appellants that do not pay a fee as a result of being in receipt of certain financial support

- those in receipt of asylum support (where the Home Office has already assessed a person as requiring financial assistance);
 - those in receipt of legal aid (where income has already been assessed as part of the legal aid award); and
 - those in receipt of support under section 17 of the Children Act 1989 (where a Local Authority has already assessed that the household requires additional support to make sure the child within that household is not put at risk).
- 5.3. We also committed in our December 2015 consultation response to extend that the scope of the protection of children exemptions includes parents of, and those with parental responsibility for, children receiving financial support from local authorities under section 17 of the Children Act 1989 (an interpretation we already give effect to in practice) and also to provide an exemption for children who are being housed by a Local Authority under section 20 of the Children Act 1989 (or any equivalent legislation in Scotland, Wales or Northern Ireland). These will be taken forward alongside these fee increases.
- 5.4. In addition, the consultation document welcomed views from respondents on possible extensions to the fee exemption scheme and specifically asked for views on adding those appellants in receipt of the Home Office destitution waiver to the scheme. A large number of the respondents supported this proposal and as a result we have decided to extend the scheme to include all appellants in receipt of a Home Office destitution waiver.
- 5.5. Alongside these exemptions, the Lord Chancellor also has a power to reduce or remit fees in full or part where he considers there are exceptional circumstances which justify doing so. The Government will be producing revised clearer guidance on the use of this power. There is also a power to defer fees where an appeal is brought on the grounds that the appellant's removal from or requirement to leave the UK would breach the UK's obligations under the Refugee Convention or Qualification Directive.
- 5.6. Finally, in the consultation, we also sought views on whether the same exemptions scheme that applies in the First-tier Tribunal should apply equally to proceedings in the Upper Tribunal. Having considered the responses we have decided that, when fees are introduced in the Upper Tribunal, all exemptions within the First-tier will be replicated alongside any others that we have outlined above.

6. Analysis of Tribunal Users and potential impacts

- 6.1. Since the introduction of fees in the First-tier Tribunal (Immigration and Asylum Chamber) in 2011, HMCTS have attempted to improve their understanding of those who use the Chamber by asking them to complete an optional questionnaire when they lodge their appeal.
- 6.2. Given that completing the survey is optional and has only been completed by 13,266 appellants over the past four years but the information generated by it has some limitations. The data only covers those who responded to the survey and not all respondents completed every question. These responses will not necessarily be representative of the Tribunal users who chose not to complete the survey.
- 6.3. It should also be recognised that this information only gives us details as to the characteristics of appellants in the First-tier Tribunal. It does not collect information relating to appellants to the Upper Tribunal. We have made an assumption that the breakdown of appellants who take their appeals on to the Upper Tribunal will be similar to the sample of appellants in the First-tier Tribunal in the absence of any evidence to contrary. It does, however, give us a snapshot of Tribunal users' protected characteristics and some indication of the likely equality impacts. The data, collected between January 2012 and February 2016, is set out in table 1 below.

Table 1: Breakdown of appellant to the First-tier Tribunal (Immigration and Asylum Chamber) by protected characteristic.

	% of individuals
(a) Sex	
Adult male	53
Adult female	47
(b) Marital Status	
Married	60
Divorced	5
Never Married	35
(c) Race	
White	9
Black	32
Asian	46
Chinese	2
Mixed	4
Other	8
(d) Religion	
Buddhist	3
Christian	40
Hindu	8
Muslim	37
Sikh	4
Other	4

No religion	4
(e) Disability	
Disabled	5
Non-Disabled	95
(f) Age	
Under 16	6
16-24	13
25-34	35
35-44	23
45-54	12
55-64	6
65+	5
<i>Percentages rounded to the nearest full percent</i>	

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

- **Sex:** from the survey respondents, a slightly higher proportion of men than women bring appeals.
- **Marital Status:** A majority (60%) of the appellants coming to the Tribunal are married.
- **Race:** A majority (92%) of the appellants coming to the Tribunal who responded to the optional survey were of Black and Minority ethnic backgrounds.
- **Religion:** The most common religions among appellants that answered the survey were Christian and Muslim.
- **Disability:** Only 5% of those who responded to the Survey disclosed that they had a disability or long term health problem
- **Age:** Individuals between the ages of 25 and 34 are most likely to bring appeals before the Tribunal.

6.5. The data collected in the survey also gives us an indication as to likely nationalities of the appellants, by providing data relating to the most common first languages declared by appellants. Only 25% of respondents to the survey declared that English was their first language. Among the 75% of respondents to the survey who listed a language other than English there was a wide range of languages. The most common were Urdu, Punjabi, Bengali, French, Yoruba, Hindi, Tamil, Russian and Farsi which points to Asian nationalities being particularly over-represented among those likely to be affected.

6.6. In summary, and on the basis of the data supplied above and our assumptions, we conclude that there is a risk of indirect discrimination, due to the potential for financial disadvantage, from the over-representation of individuals with the protected characteristic of race among the persons that make applications within this tribunal. As explained above, we believe that these fee changes will constitute a proportionate means of achieving our legitimate policy aim.

6.7. Although, for the reasons set out above, the general fee remissions system is not applicable here, there are a number of exemptions and remissions which

exist to make sure that access to justice is protected. We have extended those alongside these fee changes.

- 6.8. Further during the consultation exercise we asked respondents for their views on our assessment of the equalities impacts and to provide any data which would support their views.
- 6.9. A number of respondents disagreed with our equalities impact assessment on the basis that they felt that the incorrect data was used to measure the impact or that our assessment was inadequate, but did not provide any fresh alternative data. On this basis we still believe that the evidence source we have used presents the best data available to make a reasonable assessment of how these proposals could impact on those with protected characteristics.
- 6.10. Other respondents believed that there was a risk that women, LGBT and children could be disproportionately impacted by these proposals. There were also respondents who agreed with our assessment that there is a risk that Black and Ethnic Minority groups could be disproportionately impacted but disagreed with our conclusion that this could be justifiable.
- 6.11. Whilst respondents did provide views on who they perceived would be impacted by these proposals, the Government did not receive further evidence of any impact. Therefore, having taken into account the responses received and in view of the full evidence available to the Government, we are confident that there being a risk that Black and Ethnic Minority groups could be disproportionately impacted by these proposals, they represent a proportionate means of achieving a legitimate aim.
- 6.12. Finally, as the equality duty is an ongoing duty, we will continue to monitor and review these proposals for any potential impacts on persons with protected characteristics and make sure that access to justice is maintained.