

## **Probate Fee Structure: 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 proposals, as set out in the consultation document '*Aligning the Fees for Grants of Probate to Cost Recovery*', are to rationalise the probate fee structure so that the service is funded by a single fee for all users set to the cost of providing the service. This would entail setting the fee for an application to issue a grant of probate at £273.
- 1.2. During the consultation period we will further consider the impact of these proposals and will update our equalities considerations with any relevant research submitted in response to our equalities question.

### **2. Policy objective:**

- 2.1. The Consultation document '*Aligning the Fees for Grants of Probate to Cost Recovery*', sets out the background to, and rationale for, introducing the probate fee changes. The main policy objectives are:
  - to better align with the Managing Public Money principle that the same fee is charged for the same service, now that the cost differential between the two user groups is broadly equivalent;
  - to set the fee at a cost-recovery level; and
  - to protect access to justice by ensuring that courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy to HMCTS.
- 2.2. In this way, we will reduce public spending while at the same time making sure that we are providing a properly funded service so that access to justice is protected.

### **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. Consideration has been given to the impact of the proposed fee increases on applicants against the statutory obligations under the Act. These are outlined below.

- 4.2. **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.
- 4.3. **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 Help with Fees, the general HMCTS fee remissions scheme.
- 4.4. Moreover, the fees are recoverable from the estate. Under these proposals, estates valued at below £5,000 will remain exempt from the fee.
- 4.5. As fees are 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 broken down by age, income and wealth.<sup>1</sup> 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.
- 4.6. 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. Furthermore, people paying the fee will benefit from the inheritance, which will always be greater than the probate fee itself.
- 4.7. The analysis of the Wealth and Assets Survey also found that inheritance was correlated with income, with 6% of those in the top income quintile receiving an inheritance of £1,000 between 2014 and 2016, compared with 3% of those in the bottom two income quintiles. We know from the Households Below Average Income Survey<sup>2</sup> that individuals in the top income quintile are less likely to be from either an Asian, Black or other ethnic background. They are less likely to live in a household where there is a disabled working age adult and they are also less likely to be single with children or a single pensioner, especially a female pensioner.
- 4.8. **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.
- 4.9. **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation in implementing these changes.
- 4.10. **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

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<sup>1</sup> Intergenerational transfers: the distribution of inheritances, gifts and loans, Great Britain - Office for National Statistics

<sup>2</sup> Households below average income: for financial years ending 1995 to 2020 - GOV.UK ([www.gov.uk](http://www.gov.uk))

particular protected characteristic, where those needs are different from the needs of those who do not share that particular protected characteristic.

- 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. For this reason, we do not consider that these changes are relevant to this obligation.

## **5. Mitigation**

- 5.1. Where a beneficiary qualifies for it, the Help with Fees scheme will offer a reduction or complete remission of fees. In addition, the discretionary power of the Lord Chancellor to grant exceptional remissions will, remain in place as a safeguard where the payee simply cannot afford to pay the fee.

## **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.