

1. Introduction

- 1.1. This Equalities Statement considers the impact of the Government's plan to revise the UK Supreme Court (UKSC) fee structure as set out in the consultation document: Reforming Fees in the United Kingdom Supreme Court.
- 1.2. During the consultation period, we will further consider the impact of these proposals and will update our equalities considerations with any relevant evidence submitted in response to our equalities questions.

2. Background

- 2.1. The Supreme Court was established by the Constitutional Reform Act 2005 (“the CRA 2005”) as the highest appellate court in the country, replacing the Appellate Committee of the House of Lords. Its main function is to hear appeals on arguable points of law of the greatest public importance, ensuring a consistent interpretation of legislation and adherence to the rule of law throughout the UK. As the highest court, its decisions are binding on all lower courts, and its judgments provide guidance for future cases.
- 2.2. The Court ensures the law is correctly interpreted and applied, and that the legal limits on the powers of public institutions are respected. The Court is the final arbiter between the public and the state, and therefore a fundamental pillar of the constitution. For this reason, it was agreed, when the Supreme Court was established, that the administrative and operational costs associated with hearing cases in the Supreme Court should be borne by the taxpayer through contributions from HMCTS, the Northern Ireland Court and Tribunal Service, the Scottish Government, HM Treasury, and also Supreme Court litigants. There are no fees for criminal cases in the Supreme Court.
- 2.3. To ensure the provision of an efficient and effective Supreme Court, the Chief Executive of the Supreme Court has a duty under section 51 of the CRA 2005¹ to ensure that the Supreme Court is adequately resourced. This includes providing the necessary financial and personnel resources to enable the Supreme Court to carry out its functions effectively. The Lord Chancellor also has the power to set fees for proceedings in the Supreme Court, pursuant to section 52 of the CRA 2005. In exercising this power the Lord Chancellor must ensure that access to justice is not denied. This means that fees should not be set at a level that would deter individuals from bringing cases to the Supreme Court.
- 2.4. With consideration to these duties, the Ministry of Justice is proposing a series of reforms to the fees payable in the Supreme Court.

¹ The Lord Chancellor has a parallel duty as set out in the Lord Chancellor's oath, which includes the “*duty to ensure the provision of resources for the effective and efficient support of the courts*” for which the Lord Chancellor is responsible, see section 6A Promissory Oaths Act 1866 (as inserted by section 17 of the CRA 2005).

3. Policy Objective

- 3.1. In setting fees for the Supreme Court the Government has the following four objectives:
- To have a straightforward system for applicants to understand and the Supreme Court to administer
 - To raise income from Supreme Court users that will contribute towards operating costs
 - To support the long-term financial stability of the Supreme Court
 - To ensure fees in the Supreme Court are not a barrier to accessing justice.
- 3.2. The proposals set out in the present consultation seek to achieve these objectives by:
- Simplifying the fee structure by removing and combining fees where possible.
 - Removing the distinction in fee values for devolution jurisdiction cases.
 - Increasing Supreme Court fees by 40% in line with the Consumer Prices Index (CPI), accounting for historic inflation between April 2011 to March 2023.
 - Introducing the principle of routinely reviewing and increasing Supreme Court fees by CPI every two years.
- 3.3. As part of the Lord Chancellor's duty to protect access to justice, the Supreme Court operates a fee remission scheme that is aligned with the 'Help with Fees' (HwF) scheme administered by HMCTS. On 7 March 2023, the Government launched a public consultation proposing a series of reforms to make the HwF scheme more generous and to better target financial assistance for those most in need, whilst providing value for money for the taxpayer.² It is intended that the Supreme Court fee remission scheme with also be amended to reflect the changes made to the HwF scheme.
- 3.4. In addition to the Supreme Court's fee remission scheme and Legal Aid there is other financial assistance to ensure access to justice is protected. The Supreme Court's Chief Executive holds the discretion to reduce or fully remit a fee where they are satisfied that there are exceptional circumstances which justify doing so, which includes where paying fees would involve undue financial hardship. Additionally, where an application for permission to intervene in an appeal is filed by a charitable or not-for-profit organisation that

² Help with Fees consultation is available here: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>

seeks to make submissions in the public interest, the fee may be reduced or remitted.

- 3.5. More detail on the background to, and rationale for, the proposals for reforming Supreme Court fees are set out in the consultation document: *Reforming Fees in the United Kingdom Supreme Court*.

4. Equality Duty

- 4.1. 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);
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

- 4.2. Paying "due regard" needs to be considered against the nine protected characteristics under the Act, namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

5. Evidence and analysis

- 5.1. There is no single data source that directly identifies the protected characteristics of individuals who make use of the Supreme Court, as this is not something the court collects data on. We have instead looked at a number of related data sources that provide insight into Supreme Court litigants and an indication as to the protected characteristics of such litigants:

- **Supreme Court Administrative Records (January 2021 - July 2022):** This unpublished data is from the UKSC internal registry management system, and is stored for administrative purposes. This is case data from past judgments handed down by the Court. It includes information on the types of appellants (e.g. individuals, private companies, governments) who make use of the Supreme Court and how they fund both their court fees and cases.
- **Households below average income statistics 1994/95 to 2019/20 (2021):** This is a Department of Work and Pensions (DWP) statistical publication on the number and percentage of people living in households across the income distribution in the UK. This data is useful in assessing which groups in the income distribution will be most significantly impacted by the increase in Supreme Court fees.
- **The Legal Problem and Resolution Survey (2014 – 2015):** This survey explores people's experiences of everyday problems that may

have a legal solution through the civil justice or tribunal system and includes experiences of different legal problems within different protected characteristic groups. While these individuals may not proceed to court/tribunal, it provides an approximation of the characteristics of those that could potentially go on to use the court system. Only a small proportion of such cases would reach the Supreme Court. The survey covering 2014 – 2015 is the most recently conducted survey.

- **Civil Court User Survey (2014 – 2015):** While the Civil Court User Survey (CCUS) is now over eight years old, it provides robust information on the characteristics and experiences of civil court claimants in England and Wales. This survey is used to gain an insight into the users of the civil justice system as the proposals are in relation to increasing fees in the Supreme Court, where a proportion of cases heard are civil based.
- **Survey of Employment Tribunal Applications (2018):** This is the latest version of a report on the characteristics of parties in employment tribunal cases. This survey is used to understand the protected characteristics of users of the employment tribunal, some of whom will go on to appeal to the Supreme Court.
- **HMCTS protected characteristics questionnaire – data on users of reformed services (April 2021 – September 2021):** This is a summary report of the responses to protected characteristics related questions collected for reformed HMCTS services. The research highlights some key data on how different people with protected characteristics use the courts.

6. Analysis

- 6.1. This section covers our analysis of relevant and available data on the impact of our proposals on individuals and their protected characteristics. This analysis is split into three parts. The first and second parts of this analysis are the most relevant and insightful regarding the Supreme Court, with the third part focusing on users of the lower courts and tribunals.
- 6.2. The first part of the analysis focusses on the types of litigants that made use of the Supreme Court, how they funded their court fees, and whether they had legal representation. The source of this information came from Supreme Court administrative records of case data on past judgments handed down by the Supreme Court over an 18-month period. This data suggests that only c.15% of Supreme Court litigants are individuals who would be negatively affected by these prospective fee increases.
- 6.3. The second part of the analysis assesses the protected characteristics of the individuals who will be impacted by the proposed inflationary uplift. This assessment uses data from the Households below average income (HBAI) survey. This approach is taken as the Supreme Court does not hold data on

the protected characteristics of its litigants. Along with a breakdown of protected characteristics on age, sex, race and disability, we found that those negatively impacted by our proposals are predominantly in the upper half of the household income distribution.

- 6.4. In the third part of our analysis, we explore the protected characteristics of those with legal problems and court users to understand the types of people who make use of the lower courts and tribunals system. These findings are less significant for our purposes, as the lower courts and tribunals see considerably more cases and not every court user will go on to access the Supreme Court. However, we found that the individuals that are more likely to experience legal problems are more likely to share certain characteristics, such as being an ethnic minority or having a disability. Individuals with such characteristics were not as prevalent in the upper half of the household income distribution and as such are least likely to be negatively impacted by these proposals.

Part 1: Appellants of the Supreme Court

- 6.5. To understand the types of appellants who bring cases and make use of the Supreme Court we reviewed internal administrative data of cases for which judgments were handed down in the court, between January 2021 and July 2022, totalling 107 cases. Table 1 below sets out this data.
- 6.6. This data highlights the comparatively low number of individuals who privately fund their own court fee, compared to organisations who make up the majority of litigants. Key findings from this data are as follows:
- Two thirds of appellants bringing a case to the Supreme Court were organisations. Half of these organisations were companies or private organisations, and the other half were government bodies, with the single exception of an appellant from the third sector.
 - One third of appellants were individuals. This was made up of 15% of appellants who were individuals and who privately funded their own fee, and 19% who received financial support. The financial support took the form of legal aid, statutory fee remission, or the Chief Executive's use of their exceptional power to remit fees.

Appellant Type	Number of Appellants	Percent of all appellants (%)
Organisations		
<i>Private Companies</i>	35	32.7
<i>Government*</i>	35	32.7
<i>Charities</i>	1	0.9
Individuals		
<i>Fees privately funded</i>	16	14.9
<i>Financially assisted**</i>	20	18.7
All Appellants	107	100

* This includes National, Local, and Devolved Government

** These are individuals who received legal aid, fee remissions, or fee waivers and did not have to privately fund their court fees

6.7. The appellant data suggests that only a small proportion of the Supreme Court’s users are individuals with the potential to be negatively affected by these changes. This is because the majority of users are organisations. The data also demonstrates that individuals with a low income or little savings can and do access the Supreme Court.³ These individuals will continue to be supported through legal aid or remission. This group of individuals will not be affected by higher court fees.

Part 2: Protected characteristics of individuals likely to be affected by our proposed changes

6.8. The following section looks at household distribution of income of individuals with certain protected characteristics. This is to better understand the individuals who would be liable to pay their court fee and would not be eligible for fee remission in the Supreme Court. As there is no single source of data on the protected characteristics of individual litigants who make use of the Supreme Court, it is assumed any adult in the United Kingdom can potentially be one.

6.9. Liability to pay for court fees is determined through the Supreme Court’s fee remission scheme. Similar to the HwF scheme used in the lower courts and tribunals in England and Wales, a person’s liability is calculated using their capital and income. This will decide whether a litigant pays for their fees or receives financial support. If an individual has disposable capital below a certain threshold, their household income is then taken into account. This is assessed against a gross monthly income threshold. This threshold takes into account the composition of the household (e.g. whether the applicant has a partner or children). Applicants whose monthly income is below the relevant threshold will receive full remission of their fee. As an applicant’s income rises

³ Households are in low income if they live on less than 60% of the median income. Median income (before housing costs) was just under £30,000 for a couple with no children in the period from January 2019 to December 2020.

above the relevant threshold, they will be expected to meet more of the cost of the fee themselves.

Households below average income (HBAI) statistics

- 6.10. Using the HBAI data,⁴ we are able to compare the income thresholds at which point an individual is liable to pay the full value of their Supreme Court fee, against the quintile distribution of income for individuals in the UK. To do this we have taken the two main fees payable by appellants in the UKSC, the permission to appeal (PTA) fee (£1,390) and the appeal fee (£7,855). The appeal fee here is the proposed combination of the fee paid when informing the court of the intention to proceed and the fee for submitting the facts and issues of the case. Doing this allows us to examine the characteristics of households who may be most likely affected by our proposed changes. This is set out in Table 2 and 3 below.
- 6.11. The gross monthly income is shown in quintile medians as this is how the data is presented in the HBAI. We do not have access to more granular level income data. A quintile is a 1/5th (20%) portion of the whole, and the median is the middle number in a sorted list of numbers. In this case, each quintile shows the middle income amount, from the range of income that sits within that quintile (20%) group. The overall median of the HBAI data is the income figures given in quintile 3.
- 6.12. The figures in Table 2 are in terms of equivalised income, where household size and composition has been taken into account to measure household income. The HBAI uses net disposable household income which is adjusted for household size and composition as an assessment for material standards of living. This makes comparisons between different household compositions possible. To allow for comparisons to the court fee remission scheme thresholds, the figures have been recalculated in terms of gross income.
- 6.13. When it comes to households with children, we are unable to make exact comparisons with the HBAI data as it does not specify the average number of children in each family. For the purpose of our analysis, we have presented the income thresholds for a household with one child as a minimal comparator. If the household has more than one child, the fee remission income threshold will be higher. While this means that we are not able to do a like-for-like comparison, the HBAI data does provide information about income distribution composition.

⁴ Available here at: [Households below average income: for financial years ending 1995 to 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/households-below-average-income-for-financial-years-ending-1995-to-2020)

Table 2: Gross monthly money values of quintile medians in average 2019/2020 prices (before housing costs), UK *

Household composition	Gross income at each quintile					Income required to pay full PTA fee**	Income required to pay full appeal fee
	1	2	3 (median)	4	5		
Single, no children ***	£1,108	£2,328	£3,262	£4,313	£6,482	£3,635	£4,421
Single with children ****	£1,151	£1,703	£2,153	£2,684	£3,733	£4,060	£4,846
Couple, no children	£1,670	£3,239	£4,268	£5,559	£8,506	£4,345	£5,131
Couple with children *****	£1,303	£2,201	£3,003	£4,072	£6,709	£4,770	£5,556

* The figure given is the median for each quintile group, so quintile 3 is the overall median of the income distribution.

** Both the full fee columns use the revised income thresholds proposed as part of changes to the Help with Fees Remission scheme. Full fee liability means the income at which someone is liable to pay the full amount of their court fee. Therefore if an individual's monthly income is below the threshold then they will not have to pay their court fee.

*** "Single with no children" is inclusive of all genders.

**** "Single with children" –in this household type the number of children will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0-13.

***** "Couple with children" –in this household type the number of children will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0-13.

Note: net income has been converted to gross using an online tax calculator.⁵

6.14. Table 2 helps to illustrate where an appellant, one who would be required to pay the full cost of the main fees needed to pursue an appeal, would be on the income distribution. This table uses the value of the PTA (£1,390) and Appeal (£7,855) fee as part of our proposals for this table. For example, it shows that a single person with no children will need a gross household income of £3,620 per month (£43,440 p.a.) for them to not qualify for any financial assistance from the Supreme Court. On the income distribution, this single person with no children earns above the median for quintile 3 of the income distribution, which places them in the top half of earners for their household composition. Anybody earning below that amount, will receive a full or partial fee remission, and not be negatively impacted by our proposals. In this example that is the bottom half of all single with no children households.

6.15. Table 2 shows that:

⁵ Available at: <https://www.thesalarycalculator.co.uk/>

- **Individuals with no children** would need to be in the top 50% of the income distribution to be required to pay a full PTA fee, and in the top 30% to pay a full appeal fee;
 - **Individuals with children** would need to be in the top 10% of the income distribution to be required to pay the full PTA fee or appeal fee;
 - **Couples with no children** would need to be in the top 50% of the income distribution to be required to pay a full PTA fee or appeal fee; and,
 - **Couples with children** would need to be in the top 30% of the income distribution to be required pay a full PTA fee or appeal fee.
- 6.16. For all the household compositions, those in the lowest quintiles (quintile 1 and 2) would be eligible for fee remissions and are therefore not impacted by the proposed inflationary uplift to Supreme Court fees. Eligibility for fee remission then varies across the income distribution with certain households in quintile 3, 4, and 5 eligible depending on their household composition. For example, a household made up of a single adult with children earning enough income to place them within the top quintile will not have to pay higher fees.
- 6.17. The data suggests that only individuals in the upper half of the income distribution will face higher Supreme Court fees. Individuals in quintile 5 are the most likely to be impacted by changes to Supreme Court fees and fee remissions, as most household compositions falling within that quintile will be affected by higher fees.
- 6.18. Table 3 below summarises the quintile distribution of income by various characteristics from the HBAI statistics. These figures are based on quintile income distributions before housing costs (BHC). It covers the protected characteristics of sex, disability, ethnic group and some information on household make-up (households with children or pensioner households). The HBAI also includes an age breakdown for quintile income distribution (BHC), but only for working age adults.
- 6.19. Individuals in quintiles 1 and 2, who have a lower income, will be protected against paying higher fees for the PTA and appeal fees to bring a case to the Supreme Court. This is because their income falls below the income thresholds and therefore, they will be covered by the Supreme Court's fee remission scheme. Individuals in these quintiles are more likely to:
- Be from Asian, black or other ethnic backgrounds.
 - Live in a household with a disabled working-age adult or a disabled child.
 - Be single with children.
 - Be male.

- Be a single pensioner.

6.20. Individuals in quintiles 3, 4, and 5 will have a higher level of income to make them eligible to pay their own Supreme Court fees. It is these higher income individuals who will be most impacted by higher Supreme Court fees. We examined how the characteristics of these income quintiles compare with the general population:

- Individuals in quintile 3 are more likely to be white, from a household with a disabled child or a household with a disabled pensioner, and to live in a household where there is a pensioner couple or a working age couple with children.
- Individuals in quintile 4 are more likely to be mixed, white or Asian, to be in a couple with no children or single with no children, and to be non-disabled.
- Individuals in quintile 5 are more likely to be white, Male, be in a couple with no children, and be non-disabled.

Table 3: Quintile distribution of income for individuals by various characteristics, UK

Net equivalised disposable household income (% of all individuals)						
Sex and adulthood	Bottom quintile	Second quintile	Middle quintile	Fourth quintile	Top quintile	All individuals (millions)
Adult male	17	17	20	22	23	25.2
Adult female	19	20	20	21	20	26.4
Disability						
Disabled children	23	29	24	14	10	1.1
Disabled working-age adults	28	21	20	18	12	7.7
Disabled pensioners	22	30	22	16	10	5.3
Non-disabled individuals	18	19	20	21	22	51.5
Ethnic group of head of household (3-year average)						
White	18	20	21	21	21	56.2
Mixed/Multiple ethnic groups	23	20	14	25	18	0.8
Asian/Asian British	32	20	14	25	18	5.3
Black/African/Caribbean/black British	31	24	20	15	11	2.1
Other ethnic group	32	20	14	15	19	1.0
Family Type						
Pensioner couple	18	24	22	19	17	8.2
Single pensioner	29	30	18	14	8	4.5
Male	24	32	19	15	10	1.5
Female	32	29	18	14	7	3.0
Couple with children	20	21	21	19	19	22.9
Couple without children	12	10	18	26	34	12.6
Single with children	38	35	17	7	2	4.9
Single without children	20	16	20	24	20	12.5
Age of head of family						
With children						
25 – 29	25	29	31	11	5	1.1
30 – 34	25	23	26	16	10	2.2
35 – 39	20	24	21	19	15	2.9
40 – 44	19	20	18	20	22	2.7
45 – 49	16	19	20	18	26	1.5
50 – 54	16	20	20	18	26	1.5
55+	24	18	19	22	16	0.8
Without children						
16 – 19	19	17	18	28	18	1.2
20 – 24	15	13	22	29	21	3.7
25 – 29	7	10	17	32	33	3.1
30 – 34	10	10	17	26	38	2.2
35 – 39	11	9	22	24	34	1.4
40 – 44	15	14	18	23	31	1.4
45 – 49	17	13	17	23	30	2.0
50 – 54	15	14	17	25	28	3.0
55+	21	15	20	21	23	8.1
All individuals (millions=100%)	20	20	20	20	20	65.6

6.21. However, this data is limited for our purposes as it only covers individuals in England and Wales. Additionally, it does not contain information on pregnancy and maternity, marriage and civil partnership, religion or belief, gender reassignment and sexual orientation.

Part 3: Protected characteristics of court and tribunal users

6.22. This section will analyse in more depth the protected characteristics of court users. Although very few of these cases will go to the Supreme Court (229 permission to appeals were filled and only 42 being granted in 2021/22) it is still useful to understand which protected characteristics are overrepresented in the courts and tribunal system in general.

The Legal Problem and Resolution Survey (2014 – 2015)

6.23. Before looking at court users, we also analysed findings from the Legal Problem and Resolution Survey (LPRS) (2014 – 2015). This survey measures people's experiences of everyday problems that may have a legal solution through the civil justice or tribunal system. We have specifically looked at the prevalence of a range of civil, administrative, and family legal problems across the adult population of England and Wales. While these individuals may not proceed to court/tribunal, and even fewer would be expected to proceed to the Supreme Court, it provides an approximation of the protected characteristics of those that could potential be affected by our proposals to reform and uplift UKSC fees.

6.24. The overall response rate for the LPRS is 31% (when accounting for the response rate to the Crime survey for England and the LPRS questions). Data was weighted to ensure that findings were representative of the population of adults aged 18 and over living in private households in England and Wales.

6.25. The LPRS covers the following protected characteristics: age, disability, marital status, race and sex. The term 'BME' was used in the LPRS, which we now refer to as ethnic minority. This data is limited for our purposes as it only covers individuals in England and Wales. Additionally, it does not contain information on pregnancy and maternity, religion or belief, gender reassignment and sexual orientation.

6.26. Respondents to the survey were asked whether they experienced any civil, administrative or family problems in the 18 months before the interview. A summary of the findings is shown in Table 4 below. The key findings were:

- The proportion of individuals who had experienced at least one legal problem in the 18 months before the interview was 32% for both men and women.
- In terms of age, individuals aged 18 to 24 and 25 to 44 were more likely to have experienced a legal problem (37% and 42% respectively) compared to other age groups.

- People from ethnic minority groups were more likely to have experienced at least one legal problem compared to white individuals (38% compared to 31%).
- Those with a long-standing illness or disability that limits their activities were more likely to have experienced a legal problem, compared to adults with disabilities that do not limit their activities and adults without any disabilities (40%, 31% and 27% respectively).
- Individuals who were married/in a civil partnership (29%) or widowed (14%) were less likely to have experienced a legal problem compared to people in other marital status groups, such as divorced, single, separated and cohabitating individuals (35 – 47%).

Table 4: Percentage of individuals who reported experiencing at least one legal problem in the previous 18 months, LPRS (2014 – 2015)

	Experienced a problem (%)	Did not experience a problem (%)	Unweighted base (100%)
Sex			
Male	32	68	4,820
Female	32	68	5,238
Age			
18 – 24	37	63	473
25 – 44	42	58	2,417
45 – 64	31	69	3,842
65 – 74	18	82	2,096
75+	11	89	1,227
Ethnicity			
White	31	69	9,772
BME	38	62	734
Mixed	44	56	101
Asian or Asian British	32	68	311
Black or black British	45	55	200
Chinese or other	38	62	122
Long-standing illness or disability			
Yes, limits activities	40	60	2,043
Yes, does not limit activities	27	73	1,547
No long-standing illness or disability	31	69	6,386
Marital status			
Married/in a civil partnership	29	71	5,248
Cohabiting	38	62	1,032
Single	39	61	1,692
Separated	47	53	178
Divorced/legally dissolved civil partnership	35	65	929
Widowed	14	86	973

Civil Court Users Survey (2014 – 2015)

- 6.27. To determine the protected characteristics of the users of civil courts we have used the 2014-2015 Civil Court User Survey (CCUS). This contains data on the characteristics of civil county court claimants in England and Wales.
- 6.28. The sample for the survey was taken from the HMCTS case management system. An initial sample of 21,334 claims were selected from the number of claims made in May and June 2014.
- 6.29. During a screening and profiling stage, claims were identified based on whether they were made by a business or an individual. Individuals (aged 16 and above) were then required to fill in a questionnaire. The final sample consisted of 2,212 completed questionnaires with a response rate of 26%.
- 6.30. Before making an assessment, it is important to note the data limitations. The survey was conducted almost 10 years ago and it is possible that the profile of court users has changed since the survey was completed. However, it is the latest data available on civil county court users.
- 6.31. Another limitation is that the response rate of 26% to the postal survey is low and therefore, the data may not reflect the true views and experiences of the population of court users. However, weighting has been applied to try and correct for any known biases. It should be kept in mind that there may be unknown biases that may have not been considered, such as a variable propensity to respond based on demographic subgroups or level of engagement in the case. This should be borne in mind when interpreting the survey findings.
- 6.32. This data is limited for our purposes as it only covers individuals in England and Wales. Additionally, it does not contain data on pregnancy and maternity, disability, religion or belief, gender reassignment and sexual orientation.
- 6.33. Key findings in relation to which protected characteristics were present in county courts in comparison with general population estimates as follows:
- In terms of race, individuals were more likely to be from an Asian ethnic background (14%) compared to the overall population (5%).
 - For sex, male individuals (56%) were slightly more represented compared to the overall male population (47%).
 - In terms of age, individuals aged between 45-54 (25%) were more likely to be users of civil courts compared to their composition of the general population (17%).
 - For marital status, individuals were more likely to be married (68%) than their composition of the overall population (58%).

Survey of Employment Tribunal Applications (2018)

- 6.34. To understand the protected characteristics of users of the tribunal service we have used the 2018 SETA. This survey aims to provide information on the characteristics of the parties in, and the key features of, employment tribunal cases. It does not cover parties in other tribunals. The sample was supplied by HMCTS and consisted of single claims disposed of between the 3rd of October 2016 and 4th of October 2017. Two random samples were drawn, one for employers and one for claimants. The sample for each survey was drawn across all jurisdictions. The data were collected using Computer Assisted Telephone Interviewing. In total, 2,663 interviews were carried out: 1,373 interviews with claimants and 1,290 with employers. The data presented in the survey are statistically representative of single claims disposed of in the mentioned period.
- 6.35. This data is limited for our purposes as it does not offer an insight into Scottish Employment Tribunal users. Additionally, it does not contain information on pregnancy and maternity, marriage and civil partnership, and gender reassignment.
- 6.36. The key characteristics data that was recorded for claimants involved in employment tribunals were as follows:
- Claimants had an older age profile compared to the total workforce. They were more likely to be aged 45-64 (54% of claimants compared with 38% of all employees) and less likely to be aged under 25 (4% compared to 13%).
 - Over half of claimants were men and somewhat higher than the proportion of the total workforce (56% to 51%).
 - Over a third of claimants had a long-standing illness or disability, higher than the employee population (36% to 28%). More than a quarter had a long-standing illness, disability or infirmity that limited their activities in some way, double the proportion of those in the employee population (29% to 13%).
 - For race, black and Asian individuals were over-represented compared to the overall workforce (10% to 3% and 8% to 6% respectively).
 - Two thirds of claimants regarded themselves as belonging to a religion, slightly higher than the total workforce (66% to 59%).
 - The majority of claimants identified themselves as heterosexual (92%), compared to those identifying as gay/lesbian (2%) and bisexual (1%). The SETA did not contain sexual orientation data for the entire workforce, but in comparison to the ONS England and Wales 2021 Census these figures do not appear disproportionate, with 89% of the population identifying as heterosexual, 2% as gay/lesbian, and 1% as bisexual.

HMCTS Protected Characteristics Questionnaire (April 2021 – September 2021)

- 6.37. To give an additional insight into the protected characteristics of those using court services, we used HMCTS published data on protected characteristics for cases under their reformed services. The source of the findings below comes from *HMCTS protected characteristics questionnaire: Data on users of reformed services*,⁶ covering information about users of the following reformed services between April 2021 to September 2021:
- Online Civil Money Claims (OCMC)
 - Probate
 - Social Security and Child Support (SSCS) Tribunals
 - Online Divorce
- 6.38. The data was collected through a voluntary questionnaire, which had a response rate of around 50% for each reformed service – except probate applicants using the paper channel where the response rate was around 30%.
- 6.39. There are limitations to this data. As the questionnaire was only for online reformed court services, voluntary to answer and only covered unrepresented users (i.e. those without legal representation), it is not representative of all claims made and all service users. A full explanation of the coverage of the questionnaires and limitations to the results can be found in the ‘interpreting PCQ results’ section of the questionnaire report. It also does not provide information on how any court fees were paid, and whether fee remission was claimed through the HwF scheme. Nevertheless, the publication gives detailed figures on the protected characteristics of the respondents who answered the questionnaire.
- 6.40. The questionnaire data reveals the main differences between the users of the different service. The protected characteristics data on the different services are:
- Divorce petitioners were more likely to be female (69% for digital applications) and respondents more likely to be male (59% of respondents were male). The median age of divorce petitioners and respondents was between 35 to 44 years old.
 - Probate applicants were more likely to be older (40% of digital applicants were 55 to 64 years old; 25% were 65 years and over). This was also the case in relation to paper applications too (36% of applicants were 55 to 64 years old and 40% were 65 years and over). They were also more likely to be white, for those submitting both digital and paper applications (95%).

⁶ Available at: <https://www.gov.uk/government/publications/hmcts-protected-characteristics-questionnaire/hmcts-protectedcharacteristics-questionnaire-data-on-users-of-reformed-service>

- In OCMC, a larger proportion of defendants (31%) had physical or mental health conditions relative to claimants (20%).

7. Mitigation

- 7.1. The Supreme Court has its own fee remission scheme that is designed to protect access to justice and mirrors the HwF remissions scheme. Eligibility for fee remission is based on an individual's ability to pay, and the scheme is targeted towards those in households on low incomes and those who are in receipt of certain state benefits. Eligibility is also subject to an assessment of the value of the applicant's disposable capital (e.g. savings) with a higher capital threshold applying to those aged 61 and over, or those with a partner aged 61 and over.
- 7.2. Additionally, the Chief Executive of the Supreme Court holds the discretion to reduce or remit a fee where they are satisfied that there are exceptional circumstances which justify doing so, or where an application for permission to intervene in an appeal is filed by a charitable or not-for-profit organisation which seeks to make submissions in the public interest.
- 7.3. To ensure that we continue to protect access to justice, we intend to update the Supreme Court remission scheme with relevant changes made to the HwF fee remission scheme assumed to be introduced partway through the financial year 2023/24. The series of proposed reforms to the HwF scheme as set out in the public consultation (see paragraph 3.3 above) will make it more generous and target financial assistance at those most in need, whilst providing value for money for the taxpayer. Of our proposals, two changes that will ensure a more generous fee remission scheme are as follows:
 - **Raising the income thresholds for determining eligibility:** An applicant must earn below a certain level of income to be eligible for a full fee remission (the 'income threshold'). We are proposing to update the methodology for calculating this, thereby raising the income thresholds so that applicants can earn more income and still receive a full fee remission. This will include increased financial support for families through higher partner and child allowances.
 - **Increasing the lower capital threshold for determining eligibility:** An applicant must have capital (i.e. savings and investments) below a certain level to be eligible for fee remission. This is the 'capital threshold'. We are proposing to increase the minimum capital threshold for the lowest fees to correspond with the increased income threshold. This will allow applicants to have more capital before they become ineligible for fee remission.

8. Conclusion

- 8.1. Consideration has been given to the impact of the proposed reforms to the Supreme Court fees on individuals, against the statutory obligations under the

Equality Act 2010 ('the Act'), taking into account additional information on Supreme Court litigants and their protected characteristics.

- 8.2. **Direct discrimination:** We assess that the proposed reforms to the Supreme Court fees will not be directly discriminatory within the meaning of the Act, as the fees will continue to apply in the same way to all Supreme Court litigants. The proposals are not considered to result in people being treated less favourably because of their protected characteristics.
- 8.3. **Indirect discrimination:** Based on the HBAI data, we assess that there is likely to be an over-representation of people with certain protected characteristics that we have data on among Supreme Court litigants. People particularly disadvantaged by the proposed changes are more likely to be white; adults without a disability; and younger to middle aged adults without children. Data on other protected characteristics such as pregnancy, religion, sexual orientation, gender reassignment, and marriage or civil partnership was not available.
- 8.4. However we expect the impact of the proposals will be limited for two reasons, even for the protected characteristics we do not hold data on. Firstly, the number of appellants who are individuals who privately fund their court fee in the Supreme Court is relatively low. The main group affected by higher fees in the Supreme Court will be organisations, who make up 66% of appellants. Individuals who privately fund their fee, and will be affected by higher fees, only constitute 15% of appellants. Secondly, the HBAI data suggests that this group of individuals who will face the higher fees would be found in the top half of the income distribution, and would therefore have a greater capacity to be able to pay for the increase.
- 8.5. Overall, we consider that the inflationary uplift to fees for those over-represented will be unlikely to cause a particular disadvantage through an inability to pay. These changes constitute a proportionate means of achieving the legitimate aim of ensuring that the Supreme Court is adequately resourced through contributions from both litigants and the taxpayer. Furthermore, the Supreme Court's fee remission scheme ensures that access to justice is maintained for those with few savings and who are on a low income or in receipt of certain benefits.
- 8.6. **Discrimination arising from disability and duty to make reasonable adjustments:** As Table 4 above demonstrates, people with a limiting illness or disability were more likely to have experienced a legal problem compared to adults with disabilities that do not limit their activities and adults without any disabilities. However, when assessing HBAI data (table 3) disabled individuals are more likely to be overrepresented in the bottom 2 quintiles that will be protected from higher fees. With regards to the application process, we will maintain a paper route for those who are unable to use online services and consider other reasonable adjustments as may be required.

- 8.7. **Harassment and victimisation:** We do not consider there to be a risk of harassment or victimisation in implementing our proposed changes to Supreme Court fees.
- 8.8. **Advancing equality of opportunity:** These proposals indirectly support advancing equality of opportunity through ensuring equal access to the Supreme Court through the use of legal aid, fee remissions, and the Chief Executive's Exceptional Power to remit fees.
- 8.9. **Fostering good relations:** We do not consider that these proposals are relevant to this obligation.
- 8.10. We recognise that for those who do not qualify for the fee remission but whose circumstances are such that they cannot realistically afford to pay their fee, a remission can be granted under the UKSC Chief Executive's Exceptional Power to remit fees. This power will apply where the payment of fees would cause undue financial or other hardship. The Exceptional Power offers an additional safeguard for those with no disposable means to pay a fee.
- 8.11. However, as set out in the provided data and analysis, we consider that the potential for these proposals impacting individuals with protected characteristics is limited.

9. Equality Impact Analysis

- 9.1. As the equality duty is an ongoing duty, we will continue to monitor and review the changes for any potential impacts on persons with protected characteristics and will make sure that access to justice is maintained. Any equality impacts will also be considered as part of the proposed principle of regularly reviewing Supreme Court fees in future.