

## Implementing increases to selected court and tribunal fees: Equalities Statement

### 1. Introduction

- 1.1. This Equalities Statement is an updated version of the Statement that accompanied the Government's consultation: '*Implementing increases to selected court and tribunal fees*', which was published on 10<sup>th</sup> November 2023. This updated version accounts for the final approach taken to fee increases, the responses received and some new datasets which have been identified since the publication of the original Statement.
- 1.2. It is recommended that this statement be read alongside the previous Equalities Statement, which can be found here: [tribunalfeesconsultationequalitiesstatement.pdf \(justice.gov.uk\)](https://www.justice.gov.uk/tribunalfeesconsultationequalitiesstatement.pdf).

### 2. Background

- 2.1 His Majesty's Courts and Tribunal Service (HMCTS) provides a vital democratic function within UK society by facilitating a range of justice outcomes to people across England and Wales seeking to exercise their constitutional right to access the courts. In order to sustainably offer these services to high and effective standards, HMCTS requires sufficient levels of funding to recover its running costs. This is a key statutory duty of the Lord Chancellor who, in ensuring adequate resources for HMCTS, upholds his duty to protect access to justice for all.
- 2.2 Whilst the majority of the £2.3 billion it cost to run HMCTS in 2022/23 comes from general taxation, user contributions in the form of court and tribunal fees also play a significant role, with £727 million of HMCTS income generated from fees alone.<sup>1</sup> Most fees are set to recover their underpinning costs from users, but in some instances fees are intentionally set below cost or are at zero-value to further protect access to justice. To partially subsidise these under-recovered costs where there is a similarity in the service provided, some fees are set to lawfully over-recover. These are known as 'enhanced' fees and must receive parliamentary approval before being charged to users.
- 2.3 However, with fees set at their current levels, HMCTS ultimately recovers less than half of its running costs each year. Overall cost recovery levels have continued to decrease in real terms since 2021, when fees were last updated to reflect changes in the general level of prices. Given the rise in the Consumer Price Index (CPI) in recent years, it is important that we now update court and tribunal fees for the 2024/25 period and beyond. Doing so will raise crucial income for the courts and tribunals, by ensuring that fees more accurately and fairly reflect increased costs to HMCTS as a result of changes in the general level of prices.
- 2.4 The Ministry of Justice held a public consultation from 10 November 2023 to 22 December 2023, inviting responses on proposals to pass on a proportion of the increase to CPI by increasing up to 202 HMCTS fees by 10% from 2024. This would help to better resource HMCTS whilst minimising the impact on users in light of increases to the cost of living. The consultation also proposed to conduct a two-

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<sup>1</sup> Source: Annual Report and Accounts 2022-2023 (publishing.service.gov.uk).

yearly review of our fees for the purpose of identifying where inflation and cost-related updates are required, and to enhance the Council Tax Liability Order fee through a separate Statutory Instrument (SI) in 2024, to account for the regular fluctuations in its underlying cost whilst retaining its current £0.50p value.

### 3. Policy objective

- 3.1. The proposals set out in the consultation document were based on the following three policy objectives:
- To protect access to justice by ensuring that HMCTS is adequately resourced, whilst keeping fees affordable;
  - To more closely align user contributions to HMCTS services with increases to the general level of prices, reducing the overall cost to the taxpayer; and
  - To establish a more sustainable approach to improving HMCTS cost recovery levels over time by updating fees on a routine basis.
- 3.2. As mentioned in the consultation response document, we will proceed with making increases of 10% to 172 of the 202 fees originally proposed. One of the 30 fees no longer in scope for increases is the divorce fee, which has been excluded as we recognised respondents' concerns that an increase would not be proportionate to the service involved; we also carefully considered the equalities concerns raised with regard to the affordability of the divorce fee. We have therefore decided that an increase would not be suitable at this time, so we have decided to keep the divorce fee at its current value of £593. 70 non-enhanced fees out of the total 202 fees proposed for a 10% increase in the consultation required further analysis to confirm their underlying costs at the time the consultation launched. 29 of these 70 fees have been excluded because further analysis of the underlying costing information is still required. With these fees excluded, alongside the divorce application fee, we will be increasing a total of 172 fees by 10%.<sup>2</sup>
- 3.3. Delivering these changes will require amendment of 10 Fees Orders through a negative statutory instrument (SI). These Orders and the number of fees affected are as follows:
- The Enrolment of Deeds (Fees) Regulations 1994 No 601 – *1 fee*
  - The Non-Contentious Probate Fees Order 2004 No 3120 – *4 fees*
  - Court of Protection Fees Order 2007 No 1745 – *2 fees*
  - Magistrates' Courts Fees Order 2008 No 1052 – *18 fees*
  - Family Proceedings Fees Order 2008 No 1054 – *60 fees*
  - Civil Proceedings Fees Order 2008 No 1053 – *59 fees*
  - The Upper Tribunal (Lands Chamber) Fees Order 2009 No 1114 – *7 fees*
  - The First-tier Tribunal (Gambling) Fees Order 2010 No 42 – *7 fees*
  - The Upper Tribunal (Immigration and Asylum Chamber) (Judicial Review) (England and Wales) Fees Order 2011 No 2344 – *7 fees*

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<sup>2</sup> On average, the fees included will be increased by 10%. However, fee increases have been rounded to the nearest pound, so some of the new fee values equate to less than 10% and some are above 10% (but no more than 12.5%).

- The First-tier Tribunal (Property Chamber) Fees Order 2013 No 1179 – 7 fees
- 3.4. As well as increases to the selected 172 fees, we will proceed with undertaking a routine approach to updating appropriate fees every two years, accounting for any changes in cost and inflation. The department will also proceed to enhance the Council Tax Liability Order fee by laying an affirmative statutory instrument in Spring 2024, allowing us to retain its current level of £0.50p and to account for regular fluctuations in its underlying cost. As this fee is only payable by local authorities or their representatives, there are no protected characteristics considerations to be made. This Equalities Statement therefore considers the fee increases proposal only.
- 3.5. More detail on the background to, and rationale for the decision to increase fees are set out in the consultation response document: *Implementing increases to selected court and tribunal fees*. Available at: [Implementing increases to selected court and tribunal fees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/consultation-on-increasing-court-and-tribunal-fees)

#### 4. Equality Duties

- 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 the wide range of individuals who might use the different courts and tribunals affected by the proposed fee increases. This is in part because we are updating 172 fees which relate to a huge breadth of activities and proceedings across almost all HMCTS jurisdictions (except for the fees in the Gender Recognition Panel and the Immigration & Asylum Chamber of the First-tier Tribunal).
- 5.2. We have therefore instead reviewed several related data sources that provide insight into some of the protected characteristics of the various user groups who might benefit from the range of services provided by HMCTS. Some of the sources relate to specific jurisdictions, and some provide a more general overview of potential court and tribunal users who may or may not pay a court fee. Through this review, we were able to identify data relevant to all nine protected characteristics, although the most insightful findings relate to age, disability, marriage/civil partnership, race and sex.
- 5.3. This Equalities Statement looks at the following data sources where information is available:

- **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 some insight into the types of users who are more likely to experience these issues, including various protected characteristic groups. While only a minority of respondents ultimately proceeded to a court or tribunal, and only some respondents confirmed actually paying a court fee at the time of taking the survey, it provides an approximation of the characteristics of those that could *potentially* be affected by our proposals. The survey covering 2014 – 2015 is the most recently conducted survey. The next survey was in progress, with findings unpublished at the time of writing.
- **Gender Gaps in Access to Civil Legal Justice (2023):** This report from The Women's Budget Group summarises the findings from an online survey regarding the gender gap amongst those looking to access civil legal justice. It focuses specifically on the impacts of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) on women who encounter a legal issue. Although the survey does not provide much insight into the proportion of women amongst applicants of particular HMCTS services who could be affected by fee increases, it does explore the issues facing often vulnerable women who are unable to access legal aid and who may similarly struggle to afford court fees.
- **HMCTS protected characteristics questionnaire – data on users of reformed services (January 2023 – July 2023):** This is a summary report of the responses to protected characteristics-related questions regarding reformed HMCTS services. These services include online divorce applications; paper and online probate applications; online civil money claim applications; and social security and child support applications. We referred to the data on divorce and probate, both of which were the fees most frequently referred to by respondents of the original consultation.
- **Civil Court User Survey (CCUS) (2014 – 2015):** While the CCUS is now almost ten years old, it nonetheless provides robust information on the characteristics and experiences of civil court claimants in England and Wales. This is the most up-to-date dataset on civil court users available to us at the time of writing.
- **Nuffield Family Justice Observatory analysis (2020 – 2022):** The NFJO has conducted analysis of Cafcass data relating to private family law and child arrangements, summarised in their series of reports on 'Understanding private family law' in England & Wales.
- **ONS Divorce Statistics (2021):** This ONS dataset looks at divorces in England and Wales in 2021. It explores annual divorce numbers and rates, by duration of marriage, sex and to whom granted. Where 2021 data was not available in relation to certain characteristics, we reviewed the latest data from 2019.

- **Nuffield Foundation and Bristol University Fair Shares Report (2023):** This research study looks at the financial and property arrangements that people make when they divorce. It considers how the law works in practice for divorcing couples trying to arrange their finances, and the effects of the agreed arrangements.

## 6. Analysis

- 6.1. Referring to the data sources listed above, this section will set out in depth our analysis of the protected characteristics of court and tribunal users who could be disproportionately affected by the agreed fee increases. As very little new data has become available since the last updates to court fees were made in 2021, there are several similarities in the analysis and conclusions drawn in the Equalities Statement to the 2021 consultation.<sup>3</sup>
- 6.2. The key points from this analysis form the basis of our Public Sector Equality Duty (PSED) assessment for the increases, which is summarised in section 8 (conclusion) below. This considers whether the proposal has adequate due regard to the three aims of general equality duty, as described in para 4.1.
- 6.3. We also recognise that in some cases users may need to pay more than one fee within the same proceedings, and that the cumulative impact of certain fees could be greater on the individual liable to pay the higher cost. The mitigations described in section 7, specifically the availability of Help with Fees remissions and the Lord Chancellor's Exceptional Power to waive a fee, are aimed at helping to reduce those impacts.

### Overarching analysis of court and tribunal users

- 6.4. Before looking at each jurisdiction separately, we firstly analysed findings from the Legal Problem and Resolution survey (2014 – 2015) (LPRS) to develop an overarching understanding of who *might* use court and tribunal services.<sup>4</sup> This was an important initial step because the proposed fee increases cover a wide range of jurisdictions across HMCTS and could therefore impact several different user types. The 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 (aged 18 and over) population of England and Wales. While only 5% of respondents used a court or tribunal process, with 14% having considered it but ultimately deciding not to, the survey data still provides an approximation of the characteristics of those that could hypothetically be affected by fee increases.
- 6.5. Respondents to the survey were asked whether they had experienced any civil, administrative or family problems in the 18 months before the interview. A summary of the findings is set out in **Table 1** below.

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<sup>3</sup> Available at: [court-fees-equalities-statement.pdf \(justice.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf).

<sup>4</sup> Report available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596490/legal-problem-resolution-survey-2014-to-2015-findings.pdf).

- 6.6. The survey found that there were no statistically significant differences by gender, with the proportion of men and women who had experienced at least one legal problem in the 18 months before the interview at 32% for both.
- 6.7. However, the LPRS did find differences in regards to other protected characteristics, such as age. Specifically, individuals aged 25 to 44 and 18 to 24 were more likely to have experienced a legal problem (42% and 37% respectively) compared to other age groups.
- 6.8. Individuals from ethnic minority groups were also more likely to have experienced at least one legal problem compared to white individuals (38% compared to 31%).
- 6.9. 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%, 27% and 31% respectively).
- 6.10. Individuals who were married or 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 those who are divorced, single, separated and cohabitating (35 – 47%).
- 6.11. The LPRS found that those falling into the age, marital status and disability categories where there is a greater likelihood of experiencing at least one legal problem in the 18 months prior to the interview were also more likely to experience four or more legal problems within the same time period.
- 6.12. As well as exploring the characteristics of respondents experiencing a legal problem, the survey looked at the payment of court fees. It found that whilst 33% of the respondents who had ended up using a court or tribunal had paid a fee, 62% did not pay, either because no fee was charged, they were eligible for a remission, or because someone else had paid on their behalf. The remaining 5% were unsure whether they had paid a fee.
- 6.13. On the one hand, these figures could imply that only a minority of court users would be affected by increased fees, which would mitigate the potential impact on those with protected characteristics who the survey found to be more likely to require a court service than other user groups. However, that most respondents didn't pay the fee themselves might instead imply that fees tend to be unaffordable for many users. If this were the case, then further fee increases could exacerbate the issue. Conversely, this statistic could suggest that the Help with Fees remission scheme is in fact working effectively in its aim to protect access to justice and is therefore an adequate mitigant of any further fee increases.
- 6.14. In addition, the LPRS found that 10% of the respondents who had considered using a court or tribunal, but ultimately did not, cited high court fees as the reason for this decision. Although this finding might suggest that increases could risk discouraging higher proportions of individuals experiencing legal problems from using a court or tribunal, the data does not specifically reveal whether the 10% who were deterred by the size of court fees, or the 33% of court users who paid a fee themselves, have the same protected characteristics as those who are more likely to require a court service. We therefore cannot draw any strong conclusions from this dataset as to

whether or not fee increases will disproportionately affect those with protected characteristics to the extent that they will be deterred from or unable to access the courts.

**Table 1: Percentage of individuals who reported experiencing at least one legal problem in the previous 18 months, Legal Problem Resolution Survey 2014-15**

<b>Sex</b>	Experienced a problem (%)	Did not experience a problem (%)	Unweighted base (100%)
Male	32	68	4,820
Female	32	68	5,238
<b>Age</b>			
18 to 24	37	63	473
25 to 44	42	58	2,417
45 to 64	31	69	3,842
65 to 74	18	82	2,096
75+	11	89	1,227
<b>Ethnicity</b>			
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
<b>Long-standing illness or disability</b>			
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
<b>Marital status</b>			
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

6.15. In addition to the LPRS, a recent report on *Gender gaps in access to civil legal justice* raises some gender-specific insight that should be considered in assessing the overarching impact of fee increases on court users.<sup>5</sup> The report analyses data from a survey on the impact of cuts in legal aid and other challenges experienced by women in accessing justice, conducted with 115 organisations, including advice services, trade unions, law centres and solicitor firms. Its main focus is to explore the

<sup>5</sup> Report available at: [Gender Gaps in Access to Civil Legal Justice – Women's Budget Group \(wbg.org.uk\)](http://www.wbg.org.uk).

types of legal problems encountered by women in employment law, housing law, social security law, private family law and immigration and asylum-seeking law, as well as the potential barriers for women in accessing legal aid and advice.

- 6.16. Although the survey findings do not provide any direct indication of whether or not particular fee increases might disproportionately impact women, the report does highlight that women typically make up the majority of legally aided individuals, as well as those seeking advice on civil legal matters. It also emphasises that these women may face significant barriers to accessing legal support and are often vulnerable – for example, migrants seeking asylum, or victims of domestic abuse. If women tend to be the main recipients of civil legal aid, and that legal aid is currently more limited than it once was, it could therefore be inferred that women users of the courts and tribunals may be more likely to have lower financial means to pay their court fees, particularly if these fees are increased to reflect changes in the general level of prices.
- 6.17. As well as looking at this more generic overview of court and tribunal users to gauge the potential overarching impact of implementing increases, we also considered the characteristics of users of the individual jurisdictions affected by the proposals, to identify whether any specific fee increases would have equalities implications. Although jurisdiction-specific data is very limited, particularly where processes have not yet digitised, we were able to uncover some valuable insights into two main user groups: those engaging with the civil courts and those undertaking private family law proceedings.

#### County Civil and High Courts

- 6.18. The Civil Court User Survey (CCUS) 2014-2015 was a key source in developing our understanding of what types of individuals are more likely to be affected by the increases we are making to 65 fees in the civil jurisdiction, including fees charged in both the County and High Courts.<sup>6</sup> Specifically, the survey provided an insight into three main protected characteristics: age, disability and ethnicity.
- 6.19. The sample for the survey was taken from the HMCTS case management system. An initial sample of 21,334 claims was selected from the number of claims made in May and June 2014. During a screening and profiling stage, claims were identified based on whether they were made by a business, an individual or whether they were invalid. 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%. To account for the relatively low response rate, weighting has been applied to correct for any known biases.
- 6.20. Although the survey is now almost ten years old, it is also the most up-to-date dataset providing a comprehensive view of civil court users. We therefore deem it to be a useful reference in helping us to identify which protected characteristics might be relevant to the civil fees we are increasing.
- 6.21. The aforementioned Equalities Statement on fee increases delivered in 2021 summarises previous research on the breakdown of demographic characteristics of

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<sup>6</sup> Report available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472483/civil-court-user-survey.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/472483/civil-court-user-survey.pdf).



civil court users more generally. The key finding was that individuals with certain protected characteristics were likely to be over-represented amongst court users: specifically, that men; those of Asian ethnicity; those in the 45-54 age band; and those married or cohabitating are more likely to make an application to the civil court, when comparing survey data to general population levels. If this user cohort is more likely to make a civil application, they are also more likely to be impacted by increased court fees.

- 6.22. The survey also looks at different categories of civil claimants who make specific types of civil applications. For example, the survey found 50% of possession claimants were aged 55 and over, compared to 35% at population level. 31% of claims were made by individuals from an ethnic minority group, compared to just 10% at a general population level. In other words, the survey indicates that these groups are likely to be over-represented amongst civil court users, which could mean there is a greater chance of being disproportionately impacted by a fee increase. Nonetheless, it is worth noting that the survey also found that possession claimants tend to have a higher income and be better educated than other civil claimants, which could offset the possible disadvantage brought by higher fees.
- 6.23. As with the LPRS, the CCUS provides some data on the proportion of respondents who had paid court fees. The number of respondents who had paid a fee was similar, at 38% compared to 33% in the LPRS. 28% of respondents were covered by 'no win no fee' terms, 7% had someone pay the fee on their behalf, 2% were granted a remission or had a fee waived, and the remaining 23% who responded were unsure. Again, although these figures might imply that most civil court users do not ultimately pay a fee, they do not reveal any information on the specific characteristics of those who paid a fee and those who did not. Ultimately, this makes it difficult to draw any equalities conclusions informed by CCUS data on fee-paying; instead, we can only make assumptions on who *might* be subject to paying a court fee by referring to the data on the claimant user profiles by proceeding type.

#### Private Family Law

- 6.24. To understand the types of individuals who might make use of the Family Courts for private law matters, we referred to the Nuffield Family Justice Observatory's (NFJO) *Uncovering Private Family Law* report series, which analyse data collected by Cafcass between 2020 and 2022. This mostly relates to users who have made child arrangement applications.
- 6.25. An NFJO report based on courts users in England found that private law cases are primarily driven by male applicants, typically non-resident fathers, and mainly related to child arrangements.<sup>7</sup> 64% of the applications made by a parent in 2019/20 were made by fathers compared to mothers.
- 6.26. Although the report does not cover the proportion of these individuals who paid a court fee, it did find that 29-31% of applicants were living in the most deprived quintile. This could suggest that private family law applicants, many of whom are men and/or from ethnic minority groups (see below), are more likely to be at a disadvantage when it comes to paying fees.

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<sup>7</sup> Report available at: [nfjo\\_whos\\_coming\\_to\\_court\\_England\\_full\\_report\\_FINAL-1-.pdf](https://nuffieldfjo.org.uk/nfjo_whos_coming_to_court_England_full_report_FINAL-1-.pdf) (nuffieldfjo.org.uk).

- 6.27. In regards to ethnicity, another NFJO report on court users in England found that 78% of applicants were from white backgrounds, compared to 84% at a general population level, indicating that those from white ethnic backgrounds are under-represented in private law court cases.<sup>8</sup> However, within the white ethnic group, individuals in the Gypsy or Irish Traveller ethnic group were over-represented (0.1% of private law cases, compared to <0.1% in the general population). Individuals from mixed/multiple ethnic backgrounds were the most over-represented ethnic group, at 3.5 times higher than general population level; black, black British and other ethnic minority groups were also over-represented.
- 6.28. The NFJO report on Wales presents similar findings to England: men were more likely to be applicants of private family law cases (73%), and almost a third of adults lived in the most deprived areas of Wales.<sup>9</sup> It also reports that there was a higher incidence of health vulnerabilities amongst private family law court users compared to the general population. At present there is no comparable data to the latter available for England.
- 6.29. Although private family law proceedings often relate to child arrangements, divorce and probate proceedings are two sub-areas of the family jurisdiction that are often considered separately, and for which we found insightful data on user characteristics.

#### *Divorce-related fees*

- 6.30. Although the divorce application fee has been removed from the final list of fees for a 10% increase, included in this list are several fees which relate to divorce proceedings, such as financial orders. Whilst we only have broad data on those who make divorce applications, and not on the protected characteristics of those who tend to make specific subsequent applications, the information available on the former can provide us with an approximation of the latter.
- 6.31. To explore the possible crossover between divorce applications and protected characteristics, we referred to the *HMCTS protected characteristics questionnaire: Data on users of reformed services*, which covers the period January to July 2023.<sup>10</sup>
- 6.32. The information was collected through a voluntary questionnaire, which had a response rate of 40-70% for each service. As the questionnaire was voluntary and only covers users who did not have 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 the PCQ results' section of the report. It also does not provide information on how any court fees were paid.
- 6.33. Nevertheless, the publication gives detailed figures on the protected characteristics of the respondents who answered the questionnaire. This includes insight into online divorce applicants, whom the questionnaire found were more likely to be female (67.4%). It also found that 40.4% of applicants identified as Christian, with most other

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<sup>8</sup> Report available at: [What do we know about ethnic diversity in the family justice system England \(nuffieldfjo.org.uk\)](https://www.nuffieldfjo.org.uk/what-do-we-know-about-ethnic-diversity-in-the-family-justice-system-england).

<sup>9</sup> Report available at: <https://www.nuffieldfjo.org.uk/resource/uncovering-private-family-law-adult-characteristics-and-vulnerabilities-wales>.

<sup>10</sup> Findings available at: [HMCTS protected characteristics questionnaire 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118444/hmcts-protected-characteristics-questionnaire-2023).

respondents of no faith (49.9%), and other religions only making up a very small minority. Divorce applicants were more likely to be from white backgrounds at 83.2% of applicants, although this is broadly in line with the general population (81.7%)<sup>11</sup>, as were individuals who did not have a physical or mental health condition/illness lasting or expecting to last 12 months or more (82%), which is significantly higher than at a general population level (17.7% in England and 21.1% in Wales).<sup>12</sup> The questionnaire did not indicate any significant crossover with pregnant or recently pregnant applicants (only 3.8% of respondents to the survey, compared to 7.2% of women at a general population level)<sup>13</sup>, or those whose gender is not the same as the sex they were registered with at birth (only 0.3%).

- 6.34. The HMCTS PCQ figures regarding sex are broadly supported by the latest ONS statistics on divorce rates in 2021, which show that females were more likely to petition, at 63.1% of petitioners compared to 36.9% of petitioners who were male. ONS data also indicates that the vast majority of divorces are in relation to opposite-sex couples (111,934 divorces), with only 1.4% of applications affecting same-sex couples (1,571 divorces).<sup>14</sup> The lower rate of same-sex divorces is most likely because same-sex divorces have only been possible since 2015, following the introduction of same-sex marriage in 2014. Amongst divorces of same-sex couples, female couples made up 67.2% compared to 32.8% of male couples.
- 6.35. Although there is no up-to-date ONS data regarding age for the 2021 period, in 2019 most male and female divorce petitioners in opposite-sex relationships were in the 45-49 age group (mean age of 47.7 for men and 45.3 for women). Amongst same-sex couples, most male petitioners were in the 35-39 age category (mean age of 40.8) and most female petitioners were in the 30-34 age category (mean age of 39.5).
- 6.36. In 2019, 39.3% of opposite-sex couples divorcing were in their first marriage, and 17.5% included at least one party who had previously been divorced. The distribution was similar for same-sex couples, with 25.9% married only once and 7.7% with at least one party having been divorced in the past. The remaining respondents in both the opposite-sex and same-sex cohorts did not provide any information on their marital status, so it is difficult to draw a strong conclusion regarding the impact of higher fees on this particular characteristic.
- 6.37. The main takeaway from these findings is that women are more likely to be disproportionately affected by an increase to the divorce application fee amongst both same and opposite-sex couples. We can also assume that those in the 45-49 age range are more likely to pay a fee, although it should be noted that the data relating to age was in relation to divorcees more broadly, as opposed to just divorce petitioners. This could mean that the actual percentage of those within the 45-49 category who are liable to pay the application fee is lower than the proportion of

<sup>11</sup> Based on data from 2021 census, available at: [Population of England and Wales - GOV.UK Ethnicity facts and figures \(ethnicity-facts-figures.service.gov.uk\)](https://www.gov.uk/evidence/population-of-england-and-wales-2021-ethnicity-facts-and-figures).

<sup>12</sup> Based on data from 2021 census, available at: [Disability, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/disabilityandlongtermconditions/articles/disability-england-and-wales-2021).

<sup>13</sup> Based on data from 2021 census, available at: [Conceptions in England and Wales - Office for National Statistics](https://www.ons.gov.uk/peoplepopulationandcommunity/healthandlife/articles/conceptions-in-england-and-wales-2021).

<sup>14</sup> In comparison, in 2021 0.28% of the population aged 16 and over were in a same-sex marriage. Data available at: [Marriage and civil partnership status in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/relationshipsandmarriage/articles/marriage-and-civil-partnership-status-in-england-and-wales-2021).

those getting divorced. Slightly younger individuals are more likely to be affected by increased fees amongst same-sex couples, although same-sex couples make up a very small proportion of divorce applications overall.

- 6.38. In addition to the HMCTS PCQ and ONS data, a recent study into the financial and property arrangements of divorcing couples gives valuable insight into socio-economic differences between men and women going through a divorce. The *Fair Shares? Sorting out money and property on divorce* report, commissioned by the Nuffield Foundation, carried out a survey of 2,415 divorcees asking about their economic circumstances prior to divorce, the value of their assets, and the process of reaching a financial settlement.<sup>15</sup> A further 53 individuals were also interviewed to gain a more detailed understanding of their financial and property arrangements, what drove them to these arrangements, and their experiences of how these arrangements were reached.
- 6.39. Overall, the report found that women (especially those with dependants) were deemed to be financially worse off than men, as they are more likely to be working part-time or be in receipt of benefits. 28% of female participants in the study had monthly take-home pay of less than £1,000, compared to 10% of men. Women were also twice as likely to go to court than men. In addition, whilst the main focus of the report is on legal costs, one interviewee specifically commented that the divorce application fee is a significant sum of money for many.
- 6.40. The Women's Budget Group report called 'Gender Gaps in Access to Legal Justice' details findings from an online survey completed by 115 organisations. One of the questions asked what respondents considered to be the impact of the Legal Aid, Sentencing and Punishing of Offenders (LASPO) Act 2012 on women. 48% of the respondents that answered this question believed that it would have a major impact on women deciding not to bring cases to court. One of the examples cited in the report referred to divorce petitions not being brought due to court fees, however this was just one example and no further details were provided, so it is unclear how many respondents actually referred to divorce.
- 6.41. As there is a lack of data relating specifically to other fees that are associated with divorce, we can only make assumptions that the user demographic for fees relating to divorce would be similar to those making divorce applications. Based on the fact that women are more likely to make a divorce application than men, and the findings presented specifically regarding differences in the financial status of men and women, it is fair to assume that women are more likely to be disproportionately impacted by increases to fees relating to divorce.

#### *Probate*

- 6.42. The HMCTS Protected Characteristics questionnaire also included probate within the group of reformed services covered. It found that applicants were more likely to be older, with 39.7% of digital applicants being 55 to 64 years old, and 30% were 65 years and over. In relation to paper applications, 33.7% of applicants were 55 to 64 years old and 42.6% were 65 years and over.

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<sup>15</sup> Report available at: [Fair Shares Project | University of Bristol Law School | University of Bristol](#).

- 6.43. Most probate applicants came from white backgrounds (94.4% paper and 95.6% digital) and were less likely to have a disability (84.6%-86.9% without a disability across paper and digital applicants). Over half of both digital and paper applicants identified as Christian (57.4% and 67% respectively), with most remaining applicants not identifying with any faith.
- 6.44. The questionnaire found that very few female respondents were pregnant at the time of or in the year prior to making an application; that most applicants were heterosexual (97.5% digital, 98.1% paper); and that almost all applicants' gender was the same as the sex registered at birth (99.9% digital, 99.8% paper). Finally, the majority of respondents were married or in a civil partnership when making an application (70.6% digital, 67.2% paper).
- 6.45. Overall, we can conclude from this dataset that an increase to the probate application fee is most likely to affect heterosexual applicants, those over the age of 55 and those who are married or in a civil partnership. We can also assume that most will be from white backgrounds and that applicants are more likely to identify as Christian. Although these statistics suggest that there is over-representation of certain characteristics, any disproportionate impact of a fee increase on these groups will be lessened by fees only being payable for estates with a value of at least £5000, and the ability for applicants to recover any court fee payable from the final settled estate established through a probate grant. Consequently, we do not assess there to be any concerning equalities implications of delivering a 10% increase to the probate application fee.

#### Other jurisdictions

- 6.46. Although the fee increases relate to several other jurisdictions, both published and unpublished data available on user characteristics in these areas is either extremely limited or non-existent on these areas. Without this data, we cannot make a formal assessment of any crossover between fee increases and the protected characteristics. Instead, we have explored some general assumptions regarding who the users of the remaining jurisdictions are likely to be.
- 6.47. The majority of **public family law** applications are made by local authorities, or charities such as the NSPCC. Most of these applications relate to care, supervision and emergency protection proceedings for vulnerable children. As the protected characteristics set out in the Equalities Act 2010 are only of relevance to individuals rather than organisations, we have not considered public family law court users within our equalities analysis any further.
- 6.48. Similarly, many **Magistrates' Court** applicants are made by public bodies and organisations. Examples include local authorities applying for council tax liability orders; the police applying for warrants of commitment to take someone to prison; the Child Maintenance Service making Child Support liability order applications on behalf of individuals; and utility companies applying for warrants of entry. Some applications to the Magistrates' Court can be made by individuals as well as organisations, and this includes some of the fees we are going to increase, such as requests for certain court certificates, or appeals against deduction from earnings orders relating to child maintenance payments. It should also be noted that where a

fee is only, or mainly, payable by organisations, this could also include sole traders who may fall under particular protected characteristics.

- 6.49. However, as was noted in the 2021 Equalities Statement, there remains no available data on the characteristics of these individual or sole trader applicants to the Magistrates' Court and we are therefore unable to provide an analysis of the potential impact of fee increases on these users. Our broad assumption is that the impact on individual users is likely to be small, as many of the Magistrates' Court fees included are those made exclusively (or mainly) by public bodies and private organisations. Those fees that can be payable by individuals tend to cover a wide range of application types, therefore making it difficult to identify crossovers with particular characteristics. For example, the appeal (no other fee specified) fee can apply to a variety of appeals against decisions made by public authorities, such as those relating to taxi licences, DVLA licences and private security licences. Given this breadth of potential case types, and without supportive data, we cannot definitively say who tends to pay this fee and whether particular cohorts would be affected by a fee increase.
- 6.50. The **Court of Protection** makes decisions and appoints representatives on financial and wellbeing matters for people who cannot make a decision at the time they need to be made because they lack the capacity to make that decision. As highlighted in the 2021 Equalities Statement, user data in relation to Court of Protection applications is not collected, and we are therefore reliant on anecdotal information from HMCTS on what the characteristics of those making applications might be. The individuals for whom an application is made are typically vulnerable people: they are more likely to be older and/or live with a disability or illness, such as dementia, an acquired brain injury or a learning disability. Some may also have experienced medical negligence.
- 6.51. However, whilst applications can be made directly by the protected person, they are more frequently submitted by solicitors, local authorities, family members and hospital trusts on behalf of that individual. Fees paid to the Court of Protection are often recoverable from the protected person, and for applications relating to property and affairs deputyship, eligibility for fee remission is based on the protected person's finances rather than the applicant (the opposite applies for health and personal welfare deputyship applications). Overall, whilst we do not have the required data to make a full equalities assessment, we can make a broad assumption that most of those making the direct payment will not be disproportionately impacted by higher fees, since most applications will be made by organisations or individuals who may be able to recover the fee from the protected person. However, by extension this means that the impact of higher fees will more likely be on the protected person who may have particular age and disability-related characteristics.
- 6.52. The agreed increases also include a range of **tribunal** fees relating to immigration and asylum, gambling, property and lands matters. As the relevant tribunals do not collect any relevant user data on protected characteristics, we are unable to make a formal assessment regarding the potential equalities impacts of fee increases. However, we can make some broad assumptions regarding users of certain tribunals. For example, gambling licence appeals made to the General Regulatory Chamber of the First-tier Tribunal will be made by businesses, and therefore there

are no direct links with protected characteristics that require further exploration. Increases to Immigration & Asylum Chamber fees in the Upper Tribunal may be more likely to affect users from ethnic minority backgrounds. According to data from the Migration Observatory collected in 2021, migrants to the UK are more likely to be adults between the ages of 26-64 (70% compared to 48% of those born in the UK), and the top three countries of birth amongst migrants were India (9.7%), Poland (7.1%) and Pakistan (4.7%) – although it should be noted that this data does not necessarily correlate to the demographic of those making appeals to the Upper Tribunal.<sup>16</sup>

- 6.53. Some fees for proceedings in the Property Chamber are for applications relating to mobile homes, which may disproportionately affect those in the Gypsy/Traveller community.

## 7. Mitigation

- 7.1. In developing the original proposals set out in the consultation document, we carried out a scoping exercise in which we reviewed the over 300 live court and tribunal fees to identify which would be appropriate for a 10% increase. We based this assessment on a range of criteria, including access to justice – specifically, consideration for who might typically pay particular fees and whether those individuals are more likely to be vulnerable, or encounter affordability challenges.
- 7.2. We ultimately assessed that there is a low likelihood of affordability challenges for those paying fees as a result of increases of 10%, given that in practice the majority of increases will only result in slightly higher fees for users relative to their current value.
- 7.3. However, in recognition that some user groups with protected characteristics may be disproportionately affected by higher fees, and may find it difficult to afford them in light of increases to the cost of living, we decided to pass on a proportion of CPI by increasing fees by 10%<sup>17</sup> - this is significantly less than the 17.8% increase in CPI between March 2021 and March 2023.
- 7.4. Should a court user still encounter financial challenges when it comes to paying a fee, we are confident that they will be sufficiently protected by our Help with Fees (HwF) scheme, which facilitates full and partial fee remission for eligible users. A revised scheme was launched in late 2023 before the delivery of fee increases, making the system more generous and better supporting the Lord Chancellor in upholding his duty to protect access to justice. Revisions to the scheme include new eligibility criteria and new thresholds which have been increased in line with 2019/20 data from the Living Costs and Food survey.<sup>18</sup> Specifically, the individual threshold has increased by £250 (21%), the couple premium by £535 (306%), the child premium (aged 14+) by £445 (168%) and the child premium (aged 0-13) by £160 (60%).

<sup>16</sup> The Migration Observatory data available at: [Migrants in the UK: An Overview - Migration Observatory - The Migration Observatory \(ox.ac.uk\)](https://www.migrationobservatory.ox.ac.uk/).

<sup>17</sup> As mentioned in footnote 2, the fees included will be increased by 10% on average. However, fee increases have been rounded to the nearest pound, so some of the new fee values equate to less than 10% and some are above 10% (but no more than 12.5%).

<sup>18</sup> Data available at: [Family spending in the UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/).

- 7.5. Furthermore, in exceptional cases where the applicant does not qualify for HwF and they are not able to pay the fee because it would affect their day-to-day life, the Lord Chancellor's Exceptional Power to waive fees (LCEP) is available, exercised at the discretion of court and tribunal delivery managers, to further safeguard access to justice.
- 7.6. It should also be noted that there are several areas of HMCTS where a fee is charged below its underlying value, or not charged at all to account for equalities and vulnerabilities considerations – for example, fees are not payable for non-molestation orders. Increasing fees to reflect changes to the general level of prices and to improve overall HMCTS cost recovery levels will partly contribute towards the cross-subsidisation of related services where access to justice is of particular relevance, therefore minimising the overall equalities impact of the proposed fee changes.

## 8. Conclusion

- 8.1. Drawing on the findings from the data sources described above, this section will summarise our overall equalities assessment of the fee increases based on the three aims of Public Sector Equality Duty, as established by the Equality Act 2010.
- 8.2. **Direct discrimination:** We assess that the increases to fees will not be directly discriminatory within the meaning of the Act. This is because all the 172 fees included will continue to apply in the same way to all courts and tribunal users who are liable to pay. The fee increases are not considered to result in people being treated less favourably because of their protected characteristics, as higher fees will be payable by all users who make an application under the fees included, unless they are eligible for a fee remission.
- 8.3. **Indirect discrimination:** When taking both a general and jurisdiction-specific view of court and tribunal users who might be liable to pay a fee, our analysis indicated that there is some over-representation of individuals with certain protected characteristics. Given that individuals who are more likely to experience a legal problem tend to be those who are younger, from ethnic minority groups, living with a disability and/or who are not married or in a civil partnership, we can also assume that at least some of the same groups may be affected by higher court fees, as a proportion of these individuals may come to court to resolve the legal problem in question.
- 8.4. However, we are also aware of the limitations of the analysed data, most of which do not provide specific insight into the characteristics of those who are liable to pay a fee. It is therefore difficult to draw a concrete conclusion as to whether those with certain protected characteristics who are more likely to make use of a particular HMCTS service are also just as likely to be affected by higher fees. This is because some applicants may be eligible for a fee remission through the Help with Fees scheme, may have their fee covered by a family member or friend, or in some civil cases may have made an application under 'no win no fee' terms. In other cases, such as the Court of Protection, those who experience a legal problem or require a court service for their own benefit are not necessarily those who make an application and therefore pay a fee. In fact, some of the data reviewed indicates that a minority of individuals ultimately pay a court fee themselves, although it is difficult to say whether these statistics are an accurate representation of fee-paying across all HMCTS users. The data analysed also does not reveal whether certain user cohorts



with particular protected characteristics are under-represented for certain applications.

- 8.5. However, based on the analysis of the data above and mitigations described in section 7, we consider it unlikely that the proposals for fee increases will result in a particular disadvantage for court users with a protected characteristic compared to those who do not share the protected characteristic. If the fee level increases were to result in any such disadvantage, we consider that this would constitute a proportionate means of achieving our legitimate aim, which in turn will ensure access to justice is protected for all, in particular vulnerable individuals and those who may find it difficult to pay a fee, and support our wider equalities duties when setting fees.
- 8.6. ***Discrimination arising from disability and duty to make reasonable adjustments:*** As Table 1 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. This gives rise to the likelihood that individuals with limiting illness or disability are more likely to require assistance through the courts or tribunals and may therefore be eligible to pay a court fee – though we cannot definitively know this due to a lack of data. However, as described in section 7, we are confident that the newly revised Help with Fees remission scheme and approach to only implement partial CPI-based increases will sufficiently support those individuals who may struggle to pay a court fee.
- 8.7. ***Harassment and victimisation:*** We do not consider there to be a risk of harassment or victimisation in implementing fee increases.
- 8.8. ***Advancing equality of opportunity:*** The Act explains that this involves:
- Removing or minimising disadvantages suffered by people due to their protected characteristics.
  - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
  - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 8.9. Although the increases in question are not directly relevant to advancing equality of opportunity, this PSED aim is supported by a revised, more generous Help with Fees remission scheme. The scheme will advance equality of opportunity for people with protected characteristics who cannot afford to pay fees, and you can read about it in more detail here: [Revising the 'Help with Fees' remission scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/help-with-fees-remission-scheme).
- 8.10. ***Fostering good relations:*** We do not consider that the fee increases are relevant to this obligation.
- 8.11. Overall, whilst we recognise that increasing the 172 fees identified is more likely to impact some individuals with particular protected characteristics, we do not assess any over-representation of certain user cohorts to directly correlate with an inability to afford the increased fees. The impact on those with protected characteristics is minimised by the relatively small increase in value across most of these fees, as well

as the support provided by the recently revised Help with Fees scheme for those who cannot afford to pay a fee.

## **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.