

By Catherine Fairbairn

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Probate fees 2021



Summary

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Summary

Grants of probate

Personal representatives – known as ‘executors’ where they are appointed by a will, or ‘administrators’ otherwise – are responsible for dealing with the estate of a deceased person. Their authority to receive the assets in the estate is proved by a grant of representation. It is not always necessary to apply for a grant of representation; much depends on the size of the estate and the type of assets it comprises.

A grant of probate is one type of grant of representation, but the expression ‘grant of probate’ is sometimes used as a generic term for all types of grant. In this briefing paper, ‘probate’ includes other forms of grants of representation, unless otherwise stated.

Current fees

At present, probate applications are charged a fee of £155 if made by a professional probate practitioner, and £215 if made by an individual in a personal capacity. These fees apply to estates worth £5,000 or more. The fees were last amended in 2014 when, [the Government said](#), it was still the case that the higher fee for non-professional applicants reflected some of the additional administrative work that was required from the Probate Service to process them.

In December 2016, the then Justice Minister, Sir Oliver Heald, confirmed that, at that time, applications for a grant of probate were set at cost recovery levels. However, in July 2021, the [Government stated](#) that it currently costs HM Courts and Tribunals Service (HMCTS) more to process probate applications than the fees it receives.

Previous proposals to reform probate fees

In 2016, the Government consulted on proposals to introduce a fee structure for applications for grants of probate based on the value of the estate. Using a statutory power to charge enhanced fees, the Government proposed fees set above cost recovery levels, with the intention of using the additional fee income to subsidise other court costs. The Government proposed seven fee bands, with the fee increasing in line with the value of the estate. At that time, fees were to start at £300 for estates worth between £50,000 and £300,000, rising to a maximum fee of £20,000 for estates worth more than £2 million.

The Government’s proposals attracted widespread comment and criticism. Opponents considered that, among other things, the new fees were excessive

and would effectively amount to a form of taxation. The Government subsequently reduced the proposed fees for each band (to fees ranging from £250 for estates worth between £50,000 and £300,000, to £6,000 for estates worth more than £2 million), but opposition to the proposals continued.

In October 2019, the Lord Chancellor, Robert Buckland, confirmed that the Government no longer intended to proceed with these proposals.

More detailed information about the Government's previous proposals is provided in another Library briefing paper, [Probate fees](#) (07929).

New consultation on probate fees

On 8 July 2021, the Ministry of Justice launched a new consultation, [Aligning the Fees for Grants of Probate to Cost Recovery](#). The consultation will close on 23 September 2021.

This consultation proposes to align the fees for professional and non-professional applicants for probate into a single fee of £273 – an increase of £118 for professional applicants and £58 for non-professional applicants. The [stated objectives](#) of the proposal are:

- to bring the fee structure into alignment with Managing Public Money principles, where the same fee should be charged for all users of the same service. There is an unjustified discrepancy between different categories of user, as the costs of processing applications from the two user groups is now broadly equivalent;
- to set the fee at a level that recovers the cost of providing the service, which would better align with the standard approach to charging fees under Managing Public Money principles ...;
- and to protect access to justice by ensuring that courts and tribunals are adequately resourced in accordance with the Lord Chancellor's statutory and constitutional duty, while also reducing the overall taxpayer subsidy to HMCTS.

The [Government has said](#) the proposed fee reflects the full cost to HMCTS of providing the service and would not generate a profit for the Government.

The [Ministerial Foreword](#) points out that this is “a far more modest increase than previous proposals and directly tied to the cost of providing the service” and that the proposal is “markedly different to the Government's previous proposals to raise income from probate fees”.

Subject to the outcome of the consultation, the Government proposes to introduce the new fee structure in early 2022.

1 Background

1.1 What is a grant of probate?

Personal representatives – ‘executors’ where they are appointed by a will, or ‘administrators’ otherwise – are responsible for dealing with the estate of a deceased person. Their authority to receive the assets in the estate is proved by a grant of representation.

The Probate Registry (Family Division), part of HM Courts and Tribunals Service (HMCTS), administers the system of probate in England and Wales, and issues grants of representation.

There are three types of grant of representation:

- Probate: granted to the executors named in the deceased person’s will;
- Letters of Administration (with Will): issued when no executor is named in the will, or when the named executors are unable or unwilling to apply for the grant; and
- Letters of Administration: granted when the deceased did not leave a valid will.

A grant of probate, therefore, is one type of grant of representation but the expression ‘grant of probate’ is sometimes used as a generic term for all types of grant. In this briefing paper, the expression ‘grant of probate’ includes other forms of grants of representation, unless otherwise stated.

1.2 Is a grant of probate necessary in all cases?

It is not always necessary to apply for a grant of representation. In 2016, the Government stated that, in England and Wales, only around 50% of deaths lead to an application for a grant of probate.¹ Much depends on the size of the estate and the type of assets it comprises. Gov.UK provides further information:

You may not need probate if the person who died:

¹ Ministry of Justice, [Court Fees Consultation on proposals to reform fees for grants of probate](#), Cm 9195, February 2016, paragraph 10

- had jointly owned land, property, shares or money - these will automatically pass to the surviving owners
- only had savings or premium bonds

Contact each asset holder (for example a bank or mortgage company) to find out if you'll need probate to get access to their assets. Every organisation has its own rules.²

1.3 Current fees

At present, probate applications are charged a fee of £155 if made by a professional probate practitioner, and £215 if made by an individual.³ These fees apply to estates worth £5,000 or more.⁴ The fees were last amended in 2014.⁵ The Government has explained why there are two separate fees:

When these fees were last updated, it was still the case that the higher fee for non-professional applicants reflected some of the additional administrative work that was required from the Probate Service to process them.⁶

In December 2016, the then Justice Minister, Sir Oliver Heald, confirmed that, at that time, “applications for a grant of probate are ... currently set at cost recovery levels”.⁷ However, in July 2021, the Government stated that it currently costs HMCTS more to process probate applications than the fees it receives.⁸

An average of 270,000 applications attract a fee for a grant of probate each year, around 40% of which are made by individuals, and around 60% by professional probate practitioners.⁹

² Gov.UK, [Applying for probate. Overview](#) [accessed 29 July 2021]

³ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, paragraph 9

⁴ The Non-Contentious Probate Fees Order 2004 (as amended)

⁵ [The Non-Contentious Probate Fees \(Amendment\) Order 2014](#) (SI 2014/876 amending the Non-Contentious Probate Fees Order 2004)

⁶ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, paragraph 9

⁷ [PQ 53318 \[on Courts: Fees and Charges\], 12 December 2016](#)

⁸ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, Ministerial Foreword, p2

⁹ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, paragraph 5, which footnotes as its source, “Family Court Statistics Quarterly: October to December 2020 – GOV.UK (www.gov.uk) (<https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2020>)

Fees must be paid by the executors in advance, but they can recover them from the estate once probate is granted.¹⁰ The Government has commented on how the executors might finance the fees:

The executor has responsibilities that may include making payments for probate fees, funeral expenses, and inheritance tax. Executors are fully reimbursed for their reasonable costs from the estate, meaning they are not left personally out of pocket. Whether or not the costs incurred are reasonable is decided as a matter of law. In this respect, fees for grants of probate are different to other civil and family fees charged by HMCTS as the fee is guaranteed to be recovered from the estate.

The affordability of fees should therefore not pose a challenge to executors when administering the estate. Executors may initially face a short-term cash-flow problem with regards to paying the fee, however there are facilities available which would mitigate this. In particular, many banks and building societies will allow the executor to access funds in the accounts of the deceased for the purpose of paying funeral costs, inheritance tax, and probate fees, as well as potentially offering a bridging loan secured against the assets within the estate.¹¹

1.4 Previous proposals to reform probate fees

In 2016, the Government [consulted](#) on proposals to:

- introduce a fee structure for applications for grants of probate based on the value of the estate;
- remove applications from the [general fee remissions \('help with fees'\) scheme](#); ¹² and
- increase the threshold below which no fee would be payable for applications for grants of probate.¹³

Using a statutory power to charge enhanced fees,¹⁴ the Government proposed fees set above cost recovery levels, with the intention of using the additional

¹⁰ [Joint Committee on Statutory Instruments Twenty-sixth Report of Session 2016–17, HL 152 HC 93-xxvi, 31 March 2017](#), paragraph 1.1

¹¹ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, paragraphs 6 and 7

¹² HM Courts and Tribunals Service operates this scheme for civil, family and tribunal proceedings. The scheme is intended to ensure that those of limited financial means are not prevented from bringing proceedings in court because they cannot afford to pay the fee. For those who qualify for help under the scheme, the fee may be reduced or waived in full. Information is provided at Gov.UK, [Get help paying court and tribunal fees](#) [accessed 29 July 2021]

¹³ Ministry of Justice, [Court Fees Consultation on proposals to reform fees for grants of probate](#), Cm 9195, February 2016

¹⁴ [Section 180 of the Anti-social Behaviour Crime and Policing Act 2014](#)

fee income to subsidise other court costs. The Government proposed seven fee bands, with the fee increasing in line with the value of the estate. At that time, fees were to start at £300 for estates worth between £50,000 and £300,000, rising to a maximum fee of £20,000 for estates worth more than £2 million.

The Government's proposals attracted widespread comment and criticism. Opponents considered that, among other things, the new fees were excessive and would effectively amount to a form of taxation. Although the Government subsequently reduced the proposed fees for each band (to fees ranging from £250 for estates worth between £50,000 and £300,000, to £6,000 for estates worth more than £2 million),¹⁵ opposition to the proposals continued.

The [statutory instrument](#) intended to implement the Government's revised proposals needed the formal approval of both Houses of Parliament to become law.¹⁶ Most of the Parliamentary stages required to achieve approval were completed by February 2019. However, no date was ever fixed for the House of Commons motion to approve the draft instrument. This motion fell when Parliament was prorogued on 8 October 2019.

More detailed information about the Government's previous proposals is provided in another Library briefing paper, [Probate fees](#).¹⁷

In October 2019, the Lord Chancellor, Robert Buckland, confirmed that **the Government no longer intended to proceed with these proposals**.¹⁸ He said that the decision had been made "as a result of a lot of reflection about the function of the system and what we should be doing":

Clearly, we have a duty to the taxpayer to make sure the system funds itself. Therefore, we will work closely with the Treasury to make sure that any revisions to the current fee structure reflect that, so that we do our duty as a Government Department to make sure that we provide value to the taxpayer and the general public.¹⁹

The Lord Chancellor said that he did not want to amend the system in a way which might be seen as a tax on the bereaved. He agreed that "a 28 times increase was too far":

It was too far for me. Clearly, the Department had to make some difficult decisions with regard to revenue. We have talked about the pressures we were under. Having reflected carefully on the matter, we feel now that we are in a position to make this announcement and

¹⁵ [HCWS1066 \[Justice Update\], 5 November 2018, Draft Non-Contentious Probate \(Fees\) Order 2018](#)

¹⁶ [Draft Non-Contentious Probate \(Fees\) Order 2018](#)

¹⁷ Number 07929, 23 October 2019

¹⁸ Justice Committee, [Oral evidence: The work of the Lord Chancellor](#), HC 41, 16 October 2019

¹⁹ Justice Committee, [Oral evidence: The work of the Lord Chancellor](#), HC 41, 16 October 2019, Q112

revisit the issue as soon as possible, but on the principle of sustainability rather than taxing bereaved people.²⁰

²⁰ Ibid, Q116

2 New consultation on probate fees

On 8 July 2021, the Ministry of Justice launched a new consultation, [Aligning the Fees for Grants of Probate to Cost Recovery](#) (“the consultation paper”). The consultation will close on 23 September 2021. The Government has also published an [impact assessment](#).²¹

2.1 The Government’s new proposals

This consultation proposes to align the fees for professional and non-professional applicants for probate into a single fee of £273 – an increase of £118 for professional applicants and £58 for non-professional applicants. The Government has said the proposed fee reflects the full cost to HMCTS of processing probate applications and would not generate a profit for the Government.²²

The Ministerial Foreword points out that this is “a far more modest increase than previous proposals and directly tied to the cost of providing the service” and that the proposal is “markedly different to the Government’s previous proposals to raise income from probate fees”.²³

Subject to the outcome of the consultation, the Government proposes to introduce the new fee structure in early 2022.²⁴ The Government estimates that, in a typical year, the new fees would raise an additional £23-25million for the HMCTS.²⁵

These changes would be given effect by amending the [Non-Contentious Probate Fees Order 2004](#), which sets out the fees payable for probate applications in England and Wales. [Section 92 of the Courts Act 2003](#) grants the Lord Chancellor power to set court and tribunal fees, including fees for the Probate Service.²⁶

²¹ [JA No: MoJ005/2021, 28 June 2021](#)

²² Gov.UK, [Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021 [accessed 29 July 2021]

²³ Ibid

²⁴ Ibid, paragraph 13

²⁵ Ibid, Ministerial Foreword, p2

²⁶ Ministry of Justice, [Proposal for reform Aligning the Fees for Grants of Probate to Cost Recovery](#), 8 July 2021, paragraph 14

2.2

The consultation paper

The consultation paper notes the purpose of court fees and the Lord Chancellor’s duties in this regard:

The Lord Chancellor has a statutory and constitutional duty to protect access to justice, and to ensure that the courts and tribunals can operate effectively and efficiently. Court fees are an important element of running an effective and efficient courts and tribunals system. A simple and rational fee structure offers the best way to have a properly funded and efficient justice system that protects access to justice in the long term.²⁷

The paper refers to chapter 6 of the [HM Treasury Handbook, Managing Public Money](#) which outlines the general policy principles on the setting of fees by public sector organisations:

It states that the standard approach is to set charges and fees to recover full costs. This is intended to make sure that the Government “neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise”. It states that different charges can apply to different categories of service if there are “structural differences, where it costs more to supply some users”, but says that “different groups of customers should not be charged different amounts for a service costing the same.”²⁸

In its most recent cost recovery exercise, the Ministry of Justice found that the cost of providing the probate service had increased and the divergence in cost between processing professional and non-professional applicants had “substantially diminished”:

In 2018/19, the unit cost (which also takes into account inflation since 2014) of processing probate applications was £260 for a legal professional and £265 for a personal application, in comparison to fees of £155 and £215 respectively. In effect, this amounted to a public subsidy by the taxpayer. The average unit cost was assessed as £262 (£273 when inflated to 2021/22 prices).²⁹

The stated objectives of the proposal to establish a single consolidated fee of £273 for all users are:

a) to bring the fee structure into alignment with Managing Public Money principles, where the same fee should be charged for all users of the same service. There is an unjustified discrepancy between

²⁷ Ibid, paragraph 8

²⁸ Ibid, paragraph 10

²⁹ Ibid, paragraph 11

different categories of user, as the costs of processing applications from the two user groups is now broadly equivalent;

b) to set the fee at a level that recovers the cost of providing the service, which would better align with the standard approach to charging fees under Managing Public Money principles ...;

c) and to protect access to justice by ensuring that courts and tribunals are adequately resourced in accordance with the Lord Chancellor's statutory and constitutional duty, while also reducing the overall taxpayer subsidy to HMCTS.³⁰

The Government considers it appropriate to raise the fee, noting the availability of the Help with Fees scheme, where relevant:

As the probate fee is ultimately recovered from the estate, we believe it is appropriate and fair to alleviate the burden placed upon the taxpayer in the form of subsidising the processing of probate applications. ... Probate applications for estates below £5,000 would continue to be exempt from paying a fee and applicants would still have the opportunity to apply for a remission through the Help with Fees scheme when eligible. For applicants who are ineligible but still believe a fee remission would be warranted, they have the opportunity to request the use of the Lord Chancellor's exceptional power to waive fees.³¹

2.3 Early reaction to proposals

The Law Society said that it would be responding to the consultation in full in due course, based on discussions with its members, but meanwhile issued a press release in which it said that “plans to hike fees for probate applications are unwelcome particularly when grieving relatives are suffering because the service is still subject to significant delays”:

Law Society press release, “[Proposed rise in probate fees unjustifiable as users face long delays](#)”, 9 July 2021.

Further information is provided at: Jemma Slings, “[‘Unjustifiable’: Law Society denounces probate fee hike](#)”, Law Society Gazette, 9 July 2021.

Emily Deane TEP, STEP Technical Counsel has been quoted as saying,

‘We are delighted that the government has responded to stakeholder feedback and scrapped the proposals to introduce a new pro rata fee system, which would have been grossly unfair and

³⁰ Ibid, paragraph 12

³¹ Ibid, paragraph 13

disproportionate. The new proposals for an increased flat fee for both public and professional applicants is a far simpler and more rational approach to accrue the additional funding required by the court service.’³²

³² STEP Industry News, “[Government proposes to align probate fees in England and Wales for all](#)”, 8 July 2021 [accessed 29 July 2021]. STEP is “a global professional body, comprising lawyers, accountants, financial advisors and other practitioners that help families plan for their futures”: [About STEP For the Public](#)

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