



Ministry
of Justice

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PROBATE FEES

Thank you for your letter of 13 December, and to my colleague, Lord Keen, regarding the proposed changes to probate fees.

With regards to the concerns that the SLSC and JCSI raised in their reports on the *vires* of these proposed changes, I would like to reiterate that the enabling power in section 92 of the Courts Act 2003, read with section 180 of the Anti-social Behaviour, Crime and Policing Act 2014 gives clear statutory authority to prescribe these enhanced fees.

Section 180(1) of the 2014 Act provides that the Lord Chancellor may, with the consent of the Treasury, 'prescribe a fee of an amount which is intended to exceed the cost of anything in respect of which the fee is charged'. In doing so, the Lord Chancellor must have regard to 'the financial position of courts and tribunals for which the Lord Chancellor is responsible, including, in particular, any costs incurred by those courts and tribunals that are not being met by current fee income' (s.180(3)(a)).

The additional income raised by enhanced fees reduces the taxpayer subsidy required to fund HMCTS and enables us to cross-subsidise other parts of the courts and tribunals system. For example, we charge no or low fees in parts of family justice, including in domestic violence and non-molestation orders, and for cases before the First-tier Tribunal concerning mental health. The best way to protect access to justice in the long term is to have a properly funded justice system and these fees will be used for just that (as per s.180(6), 2014 Act). The income raised from these changes will continue to fund and recover costs of the Probate Service, who offer an important service to those who are bereaved, and the additional income will be ring-fenced to fund the wider court and tribunals service.

We do not accept that the concept of a "fee" is subject to inherent limitations about the relationship to the service for which it is charged. The specific legislative provision in s.180 of the 2014 Act breaks the link between the cost of the service and the fee that may be charged and this was clearly the intention of Parliament in making such a provision.

With regards to your suggestions that these changes may be described as a tax, I would reiterate that this is a progressively banded fee scheme which we feel is fair and proportionate. This includes raising the fee threshold from £5,000 to £50,000 and lifting an additional 25,000 estates out of fees altogether each year. No estate will pay a fee greater than 0.5% of its value.

This is an application fee for a specific service – to obtain a grant of representation to deal with a person's estate, which is distinct from general taxation which is paid into a consolidated fund held by HM Treasury. Charging fees is justified as a way of funding our courts system to provide access to justice.

Finally, I can assure you that the views of professional advisors and peers have not been ignored. Many respondents in the original consultation agreed with the principle of charging a fee based on the value of the estate but some did not believe that the fees were set at appropriate levels. The Government has listened to concerns raised under the previous proposal and reduced the fee in each of the bands. In particular, the top fee has been reduced significantly from £20,000 to £6,000 for estates valued over £2m.

The Non-Contentious Probate Fees (Order) 2018 was debated in the House of Lords on 18 December 2018, and you may read the transcript here: [https://hansard.parliament.uk/Lords/2018-12-18/debates/F73EBD4D-BA94-45C3-8CC7-EECDDF20C6A7/Non-ContentiousProbate\(Fees\)Order2018](https://hansard.parliament.uk/Lords/2018-12-18/debates/F73EBD4D-BA94-45C3-8CC7-EECDDF20C6A7/Non-ContentiousProbate(Fees)Order2018)

I hope this letter provides some reassurance and clarity in addressing your concerns.

Yours sincerely



LUCY FRAZER MP