

## Surrey Law Society Response to the Consultation on: Aligning the fees for grants of probate to cost recovery (September 2021)

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### **Introduction**

The Surrey Law Society is a membership organisation of around 1,000 local solicitors, ranging from sole practitioners to large corporate firms. The Society was incorporated in 2001, following the coming together of 3 existing law societies in Surrey. The Society puts on a comprehensive, hybrid programme of training for members, including webinars, online forums and in-person training sessions. It runs a range of social events to encourage networking and peer support in the county and in 2018 introduced the SLS Legal Awards programme to its event calendar. The Society provides guidance and support to members in a variety of formats, including through its e-Bulletins and Surrey Lawyer magazine, as well as representing members on issues of interest, including engagement in consultations that affect the profession.

We welcome the opportunity to respond to this. The probate process takes place at a stressful and difficult time for family members and friends of the deceased. It is important that this process is as uncomplicated as possible to avoid adding additional administrative and financial burden.

### **Executive summary**

1. We are supportive of the overall aim to simplify and improve processes and online journey for users of the probate service.
2. We understand that funds are needed to invest in further improvements and development.
3. Fees charged by the probate service should be reflective of the cost the probate service and account for funds for future improvements.
4. However, we note that court closures, the digitisation strategy and increased fees across various court jurisdictions have already produced savings and income for the court systems.
5. Our members continue to experience technical issues using the online system, stops in the application process which can result in their clients waiting several more weeks for a simple grant of probate, difficulties contacting staff at the centralised registries, and where they are able to get through the busy phone lines, ongoing difficulties in explaining to call handlers where stops have been incorrectly applied to their application.
6. We believe that HMCTS should address service issues and make the required improvements before introducing the new fee if possible.

## **Response**

22. *The HM Treasury handbook on Managing Public Money specifies that the standard approach to charging fees is that the same charge should apply to all users of a defined category of service. While charging different cohorts different fees is permissible when there are structural differences that lead to different costs, the evidence presented in the proposal demonstrate that there is no longer a structural difference between the cost of providing grants of probate to professional applicants and personal ones. Our proposal is therefore to remove this discrepancy in legislation and charge the same fee for an application for all users.*

### **Question 1: Do you agree that the fee payable for a grant of representation should be the same for all users, regardless of whether the application is from a professional probate practitioner or a personal applicant?**

7. The fee charged for probate applications should reflect the amount of work undertaken to process the application.
8. Probate professionals are required to submit applications through the online platform, which may reduce the administration process for HMCTS compared to applications submitted on paper. If so, we recommend retaining the discount for applications submitted by professionals to reflect the difference in processing times. If there are no cost benefits to HMCTS for applications completed and submitted by professionals, then it stands to reason that the fee for these applications should not attract a discount.
9. Some of our members were concerned a flat fee could mean reduced numbers of applications from professionals.
10. Low value estates (under £5,000) currently do not pay the application fee this should remain unchanged.

23. *Managing Public Money also states that fees should be set so as to recover the cost of the service. This is not currently the case in probate. We estimate that a single fee of £273 is required to fund the cost of the service.*

### **Question 2: Do you agree with the proposal to raise the fee payable for probate applications to recover the cost of providing the service? Please give reasons for your answer.**

24. *Please refer to our accompanying Impact Assessment and the Equality Statement.*

11. Yes.
12. We would welcome a commitment from government that the revenue raised will be used to fund improvements to the probate service and not other court jurisdictions.
13. We recommend against increasing fees for probate applications while the service continues to experience such significant delays.
14. We recommend a review of the fees in say 3 years to time to assess whether the fees payable reflect the trust costs of processing application.
15. We recommend that current service issues and delays are addressed before a fee increase is introduced.

**Question 3: Do you consider whether the proposal will have a disproportionate impact on individuals with protected characteristics? Are there any potential modifications that we should consider to mitigate this impact?**

16. There should be no discrepancy in fees between paper and online applications as such a measure may represent a barrier people who may be unable to use the online system.

Prepared on behalf of the Surrey Law Society  
By Kieran Bowe