

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT NON-CONTENTIOUS PROBATE FEES
ORDER 2017

Wednesday 19 April 2017

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The Committee consisted of the following Members:

Chair: SIR ALAN MEALE

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)
 † Bingham, Andrew (*High Peak*) (Con)
 Doughty, Stephen (*Cardiff South and Penarth*) (Lab/
 Co-op)
 † Duddridge, James (*Rochford and Southend East*)
 (Con)
 † Heald, Sir Oliver (*Minister for Courts and Justice*)
 † Jenrick, Robert (*Newark*) (Con)
 Lewis, Mr Ivan (*Bury South*) (Lab)
 † Mak, Mr Alan (*Havant*) (Con)
 † Opperman, Guy (*Lord Commissioner of Her
 Majesty's Treasury*)

† Pickles, Sir Eric (*Brentwood and Ongar*) (Con)
 † Qureshi, Yasmin (*Bolton South East*) (Lab)
 Reeves, Rachel (*Leeds West*) (Lab)
 † Selous, Andrew (*South West Bedfordshire*) (Con)
 † Smith, Nick (*Blaenau Gwent*) (Lab)
 † Tomlinson, Michael (*Mid Dorset and North Poole*)
 (Con)
 † Villiers, Mrs Theresa (*Chipping Barnet*) (Con)

Gail Bartlett, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Wednesday 19 April 2017

[SIR ALAN MEALE *in the Chair*]

Draft Non-Contentious Probate Fees Order 2017

8.55 am

The Minister for Courts and Justice (Sir Oliver Heald): I beg to move,

That the Committee has considered the draft Non-Contentious Probate Fees Order 2017.

The purpose of the draft order is to implement a new, fairer, banded structure of fees for a grant of representation, commonly known as a grant of probate. These new fees come under the category of enhanced fees. As the Committee may be aware, in section 180 of the Anti-social Behaviour, Crime and Policing Act 2014, Parliament gave the Lord Chancellor the power to set certain—not all—court and tribunal fees at levels above what the service costs to provide. The income generated by those enhanced fees is ring-fenced, to provide an efficient and effective system of courts and tribunals.

The Government are investing close to £1 billion to reform the courts and tribunals and the criminal justice system, but such a system requires funding for the long term. In 2015-16, the running costs of Her Majesty's Courts and Tribunals Service were £1.9 billion. We recovered only £700 million of that in fees. That position is unsustainable, and it is right that we look to the users of the service to pay more where they can afford to do so. Parliament understood the importance and value of our world-leading justice system and the financial pressure that the Courts and Tribunals Service faces. That is why it passed the power in the 2014 Act. It is under that power that the Government have laid this draft order.

The draft order introduces a new banded structure for probate fees, where the fee payable is no longer a flat fee but instead related to the value of the estate. That is not a new concept. Between 1981 and 1999, probate fees were linked to the net value of the estate, but that scheme was replaced in 1999 by a flat fee for solicitors, with a supplement for personal applications. In their response to the Government consultation, the senior judiciary agreed that the 1999 move back to a flat fee was a regressive step.

Under the new structure, we are raising the threshold below which no fee is payable from £5,000 to £50,000. That change means that more than half of estates will pay nothing; we are lifting about an extra 25,000 estates every year out of fees altogether. For those estates that will have to pay a fee, estates under £300,000 will pay £300, which is a minor increase from the current £255 fee for personal applications. In total, more than 90% of estates will pay £1,000 or less.

I acknowledge that the most valuable estates will face higher fees, but those fees will only ever be a small proportion of the estate being inherited—a maximum of 1% of the total value. We believe it is fair to ask those who can afford to pay more to do so. These new fees will help to provide a stable financial footing for the Courts

and Tribunals Service, allowing the Government to continue to provide an efficient and effective service and to subsidise other parts of the courts system that do not recover their costs in fees, including domestic violence proceedings in the family courts and mental health tribunals. I therefore commend the draft order to the Committee.

8.58 am

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Sir Alan. I thank the Minister for his explanation. However, we wish to oppose this draft statutory instrument, and I will explain why.

The reforms being introduced are a form of taxation by the back door. At present there is a simple, clear flat-rate probate fee, but these measures will impose a significantly increased sliding scale on all properties worth more than £50,000. It is not acceptable to place the extra burden of high probate fees on bereaved families in their moment of grief.

Grants of probate currently cost a flat fee of £155 when applied for by a solicitor and £215 when done by an individual. Under the new system, however, the costs will rise enormously. They will rise to £300 for an estate worth £50,000, and up to the enormous amount of £20,000 at the higher end. An estate worth £50,000 is not a large one. The fact that this Conservative Government think it is a reasonable threshold at which to start charging inflated fees shows once again how out of touch they are.

James Duddridge (Rochford and Southend East) (Con): Will the hon. Lady give way?

Yasmin Qureshi: I will just finish what I am saying. Recently, Royal London said that a freedom of information request it made to the Ministry of Justice showed that the MOJ could not provide the cost of handling applications broken down by the size of an estate. The MOJ said that it did not have such information, “because there is no legal or business requirement” for that.

James Duddridge: Will the hon. Lady give way?

Yasmin Qureshi: That reveals the extent to which the MOJ is woefully unprepared to introduce this new stealth death tax. Once again, the Government are exposed as unfair, incompetent and dishonest.

James Duddridge: Will the hon. Lady give way? This is a debate.

The Chair: Order. May I inform the hon. Gentleman that it is protocol for the two Front Benchers to make their presentations first? It is possible to intervene, but it is very clear that the Opposition spokesperson is determined to go through the first part of her address. There will be plenty of time to speak later. The hon. Gentleman has caught my eye, so if he delays his attempt to converse I will call him as soon as I can.

Yasmin Qureshi: Thank you, Sir Alan. The policy shows that the Government are being unfair, incompetent and dishonest. The previous Prime Minister said that the Conservative Government would take the £1 million family home out of inheritance tax altogether. Now this

Government want to increase fees radically and hope no one will notice, which proves that their promises are not worth the paper they are written on.

James Duddridge: On a point of order, Sir Alan. Is the word “dishonest” parliamentary language?

The Chair: The hon. Gentleman has raised a valid point. I do not think that that terminology should be encouraged. However, I am sure that the hon. Lady will redefine her description in the course of her re-address to the Committee.

Yasmin Qureshi: Thank you, Sir Alan. As you have rightly said, the hon. Member for Rochford and Southend East will have plenty of time to contribute after I have spoken. The rule is that if I do not wish to take an intervention, I do not have to do so—*[Interruption.]* The Whip is speaking from a sedentary position.

James Duddridge *rose—*

Yasmin Qureshi: I am going to finish what I want to say. I think that everybody knows the context in which I used the word “dishonest”. It was clear and obvious.

James Duddridge: Withdraw.

The Chair: Order. I made a ruling earlier. The hon. Member for Bolton South East is currently trying to explain her use of the word and withdrawing it. I am giving her the opportunity to do that. Will members on both sides of the Committee please calm down? We are only eight minutes into the sitting. I would appreciate it if the Committee would give the Opposition spokeswoman the opportunity to explain herself and then we will move on.

Yasmin Qureshi: Thank you, Sir Alan. As I was trying to explain, I used the word—I will not repeat it—in a particular context. I am happy to use a different expression. If Conservative Members had given me a moment to finish what I had to say, they would have heard me explain that.

The measure exposes the Government’s incompetence and it is unfair on the people. The previous Prime Minister promised that he would take the £1 million family home out of inheritance tax altogether, yet this Government want to increase fees radically and hope that no one will notice. Moreover, the Joint Committee on Statutory Instruments has singled out this SI, stating:

“The Lord Chancellor is not permitted to impose a tax... Therefore, despite the arguments put forward by the Ministry of Justice, the Committee has a real doubt as to whether the Lord Chancellor may use a power to prescribe non-contentious probate fees for the purpose of funding services”.

Furthermore, the majority of respondents to the Government’s consultation did not agree with the proposals. Despite that, the Government have seen fit to proceed. One wonders what the point of the exercise was if it is to be ignored. We believe that the majority of respondents were correct and that the proposals are indeed flawed.

The Government have said that the dramatic increases in fees are justified by the need to cover costs. However, given the scale of the increases, it is blatantly obvious that they are not about covering costs, but about raising revenue. As Royal London’s director of policy, Steve Webb, has said:

“The Government is treating bereaved families as if they were a ‘nice little earner’.”

We need probate fees that are clear and fair, and that do not treat grieving families as cash cows for the Government. That is why we oppose the measure.

9.5 am

James Duddridge: It is a great pleasure to speak in this debate, Sir Alan. The constituents of Bolton South East will have the opportunity to elect a better Member of Parliament who is less incoherent and more lucid. Had the hon. Lady had the good grace to take an intervention, I would have asked her how she reconciled her Opposition party’s policies on inheritance tax with the policy under discussion, which seems very sensible. I regret that she did not take that intervention. Although she did not have to take it, I think her electorate will judge her on that basis.

9.6 am

Mrs Theresa Villiers (Chipping Barnet) (Con): May I first give my profound apologies, Sir Alan, for arriving late and missing the first 30 seconds or so of the Minister’s speech?

I must say something about the concerns that my constituents have raised with me about these changes. The Minister made a coherent case and I recognise that there is a degree of fairness in asking people to contribute to the cost of the legal system they are using, but some of my constituents are anxious and concerned about the additional bill they will face on bereavement.

I suspect that the matter has been raised with me because I am an MP for a London constituency and London is where the higher fees are likely to have the most significant impact, because property prices in London have risen in recent years so more estates in Greater London are likely to be affected by the higher fees than those in other parts of the country. The reality is that people have worked hard and saved hard over many years to pay for their homes and there is concern about the imposition of a significant increase in fees suddenly and without a graduated approach. I would be grateful if the Minister will explain.

The Minister says that the measure reflects the cost to the legal system of carrying out probate, but that suggests that those with smaller estates should also pay some fee. Will he explain why, just because an estate is large, probate costs the legal system dramatically more money to process? If this is genuinely about meeting the costs incurred by taxpayers for running the legal system, I find it a little difficult to understand why there is such a dramatic difference between smaller and bigger estates. I hope he will say whether the Government have really reflected on how the measure will impact on people living in London and the south-east, including my Chipping Barnet constituency.

9.9 am

Andrew Selous (South West Bedfordshire) (Con): As a former Justice Minister, I am well aware of the constraints on the Ministry of Justice’s budget and the need to cover the cost of services. I know that my right hon. and learned Friend the Minister is very alert to all these issues, so can he say something about the availability of finance for bereaved families where there is not ready cash within the estate? I would be very grateful if he could reassure the Committee that banks and other

[Andrew Selous]

financial institutions are ready, willing and able to lend the money that will be necessary for the probate fees, so that distressed families do not have an additional concern about raising cash when the estate may not be particularly liquid.

9.10 am

Sir Oliver Heald: We have had a good debate and some interesting points have come out that I hope I can address. I acknowledge the point made by my right hon. Friend the Member for Chipping Barnet that the most valuable estates will face higher fees, but those fees will only ever be a small proportion of the estate being inherited. We are capping it at 1% of the total value. We believe that it is fair to ask those who can afford to pay to pay more. The new fees will help to provide a stable financial footing for the Courts and Tribunals Service generally, allowing the Government to continue to provide an efficient and effective service, and there is a cross-subsidy between areas such as this and other parts of the system that do not recover their costs in fees and would probably never be able to. That includes domestic violence proceedings in the family courts and mental health tribunals, and there are other obvious areas where that is the case. The power, which was debated in Parliament, allows for a fee to be charged that is higher for some areas than the costs, in order to provide an overall structure for the Courts and Tribunals Service that delivers a more substantial payment from the users of the system generally.

I was asked whether this is a tax on estates. The Office for National Statistics has not classified it as such as we speak, but the accounting classification that is given would not change the Government's view that this is a payment under a specific scheme for a service. Of course, within accounting circles there are other, similar service fees which the Government charge, some of which are classified as taxes and some of which are not. In practical terms, I do not believe that it makes any difference to what we are talking about, which is a fee for a service. It has been suggested that we are misusing the power in section 180 of the 2014 Act to impose a tax, but section 180, which was debated and passed by Parliament, gave the Lord Chancellor this very power; a clear power to charge above cost. There is nothing unexpected about this, it was consulted on, so I think it is wrong to suggest that this measure is in any way a misuse of the power; it is exactly what it was intended for.

The hon. Member for Bolton South East mentioned inheritance tax. Of course, the Government are delivering on our commitment to take the family home out of inheritance tax for all but the richest by raising the effective threshold for married couples and civil partners to £1 million. The amount of money that has already been released to families in that way is, of course, far more than we are talking about today. It is not unusual in a consultation for a fee change to be unpopular—another point made by the hon. Lady—but the purpose of a consultation is not simply to conduct an opinion poll on whether people in a particular category want to pay a particular fee. It is also to look at the structure of it, the way the policy is framed more generally, to look at whether it is right to have a progressive scheme, as this is, or to have a regressive scheme of the sort which the hon. Lady supports. It is always surprising to me when

a Labour Party spokesman speaks up for a regressive tax. Surely, one would expect the Labour Party to support progressive taxation or, in this case, a progressive fee, so this is a rather odd approach for it to take.

My hon. Friend the Member for South West Bedfordshire spoke about affordability. The fee will always be recoverable from the estate, so executors will not end up out of pocket personally. Executors have a number of options to fund the fee, so that no fee should be unaffordable. In most cases, we expect the banks to release enough cash from the estate to pay the probate fee. We know from Her Majesty's Revenue and Customs that the average estate is 25% in cash.

We have also been working with the British Bankers Association and the Building Societies Association, and their bereavement principles encourage members to allow necessary payments to be made where possible within the law. Where an executor is not successful initially in accessing funds from a bank or building society, the Probate Service will—as part of its service—write to the relevant institution to provide reassurance that the assets are needed for the fee.

Other avenues of funding are also available, including a loan scheme. If these options have been exhausted, the Probate Service itself can give limited access to specific assets in the estate for the purpose of paying the fee. If there were a case of hardship, which there should not be, given the nature of the fee, the Lord Chancellor has a general power to provide help. I hope that satisfies my hon. Friend on those points.

The hon. Member for Bolton South East raised some other issues. She may want to consider that if a couple jointly own a property as joint tenants in the normal way, and one of the parties dies, the property would pass to the remaining spouse or partner in the joint ownership. It would pass by operation of law and would not form part of the estate in terms of the value for the fee. It is worth bearing in mind that we are talking about situations other than that and not one where one party to ownership dies and the other party inherits by survivorship.

With those few points, I hope the Committee will support the order.

Question put.

The Committee divided: Ayes 10, Noes 2.

Division No. 1]

AYES

Bingham, Andrew	Opperman, Guy
Duddridge, James	Pickles, rh Sir Eric
Heald, rh Sir Oliver	Tomlinson, Michael
Jenrick, Robert	Villiers, rh Mrs Theresa
Mak, Mr Alan	

NOES

Qureshi, Yasmin	Smith, Nick
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Question accordingly agreed to.

Resolved,

That the Committee has considered the Draft Non-Contentious Probate Fees Order 2017.

9.18 am

Committee rose.