



Lord chancellor 'overstepping powers' with probate fee rise

By Max Walters | 5 April 2017

A parliamentary committee has dealt a blow to the government's plan to overhaul probate fees, saying the lord chancellor could be overstepping her power by introducing fees which bear the hallmark of a tax on estates.

In a [critical report published today](#), the joint committee on statutory instruments said there is 'doubt about' whether the proposals would be *intra vires* and said the proposals should have the special attention of both houses.

Earlier this year the Ministry of Justice, said it would press ahead with controversial plans to hike probate fees so that they are in line with the value of the estate. The changes will in some cases see fees hiked by as much as 129 times. The money generated, expected to be around £250 million per year, will be used to fund the courts and tribunals service.

However today's report says: '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 which executors do not seek to use.'

The committee, which has 12 members including five Conservatives, is appointed to consider statutory instruments made in exercise of powers granted by act of parliament.

According to the committee, the new probate charges appear to 'have the hallmarks of taxes rather than fees', and are disproportionate to the service provided by the probate registry.

The enabling powers that the MoJ is relying on fall within section 92 of the Courts Act 2003 and section 180 of the Anti-Social Behaviour, Crime and Policing Act 2014.

The 2014 act states that before setting a fee the lord chancellor must have regard to the financial position of the courts, including any costs incurred by the courts not being met by fee income and the competitiveness of the legal services market.

According to the committee, it asked the MoJ whether the lord chancellor would be acting beyond her powers by 'in substance, imposing a tax on estates rather than prescribing probate fees'.

The MoJ said the 2014 act demonstrated 'parliament's clear intention that the lord chancellor may set certain fees above cost recovery levels in one part of the court and tribunal system in order to help maintain the efficient and effective operation of the rest of the system'.

However, the committee said it was doubtful whether the act entrusts the lord chancellor with the power to impose charges of the 'magnitude proposed by the draft order'.

Rebecca Fisher, partner at London-based law firm Russell-Cooke, said the ball was now 'firmly back in the MoJ's court'.

'The committee were concerned that the lord chancellor was acting beyond the enabling powers because she would, to all intents and purposes, be imposing a tax rather than a prescribed probate fee,' she told the *Gazette*.

'This is because the fee is directly linked to the value of the estate rather than any work involved by the courts and the fee is being used to fund the court service as a whole. Any form of taxation requires the consent of parliament. Given the committee believe this is akin to taxation and the manner in which the lord chancellor seeks to use her powers is quite extraordinary, the ball is firmly back in the MoJ's court.'

The MoJ has been contacted for comment.

The controversial new fees are:

Value of estate	Proposed fee
Up to £50,000	£0
Between £50k-£300k	£300
Between £300k-£500k	£1,000
Between £500k-£1m	£4,000
Between £1m-£1.6m	£8,000
Between £1.6m-£2m	£12,000
More than £2m	£20,000

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