

Equality Statement

The Justices' Allowances (Amendment) Regulations 2023

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Arrangements for the Submission and Processing of Expenses Claims by Magistrates

Introduction

1. This Equality Statement documents the assessment undertaken by the Ministry of Justice of equality impacts arising from the information relating to, and the method by which, magistrates are required to claim expenses. This assessment has been undertaken to assist Ministers in fulfilling the Public Sector Equality Duty (PSED) in accordance with section 149 of the Equality Act 2010.

Background

2. Section 15 of the Courts Act 2003 allows magistrates to claim expenses for expenditure and loss of earnings or benefits incurred while carrying out their judicial duties. HM Courts & Tribunals Service (HMCTS) is responsible for reviewing and processing claims.
3. Since April 2020, a digital expenses system has enabled magistrates to submit expenses claims online, replacing a paper form-based claim system.
4. On 4 July 2023 a statutory instrument to amend the Justices' Allowances Regulations 2015 ("the Regulations") was laid before Parliament, coming into force on 25 July 2023. This instrument amends the Regulations by abolishing the requirement to submit an Annual Declaration and by ensuring, more broadly, that the Regulations reflect current operational practice, including by removing the requirement to submit paper expenses forms.
5. The new instrument specifies in some detail the particulars to be provided when making an expenses claim. Strictly speaking, it does not require claims to be submitted online. This requirement is set out separately in non-binding policy guidance.

Equality duties

6. Section 149 of the Equality Act 2010 ("the Act") requires public authorities, in the exercise of their functions, to have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
7. There are nine protected characteristics that fall within the Act: sex, race, disability, age, sexual orientation, religion and belief, gender reassignment, marriage & civil partnership, pregnancy & maternity. The characteristics of marriage and civil partnership are relevant only when considering the first limb of the duty in section 149(1)(a) of the Act.

Direct discrimination

8. Direct discrimination occurs when a person is treated less favourably than others on the basis of a protected characteristic. Our assessment is that the requirement for magistrates to submit expenses claims electronically is not directly discriminatory because it does not treat individuals less favourably because of their protected characteristics.

Indirect discrimination

9. Indirect discrimination occurs when a provision, criterion or practice is applied equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not.
10. There is potential for the requirement to submit expenses claims electronically to put older and disabled magistrates at a particular disadvantage by reference to the protected characteristics of age and disability. This is particularly the case since there is a lower level of internet usage among older people and those with disabilities than in the UK population at large.¹

Statistical background

11. Demographically, the age distribution of the magistracy is disproportionately older than the population as a whole. 44% of magistrates were aged 60 or over on 1 April 2022,² compared to an estimated 24% of the 2021 population of England and Wales.³
12. A disability is also more likely for older members of the population. In the Family Resources Survey 2020/21, 22% of adults in the UK reported having a disability as

¹ Where possible, the magistracy is compared with the populations of England and Wales alone, as the magistracy only operates in this jurisdiction. A comparison is made with the UK as a whole where this data is not available.

² [Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2022 Statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2022-statistics)

³ [Population and household estimates, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/peoplepopulationandcommunity/healthandlife/bulletins/populationandhouseholdestimates/2021)

defined in the Equality Act 2010.⁴ For adults at the State Pension age of 66 years old and above, the percentage who reported having a disability was 42%. Of those who reported a disability and were of state pension age, 63% reported a mobility related impairment type.⁵ Given the age distribution of the magistracy, it is therefore likely that a higher proportion of magistrates than the population at large will have a disability.

13. Disability and age have an impact on internet usage. ONS data from 2020 notes that while 92% of adults in the UK were recent internet users, this falls to 81% for adults with a disability. Additionally, 89% of older adults without a disability (aged between 65 and 74) reported using the internet recently, compared to 79% of adults with a disability in the same age group.⁶

Proposed mitigation

14. The policy guidance currently in place for magistrates on claiming expenses requires them to submit claims through the online expenses system unless there is an agreement in place for an alternative arrangement, either as a reasonable adjustment in relation to a disability or for reasons such as lack of access to or ease of use of IT equipment. The intention is to retain this approach.
15. Currently, 29 magistrates have reasonable adjustments in place allowing them to submit paper claims. As of 1 April 2022, there were 12,506 magistrates in England and Wales. Consequently, the proportion who claim expenses and require reasonable adjustments to do so is very small. Our assessment is therefore that the impact of requiring magistrates to submit expenses claims electronically in terms of indirect discrimination is likely to be minimal. This suggests that retaining an approach whereby alternative arrangements are agreed on a case-by-case basis will be sufficient to ensure that magistrates are not put at a particular disadvantage by reference to a protected characteristic.
16. In general, the Lord Chancellor's requirement to assess the reasonableness of adjustments requiring the alteration of buildings in the courts estate or the provision of equipment is carried out on his behalf by HMCTS.
17. Magistrates will be directed to contact the team responsible for administering expenses in order to request approval to submit claims in an alternative manner. This

⁴ This figure matches the percentage of adults in England who reported a disability; in Wales it was 28% ([Family Resources Survey: financial year 2020 to 2021 - GOV.UK \(www.gov.uk\)](#)).

Disability is defined at s.6 of the Equality Act 2010: "A person has a disability if a person has a physical or mental impairment, and if the impairment has a substantial long-term adverse effect on the person's ability to carry out normal day-to-day activities." (<https://www.legislation.gov.uk/ukpga/2010/15/section/6>)

⁵ [Family Resources Survey: financial year 2020 to 2021 - GOV.UK \(www.gov.uk\)](#)

⁶ [Internet users, UK - Office for National Statistics \(ons.gov.uk\)](#)

process, including contact details, will be included in communications to newly-appointed magistrates to ensure awareness.

Harassment and victimisation

18. Harassment under the Act includes unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
19. We do not consider there to be a risk of harassment or victimisation as a result of the requirement to submit claims digitally.

Advancing equality of opportunity

20. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity by meeting the needs of magistrates who share a particular characteristic, where those needs are different from the needs of those who do not share that particular characteristic.
21. The digital expenses system is available to all current and future judicial office holders, irrespective of their protected characteristics, as is the option of discussing an alternative arrangement with HMCTS. Our view is therefore that requiring the digital submission of expenses will not negatively affect equality of opportunity.

Fostering good relations

22. We have considered this objective and do not consider there to be scope within these proposals to foster good relations between those with protected characteristics and those without.