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| **Review of the introduction of fees in the Employment Tribunals**  |

Equality Statement

1. **Introduction**
	1. This Equality Statement considers the impact of the Government’s proposals to widen the scope of the Help with Fees scheme for proceedings in the Employment Tribunals (ETs) and the Employment Appeal Tribunal.
	2. The specific proposals are to increase the gross monthly income thresholds for a fee remission as set out in Table 1 below.

Table 1: Current and proposed gross monthly income thresholds for a fee remission

|  |  |  |
| --- | --- | --- |
| **Gross monthly income with:** | **Single** | **Couple** |
| Current | New | Current | New |
| No children | £1,085 | £1,250 | £1,245 | £1,410 |
| One Child | £1,330 | £1,495 | £1,330 | £1,655 |
| Two Children | £1,575 | £1,740 | £1,575 | £1,900 |
| £245 for each additional child |

1. **Policy objective:**
	1. The Government has undertaken a review of the introduction of fees in the ETs. The review has found that the original objectives for fees have been broadly met, and that while it was clear that fees had discouraged some people from bringing ET claims, there was no evidence that they had been prevented from bringing them.
	2. Nevertheless, the Government accepts that the fall in ET claims has been much greater than anticipated, including the fall in discrimination claims, and that there is some evidence that some people have not been able to resolve their disputes through Acas conciliation, but have decided not to pursue the matter through the ETs because they found the fees off-putting. For this reason, and having regard to the Public Sector Equality Duty (PSED), the Lord Chancellor has decided that some adjustment to the current fees and remissions scheme is justified to alleviate the impact fees have had.
	3. In our view, the most effective approach would be to widen access to the support provided under the Help with Fees scheme. Under this scheme, people who qualify under financial tests of disposable capital and gross monthly income may have the fee remitted in full or in part. We believe that adjusting the Help with Fees scheme is the fairest approach because it would benefit people on low incomes, but who do not qualify for a full remission under the current scheme, either because they would no longer be required to pay a fee, or they would pay less than under the current arrangements. These are the people we believe are most likely to find fees off-putting. These changes will apply to all jurisdictions to which Help with Fees currently applies, as we consider it reasonable to maintain a single remission scheme.
2. **Equality duties**
	1. Section 149 of the Equality Act 2010 (“the Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:
	* eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
	* advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
	* foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
	1. Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.
3. **Summary**
	1. Consideration has been given to the impact of the proposed increases to the fee remissions thresholds against the statutory obligations under the Act. These are outlined below.
	2. The first consideration is the impact of these proposals on the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010. We consider that these proposals would have a largely positive effect in this regard. The ETs are an important forum for the determination of discrimination and related claims under the 2010 Act, and we believe that these proposals are the most effective means of alleviating any undue discouragement that fees may have on those considering bringing these (and other) claims.
	3. We have nevertheless gone on to consider whether the proposals could themselves give rise to unlawful discrimination or other prohibited conduct under the 2010 Act.
	4. ***Direct discrimination***: Our assessment is that the proposed increases in the gross monthly income thresholds for a fee remission would not be directly discriminatory within the meaning of the Act as they would apply to all ET claimants and would not treat people more or less favourably because of their protected characteristic.
	5. ***Indirect discrimination****:*Our assessment, based on the information available, is that the people most likely to benefit from these proposals are people on relatively low incomes, but who nevertheless earn more than the current income threshold and therefore do not qualify for a full remission under the current scheme.
	6. The particular disadvantage that we think some people might arguably experience as a result of the consultation proposals is financial: those who would not be eligible for a fee remission under our proposals would have to pay more than those who would qualify.
	7. We have more data on the protected characteristics of ET users, and we have therefore based our assessment on an analysis of the protected characteristics of people granted fee remissions on the ETs. These data are set out at Table 2 below.
	8. Our analysis indicates that there is likely to be a differential impact in relation to some of the protected characteristics if they were implemented. In summary:
		* Gender: 26% of single claims issued by women received a fee remission compared with 23% for men. Men bringing ET claims might therefore be said to experience a comparative financial disadvantage from these proposals;
		* Age: those under 25 were more likely to receive a remission (43% of single complaints lodged by those under 25), and the grant of fee remissions broadly reduced as age increased. Older people bringing ET claims might therefore be said to be put at a comparative financial disadvantage from these proposals;
		* Race: people bringing claims who were from BAME backgrounds were more likely to be granted a fee remission (26%) compared with White people (22%). Within racial groups, those identifying themselves as Black/ African/ Caribbean/ Black British or from mixed or multiple ethnic groups were most likely to receive a remission (30%), whereas those identifying as Asian/ Asian British were least likely to receive a remission (19%). White people, and people from Asian or Asian British backgrounds might therefore be said to be put at a comparative financial disadvantage from these proposals
		* Disability: disabled people were more likely to receive a fee remission (26%) compared with people who were not disabled (23%). We do not therefore believe that these proposals would lead to a comparative financial disadvantage for disabled people.
	9. Our analysis also indicates that those identifying themselves as Muslim (30%) other religions (28%) and people with no religious belief (29%) were more likely to receive a fee remission than other groups; single people and those not in civil partnerships were more likely to receive a remission (33%) compared to those who were married or in a civil partnership (16%); and those identifying themselves as gay, lesbian, bisexual or other sexual identity (27%) were slightly more likely to receive a fee remission compared to those identifying as heterosexual/ straight (24%).
	10. Assuming for the purpose of this analysis that these impacts place the claimants sharing protected characteristics at a particular (financial) disadvantage, there could be the potential for indirect discrimination. Any such disadvantage would be relatively small, but we consider that any indirect discrimination would be justified by the objectives these proposals are seeking to achieve (see paragraph 4.14 below).
	11. There is a risk that our assessment, which is based on the protected characteristics of people who been granted a fee remission in the ETs, is not representative of the characteristics of people eligible for fee remissions more generally across HMCTS’s fee charging jurisdictions to which the Help with Fees scheme applies.
	12. We do not have data on the protected characteristics of people granted fee remissions in those jurisdictions. We have however compared the data on ET users with data published in the Household Income Survey: see Table 3. The results can be summarised as follows:
* **Sex**: Males and females appear equally eligible for either a full or partial fee remission. This is because eligibility is based on an assessment of household income. However, when members of the household have a contrary interest in the proceedings, they are assessed on their individual means. In these circumstances, the applicant with the lower income is more likely to qualify for a fee remission. Due to differences in gender earnings, this is more likely to be a female member;
* **Ethnic Group**: Those living in households headed by someone from a non-white ethnic group are much more likely to live in a household in the **bottom** quintile compared to those headed by someone from a white ethnic background;
* **Disability**: Adults with a disability are more nearly twice as likely as the average to live in a **household** in the bottom quintile compared to adults with no disability;
* **Age**: Individuals under 30 years of age, and especially those aged under 25, are more likely to live in low income households and so are more likely to qualify for a fee remission.
	1. This analysis therefore broadly confirms that people from Black and Minority Ethnic backgrounds, disabled people, younger people and to a more limited extent women are more likely to live in households in the lowest income households and therefore more likely to qualify for a fee remission. This broadly reflects the findings of the assessment of the protected characteristics of people eligible for fee remissions and therefore provides reassurance that the analysis based on fee emissions granted in the ETs provides a reasonable approximation of the protected characteristics of those eligible for Help with Fees in other fee charging jurisdictions.

***Justification***

* 1. Our analysis has assumed for these purposes that there is the potential for some indirect discrimination in relation to certain protected characteristics: i.e. for men, older people and people from Asian/Asian British backgrounds. To the extent that an increase in the gross monthly income thresholds for a fee remission would put individuals sharing a protected characteristic at a particular disadvantage, the Government believes this would be justified.
	2. The objective of these proposals is to alleviate the impact of the substantial and sustained fall in the volumes of ET claims, including discrimination claims, in light of the particular evidence that some people have found fees off-putting in this jurisdiction. We believe that the proposed approach of adjusting the remission scheme is likely to be the most effective and proportionate way of targeting these people. The proposals would benefit those with lower incomes but who nevertheless do not qualify for a full fee remission under the current scheme. If implemented, these proposals would lead to more people qualifying for a full fee remission, and others within the remission envelope contributing less that they would be required to pay under the current regime. We consider it reasonable to maintain a single ‘Help with Fees’ regime by applying these changes to all jurisdictions currently within the scope of the scheme.
	3. Overall, the Government believes that these proposals represent a proportionate means of achieving these legitimate aims.
	4. ***Discrimination arising from disability and duty to make reasonable adjustments***: the evidence indicates that disabled people are likely to benefit from these proposals because disabled people bring a higher proportion of ET claims compared with their representation in the workforce, but they are also more likely to be granted a fee remission. We do not consider that the proposals would treat disabled persons unfavourably because of something arising in consequence of their disability.
	5. ***Harassment and victimisation***: We do not consider there to be a risk of harassment or victimisation if these proposals were implemented.
	6. ***Advancing equality of opportunity***: We have considered how these proposals may impact on the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. We do not consider that these fees will have any detrimental impact on the advancement of equality of opportunity, and to the extent that the proposals would provide financial support to people who bring ET claims, and are designed to alleviate the impact that fees have had in discouraging people from bringing ET claims, and in particular from bringing claims alleging discrimination, we believe that these proposals would help to promote equality of opportunity.
	7. ***Fostering good relations***: ETs are the forum in which employment related rights, including rights in relation to discrimination, can be asserted and enforced, where the parties are unable to resolve them out of court. They therefore form part of the system for eliminating discrimination, advancing equality of opportunity and fostering good relations.
	8. We estimate that our proposals to widen the support available under the Help with Fees scheme would help more claimants to bring ET proceedings, including claims to enforce their rights in relation to anti-discrimination law. The data suggest that people from Black or Black British backgrounds, disabled people and to a more limited extent women, are more likely to qualify for help under the Help with Fees scheme and are therefore more likely to benefits from these proposals.
	9. To this extent, we believe that the proposals in this consultation would, if implemented, help to foster good relations between people with protected characteristics and those who do not share them.
1. **Mitigation**
	1. The Help with Fees scheme is means tested and provides financial support to those who qualify to bring ET claims. It therefore provides support to those who qualify and who would otherwise struggle to pay the fee.
	2. For those who do not qualify, the Lord Chancellor has a power to remit fees in exceptional circumstances where the claimant can demonstrate that they cannot realistically afford to pay a fee. On 10 October we published revised and updated guidance on the application of this power to make sure that those entitled to help under the scheme receive it. The guidance is available on [www.gov.uk](http://www.gov.uk).[[1]](#footnote-2)

Table 2: Breakdown of fee remissions granted in the Employment Tribunals by protected characteristic

|  |  |  |  |
| --- | --- | --- | --- |
| **Protected characteristic** | **Fee paid** | **Fee remitted** | **Data not available** |
|  | **%** | **%** | **%** |
| **Gender** |  |  |  |
| Male | 73 | 23 | 4 |
| Female | 69 | 26 | 4 |
|  |  |  |  |
| **Age** |  |  |  |
| 16 – 24 | 56 | 43 | 0 |
| 25 – 34 | 71 | 28 | 1 |
| 35 – 44 | 75 | 25 | 0 |
| 45 – 54 | 78 | 22 | 0 |
| 55 – 64 | 83 | 16 | 0 |
| 65 and over | 77 | 22 | 1 |
|  |  |  |  |
| **Race** |  |  |  |
| White | 78 | 22 | 0 |
| Asian/Asian British | 81 | 19 | 1 |
| Black/Black British | 69 | 30 | 0 |
| Mixed | 69 | 30 | 0 |
| Other | 74 | 25 | 0 |
|  |  |  |  |
| **Disability** |  |  |  |
| Disabled | 74 | 26 | 0 |
| Not disabled | 76 | 23 | 0 |
|  |  |  |  |
| **Religion** |  |  |  |
| Christian | 77 | 23 | 0 |
| Muslim | 70 | 30 | 0 |
| Hindu | 78 | 22 | 0 |
| Sikh | 86 | 12 | 2 |
| Other | 71 | 28 | 1 |
| No religion | 71 | 29 | 0 |
|  |  |  |  |
| **Marital status** |  |  |  |
| Married/in registered partnership | 84 | 16 | 0 |
| Single/not in registered partnership | 67 | 33 | 0 |
|  |  |  |  |
| **Sexual Orientation** |  |  |  |
| Heterosexual, straight | 75 | 24 | 0 |
| Gay, lesbian, bisexual or other sexual identity | 72 | 27 | 1 |
|  |  |  |  |
| **Gender reassignment[[2]](#footnote-3)** |  |  |  |

**Table 3: Distribution of Income by Protected Characteristics of Working Age Adults**

|  |  |  |
| --- | --- | --- |
| **% Individuals** | **Net equivalised disposable household income (after housing costs)** |  |
|   | **Bottom** | **Second** | **Middle** | **Fourth** | **Top** |  | **All** |
|   | **quintile** | **quintile** | **quintile** | **quintile** | **quintile** |  | **(millions)** |
|  |  |  |  |  |  |  |  |
| **Gender**  |  |  |  |  |  |  |  |
| Adult male | 19 | 16 | 19 | 22 | 24 |  | 19.2 |
| Adult female | 21 | 18 | 19 | 21 | 22 |  | 18.4 |
|   |  |  |  |  |  |  |  |
| **Ethnic Group** |  |  |  |  |  |  |  |
| White | 18 | 16 | 19 | 22 | 24 |  | 33.2 |
| Non-White | 32 | 21 | 17 | 15 | 15 |  | 4.4 |
|   |  |  |  |  |  |  |  |
| **Disability**  |  |  |  |  |  |  |  |
| Disabled  | 30 | 22 | 19 | 16 | 14 |  | 9.0 |
| Non-Disabled  | 17 | 15 | 19 | 23 | 26 |  | 28.6 |
|   |  |  |  |  |  |  |  |
| **Age**  |  |  |  |  |  |  |  |
| 16-24  | 28 | 20 | 18 | 20 | 14 |  | 5.4 |
| 25-29  | 19 | 19 | 21 | 24 | 17 |  | 4.1 |
| 30-39  | 20 | 16 | 19 | 21 | 25 |  | 8.3 |
| 40-49  | 18 | 17 | 19 | 21 | 25 |  | 9.2 |
| 50 to Retirement Age  | 19 | 15 | 18 | 21 | 27 |  | 10.8 |
|  |  |  |  |  |  |  |  |
| **All adults** | **20** | **17** | **19** | **21** | **23** |   | **37.6** |
| Source: MoJ calculations based on DWP (2015) Households Below Average Income 2013-14, Tables 5.1db, 5.2db & 5.2db.  |
| \* Age totals may not sum due to rounding |

1. https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/560141/EX160A\_web\_1016.pdf. [↑](#footnote-ref-2)
2. Information on gender reassignment for ET users is not collected. [↑](#footnote-ref-3)