

Title: Employment Tribunals Fees Review: Proposed increases to the threshold for fee remissions IA No: MoJ 001/2017/RTA RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: HM Courts and Tribunals Service	Impact assessment (IA)		
	Date: 31/01/2017		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Secondary Legislation		
Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk			
Summary: Intervention and Options			RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
-£15m	n/a	n/a	Not in scope	N/A

What is the problem under consideration? Why is government intervention necessary?

The Government's post implementation review of Employment Tribunal fees proposes an adjustment to the gross monthly income threshold for a fee remission. Government intervention is necessary to help alleviate the impact that the introduction of fees has had on volumes of claims in the ET, including the impact on volumes of discrimination claims, and the evidence that some people have found the fees off-putting.

What are the policy objectives and the intended effects?

The policy intention is to increase the availability and take up of support under the fee remissions scheme. The intended effect would be to increase the number of people entitled to a fee remission (either in full or in part). We also anticipate that this reform would lead to an increase in the number of cases brought to the Courts and Tribunals.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option.

The following options are considered:

- Option 0: Do Nothing. Maintain the current remissions threshold.
- Option 1: Increase the remission threshold in all jurisdictions. Under this option the gross monthly income threshold would increase from the current level of £1,085 to £1,250. The additional allowances for couples and children would also increase by the same amount.

Based on the evidence available, the Government's preferred option is Option 1 as this best meets the policy objective.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date:					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ **Date:** _____

Summary: Analysis and Evidence

Policy Option 1

Description: Increase the remission threshold in all jurisdictions

Price Base Year 2017	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: -42	Best Estimate: -15

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1	2	17
High			7	60
Best Estimate	0.1		4	33

Description and scale of key monetised costs by 'main affected groups'

The Ministry of Justice (MoJ) would face a loss in income of £2m per year through some claims no longer being required to pay a fee. There would also be additional on-going costs to HMCTS resulting from processing an increased number of cases, estimated at £2m per year. Lastly, HMCTS would face a one-off transitional cost of £0.1m from implementing the proposed changes.

The total ongoing costs of this proposal are estimated at £4m per year.

Other key non-monetised costs by 'main affected groups'

There may be familiarisation costs to both legal service providers and users of the Courts and Tribunals, although these are not expected to be substantial. There may be legal costs to users and other parties associated with bringing and defending additional claims. Due to the small volume of additional claims these costs are not expected to be substantial.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1	2	17
High			2	17
Best Estimate			2	17

Description and scale of key monetised benefits by 'main affected groups'

Claimants who would have lodged and paid a fee, but now qualify for a remission, would benefit from the proposed changes by around £2m per annum.

Other key non-monetised benefits by 'main affected groups'

More claimants might be encouraged to lodge a case as they might now qualify for a remission. The economic benefit of users being able to reach a court or tribunal determination on their case is expected to outweigh the additional costs to HMCTS.

There may be benefits to legal service providers through an increase in claims. Due to the small volume of additional claims these costs are not expected to be substantial.

Key assumptions/sensitivities/risks

- Our central scenario is based on two caseload assumptions:
 - A three percent increase in the number of employment tribunal claims. 100% of these additional cases will be eligible for remissions.
 - A five percent increase in the number of remitted claims in all other jurisdictions. 100% of these additional cases will be eligible for remissions.
- Sensitivity analysis also considers the impact of a zero percent and a 10% increase in cases and is explained further in the sensitivity section below.

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

A. Background

1. Fees were introduced for proceedings before the Employment Tribunals (ET) and the Employment Appeals Tribunal (EAT) in July 2013. A two-tier fee structure was introduced for proceedings in these tribunals:
 - Type A fees are charged for specified proceedings which are typically simpler and more straightforward, use less tribunal resource and therefore attract lower fees. These proceedings include, for example, claims seeking a written contract of employment; an application for payment of unpaid wages; and applications under the Working Time Directive (for example, entitlement to regular working breaks).
 - Type B fees were introduced for more complicated cases, including for example claims of unfair dismissal and discrimination. These cases are typically more complex, consume more Tribunal resource and therefore attract higher fees.
2. There are separate fee structures for claims brought by individuals and those brought as a multiple claim. The main fees charged for these proceedings are set out in the following table.

Table 1: Fees in the Employment Tribunals

Single claims Fee Type	Type A	Type B	
1. Issue fee	£160	£250	
2. Hearing fee	£230	£950	
Amount of fee: fee group			
<u>Type A claims</u>	2 - 10 claimants	11 - 200 claimants	Over 200 claimants
1. Issue fee	£320	£640	£960
2. Hearing fee	£460	£920	£1,380
<u>Type B claims</u>			
1. Issue fee	£500	£1,000	£1,500
2. Hearing fee	£1,900	£3,800	£5,700
Fees in the Employment Appeal Tribunal	All appeals		
1. Issue fee	£400		
2. Hearing fee	£1,200		

3. HM Courts and Tribunals Service (HMCTS) administers a standard fee remissions scheme which applies in the civil and family courts and in all tribunals in which fees are charged, with the exception of the First-tier Tribunal (Immigration and Asylum chamber) in which a separate fee remissions, exemptions and waivers scheme applies. Under the standard fee remissions scheme, an applicant may qualify for a remission, based on assessments of disposable capital and gross monthly income. Depending on his or her means, the applicant may qualify for a remission in full or in part. Full details are set out in the ET Fees Review.
4. The Government also made a commitment to undertake a post-implementation review of fees in the ETs. The start of the review was announced in June 2015.
5. The ET Fees Review, published in the accompanying document, has confirmed that fees have broadly met the original objectives, and that the current scheme is generally working effectively and operating lawfully. Nevertheless the Government has decided that some action is justified in view of the fall in ET claims and the evidence that some people have found the fees off-putting.

B. Policy Rationale and Objective

6. The policy objective of these consultation proposals is to increase the availability and take up of support under the fee remissions scheme. This would lead to a rise in the number of people entitled to a fee remission (either in full or in part).
7. Although the policy has been designed to address concerns identified in the review of Employment Tribunal fees, HMCTS operates a standard fee remissions scheme for all of its fee charging regimes, with the exception of the First-Tier tribunal (Immigration and Asylum Chamber). We consider it reasonable to maintain a standardised approach to fee remissions, and these proposals would therefore also benefit people on low incomes bringing proceedings in the civil and family courts and in the tribunals in which the standard Help with Fees scheme applies.

C. Affected Stakeholder Groups, Organisations and Sectors

8. These reforms would primarily affect individuals pursuing claims in HMCTS. A list of all the main groups that might be affected are show below:
 - Users – those that bring the case to the Court or Tribunal;
 - Defendants – those individuals or businesses who are responding to the user;
 - HMCTS – the body that administers the Court and Tribunal Service;
 - Taxpayers – through the subsidy currently provided by the UK Exchequer towards the operating costs of HMCTS; and
 - Legal service providers – through an increase in cases

D. Description of Options Considered

9. The following options are considered in this Impact Assessment (IA):
 - **Option 0: Do nothing.** Maintain the current remissions threshold.
 - **Option 1: Increase the gross monthly income threshold for a fee remission.**

Option 0

10. Under the Do Nothing option the proposal highlighted in Option 1 would not be implemented and the current remission thresholds would remain the same. As the Do Nothing is compared to itself the costs and benefits are necessarily zero, as is its Net Present Value (NPV). This option is used as the baseline against which Option 1 is compared.

Option 1

11. Under this option, there would be adjustments to increase the gross monthly income threshold below which a full fee remission is available (subject to meeting the disposable capital test). The specific proposal is to raise the gross monthly income threshold for a single person from £1,085 to £1,250. This reflects the amount that someone would earn if they worked full time (40 hours/week) and were paid at the rate of the National Living Wage (currently £7.20/hour for someone over 25).
12. Under these proposals, the current allowances for people living as couples and those with children would be maintained. The detailed proposals are set out in Table 2 below.

Table 2: Proposed low threshold for a fee remission under the gross monthly income test.

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				

13. This proposal applies to all jurisdictions in HMCTS except for the Immigration and Asylum Chamber, which operates a separate fee remissions, exemptions and waivers scheme.
14. The Government's preferred approach is to implement Option 1 as it best meets the policy objective.

E. Costs and Benefits

15. This IA identifies both monetised and non-monetised impacts on individuals and groups in the UK, with the aim of understanding what the overall impact on society might be from increasing the remissions threshold. The costs and benefits of the proposal are compared to Option 0, the Do Nothing case, where the remission threshold is maintained at its current level.

Key data sources

16. The assessment of costs and benefits in this IA is based on the following key sources of evidence:
 - The 2008 Survey of Employment Tribunal Applications (SETA), which details information on the characteristics of Employment Tribunals claimants¹;
 - The 2010/11 Family Resources Survey (FRS)²; and
 - ACAS Management Information (MI) and evaluation on early conciliation.
17. There are later versions of both the SETA (2013) and FRS (2014/15). We will consider this additional data during the consultation period.

Methodology

18. To establish the current level of remissions in the HMCTS, excluding the Immigration and Asylum Chamber, we needed to estimate the users' ability to pay. As data are not routinely collected, we had to find an alternative method to estimate people's eligibility for remissions. To do this, we analysed the results from both the SETA and the FRS and found three variables – gender, age and employment status – that were common to both these surveys. We then used these to estimate the distribution of Court and Tribunal users' income in England and Wales as a whole. From that distribution, we estimate the proportion of the population eligible for a remission and calculated the expected total cost of remissions, based on the current threshold.
19. To estimate how remissions might change following the threshold increase, we applied the same methodology as above but increased the minimum threshold by £185 to £1,250. The difference between these two figures (the current remission cost and expected new remission costs) gives us our estimated additional cost i.e. the loss of income to HMCTS.

Demand

20. The central scenario forecasts a small increase in the number of cases heard HMCTS. This estimate is comprised of two assumptions:
 - a three percent increase in single Type A and B cases in the ET; and

¹ <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-seta-2008-findings>

² <https://www.gov.uk/government/statistics/family-resources-survey-201011>

- a five percent increase in remission caseload volumes³ in all remaining jurisdictions.
21. The three percent increase in total ET cases is based on evidence from the ACAS review of early conciliation⁴ that around 3% of respondents to their survey said that they had not been able to resolve their dispute through conciliation but had not issued proceedings because they said they could not afford to pay. The five percent increase in remission volumes in all other jurisdictions has been included to factor in a further increase in caseload in our calculations. We have assumed that 100% of these additional cases will be eligible for a remission.
 22. The sensitivity analysis, in section G, also considers the impact of a zero percent and 10 percent increase in caseloads and is explained in more detail in the sensitivity section below.

Net Present Value

23. The NPV is calculated over a ten-year period. The reduction in fee income to MoJ and the corresponding benefit to Court and Tribunal users are not included in the overall NPV as they represent a transfer payment between claimants and HMCTS.

Option 1: Increase the remission threshold

Costs of Option 1

Transitional costs

HMCTS

24. HMCTS expects to incur costs for making changes to court IT systems and those related to court staff having to spend some time familiarising themselves with the new remission scheme. These one-off transitional costs for HMCTS are expected to be around £0.1m.

Court and Tribunal users and legal services providers

25. Familiarisation and awareness costs might also be incurred by users and associated legal services providers. These have not been monetised and are not expected to be substantial.

Ongoing costs

MoJ & HMCTS

26. The expected cost to the MoJ is estimated to be around £4m per year. This is split between increasing running costs from processing more cases (£2m) and lost fee income (£2m).

Defendants

27. Defendants may incur legal costs associated with defending additional claims. Due to the small expected increase in claims volumes, additional legal costs are not expected to be substantial. These costs have not been monetised.

Benefits of Option 1

Ongoing benefits

³ This five percent increase is based on the number of current remissions, not total cases. This is because some cases in HMCTS do not qualify for a remission, for example, businesses.

⁴ *Evaluation of Acas Early Conciliation 2015*, Acas, 04/15. <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>.

Court and Tribunal users

28. Users who would have lodged and paid a fee to bring a case, but who would qualify for a remission under the proposed changes, would benefit from these adjustments. Some users would no longer be required to pay a fee at all, and others would be required to pay a smaller contribution than under the current arrangements. We estimate that this group would benefit by around £2m per annum.
29. Additionally, more claimants may be encouraged to lodge a case because they would qualify for a fee remission. These users would benefit from being able to take their case to a Court or Tribunal. The economic benefit of users being able to reach a Court or tribunal determination is expected to outweigh the additional running costs to HMCTS.

Legal Service Providers

30. An increase in the number of cases brought to court would be a benefit to legal service providers if users decide to be legally represented. Due to the small increase in claims volumes, benefits to legal service providers are not expected to be substantial. These costs have not been monetised.

Net impact of Option 1

31. On an ongoing basis, the proposal to increase the remissions threshold across all jurisdictions is expected to benefit users in the region of £2m per annum. The proposal is also expected to cost HMCTS around £0.1m in implementation costs and £4m ongoing costs. As the benefits to these users are expected to be offset by the increased costs to HMCTS, the net impact of the proposal is expected to be in the region of -£2m per annum.

F. Summary of Recommendation

32. The preferred approach is to implement Option 1. Under this proposal, some claimants who are currently charged a fee would then qualify for a remission and these proposals are expected to deliver savings to these users of around £2m a year. Under our central scenario, volumes are also expected to increase slightly, with 100 percent of these additional cases qualifying for a remission.

G. Sensitivity Analysis

33. The figures shown in Section E and F are based on our central caseload estimate; however, there is some uncertainty around the additional cases that may come to court and so we have examined the impact of both a high and low caseload scenario. The three scenarios are summarised below.
 - a) A low scenario of a zero per cent increase in cases;
 - b) A central scenario of:
 - i. a three percent increase in single Type A and B cases in the ET; and
 - ii. a five percent increase in remission caseload volumes in all remaining jurisdictions.
 - c) A high scenario of a 10 percent increase in caseload across all jurisdictions.
34. As explained in the demand section above, the central estimate is based on a three percent increase in total ET cases and a five percent increase in remission volumes in all other cases. The high case scenario of a 10 percent increase in all cases is based on the same ET data used as evidence in the central estimate, but instead these evaluation figures have been applied to the 2014-15 ACAS management information.
35. Finally, our lower case estimate assumes that there would be no additional claims – the additional cost or benefit would result from users who are currently charged a fee now being eligible for a remission.
36. A summary of the three options are shown in Table 3:

Table 3: Summary of caseload scenarios, 2016/17 prices

	Caseload Scenarios		
	Low	Central	High
Average Annual Costs	£2m	£4m	£7m
Average Annual Benefits	£2m	£2m	£2m
Annual Net impact	£0m	-£2m	-£5m

H. Enforcement and Implementation

37. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the case would not be permitted to proceed. This would continue to apply under the option being considered.

I. Monitoring and Evaluation

38. The MoJ continuously monitors the impact of all fee changes both in terms of the impact on case volumes and in respect of their success in generating the anticipated levels of income.

J. Business Impact Target (BIT) and One-in Three-out status (OI3O)

39. The measure, as a fee remission under s22 of the Small Business, Enterprise and Employment Act (2015) is statutorily excluded from the regulation framework. It is not in scope of the BIT or OI3O.