

# **Revising the ‘Help with Fees’ remission scheme – protecting and enhancing access to justice: Equalities Statement**

## **1. Introduction**

- 1.1. This Equalities Statement considers the impact of the Government’s plan to revise the Help with Fees (HwF) scheme as set out in the consultation document: *Revising the ‘Help with Fees’ remission scheme – protecting and enhancing access to justice*.
- 1.2. During the consultation period, we will further consider the impact of these proposals and will update our equalities considerations with any relevant evidence submitted in response to our equalities questions.

## **2. Background**

- 2.1. It is the Lord Chancellor’s duty to protect the constitutional right of access to justice. A key element of that duty is making sure that people are not prevented from turning to our courts or tribunals for help simply because they cannot afford to pay the fee. All individuals, regardless of their financial circumstances, must be able to access the courts and tribunals system in times of need.
- 2.2. It is with this crucial duty in mind that the HwF scheme was introduced on 7 October 2013. The scheme supports the Lord Chancellor’s duty to protect access to justice by providing financial help towards the cost of court and tribunal fees for individuals with limited financial means. Without the HwF scheme, many vulnerable individuals each year would otherwise struggle to access justice through our courts and tribunals.
- 2.3. The Ministry of Justice is proposing a series of reforms to make the HwF scheme more generous and target financial assistance at those most in need, whilst providing value for money for the taxpayer. Building on the previous update on 30 September 2021 when inflationary increases were applied to the gross monthly income thresholds (backdated to 2016), the proposals within the current consultation are the outcome of a comprehensive review that examined all aspects of the HwF scheme. As the country continues to recover from COVID-19 and faces significant economic challenges, our proposed reforms are essential to support vulnerable individuals at the greatest risk of being denied access to justice.

## **3. Policy Objective**

- 3.1. Our proposals are the outcome of a comprehensive review of the current HwF scheme, which was led by three primary objectives:
  - To ensure access to justice for individuals on low income with little to no savings;
  - To provide value for money for the taxpayer; and
  - To have a straightforward system for applicants to understand and HM Courts and Tribunals Service (HMCTS) to administer.

3.2. With a focus on those objectives, the proposals set out in the present consultation seek to achieve:

- A more generous scheme that provides more help to individuals with limited financial means;
- A better targeted scheme that provides financial assistance to individuals who need it most; and
- A scheme that provides the best value for taxpayers' money.

3.3. More detail on the background to, and rationale for, the proposals for reforming the HwF scheme are set out in the consultation document: *Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice*. Available at: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>

## 4. Equality Duty

4.1. 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);
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

4.2. Paying “due regard” needs to be considered against the nine “protected characteristics” under the Act, namely: age, disability, gender reassignment, marriage and civil partnership pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

## 5. Evidence and analysis

5.1. There is no data source that identifies the protected characteristics of those within the general population who may need to make use of the HwF scheme in the future. Therefore, whether the information is available, we have instead looked at a number of related data sources that can provide an indication of potential users' protected characteristics.

5.2. From the data sources we have found relevant to the nine protected characteristics, we have been able to find relevant data on age, disability, marital status, race and sex. We were not able to find equivalent relevant data relating to gender reassignment, pregnancy/maternity, religion or belief, or sexual orientation.

5.3. This Equalities Statement looks at the following data sources where information is available:

- **The Legal Problem and Resolution Survey (2014 – 2015):** This survey explores people's experiences of everyday problems that may have a legal solution through the civil justice or tribunal system and includes experiences of different legal problems within different protected characteristic groups. While these individuals may not proceed to court/tribunal, it provides an approximation of the characteristics of those that could potentially be affected by our proposals to revise the HwF scheme. The survey covering 2014 – 2015 is the most recently conducted survey. The next survey is due to be carried out in 2023.
- **Court Users Protected Characteristics:** This is a collection of research summarised in a previous Equalities Statement published in 2021 that accompanied the consultation: *Increasing selected court fees and Help with Fees income threshold by inflation*.<sup>1</sup> We are using the same research for this Equalities Statement as it is the most recent data available and remains relevant, as it covers the group of court users whose case involved court fees and where they may have applied for HwF scheme. The research highlights some key data on how different people with protected characteristics use the courts.
- **HMCTS protected characteristics questionnaire – data on users of reformed services (April 2021 – September 2021):** This is a summary report of the responses to protected characteristics related questions collected for reformed HMCTS services.
- **The Help with Fees Administrative Data:** This unpublished data is from HMCTS' internal management system, whereby the information collected through the HwF application forms are stored for administrative purposes. It includes data on two types of protected characteristics – age and marital status – which are collected as they are necessary for the HwF eligibility assessment process.
- **Households below average income (HBAI) statistics:** This is a Department of Work and Pensions (DWP) statistical publication on the number and percentage of people living in low-income households in the UK.

## 6. Analysis

6.1. This section will set out in depth our analysis of the protected characteristics of court and tribunal users, as well as (where possible) HwF applicants, and whether our proposals to revise the HwF scheme is likely to disproportionately affect them.

### The Legal Problem and Resolution Survey (2014 – 2015)

6.2. Before looking at court users who have applied for fee remission through the HwF scheme, we analysed findings from the Legal Problem and Resolution Survey (LPRS) (2014 – 2015). This survey measures people's experiences of everyday problems that may have a legal solution through the civil justice or tribunal system.

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<sup>1</sup> Available at: <https://consult.justice.gov.uk/digital-communications/increasing-selected-court-fees-income-thresholds/>

We have specifically looked at the prevalence of a range of civil, administrative and family legal problems across the adult (aged 18 and over) population of England and Wales. While these individuals may not proceed to court/tribunal, it provides an approximation of the protected characteristics of those that could potentially be affected by our proposals to revise the HwF scheme.

- 6.3. The LPRS covers the following protected characteristics: age, disability, marital status, race and sex. It does not include a breakdown of gender reassignment, pregnancy/maternity, religion/belief, or sexual orientation. The term 'BME' was used in the LPRS, which we now refer to as ethnic minority.
- 6.4. Respondents to the survey were asked whether they experienced any civil, administrative or family problems in the 18 months before the interview. A summary of the findings is shown in Table 1 below.
- 6.5. The proportion of men and women who had experienced at least one legal problem in the 18 months before the interview was 32% for both.
- 6.6. In terms of age, individuals aged 18 to 24 and 25 to 44 were more likely to have experienced a legal problem (37% and 42% respectively) compared to other age groups.
- 6.7. People from ethnic minority groups were more likely to have experienced at least one legal problem compared to white individuals (38% compared to 31%).
- 6.8. Those with a long-standing illness or disability that limits their activities were more likely to have experienced a problem, compared to adults with disabilities that do not limit their activities and adults without any disabilities (40%, 31% and 27% respectively).
- 6.9. Individuals who were married or in a civil partnership (29%) or widowed (14%) were less likely to have experienced a legal problem compared to people in other marital status groups, such as divorced, single, separated and cohabitating (35 – 47%).

**Table 1: Percentage of individuals who reported experiencing at least one legal problem in the previous 18 months, LPRS (2014 – 15)**

	Experienced a problem (%)	Did not experience a problem (%)	Unweighted base (100%)
<b>Sex</b>			
Male	32	68	4,820
Female	32	68	5,238
<b>Age</b>			
18 to 24	37	63	473
25 to 44	42	58	2,417
45 to 64	31	69	3,842
65 to 74	18	82	2,096
75+	11	89	1,227
<b>Ethnicity</b>			
White	31	69	9,772
BME	38	62	734
<i>Mixed</i>	44	56	101
<i>Asian or Asian British</i>	32	68	311
<i>Black or Black British</i>	45	55	200
<i>Chinese or other</i>	38	62	122
<b>Long-standing illness or disability</b>			
Yes, limits activities	40	60	2,043
Yes, does not limit activities	27	73	1,547
No long-dstanding illness or disabili	31	69	6,386
<b>Marital status</b>			
Married/in a civil partnership	29	71	5,248
Cohabiting	38	62	1,032
Single	39	61	1,692
Separated	47	53	178
Divorced/legally dissolved civil partnership	35	65	929
Widowed	14	86	973

Court Users Protected Characteristics and HMCTS protected characteristics questionnaire: data on users of reformed services (April 2021 – September 2021)

- 6.10. The 2021 Equalities Statement published when selected court fees and the HwF income thresholds were increased by inflation in September 2021 summarises previous research on the breakdown of demographic characteristic of court users.<sup>2</sup>
- 6.11. Since its publication, further data has become available to give additional insight into the protected characteristics of those using certain court services. HMCTS published data on protected characteristics for cases under their reformed services – *HMCTS protected characteristics questionnaire: Data on users of reformed services* – for the period April to September 2021.<sup>3</sup> These ‘reformed services’ include the following case types:
- Online Civil Money Claims (OCMC)
  - Probate
  - Social Security and Child Support (SSCS) Tribunals
  - Online divorce
- 6.12. The information was collected through a voluntary questionnaire, which had a response rate of around 50% for each service (whether the responses were from the respondent or defendant) – except probate applicants using the paper channel where the response rate was around 30%. As the questionnaire was voluntary and only covers unrepresented users (i.e. those without legal representation), it is not representative of all claims made and all service users. A full explanation of the coverage of the questionnaires and limitations to the results can be found in the ‘interpreting PCQ results’ section of the report. It also does not provide information on how any court fees were paid, and whether fee remission was claimed through the HwF scheme. Nevertheless, the publication gives detailed figures on the protected characteristics of the respondents who answered the questionnaire.
- 6.13. Key findings in relation to case types where fees are charged (and therefore is available for fee remission under the HwF scheme) are as follows:
- Divorce petitioners were more likely to be female (69% for digital applications) and respondents more likely to be male (59% of respondents were male).
  - Probate applicants were more likely to be older. 40% of digital applicants were 55 to 64 years old; 25% were 65 years and over. In relation to paper applications, 36% of applicants were 55 to 64 years old and 40% were 65 years and over).

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<sup>2</sup> Available at: <https://consult.justice.gov.uk/digital-communications/increasing-selected-court-fees-income-thresholds/results/court-fees-equalities-statement.pdf>

<sup>3</sup> Available at: <https://www.gov.uk/government/publications/hmcts-protected-characteristics-questionnaire/hmcts-protected-characteristics-questionnaire-data-on-users-of-reformed-services>

### HwF Internal Administrative Data (2019 – 2020)

- 6.14. HMCTS holds unpublished administrative data on HwF applications. The data is based on the number of applications received, rather than the number of individuals who have applied. This is because the scheme provides financial support for one-off fees. As such, an applicant is required to make a new HwF application each time a fee arises over the course of their court or tribunal proceedings. For example, an individual reaching the hearing stage of a money claim could have put through, and been successful in making, at least two HwF applications – one to apply for remission for the claim issue fee at the start of the case, and a second application for the hearing fee.
- 6.15. HMCTS received 200,000 HwF applications in 2019/20 – of which, 76% were successful. Of the successful HwF applications, 89% received full fee remission and 11% received partial fee remission. 55% of the successful applications were passported (eligible) due to the applicants receiving the relevant qualifying means-tested benefits. The remaining 45% of applicants were successful on passing the full HwF income assessment.
- 6.16. Although more recent data is available, we have used data for the year 2019/20 to exclude the impacts of the COVID-19 pandemic. For the purposes our analysis, 2019/20 is the most recent steady-state year prior to the pandemic, and therefore the most recent year with typical court use and remission levels.
- 6.17. Except for applicants' age and marital status, HMCTS does not collect any other protected characteristics information of those who apply for the HwF scheme. Data on age and marital status are both collected because they are necessary to assess the applicant's eligibility for fee remission.
- 6.18. Table 2 and Table 3 below summarise the age and marital status information for HwF applications in 2019/20.

**Table 2: Successful HwF applications, split by age band, (April 2019 – March 2020), compared to ONS population estimates (Mid-2019)**

Age bands	Proportion successful HwF applications (1)	Proportion of total HwF applications (1)	ONS England and Wales population estimates (18+) <sup>4</sup>
18 to 24	6%	6%	11%
25 to 44	55%	54%	33%
45 to 64	33%	33%	33%
65 to 74	4%	5%	13%

<sup>4</sup> Mid-2019 population estimate for England and Wales:

<https://www.ons.gov.uk/file>

<uri=/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalescotlandandnorthernireland/mid2019april2020localauthoritydistrictcodes/ukmidyearestimates20192020ladcodes.xls>

75+	2%	2%	11%
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1. An individual can be represented more than once in the HwF application data and therefore, whilst this table is included to provide an indication of how the profile of HwF users compares to the wider population, the data is not directly comparable.

**Table 3: Successful HwF applications, split by marital status (April 2019 – March 2020), compared to ONS population estimates (Mid-2019)**

Marital Status	Proportion of successful HwF applications (1)	Proportion of total HwF applications (1)	ONS England and Wales population estimates <sup>5</sup>
Married/civil partnership	22%	29%	41%
Single (including divorced or widowed)	78%	71%	59%

1. An individual can be represented more than once in the HwF application data and therefore, whilst this table is included to provide an indication of how the profile of HwF users compares to the wider population, the data is not directly comparable.

6.19. For marital status, the HwF applications data would not be representative of the general population due to the number of divorce applicants applying for the HwF scheme and that in these cases, they are instructed to record a status of single (“If your case is against your partner, such as a divorce, dissolution or domestic violence, tick single”).

6.20. In terms of age, individuals aged 61 and over accounted for 10% of all HwF applications received in 2019/20, and 9% of successful applications for remissions. Individuals aged 61 to 65 (inclusive) accounted for 4% of all HwF applications received in 2019/20, and the same proportion of successful applications. This age group made up 7% of the general population of those 18 and over in England and Wales in 2019.

6.21. Currently, where an applicant or their partner is aged 61 or over, they are eligible for a flat £16,000 capital threshold regardless of the fee amount. This is known as the ‘age cap’, which was designed to assist individuals over the State Pension age, in recognition of the fact that older people of or above pension age are generally retired and thereby find it more difficult to replenish capital.

6.22. At the time of its introduction in October 2013, the age cap was set at 61 to align with the women’s state pension age. However, there have been major changes to state pension age since then that make the age cap outdated. First, the gendered difference in pension ages no longer exists. Second, the State Pension for any gender is currently 66. Our proposed reforms to the HwF

<sup>5</sup> 2019 ONS population estimates by marital status:  
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesby maritalstatusandlivingarrangementswales>



scheme include a proposal to lift the age cap by aligning it to today's state pension age of 66.

6.23. As a result of our proposal, a cohort within the age group of 61 to 65 (inclusive) will be negatively impacted as they will no longer benefit from a flat £16,000 capital threshold. Instead, they will be subject to the same capital thresholds as everyone else who is below the age cap i.e. starting at £4,250 and increasing to £16,000 depending on the size of the fee.<sup>6</sup>

6.24. Though removing the age cap will mean this subset of older applicants will be ineligible for HwF in future, it will only affect those with capital we assess to be over the threshold for warranting assistance through the HwF scheme. Meanwhile, those with limited savings and on low income will still benefit from HwF reforms to the income and capital tests.

#### Households below average income (HBAI) statistics

6.25. Using the HBAI data,<sup>7</sup> we are able to compare the current and proposed HwF income thresholds to the quintile distribution of income for individuals in the UK. This allows us to examine the characteristics of households who may be most likely affected by our proposed changes. This is set out in Table 4 below.

6.26. The gross monthly income is shown in quintile medians as this is how the data is presented in the HBAI. We do not have access to more granular level income data. A quintile is a 1/5th (20%) portion of the whole, and the median is the middle number in a sorted list of numbers. In this case, each quintile shows the middle income amount, from the range of income that sits within that quintile (20%) group. The overall median of the HBAI data is the income figures given in quintile 3.

**Table 4: Gross monthly money values of quintile medians (1) in average 2019/2020 prices (before housing costs), UK**

Household composition	Quintile 1	Quintile 2	Quintile 3 (median)	Quintile 4	Quintile 5	Whole group mean	Current HwF income threshold	Proposed HwF income threshold
Single with no children (2)	£1,108	£2,328	£3,262	£4,313	£6,482	£3,703	£1,170	£1,420
Single with children (3)	£1,151	£1,703	£2,153	£2,684	£3,733	£2,398	£1,435	£1,845
Couple with no children	£1,670	£3,239	£4,268	£5,559	£8,506	£5,130	£1,340	£2,130
Couple with children (4)	£1,303	£2,201	£3,003	£4,072	£6,709	£3,936	£1,605	£2,555

<sup>6</sup> £4,250 as per our proposed revision to the lower capital threshold

<sup>7</sup> Available at: <https://www.gov.uk/government/statistics/households-below-average-income-for-financial-years-ending-1995-to-2020>

1. *The figure given is the median for each quintile group, so the quintile 3 is the overall median of the income distribution.*
2. *“Single with no children” is inclusive of all genders.*
3. *“Single with children” – the number of children in this household type will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0-13.*
4. *“Couple with children” – the number of children in this household type will vary, but the HwF income thresholds used as a comparator assumes one child in the household, aged 0-13.*

*Note: net income has been converted to gross using an online tax calculator.<sup>8</sup>*

- 6.27. The figures in Table 4 are in terms of equivalised income (as defined above). The HBAI uses net disposable household income which is adjusted for household size and composition as an assessment for material standards of living. This makes comparisons between different household compositions possible. To allow for better comparisons with the HwF income thresholds, the figures have been recalculated in terms of gross income.
- 6.28. When it comes to households with children, we are unable to make exact comparisons with the HBAI data as it does not specify the average number of children in each family. For the purpose of our analysis, we have presented the HwF thresholds for a household with one child as a minimal comparator. If the household has more than one child, the HwF threshold will be higher. While this means that we are not able to do a proper like-for-like comparison, the HBAI data does provide information about income distribution by different characteristics. It therefore allows us to get a better understanding of which groups might benefit from the changes to HwF.
- 6.29. Table 4 shows that the current HwF threshold is between the median gross income of quintile 1 and 2 for all groups except for the ‘couple with no children’, where it is below the quintile 1 median income.
- 6.30. For the proposed income threshold for the two children household groups (‘couple with children’ and ‘single with children’), the threshold is between quintile 2 and 3, and for the two households without children the proposed income threshold sits between quintile 1 and 2.
- 6.31. Overall, the data suggests that our proposed income thresholds will be more generous for those on lower incomes who are not currently captured by the HwF scheme. Specifically, individuals in the two groups with children are most likely to benefit from our proposed changes to the HwF scheme, as these households would be more likely to receive either a full remission or a greater partial remission.
- 6.32. Table 5 below summarises the quintile distribution of income by various characteristics from the HBAI statistics. These figures are based on quintile income distributions before housing costs (BHC). It covers the protected

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<sup>8</sup> Available at: <https://www.thesalarycalculator.co.uk/>

characteristics of gender, disability, ethnic group and some information on household make-up (households with children or pensioners households).

**Table 5: Quintile distribution of income for individuals by various family and household characteristics, UK**

<b>Gender and adulthood</b>	<b>Net equivalised disposable household income (% of individuals)</b>					
	Bottom quintile	Second quintile	<b>Middle quintile</b>	Fourth quintile	Top quintile	All individuals (millions)
Adult male	17	17	20	22	23	25.2
Adult female	19	20	20	21	20	26.4
Children	26	25	20	15	15	14.0
<b>Disability</b>						
Disabled individuals	26	25	21	17	11	14.1
Disabled children	23	29	24	14	10	1.1
Disabled working-age adults	28	21	20	18	12	7.7
Disabled pensioners	22	30	22	16	10	5.3
Non-disabled individuals	18	19	20	21	22	51.5
<b>Ethnic group of head of household (3-year average)</b>						
White	18	20	21	21	21	56.2
Mixed/ Multiple ethnic groups	23	20	14	25	18	0.8
Asian/ Asian British	32	22	16	14	15	5.3
Black/African/Caribbean/Black British	31	24	20	15	11	2.1
Other ethnic group	32	20	14	15	19	1.0

**Table 5 (continued): Quintile distribution of income for individuals by various family and household characteristics, UK**

	Net equivalised disposable household income (% of individuals)					
	Bottom quintile	Second quintile	<b>Middle quintile</b>	Fourth quintile	Top quintile	All individuals (millions)
<b>Family Type</b>						
Pensioner couple	18	24	22	19	17	8.2
Single pensioner	29	30	18	14	8	4.5
Male	24	32	19	15	10	1.5
Female	32	29	18	14	7	3.0
Couple with children	20	21	21	19	19	22.9
Couple without children	12	10	18	26	34	12.6
Single with children	38	35	17	7	3	4.9
Single without children	20	16	20	24	20	12.5
<b>All individuals (millions=100%)</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>65.6</b>

6.33. The HBAI also includes an age breakdown for quintile income distribution (BHC), but only for working age adults. This is summarised in Table 6, where HBAI base age on the head of the family and present the broken down by households with or without children.

**Table 6: Quintile distribution of income (BHC) for working-age adults, by age of the head of the family and households with or without children, United Kingdom**

	Net equivalised disposable household income					
	Bottom quintile	Second quintile	<b>Middle quintile</b>	Fourth quintile	Top quintile	All working-age adults (millions)
<b>Age of head of family</b>						
<b>With children</b>						
16 - 24	35	36	17	9	4	0.3

25 - 29	25	29	31	11	5	1.1
30 - 34	25	23	26	16	10	2.2
<b>Net equivalised disposable household income</b>						
	Bottom quintile	Second quintile	<b>Middle quintile</b>	Fourth quintile	Top quintile	All working-age adults (millions)
<b>Age of head of family</b>						
<b>With children</b>						
35 - 39	20	24	21	19	15	2.9
40 - 44	19	20	18	20	22	2.7
45 - 49	16	19	20	20	25	2.4
50 - 54	16	20	20	18	26	1.5
55 +	24	18	19	22	16	0.8
<b>Without children</b>						
16 - 19	19	17	18	28	18	1.2
20 - 24	15	13	22	29	21	3.7
25 - 29	7	10	17	32	33	3.1
30 - 34	10	10	17	26	38	2.2
35 - 39	11	9	22	24	34	1.4
40 - 44	15	14	18	23	31	1.4
45 - 49	17	13	17	23	30	2.0
50 - 54	15	14	17	25	28	3.0
55 +	21	15	20	21	23	8.1

6.34. Households in quintile 1 and quintile 2 have a lower income with which to pay fees. They will however benefit from the increased HwF income thresholds. We examined how the characteristics of these income quintiles compare with the general population:

- According to Table 5, households in the Bottom quintile were more likely to be from either an Asian (32%), Black (31%) or other ethnic background (32%) than a White (18%) or Mixed (23%) ethnic background. They were more likely to live in a household where there is a disabled working age adult (28%) and they are also more likely to be single with children (38%)

or a single pensioner – defined as an adult over state pension age (29%), especially a female pensioner (32%).

- Table 6 shows households in the Bottom quintile were more likely to be with children and head of the family to be aged 16-34 years old (35% were 16-24 years old, 25% were 25-29 years old, and 25% were 30-34 years old). Those aged 55 years old and over (of the working age population) were more likely to be in the Bottom quintile, in both households with children (24%) and without (21%).
- Based on the gross monthly median income for quintile group 1 in Table 4 (derived from the median of the net income quintiles from HBAI), the Bottom quintile group would be covered by the revised HwF scheme.
- As shown in Table 5, the data suggests that households in the Second quintile were more likely to be either from an Asian (22%) or Black (24%) ethnic background. They were more likely to be living with a disabled child (29%) as well as being either single with children (35%) or a single pensioner (30%).
- Table 6 shows working age adults in the Second quintile were more likely to be in households with children where the head of the family is aged 16-39 (36% were 16-24 years old, 29% were 25-29 years old, 23% were 30-34 years old, and 24% were 35-39 years old).
- Based on the gross monthly median income for quintile group 2 in Table 4, households with children in the Second quintile group would be covered by the revised HwF scheme.

6.35. Apart from those aged 61 to 65 (inclusive) who will lose out from the uplift to the age cap, the other cohort of potential applicants who are impacted negatively by our proposed HwF reform are: individuals who are currently eligible for partial fee remission but, due to having income higher than the national median, will receive less or no remission (depending on their income and the fee size). Our proposed changes to the partial remissions policy would introduce a taper scheme,<sup>9</sup> and a reduction of £1,000 to the gross monthly income cap (from £4,000 above the income threshold, to £3,000 above the threshold).

6.36. If our proposed income thresholds were introduced without any changes to the current partial remission policy, a single person household without children with a gross annual salary of approximately £65,000 (based on a monthly income of £5,420)<sup>10</sup> could be eligible for fee remission – depending on the level of fee. However, under our proposed partial remissions policy, the upper limit of the income cap for a single person household without children would reduce to an annual salary of £53,000 (based on a monthly income of £4,420).<sup>11</sup>

6.37. Additionally, our partial remissions proposals would mean that individuals from single households with income between £38,000 and £53,000 a year will pay more of their fee (i.e. will be eligible for less partial remission) if the fee is approximately £1,100 or above. These income levels would be higher for households with a

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<sup>9</sup> This would be a stricter system compared to the current 50% partial remissions rule.

<sup>10</sup> Income threshold of £1,420 + £4,000.

<sup>11</sup> Income threshold of £1,420 + £3,000.

partner or children. In relation to the partial remissions proposals, the protected characteristics of the median (middle quintile) group and the fourth quintile group would be of interest. As Table 5 shows, those living with a child with a disability (24%) were more likely to be in the middle quintile group, and pensioner couples (22%) as well as pensioners with a disability (21%). Additionally, the proportion of households where the head of household is from a white ethnic background were more likely to be in the middle quintile (21%) and the fourth quintile (21%) group. Individuals were more likely to be in the fourth quintile group who were male (22%) and from the mixed multiple ethnic group category (25%).

## 7. Conclusion

- 7.1. Consideration has been given to the impact of the proposed reforms to the HwF scheme on individuals, against the statutory obligations under the Act.
- 7.2. Overall, we assess that our proposed reforms will enhance access to justice and advance greater equality of opportunity, particularly the proposals to:
  - Increase the income threshold to £1,420 for a single applicant;
  - Increase the Couple Premium to £710;
  - Increase the Child Premium by applying a Premium of £710 for children aged 14 and over, and a Premium of £425 for children aged under 14; and
  - Increase the lower capital threshold (where the age cap does not apply) to £4,250.
- 7.3. These proposals will broaden the availability of full fee remission under the HwF scheme, providing increased help to individuals with limited savings and on low incomes. As noted by Tables 4 to 6 above, households in quintile 1 and quintile 2 / Bottom quintile and Second quintile who have lower income will benefit from the increased HwF income thresholds. Moreover, as set out above, individuals in these quintiles are also more likely to:
  - Be from Asian, Black or other ethnic background
  - Live in a household with a disabled working-age adult or a disabled child
  - Be single with children
  - Be a single female pensioner.
- 7.4. Therefore, the increased help offered by a revised HwF scheme will better protect and advance equality of opportunity for people with those protected characteristics.
- 7.5. **Direct discrimination:** We assess that the proposed revision of the HwF scheme will not be directly discriminatory within the meaning of the Act, as the scheme will continue to apply in the same way to all courts and tribunal users where fees are charged. The proposals are not considered to result in people being treated less favourably because of their protected characteristics.
- 7.6. **Indirect discrimination:** Based on the above analysis, we assess that there is likely to be an over representation of people with certain protected characteristics

among court and tribunal users, and therefore more likely that individuals with those protected characteristics could be disproportionately affected by the proposed changes to the HwF scheme. However, the impact will be limited because our proposals will make the scheme more generous than it currently is. Using our proposed methodology to update the gross monthly income threshold, and the Couple and Child Premiums, will provide increased financial assistance to a large proportion of applications who currently would not qualify for full fee remission. Similarly, our proposal to increase the lower capital threshold in line with the updated gross monthly income threshold will enable further access to the HwF scheme.

7.7. We recognise that two aspects of our policy proposals will reduce the availability of support under the HwF scheme for specific cohorts, namely:

- The proposal to introduce a taper to calculate eligibility for partial fee remission, and the reduction of £1,000 (from £4,000 to £3,000) to the gross monthly income cap; and
- The proposal to lift the age cap from '61 years and over' to '66 years and over'.

7.8. However, as set out under paragraphs 6.21 to 6.24 (regarding age cap) and paragraphs 6.34 to 6.37 (regarding partial remissions) above, we consider that the potential for these proposals impacting individuals with protected characteristics is limited.

7.9. Further, in developing our proposals, we have been careful in balancing our aim to establish a more generous scheme with our duty to ensure that the finite resources of the taxpayer remain focused on providing most help towards those without the financial means – who would, but for the HwF scheme, be unable to access the courts and tribunals.

7.10. Therefore, based on the policy rationale and considerations that form the basis for our proposals, we consider that any potential indirect discrimination is justified and proportionate to our legitimate policy aims.

7.11. ***Discrimination arising from disability and duty to make reasonable adjustments:*** As Table 1 above demonstrates, people with a limiting illness or disability were more likely to have experienced a legal problem compared to adults with disabilities that do not limit their activities and adults without any disabilities. This gives rise to the likelihood that individuals with limiting illness or disability are more likely to require assistance through the courts or tribunals – though we cannot definitively know this due to a lack of data. Nevertheless, we consider that our proposals to revise the HwF scheme will provide more benefit to more court and tribunal users, through increased income and capital thresholds. With regards to the application process, we will maintain a paper route for those who are unable to use online services.

7.12. ***Harassment and victimisation:*** We do not consider there to be a risk of harassment or victimisation in implementing our proposed changes to the HwF scheme.



- 7.13. **Advancing equality of opportunity:** As explained above, our proposals to increase the income and capital thresholds will provide more help to households on low incomes and limited savings. Tables 4 to 6 above demonstrate that our income threshold proposals will particularly target better assistance to those in quintiles 1 and 2 / Bottom quintile and Second quintile, which are more likely to have individuals with protected characteristics. Overall, we therefore consider that our proposals advance equality of opportunity for people with protected characteristics who cannot afford to pay fees.
- 7.14. **Fostering good relations:** We do not consider that these proposals are relevant to this obligation.
- 7.15. For those who do not qualify for the HwF scheme but whose circumstances are such that they cannot realistically afford to pay a court or tribunal fee in question, a remission can be granted under the Lord Chancellor's Exceptional Power to remit fees. This power will apply where the payment of fees would cause undue financial or other hardship. Decisions are based on the merits of each individual application by considering the applicant's income, disposable capital, expenditure or other extenuating circumstances. The Lord Chancellor's Exceptional Power offers an additional safeguard for those with no disposable means to pay a fee.
- 7.16. There is an equivalent exceptional circumstances power for the UK Supreme Court fees. The power is exercisable by the Chief Executive, who also has the power to remit fees in relation to applications for permission to intervene in appeals filed by charitable or not-for-profit organisations seeking to make submissions in the public interest.

## **8. Equality Impact Analysis**

- 8.1. As the equality duty is an ongoing duty, we will continue to monitor and review the changes for any potential impacts on persons with protected characteristics and will make sure that access to justice is maintained.