

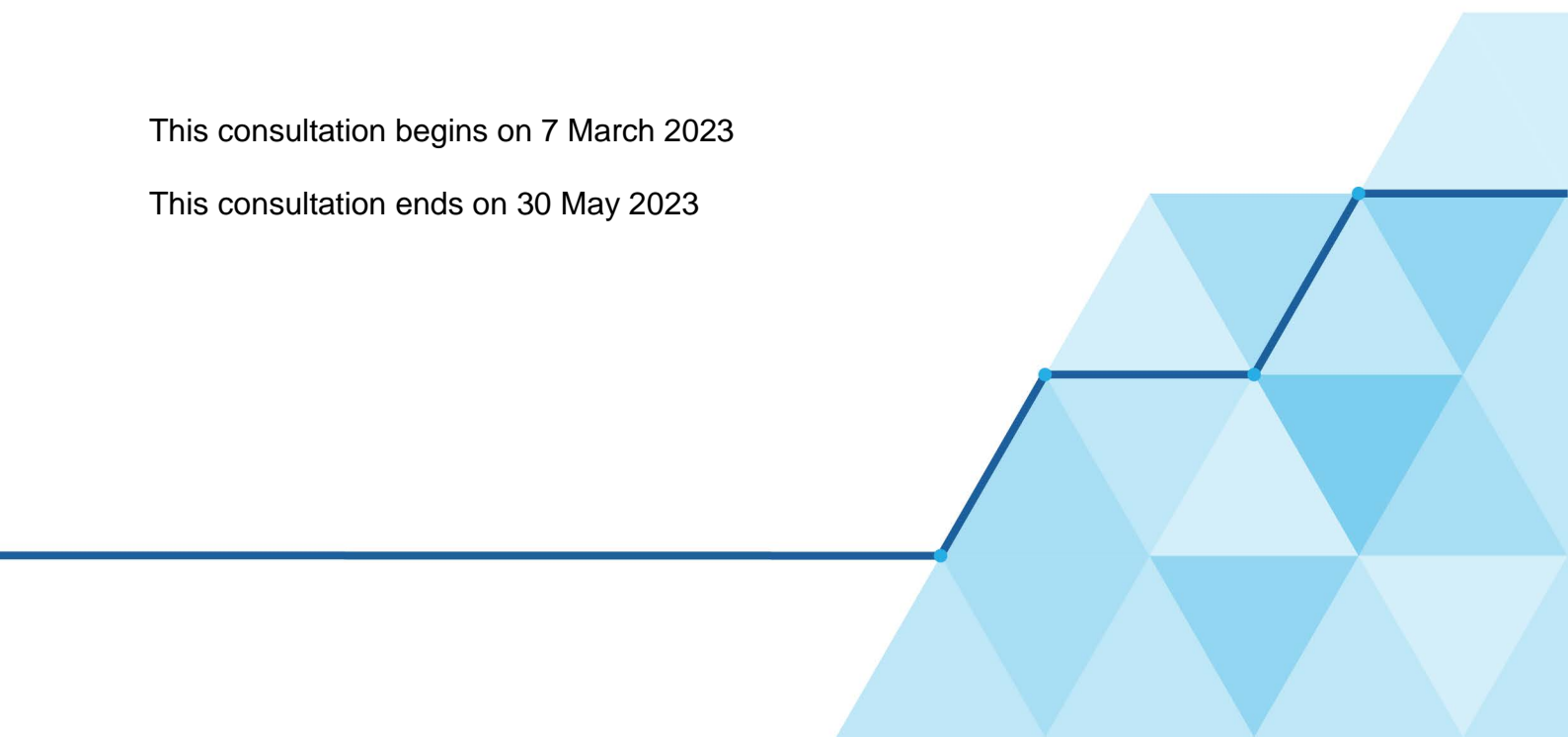


Ministry  
of Justice

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

This consultation begins on 7 March 2023

This consultation ends on 30 May 2023





Ministry  
of Justice

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

**A consultation produced by the Ministry of Justice. It is also available at  
<https://consult.justice.gov.uk/>**

# About this consultation

**To:** This consultation is aimed at users of the courts and tribunals, the legal profession, the judiciary, the advice sector and all with an interest in the courts and tribunals.

**Duration:** From 07/03/23 to 30/05/23

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# Ministerial Foreword

Access to justice is fundamental to upholding the rule of law. Everyone, regardless of their financial circumstances, must be able to access our world class courts and tribunals service in times of need.

Introduced by the Government in October 2013, the Help with Fees scheme protects access to justice by subsidising the cost of court and tribunal fees for individuals on low income and little to no savings. Without the scheme, thousands of people every year would be prevented from obtaining justice simply because they could not afford to pay a fee.

The Ministry of Justice is committed to helping those most in need and this role is especially critical in the current economic landscape. As a country, we continue to grapple with the lasting effects of the COVID-19 pandemic, while managing significant social and economic challenges before us. In such times of uncertainty and upheaval, people must be able to enforce their constitutional right of access to justice more than ever.

Therefore, we are proposing to reaffirm the Lord Chancellor's commitment and duty to protect access to justice by reforming the Help with Fees scheme. Our proposals will make the scheme more generous, target the Government's financial assistance at those most in need and provide the greatest value for money for the taxpayer.

The proposals will make a real difference to vulnerable individuals who need a robust fee remission scheme to access the courts and tribunals – whether that is to exercise their housing rights, resolve family disputes, obtain compensation for personal injury or assert other essential rights protected by our courts and tribunals.

I am proud of our mission at the Ministry of Justice to protect the rule of law and ensure access to justice. A fee remission scheme that is fair, transparent and effective is crucial to meet this important objective. I hope that you consider our proposals to be balanced and for the benefit of all in society.

**Mike Freer MP**

Parliamentary Under Secretary of State

# Executive Summary

1. The Help with Fees (HwF) scheme was introduced on 7 October 2013.<sup>1</sup> It is the single fee remission system applicable in all courts and tribunals in England and Wales.<sup>2</sup>
2. The HwF scheme provides individuals on low income and little to no savings with financial support towards the cost of their court or tribunal fees. Provided they meet the eligibility criteria, applicants will either be eligible for a fee reduction (partial remission) or full fee remission. Where individuals do not meet the eligibility criteria for fee remission under the HwF scheme, the Lord Chancellor may remit a court or tribunal fee where there are exceptional circumstances which justify doing so.
3. The UK Supreme Court fee remission scheme applies the same eligibility criteria as the HwF scheme. However, the exceptional circumstances 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.
4. Following a comprehensive review of the HwF scheme, we are proposing a set of reforms to ensure a more generous, better targeted and efficient system. Specifically, we are proposing to:
  - Update the methodology to set new income thresholds, Child Premiums, and Couple Premium
  - Amend the definition of 'gross monthly income'
  - Amend the list of income excluded from calculation under the scheme, in line with the updated income thresholds methodology
  - Provide applicants with the option to use one month or three-month average earnings for the income test
  - Revise the method for calculating eligibility for partial fee remissions
  - Amend the definition of 'disposable capital'
  - Increase the lower capital threshold
  - Simplify the capital threshold band system
  - Revise the capital threshold age cap
  - Update the list of capital excluded from calculation under the scheme

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<sup>1</sup> Following a consultation dated 18 April 2013 and a consultation response dated 9 September 2013; see <https://consult.justice.gov.uk/digital-communications/fee-remissions-court-tribunals/>.

<sup>2</sup> The HwF scheme also applies to fees currently charged by tribunals with UK-wide jurisdiction. See paragraph 21 below for a full list of courts and tribunals to which the scheme applies. Note, separate fee remission schemes operate for court fees in Scotland and Northern Ireland.

- Introduce a 'time limit' on compensation payments within the list of capital excluded from the scheme
  - Amend the declaration and statement of truth to allow litigation friends and legal representatives to complete and sign the HwF application on applicants' behalf
  - Add a provision to deal with incomplete HwF applications
5. The proposals set out in this consultation concern the courts and tribunals in England and Wales; the current jurisdiction of non-devolved tribunals in England, Wales, Scotland and Northern Ireland; and the UK wide Gender Recognition Panel. The UK Supreme Court operates its own remission scheme. However, it is aligned with the HwF scheme in its eligibility criteria. As such, to maintain consistency between the two schemes, we intend to update the UK Supreme Court remission scheme with relevant changes made to the HwF scheme as necessary.
6. Relevant provisions regarding the HwF scheme are contained in the following Statutory Instruments ('Fees Orders'), which will require amendments should our proposals be implemented:
- The Non-Contentious Probate Fees Order 2004
  - The Gender Recognition (Application Fees) Order 2006
  - The Court of Protection Fees Order 2007
  - The Civil Proceedings Fees Order 2008
  - The Family Proceedings Fees Order 2008
  - The Magistrates' Courts Fees Order 2008
  - The Supreme Court Fees Order 2009
  - The Upper Tribunal (Lands Chamber) Fees Order 2009
  - The First-tier Tribunal (Gambling) Fees Order 2010
  - The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011
  - The Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011
  - The First-tier Tribunal (Property Chamber) Fees Order 2013
  - The Courts and Tribunals Fee Remissions Order 2013



# Introduction

## Background

7. Our courts and tribunals provide an essential public service. When they decide on disputes and matters of law, their decisions benefit not only the parties directly involved but also the wider public. While a case may be brought by an individual, the court or tribunal's decision will establish and/or clarify rules and principles in the relevant area of law. On the one hand, this ensures that individuals and businesses know they will be able to enforce their rights if they need to do so. On the other hand, they will also know that if they fail to meet their obligations, there is likely to be a remedy they can access. In this way, justice through the courts and tribunals system is of value and interest to everyone.
8. It is the Lord Chancellor's duty to protect the constitutional right of access to justice. A key element of the 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.
9. It is with this crucial duty in mind that the HwF scheme was introduced on 7 October 2013.<sup>3</sup> 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.
10. There are two tests that determine an applicant's eligibility for fee remission through the HwF scheme: the capital test and the income test. Together, they assess the applicant's circumstances – such as their level of household income, their household savings, if they live with a partner or have dependent children, whether they are in receipt of certain benefits and the size of their court or tribunal fee. Applicants who are successful in their applications receive either a full or partial fee remission. Chapter 2 of this consultation provides full details on how the scheme operates.
11. Without the HwF scheme, many vulnerable individuals each year would otherwise struggle to access justice through our courts and tribunals. In the year 2021/22 alone, HM Courts and Tribunals Services (HMCTS) successfully granted partial or full fee remission to 122,517 applications. This was equivalent to £81 million in fee

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<sup>3</sup> The scheme was established by The Courts and Tribunals Fee Remissions Order 2013 (SI 2013/2302), later amended by The Courts and Tribunals Fees (Miscellaneous Amendments) Order 2014 (SI 2014/590) and The Court Fees (Miscellaneous Amendments) Order 2021 (SI 2021/985).

remissions, accounting for 11% of the total value of fee charges that year (£736 million). Given the scheme's crucial role in protecting access to justice, it is imperative that it continues to accurately target and support individuals most in need of assistance.

12. The Ministry of Justice is therefore 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 to the scheme on 30 September 2021,<sup>4</sup> the proposals within this consultation are the outcome of a comprehensive review that examined all aspects of the HwF structure. 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.

## Scope of the consultation

13. This consultation is structured as follows:
  - a) Chapter 1 summarises the HwF scheme in its current form.
  - b) Chapter 2 provides details of our review of the HwF scheme, the outcome of which forms the basis for our proposals.
  - c) Chapters 3 to 6 fall under Part A of our proposals, which concern the eligibility criteria for the HwF scheme.
    - Chapter 3 details proposals to revise the income test.
    - Chapter 4 details proposals to revise the partial remissions policy.
    - Chapter 5 details proposals to revise the capital test.
  - d) Chapter 6 falls under Part B of our proposals. It details proposals to revise the application process to make it simpler and clearer for applicants and HMCTS.
  - e) Part C sets out our proposals in relation to implementing the proposed changes and transitional provisions.

## Consultation Period

14. This consultation seeks views on the proposals to revise the HwF scheme. The consultation runs for a period of 12 weeks and closes on 30 May 2023.

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<sup>4</sup> When inflationary increases were applied to the gross monthly income thresholds (backdated to 2016).

# Chapter 1 – Review of the Help with Fees scheme

15. The Help with Fees (HwF) scheme was introduced in October 2013. Apart from a minor amendment in 2014 to the definition of excluded benefits and an update in September 2021 when the income thresholds were increased pursuant to inflation (backdated to 2016), the HwF scheme has not been subject to other changes.
16. The review of the HwF scheme was led by three primary objectives:
  - a) **To ensure access to justice for individuals on low income with little to no savings:** It is critical that the scheme continues to support individuals who would otherwise be unable to access the courts and tribunals. To ensure this remains the case, the thresholds and rules must remain well-targeted so that individuals most in need do not fall through the gap over time.
  - b) **To provide value for money for the taxpayer:** Given that the HwF scheme falls within the justice system, the cost of providing individuals with fee remissions is borne by the taxpayer. As mentioned above, total fee remissions equalled £81 million in 2021/22. The scheme must therefore continue to provide value for taxpayers' money. On the eligibility front, this means that individuals with sufficient financial means to pay their fee should be filtered out. On an operational level, the scheme should function as efficiently as possible to avoid unnecessary costs.
  - c) **To have a straightforward system for applicants to understand and HMCTS to administer:** The rules of the scheme should be easy for applicants to understand and apply to themselves to ascertain whether they are eligible for fee remission, and to what extent. The scheme and its rules should also be simple for HMCTS to apply.
17. With a focus on these three objectives, we examined all aspects of the HwF scheme, from the eligibility criteria to the functioning of the application process. The proposals set out in this consultation are the outcome of our review and seek to achieve:
  - a) A more generous scheme that provides more help to individuals with limited financial means.
  - b) A better targeted scheme that provides financial assistance to individuals who need it most.
  - c) A scheme that provides the best value for taxpayers' money.

# Chapter 2 – The current Help with Fees scheme

## Introduction

18. This chapter summarises how the current Help with Fees (HwF) scheme works. An overview flowchart of the HwF eligibility process can be found in **Annex A**.
19. For an applicant to be eligible for financial help through the HwF scheme, they must pass two tests – the capital test and the income test. The capital test assesses the applicant's household disposable capital. Provided they pass that test, the applicant is then assessed on their household gross monthly income (the income test). This second test determines whether an applicant qualifies for fee remission and if so, the level of remission they will receive. Successful applicants will either qualify for partial fee remission (meaning they pay a reduced fee) or full fee remission (meaning they pay nothing at all).
20. The HwF scheme is only available to individuals. As noted in paragraph 3 above, those that are ineligible under the HwF scheme can apply for fee remission under the Lord Chancellor's exceptional power to remit fees.
21. The HwF scheme applies to the following courts and tribunal jurisdictions:
  - The County Court (England and Wales)
  - Magistrates' Courts (England and Wales)
  - Probate service (England and Wales)
  - The High Court (England and Wales)
  - The Court of Appeal (England and Wales)
  - Gambling Appeals (England, Scotland and Wales)
  - First-tier Tribunal (Residential Property Chamber) (England)
  - The First-tier Tribunal (Immigration and Asylum Chamber) (United Kingdom)
  - Court of Protection (England and Wales)
  - Upper Tribunal (Lands Chamber) (England and Wales)
  - The Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom)
  - Gender Recognition Panel (United Kingdom)

## Eligibility: the capital test

22. The first stage of determining eligibility for fee remission under the HwF scheme is the capital test. This test assesses an applicant's household 'disposable capital' against set thresholds. Where an applicant has a partner,<sup>5</sup> their joint capital is considered unless it is a case where there is a contrary interest – for example in divorce proceedings between the applicant and their partner.
23. If the applicant's household disposable capital exceeds the threshold that is applicable to them, they do not pass the capital test and will not be eligible for fee remission. If they are within the threshold, they will proceed to the income test.
24. 'Disposable capital' within the HwF scheme currently means the value of every resource of a capital nature belonging to the applicant on the date on which the application is made. This includes, but is not limited to:
  - money in ISAs and any other savings account
  - joint savings accounts
  - fixed rate or investment bonds
  - any lump sum (for example, a redundancy pay-out)
  - stocks and shares
  - trust funds (or any other kind of fund)
  - value of second homes
  - any money or property outside the UK

### Capital disregards

25. There are certain types of capital that are excluded from the category of disposable capital, meaning they **do not** count towards an applicant's capital for the purposes of the HwF scheme. These exclusions are referred to as 'capital disregards' and are currently as follows:
  - A property which is the main or only dwelling occupied by the applicant
  - Household furniture and effects of the applicant's main or only home
  - Articles of personal clothing
  - The value of any vehicle which would leave the applicant or their partner without motor transport if sold
  - Tools and implements of trade, including vehicles used for business purposes

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<sup>5</sup> A partner is "a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart.". This includes people who are married, civil partners, or are living together as if married or civil partners, with or without dependent children, at the same address and relying on their joint income for household expenses. Where the couple is not living together, the applicant's partner must nevertheless be included for the HwF assessment if they are not living at the same address due to force of circumstance (for example: because the partner is serving in the Armed Forces, in prison or living in a residential care home).

- The capital value of the applicant's or their partner's business (where the applicant or their partner is self-employed)
- Any capital held in trust funds which the applicant cannot access
- Capital held in an employee-owned business where the company holds the applicant's shares collectively (e.g. by an employee trust)
- A jobseeker's back to work bonus
- Unfair dismissal payments
- Medical negligence or personal injury awards
- The cash value of any personal or occupational pension scheme
- The cash value of any insurance contracts (e.g. life insurance)
- Any capital payment made out of the Independent Living Funds
- Any bereavement payment
- Any capital insurance or endowment lump sum payments received in case of illness, disability or death
- Any student loan or student grant
- Money from the criminal injury compensation scheme

26. After the applicant has taken into account all resources that qualify as disposable capital and excluded those that are to be disregarded, the total sum is assessed against the capital threshold.

### Capital thresholds

27. Currently, if an applicant or their partner is **61 years old or over** at the date of making a HwF application, they will pass the capital test if their disposable capital is below £16,000. Known as the 'age cap', this is a flat capital threshold that applies to this age group regardless of the fee amount.

28. Where an applicant and their partner (if applicable) are **under** the age of 61 at the date of making a HwF application, the capital threshold varies according to the size of the fee. Starting at a lower capital threshold of £3,000 and rising to a maximum of £16,000, there are ten capital threshold bands as follows:

The court or tribunal fee is:	The applicant's capital must be less than:
Up to £1,000	£3,000
Between £1,001 – £1,335	£4,000
Between £1,336 – £1,665	£5,000
Between £1,666 – £2,000	£6,000
Between £2,001 – £2,330	£7,000
Between £2,331 – £4,000	£8,000

The court or tribunal fee is:	The applicant's capital must be less than:
Between £4,001 – £5,000	£10,000
Between £5,001 – £6,000	£12,000
Between £6,001 – £7,000	£14,000
£7,001 or over	£16,000

29. Applicants who pass the capital test as set out above will proceed to the income test.

### Capital threshold: worked examples

#### Example 1

Abdul is single and 64 years old. He has disposable capital of £10,000. As this is under the £16,000 flat capital threshold, **he passes the capital test and may be eligible** for fee remission depending on his level of income. The value of the fee payable is irrelevant in this case due to the age cap.

#### Example 2

Anna is 30 years old and single. She has disposable capital of £4,000 and the fee payable is £232. As her capital is over the £3,000 capital threshold applicable to her, she will be **ineligible** for fee remission.

#### Example 3

Antonio is 40 years old and single. He has disposable capital of £8,000 and the fee payable is £5,000. As his capital is under the £10,000 capital threshold applicable to him, **he passes the capital test and may be eligible** for fee remission depending on his level of income.

## Eligibility: the income test

30. Once an applicant passes the capital test, they move onto the second stage of the HwF eligibility process: the income test. This is an assessment of the applicant's household gross income in the month prior to the application.<sup>6</sup> As with the capital test, where an applicant has a partner, their income will also be taken into consideration.

<sup>6</sup> Before deductions for National Insurance and tax.

31. The income test is at the core of the HwF scheme. Where an applicant is eligible for fee remission, this test determines the level of financial help they will receive. As an overview, and as shown by the flowchart in **Annex A**, there are three main routes through which an applicant can receive partial or full fee remission:
- **Route 1:** If an applicant is receiving a means-tested benefit that is considered a 'qualifying benefit' for the purposes of the HwF scheme (full details below at paragraphs 32 to 33), they automatically pass the income test and are eligible for full fee remission.
  - **Route 2:** If an applicant is **not** receiving a means-tested qualifying benefit but their gross household monthly income is **below** the income threshold (full details below at paragraph 38), they will receive full fee remission.
  - **Route 3:** If an applicant is **not** receiving a means-tested 'qualifying benefit' and their gross household monthly income is **over** the income threshold, they may still be eligible for partial remission. The applicant will receive a partial fee remission if their gross household monthly income is **below** the maximum gross monthly income cap as set by the scheme (full details below at paragraphs 42 to 45).

### **Qualifying means-tested benefits and 'passporting'**

32. As a starting point, applicants who have passed the capital test and are in receipt of certain 'qualifying' means-tested benefits are automatically deemed to fall below the HwF income thresholds and will not have to pay anything towards their fee. This route is referred to as 'passporting'.
33. The qualifying benefits that currently passport applicants through the income test are:
- Income-based Jobseeker's Allowance
  - Income-related Employment and Support Allowance
  - Income Support
  - Pension Credit (Guarantee Credit)
  - Universal Credit with additional earnings of less than £6,000 (gross annual)
34. Applicants who pass the capital test but do not receive any of the above qualifying benefits must pass the gross monthly income test to be eligible for fee remission.

### **Income test – passporting: worked examples**

#### **Example 1**

Bria is single with no children and has passed the capital test. She receives Income-based Jobseeker's allowance. **She is passported through the HwF scheme and is eligible for a full fee remission.**



### Example 2

Bidev lives with a partner and one child and has passed the capital test. He receives Universal Credit but his additional take home earnings are £600 per month. **He is not passported through the HwF scheme** as his additional earnings are **above** the £500 per month limit. He must proceed to a full income assessment against the income thresholds and caps (full details below at paragraphs 35 to 38), which will determine whether he is eligible for fee remission, and if so, to what extent.

### Gross monthly income thresholds

35. The HwF scheme sets a gross monthly income threshold for each household. Applicants whose monthly income is at or below the threshold applicable to them will receive full remission of their fee. As a household's income increases above the threshold, the level of remission they receive will decrease incrementally until they are not eligible for any fee remission and must meet the full cost of the fee themselves.
36. 'Gross monthly income' is the total income received by an applicant and their partner (where applicable) from all sources in the calendar month preceding their HwF application. Where an applicant or their partner is self-employed, income is calculated from the person's share of the net profits from the last accounting period or the money or goods they have taken from the business over the period being considered.
37. Applicants' respective income thresholds are adjusted for their household compositions. A higher threshold is available for applicants with a partner (known as a 'Couple Premium'). The threshold also accounts for any financially dependent children whereby a standard allowance (known as a 'Child Premium') will apply for each dependent child and increase the applicant's total threshold.
38. Following inflationary increases applied to the HwF income thresholds on 30 September 2021, the current gross monthly income thresholds are as follows:

	Single applicant	Applicant with a partner (+ Couple Premium of £175)
Income threshold without children:	£1,170	£1,345
<b>An allowance of £265 is granted for each financially dependent child (Child Premium)</b>		
Income threshold with 1 child	£1,435	£1,610
Income threshold with 2 children	£1,700	£1,875

**Income disregards**

39. Similar to capital disregards, there are certain benefits (separate to qualifying benefits) and forms of income that are excluded from the gross monthly income assessment. These are referred to as 'income disregards' and are currently as follows:

<b>Income disregards</b>	
<b>Benefits and forms of income that are excluded from gross monthly income test</b>	
Armed Forces Independence Payment (AFIP)	Independent Living Fund Payments
Financial support under an agreement for the foster care of a child	Cold Weather and Payment Constant Attendance Allowance
Attendance Allowance	Limited capability for work element of Universal Credit
Funeral Payment	Direct payments made under Community Budgeting Loan
Back to Work Bonus Bereavement Allowance	Personal Independence Payment (PIP)
Housing Benefit	Direct payments made under Community Care, Services for Carer and Children's Services
Budgeting Advances paid under Universal Credit	Pension paid under the Naval, Military and Air forces etc (Disablement and Death) service Pension Order 2006
Housing Credit element of Pension Credit	Disability Living Allowance (DLA)
Carer's Allowance	Severe Disablement Allowance
Housing Element of Universal Credit	Disabled and Severely Disabled elements of Child Tax Credit, Working Tax Credit and Universal Credit
Carer Element of Universal Credit	Short Term Benefit Advances (STBAs) and Universal Credit Advances
Industrial Injuries Disablement Benefit	Exceptionally Severe Disablement Allowance
Childcare Element of Working Tax Credit Childcare Element of Universal Credit	Widowed Parents Allowance

40. After disregarding any relevant income or benefits as noted above, if the applicant's gross household monthly income is **at or below** the relevant threshold that applies to them, they will be eligible for full fee remission.
41. Alternatively, if their income is **above** the threshold, a further assessment will be required to determine whether they are eligible for partial fee remission.

### **Income test – income thresholds and income disregards: worked examples**

#### **Example one**

Mike lives with his partner and 10-year-old child. Having passed the capital test, the gross monthly income threshold that applies to him is £1,610 (£1,345 + £265).

Disregarding Personal Independence Payment of £200, Mike's gross household income in the month prior to application is £1,600. **He passes the income test and is eligible for a full fee remission.**

#### **Example two**

Miriam is single with a 12-year-old child. Having passed the capital test, the gross monthly income threshold that applies to her is £1,435 (£1,170 + £265).

There are no income disregards that apply to Miriam. Her gross household income in the month prior to application is £3,000. **She is not eligible for a full fee remission and must proceed with a further assessment, which determines whether she will qualify for a partial fee remission.**

## **Partial fee remission**

42. Applicants whose gross household monthly income exceeds the applicable threshold for their circumstances may still receive some help with their fees by way of a partial remission. This is determined by assessing the applicant's income level against the 'gross monthly income cap' (i.e. the maximum allowed gross monthly household income).
43. In the same way as income thresholds, the gross monthly income cap is also set depending on the applicant's household composition – accounting for a Couple Premium if the applicant has a partner and/or a Child Premium for any financially dependent children. The current income cap is as follows:

### Gross Monthly Income Cap

	Single applicant	Applicant with a partner
Monthly income cap without children	£5,170	£5,345
<b>An allowance of £265 is granted for each financially dependent child</b>		
Monthly income cap with 1 child	£5,435	£5,610
Monthly income cap with 2 children	£5,700	£5,875

44. If an applicant's monthly gross income **exceeds** the income cap that is applicable to their circumstance, they will not receive any financial assistance through the HwF scheme.
45. Where an applicant's gross monthly income is **above the income threshold** but **below the monthly income cap** applicable to their circumstance, the level of partial fee remission is currently determined using the '50% rule'. For every £10 the applicant receives over the income threshold, they will be required to contribute £5 towards the fee (up to a maximum of £2,000).

#### Income test – partial fee remission: worked examples

##### Example one

Scott is single with an 11-year-old child. The fee payable is £5,000 and he has passed the capital test.

The gross monthly income threshold that applies to him is £1,435.

The gross monthly income cap that applies to him is £5,435.

Scott's gross monthly income month prior to application is £5,000. As this is **above** the income threshold but **below** the cap, **he will be eligible for partial fee remission**.

Applying the 50% rule and rounding down to the nearest £5, his income is £3,565 **above** the income threshold. He will need to pay 50% of this towards the fee: £1,780. The remaining £3,220 is not payable.

##### Example two

Sulekha lives with a partner and their 13-year-old child. The fee payable is £1,000 and she has passed the capital test.

The gross monthly income threshold that applies to her is £1,610. The gross monthly income cap that applies to her is £5,610.

Sulekha's gross monthly income prior to the application is £6,000. As this is **above** both the income threshold and the cap, **she will be ineligible for fee remission.**

### **Example three**

Selen is single and without children. The fee payable is £1,000.

The gross monthly income threshold that applies to her is £1,170.

The gross monthly income cap that applies to her is £5,170.

Selen's gross monthly income month prior to application is £4,000 i.e. **above** the income threshold but **below** the cap.

Applying the 50% rule, her income is £2,830 above the income threshold. 50% of this would be payable towards a fee: £1,415.

However, the fee in question is **below** £1,415 (fee of £1,000). As such, **Selen will be ineligible for remission on this occasion and will be liable to pay the full fee.**

## **The application process**

46. With the exception of fee remission relating to the Court of Protection and for company appeals to the Gambling jurisdiction of the First-tier Tribunal (General Regulatory Chamber) that have specific forms and guidance, an application for remission through the HwF scheme can be made through an online form on the gov.uk website or by using the EX160 paper application form. Public guidance on the eligibility criteria and the application process is contained in the form EX160A, which can also be found on the gov.uk website.
47. Applicants must generally apply for remission under the HwF scheme at the point they are making their court or tribunal application for which a fee is payable, but for the HwF scheme, they would be liable to pay.<sup>7</sup>
48. There is an alternative route whereby applicants can make a retrospective (refund) application for fee remission. This is where an applicant has paid the fee themselves but believes they may have been entitled to fee remission had they applied at the

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<sup>7</sup> With the exception of a HwF application concerning a fee in the Court of Protection. Depending on the type of case being brought, the financial circumstances to be assessed will be either of (a) the person making the application on behalf of a vulnerable person; or (b) the vulnerable person.

time.<sup>8</sup> As this is a refund scenario, there is a time limit of three months for making a retrospective application.<sup>9</sup>

49. Once an application is submitted, it is received and processed by HMCTS. In some cases, HMCTS may request documentary evidence from an applicant in support of the application they have submitted.

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<sup>8</sup> Only the applicant who paid the fee can apply. Vexatious litigants or litigants bound by a civil restraint order can apply retrospectively for help with fees provided that their application for leave to apply was successful. No retrospective applications can be made in respect of fees paid via the Money Claim Online (MCOL) service, or for search or photocopy fees.

<sup>9</sup> A retrospective application must be made within (a) three months of a Final Order being issued by the Court of Protection; or for all other courts and tribunals (b) three months from the date the fee was paid.

## **PART A OF PROPOSALS: Help with Fees eligibility criteria**

50. Following a review of the Help with Fees (HwF) scheme, we are making the following proposals for revising the eligibility criteria.

### **The income test**

51. With regards to the income test, we propose the following:

- Using an updated methodology to set new income thresholds, Child Premiums, and Couple Premium.
- Amending the list of income disregards in line with the updated income thresholds methodology.
- Maintaining the current list of means-tested benefits for passporting applicants through the income test.
- Amending the definition of gross monthly income.

### **Partial fee remission**

52. We propose to:

- Replace the 50% partial remissions rule with a three-banded taper scheme.
- Reduce the gross monthly income cap from £4,000 to £3,000 above the gross monthly income threshold.

### **The capital test**

53. We propose to revise the capital test by:

- Amending the definition of disposable capital.
- Increasing the lower capital threshold from £3,000 to £4,250, in line with the updated income thresholds methodology.
- Replacing the current ten-band capital threshold system with a simplified three-band structure.
- Revising the capital threshold age cap from 61 years old to 66 years old.
- Updating the list of capital disregards to remove items as set out under paragraph 141 below.
- Extending the list of capital disregards to include the compensation schemes as listed under paragraph 147 below.
- Introducing a 'time limit' on compensation payments included in the capital disregards list.

## Chapter 3 – Income test proposals

### Introduction

54. In practice, applicants must pass the capital test before progressing to the income test. However, we set out proposals regarding the income test first as our income test proposals are central to the Help with Fees (HwF) scheme and lay the foundation for our proposed changes to the capital test as set out in Chapter 5 below.
55. Our income test proposals fall under the following areas:
- Income thresholds
  - Income disregards
  - Passporting benefits
  - Definition of gross monthly income
56. Where appropriate, we have sought to maintain consistency between our proposals to revise the HwF scheme and the proposals for updating the legal aid scheme, as set out in the 'Means Test Review' (Legal Aid MTR) consultation published in March 2022. However, to account for the differences between the two schemes, our proposals depart from the Legal Aid MTR approach where necessary. While similar in many ways, the schemes are fundamentally different in their core purposes. The HwF scheme provides financial support for one-off court or tribunal 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 (i.e. over the course of a single case, there may be multiple HwF applications relating to different fees). In contrast, the legal aid scheme typically provides ongoing financial support to help litigants manage their litigation over an extended period.

### Income thresholds

57. As noted above, aside from a minor amendment in 2014 to the definition of 'excluded benefits' and update to the income thresholds by inflation (backdated to 2016) in September 2021, the income test has not been otherwise updated since the HwF scheme was first introduced in 2013.
58. The current income thresholds were derived from HM Revenue and Customs Working Tax Credit income cut-off for workers (currently in the process of being phased out and replaced by Universal Credit).<sup>10</sup> At the time of implementing the HwF

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<sup>10</sup> Note: workers without children and without the 30-hour element of Tax Credit.



scheme in 2013, the Working Tax Credit rates used were £13,022 per annum for a single person and £17,809 per annum for a couple.

59. Our review of the HwF scheme has identified that the income thresholds are outdated and out of step with increased living costs. As set out in the table under paragraph 38 above, the gross monthly income threshold is £1,170 for a single applicant without children, which amounts to an annual income of £14,040. This is far below the current gross annual salary of £19,760 for a person earning the National Living Wage (NLW), working 40 hours per week. The gap will only continue to widen when the NLW hourly rate increases to £10.42 from 1 April 2023, and the gross annual salary rises to approximately £21,674.
60. We therefore propose to update the income thresholds. This will ensure that the HwF scheme continues to assist individuals on the lowest incomes, so they are able to meet ordinary and reasonable living costs without sacrificing those elements of their finances towards a fee. We propose to achieve this outcome by setting the HwF income thresholds based on data on living expenses published in the Office for National Statistics (ONS) Living Costs and Food Survey (LCF).
61. The ONS LCF is an annually produced dataset reflecting information on the spending patterns of households across the UK at different levels of income ('deciles'). Expenditure is broken down in detail across different spending categories – such as food & non-alcoholic drinks, transport, communication etc. The ONS LCF is a national statistic that meets high standards of trustworthiness, quality, and value. Using this data allows us to establish the level of income required by an individual to meet ordinary and reasonable expenditure. For the purposes of the HwF scheme, any income **above** that level is effectively disposable income that is **not** required to meet ordinary and reasonable expenditure, and as such, money that can be used towards paying a fee – either in part, or in full (depending on the individual's exact income level).
62. In order to set the HwF gross monthly income threshold and related Couple and Child Premiums, we have developed the following 3-step methodology. See **Annex B** for a full breakdown of our proposed methodology for setting the updated income thresholds.
63. **Step 1 – the income decile:** Similar to the Legal Aid MTR's rationale, we consider that a fee remission scheme should be targeted at providing most financial assistance to households below the median income level. We therefore propose to set the HwF income threshold using the average actual expenditure of households in the **5th income decile** of the population. The 5th decile represents the average

household expenditure of people whose income falls 40% to 50% of the way up the UK's income distribution.<sup>11</sup>

64. **Step 2 – ordinary and reasonable expenditure:** To establish what should be included in the income threshold as ordinary and reasonable expenditure, we assessed all expenditure categories within the ONS LCF and made decisions to exclude certain categories of spend that we consider to be non-essential – such as alcohol, tobacco, narcotics, and gambling payments. **Annex B** contains a detailed explanation with a full list of categories that have been included and excluded for the purposes of the income test. We note that this approach was also used by the Legal Aid MTR (though accounting for differences between the schemes as noted above in paragraph 56).
65. **Step 3 – equivalisation:** Whilst the ONS LCF methodology sets the income threshold for a single person without children, it does not account for different household compositions – namely, to establish Couple and Child Premiums for the HwF income test. We know that household composition has a direct bearing on living costs and, as a result, whether an applicant can afford their court or tribunal fee. As set out in Chapter 2 above, the current HwF scheme already accounts for different household sizes by adding premiums for additional members of a household – through Couple and Child Premiums. We propose to update the Premiums by applying an 'equivalisation' process to the ONS LCF data.
66. Equivalisation is an economic process that adjusts income to take account of the needs of different sized households. In line with the Legal Aid MTR, we propose using the Organisation for Economic Co-operation and Development (OECD) modified equivalence scale, which has become the most widely adopted equivalisation scale internationally, and is used by the ONS and the Department for Work and Pensions (DWP) for key household income statistics.
67. Moreover, in applying equivalisation, we propose to update the Child Premium to account for different expenditure needs based on a child's age. We propose to establish two levels – a lower Premium for a child aged 0 to 13; and a higher Premium for a child over 14 that is equivalent to the Couple Premium.

### **Proposed income thresholds based on the updated methodology**

68. As a working proposal, to understand possible HwF income threshold figures, we have applied our proposed methodology to the 2019/20 ONS LCF dataset.
69. Although a more recent ONS LCF dataset covering the year 2020/21 is available, we have not used that data as it is skewed by the impact of the COVID-19 pandemic on household spending that year. In our view, the 2019/20 dataset more accurately

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<sup>11</sup> Annual salary of £29,000 - £36,800.

reflects typical household spending habits. For example, households in the 5th decile in 2020/21 saw significant increases in spending on housing, fuel and power but significant decreases on spending for transport, recreation & culture, and restaurants & hotels. It therefore does not provide an accurate representation of household expenditure that is suitable for implementing into any proposals for revising the HwF scheme. This is demonstrated by the fact that applying our above methodology to the 2020/21 data provides for lower HwF income thresholds compared to using the 2019/20 data.

70. Using the 2019/20 data, the proposed income thresholds are as follows:

<b>Gross monthly income thresholds using 2019/20 ONS LCF 5th income decile and OECD equivalisation</b>	
Individual threshold for a single applicant	£1,420
Couple Premium	£710
Child Premium (age 14+)	£710
Child Premium (age 0–13)	£425

71. In line with yearly publication, we understand that the next ONS LCF Survey covering the year 2021/22 will be available in March 2023. We therefore propose to review our use of the 2019/20 data and the proposed thresholds in the above table when the 2021/22 data is published.
72. We also recognise that the use of 2019/20 ONS LCF data, and therefore the proposed thresholds above, does not capture the ongoing effects of the rise in inflation in the UK. As part of our HwF review, although we explored the possibility of adjusting the proposed income thresholds to take account for inflation, we have taken a decision not to pursue this option for the following reasons:
- There is a high degree of uncertainty about what inflation will be in both the short and long term. In the absence of a clear and certain picture, we do not consider it prudent to build in any level of inflation uplift. We will nevertheless continue to monitor inflation and its impacts on household expenditure and reassess our position if, and as, necessary.
  - There is insufficient evidence on the lasting impact of the ongoing rise in inflation on household expenditure. Without such evidence, uprating the income thresholds to account for inflation would be inconsistent with our proposed methodology, which is based on actual UK household expenditure.
73. We consider that relying on 2019/20 LCF ONS data to calculate the income threshold and reviewing the figures in light of 2021/22 data when it is published, remains the most appropriate approach.

## Proposed income thresholds based on the updated methodology: worked examples

### Example 1

Situation: Tara is a single parent with a child aged 8. She receives a monthly gross salary of £1,500pm (~£18k annually). The fee is £232.

Outcome under the current scheme: The threshold that applies to Tara is the gross income threshold (£1,170) plus a Premium of £265 for her child – total of £1,435. Since her income of £1,500 is **above** the threshold of £1,435, she is expected to pay part of the fee. **She will pay £30 and receive £202 remission.**

Outcome under proposed updated income threshold: The threshold that would apply to Tara would be £1,420 (new gross income threshold) plus a Premium of £425 for her child = £1,845. Since her income is **below** £1,845, **she will receive full remission.**

### Example 2

Situation: Terry lives with his wife Demi and their three children (aged 10, 13, and 15). He earns a gross salary of £2,500pm (~£30k p.a.) and Demi a part time gross salary of £750pm = total gross household income of £3,250. The fee is £183.

Outcome under the current scheme: The threshold that applies to Terry is £1,170 (lower threshold) plus £175 (Couple Premium) plus 3 x £265 (3x Child Premium) = £2,140. Their combined monthly income of £3,250 is **above** the threshold, so **he will have to pay the full fee.**

Outcome under proposed updated income threshold: The applicable threshold under the new scheme would be £1,420 (lower threshold) + £710 (Couple Premium) + 2 x £425 (Premium for children aged 0–13) + £710 (Premium for children aged 14+) = £3,690. Their gross household income is **below** £3,690 so **he will receive full remission.**

**Question 1:** Do you agree with our proposed methodology to set the income thresholds using ONS LCF data? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 2:** Do you agree with our proposed methodology to use the 5th income decile to set the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 3:** Do you agree with our assessment of 'essential' and 'non-essential' expenditure categories, as set out in **Annex B**, for the purposes of calculating the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 4:** Do you agree with our proposal to use the OECD modified equivalence scale to establish the Couple Premium and Child Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 5:** Do you agree with our proposal to set two levels of Child Premiums – a lower premium for a child aged 0 to 13 and a higher premium for a child over 14? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 6:** Do you agree with our proposal to use the 2019/20 ONS LCF data to set the income threshold and Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 7:** Do you agree with our proposal to review the income thresholds (as set out in the table under paragraph 70 above) when the ONS LCF 2021/22 data is published in 2023? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 8:** Do you agree with our proposal to withhold adjusting the income thresholds by inflation as explained above? Please state yes/no/maybe/don't know and provide reasons for your answer.

## Income disregards

74. As set out above in paragraph 39, certain benefits and forms of income are disregarded from the income test. The 2013 consultation stated that the majority of excluded benefits supported 'a person with a disability' or 'contributed towards childcare costs', though some housing, social care, and bereavement-related benefits were also set out in the list of excluded benefits.
75. Given our proposed methodology for setting the gross monthly income threshold, we propose updating the list of income disregards to ensure that the only types of income to be excluded are those necessary to meet costs not represented in the ONS LCF data, namely:
- payments intended to cover an immediate financial need, i.e. Universal Credit advance payments or bereavement support payments.
  - payments intended to cover a specific, unavoidable set of costs, e.g. costs relating to disability.

76. Consistent with the Legal Aid MTR, we do not consider it appropriate for the HwF scheme to include income from these sources because each payment is provided to meet a specific cost unique to certain individuals, which cannot be captured by the ONS LCF methodology. In contrast, we do not propose disregarding payments provided to support someone with general living costs as they are accounted for by the ONS LCF methodology.
77. We therefore propose to remove the following payments from the current list of income disregards:
- Housing benefit
  - Back-to-work bonus
  - Housing element of Pension Credit
  - Widowed parents' allowance
  - Childcare element of Working Tax Credit
78. A full list and description of those benefits which would be removed from, retained, or added to the list of income disregards can be found in **Annex C** along with the rationale for the proposed changes.

### **Universal Credit**

79. The HwF scheme currently disregards the following Universal Credit elements:
- an additional amount to the child element in respect of a disabled child
  - a housing costs element
  - a childcare costs element
  - a carer element
  - a limited capability for work or limited capacity for work and work-related activity element
80. Consistent with the rationale set out above concerning income disregards, we intend to continue disregarding elements of Universal Credit provided to support disabled people and carers. Equally, to remain consistent with our rationale, we propose removing the disregards for the housing and childcare elements, as these costs are included within the ONS LCF data, and therefore accounted for by our proposed methodology for setting income thresholds.

**Question 9:** Do you agree with our proposal to update the list of income disregards as outlined above, and in **Annex C**? Please state yes/no/maybe/don't know and provide reasons for your answer.

## Passporting benefits

81. As set out under paragraphs 32 to 34 above, the HwF scheme passports applicants in receipt of certain qualifying means-tested benefits through the income test. The aim of passporting is to simplify the application process for individuals who have had their means assessed by DWP and who are therefore highly likely (due to their low incomes) to be eligible for fee remission if they underwent a full assessment. This method also streamlines the process for, and reduces additional pressure on, HMCTS.
82. As part of our HwF review, we analysed whether the list of passporting benefits remain relevant or if any changes are needed. On assessment, we do not consider that any changes are necessary.
83. In our review, we paid particular regard to recipients of Universal Credit who are passported through the HwF scheme. At present, recipients of Universal Credit with additional take home earnings of **less than** £6,000 per annum (£500 per month) are passported through the HwF income test. Those who receive Universal Credit but have additional take home earnings of **more than** £6,000 per annum are not passported and their income will be assessed in full.
84. Universal Credit was introduced in 2013 as a replacement for Income-based Jobseeker's Allowance, Income-related Employment Support Allowance, Income Support, Child Tax, Working Tax Credit, and Housing Benefit. These benefits are now referred to as 'legacy benefits' and DWP intends to have migrated all benefit recipients over to Universal Credit by 2024.
85. Universal Credit involves a fixed standard allowance which is increased with 'elements' for certain characteristics, such as being a carer or being disabled (as set out above). For persons who earn income beyond Universal Credit (known as 'work allowance'), the amount they are paid progressively reduces as they earn above their work allowance. Accordingly, for many Universal Credit recipients, their income will be constituted by the sum of their earnings and their final Universal Credit award.
86. As noted in paragraph 33 above, HwF applicants receiving Universal Credit with additional take home earnings of over £6,000 per annum will not be passported through the income test.
87. By contrast, in civil legal aid at present, all recipients of Universal Credit are passported, regardless of any additional earnings. As noted in the Legal Aid MTR at paragraphs 196 to 198, this approach has generated significant costs and inconsistent outcomes between Universal Credit and non-Universal Credit applicants. Accordingly, the Legal Aid MTR proposed introducing an earnings threshold for passporting Universal Credit recipients, also set at additional earnings of £500pcm

(gross). This threshold was set after detailed analysis which concluded that under this threshold, 99% of households earning between £0 and £500pcm would be eligible for non-contributory legal aid (contrasted with just 73% being eligible when passporting all Universal Credit recipients).

88. In our review, we conducted the same detailed analysis regarding the HwF scheme and Universal Credit recipients. We wanted to ensure that the current threshold strikes the right balance between passporting as many individuals as possible to maximise fairness and operational efficiency, while minimising passporting individuals who would not otherwise be eligible for full fee remission.
89. Following that analysis, we have concluded that the existing threshold of £6,000 per annum (or £500 per month) continues to strike the appropriate balance. Under the current HwF scheme, 93% of Universal Credit recipients passported would be eligible for a full fee remission if tested. Under the proposed updated scheme,<sup>12</sup> over 99% of Universal Credit recipients passported would be eligible for a full fee remission if tested.
90. We acknowledge that this means a very small percentage of Universal Credit recipients will receive greater fee remission than they would if they underwent the full income assessment, but we believe the minimal cost involved in that is vastly outweighed by the administrative benefits of passporting for both applicants and HMCTS.

**Question 10:** Do you agree with our proposal to maintain the current list of means-tested benefits for passporting applicants through the income test? Please state yes/no/maybe/don't know and provide reasons for your answer.

## Definition of gross monthly income

91. We are proposing three changes to the definition of gross monthly income.

### Gross monthly income definition proposal 1

92. Under paragraph 13 of the Courts and Tribunal Fee Remissions Order 2013, gross monthly income is currently defined as:

“(1) Subject to paragraph 14, gross monthly income means the total monthly income, for the month preceding that in which the application for remission is made, from all sources, other than receipt of any of the excluded benefits.

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<sup>12</sup> That is, if each proposal set out in this consultation were implemented.



93. Although there is some further clarification under paragraph 13(2) and (3) regarding income from a trade, business or gainful occupation other than an occupation at a wage or salary, the core income definition is not sufficiently clear. In its current form, it is open to interpretation for example where non-standard sources of income are concerned, such as cash gifts. This effect conflicts with one of the key objectives of the HwF review: to ensure a straightforward scheme for applicants to understand, and HMCTS to apply. The current definition is also inconsistent with the definition of income under civil legal aid – section 21 of The Civil Legal Aid (Financial Resources and Payment for Services) Regulation 2013.
94. We therefore propose to amend the definition of what constitutes gross monthly income to align with civil legal aid as follows:
- the gross amount the individual has earned, the gross amount of any entitlements that have accrued, and any other gross sums from any source which the individual has received.
95. We will ensure that the public guidance on gross monthly income contained in the form EX160A, which can also be found on the gov.uk website, remains updated with relevant examples of what applicants should include as income as required.

**Question 11:** Do you agree with our proposal to amend the definition of gross monthly income as per paragraph 94? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Gross monthly income definition proposal 2**

96. At present, the definition of gross monthly income in the HwF scheme is the total monthly income received in the month preceding the application being made. For self-employed persons, that income is the sum of the profits and drawings of the applicant in the month preceding the application.
97. However, the 'one month' limit is inflexible in recognising that persons who are self-employed or employed in shift work have fluctuating income from month to month, dependent on available work. Testing only the income accrued in the month prior to a HwF application may disadvantage some applicants, as it increases the risk that someone who accrued unusually high earnings in the month prior to their application would be ineligible for fee remission.

98. To address this issue, we propose to amend the income test to permit an applicant to choose whether they calculate their income on the basis of one month or a three-month average prior to making a HwF application. Introducing an option in this way would provide a more accurate representation of an applicant's typical income if they are self-employed or casually employed and less likely to earn the same amount each month.

**Question 12:** Do you agree with our proposal to give applicants a choice between using a monthly income or a three-month average income for the income test? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Gross monthly income definition proposal 3**

99. The income test currently considers any drawings the applicant has made in the calendar month prior to their application as income. In the case of self-employed applicants, any 'drawings' they take from their business are effectively previously earned profit that is being taken from the business to use for personal expenditure.
100. Given that drawings are essentially capital that is available to an applicant to use for personal expenditure, our view is that drawings should not be considered as income for the purposes of the HwF scheme, but rather contribute to the applicant's capital once the applicant has taken the drawings and is in possession of them. Therefore, we propose that the scheme no longer include drawings in the income test.

**Question 13:** Do you agree with our proposal to amend the gross monthly income definition to no longer include drawings as income? Please state/yes/no/maybe/don't know and provide reasons for your answer.

## Chapter 4 – Partial fee remission proposals

### Introduction

101. As detailed in chapter 1, once an applicant has passed the capital test, the income test determines the level of financial help they should be provided. Where a household's gross monthly income is **above** the gross monthly income **threshold** but **below** the gross monthly income **cap**, the applicant will receive partial help with their fee.
102. Through a partial fee remission policy, the Help with Fees (HwF) scheme recognises that even if someone falls above the income threshold, they may still need financial assistance with the payment of a court or tribunal fee. Therefore, the intention is to provide proportionate subsidy for individuals with income below the set monthly income cap.
103. Our review of the HwF scheme analysed the current partial fee remission policy's '50% rule' and income cap to assess whether they strike the right balance between ensuring access to justice for those with limited financial means and providing taxpayers with value for money. Our analysis uncovered two main issues with the current policy.
104. Firstly, the current income cap – set at £4,000 above the income threshold – is too high. For example, the income cap for a single applicant without children is £1,170 (threshold) + £4,000 = £5,170. Applying the same principle, under our proposed monthly income thresholds as set out above, the new monthly income cap would start at £5,420 for a single applicant without children (proposed threshold of £1,420 + £4,000). This means that a single person without children with a gross annual salary of approximately £65,000 (based on a monthly income of £5,420) could be eligible for fee remission. Moreover, depending on the level of the fee, the 50% rule could mean they receive a sizeable subsidy for their fee. This outcome would clearly be against a central purpose of the HwF scheme – to target assistance at individuals with limited financial means, particularly those below the median income level. A salary of £65,000 is around double the median UK gross household income of £33,000 per annum (£2,750 per month).<sup>13</sup> Given that the HwF scheme is fully subsidised by

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<sup>13</sup> Based on median weekly pay of £640 for full-time employees as at April 2022.

taxpayers, such an outcome would also be contrary to our aim to ensure value for taxpayer money.

105. Secondly, the fixed 50% rule is too rigid. The rule is uniform throughout the scheme, without accounting for whether an applicant is **substantially** above the gross monthly income threshold or whether someone is **just** above it. In both cases, the applicant is expected to pay their fee in full or in part, up to the level of 50% of their income above the gross monthly income threshold. As noted above, the partial remissions policy is intended to determine how much of a person's disposable income should be put towards a fee. Following this rationale, it is appropriate that a person with higher income (and therefore, more disposable income) should be expected to use more of that income to pay their fee – and vice versa.

## The proposal

106. We propose to replace the partial remissions policy with a three-banded taper scheme that reduces the gross monthly income cap from £4,000 to **£3,000** above the gross monthly income threshold:

### Our proposed partial remissions taper scheme

Band	Gross monthly income level	% payable towards a court or tribunal fee
1	Up to £1,000 above the threshold	50%
2	£1,001 to £2,000 above the threshold	70%
3	£2,001 to £3,000 above the threshold	90%

107. The taper scheme together with the revised gross monthly income cap would operate similar to Income Tax so that only the income within that specific band would face the applicable contribution fee. Though we use percentages to reflect the changes above, in practice our proposal would operate in line with the current scheme, i.e. 70% means that for every £10 above the applicable threshold they contribute £7, for 90% they contribute £9 etc.
108. In choosing the bands and the percentages as proposed, we have focussed on reducing the level of subsidy provided by the HwF scheme to those incomes above the gross monthly income threshold, while also ensuring that the percentage increases are relatively smooth.
109. In arriving at the figure of £3,000 for the monthly income cap, we have considered several factors. First, we have taken note of the eligibility criteria for civil legal aid, which states that individuals with income above the national median should not be

eligible for non-contributory civil legal aid. We have also considered any potential impacts on access to justice. On assessment, we do not believe that reducing assistance for individuals with income above the national median would impede access to justice. Where applicants are not eligible for partial remission through our proposed reforms to the HwF scheme, their income level would clearly suggest that they should, and can afford to, use their disposable income to pay a fee. Where an individual is ineligible for assistance through the HwF scheme, applicants remain able to apply for fee remission under the Lord Chancellor's exceptional power to remit fees.

110. Lastly, we have also considered the real-world impact of reducing the cap. Notwithstanding reduced assistance to those on higher incomes, our proposal to make the scheme's monthly income thresholds more generous will mean that the vast majority of people will still benefit from our proposed reforms to the income test. As such, our proposal to reduce the monthly income cap will only affect those with income above the national median. For example, single applicant households with a gross monthly income of between £3,200 and £4,420 (approximately £38,000 to £53,000 annually) may pay more of their fee under our proposed scheme – but only where the fee is approximately £1,100 and above. However, we note that single applicants with no children and a gross monthly income of £3,200 or less (approximately £38,000 annually) will pay the same amount or less for any fee under both the 50% rule and our proposed scheme.
111. Under our proposed taper scheme with a reduced monthly income cap, the level of fee remission decreases as the applicant's gross monthly income increases above the monthly threshold. This ensures proportionate contributions for those on higher incomes and with more disposable income. It also reduces and smooths the upper cliff-edge that exists under the current 50% rule.

#### **Partial fee remission proposals: worked example**

Razana is single without children. She has a gross monthly household income of £4,000. The fee is £2,000.

Applying the proposed gross monthly income thresholds as set out under Chapter 4, the relevant threshold would be **£1,420**.

Applying the proposed gross monthly income cap as proposed above, the relevant cap would be **£4,420** (£1,420 + £3,000).

Razana is over the income threshold but under the income cap. As she earns **£2,580** more than the threshold, her partial fee remission under our proposed taper scheme would be calculated as follows:

- Band 1: £1,000 of her income falls in Band 1. 50% of this is £500.
- Band 2: £1,000 of her income falls in Band 2. 70% of this is £700.
- Band 3: £580 of her income falls in Band 3. 90% of this is £520.<sup>14</sup>

Razana is liable to pay a total of **£1,720** (£500 + £700 + £520) towards the fee of £2,000. The remaining £280 will be remitted.

**Question 14:** Do you agree with our proposal to replace the fixed 50% partial remissions rule with the three-banded taper scheme set out above? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 15:** Do you agree with our proposal to reduce the gross monthly household income cap to £3,000 above the gross monthly income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

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<sup>14</sup> Rounded down to the nearest £5.

# Chapter 5 – Capital test proposals

## Introduction

112. This chapter sets out our proposals in relation to the capital test, which fall under the following areas:
- Definition of disposable capital
  - The lower capital threshold
  - The capital threshold band system
  - The age cap
  - Capital disregards
113. The capital test, as introduced in 2013, takes into consideration two key factors:
- **Simplicity:** The scheme was designed to operate across all court and tribunal jurisdictions as simply as possible without differentiating between types of fees or applicants. Evidential requirements were intentionally kept light to minimise burden on applicants and HMCTS.
  - **Fairness:** The size of court and tribunal fees can vary hugely depending on the type of service and the jurisdiction an applicant seeks to access. Therefore, a banded system was designed so that as the size of the fee increases, so does the level of capital threshold that applies. This ensures a fair and proportionate system whereby applicants get the help they need.
114. The capital test was devised to appropriately filter out of the scheme those individuals with substantial disposable capital that could be used to fund their fee. Where someone has a considerable level of savings or other capital assets, it is reasonable to expect they use those resources to pay their fee before utilising public funds. Implementing this threshold means that the Help with Fees (HwF) scheme remains focused on helping those individuals with little to no savings who, if not for the scheme, would be unable to access the courts and tribunals system.
115. The proposals to revise the capital test have been developed with a view to maintaining the core rationale behind its introduction and to further strengthen the principles of simplicity, fairness, and access to justice.

## Definition of disposable capital

116. Under paragraph 5 of the Court and Tribunals Fee Remissions Order 2013, disposable capital is currently defined as:

“the value of every resource of a capital nature belonging to the party on the date on which the application for remission is made, unless it is treated as income by the Order, or it is disregarded as excluded disposable capital”

117. The definition was set broadly to ensure that financial assistance provided by the HwF scheme is properly targeted at those who otherwise would be unable to access justice. As the 2013 consultation noted, if an applicant has disposable capital, they should use it to pay their fees. The existing scheme then limits the breadth of this definition through a list of capital disregards (see full list under paragraph 25 in Chapter 1).
118. The wide scope of what qualifies as disposable capital means that, strictly speaking, items such as mobile phones should be valued for the purposes of the capital test. To the extent they are not disregarded, many other items of personal property also fall within the broad definition. However, it is clearly inappropriate and overly onerous to ask applicants to calculate the value of every capital resource they have (subject to disregards). It would also be unreasonable to expect or ask applicants to sell certain items of personal property – such as wedding rings or mobile phones – to fund their court or tribunal fees. This is particularly so given the HwF scheme provides remission for individual fees.
119. We therefore propose amending the definition of disposable capital to an applicant's (and where applicable, their partner's) savings and investments including, without being limited to:
- bonds
  - lump sums
  - stocks and shares
  - the value of second homes
  - money or property owned outside the UK
120. Our proposed definition is simpler than the current version for applicants to understand and less onerous to comply with. It will also better align the definition with existing guidance provided to applicants, including on the HwF application form which asks applicants about their 'savings and investments'.
121. Overall, our proposed definition is consistent with the objective to implement a straightforward system for applicants to understand and for HMCTS to administer.

**Question 16:** Do you agree with our proposal to amend the definition of disposable capital to mean 'savings and investments' with a non-exhaustive list of included examples as set out in paragraph 119? Please state yes/no/maybe/don't know and provide reasons for your answer.



## The lower capital threshold

122. As detailed in Chapter 1, unless the applicant or their partner are aged 61 or above, they must have disposable capital of less than £3,000 to remain eligible for fee remission. This is the current 'lower capital threshold', and the first part of the capital test that applicants must pass to progress through the HwF scheme.
123. The threshold needs to maintain a fair balance between filtering out individuals with substantial disposable capital from the scheme and assisting those with limited capital. The starting point is that financial assistance through the HwF scheme should not be directed at applicants who have considerable levels of savings or capital assets. Where applicants have access to substantial disposable capital, we believe it is right that this should be their first recourse for meeting any fees before seeking public funds.
124. In terms of determining a reasonable level for a lower capital threshold, the general rule of thumb is that individuals should have three months' essential expenditure available in savings to allow households to pay for unforeseen costs for a period of unemployment. This is considered suitable because it gives individuals a reasonable amount of time to adjust to a change in their financial circumstances – for example, by finding a new job.
125. The current lower capital threshold was devised to align with this principle. When the HwF scheme was introduced in 2013, the standard gross monthly income threshold for a single applicant was £1,085. Therefore, applying a multiplier of 3, the lower capital threshold was set at the rounded figure of £3,000. Three months' expenditure was also the underlying rationale for setting the new lower capital threshold in the Legal Aid MTR, based on advice from the Money and Pensions Service (MaPS).<sup>15</sup>
126. Although each person's financial circumstances will be different, we consider that setting the lower capital threshold at three months' expenditure remains a sound rationale. Accounting for the proposed increase to the income threshold to £1,420, we propose an updated lower capital threshold as follows:

<b>Proposed gross monthly income threshold for a single HwF applicant</b>	<b>Multiplier</b>	<b>Proposed lower capital threshold</b>
£1,420	x 3	£4,250 <sup>16</sup>

<sup>15</sup> An executive non-departmental body sponsored by the DWP that provides advice and guidance to the public on financial management.

<sup>16</sup> Rounded to the nearest £50.

127. By updating the lower capital threshold to be more generous and in line with the economic reality of today, our proposal will strengthen access to justice.
128. We note that once an applicant passes the lower capital threshold test, the HwF capital threshold band system provides a nuanced approach by applying a higher threshold to individuals who are facing larger fees.

### Update to the lower capital threshold: worked example

Lin is 40 years old. He has disposable capital of **£3,500**. The fee is £150.

**Current scheme:** For fees costing £1,000 or less, the capital threshold that applies is £3,000. Lin has **more** disposable capital than £3,000. He fails the capital threshold test and **is ineligible for fee remission**.

**Under our proposed update to the threshold:** For fees costing £1,420 or less, the capital threshold that applies would be £4,250. Lin has **less** disposable capital than £4,250. He passes the capital threshold test and **remains eligible for fee remission**.

**Question 17:** Do you agree with our proposal to maintain the principle of using three months' expenditure to set the lower capital threshold, and accordingly increase the lower capital threshold to £4,250? Please state yes/no/maybe/don't know and provide reasons for your answer.

## The capital threshold band system

129. We propose to replace the current ten-band system (see Chapter 1) with a simplified three-band structure as follows:

Value of the court or tribunal fee	Capital threshold
Up to £1,420	£4,250
£1,421 – £5,000	3x the fee charged
£5,001 or over	£16,000

130. The size of a court or tribunal fee can vary greatly depending on the jurisdiction and the type of service an applicant seeks to access. For example, an individual can have their appeal determined by the First-tier Tribunal (Immigration and Asylum Chamber) for a fee of £80. By contrast, even before a case begins at court, issuing a civil

money claim in the County or High Court can range anywhere from £35 to £10,000 depending on the value of the claim.

131. The capital threshold band system was introduced to account for the wide range of fees by providing greater leeway for applicants who face higher fees. This ensures a fair system by having a proportionate and more generous test rather than taking a rigid 'one size fits all' approach. Implementing a staggered system also works to reduce 'cliff-edges' for applicants on the 'wrong' side of a particular band.
132. For those reasons, based on our review of the current HwF scheme, we consider that a banded threshold system remains an appropriate means of best supporting individuals with limited financial means.
133. However, we propose revising the structure with a view to:
  - **Rationalise the band system so the threshold increases apply a consistent multiplier:** The current ten-band system applies two different multipliers as the fee increases. For fees up to £2,330, the threshold is 3x the fee. For fees of £2,331 upwards, the threshold is 2x the fee – up to the maximum capital threshold of £16,000. In contrast, our proposal aligns with MaPS' guidance that individuals should generally have three months' expenditure available in savings by applying a 3x multiplier to fees – up to the maximum capital threshold of £16,000. Whilst continuing to reduce 'cliff-edges' for applicants, this approach will introduce a clear and consistent band system.
  - **Simplify the band system:** By having different multipliers for different fee levels and ten separate bands, the current system is not easy to follow. Alongside applying a consistent rationale, our proposal provides a simple structure that will practically benefit both applicants and HMCTS.

### Proposed change to the capital threshold band system: worked examples

#### Example 1

Natasha is 40 years old. She has disposable capital of £8,100 and the fee payable is £3,500.

**Under the current scheme:** For fees costing between £2,331 and £4,000, the capital threshold that applies is £8,000. As Natasha's disposable capital is **above** this threshold, **she fails the capital test and is ineligible** for fee remission.

**Under our proposed capital threshold band system:** The capital threshold that applies is £10,500 (3x the fee amount of £3,500). Natasha's disposable capital is **below** this threshold so **she passes the capital threshold test and may be eligible** for fee remission depending on her level of income.

### Example 2

Bruce is 20 years old. He has disposable capital of £6,900 and the fee payable is £2,200.

**Under the current scheme:** For fees costing between £2,001 and £2,330, the capital threshold test that applies is £7,000. As Bruce's disposable capital is **above** this threshold, **he fails the capital test and is ineligible** for fee remission.

**Under our proposal to simplify the capital threshold band system:** The capital threshold that applies is £6,600 (3x the fee amount of £2,200). Bruce's disposable income is **below** this threshold so **he passes the capital threshold test and may be eligible** for fee remission depending on their level of income.

**Question 18:** Do you agree with our proposal to replace the current ten-band threshold system with a simplified three-band structure as set out in paragraph 129? Please state yes/no/maybe/don't know and provide reasons for your answer.

## The age cap

134. Currently, where an applicant or their partner is aged 61 or over, a flat £16,000 capital threshold applies. This is the case regardless of the size of the court or tribunal fee. This policy is known as the 'age cap'.
135. We propose to increase the age cap from 61 to **66 years old**. If implemented, this would mean that only applicants (or applicants with partners) aged 66 or above would qualify for the £16,000 capital threshold. Applicants between the age of 61 and 65 (inclusive) would be subject to the standard lower capital threshold of £4,250.
136. The age cap was designed as part of the HwF scheme to assist individuals over 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. 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.
137. However, there have been major changes to state pension age since the HwF scheme was introduced in 2013 which 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. As such, our proposal seeks to update the age cap by aligning it to today's state pension age.

## Proposed change to the age cap: worked examples

### Example 1

Evelyn is 70 years old. She has disposable capital of £10,000. The fee is £3,000.

**Under the current scheme:** As Evelyn is older than 61, the capital threshold that applies is £16,000. Her disposable capital is **below** this threshold so **she passes the capital test and may be eligible** for fee remission depending on her level of income.

**Under our proposal to increase the age cap to 66 years old:** As Evelyn is older than 66, the capital threshold that applies remains £16,000. Her disposable capital is **below** this threshold so **she passes the capital test and may be eligible** for fee remission depending on her level of income.

### Example 2

Joy is 65 years old. She has disposable capital of £10,000. The fee is £3,000.

**Under the current scheme:** As Joy is older than 61, the capital threshold that applies is £16,000. Her disposable capital is **below** this threshold so **she passes the capital test and may be eligible** for fee remission depending on her level of income.

**Under our proposal to increase the age cap to 66 years old:** As Joy is younger than 66, she is subject to the same capital thresholds as all other applicants. The fee is £3,000 so the capital threshold that applies here is £9,000. Joy's disposable capital of £10,000 is **above** this threshold so **she fails the capital test and is ineligible** for fee remission.

**Question 19:** Do you agree with our proposal to increase the age cap to align with the current state pension age of 66? Please state yes/no/maybe/don't know and provide reasons for your answer.

## Capital disregards

138. As explained in Chapter 1, there are certain types of capital that are excluded from the category of 'disposable capital' and will not be assessed by the HwF scheme. The current list of capital disregards is set out at paragraph 25 above.
139. The rationale behind capital disregards is to exclude capital resources that an applicant needs to maintain an acceptable living standard. As such, disregarded capital items broadly fall into four categories:

- property required to maintain a reasonable standard of living (for example, an applicant's primary dwelling or a vehicle used for motor transport)
- property required for the purposes of work (for example, tools of trade)
- entitlements provided for a specific purpose (for example, student loans or a job seeker's back to work bonus)
- entitlements received as a result of damages or a form of serious harm/loss (for example, payments made pursuant to claims due to personal injury or medical negligence)

140. We are proposing three changes to the list of capital disregards.

**Capital disregards proposal 1: removing items from the list of capital disregards**

141. Assuming the definition of 'disposable capital' is amended as set out above at paragraph 120, we propose removing the following items from the current list of capital disregards:

- household furniture and effects of the main or only dwelling occupied by the party
- articles of personal clothing
- tools and implements of trade, including vehicles used for business purposes

142. We propose this on the basis that, these items would not fall within the category of the new disposable capital definition of 'savings and investments' and therefore would not need to be disregarded. Removing the three items from the list will therefore help simplify and streamline the scheme.

143. We have also considered whether the item of 'property which is the main or only dwelling occupied by a party' that is currently in the list of capital disregards should be similarly removed. However, in the interests of providing a clear guidance to applicants and HMCTS, we propose to retain this item in the capital disregards list. This will avoid any potential confusion around whether a person's main or only dwelling could also be an 'investment' for the purposes of a HwF application.

**Question 20:** If the definition of disposable capital is amended as proposed under paragraph 120 above, do you agree with our proposal to update the list of capital disregards to remove the following items?

- the household furniture and effects of the main or only dwelling occupied by the party
- articles of personal clothing
- tools and implements of trade, including vehicles used for business purposes.

Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Capital disregards proposal 2: adding items to the list of capital disregards**

144. Apart from three categories of compensation (see paragraph 25 of Chapter 1), the current HwF scheme does not disregard payments from compensation schemes more broadly. This contrasts with the civil legal aid means test which currently disregards payments made pursuant to the Infected Blood Support Scheme and to persons diagnosed with Creutzfeldt-Jakob disease (vCJD).<sup>17</sup> Similarly, the Universal Credit scheme disregards compensation paid pursuant to a vCJD diagnosis, as well as payments made from the London Bombings Relief Charitable Fund and the We Love Manchester Emergency Fund (among others).
145. A rationale for disregarding these additional payments is: they fall into the category of payments made specifically to provide for persons who have suffered some kind of personal (non-monetary) harm. As such, accounting them into calculations for schemes such as legal aid or Universal Credit would be inappropriate. For example, an individual who has received a lump sum payment through the Windrush Compensation Scheme for personal harm and suffering should not be expected to treat it as available disposable capital for funding legal services. Similarly, it should not be included in an assessment to calculate their eligibility for Universal Credit payments.
146. On assessing the current list of capital disregards under the HwF scheme, we consider that the same rationale should also apply here. Where someone has received payment to compensate them for personal harm suffered, they should not be required to use those payments to pay a court or tribunal fee.
147. As such, we propose to bring the HwF scheme in line with other government means-test schemes, as well as aligning the position with the Legal Aid MTR which included a similar proposal, by adding the following payment and compensation schemes to the list of capital disregards:<sup>18</sup>
- Armed Forces Compensation Scheme
  - Compensation payments relating to the Grenfell Tower fire
  - Compensation payments relating to Windrush
  - Lambeth Children's Homes Redress Scheme
  - London Emergencies Trust payments
  - Medomsley Detention Centre Physical Abuse Settlement Scheme
  - Miscarriage of Justice Compensation Scheme
  - National Emergencies Trust payments
  - Payments from the Infected Blood Support Schemes

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<sup>17</sup> As well as many other schemes on a discretionary basis.

<sup>18</sup> To note: unlike the HwF scheme where all capital disregards are in effect mandatory, the Legal Aid MTR's proposal for additional capital disregard payments are, depending on their type, either mandatory or discretionary.

- Payments relating to interment, forced labour, injury or loss of a child during the Second World War
- The Jesus Fellowship Redress Scheme
- Vaccine Damage Payment compensation
- Variant Creutzfeldt-Jakob Disease related compensation scheme
- Victim of Overseas Terrorism Compensation Scheme
- We Love Manchester Emergency Fund payments

**Question 21:** Do you agree with our proposal to amend the list of capital disregards to include the list of payment and compensation schemes under paragraph 147? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 22:** Are there other payments that should be added to the list of capital disregards alongside the additional payments proposed under paragraph 147? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Capital disregards proposal 3: capital 'time limits'**

148. As set out under paragraph 25 of Chapter 1, the list of capital disregards includes payments arising from certain legal claims or compensation schemes, specifically:

- a payment made as a result of a determination of unfair dismissal by a court of tribunal, or by way of settlement of a claim for unfair dismissal
- any compensation paid as a result of a determination of medical negligence or in respect of any personal injury by a court, or by way of settlement of a claim for medical negligence or personal injury
- any payments made under the criminal injuries compensation scheme

149. Additionally, we propose to add payments listed under paragraph 147 above to the existing list of capital disregards.

150. As noted above, disregarding these types of payments when means-testing is common across government. For example, sums awarded to a person in consequence of personal injury are disregarded from Universal Credit means-testing, and payments made under the criminal injuries compensation schemes can be disregarded under the civil Legal Aid means test.<sup>19</sup>

151. However, unlike other government means-test schemes that limit the period for which these types of capital remain disregarded, the HwF scheme provides no such 'time limit'. For example, for Universal Credit, the DWP disregards personal injury payments paid in a lump sum for a period of 12 months from the date of payment. While the civil legal aid means test does not currently have a similar time limit, the

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<sup>19</sup> They are a discretionary disregard, rather than a mandatory disregard.



Legal Aid MTR has proposed that back payments of child maintenance received up to 24 months prior to an application should usually be disregarded.<sup>20</sup>

152. The absence of a time limit for capital disregards within the HwF scheme leads to unnecessary complexity and confusion. First, it leaves open the argument that such payments should be disregarded for the applicant's lifetime (at least). It also gives rise to potential arguments that such payments should continue to be disregarded even if they have been used to purchase other capital, for example in the form of a second home or equity investments.

153. We therefore propose to clarify the position by introducing a 24-month time limit for these payments included in the list of capital disregards, namely:

Existing compensation payments disregarded under the HwF scheme to be subject to the proposed 24-month time limit:	<ul style="list-style-type: none"> <li>• A payment made as a result of a determination of unfair dismissal by a court of tribunal, or by way of settlement of a claim for unfair dismissal</li> <li>• Any compensation paid as a result of a determination of medical negligence or in respect of any personal injury by a court, or by way of settlement of a claim for medical negligence of personal injury</li> <li>• Any payments made under the criminal injuries compensation scheme</li> </ul>
If the list of capital disregards is extended in line with our 'capital disregards proposal 2' above, additional compensation payments to be subject to the proposed 24-month time limit:	<ul style="list-style-type: none"> <li>• Armed Forces Compensation Scheme</li> <li>• Compensation payments relating to the Grenfell Tower fire</li> <li>• Compensation payments relating to Windrush</li> <li>• Lambeth Children's Homes Redress Scheme</li> <li>• London Emergencies Trust payments</li> <li>• Medomsley Detention Centre Physical Abuse Settlement Scheme</li> <li>• Miscarriage of Justice Compensation Scheme</li> <li>• National Emergencies Trust payments</li> <li>• Payments from the Infected Blood Support Schemes</li> <li>• Payments relating to interment, forced labour, injury or loss of a child during the Second World War</li> <li>• The Jesus Fellowship Redress Scheme</li> <li>• Vaccine Damage Payment compensation</li> <li>• Variant Creutzfeldt-Jakob Disease related compensation scheme</li> <li>• Victim of Overseas Terrorism Compensation Scheme</li> <li>• We Love Manchester Emergency Fund payments</li> </ul>

<sup>20</sup> As with footnote 10, back payments of child maintenance are being proposed as a discretionary disregard.

154. Each compensation payment would be 'excluded disposable capital' for the purposes of the HwF scheme for 24 months from the date on which it is received.
155. The 24-month time limit is consistent with the Legal Aid MTR proposal regarding back payment of child maintenance (noting that the HwF scheme does not contain discretionary disregards). We also believe that 24 months is a reasonable time for applicants to adjust their budgeting to account for increased household expenditure caused by personal harm suffered. Any immediate and substantial fixed costs caused by the harm will likely have passed by this time period. After this time, applicants should have adjusted to their new household expenditure patterns. Therefore, these capital items should no longer be disregarded.

**Question 23:** Do you agree with our proposal to introduce a 24-month time limit for existing compensation payments disregarded under the HwF scheme and (if the list of capital disregards is extended in line with our proposal above) proposed additional payments – in line with the table under paragraph 153? Please state yes/no/maybe/don't know and provide reasons for your answer.

## **PART B OF PROPOSALS: The application process**

156. We make the following proposals for revising the application process:

- To amend the declaration and statement of truth to allow litigation friends and legal representatives to complete and sign the application on applicants' behalf.
- To add a provision within the Fees Orders to deal with incomplete HwF applications.

# Chapter 6 – The application process

## Introduction

157. Through our review, we identified the following areas where the process relating to completion of the Help with Fees (HwF) application can be improved and made more efficient:

- The declaration and statement of truth
- Completion of HwF applications

## Declaration and Statement of truth

158. The declaration and statement of truth appear at the end of the HwF application. This requires the applicant to sign or approve a declaration confirming that the information they have provided in the application is accurate to the best of their knowledge. The wording is as follows:

I believe that my current financial circumstances mean that I may be entitled to help with fees. I declare that the information I have given on this form is correct and complete. I understand that if I have given false information, criminal or civil proceedings may be brought against me. I understand that if I have given false information or I do not provide evidence of the information given in this form if requested, my application may be rejected and the full fee will be payable.

159. The declaration is currently worded in such a way that only applicants can confirm and sign or approve the HwF application. As an exception, where someone is represented by a litigation friend, the litigation friend can make the declaration and sign on the applicant's behalf. However, the wording of the declaration in the Fees Orders does not make this expressly clear. Separately, the current wording does not allow an applicant's legal representative to apply on their behalf. As part our review of the HwF scheme, we have identified that this limitation causes a number of problems for both HMCTS and applicants:

- Many applicants applying for HwF have legal representation. Not allowing legal representatives to apply for HwF on their clients' behalf can lead to unnecessary delays in making applications. It is also contributing to increased retrospective applications that take longer and are more onerous for HMCTS to process. This is usually in cases where a legal representative is unable to complete a HwF application when they submit a claim or application sufficiently quickly, so they pay the fee when it is due and arrange for the applicant to complete a retrospective HwF application.

- It is not clear from the wording of the declaration that litigation friends are permitted to apply on applicants' behalf. They must read the separate external guidance for clarification, which provides that they can apply on the applicant's behalf. This discrepancy makes it confusing for any persons reading the form as it does not accurately reflect the way the scheme works.
- Limiting the declaration and statement of truth to applicants is inconsistent with many other court or tribunal forms, which have similar declarations that can be confirmed and signed by either the applicant, the litigation friend or the legal representative. For example, the civil claim form 'N1' allows the claimant, a litigation friend or the claimant's legal representative to complete and sign the form.

160. For these reasons, we propose to amend the declaration and statement of truth.

### **The proposal**

161. We propose amending the declaration and statement of truth on the HwF application to expressly permit legal representatives and litigation friends to confirm and sign a HwF application on behalf of applicants.

162. As with other similar declarations and statements of truths that can be signed by legal representatives, it would be part of their professional obligations to be satisfied that the declaration they are making on their client's (the HwF applicant's) behalf is correct.

163. Our proposal will meet the key objectives of providing value for taxpayers' money alongside making the process simple for applicants and HMCTS staff in the following ways:

- Allowing legal representatives to make HwF applications will help to improve their overall quality. This is because legal representatives will have experience of completing the applications to the necessary standard for HMCTS to process without delay. This will in turn help reduce the time and resource pressure on HMCTS.
- Allowing legal representatives to make HwF applications will help ease and shorten the process for applicants as they will be able to rely on their legal representatives, without the need for a lengthy back-and-forth process. It will also reduce the number of time and work intensive retrospective applications received by HMCTS as legal representatives will be able to apply for HwF on behalf of their client at the same time as making a claim or application when the fee is due.
- Our proposal will make it clear on the HwF application itself that litigation friends are permitted to apply on an applicant's behalf, preventing potential confusion at the point of making an application.

- Amending the declaration and statement of truth will bring the HwF scheme in line with other court and tribunal forms that can already be completed and signed by litigation friends and legal representatives.

**Question 24:** Do you agree with our proposal to amend the declaration and statement of truth within the HwF application to expressly allow litigation friends and legal representatives to complete and sign on the applicants' behalf? Please state yes/no/maybe/don't know and provide reasons for your answer.

## Completion of applications

164. HMCTS reports that in many cases, key pieces of information requested in the HwF application that are essential to process the application are not provided by applicants in a timely manner. This is commonly the case where applicants complete paper HwF applications and missing information include:
- The applicant's full address including their postcode
  - The applicant's National Insurance number (necessary for HMCTS to enable checks with other Government Departments for the purpose of the income test)
  - The applicant's signature on paper forms
  - Supporting evidence of the financial data provided on the application in a timely manner when requested
165. Where applicants currently fail or refuse to comply with requests for missing information in a timely manner, HMCTS is often unable to enforce compliance.
166. The operational challenge is due to a lack of formal mechanism within the Fees Orders that sets out clear requirements for completing the HwF application, with a corresponding enforcement mechanism to ensure compliance. The only requirement is that applicants (a) indicate the applicable fee; (b) declare their disposable capital; and (c) provide documentary evidence of their gross monthly income and number of children. HMCTS therefore lacks authority to resolve issues of incomplete applications and non-compliance.
167. The effect of the current position is a HwF scheme that is contrary to the HwF review's objectives of providing value for taxpayers' money and ensuring an efficient system, on the basis that:
- Incorrectly completed forms and non-compliance with HMCTS' requests that are essential for processing applications cause delays for both applicants and HMCTS who must engage in, sometimes lengthy, communications to resolve issues.

- Incomplete applications also lead to unnecessary additional work for both applicants and HMCTS. On the applicant's end, they will be required to re-complete their form or add further information retrospectively. For HMCTS, additional resources will be required to bring the application to a conclusion, particularly in cases where a lot of information or particularly complex information is needed.
- The lack of an enforcement mechanism for compelling applicants to provide necessary information and respond to requests within set timeframes means that HMCTS is often unable to resolve applications confidently and efficiently.

### **The proposal**

168. We propose to add a provision within the Fees Orders to state that where an application for remission is incomplete, or additional information is required, the requested information must be provided within the period notified in writing to the applicant. If information requested is not provided, the HwF application shall be treated as abandoned.
169. Our proposal will meet the key objectives of providing value for taxpayer money and making the process simpler for applicants and HMCTS in three ways:
- It will create a transparent and clear provision for applicants and HMCTS to follow from the outset of the application process. This will help to smooth the application process as applicants will have access to clear guidance on completing the application and responding to HMCTS requests.
  - It will support effective use of HMCTS time and resources in making timely and evidence-based decisions when dealing with applicants, and in particular any non-compliance. This will also ensure clarity and consistency across HMCTS.
  - It will simplify and expedite the application process. Introducing a clear provision on what is required for an application to be valid will help applicants to submit complete applications in the first instance, thereby reducing the associated delays involved in a protracted application process to obtain missing information.

**Question 25:** Do you agree with our proposal to add a provision within the Fees Orders to state that where an application for remission is incomplete, or additional information is required, the requested information must be provided within the period notified in writing to the applicant. If information requested is not provided, the application shall be treated as abandoned? Please state yes/no/maybe/don't know and provide reasons for your answer.

## PART C OF PROPOSALS: Implementation

170. Following the conclusion of the consultation period, we will analyse the consultation responses and then publish a summary of responses alongside the full details of our revised Help with Fees (HwF) scheme. We will aim to publish this within 12 weeks of the closure of the consultation.

171. We will then prepare any necessary amendments to regulations, and the accompanying guidance for applicants and HMCTS. At the same time, work will start on making the necessary changes to the HwF digital system.

### Transitional provisions

172. In the transition to a revised HwF scheme, we have identified the following possible scenarios that could arise, alongside proposals on how they should be treated:

- **Scenario 1:** Where a HwF application was lodged prior to the revised scheme coming into force but has not yet been processed by HMCTS.<sup>21</sup> In this case, the application will be assessed in line with the rules in force at the time the application was lodged.
- **Scenario 2:** An applicant paid the court or tribunal fee on a date **before** the revised HwF scheme came into force but they make a retrospective application **after** the HwF scheme comes into force. The refund application, based on the applicant's capital and income at the time they paid the fee, will be assessed in line with rules of the old HwF scheme.

**Question 26:** Do you agree with our proposals to assess applicants during the transition period as set out in the above scenarios? Please state yes/no/maybe/don't know and provide reasons for your answer.

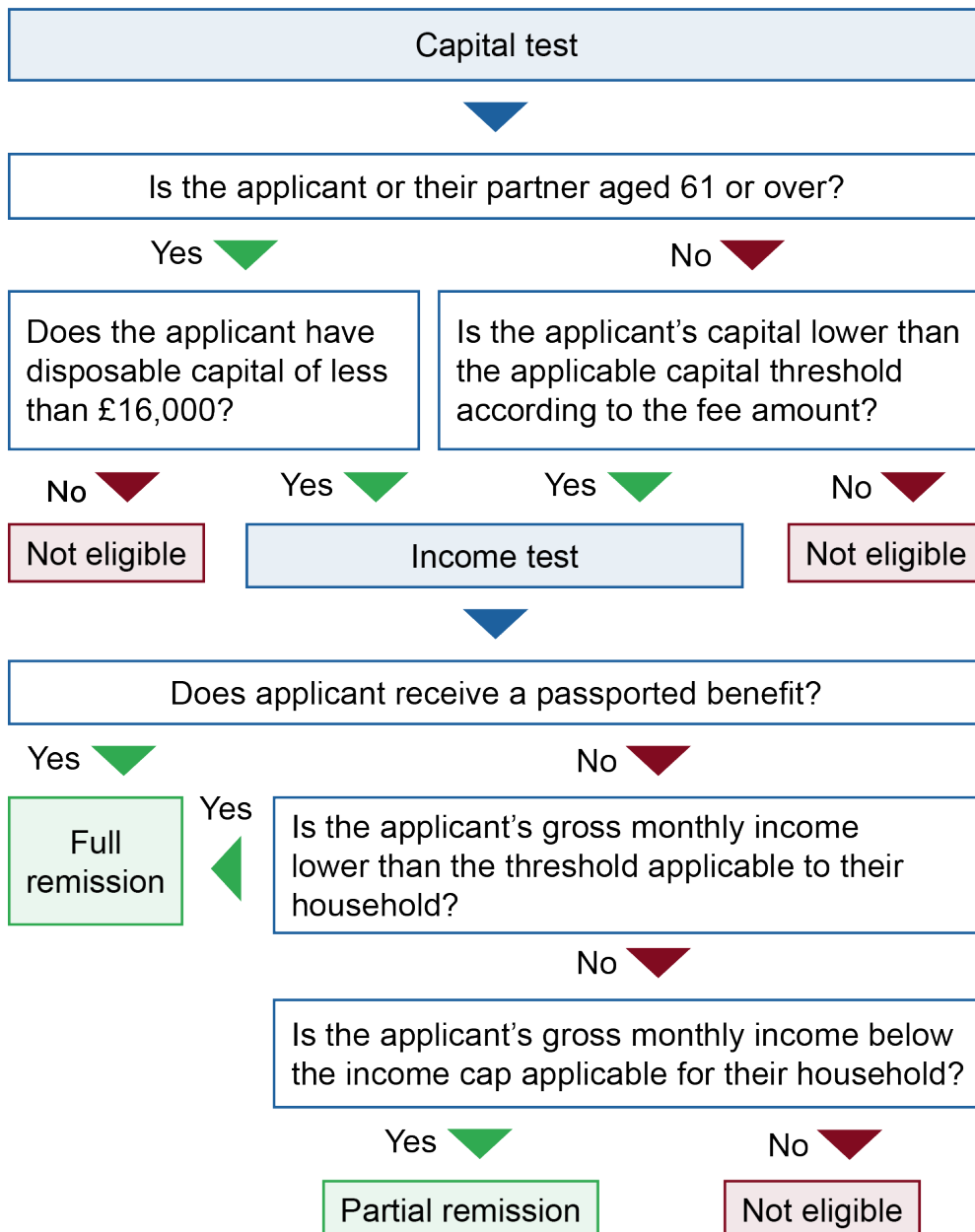
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<sup>21</sup> For digital applications, this would be the date the applicant receives their digital code. For paper applications, this would be the date the application is received by HMCTS.



# Annex A: The Help with Fees eligibility process flowchart

The current **Help with Fees** application process



## Annex B: Development of the proposed updated income threshold

This annex sets out in full:

- Our proposed methodology for setting a revised income threshold
- Our proposed methodology for setting a revised Couple and Child Premiums
- Applying the updated methodology to the 2019/20 ONS dataset, our proposed figures for single applicant income threshold, Couple Premium and Child Premiums

We used a three-step process, making use of ONS and OEECD data and guidance, to develop our proposed methodology for updating the income threshold and Premiums.

### **Step 1: Calculate the spend of an individual at the 5th decile of the population using the ONS LCF Survey**

The ONS LCF survey is an annual survey designed to measure household expenditure on goods and services across the whole UK. The survey also gathers data on household income. Approximately 6,000 households in the UK respond to the LCF each year. All respondents, of all ages, are required to keep a diary of expenditure for 2 weeks.

From this dataset we focused on the total actual expenditure of a household that is in the 5th decile of the income distribution. The 5th decile covers those whose household income would place them 40% to 50% of the way up the income distribution. We chose this approach to ensure consistency with the Legal Aid MTR, which also used a similar ONS-based approach.

The ONS LCF data sets out the expenditure that was actually incurred net of tax and deductions (such as NI or pensions). We have added these back in to arrive at a gross monthly income to compare to our HwF threshold. **The gross monthly income required for an individual to be able to afford what a person at the 5th decile actually spends on goods and services is £1,862.**

### **Step 2: exclude certain categories from ONS LCF 5th decile**

We have only excluded categories that we would consider unnecessary expenditure, or where the spending could be genuinely saved and not just deferred. **From the £1,862, we have excluded £443 using these conditions.** This came from the following categories:

- **Alcoholic drink, tobacco and narcotics (£53):** we do not consider this to be 'necessary spending'. This judgment replicates a long-standing precedent used for the purposes of criminal legal aid eligibility.
- **Gambling payments (£9):** we do not consider such expenditure to be necessary.

- **Holiday related expenditure (£145):** package holidays, spending on holidays, travel and medical insurance. We do not consider such expenditure to be necessary and therefore, could be dispensed with or replaced with an alternative form of recreation.
- **Restaurants and hotels (£122):** on restaurants, we consider that not all spending can be deemed necessary. Therefore, we have followed the Legal Aid MTR in only allowing a limited amount of spending on restaurants. This is required to ensure that our threshold provides sufficient allowance for an individual to purchase food. We have excluded spend on hotels, as this is not considered necessary spending in line with other judgements relating to holidays.
- **Licences, fines, and transfers (£2.50):** such as motoring fines and stamp duty. Similar to the approach taken by the Legal Aid MTR, we consider that spending in this area is not necessary. Road tax is also included in this category and this element has not been excluded, as this is a necessary cost that cannot be considered for exclusion.
- **Money transfers and credit (£55):** such as money given as a cash gift, donations to charity, credit card interest payments. We consider that, as concluded by the Legal Aid MTR, spending in this area is not necessary.
- **33% reduction on recreation and culture (£56):** this covers a wide range of spending, such as games, hobbies, cinemas, pets, books and computers. We consider that such spending should not be excluded in its entirety, as people should be able to afford some level of social and cultural participation. However, we believe that it is reasonable to expect applicants to reduce their expenditure on leisure activities by some amount in order to save to pay a fee. In this case, we have applied a reduction of 33%. Package holidays and gambling payments are treated separately and are excluded entirely (as above).

Excluding these forms of expenditure, the **gross monthly income an individual needs in order to afford the reasonably necessary expenditure of an individual in the 5th decile of the income distribution is £1,420 (rounded to the nearest £5).**

### **Step 3: produce 'premiums' to account for different household sizes, using the OECD-modified equivalence scale**

Different households have different spending needs. A child typically has smaller expenditure needs than an adult. Two adults in a household will need less than twice the expenditure of a single-adult household, as the two people can share goods and services ('economies of scale'). The current HwF scheme already accounts for different household sizes by adding Premiums for additional members of a household.

To calculate the updated Premiums, we have used the OECD-modified equivalence scale. Equivalence is an economic technique which gives each household member a different cost weighting. The OECD-modified scale is used widely across Europe, and in the UK is used by the DWP and the ONS for key household income statistics. Under this approach, a single adult household is given a value of 1; each additional adult is given a smaller

'equivalence' value of 0.5 to reflect economies of scale. Children under the age of 14 are given a value of 0.3, and children aged 14 or over are given a value of 0.5.

Applying this to our proposed adult threshold of £1,420:

- The Couple Premium is calculated as the cost of an additional adult ( $0.5 \times £1,420 =$  **£710**)
- The Child Premium for children under 14 is **£425** ( $0.3 \times £1,420$ )
- The Child Premium for children aged 14 or over is **£710** ( $0.5 \times £1,420$ ).

## Annex C: Proposed reforms to the income disregards list

This annex provides a full breakdown of the benefits payments we propose to retain, remove, or add to the income disregards list with explanations as to how we reached the decision for each payment.

### Retain in the scheme

We propose retaining the following payments in the disregards list:

- 1. Income provided for the purpose of covering costs not covered in ONS LCF (disability):** The ONS LCF does not account for the additional costs relating to a disability. In line with our rationale, if an applicant receives financial support relating to the additional costs due to a disability, we do not think it is reasonable to expect this income to be used to finance fee payments. This rationale covers the following benefits:
  - **Attendance Allowance:** For those of state pension age whose disability means they require someone to help look after them. There were 1.5 million claimants as of August 2021. This benefit is disregarded in the legal aid scheme.
  - **Severe Disablement Allowance:** For those below state pension age who cannot work because of illness/disability. Replaced with incapacity benefit in 2001, however those already claiming continue to do so. There were 15,000 claimants as of August 2021. This benefit is disregarded in the legal aid scheme.
  - **Carer's Allowance:** For those who care for someone at least 35 hours a week and that person received specific benefits. There were 1.3 million claimants as of August 2021. This benefit is disregarded in the legal aid scheme.
  - **Disability Living Allowance:** To cover the additional cost relating to a disability. Claims relating to children can still be made but otherwise replaced by Personal Independence Payment. Those born before 1948 and already claiming can continue to do so. There were 1.3 million claimants as of August 2021. This benefit is disregarded in the legal aid scheme.
  - **Constant Attendance Allowance:** For those who need daily care and attention because of a disability and received Industrial Injuries Disablement Benefit or a War Disablement Pension. We have not been able to locate the volume of recipients but expect it to be low. This benefit is disregarded in the legal aid scheme.
  - **Exceptionally Severe Disablement Allowance:** For those who received one of the top two rates of Constant Attendance Allowance and need permanent, constant care and attention. We have not been able to locate the volume of

recipients but expect it to be low. This benefit is disregarded in the legal aid scheme.

- **Industrial Injuries Disablement Benefit:** For those who became ill or disabled as the result of an accident or disease at work on approved employment training. Counted as income for the purpose of calculating means tested benefits. There were 180,000 claimants as of August 2021. This benefit is **not** disregarded in the legal aid scheme.
- **Disabled and severely disabled elements of Child Tax Credit:** Top-ups provided to parents who have a child with a disability – approximately 160,000 children benefit. Given it is a 'top-up', we considered whether we should remove this from the disregard list. We could not find any evidence that parents are expected to spend this income on additional costs relating to the child's disability. It is not disregarded in the legal aid scheme. However, we decided to keep this in on the basis that i) it has been disregarded for the last nine years; ii) volumes are relatively low and tax credits are due to be rolled into Universal Credit by 2024 so there would be limited impact to making a change.
- **Payments out of the Independent Living Fund:** Provided to enable those with disabilities to live independently, rather than in residential care. This fund closed in 2015 but payments continue to be made in Scotland and through Local Authorities in England and Wales. Volumes are unknown but expected to be low. This benefit is disregarded in the legal aid scheme.
- **Armed Forces Independence Payment:** To support veterans with the additional costs associated with injuries. For those injured while serving in the armed forces on or after 6 April 2005. There were 1,171 claimants as of March 2020. This benefit is disregarded in the legal aid scheme.
- **Compensation paid under the Naval, Military, and Air Forces Service Pension Order 2006:** No-fault compensation for all ex-service personnel where illness, injury or death is caused by service from 1914 – 5 April 2005. There were 101,500 claimants as of March 2021. This benefit is disregarded in the legal aid scheme.
- **Personal Independence Payment:** To help with some of the extra costs associated with long term ill health or disability. There were 2.8 million claimants as of August 2021. This benefit is disregarded in the legal aid scheme.

## 2. **Income provided for the purpose of covering a specific cost not covered in ONS LCF (other)**

- **Payments made to support people in need of social care:** Those who get help from social services can apply for direct payments, which will allow them to choose and buy the services they need themselves, rather than receiving them from the Council. We have not been able to locate the volume of recipients. This benefit is disregarded in the legal aid scheme.

- **Payments made from the Social Fund:** This is a DWP-led fund that covers a wide range of payments. These payments are provided to cover specific purposes – such as the cost of funerals, crisis loans, childbirth, and cold weather. Total volume appears to be in the high 100,000s. These payments are disregarded in the legal aid scheme.
- **Financial support under an agreement for the foster care of a child:** An allowance to cover the cost of caring for a child. As of March 2021, there were approximately 55,990 children in foster care. The HwF scheme has a Child Premium which is meant to account for the costs associated with raising children. However, we think we should recognise that there may be additional costs relating to accommodating a looked-after child, and that these allowances are provided specifically to support fosterers to take on this responsibility. We propose clarifying that where a foster parent receives financial support to foster, this income is disregarded – even if the support is **over and above** the relevant Child Premium threshold. This would avoid inadvertent double counting, and is the approach taken in the legal aid scheme.

### 3. **Income provided for the purposes of meeting an immediate financial need**

- **Advance payments made on account under Universal Credit or other legacy benefits:** Loans from the DWP intended to help people budget prior to their benefit claim being complete. There were 277,000 advance applications as of May 2020. We propose excluding this because the payments are made to people who have already proven to DWP that they need this money immediately due to their financial circumstances. We do not think it would be appropriate for them to pay fees with this money. This benefit is disregarded in the legal aid scheme.
- **Bereavement Support Payment:** A payment available for up to 21 months for those whose partner has died and either paid sufficient NI contributions or died because of an accident at work. There were 55,000 claimants as of September 2021. This benefit is disregarded in the legal aid scheme.

### **Remove from the scheme**

We propose removing the following payments from the disregards list:

- **Housing Benefit:** To help pay rent for those who are unemployed, on a low income or claiming benefits. There were 2.7 million claimants as of August 2021. Being replaced by Universal Credit, though those of State Pension Age or living in supported, sheltered or temporary housing can still apply. Given that the ONS LCF provides an allowance for housing, and we have premiums to take into account larger household sizes, we think our proposed allowances already taken into account the spend needed for housing. This benefit is **not** disregarded in the legal aid scheme.

- **Back to Work Bonus:** A bonus of up to £1000 as a consequence of a reduction in JSA due to obtaining employment. This was abolished in 2004 and is no longer in use. The Means Test Review proposes removing this from the legal aid scheme.
- **Housing Element of Pension Credit:** A top-up of Pension Credit for people of state pension age, to cover ground rents, services charges etc. There were 1.4 million claimants of Pension Credit, though we are not aware of how many claim this additional benefit. This benefit is **not** disregarded in the legal aid scheme. We don't think there is a rationale to pick out those specific housing costs which are covered in the ONS LCF data.
- **Widowed Parent's Allowance:** Allowance to cover childcare following the death of a partner, for those who are under the State Pension Age, claim child benefit and whose bereavement happened before 6 April 2017. There were approximately 20,000 claimants as of August 2021. This benefit is **not** disregarded in the legal aid scheme.
- **Childcare element of Working Tax Credit:** Top-up provided to support working parents who pay for childcare. Due to be merged into Universal Credit in 2024. There were approximately 100,000 families claiming this benefit as of April 2021. Childcare is already covered as a form of expenditure in the ONS LCF. This benefit is **not** disregarded in the legal aid scheme.

### **Add to the scheme**

We propose adding the following payment to the disregards list:

- **Disabled and Severely Disabled elements of Working Tax Credit:** For those claiming Working Tax Credit who have a disability or a severe disability. There were 63,000 families claiming as of April 2021. This benefit is **not** disregarded in the civil legal aid scheme, though other disability benefits are disregarded. We think that there is a reasonable justification for adding it into the HwF scheme. This is primarily on the basis that it would be consistent with our position on child tax credit, where we do disregard the disabled and severely disabled elements. Not correcting this discrepancy would result in unequal treatment of applicants in similar positions.



# Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

## The income test proposals

**Question 1:** Do you agree with our proposed methodology to set the income threshold using ONS LCF data? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 2:** Do you agree with our proposed methodology to use the 5th income decile to set the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 3:** Do you agree with our assessment of 'essential' and 'non-essential' expenditure categories, as set out in **Annex B**, for the purposes of calculating the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 4:** Do you agree with our proposal to use the OECD modified equivalence scale to establish the Couple Premium and Child Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 5:** Do you agree with our proposal to set two levels of Child Premiums – a lower premium for a child aged 0 to 13 and a higher premium for a child over 14? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 6:** Do you agree with our proposal to use the 2019/20 ONS LCF data to set the income threshold and Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 7:** Do you agree with our proposal to review the income thresholds (as set out in the table under paragraph 70 above) when the ONS LCF 2021/22 data is published in 2023? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 8:** Do you agree with our proposal to withhold adjusting the income thresholds by inflation as explained above? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 9:** Do you agree with our proposal to update the list of income disregards as outlined above, and in **Annex C**? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 10:** Do you agree with our proposal to maintain the current list of means-tested benefits for passporting applicants through the income test? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 11:** Do you agree with our proposal to amend the definition of gross monthly income as per paragraph 94? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 12:** Do you agree with our proposal to give applicants a choice between using a monthly income or a three-month average income for the income test? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 13:** Do you agree with our proposal to amend the gross monthly income definition to no longer include drawings as income? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Proposals regarding the partial remissions policy**

**Question 14:** Do you agree with our proposal to replace the fixed 50% partial remissions rule with the three-banded taper scheme set out above? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 15:** Do you agree with our proposal to reduce the gross monthly household income cap to £3,000 above the gross monthly income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **The capital test proposals**

**Question 16:** Do you agree with our proposal to amend the definition of disposable capital to mean 'savings and investments' with a non-exhaustive list of included examples as set out in paragraph 119? Please state yes/no/maybe/don't know and provide reasons for your answer

**Question 17:** Do you agree with our proposal to maintain the principle of using three months' expenditure to set the lower capital threshold, and accordingly increase the lower capital threshold to £4,250? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 18:** Do you agree with our proposal to replace the current ten-band threshold system with a simplified three-band structure as set out in paragraph 129? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 19:** Do you agree with our proposal to increase the age cap to align with the current state pension age of 66? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 20:** If the definition of disposable capital is amended as proposed under paragraph 119 above, do you agree with our proposal to update the list of capital disregards to remove the following items?

- the household furniture and effects of the main or only dwelling occupied by the party
- articles of personal clothing
- tools and implements of trade, including vehicles used for business purposes.

Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 21:** Do you agree with our proposal to amend the list of capital disregards to include the list of payment and compensation schemes under paragraph 147? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 22:** Are there other payments that should be added to the list of capital disregards alongside the additional payments proposed under paragraph 147? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 23:** Do you agree with our proposal to introduce a 24-month time limit for existing compensation payments disregarded under the HwF scheme and (if the list of capital disregards is extended in line with our proposal above) proposed additional payments – in line with the table under paragraph 153? Please state yes/no/maybe/don't know and provide reasons for your answer.

## **Proposals regarding the application process**

**Question 24:** Do you agree with our proposal to amend the declaration and statement of truth within the HwF application to expressly allow litigation friends and legal representatives to complete and sign on the applicants' behalf? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 25:** Do you agree with our proposal to add a provision within the Fees Orders to state that where an application for remission is incomplete, or additional information is required, the requested information must be provided within the period notified in writing to the applicant. If information requested is not provided, the application shall be treated as abandoned? Please state yes/no/maybe/don't know and provide reasons for your answer.

**Question 26:** Do you agree with our proposals to assess applicants during the transition period as set out in the above scenarios? Please state yes/no/maybe/don't know and provide reasons for your answer.

### **Equality impact analysis**

**Question 27:** Do you agree that we have correctly identified the range and extent of the equalities impacts under each of the proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts as appropriate.

**Question 28:** Are there forms of mitigation in relation to equalities impacts that we have not considered? Please state yes/no/maybe/don't know and provide reasons for your answer.

# Impact Assessment, Equalities and Welsh Language

## Impact Assessment

1. A formal Impact Assessment has been prepared for this proposal and has been published alongside this consultation.

## Equalities

2. Under the Equality Act 2010, the Government is required, as part of policy development, to consider the equalities impact of our proposal. In summary, public authorities subject to the equality duty must have regard to the following when exercising their functions:
  - eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not;
  - foster good relations between people who share a protected characteristic and those who do not.
3. For the purposes of the equality assessment the relevant protected characteristics under the Equality Act are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.
4. An Equalities Statement has been prepared for this proposal and has been published alongside this consultation.

## Welsh Language

5. This proposal, if implemented, would also impact those who speak the Welsh Language.
6. A Welsh version of this document can be found at: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>. A Welsh language copy of the Impact Assessment and the Equalities Statement will be provided on request.

# About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details/How to respond

Please send your response by 30 May 2023 to:

Fees Policy  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

Email: MOJ Fees Policy [mojfeespolicy@justice.gov.uk](mailto:mojfeespolicy@justice.gov.uk)

### Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

### Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested by emailing MOJ Fees Policy at [mojfeespolicy@justice.gov.uk](mailto:mojfeespolicy@justice.gov.uk)

### Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available online at <https://consult.justice.gov.uk/>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## **Confidentiality**

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the United Kingdom General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example 'local business owner', 'member of public').

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

For more information see the Ministry of Justice Personal Information Charter.



## Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1__.pdf)



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