



Ministry  
of Justice

# **Fee remissions for the courts and tribunals – consultation response**

Response to Consultation CP15/2013

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## **Fee remissions for the courts and tribunals – consultation response**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

September 2013

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## **About the consultation**

**To:** The consultation '*Fee remissions for the courts and tribunals*' (CP15/2013) was aimed at users of the courts and tribunals, the Gender Recognition Panel, the legal profession, the judiciary, the advice sector and all those with an interest in the courts and tribunals.

**Duration:** From 18/04/2013 to 16/05/2013.

**Enquiries (including requests for the paper in an alternative format) to:** Rachel Vickerstaff  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

Tel: 020 3334 5389  
Fax: 020 3334 2233

Email: [mojfeespolicy@justice.gsi.gov.uk](mailto:mojfeespolicy@justice.gsi.gov.uk)



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## Introduction and contact details

This document is the post-consultation report for the consultation paper '*Fee remissions for the courts and tribunals*' (CP15/2013).

It will cover:

- the background to the report
- the reforms of the fee remission system
- the next steps following this consultation, and
- a summary of the responses to the report.

Further copies of this report and the consultation paper can be obtained by contacting **Rachel Vickerstaff** at the address below:

**Ministry of Justice  
102 Petty France  
London SW1H 9AJ**

**Telephone: 0203 334 5389**

**Email: [mojfeespolicy@justice.gsi.gov.uk](mailto:mojfeespolicy@justice.gsi.gov.uk)**

This report is also available in English and Welsh at:

<https://www.gov.uk/government/consultations/fee-remissions-in-the-courts-and-tribunals>,  
or <https://consult.justice.gov.uk/digital-communications/fee-remissions-court-tribunals>

Alternative format versions of this publication can be requested from:  
[mojfeespolicy@justice.gsi.gov.uk](mailto:mojfeespolicy@justice.gsi.gov.uk) or 0203 334 5389.



## Background

1. The proposals set out in the consultation paper represented the wide-ranging reform of the fee remissions system. The remission system ensures that access to justice is maintained for those individuals on lower incomes who would otherwise have difficulty paying a fee to use court or tribunal services. Such individuals can therefore access court or tribunal services free of charge or at a reduced rate. A fee remission is a full or partial waiver of the fees that become payable when an individual uses these services.
2. The current fee remission system in Her Majesty's Courts and Tribunals Service (HMCTS) has three elements, also known as qualifying eligibility criteria:
  - Remission 1 – an automatic full fee remission for those in receipt of stated qualifying means-tested benefits, known as a 'passporting' benefit;
  - Remission 2 – a full fee remission for those whose gross annual income is calculated to be lower than stated thresholds; and
  - Remission 3 – a full or part fee remission based on an income and expenditure means test to calculate net monthly disposable income. Annex A contains a more detailed summary of the current remission system.
3. The consultation paper '*Fee remissions for the courts and tribunals*' (CP15/2013) was published on 18th April 2013 and closed on the 15th May 2013. It invited comments from groups and individuals who have an interest in the civil courts, tribunals and the Gender Recognition Panel. The consultation also covered the UK Supreme Court.
4. The proposals can be summarised as follows:
  - Introduction of a single remissions system across the civil and tribunal business operated by Her Majesty's Courts and Tribunals Service (including the Gender Recognition Panel) and the UK Supreme Court. The proposals do not apply to the First-tier Tribunal (Immigration of Asylum Chamber), whose remissions system was subject to a separate consultation earlier this year, nor to the Office of the Public Guardian, which is an agency of the Ministry of Justice;
  - Amendment to the benefits which will be accepted as part of the proof of entitlement to a fee remission, to account for the introduction of Universal Credit;
  - Introduction of a disposable capital test to the eligibility criteria;
  - Removal of a qualifying benefit for "Working Tax Credit but not also in receipt of Child Tax Credit";
  - Introduction of a single tapered income assessment to replace the existing Remission 2 and 3 criteria currently used in most courts (remission applicants with a gross monthly income below a certain threshold would be automatically eligible for a full fee remission where they also pass the disposable capital test, while applicants above this threshold would be required to pay a contribution if they also pass the disposable capital test);
  - Removal of fees paid in respect of photocopying and searches from the scope of the remission provisions; and

- Reduction of the time period in which to apply for a retrospective fee remission from six months to two months.
5. The consultation period closed on 16th May 2013 and this report sets out the government's proposals for reform of the remissions system in light of the responses received.
  6. The Impact Assessment accompanying the consultation has been updated. The updated Impact Assessment can be found at:  
<https://www.gov.uk/government/consultations/fee-remissions-in-the-courts-and-tribunals>, or <https://consult.justice.gov.uk/digital-communications/fee-remissions-court-tribunals>.
  7. The final Equality Statement was updated to take account of responses by stakeholders, and can be found in **annex C** of the Impact Assessment.
  8. A list of respondents can be found at **annex B**.

## The reform of the fee remission system

1. We received 64 responses to the consultation; a list of respondents can be found at **annex B**. An analysis of these responses can be found at **annex A**. This section outlines the government's intended reforms to the fee remission system for courts, tribunals and the UK Supreme Court in light of those responses.

### A single fee remission system

2. We will introduce a single remissions system in all courts and tribunals and the UK Supreme Court. This system will be fairer, more transparent and easier for all users of courts and tribunals.
3. While we recognise that users of different courts and tribunals may have unique characteristics or circumstances, we believe that a single system, solely based on the ability of users to pay a fee, is consistent, fair, and easier to understand whilst still protecting access to justice. We do not believe that a person accessing two different courts or tribunals should receive two different remissions decisions. A fee of, for example, £200 is no more or less affordable for an applicant whether that applicant is seeking to gain access to a child, bringing a claim to an employment tribunal or applying to the Gender Recognition Panel.
4. The government does not consider that the varying limitation periods in different courts and tribunals are a reason for different remissions systems to be adopted. It believes that the evidence necessary to support an application can be accessed within the time limits in operation. Where an emergency application is necessary, the court or tribunal manager has the power to waive a fee on agreement that evidence of eligibility for a remission will be provided at a later date. In the employment tribunals, a claim will be filed when submitted so long as it is accompanied by either a fee or remission application, regardless of any error regarding the level of fee or completion of remission application.
5. As proposed in the consultation document, we will not apply this remission system to the First-tier Tribunal (Immigration and Asylum Chamber), as a significant proportion of the users of this tribunal reside outside the UK. A remissions system based on receipt of UK benefits and UK income levels would be impractical to operate. We do not consider that this issue of practicality extends to the other courts and tribunals subject to this consultation.
6. However, this remission system will apply to the Upper Tribunal (Immigration and Asylum Chamber) (UTIAC), which hears Judicial Review cases that attract fees. At present, the HMCTS remissions system applies to these cases and therefore the single remission system consulted upon in this document will apply to Judicial Review cases heard in the UTIAC.

### The introduction of a disposable capital test

7. We will introduce a disposable capital test for assessing an applicant's financial eligibility for a remission. We believe it is unreasonable to expect taxpayers to continue to subsidise those with the financial means to pay a court or tribunal fee. A majority of respondents agreed with the introduction of a disposable capital test in

principle. If an applicant has disposable capital (e.g. savings) available to them, it is appropriate that they are expected to spend a portion of this capital before seeking taxpayer funds.

8. We do not consider that the disposable capital test will penalise savers, as was suggested by some respondents; rather, we believe it will ensure that remissions are targeted at those who are unable to afford a fee due to low levels of disposable capital and income. It is unreasonable to expect taxpayers to continue to subsidise those with the funds available to pay a court or tribunal fee.
9. Some respondents suggested that certain groups of users should be exempt from a disposable capital test. Having considered the arguments put forward, the government continues to believe that a disposable capital test should apply to all applicants, as all who are able to pay their fee should do so. Arguments were made for exceptions for the following categories of applicants:
  - Over 60s: We do not consider it reasonable to exempt over 60s from the capital test entirely but, having considered the responses on this issue, the government recognises that pensioners are less able to replenish capital than working-age applicants, are often reliant on savings to support a low income, and are more likely to face care costs. We therefore propose to introduce a different capital threshold for applicants aged 61 or over (the current state retirement age for women).
  - Users of the employment tribunals: We disagree with the argument made by some respondents that users of the employment tribunals are unable to access the disposable capital considered within the time limitations set for employment tribunal users to bring a claim. The disposable capital test has been designed to exclude capital that cannot be readily accessed or realised (see **annex C**). We continue to believe it appropriate to consider capital held in a second home and consider that those with such substantial assets will be able to realise capital from these assets to fund their fee, and therefore should not be subsidised by the taxpayer
  - Users of the Gender Recognition Panel (GRP): It has been argued that some users of the GRP may have saved towards gender reassignment treatment and that requiring them to pay a fee from their savings would therefore be unfair. However, the fee in the GRP is relatively low (£140) and we do not consider that, where an individual has taken a decision to save to fund their gender reassignment treatment, it is unfair to also expect them to contribute to this fee where they have the means to do so.

### **The disposable capital test thresholds**

10. For applicants under the age of 61, we will introduce a disposable capital test which requires those with a disposable capital of between £3,000 and £8,000 to spend no more than one third of their disposable capital on a fee, and those with £8,000 or more to spend no more than half of their disposable capital on a fee.
11. We disagree with the assertion made by some respondents that applicants would be dissuaded from pursuing a court or tribunal case if they are expected to pay a portion of their disposable capital towards a fee. We also disagree with the suggestion made by some respondents that the capital threshold should mirror those used in other tests, e.g. the £8,000 threshold for Universal Credit or for some types of Legal Aid. We do not consider that a comparison with other capital tests, which relate to

payments of potentially higher sums of money over longer time frames, provide a meaningful comparison to court fees which are usually for much lower amounts over a shorter time frame. The most common court and tribunal fees are £500, or under and it is reasonable to assume that a majority of court or tribunal users will contribute a lower proportion (than a third or half) of their disposable capital on any fee.

12. While we consider that the thresholds consulted on are appropriate, we recognise that the three-tiered approach set out in the consultation did create some unintended consequences. We will therefore implement an amended disposable capital test to include a more tiered structure of disposable capital limits, based on the fee payable (see Table 1). The use of more disposable capital limits reduces the impact of ‘cliff edges’, where those with relatively similar fees, potentially pay significantly different portions of their capital towards the fee.

*Table 1: Disposable capital thresholds*

<b>Fee charged:</b>	<b>Disposable capital threshold:</b>
Up to £1,000	£3,000
£1,001 to £1,335	£4,000
£1,336 to £1,665	£5,000
£1,666 to £2,000	£6,000
£2,001 to £2,330	£7,000
£2,331 to £4,000	£8,000
£4,001 to £5,000	£10,000
£5,001 to £6,000	£12,000
£6,001 to £7,000	£14,000
£7,001 or more	£16,000

13. For those over the age of 61, we will introduce a single capital threshold of £16,000 irrespective of the level of fee to be paid, meaning that applicants aged 61 or over with capital of less than £16,000 will move straight to the income test.
14. The terms of the disposable capital test contain allowances (disregards) for certain users of the courts and tribunals who could potentially be disadvantaged by the introduction of disposable capital test (see annex C for more detail). For example, there are disregards for community care payments, compensation for personal injury/medical negligence and capital payments from the Independent Living Fund.
15. Should there be circumstances where the payment of a fee by an applicant with the necessary level of capital could result in financial or other type of hardship, such as the inability to pay for care needs, it will be possible to request a remission on the basis of exceptional circumstances.

#### **The terms of the disposable capital test**

16. The government will introduce a disposable capital test which largely replicates the terms set out in the consultation (see **annex C** for full details). The terms of the disposable capital test are sufficiently detailed to effectively target the fee remission scheme at those who need it most, while remaining simple enough for users (and

staff) to understand. Following a number of suggestions and questions from respondents, we have provided greater clarity on the terms of the disposable capital test, by stating clearly what is included or disregarded (e.g. all forms of capital redundancy payments); and we have added some additional disregards (e.g. payments under the Criminal Injuries Compensation scheme).

17. The government continues to believe that, subject to the exceptions identified at **annex C**, all disposable capital assets (e.g. holiday homes) should be considered, so that remissions are targeted only to those who do not have the financial means to pay a court or tribunal fee.
18. Some respondents made arguments for additional exclusions or sought clarity on the terms of the test:
  - Unfair dismissal and redundancy payments: Some respondents argued that that it was inconsistent that unfair dismissal payments were disregarded from the disposable capital test, while redundancy payments were included. Some respondents also sought clarity on what forms of redundancy payments were to be included. Having considered the responses, the government believes it is reasonable that those who have received a substantial redundancy payment (in any form), and therefore have the means to pay a court or tribunal fee, should pay such a fee. It continues to believe that a distinction can be drawn between redundancy payments, which will be considered as disposable capital, and unfair dismissal payments as the latter are granted when it has been established that an employer has acted unlawfully.
  - The government disagrees with the argument made by some respondents that redundancy payments should be disregarded on the assumption that some employees may have a genuine case for unfair dismissal. Should a case be successful, the fee paid may be claimed from the employer in the employment tribunal. It also considers that it is highly unlikely that employers (especially SMEs with more limited means) would grant higher redundancy payments than they are required to pay with the purpose of making a former employee ineligible for a fee remission, as was suggested in response to the consultation.
  - Jointly held capital: Some respondents were confused about the treatment of jointly held capital. To clarify, where an applicant has jointly held capital (with someone who is not their partner) we will consider only the applicant's share of the capital. We will assume that the applicant has an equal share in the capital asset unless they can prove otherwise. For example, an applicant who jointly owns a second home with no mortgage with two friends valued at £99,000<sup>1</sup>; would be assessed as having £33,000 worth of disposable capital and would therefore be ineligible for a remission. However, jointly owned disposable capital is distinct from capital owned jointly by a couple, which is considered in full as a household disposable capital for the purpose of a remission application (other than in cases where the partner has a contrary interest in proceedings).

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<sup>1</sup> Second homes are valued at their market value, less 10% for expenses incurred in sale and less the amount of debts secured on the property (e.g. mortgage).

### Evidence for and enforcement of the disposable capital test

19. We will not require applicants to provide evidence of their disposable capital when applying for a fee remission. We seek to have a simple and transparent test, which does not unduly burden applicants or staff. A requirement for applicants to supply evidence of all of their disposable capital would be burdensome and administratively complex, and would not resolve the issue of how to prove an assertion that no capital assets are held. We will continue to grant discretion to Delivery Managers (Court or Tribunal Managers) to request additional evidence in cases of doubt.
20. The government recognises the concerns of some respondents that in any means testing system there will be a minority of applicants who may intentionally provide false information in order to avoid paying a court or tribunal fee. The consultation set out that if an applicant is found to have been deliberately untruthful in their application for a remission they would be required to pay the fee in full. A number of respondents suggested that a more robust penalty in the form of a specific criminal offence should be created. We do not consider it necessary to create a new criminal offence to deal with those who deliberately provide false information, because such a criminal offence already exists. We will instead make it clear in guidance and on application forms that deliberately providing false information for the purpose of obtaining a fee remission may result in criminal proceedings for fraud. The offence would only apply in cases where false information is deliberately provided, rather than applications where genuine mistakes are made, and staff will be fully trained and able to advise applicants about their remission application and the terms of the capital test, whether in person, in writing or by phone.
21. The government acknowledges the concerns of some respondents that, in rare cases, applicants may be unaware of, or may have been misled about, a partner's capital, especially in vulnerable circumstances. However, it does not consider that this provides a compelling reason for excluding a partner's capital from the test. It believes that it is reasonable to assume that the majority of couples honestly share their financial information. In cases where their partner has a contrary interest, only the applicant's disposable capital will be considered. This approach reflects current practice for the assessment of household income, which has operated in the current fee remission system for a number of years. It will also remain possible for a Delivery Manager to consider a remissions application under the exceptional circumstances test where necessary.

### Gross monthly income test

22. The government will introduce a single gross monthly income test, to replace the current passported benefit (Remission 1), gross annual (Remission 2) and net monthly income (Remission 3) tests; using the criteria set out below.

Table 2: Gross monthly income thresholds

<b>Gross monthly income with:</b>	<b>Single</b>	<b>Couple</b>
No children	£1,085	£1,245
1 child	£1,330	£1,490
2 children	£1,575	£1,735
Add £245 for each additional child		

- If an applicant has passed the disposable capital test and has a gross monthly income below the relevant threshold set out in *Table 1* (disregarding income from the excluded benefits listed in **annex C**), they will be eligible for a full remission. We propose to accept that recipients of Income-related Employment and Support Allowance, Income Support, Income-based Jobseeker's Allowance, Pension Credit guarantee credit and some recipients of Universal Credit would be automatically deemed to fall below this income threshold. They will therefore receive a full remission if they also pass the household disposable capital test.
  - If an applicant has a gross monthly income over the relevant threshold set out in *Table 1*, the applicant will be required to make a contribution towards their fee of £5 for each additional £10 income above the threshold, up to the value of the fee. This means, for example, that where an applicant has an additional £100 monthly income over the relevant threshold, they will be required to pay £50 towards their fee, or the full amount of the fee if this is £50 or less. An applicant with a gross monthly income of over £4,000 above the relevant threshold set out in *Table 1* will not be eligible for any remission.
23. The test will effectively target full and partial remissions to those who need them most, through a simple and workable system. For example, a single mother with one child and £15,900 gross annual income will receive a full remission if they also pass the capital test, while a single person earning £12,990 will also receive a full remission if they also pass the capital test. The test will consider the gross monthly income of the applicant and, where applicable, their partner (for the month preceding the remission application), so that we determine the current ability of an applicant to pay a court or tribunal fee.
24. The government will continue to disregard income received from certain benefits relating to housing, childcare, disability and bereavement, when assessing an applicant's gross monthly income (see **annex C**). It will also continue to use gross monthly income thresholds which vary by household circumstance – i.e. if a person is single, in a couple or has children. Following the consultation, the government has expanded the number of excluded benefits which are to be disregarded from the gross monthly income test, to include:
- Carers element of Universal Credit;
  - Industrial Injuries Disablement Benefit; and
  - Limited Capability for Work Element of Universal Credit.
- These added benefits are direct replacements for, or are similar in their purpose to, the other benefits disregarded under the gross monthly income test.
25. The government confirms its intention to give recipients of 'Universal Credit with earnings of less than £6,000' to an automatic full remission if they also pass the capital test. This broadly replicates the numbers that are currently passported via the proposed qualifying benefits under Universal Credit conditions. Some respondents argued that all recipients of Universal Credit should receive an automatic full remission. However, the government estimates that allowing an automatic passport for the income test to Universal Credit recipients (once it is fully rolled out) could cost up to about £4m per annum in additional full remissions, because an estimated 2.6m more adults will be eligible for some form of Universal Credit, some of whom would not qualify under the income test if tested separately. Therefore, passporting all Universal Credit recipients would not effectively target eligibility for full remissions.

26. The government will apply the gross monthly income test equally to users of all courts and tribunals. The government disagrees with the assertion made by some respondents that users of the employment tribunal will be disproportionately impacted by the test due to the time limits in place for filing a claim. It believes that the evidence necessary to support an application can be accessed within the time limits in operation. In the employment tribunals a claim will be filed when submitted so long as it is accompanied by either a fee or remission application, regardless of any error on the level of fee or completion of remission application. Furthermore, the employment tribunals provide a public enquiry line where trained customer contact staff will be available to support and direct queries.
27. The government also intends to maintain the discretion for the Lord Chancellor (for courts or tribunals) or the Chief Executive of the Supreme Court, to reduce or remit a fee where they are satisfied that there are exceptional circumstances which justify doing so.<sup>2</sup>

### Gross monthly income cap

28. The government will introduce a single gross monthly income cap, set £4,000 above the gross monthly income threshold to receive a full remission, as outlined in *Table 2* below. It disagrees with the suggestion of some respondents that the gross monthly income cap is too low. The cap will effectively target fee remissions to those who need it the most; it will take account of household circumstances and is set at a level which accommodates the wide range of fees payable in courts and tribunals.<sup>3</sup> Furthermore, the assessment of an applicant's gross monthly income continues to take account of certain housing, childcare, disability, carers and bereavement costs by disregarding income from benefits in these areas (see **annex C**).

*Table 3: Gross monthly income cap:*

<b>Gross monthly income cap with:</b>	<b>Single</b>	<b>Couple</b>
No children	£5,085	£5,245
1 child	£5,330	£5,490
2 children	£5,575	£5,735

29. The government has considered whether a variable gross monthly income cap, based on the fee to be paid or the court or tribunal been accessed, is workable and appropriate. It did not consider that such an amendment aligns with the policy intention that a remissions decision should be made on the same basis irrespective of the court or tribunal being accessed. While fees vary across courts and tribunals, the sliding scale of contributions will ensure that, where higher fees are charged, more applicants will become eligible for a partial remission.

### Evidence for the gross monthly income test

30. The government will reduce the complex and significant evidence burden found in parts of the current system, for example, by abolishing the net monthly income test

<sup>2</sup> In practice Delivery Managers (rather than court staff) will make decisions on the use of this exceptional power, while the Chief Executive of the UK Supreme Court delegates this responsibility to the Registrar.

<sup>3</sup> At present, there is no income cap for those in receipt of partial remissions under Remission 3.

(Remission 3), which requires an extensive range of documentary evidence (e.g. nursery receipts, tenancy agreements, etc.) As a result, the gross monthly income test will be simpler and more transparent for users. The documentary evidence required of applicants under the gross monthly income test is summarised below:

- Documentary evidence of a qualifying benefit as issued by DWP or HMRC. It must show the applicant's title, full name, address and postcode and confirm that the applicant has received the benefit. The evidence must be dated within the last month, or the current financial year for Pension Credit guarantee credit.

OR

- Three months' bank statements, in addition the evidence detailed below:
  - i) **Paid employment:** applicants must provide their most recent original wage slips from all their jobs.
  - ii) **Self employment:** applicants must provide their most recent tax return (Self Assessment), and either their most recent HMRC Self Assessment Tax Calculation or other proof of current income;
  - iii) **Other source of income:** applicants must provide alternative documentation if the other sources of income have not been listed within their bank statements.

31. This system relies on evidence that is generally easy to access and will reduce the burden of evidence required of users from the current system. The government disagrees with the suggestion by some respondents that the generally shorter time limits for lodging an application in the employment tribunals are so short as to prevent an applicant from being able to access the necessary evidence to support an application. Furthermore, the requirement to supply documentary evidence of benefits (from DWP and HMRC), wage slips and three months' bank statements has operated for a number of years in the current fee system without significant issue.
32. The government recognises the concern of some respondents that a minority of applicants may have difficulty acquiring the necessary evidence (for example those without bank accounts or those who may have trouble receiving payslips from their employer). As is current practice, court or tribunal staff may exercise their discretion and request alternative forms of evidence from the applicant in these circumstances.

### Assessment of household means

33. The government will assess household means (the combined gross income and disposable capital of the applicant and their partner) when considering an application for a fee remission. By assessing household means, we do not provide taxpayer-funded fee remission to households who have the financial means to pay a court or tribunal fee (for example, if the partner of an applicant has considerable income or disposable capital). If the fee remission system were to assess couples as single where they have claimed to have separate finances, as suggested by some respondents, the fee remission system would be significantly more costly for the taxpayer. Furthermore, the government notes that assessments for taxpayer-subsidised means tested benefits commonly use this test. This reflects the reality that partners will, in the majority of cases, share finances - for example, in paying a mortgage or bills, or in caring for their children. Therefore, it is reasonable to assume that both the applicant and their partner gain financially or otherwise from the use of a court or tribunal.

34. The definition of a partner is provided in **annex C**. For clarity, where a couple is living apart due to force of circumstance (e.g. where they are in the armed forces, in a care home or in prison) we will treat them as a couple for the purpose of a fee remission application if the relationship subsists.
35. For the purposes of the disposable capital test, the thresholds for those aged 61 or above will apply when either the applicant or their partner is aged 61 or above.
36. Following concerns raised by some respondents, the government wishes to clarify that the current practice for the assessment of household means for users of the Court of Protection, which deals with decision-making for people who may lack capacity, will continue. Applicants will continue to be assessed as single where:
  - the fee payer is 'P' (applicable in property and financial affairs cases), or
  - where the partner of a third party applicant is 'P'.

Where a third party fee payer has a partner that is not 'P', the applicant will be assessed as a couple as in other courts and tribunals.

### **Contrary interest**

37. The government intends, as outlined in the consultation, that the relevant Delivery Manager (or the Registrar in the UK Supreme Court) has the discretion to consider an applicant as a single person if their partner has a contrary interest in the proceedings in respect of which the applicant is seeking a fee remission. In such cases, the income and/or disposable capital assets held by the partner, or held jointly by the couple, would not be taken into account. Matters which could be considered as such can include:
  - divorce, dissolution or annulment;
  - gender recognition applications;
  - domestic violence; or
  - forced marriages.

Staff guidance will advise (i.e. provide examples to) Delivery Managers of cases which may involve a contrary interest; while allowing for their discretion in applying this measure.

38. This discretion will apply to cases involving domestic abuse. However, if the case itself is considered an emergency (e.g. domestic violence, injunctions, evictions or cases involving children) then applicants are able to make an emergency application (where a remission is granted without supporting evidence following an undertaking that it will be provided retrospectively).

### **Third party applications**

39. The government will apply the existing process for third party applications to all courts and tribunals subject to this consultation, and the current practice in the Court of Protection, which deals with decision making for people who may lack capacity.
40. At present, where a Court of Protection case concerns property or financial affairs (or is a hybrid case) eligibility for fee remission is based on the financial circumstances (gross income and disposable capital) of 'P', rather than the financial circumstances

of the third party applicant as in health and personal welfare cases. We disagree with the suggestion by some respondents that the same remission processes should apply in health and personal welfare cases as in property and financial affairs cases. The assessment of 'P's' financial means in property and financial affairs cases acknowledges that these types of cases may grant control of such finances by making the third party applicant a deputy.

41. As outlined earlier, in the Court of Protection we will continue to assess the applicant as single where:
- the fee payer is 'P' (applicable in property and financial affairs cases), or
  - where the partner of a third party applicant is 'P'.

Where a third party fee payer has a partner that is not 'P', the applicant will be assessed as a couple, as in other courts and tribunals.

### **Copy documents and search fees**

42. The government will not provide fee remissions for copy document fees or search fees<sup>4</sup> under the new system. The provision of copy documents and searches is not a judicial function which provides access to justice. Both of these functions provide access to additional copies of documents which have already been provided to the applicant.
43. The government intends that in rare circumstances where an applicant did not receive the original copy of an order (e.g. the whereabouts of a party were unknown at the time), a fee will not be chargeable, rather than a remission granted. This will apply to vulnerable situations where an applicant did not receive (or cannot access) the original copy, for example due to homelessness or domestic violence.
44. We disagree with the suggestion by some respondents that applicants will be deterred from accessing a court or tribunal if they are unable to access the relevant documents. It is reasonable that that applicants use other avenues to copy documents (e.g. shops), which are often cheaper, rather than have this service provided by a court or tribunal at the taxpayer's cost. For search fees, original copies of certificates, orders or decrees absolute would have been provided to the relevant parties when made. For other search fees that have no relation to a case (e.g. researching genealogy), it is not reasonable that the taxpayer funds a non-judicial function via the fee remission system whose purpose is to protect access to justice.

### **Retrospective remissions**

45. The government will introduce a three month time limit in which applicants can apply for a retrospective remission (refund), rather than the two-month limit as proposed in the consultation. Having considered the concerns of respondents, the government acknowledges that while the proposed remission system has reduced the burden of evidence required of users and relies on evidence that is generally easy to access, some applicants may face specific difficulties in gathering evidence within a two-month period. It therefore believes that three months is a more reasonable time

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<sup>4</sup> A copy document fee is payable by an individual wishing to obtain an additional copy of a document held by a court or tribunal. A search fee is payable by an individual wishing to obtain information held by a court or tribunal.

limit. The government does not agree with the suggestion by some respondents that applicants will not be sufficiently aware of the fee remission system to allow them to apply for a retrospective remission within the time limit given. The government will produce clear guidance which signposts court and tribunal users paying a fee to the fee remission system.<sup>5</sup>

46. However, in the Court of Protection, the three-month retrospective remission period will commence from the date the Final Order is made. This reflects the concerns of some respondents about the unique circumstances of Court of Protection users, where third party applicants may not be aware of, or may not be able to access information about, the financial circumstances of 'P'<sup>6</sup> because of either 'P's lack of mental capacity or legal restrictions on the third parties' access to 'P's financial information. This places considerably more practical difficulties to accessing the information necessary for a remission application than in other courts and tribunals, and therefore necessitates a different approach to reflect that the information may not be available until the case is completed and a final order is issued.
47. In cases where the applicant is in a vulnerable situation, or is unable to provide evidence due to circumstances related to their court or tribunal case (e.g. an employment tribunal case where a former employer will not provide wage slips), the Delivery Manager or the Registrar of the UK Supreme Court has the ability to exercise their discretion in relation to the evidence required and may also consider whether the circumstances of the case are such that they avail themselves of the ability of the Lord Chancellor or Chief Executive (in UKSC) to extend the time limit.

### Multiple party claims

48. The government will introduce the same rules when a multiple party claim is made in all courts and tribunals. It believes it is consistent and fair that members of multiple party claim groups receive the same entitlement to fee remissions whichever court or tribunal their claim presents to. We disagree with the suggestion by some respondents that a different approach for should be taken in the First-Tier Tribunal (Property Chamber). We believe it is fair that the same terms apply to users of this tribunal as to users of other courts and tribunals. We will introduce the standard safeguard across all courts and tribunals which will mean that applicants will not be required to pay more as part of a multiple application than had they brought an individual case.
49. The government disagrees with the suggestion by some respondents that there is inconsistency or unfairness in its approach to the employment tribunals because these tribunals operate a multiple fee group structure. The use of fee group structure in the employment tribunals reflects the higher incidence of multiple claims in these tribunals as well as the additional cost of dealing with such claims. Individuals accessing the fee group structure in employment tribunals may pay a lower fee per

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<sup>5</sup> The 2007 PriceWaterhouseCoopers report "Is the 2007 court remission system working?" (<http://webarchive.nationalarchives.gov.uk/20100111120959/http://www.justice.gov.uk/publications/docs/2007-court-fee-remission-system.pdf>) recommended a review of training and guidance to all staff involved in processing remission applications. Following this report, all staff processing remissions received comprehensive training, benefitting from improved guidance and the development of a national Standard Operating Procedure.

<sup>6</sup> In property and financial affairs cases before the Court of Protection, eligibility for remissions is based on the disposable capital and income of 'P', who lacks mental capacity.

person than if they had brought a case as an individual. Furthermore, we do not agree that the proposed system discriminates against trade union members. Any individual, regardless of their trade union membership or non-membership, can apply for a fee remission in a multiple claim, and no individual will ever pay more than the fee they would have paid had they brought a single application.

50. We disagree with the suggestion made by some respondents that the procedures for applicants seeking a remission in multiple claims are too complex or unclear. Once applicants are assessed for fee remissions as part of a multiple party fee group, they will be clearly informed of the fee they are required to pay for each stage of their case (i.e. issue and hearing fee).<sup>7</sup> The appeals process for applicants in multiple claimant fee groups is the same as for any single fee remission applicant (see **annex D**) and will be clearly set out in the remissions guidance. Furthermore, court or tribunal staff will be able to assist applicants where necessary, with a public enquiry line available for users of the employment tribunals.

### Equality impacts

51. The government believes that the fee remissions system proposed will ensure that access to justice is maintained for those who are unable to afford to pay a fee. The proposals and any resulting impacts remain a proportionate means of achieving a legitimate aim – to ensure that those who can afford to contribute to the cost of their fee should do so, but that those who cannot pay the fee should not be prevented from accessing the court or tribunal as a result.
52. Following our consultation and changes made in response to the consultation, our modelling has been updated. Of all those impacted by the proposals, more than 60% will see no cost or eligibility impacts for a fee remission. A further 16% will be positively impacted, whilst less than one quarter will be negatively impacted by the proposals (see **annex C** of the Impact Assessment). We do not consider that, for those negatively impacted, the proposals will amount to a substantial disadvantage in monetary terms. We consider that the fee remissions system proposed will ensure that access to justice is maintained for those who are unable to afford to pay a fee.
53. The government will maintain the Lord Chancellor's exceptional power to reduce or remit fees (or the Chief Executive in the case of the Supreme Court) and to reduce or remit a fee where they are satisfied that there are exceptional circumstances which justify doing so (for example, where an individual has suffered an unexpected event affecting their ability to pay a fee).
54. Some respondents suggested that the equality information provided in the consultation was insufficient. We have included in our equality analysis (**annex C** of the Impact Assessment) a detailed breakdown of the equality impacts by protected characteristics of age, disability, race and sex<sup>8</sup>. We have considered the data/sources suggested by respondents. However, the data sources suggested were either already used (for example, data from DWP) or did not add any additional information that

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<sup>7</sup> Multiple claimant fee groups who present their claim to the tribunal together (e.g. on an ET1 form) will remain in the fee groups for the life of claim (regardless of how judges chose to manage a claim).

<sup>8</sup> There is not the data available to model the equality impacts of the proposals on the protected characteristics of gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, or sexual orientation.

could be used for the modelling (for example, the FRS data used already contained details on the income levels of different individuals).

### **Electronic data sharing**

55. Some respondents commented that both the applicants and administrators of the fee remission system would benefit from electronic links with DWP and HMRC. The government reiterates that it is our long term aim to check the receipt of qualifying benefits and other applicant information electronically, reducing the amount of evidence users will need to provide in order to be granted a fee remission. The Crime and Courts Act, clause 28<sup>9</sup> (to be commenced), allows for information sharing between MoJ, DWP and HMRC for the purposes of determining eligibility for a fee remission application. We continue to consider the options for introducing an IT system to deliver this solution.

### **Prisoners**

56. The consultation did not specifically set out how the reforms would apply to prisoners applying for a fee remission (prisoners who bring a non-criminal case in a court or tribunal maybe eligible for a remission).<sup>10</sup> The government consulted on the basis that the proposals would apply to all court and tribunal users and therefore they will apply in full to prisoners and their partners.

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<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2013/22/section/28/enacted>

<sup>10</sup> In the current system, prisoners are eligible to apply under Remission 3 (the disposable income test) and for practical reasons do not receive the same allowances as other applicants (e.g. general living expenses).

## Conclusion and next steps

1. The responses we have received have been fully considered and led to the policy changes outlined in this document. In summary, these changes are:
  - The amendment of the disposable capital test to include more thresholds and the provision of a different threshold for those aged 61 or over;
  - Amendments and clarifications to the terms of the disposable capital test;
  - The addition of more excluded benefits under the gross monthly income test;
  - Time period in which to apply for a retrospective fee remission to be three rather than two months; and
  - Application of the same eligibility test to prisoners and their partners.
2. The government intends to implement the changes by Statutory Instrument by October 2013.

## Annex A: Analysis of responses to the consultation

### Introduction

1. This section provides a detailed analysis of the responses to the proposals for reform set out in the consultation paper.
2. The consultation closed 16th May 2013 and received 64 responses. This is included 15 from representative bodies, 11 from legal bodies, 10 from trade unions, 8 from public bodies, 8 from individuals, 5 from voluntary bodies, 4 from judicial bodies and 3 from business groups. A list of respondents is attached at **annex B**.

### 1. A single fee remissions system

3. The consultation proposed a single remission system for users of all HMCTS operated courts, the UK Supreme Court and fee paying tribunals<sup>11</sup>, with the exception of the First-tier Tribunal (Immigration and Asylum Chamber). At present, eligibility for remissions varies by court or tribunal.
4. The government reasoned that a single remission system would be easier for users to understand and access. It would also help drive greater efficiency and consistency in the administration of fee remissions, as decisions on remission entitlement would be taken on the same basis irrespective of the nature of the court or tribunal where the fee is charged. Entitlement to a remission would be based solely on the ability of the applicant to afford the fee. One question was asked on the principle of a single system.

**Question 1 – Do you agree that there should only be one remission system in operation within HMCTS-operated courts and tribunals and the UK Supreme Court?**

5. We received 52 responses to this question. 32 respondents agreed that a single remissions system for all courts and tribunals should be introduced. 10 respondents disagreed with the proposal; while 10 offered no firm view (neither disagreed nor agreed with the proposal). Those in support of the proposals commented that:
  - A single system would be more transparent, easier for users to understand and fairer;
  - The proposals would streamline administrative processes and be more cost effective; and
  - Electronic data sharing should be applied where possible

<sup>11</sup>Civil Courts (England and Wales), Family Courts (England and Wales), Magistrates Courts (England and Wales), Court of Protection (England and Wales), Probate services (England and Wales), The High Court (England and Wales), The Court of Appeal (England and Wales), the UK Supreme Court (UK), Employment Tribunals (ET), Employment Appeal Tribunals (EAT) (England, Scotland and Wales), Gambling Appeals (England, Scotland and Wales), Property Chamber (England), Upper Tribunal (Lands Chamber) (England and Wales), Upper Tribunal (Immigration and Asylum Chamber) (UTIAC) (Judicial Review cases only), and the Gender Recognition Panel (UK).

6. For example, one legal representative body noted:

“This will aid transparency in that members of the public will not need to seek out eligibility criteria for different courts and tribunals. It will assist public understanding of the availability of the remission scheme. It will be fairer as between the users of different courts and tribunals in that the availability and level of remission will in future be the same in each. We welcome, for example, the application of a remission system as *pari passu*<sup>12</sup> for the introduction of fees in the employment tribunals and employment appeal tribunals. It will be administratively more straightforward for HMCTS for there to be one single remission system in place of a variety of different systems.”

7. A business representative body noted:

“Yes we agree. It will make for a simpler system for both those accessing and those administering fee remissions which in turn should lead greater administrative efficiency and consistency.”

8. The 10 respondents who disagreed with the proposal argued that:

- A single system did not adequately address the varying characteristics or circumstances of users, particularly in certain tribunals;
- Users of certain courts and tribunals would be disproportionately impacted by the proposals; and
- Certain courts and tribunals should be excluded from the proposed single remissions system; namely the employment tribunals, the Gender Recognition Panel and Court of Protection

9. For example, one trade union noted:

“The [union] recognises that the introduction of a single remission scheme would simplify and reduce the administration costs of the fees and remission system. However it also important to recognise the nature of claims and the characteristics of claimants differ significantly across the courts and tribunal system. In our opinion, the proposed uniform approach to remissions will not be sufficiently flexible to ensure that resources are effectively targeted at those most in need of remissions.”

10. A voluntary body noted:

“To be well targeted courts/ tribunals should recognise differences and there are groups that have particular needs, this is evident for the transgender community who may be disproportionately affected by these changes.”

## 2. Financial eligibility for a remission

11. The proposed system is based on two distinct tests. The applicant will have to pass both tests in order to be eligible for a fee remission:

- The first test will determine whether an applicant is eligible for a remission based on an assessment of their household<sup>13</sup> disposable capital (e.g. savings and

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<sup>12</sup>‘Pari passu’ is a Latin phrase that literally means “with an equal step” or “on equal footing.”

<sup>13</sup>A household is a single person or a couple

investments). Applicants with disposable capital in excess of a certain threshold would not be eligible for a fee remission; and

- The second test will consider whether an applicant who passed the disposable capital test receives a full fee waiver, pays a contribution towards their fee or pays the full fee. A full fee waiver will be granted if the applicant can demonstrate that their household income is below a certain threshold. Above the threshold the applicant would be required to pay a contribution towards the fee, but no more than the value of the fee, based on a percentage of their income in excess of the threshold. The full fee will be payable where their income exceeds the threshold by a defined amount.

### Disposable capital test

12. The consultation proposed the introduction of a disposable capital test. For fees up to £1,000, remissions are limited to those applicants whose household disposable capital is less than £3,000. For fees between £1,001 and £4,000, remissions are limited to those applicants whose household disposable capital is less than £8,000. In rare cases where a fee may exceed £4,000, the fee would only be payable where disposable capital of £16,000 or more is held.

Fee of:	Disposable capital threshold:
Up to £1,000	£3,000
Up to £4,000	£8,000
Over £4,000	£16,000

13. The government reasoned that at present, none of the fee remission systems in operation considered the disposable capital of remission applicants. This could mean that an applicant with, for example, low income but considerable savings could receive a remission. The government believes that it is inappropriate that taxpayer funds should be directed towards those with the financial means to pay a fee.
14. The consultation sought views on whether disposable capital should be considered in deciding remission eligibility, and whether the proposed limits, terms and evidence requirements/enforcement mechanisms of the test were appropriate. We asked four questions.

**Question 2 – Do you agree that disposable capital should be considered when deciding fee remission eligibility? Please state the reason(s) for your answer.**

15. We received 49 responses to this question. 21 respondents agreed with the introduction of a disposable capital test, 19 disagreed and 9 offered no firm view.
16. Those in agreement felt that it was particularly unfair that those with considerable savings should be able to access a fee remission. They also commented that the test is fair and relatively simple. For example, the following comments were made by representative bodies:

“Those with sufficient means should pay to allow those with fewer means to get support via the remissions system.”

”It cannot be right that under the current system an individual without a regular income, yet who possesses substantial savings and disposable capital will be exempt from the ET [employment tribunal] fee system”

17. The respondents who disagreed with the proposal argued that:

- The proposal would penalise savers, particularly the elderly with care needs;
- The proposal would disproportionately impact users of certain tribunals, namely the employment tribunals and the Gender Recognition Panel; and
- Users of the employment tribunals, who have shorter time limitations, may not be able to realise their disposable capital.

18. For example, a trade union commented:

“It is right that capital should be taken into account however, we are very concerned that the proposed system will mean many are denied access to justice. We do have particular concerns over the interaction of these provisions with the remission system for Employment Tribunal claims: in the majority of other jurisdictions, claimants have a long limitation period (typically three to six years) to lodge a claim, affording them time to convert disposable capital assets to cash to meet fees and associated legal costs. However with ET claims there is only a three month period which leaves little or no time for a claimant to realise that asset.”

19. A legal body noted:

“Our particular concern is with regard to elderly and vulnerable people and, as such, whilst we can see the sense in considering disposable capital there needs to be specific guidance in cases involving the COP [Court of Protection]. Elderly people are often reliant upon their capital to support a meagre income and higher expenditure for care and other related issues. We would therefore argue that taking into account disposable capital can and will impact particularly upon this group.”

**Question 3 – Do you agree with the proposed disposable capital limits? Please state the reason(s) for your answer.**

20. We received 51 responses to this question. 40 respondents disagreed with the proposed disposable capital limits, 7 agreed with the proposed limits, while 4 offered no firm view. Those in support of the proposals commented that:

- The proposed capital thresholds are reasonable, clear and concise;
- That most court or tribunal users will pay fees much lower than £1,000; and
- Applicants should consider the cost and strength of their case.

21. For example, a representative body noted:

“The proposed disposable capital limits appear to be reasonable, having regard to the fact that most litigants would not necessarily incur Court fees as high as £1,000.00 or above as has been stated in the comments in the paper.”

22. A voluntary body and two public bodies noted:

“Yes. People should have to think about the cost of actions they bring and should be reasonably clear that they have a case.”

“It is clear and concise and relevant to the amount of fee.”

“The proposals seem balanced and not excessive.”

23. The respondents who disagreed with the proposal argued that:

- The proposed disposable capital limits were too low;
- The proposal could be a potential barrier to access to justice;
- The disposable capital limits should mirror those used by civil legal aid or benefits; and
- The proposal would disproportionately impact users of certain tribunals, namely the employment tribunals and the Gender Recognition Panel, and the Court of Protection.

24. For example, a legal representative body noted:

“[We are] shocked by the proposal that an individual with only £3,000 in the bank should be required to pay up to a maximum of £1,000 in court fees. A third of that individual’s savings could be wiped out in court fees. A person with £8,000 in capital assets would be expected to dissipate up to half of their savings on court fees. That cannot be right or fair. These days £3,000 is not a large amount to cover the emergencies and other requirements to use capital that can arise. This cost must be a substantial disincentive for an individual to seek justice.”

25. A voluntary body noted:

“It appears disproportionate to us, for people on benefit level incomes with low savings levels should be required to use such a high proportion of their capital to fund court fees. If even the benefit rules accept that capital of below £6,000 should be disregarded then at the very least, the court fee remission capital limits should mirror benefit rules. We cannot avoid viewing this proposal as an erosion of access to justice for the poorest in our society and would welcome reconsideration.”

26. It was also noted that the large gap between the thresholds created some unfairness. For example a person required to pay a fee of £950 who had savings of £3,000 would not receive a remission, while a person with a fee of £1,050 with savings of £4,000 would receive a remission (subject to the income test).

<p><b>Question 4 – Do you agree with the proposed terms of the disposable capital test? Please state the reason(s) for your answers.</b></p>
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27. We received 48 responses to this question. 28 disagreed with the proposed terms of the capital test. 13 agreed with the terms, while 7 offered no firm view. Those in support of the proposals commented that:

- the test was clear and transparent for both users and staff; and
- the terms of the test are reasonable and fair.

28. For example, one voluntary body noted:

“A simplified version of the test of what constitutes disposable capital that applies for civil legal aid would be acceptable. It should be clearer for applicants and staff to understand.”

29. The respondents who disagreed with the proposals argued that:

- redundancy related payments<sup>14</sup> should be disregarded from the disposable capital test,
- it is inconsistent to include redundancy payments in the disposable capital test, but disregard unfair dismissal payments;
- those in receipt of redundancy payments may later bring successful unfair dismissal claims;
- employers may deliberately grant a redundancy payment of over £3,000 to in effect bar a former employee from receiving a remission in an employment tribunal;
- the proposals disproportionately impact the over-60s, because they are less able to replenish capital and receive larger redundancy payments; and
- clarification is needed on the treatment of jointly owned capital, and capital owned by a partner.

30. For example, one legal representative body noted:

“[It is] unclear why redundancy payments but not unfair dismissal payments are treated as disposable capital given that both are designed to cushion the impact of unemployment. It is not clear to [us] how these payments are to be distinguished. Clear guidance to claimants will be necessary to ensure that monies received from employers upon termination of employment are correctly included or excluded from disposable capital.”

31. A judicial body noted:

“...there is a concern in connection with jointly held capital being treated as disposable capital. It is assumed that this is to be treated as disposable capital only to the extent that the capital actually belongs to the party making the application. For example...in connection with a second home what if the second home is jointly owned with a group of other individuals (say a group of friends who club together to buy a holiday cottage)?”

32. A legal voluntary body noted:

“We disagree with the removal of the pensioner disregard. Pensioners are penalised for having saved during their working lives by this removal, and will have less opportunity to replenish their savings than working age applicants for a remission. Given that occupational and personal pension schemes are disregarded the removal of the disregard seems arbitrary, as pensioners who have used a pension are favoured over those who have not.”

### **Evidence to support the disposable capital test and enforcement**

33. In seeking to have simple and transparent test which does not burden applicants or staff, we proposed that applicants declare the value of their household disposable capital by a ‘statement of truth’ on the remission application form. In cases of doubt a

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<sup>14</sup>For example: statutory redundancy payments, non-statutory redundancy payments, payment of wages in lieu of notice, and payment of outstanding holiday / time-in-lieu-of-leave payments.

Court or Tribunal Manger would have discretion to request documentary evidence of disposable capital from the applicant. If the party is found to have provided incorrect information on the remission application form, the party will become liable for the fee.

**Question 5 – Do you agree with the proposed evidence requirements and enforcement mechanism of the capital test? Please state the reason(s) for your answer.**

34. We received 44 responses to this question. 17 respondents agreed with proposed evidence requirements and enforcement mechanism. 17 disagreed with the proposals, while 10 offered no firm view. Those in support of the proposals commented that:

- A statement of truth is sufficient and proportionate for a majority of applicants;
- In a minority of cases where there is doubt, discretion can be used to request further evidence; and
- The statement of truth ensures that the remission system is simple to administer.

35. For example, a legal/judicial representative body noted:

“A simple statement by the applicant will in the majority of cases be sufficient. Retaining discretion to ask for further evidence preserves a proportionate approach.”

36. A trade union noted:

“A ‘statement of truth’ to declare the value of disposable income is as good a mechanism as any, even if – as the impact assessment acknowledges – the result may be a 60% reduction in anticipated savings. Any remissions system should be easy to administer.”

37. The respondents who disagreed with the proposals argued that:

- The proposed sanction would not deter applicants from making false declarations;
- A financial or criminal penalty should be introduced as a deterrent;
- Applicants may not be aware of their partner’s disposable capital (notably in vulnerable domestic situations – e.g. domestic abuse); and
- Applicants with poor literacy or numeracy skills should not be responsible for declaring their capital.

38. For example, one business representative body noted:

“The effectiveness of the new capital test relies on the accuracy of a ‘statement of truth’ made by the individual applying for a remission. While this approach has been put forward with the intention of keeping the remissions system simple, [our] members are concerned that it is too open to abuse by those intent on gaming the system... There needs to be a deterrent to prevent making a false statement being the rational decision for claimants”.

39. A trade union noted:

“The [union] is concerned that in the absence of detailed accompanying advice and guidance, this proposal will place too high a burden on would-be claimants, particularly those with limited or no English language skills, who will inevitably struggle to comprehend the ‘test’ and the complex rules governing remissions in general.”

**Income Test – Full remission and partial remission**

40. The consultation proposed a second test, which considers whether an applicant who has passed the disposable capital test receives a full fee remission, pays a contribution towards their fee or pays the fee in full. Under the full remission element, gross monthly income thresholds are proposed for single people and couples, with a further allowance added for each dependant child:

41. Proposed income thresholds:

Gross monthly income with:	Single	Couple
No children	£1,085	£1,245
1 child	£1,330	£1,490
2 children	£1,575	£1,735
Add £245 for each additional child		

42. The government proposed to accept certain means tested benefits as evidence that an applications income is deemed to fall below the relevant income threshold and will therefore be automatically entitled to a full remission (i.e. passported) if they also pass the capital test. The government proposed that those in receipt of ‘Working Tax Credit who are not also in receipt of Child Tax Credit’ test would no longer be automatically passported through the income test on this basis. It was also proposed that some recipients of Universal Credit would be ‘passported’ through the income test subject to the government determining the appropriate level of Universal Credit (‘UC with earnings of less than £6,000’ was used as an illustrative example in the consultation).

43. The consultation also proposed to simplify the formula for calculating eligibility for a partial remission by replacing the Remission 3 test with the same gross monthly income thresholds used to assess entitlement for a full remission. Those with income above the stated thresholds would be expected to pay a contribution of £5 for each additional £10 income above the threshold.

44. Finally, the government proposed to introduce a gross monthly income cap, so that those with income in excess of £4,000 above the stated thresholds for full remission would be ineligible for a partial remission and would pay the fee in full. We sought respondents’ thoughts on whether the income cap should be singular or variable by the fee to be paid.

45. The consultation sought views on whether the proposed income test is targeted, simple and workable; whether we should introduce a gross monthly income cap, and if the evidence requirements of the income test were appropriate. We asked three questions.

**Question 6 – Do you agree that these proposals strike the right balance in targeting eligibility for full and partial remission through a simple and workable system? If you do not agree, please explain why, and what alternatives you propose.**

46. We received 55 responses to this question. 37 respondents disagreed that the proposals strike the right balance. 12 agreed with the proposals, while 6 offered no firm view. Those in support of the proposals commented that:

- The current income tests are too complex and put a high evidence burden on users and staff; and
- The proposed income test is a simple and clear way of determining eligibility for remissions.

47. For example, one legal representative body noted:

“[We] accept that any fee remission scheme will have to be related to income. The process for assessing income to determine full or partial remission must be straightforward. As the consultation paper itself acknowledges the current test for assessing partial remission is too complicated and burdensome. We would support using gross monthly income thresholds to assess entitlement for both full and partial remission.”

48. The respondents who disagreed with the proposals argued that:

- The proposals did not correctly target eligibility for full and partial remissions;
- The gross monthly income thresholds were too low;
- The assessment of gross monthly income (instead of net monthly income) is a potential barrier to access to justice;
- The use for gross monthly income thresholds does not adequately take account of housing, child care and other costs;
- Employment tribunal users will be disproportionately impacted; and
- All recipients of Universal Credit should be automatically passported to a full fee remission.

49. For example, one trade union noted:

“We also consider that the low income limit, which is not far above the national minimum wage, together with the failure to take account of disposable income, is problematic and will lead to extreme unfairness in the system and a denial of access to justice to those of limited means. The legitimate and entirely necessary outgoings of some individuals may cause their disposable income to be of such low levels that they should qualify for remission, a factor that will not be recognised under the current proposals for assessing income. We consider that applying an income limit that broadly equates at least to a living wage would be far fairer.”

50. A legal representative body noted:

“[We] consider that a gross income test would be unfair....In particular, [we] consider that any assessment of income should take into account housing costs and work related childcare costs. If these costs are not disregarded for fee remission applications it would be unfair to those who live in parts of the country where housing is scarce or more expensive and to working parents. Single mothers will be particularly and substantially disadvantaged if work related child care costs are not taken into account.”

51. Another trade union noted:

“[We] do not believe that this consultation provides enough information on the process to be introduced and how this will impact on other issues applicants have to consider in a very limited time frame... We believe that there is a distinct possibility that individuals, particularly submitting paper applications that applicants, through no

fault of their own, fail to provide the evidential requirements, fail to apply for remission or perhaps forget to sign the cheque for the appropriate fee. Any of these could result in an application being time barred if the application has to be returned to the claimant and resubmitted. This could result in the application being struck out.”

**Question 7 – Do you agree that there should be a gross monthly income cap so that those with a certain amount of income would be ineligible for a partial remission and would pay the fee in full? If so, do you agree that a single cap of £4,000 is appropriate or should the government consider varying the cap for different fee levels? Please state the reason(s) for your answer.**

52. We received 43 responses to this question. 17 respondents agreed with the introduction of a gross monthly income cap. 11 disagreed with the proposal, while 15 offered no firm view. Those in support of the proposals commented that:

- The gross monthly income cap is reasonable, fair and simple; and
- The proposal targets remissions to those who need them most.

53. For example, one trade union noted:

“The [union] in general supports the principle of an income cap above which an individual will not qualify for a remission. This will help to ensure that resources can be targeted at those most in need. However, we do not agree that the monthly income cap should be lower than the equivalent cap which applies under remission 3 of the existing remission scheme.”

54. The respondents who disagreed with the proposal argued that:

- the gross monthly income cap was too low, largely as a result of the gross monthly income thresholds being too low;
- the gross monthly income cap was too high;
- net monthly income should be considered instead of gross monthly income; and
- the gross monthly income cap should be variable.

55. For example, a legal voluntary body noted:

“We suggest that the monthly income cap of £4,000 for a fee remission is too high. This is equivalent to a £70k gross yearly income. A £3,000 cap (equivalent to an income of £50k yearly gross income) is more appropriate.”

56. A trade union noted:

“In broad terms we agree that there should be an income cap so that the remission system focuses resources on those most in need. However...we consider that this should relate to disposable income which will provide a far more realistic and accurate assessment of those of limited means who could most benefit from the remission system.”

57. A business group noted:

“We believe that the most equitable solution would be to introduce varying gross monthly income caps for different fee jurisdictions, where levels vary. For the purposes of remissions for Employment Tribunal fees, a gross monthly income cap of £4,000 appears reasonable.”

**Question 8 – Do you agree with the proposed evidence requirements for the income test? Please state the reason(s) for your answer.**

58. We received 45 responses to this question. 23 respondents agreed with the proposed evidence requirements. 17 disagreed, with 5 offering no firm view. Those in support of the proposals commented that the evidence requirements were clear and reasonable. They also noted that electronic data sharing should be introduced where possible.
59. For example, one business representative body noted:  
“Yes we agree. The proposals aim to strike a balance between requiring sufficient evidence to avoid false claims, and creating an undue barrier to justice for applicants.”
60. A legal representative body noted:  
“...the process for evidencing income must be as straightforward as possible. Documentary evidence of a qualifying benefit from the DWP or three months bank statements and recent wage slips/tax returns for the self employed seem reasonable. The Society would encourage the introduction of IT systems which would allow the DWP to share applicant data with the MOJ for the purpose of deciding eligibility for fee remissions as provided under the Crime and Courts Bill.”
61. The respondents who disagreed with the proposals argued that:
- Users of the employment tribunal may be unable to gather the required evidence within the time limits applied in the employment tribunals;
  - Users of the employment tribunal may have their wage slips withheld by a former employer, or the case may concern the non-payment of wages;
  - Applicants frequently face delays in acquiring evidence from other government departments (for example, a recently dated benefit letter from DWP); and
  - The proposals do not address the requirements of those without bank accounts.
62. For example, two trade unions noted:  
“This Employment Tribunal has jurisdiction to receive applications from people who have not received either an appropriate or any wage slip at all from their employer. Therefore, there will be a number of applicants who have not received the relevant wage slip which is required as supporting evidence yet that is the very nature of their application to the Tribunal in order to try to obtain such evidence. It seems inequitable that such people could be so precluded.”  
  
“The short time limits which apply to employment tribunal claims mean that it will often be difficult for claimants to gather all relevant documentation before submitting a claim. The TUC therefore believes that it is essential that employment tribunal claimants are permitted to submit evidence demonstrating eligibility for a remission after a claim has been admitted by an employment tribunal. Failure to do so will mean that some individuals would be unfairly barred from the employment tribunal system.”
63. A judicial body noted:  
“It appears to be assumed that everyone has a bank account. It is our understanding that there are at least several hundred thousand adults in Great Britain who do not have a bank account. (This is borne out by HM Treasury information). While it might

be considered that many of those without a bank account are likely to be individuals who will qualify for remission on the basis of receiving a qualifying benefit this cannot be taken for granted”.

### Treatment of Income

64. The proposed remission system is based on an assessment of the income and disposable capital of an applicant and their partner, as both the applicant and their partner gain financially or otherwise from the use of a court or tribunal. However, we recognised that in certain instances it would not be appropriate for an applicant to be assessed as a couple. It was proposed that an applicant would be assessed as a single person if their partner has a contrary interest in the proceedings in respect of which the applicant is seeking a fee remission (e.g. divorce or domestic violence).

<b>Question 9 – Do you agree that eligibility to a remission should be based on assessment of household means? Please state the reason(s) for your answer.</b>
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65. We received 44 responses to this question. 22 respondents agreed that eligibility for a fee remission should be based on an assessment of household means. 20 disagreed with the proposal, while 3 offered no firm view. Those in support of the proposals commented that:

- A partner may be earning a substantial wage which should be taken into account when assessing eligibility;
- The proposal is fair and reasonable; and
- The proposal reflects current practice for assessing household means.

66. For example, a public body and voluntary body noted:

“Yes. One partner may be earning a substantial wage so all income should be taken into account.”

“We can see that where there is no contrary interest in the proceedings that remission based on an assessment of the means of the household rather than the individual would be appropriate. As the paper states, however, there must be an appropriate mechanism put in place for exceptional situations, as suggested.”

67. The respondents who disagreed with the proposal argued that:

- The disposable capital and income of a partner should not be assessed, particularly where there is not direct financial interest for the partner;
- Some couples maintain separate finances, or do not share financial information with each other;
- Greater clarity is required on the terms of assessing household means (e.g. where partners live apart due to force of circumstance); and
- Household means should not be assessed in the Court of Protection, where ‘P’ is vulnerable and may have high care costs.

68. For example, one judicial body noted:

“To require proof of a partner’s income raises issues about the partner’s rights of privacy and how someone whose partner does not wish to disclose their finances can prove a claim for remission. We question the evidence base for the assertion that

“both the applicant and their partner gain financially or otherwise from the use of a court or tribunal”. That will depend upon the arrangements which are made as between the partners with regard to financial matters. It cannot be assumed that there is an equal or open financial partnership. Furthermore, the problems in this regard might be more marked where the relationship has been of short duration. Say for example two individuals have moved in together within the last 6 months prior to the litigation commencing. It is not necessarily reasonable to expect that they will have shared financial arrangements by that stage in their relationship.”

69. A legal body noted:

”Annex E gives a workable definition of retained membership as ‘including a person with whom the applicant usually lives with as a couple but is not currently living with due to force of circumstance’. This is too wide in scope and would be better addressed by using the concepts found in income-related benefits assessments... It is suggested that including an absent partner in a household assessment is inappropriate in all cases where the absent partner is maintaining a separate home, say for work or education purposes. If the absent partner is in hospital or long-term residential or care home, it would not be appropriate to take account of their resources.”

**Question 10 – Do you envisage other circumstances where a contrary interest could apply? Please state the reason(s) for your answer.**

70. We received 26 responses to this question. Those who responded to the question noted:

- There are various situations where there could be a contrary interest, for example where:
  - Both partners are party to the same multiple claimant fee group;
  - Partners are opposing parties in a case (i.e. other than divorce); or
  - Where an applicant is taking their partner’s employer to tribunal.
- Contrary interests are more prevalent in the family courts, particular in cases involving children, or domestic abuse (whether physical, financial or otherwise); and
- Discretion should be used to ensure the remission system is flexible to accommodate unique situations and protect access to justice.

71. For example, one public body noted:

“... contrary interests will arise much more frequently in family justice disputes. However, there will be a number of instances where one partner can be uncooperative, or worse. These cases will frequently involve children. This is another reason for ensuring that there is a readily available process for the application of discretion”

### Third party applications

72. The consultation proposed to maintain the existing processes for third party applications in the Court of Protection. That is, when a case concerns the property or financial affairs<sup>15</sup> (as opposed to the health and welfare) ‘P’<sup>16</sup> is treated as the fee payer’. This means that the remission application is assessed on the income and disposable capital of ‘P’ rather than the third party applicant.

**Question 11 – Do you agree that the existing process for third party applications should be applied to all courts and tribunals subject to this consultation, and that the current practice in the Court of Protection should continue? Please state the reason(s) for your answer.**

73. We received 30 responses to this question. 27 agreed with the proposals and 3 disagreed. While many respondents who agreed with the proposal did not have specific observations, those who did commented that:

- the current practice is fair and workable;
- the process for third party applicants should be consistent across courts and tribunals; and
- the current practice for third party applications in the Court of Protection should continue.

74. The respondents who disagreed with the proposals argued that the current practice for fee charging and remissions in property and financial affairs cases (where eligibility is based on the financial means of ‘P’) should also apply to health and personal welfare cases. For example, a representative body noted:

“...the [body] considers that the entitlement to a fee remission should depend on the means of the person whom the third party represents, since the application is made for the benefit of that person.”

### 3. Scope of the fee remissions system

75. The consultation proposed that fee remissions should only be available for fees payable or judicial functions that provide access to justice. As such, the government proposed to remove copy document fees and search fees<sup>17</sup> from the scope of the remission system. In exceptional circumstances where an applicant did not receive the original copy of an order (e.g. the whereabouts of a party where unknown at the time), the government proposed that a copy fee should not be charged in the first place, rather than a remission granted.

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<sup>15</sup>The consultation incorrectly stated that ‘P’ is treated as the applicant in cases of health and welfare in the Court of Protection. We wish to clarify that in cases of health and welfare, the third party is treated as the applicant.

<sup>16</sup>P’ is a person who lacks mental capacity.

<sup>17</sup>A copy document fee is payable by an individual wishing to obtain an additional copy of a document held by a court or tribunal. A search fee is payable by an individual wishing to obtain information held by a court or tribunal.

76. The consultation sought views on whether copy document and search fees should continue to be included in the scope of remissions, and whether there are circumstances that could restrict access to justice.

**Question 12 – Do you agree that providing copies of documents and searches should be exempt from the remission system? Please state the reason(s) for your answer.**

77. We received 42 responses to this question. 24 respondents agreed that copy documents and search fees should be exempt from the remission system. 14 disagreed and 4 offered no firm view. Those in support of the proposals commented that:

- Copy documents and search fees do not facilitate access justice;
- If documents have been supplied previously, then this fee should be exempt from remissions;
- The current system is open to abuse, with applicants requesting more than they need; and
- The proposal will reduce the waste of staff resources.

78. For example, a public body and an individual noted:

“... the fact that fee exempt litigants can currently get court staff to make photocopies and still not pay for that is quite ridiculous. I know of several instances of litigants who are fee exempt openly saying that they know they can get free copies done.”

“... the primary purpose of public funding is to facilitate access to justice [for those] unable to do so through their own means. Unless applicants can show [that] not having access to such information would hinder their access to justice, I see no reason for the public to fund this expenditure.”

79. Those who disagreed with the proposal argued that:

- An applicant may not have received the original document, with particular concern for those in vulnerable situations (e.g. the homeless);
- The proposal could restrict access to justice, particularly for those on low incomes; and
- There will be an increase in self litigation following reforms to the scope of legal aid (following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012), increasing the need for these services.

80. For example, one trade union noted:

“This is of particular concern in relation to situations where the matter for which justice is sought has rendered a party homeless and reliant on charity for food. A victim of domestic abuse or illegal eviction may not have access to any documents. The documents may be necessary to prove domestic abuse in order to apply for legal representation. There needs to be some safeguards for the most vulnerable in society.”

**Question 13 – Do you envisage circumstances where charging for copy or search fees would restrict access to justice? Please state the reason(s) for your answer.**

81. We received 26 responses to this question. Those who responded to this question commented that:
- The proposal will increase the cost of litigation for individuals, potentially restricting access to justice;
  - An applicant may not have received the original document, with particular concern for those in vulnerable situations (e.g. the homeless);
  - There is particular concern for individual litigants who face cumulative charges; and
  - Those on low incomes will be unable to afford the charges for copy documents or search fees.

82. For example, one legal representative body noted:

“Charging a person in receipt of remission of fees £5 for the copy of a document may seem small beer but multiply the sum several times and very quickly these charges could become a hindrance to access to justice for some people. There must be a limit on what a person in receipt of fee remission can be expected to pay if charges for copies or search fees are taken out of the remission system.”

**Retrospective remissions**

83. The consultation proposed to reduce the period in which to apply for a retrospective remission (a refund) from six to two months on the basis that two months is a sufficient length of time within which to obtain the documentary evidence necessary to support a retrospective remission application. The Lord Chancellor (in courts or tribunals) or the Chief Executive of the UK Supreme Court would be able to extend the period if they ‘consider that there is a good reason for an application being made after the end of the period of two months.’
84. We sought views on whether two months was sufficient time limit for making a retrospective fee remission application (refund); we asked one question.

**Question 14 – Do you agree that the time limit for making a retrospective remission should be reduced to two months? Please state the reason(s) for your answer.**

85. We received 45 responses to this question. 29 respondents disagreed that the limit for retrospective remissions should be reduced to two months. 10 agreed with the proposal, with 6 offering no firm view. Those in support of the proposals commented that:
- Two months was a reasonable period of time in which to gather evidence; and
  - A mechanism should be in place for exceptional circumstances.

86. For example, one representative body noted:

“A reduction to two months is agreed, but it is respectfully suggested that there should be some form of mechanism in place to accommodate exceptional circumstance case[s].”

87. The respondents who disagreed with the proposal argued that:
- Two months is insufficient time to gather the necessary evidence;
  - Applicants often face delays in acquiring evidence from other government departments;
  - Users of the employment tribunals may have necessary evidence withheld by a former employer;
  - There is particular concern that users of the Court of Protection will not be able to access financial information about ‘P’ (who lacks mental capacity) within two months; and
  - Court and tribunal users are not sufficiently aware of the fee remission system to apply within two months.

88. For example, one trade union noted:

“Two months is an unrealistically short period of time. Much of the documentary evidence required by applicants at the Employment Tribunal will be held by their former employer who is not likely to be co-operative with a former employee taking out a case against them. [We suggest] three months.”

89. A specialist legal body noted:

“If it is intended that the time-limit runs from the date of the application then we believe that it will be impossible to comply with the limit as proposed. Applications to the CoP currently take some 10-16 weeks to process. It is only once an order is received that a Deputy can contact financial institutions to advise them of their appointment and seek the relevant details as to currently capital and income. It is therefore clear that a two month time limit is completely inadequate.”

### **Multiple Claims**

90. The consultation proposed to extend the fee remission provisions which currently apply in the civil courts for multiple claims to all courts and tribunals, and maintain the additional provisions for multiple party claims in the employment tribunals (where the fee increases depending on the number of parties bringing a claim).
91. Where there are two or more claimants or defendants involved in the same case, they will be jointly responsible for any fees that need to be paid during the case. Each claimant or defendant can apply for a fee remission. If one or more claimants or defendants are granted a remission, the remaining claimants or defendants (if any) will become responsible for the fee. If two or more claimants or defendants gain a partial remission, the amounts they must pay towards the fee will be added together.
92. The government also proposed a safeguard that no individual in a multiple party claim would be required to pay more than the single fee.
93. The government acknowledged that the Leasehold Valuation Tribunal, now merged into the First-tier Tribunal (Property Chamber), had different provisions for multiple party claims. Under these provisions, if one or more claimants are granted a fee remission, the remaining claimants (if any) are only responsible for an allocated portion of the fee (e.g. 50% of the fee under a two person claim). Under our provisions, the remaining claimant(s) would become responsible for the whole fee, with the safeguard that they would never pay more than the single fee.

**Question 15 – Your views are welcome on whether there are any other factors we need to take into account for claimants seeking remissions in multiple claims.**

94. We received 24 responses to this question. Those who responded commented that:

- The procedures for claimants seeking a remission in multiple claims<sup>18</sup> are complex and unclear;
- There is inconsistency in the approach to employment tribunals and other courts and tribunals, because the employment tribunals operate multiple fee structures;
- Clarification is needed on the appeals process for remission applicants in multiple claims;
- The proposals discriminated against trade unions; and
  - The current practice for multiple claims in the First-tier Tribunal (Property Chamber) should continue.

95. For example, one public body noted:

“We are concerned at the inconsistency in approach being adopted for civil proceedings as against Employment Tribunal cases, particularly given the aim of creating a single fee remissions system. Another concern is the complexity for staff and litigants in calculating fees payable by all the individuals in a multiple action where some claimants qualify for remissions but others do not.”

96. A legal body noted:

“Most multiple claims will involve members of trade unions and the rules appear to be that there will be no remission in those circumstances. As a trade union only indemnifies members against the expenses which they would incur this approach is iniquitous towards trade unions.”

**Question 16 – Overall, do you agree that this provides a fair, transparent and workable structure for determining fee remissions for HMCTS and the UK Supreme Court? Please state the reason(s) for your answer.**

97. We received 45 responses to this question. 28 disagreed that the proposals provided a fair, transparent and workable structure for fee remissions. 12 agreed with the proposals and 5 offered no firm view. Those in support of the proposals commented that:

- The proposals are fair, transparent and workable;
- A joined up remission system is beneficial for all; and
- The proposed system is easy to understand.

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<sup>18</sup> ‘Multiple claims’ refers to multiple claimant fee groups who present their claim to the tribunal together (e.g. on an ET1 form), and will remain in the fee groups for the life of claim (regardless of how judges chose to manage a claim). A ‘multiple’ is a group of cases linked together by the judiciary for case management and hearing purposes. A judge may order a number of separate fee groups, or individuals, to be joined as one larger multiple. This will not change the fee group or individual status of claimants.

98. For example, one representative body noted:

“Overall it is agreed that a fair, transparent and workable structure for determining fee remissions is provided but this is subject to the various comments that have been made.”

99. The respondents who disagreed with the proposals argued that:

- The proposed fee remission system would restrict access to justice, particularly for those on low incomes and the vulnerable/those with protected characteristics;
- The proposed system is too complex, and is therefore unworkable; and
- The proposed reforms do not go far enough, in that all applicants should make some contribution towards a fee.

100. For example, a voluntary body noted:

“The proposed fee remission scheme is unduly complex, and many court and tribunal users will find it difficult to fully understand; others will have difficulty meeting the evidence requirements. And, as noted above, the disposable capital limit and the income thresholds are far too low. We believe that this will result in financial hardship for some of those on a low income, and denial of access to justice for others.”

#### 4. Equality Impacts

101. The consultation included an assessment of the equality impacts of the proposals in the equality impact summary (annexed in the Impact Assessment). It found that of all those impacted by the proposals, 57% will see no cost or eligibility impacts for a fee remission. A further 13% will be positively impacted, whilst 30% will be negatively impacted by the proposals.

102. Our modelling showed that there may be some differential impacts related to the protected characteristic of age, where those in older age groups could see a greater reduction in eligibility for a fee remission and an increase in payment towards a fee when compared to those in younger age groups due to greater likelihood of having disposable capital available. We found some small differences in impacts in relation to race, with those from a White ethnic group potentially more likely to be negatively impacted than those from Black, Asian and Minority Ethnic groups. Our modelling showed impacts on both disability and sex to be marginal.

103. We acknowledged in the consultation that the data on which we have based our equality impact summary is limited. This is particularly true regarding impacts on the transsexual community<sup>19</sup> where we hold insufficient data to estimate the financial impacts of our proposals. Given these limitations, we asked our stakeholders equality questions to better our understanding of the equality impacts of these proposals.

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<sup>19</sup>A proportion of whom are likely to use the Gender Recognition Panel.

**Question 17 – Do you think the proposed remission system is likely to have any positive or adverse equality impacts? Please state the reason(s) for your answer.**

104. We received 36 responses to this question. 27 respondents argued that the proposals will have adverse equality impact. 15 argued that the proposals were unlikely to have an equality impact, and 4 offered no firm view. Those who believed that the proposal were unlikely to have an equality impact commented that:
- The proposals are fair and balanced because they are applied equally to all; and
  - The impacts are proportionate.
105. For example, one business representative body noted:
- "We agree that the proposals are a proportionate means of achieving a legitimate aim."
106. The respondents who argued that proposals would have an adverse equality impact commented that:
- There is link between those on low incomes and the protected characteristics outlined in the 2010 Equality Act.<sup>20</sup>
  - The government should note the findings of the 2008 Leonard Cheshire Disability report 'Disability Poverty in the UK' and the 2007 Joseph Rowntree Foundation report 'Poverty and ethnicity in the UK'<sup>21</sup>, which demonstrate the higher prevalence of poverty among the disabled and ethnic minorities;
  - The proposals disproportionately impact the elderly, with particular concern that the elderly have a reduced ability to replenish their disposable capital and the disproportionate impacts on users of the Court of Protection;
  - The impact assessment is not robust; and
  - The equality impacts of the reforms are not justified.
107. For example, a specialist legal body noted:
- "The figures provided in the consultation already indicate an adverse impact upon the elderly over and above other categories without evidence of a true ability to pay. This will have an adverse impact based upon the reasons our clients utilise the Court of Protection in the majority of cases. Where an individual requires assistance in managing the financial affairs or welfare of another person due to lack of capacity that is we would argue that there is unfair and unreasonable impact in the current proposals to take capital and income of the household into account without consideration being specifically included of the impact of care home fees/care costs. The "tariff" proposed may prove difficult for vulnerable people to interpret and potentially dissuade some from applying to the COP and increase the risk of potential financial abuse with inappropriate measures being taken to attempt to manage money or property."

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<sup>20</sup>The 2010 Equality Act outlines the following characteristics as protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf)

<sup>21</sup><http://www.lcdisability.org/?lid=6386>; <http://www.jrf.org.uk/publications/poverty-and-ethnicity-uk>

108. A trade union noted:

In general terms, the remission system exists to assist those of limited means, and research by, amongst others, the Joseph Rowntree Foundation suggests that those with protected characteristics as defined by the Equality Act 2010 are more likely to be of limited means. As a result, any changes to the remission system that reduce the availability of remission, such as the proposals contained here, will have the greatest negative impact upon those with protected characteristics and therefore an adverse equality impact.

**Question 18 – If you think the proposal is likely to have any adverse equality impacts, how could these impacts be mitigated? Please state the reason(s) for your answer**

109. We received 28 comments to this question. In supporting the proposals, an individual commented that:

“I see nothing that indicates there are any equality situations as long as it’s enforced in equal measure.”

110. Many respondents argued that the adverse equality impacts could be mitigated by increasing the thresholds used in the capital test and the gross annual income test. Some suggested the introduction of capital disregards for the over-60s, the exclusion of redundancy payments and deductions for childcare or housing costs.

111. Again some respondents noted that the equality information provided with the consultation was insufficient.

**Question 19 – Are you aware of any further evidence that could aid our analysis of potential equality impacts? If so please provide us with this evidence.**

112. We received 13 comments to this question. Respondents suggested a number of evidence/data sources, namely the 2008 Leonard Cheshire Disability report ‘Disability Poverty in the UK’ and the 2007 Joseph Rowntree Foundation report ‘Poverty and ethnicity in the UK’; but also the:

- Low Pay Commission
- ONS
- DWP
- Charities specialising in care of disabled, infirm or elderly.
- TUC & Affiliated Unions
- Evidence concerning the non payment of Employment Tribunal awards
- Luton Irish Forum.

## 5. Electronic data sharing

113. Throughout the responses to specific questions, respondents commented that both the applicants and administrators of the fee remission system would benefit from electronic links with DWP and HMRC.

114. For example, a business representative group noted:

“We [also] believe that government should by now have in place systems that allow different parts of government to check information electronically, and that HMCTS should long ago have secured access to information held by the DWP and HMRC.”

115. A voluntary group noted:

“We welcome the stated long term aim to check the receipt of qualifying benefits and other applicant information electronically but would query whether this is likely to be feasible without substantial updating of current court computer systems.”

## Annex B: List of respondents

Access Law LLP  
Administrative Justice and Tribunals Council  
Association of Residential Managing Agents (ARMA)  
Associated Society of Locomotive Engineers and Firemen (ASLEF)  
Association of Personal Injury Lawyers (APIL)  
The Bar Council  
Bradford Law Centre  
Caroline Bielanska Consultancy  
CBI  
Citizens Advice  
Civil Courts Users Association  
Civil Justice Council  
Cloisters  
Council of Employment Judges (England and Wales)  
EEF The Manufacturers' Organisation  
Employment Lawyers Association  
Faculty of Advocates  
Family Justice Council  
Finance & Leasing Association  
Federation of Private Residents' Associations (FPRA)  
Federation of Small Businesses (FSB)  
GMB  
HMCTS (4 individual responses)  
Hughes Carlisle  
Individuals (8)  
Institute of Directors  
Judiciary of the Employment Tribunals for England and Wales  
Justice Clarkes Society  
The Law Society  
The Law Society (Scotland)  
LGBT Youth Scotland  
MOJ (1 individual response)  
Money Advice Trust

Motor Accident Solicitors Society (MASS)  
National Union of Journalists (NUJ)  
National Union of Teachers (NUT)  
PCS  
President of Employment Tribunals (Scotland)  
RMT  
Scotland's Trade Union Centre (TUC)  
Scottish Transgender Alliance  
SNAP Cymru  
Society of Trust and Estate Practitioners  
Solicitors for the Elderly  
Southwark Law Centre  
St James Church and Legal Advice Centre  
The Association of Her Majesty's District Judges  
Thompsons Solicitors  
TUC  
Unison  
UNITE  
USDAW  
Young legal Aid Lawyers (YLAL) (endorsing the Law Society response)  
Yorkshire Employment Tribunal Members' Association (YETMA)

## Annex C: Treatment of disposable capital and income

### Resources of a partner

1. When assessing an applicant's eligibility for full or partial remissions, the income and capital of a partner, if any, is to be included as the income and capital of the applicant – unless the partner has a contrary interest in the proceedings in which the applicant is seeking a fee remission (e.g. divorce, gender reassignment certification, forced marriage or domestic violence).
2. "Partner" means a person with whom the applicant lives with as a couple. This includes a person with whom the applicant usually lives with as a couple but is not currently living with due to force of circumstance (e.g. where a partner is serving in the Armed Forces).

### CAPITAL

#### Definition of capital

3. "Disposable capital" means the value of every resource of a capital nature belonging to the applicant on the date on which the application is made unless –
  - a. it is to be treated as income;
  - b. it is to be disregarded.
4. Any sums that are paid regularly (e.g. payments under annuity) are to be treated and declared by the applicant as income.
5. Sources of disposable capital include, but are not limited to:
  - a. all capital held in all types of savings accounts, ISAs, fixed rate bonds, market linked investment bonds or savings, trust funds (where accessible), or any other fund available to the applicant;
  - b. stocks or shares;
  - c. any type of capital financial products (such as unit trusts, an OEIC's/Open-Ended Investment Company, or derivatives);
  - d. all forms of redundancy capital payments received<sup>22</sup>;
  - e. any capital payments ('lump sums') received from endowment or insurance policies (unless received in cases of illness, disability, or death);
  - f. Second homes;

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<sup>22</sup>This includes, unless paid as income, statutory redundancy pay, non-statutory redundancy pay, payment of wages in lieu of notice, and outstanding holiday/time-in-lieu-of-leave payments.

- g. Any jointly held capital (where one or more parties have a financial interest in a disposable capital source);
- h. any type of capital held outside the UK.

### **Valuation of capital**

- 6. Where the disposable capital is not in cash terms, its value is to be calculated at its current market value or surrender value, less—
  - a. expenses incurred in the sale (10%), and
  - b. the amount of any debts secured on it

e.g. An applicant's second home has a current market value of £100k. Less 10% for sale expenses (£10k) and less their mortgage (£70k), this leaves a £20k capital value to be considered.
- 7. The market value of disposable capital possessed by the applicant in a country outside the UK is:
  - if there is no prohibition in that country against the transfer of that capital to the UK, the market value in that country; or
  - if there is such a prohibition, the amount it would raise if sold in the UK to a willing buyer.
- 8. Where disposable capital is held in currency other than sterling, it is to be calculated after the deduction of any banking charge or commission payable in converting that capital into sterling.
- 9. Where an applicant has jointly held disposable capital asset (with one or more other persons), an applicant is treated as having an equal share in those assets, in the absence of evidence to the contrary
- 10. Capital held in Employee-owned business (EOB) shall be considered, unless the company holds the applicant's shares collectively (e.g. by an employer trust such as the John Lewis model).

### **Capital to be disregarded**

- 11. Unless an applicant has any exceptional quantity or value in the items concerned, none of the following will be considered as disposable capital:
  - a. a property which is the main or only dwelling occupied by the party;
  - b. the household furniture and effects of the main or only dwelling occupied by the party;
  - c. articles of personal clothing;
  - d. any vehicle, the sale of which would leave the party, or their partner, without motor transport;

- e. tools and implements of trade, including vehicles used for business purposes;
- f. the capital value of the party's or their partner's business, where the party or their partner is self-employed;
- g. the capital value of any funds or other assets held in trust, where the party or their partner is a beneficiary without entitlement to advances of any trust capital;
- h. a jobseeker's back to work bonus;
- i. a payment made as a result of a determination of unfair dismissal by an employment tribunal, or by way of settlement of a claim for unfair dismissal;
- j. 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;
- k. the capital held in any personal or occupational pension scheme;
- l. any cash value payable on surrender of a contract of insurance;
- m. any capital payment made out of the Independent Living Funds;
- n. any bereavement payment;
- o. any capital insurance or endowment lump sum payments that have been paid as a result of illness, disability or death;
- p. any student loan or student grant;
- q. any payments under the criminal injuries compensation scheme.

### **Deprivation of capital**

12. If an applicant has deliberately deprived themselves of capital for the purpose of securing entitlement to remission or part remission of fees, the applicant is to be treated as possessing the deprived capital.
13. An applicant is not to be treated as depriving themselves of disposable capital if the party disposes of it for the purposes of—
  - reducing or paying a debt owed by the applicant; or
  - purchasing necessary goods or services if the expenditure was reasonable in the circumstances of the party's case

## **INCOME**

### **Definition of income**

14. "Gross monthly income" means total monthly gross income for the month preceding that which the application for remissions is made, from all sources other than receipt of any of the excluded benefits.

15. The income from a trade, profession or vocation (“self employed earnings”) is to be calculated from the person’s share of the net profits in respect of the last accounting period of such trade, profession, or vocation for which accounts have been prepared, or the drawings of the persons concerned in respect of the period of calculation.

### Excluded benefits

16. “Excluded benefits” means—

- a. any of the following benefits payable under the Social Security Contributions and Benefits Act 1992 or the corresponding provisions of the Social Security Contributions and Benefits (Northern Ireland) Act 1992—
  - i. attendance allowance under section 64;
  - ii. severe disablement allowance;
  - iii. carer’s allowance;
  - iv. disability living allowance;
  - v. constant attendance allowance under section 104 as an increase to a disablement pension;
  - vi. any payment made out of the social fund;
  - vii. housing benefit;
  - viii. widowed parents allowance;
- b. any of the following benefit payable under the Tax Credits Act 2002—
  - i. any disabled child element or severely disabled child element of the child tax credit;
  - ii. any childcare element of the child tax credit;
- c. any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009, the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011, the Carers and Direct Payments Act (Northern Ireland) 2002, or section 12B(1) of the Social Work (Scotland) Act 1968;
- d. a back to work bonus payable under section 26 of the Jobseekers Act 1995, or article 28 of the Jobseekers (Northern Ireland) Order 1995;
- e. any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;
- f. any payments from the Industrial Injuries Disablement Benefit;
- g. any pension paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 2006;
- h. any payment made from the Independent Living Funds;
- i. any payment made from the Bereavement Allowance;
- j. any financial support paid under an agreement for the care of a foster child;
- k. any housing credit element of pension credit;

- l. any armed forces independence payment;
- m. any personal independence payment payable under the Welfare Reform Act 2012;
- n. any payment on account of benefit as defined in the Social Security (Payments on Account of Benefit) Regulations 2013;
- o. any of the following amounts, as defined by the Universal Credit Regulations 2013, that make up an award of universal credit—
  - i. an additional amount to the child element in respect of a disabled child;
  - ii. a housing costs element;
  - iii. a childcare costs element;
  - iv. a carer element;
  - v. a limited capability for work or limited capacity for work and work -related activity element.

## Annex D: Appeals

If a remission applicant wishes to appeal, they must:

- Write to the court or tribunal by the date set out in the court or tribunal officer's refusal letter (this will be roughly 14 days from when an applicant receives the letter); and
- Say why they not happy with the decision made; and
- Include any evidence they supplied with the original application and any extra evidence to support their case.

The Delivery Manager (the Court or Tribunal Manager) will consider their appeal and inform the applicant of their decision within ten working days.

- If the appeal is allowed and a full remission granted, a court or tribunals officer will process the court or tribunal papers that the remission was for.
- When the appeal is allowed for a part remission, the applicant will be told how much of the fee they must pay. The court or tribunal papers will not be processed until that amount is received.
- If the appeal is refused, the delivery manager will write to the applicant explaining the reasons why the appeal has been refused.

The applicant can appeal one more time to the Operational Manager whose name and address will be set out in the refusal letter. To appeal to the Operational Manager, the applicant must follow the same procedure as for appeals to the Delivery Manager.

The Operational Manager's decision is final and cannot be appealed.

**Consultation Co-ordinator contact details**

If you have any comments about the way this consultation was conducted you should contact Sheila Morson on 020 3334 4498, or email her at: [sheila.morson@justice.gsi.gov.uk](mailto:sheila.morson@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Ministry of Justice  
Consultation Co-ordinator  
Better Regulation Unit  
Analytical Services  
7th Floor, 7:02  
102 Petty France  
London SW1H 9AJ**







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