

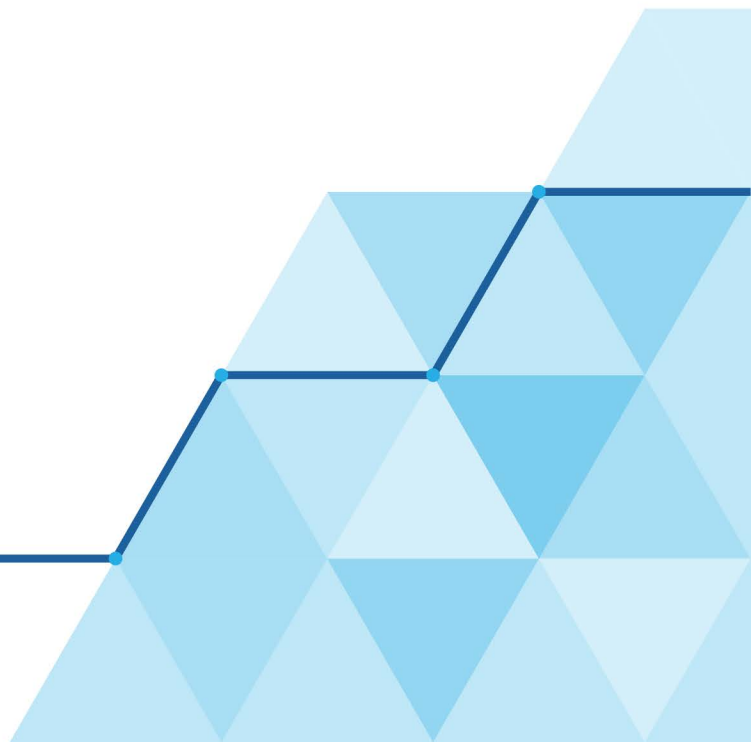


Ministry
of Justice

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

Consultation response

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on 16 October 2023





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Consultation response

**Response to consultation carried out by the
Ministry of Justice.**

**This information is also available at
<https://consult.justice.gov.uk/>**

Revising the ‘Help with Fees’ remission scheme –
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About this consultation response

This document is the post-consultation report for the consultation paper: Revising the ‘Help with Fees’ remission scheme – protecting and enhancing access to justice.

It will cover:

- The background to the report.
- A summary of the responses to the report.
- A detailed response to the specific questions raised in the report.
- The next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the **Fees Policy Team** at the address below:

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This report is also available at
<https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from mojfeespolicy@justice.gov.uk.

Complaints or Comments

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

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Introduction

Background

1. Introduced on 7 October 2013, the Help with Fees (HwF) scheme is crucial in supporting the Lord Chancellor’s duty to protect the constitutional right of access to justice. It achieves this by providing individuals on low income and little to no savings with financial support towards the cost of their court or tribunal fee. In this way, the scheme ensures that people are not prevented from turning to our courts and tribunals for help simply because they cannot reasonably afford a fee. Without the scheme, many vulnerable individuals each year would otherwise struggle to access justice through our courts and tribunals system.
2. Separately, if an applicant is ineligible for assistance under the HwF scheme but considers that their circumstances are such that fee remission should be granted, they may request court or tribunal staff to consider applying the Lord Chancellor’s power to remit

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fees, which is available only in exceptional circumstances.

3. It is paramount that the HwF scheme continues to accurately target and support individuals most in need. The Ministry of Justice therefore conducted a comprehensive review of the HwF scheme, led by three primary objectives:
 - a) **To ensure access to justice for individuals on low income with little to no savings.** It is critical that the scheme continues to support individuals who would otherwise be unable to access the courts and tribunals. To ensure this remains the case, the thresholds and rules must remain well-targeted so that individuals most in need do not fall through the gap over time.
 - b) **To provide value for money for the taxpayer.** Given that the HwF scheme falls within the justice system, the cost of providing individuals with fee remissions is borne by the taxpayer. The scheme must therefore continue to provide value for taxpayers' money. On the eligibility front, this means that individuals with sufficient financial means to pay their fee should be filtered out.

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On an operational level, the scheme should function as efficiently as possible to avoid unnecessary costs.

c) **To have a straightforward scheme for applicants to understand and HM Courts and Tribunals Service (HMCTS) to administer.** The rules of the scheme should be easy for applicants to understand and apply to themselves to ascertain whether they are eligible for fee remission, and to what extent. The scheme and its rules should also be simple for HMCTS to administer.

4. As a result of the review, we developed a set of wide-ranging proposals for reforming the HwF scheme and put forward our proposed changes in the consultation: *‘Help with Fees remission scheme – protecting and enhancing access to justice*, published on 7 March 2023.¹ The consultation invited responses to proposals to revise the income test, the partial fee remission policy, the capital test and the application

¹ <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>

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process. Overall, our package of proposals sought to achieve the following aims:

- a) A more generous scheme that provides more help to individuals with limited financial means.
- b) A better targeted scheme that provides financial assistance to individuals who need it most.
- c) A scheme that provides the best value for taxpayers’ money.

5. The consultation period closed on 30 May 2023 and this document is the Government’s full response to the consultation paper. It will cover:
 - A summary of the responses to the consultation.
 - A detailed response for each theme and specific questions raised in the consultation responses.
 - The next steps following this consultation.
6. The Impact Assessment and the Equalities Statement accompanying the consultation have been updated to take account of responses from stakeholders and further analysis carried out during the consultation period. The updated

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documents are published alongside this consultation response.

7. A list of respondents to the consultation can be found at **Annex A**.
8. The full list of proposals we will be taking forward following the consultation can be found at **Annex B**.

Summary of responses

9. A total of 18 responses to the consultation paper were received. Of these, over 60% were from those working in the legal or public sector. Other respondents included the main representative bodies for the legal profession, and members of the public.
10. Respondents could choose which questions they answered and not all respondents answered all the questions.
11. We have analysed the responses to the consultation and considered the impact of our policy proposals in light of recurring themes raised by some of the respondents. We also

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considered the potential impacts of changes suggested by some respondents.

12. Overall, respondents welcomed the Government's review of the HwF scheme, with the majority answering 'yes / agree' to 23 out of the 28 questions (i.e. agreement with over 80% of the consultation questions). Respondents were particularly supportive of the proposals to update the scheme by increasing financial assistance, such as raising the income and capital threshold levels. Respondents were also supportive of proposed measures to simplify the scheme and make it more accessible, such as reducing the number of capital threshold bands and allowing legal representatives and litigation friends to complete and sign HwF applications on behalf of the applicant.
13. Where respondents disagreed with certain policy proposals, we have reflected on their views and address them in detail within this consultation response. Overall, the most pertinent disagreements related to:
 - **Consultation questions 1 to 8 – the proposed income thresholds:** Whilst

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respondents reacted positively to the more generous thresholds and generally agreed with our proposed methodology, some commented that the thresholds should be increased further and adjusted to take account of the rise in inflation and cost of living. We have reviewed our proposals in light of the responses received as well as the recently published 2021/22 Office for National Statistics (ONS) Living Costs and Food Survey (LCF) data. Following careful analysis, we remain confident that the income threshold proposals we set out in the consultation based on the 2019/20 ONS LCF data are balanced and robust. Please see the Government’s full response to questions 1 to 8 below.

- **Consultation question 9 – proposed amendments to the list of income disregards:** Although 60% of respondents who answered the question agreed with our proposal, those who answered ‘no’ strongly disagreed with the proposed removal of housing benefit, the housing element of pension credit and the childcare element of

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tax credit from the list of income disregards. In summary, this disagreement was on the basis that these benefits should be considered payments for direct actual costs for households likely to be on lower incomes – not income. Upon review and targeted analysis, we agree with respondents’ views and propose to retain them in the list of income disregards. Please see the Government’s full response to question 9 below.

- Consultation question 23 – the proposed 24-month time limit for existing compensation payments disregarded under the HwF scheme and the proposed additional payments: Respondents agreed with the proposal to extend the list of payments disregarded from the HwF capital assessment but strongly disagreed with introducing a 24-month time limit on the grounds of fairness. Upon review and targeted analysis, we agree with respondents’ views and do not propose to pursue the time limit proposal. Please see

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the Government’s full response to
question 23 below.

Structure of the response

14. Chapter 1 covers the Government response to consultation questions 1 to 13 in relation to the income test proposals.
15. Chapter 2 covers the Government response to consultation questions 14 and 15 in relation to partial remission proposals.
16. Chapter 3 covers the Government response to consultation questions 16 to 23 in relation to the capital test proposals.
17. Chapter 4 covers the Government response to consultation questions 24 and 25 in relation to proposals for revising the application process.
18. Chapter 5 covers the Government response to consultation question 26 in relation to the transitional provision proposals.
19. Chapter 6 covers the Government response to miscellaneous general comments that did not directly relate to the consultation questions and

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do not fall within the scope of our consultation proposals.

20. Please note that the Government’s response to consultation questions 27 and 28 are covered in the accompanying updated Equalities Statement.

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Chapter 1 – The income test

Income thresholds

21. This section sets out the summary of responses to the consultation questions 1 to 13 relating to the income threshold proposals, together with the Government’s response.

Summary of responses

Question 1: Do you agree with our proposed methodology to set the income thresholds using ONS LCF data?

22. We received 11 responses to this question. 6 respondents (55%) agreed with the proposed methodology, 3 respondents (27%) disagreed, and 2 respondents (18%) answered ‘maybe’.
23. The majority of respondents welcomed our proposal to update the underlying methodology and raise income thresholds. They also agreed that the ONS LCF is a sound basis for our methodology as it meets high standards of trustworthiness and quality. However, there

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were concerns raised by respondents about it being a ‘small’ sample set and whether it reflects the disparities in housing costs by tenure, location and household composition.

Government response

24. As detailed in the consultation, we are confident that the ONS LCF provides a robust foundation for establishing the level of income required by an individual to meet ordinary and reasonable expenditure, and is thereby a suitable basis for setting the HwF income thresholds.
25. While surveys by their nature sometimes do not give a complete picture, the ONS LCF is the largest expenditure survey in the UK. Moreover, if the sample design is sound (as we believe the ONS LCF is), a modest sample size is not necessarily a barrier to creating estimates with a high degree of confidence. The ONS LCF is designed to capture expenditure by households and the complexities associated with this. This includes different types of tenure as the ONS LCF encompasses households who are both tenants and homeowners. The gross monthly income threshold therefore accounts for housing

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costs and we consider adjusting the thresholds further, beyond accounting for household composition through Couple or Child Premiums, is inappropriate and unnecessary. Further, to ensure households on low incomes continue to have an additional safeguard, we will continue to disregard housing benefit and the housing element of Universal Credit from the HwF income assessment (see the full Government response to consultation question 9).

26. In summary, where the primary concern is to establish expenditure by income group, as is the case for the purposes of revising the HwF scheme, the ONS LCF is the best source. We will therefore proceed with the proposal as consulted upon, setting the income thresholds using ONS LCF data. For completeness, we note that respondents who disagreed with our proposed methodology or expressed concerns did not provide an alternative data source or methodology.

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Question 2: Do you agree with our proposed methodology to use the 5th income decile to set the income threshold?

27. We received 9 responses to this question. 5 respondents (56%) agreed with the proposed methodology of using the 5th decile to set the income threshold, 2 respondents (22%) disagreed, and 2 respondents (22%) answered 'maybe'.
28. Respondents noted that it seems sensible to use the 5th income decile and to align the scheme with the approach used for the Legal Aid Means Test Review (MTR). Of the two respondents who disagreed, they commented that the thresholds should be higher to encompass more people and that those on flexible hours and who earn income from different sources should be considered in the threshold calculations.

Government response

29. As detailed in the consultation, the 5th income decile represents those whose household income would place them 40% to 50% of the

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way up the income distribution. We remain of the view that the HwF scheme should be targeted at providing most financial assistance to households below the median income level. This approach also ensures consistency with the Legal Aid MTR, which used a similar ONS-based approach.

30. Regarding the suggestion that people working flexible hours should be considered specifically, we do not consider that flexible working hours have a bearing on our proposal to use the 5th income decile. The point is instead covered by our proposal to accommodate people on fluctuating incomes by allowing applicants the option of relying on a three-month average of their income for the HwF income assessment (see consultation question 12). Separately, if individuals have income from multiple sources, we consider it appropriate that all forms of income should be assessed to determine their eligibility for fee remission.
31. We will proceed with the proposal as consulted upon, setting the income thresholds using the 5th income decile.

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Question 3: Do you agree with our assessment of 'essential' and 'non-essential' expenditure categories, as set out in Annex B of the consultation, for the purposes of calculating the income threshold?

32. We received 9 responses to this question. 4 respondents (45%) agreed with our assessment of 'essential' and 'non-essential' expenditure categories to calculate the income threshold, 3 respondents (33%) disagreed, and 2 respondents (22%) answered 'maybe'.
33. Respondents who agreed with our proposal understood the Government's responsibility to balance how taxpayers' money is spent with preserving access to justice, highlighting that applicants should have a financial obligation towards their fee if they can reasonably afford to pay. Respondents who disagreed: (a) did not consider that licenses, fines and transfers should be excluded from the income threshold calculation; and (b) considered that categories of recreation, holiday and culture should not be excluded or reduced. One respondent probed whether a different income threshold should be

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calculated for households with disabled family members. This was on the basis that they believed costs faced by families who have a relative with a severe learning disability are higher than those faced by families who do not have family members with a disability.

Government response

34. We welcome the understanding of the Government’s duty to balance the need to ensure that taxpayers’ money is proportionately and efficiently targeted with the responsibility to protect access to justice. Whilst we acknowledge the respondents’ point noted above regarding different expenditure categories, we have a clear responsibility to the public purse and cannot therefore include all non-essential types of expenditure when calculating the HwF income threshold.
35. Where licenses, fines and transfers are concerned, as set out in the consultation and in line with Legal Aid, we maintain that these expenditure categories do not equate to reasonable and necessary expenditure. However, we consider that road tax (as part

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of these categories) is a necessary expenditure, and it has therefore been included as an allowance.

36. We note that the income thresholds do partially include holiday, recreation and culture spending by allowing for some expenditure within these categories. Whilst we do not believe that this spending is unnecessary in people’s lives, we do consider it reasonable that HwF applicants should be expected to cut back in areas such as these before seeking recourse to public funds.
37. We acknowledge the concern that households with disabled family members may have higher costs. In recognition of this, the HwF scheme applies several disability related income disregards (such as attendance allowance, severe disablement allowance, Disability Living Allowance etc.), which ensures that such income is not factored into the HwF assessment. Please see Annex B of this consultation response for the full list of payments we propose to continue disregarding from the income test. Additionally, where households with disabled family members

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receive one of the qualifying benefits, they will be passported through the income test and will receive full fee remission.

38. As the HwF scheme already accounts for households with disabled family members in this way, and will continue to do so, we do not propose to set a separate threshold for households with disabled family members. We would highlight that it is not appropriate to judge households with disabled family members as one category given there are a broad range of disabilities across a wide spectrum that individuals may have. This directly impacts the level of household expenditure, which we consider best tailored for through the list of income disregards and (where relevant) the benefits passporting system. Separately, we would point out that the ONS LCF dataset used to calculate the income thresholds includes individuals who would be considered disabled under the Equality Act 2010 definition. Additionally, as noted in paragraph 2 above, where an individual is ineligible for assistance through the HwF scheme, they remain able to

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apply for fee remission under the Lord Chancellor's exceptional power to remit fees.

39. We will proceed with the proposal as consulted upon, applying the 'essential' and 'non-essential' expenditure categories set out in Annex B of the consultation for the purposes of calculating the income threshold.

Question 4: Do you agree with our proposal to use the Organisation for Economic Co-operation and Development (OECD) modified equivalence scale to establish the Couple Premium and Child Premiums?

40. We received 10 responses to this question. 5 respondents (50%) agreed with our proposal to use the OECD modified equivalence scale to set the Couple and Child Premiums, 2 respondents (20%) disagreed, 2 respondents (20%) answered 'maybe', and 1 respondent (10%) answered 'don't know'.
41. Of the respondents who agreed, they requested clarifications on our proposal which we address in the Government response below. Respondents who disagreed with our proposal

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considered that the Child Premiums were not sufficiently generous and that an equivalence value of 0.5 should be used for children of all ages. One respondent noted that while children generally have lower expenditure needs than adults, this is not often the case for children with disabilities and recommended an additional premium relating to disability. Finally, a respondent considered that different household compositions, such as lone parents, are not clearly assessed by the OECD method.

Government response

42. We welcome the general support for this proposal. To clarify a few questions raised by respondents:

- **Whether there will be a maximum number of children that an applicant can claim Child Premiums for:** As is currently the case, there will not be a limit on how many children an applicant can claim Child Premiums for.
- **How the Child Premium would account for children who are financially supported by, but not living with, the applicant:** The

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Child Premium is in place to account for additional expenditure required by households to support dependent children. Applicants are, and will continue to be, entitled to a Child Premium for each dependent child they have – either a child living with the applicant or a child that the applicant or the applicant's partner is financially supporting through child support or periodic payments.

43. We do not consider that an equivalence value of 0.5 should apply to children of all ages. As detailed in the consultation, we consider that using different equivalence values for children of different ages (0.5 for children aged 14 or above and 0.3 for children under 14) is the correct approach as it is the standard established OECD modified equivalence scale methodology. This approach also aligns with our responsibility to ensure that taxpayers' money is properly targeted according to the greatest need.
44. We acknowledge the concern regarding increased costs for families who have children with disabilities. We refer the respondent to

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paragraph 37 above where we explain our reasons for using income disregards, rather than a separate income threshold, as the method for taking into account different disability types and related needs/costs. Additionally, whilst the OECD modified equivalence scale does not have a means to consider further factors such as disability, the ONS LCF dataset used to calculate the thresholds includes individuals who would be considered disabled under the Equality Act 2010 definition.

45. Regarding the comment that different household compositions such as lone parents with children are not clearly assessed by the OECD method, we confirm that Couple and Child Premiums using the OECD modified equivalence scale are calculated precisely to account for the increased costs of households with two adults and/or dependent children. As such, the methodology does clearly assess and account for different household compositions.
46. We will proceed with the proposal as consulted upon, using the OECD modified equivalence

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scale to establish the Couple Premium and Child Premiums.

Question 5: Do you agree with our proposal to set two levels of Child Premiums – a lower premium for a child aged 0 to 13 and a higher premium for a child over 14?

47. We received 11 responses to this question. 3 respondents (27%) agreed with our proposal to set two levels of Child Premiums, 5 respondents (45%) disagreed, 2 respondents (18%) answered 'maybe', and 1 respondent (9%) answered 'don't know'.²
48. Some respondents agreed with having a higher Premium for children aged 14 and over due to the increased costs. Of the respondents who disagreed and provided comments, there were requests for clarification on where the cut off at the age of 14 was derived from and what evidence would suffice for age verification. These are addressed in the Government response below. Respondents separately

² Subgroups do not total to 100% due to rounding.

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recommended that both categories of children should benefit from the higher Premium, on the basis that young children and infants can have higher costs. One respondent suggested that there should be three age brackets for Child Premiums (children under 5, children aged 5 to 11, and children aged 12 to 18).³ Lastly, a respondent noted that they agreed in principle with our proposal but recommended a disability premium to account for higher household expenditure for children with disabilities.

Government response

49. Firstly, to clarify a few questions raised by respondents:

- **Where the ‘cut off’ at the age of 14 for separating the age categories was derived from:** The OECD conducted research on

³ Note: the respondent suggested categories of (a) children under 5; (b) children aged 5 to 11; (c) children aged 11 to 18. However, to avoid confusion, we have assumed that the respondent categorised the same age group (children aged 11) into two different age groups by mistake so have amended category c to ‘12’ in this consultation response.

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how different countries across the world define an adult. While most countries consider those who are 16 years old or above as adults, certain countries consider those of 14 years old or above to be adults. Based on their research, the OECD applied the more generous cut off age of 14 to determine the older child category – as this allows children aged 14 and 15 to benefit from the higher equivalence value of 0.5, rather than the lower value of 0.3. By contrast, applying the cut off at age 16 would result in children aged 14 and 15 losing out on the higher Child Premium.

- **What evidence would suffice for age verification of children:** We intend to keep the application process simple by requiring applicants to declare which of the two age categories their children fall into, and how many. We note that there are several existing court application forms which take this same

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approach.⁴ With regards to age verification, it is the responsibility of the applicant, their legal representative or litigation friend to complete the HwF application correctly and attest that all information provided is true to their knowledge through signing the declaration and statement of truth. As is clearly stated in the HwF application, if an applicant supplies false information or does not supply evidence of the information provided if requested, their application may be rejected, and the full fee will be payable.

50. In response to the suggestion that both age categories should benefit from the higher Child Premium, we refer the respondent to our rationale under paragraph 43 above. As older children aged 14 and above tend to have higher expenditure needs than children aged 0 to 13,

⁴ See court application forms including: EX105 (Request that the costs of transcripts be paid at public expense); Defence forms N11R and N11M; N9A (Form of admission); N92 (Application for an Administration Order); and N9C (Admission – unspecified amount, non-money and return of goods claims).

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we maintain that setting two levels of Child Premiums is the best approach.

51. We do not consider that the age categories of children should be split further into three different categories (children under 5, children aged 5 to 11, and children aged 12 to 18). Firstly, the respondent who put forward this proposal did not provide an objective evidential basis or rationale for recommending that we depart from the established OECD-modified equivalence scale methodology. Secondly, it is important to ensure that the HwF scheme is simple and straightforward for applicants and HMCTS. As such, in absence of evidence and a solid rationale for creating a more complex scheme, we are not persuaded to amend our proposal.
52. With regard to the recommendation to implement a disability premium, we refer the respondent to paragraphs 37 and 44 above, which respond to the same point.
53. In light of the above, we will proceed with the proposal as consulted upon, setting two levels of Child Premiums (a higher Premium for children

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aged 14 and over, and a lower Premium for children aged 0 to 13).

Question 6: Do you agree with our proposal to use the 2019/20 ONS LCF data to set the income threshold and Premiums?

54. We received 11 responses to this question. 7 respondents (64%) agreed with our proposal to use the 2019/20 ONS LCF data. 3 respondents (27%) disagreed, and 1 respondent (9%) answered 'maybe'.
55. Most respondents agreed with our proposal and accepted that the thresholds would be more generous than if we used the 2020/21 ONS LCF data. Of the respondents who disagreed, they commented that the thresholds were still not generous enough and are out of date considering the high inflation rates. One respondent commented that the proposed threshold would still be below the National Living Wage (NLW).

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56. We understand respondents' sentiments that the HwF scheme should be accurate and up to date. As detailed in the consultation, we relied on the 2019/20 ONS LCF dataset because, at the time of publishing the consultation, the most recent available data (for the year 2020/21) was not representative of usual household spend due to the impact of COVID-19. We therefore assessed that the 2019/20 dataset, which provided for more generous thresholds, more accurately reflected typical household spending habits.
57. On 31 May 2023, following the end of the HwF consultation period, the ONS published new LCF data covering the year 2021/22. We have since analysed this dataset to ensure that our proposed thresholds remain accurate and up to date. Upon review, we have discovered that, although there was an increase to household expenditure compared with 2020/21, spending remained at a below pre-pandemic level of 2019/20. Therefore, as the table below illustrates, revising the HwF scheme using the latest 2021/22 ONS LCF data would still provide

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for lower thresholds than those proposed using the 2019/20 dataset.

Gross monthly income thresholds

	Current thresholds	Thresholds using 2019/20 ONS LCF	Thresholds using 2021/22 ONS LCF
Single applicant threshold	£1,170	£1,420	£1,380
Couple premium	£175	£710	£690
Child premium (age 14+)	£265	£710	£690
Child premium (age 0–13)	£265	£425	£415

58. We therefore propose to continue using the 2019/20 ONS LCF data to set the income thresholds. Additionally, in line with respondents’ comments, we are mindful that the HwF thresholds, as far as possible, should ensure they continue to protect access to justice and remain sustainable in the short, medium and long term, whilst focusing finite public funds on

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those with limited financial means. As such, we intend to periodically review new ONS LCF data and consider the thresholds as new datasets are published in the future.

59. We also recognise respondents’ concerns regarding the ongoing financial pressures being experienced by many across the country, notably the high inflation rates. We are firmly of the view that the ONS LCF data is a well-established, reliable and sustainable measure of household expenditure used by other government departments, and to use another measure to calculate the thresholds would not be sufficiently robust. Please see the Government’s full response in respect of the inflation-based consultation question 8 below.
60. We do not consider that the HwF income thresholds and the NLW are directly comparable. Firstly, different to the NLW, the HwF income thresholds are concerned with an individual’s ordinary and reasonable expenditure and as such, non-essential expenditure such as gambling and alcohol (among others) are not accommodated. Secondly, while the NLW is

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individual-specific, the HwF income thresholds concern households. Therefore, the HwF scheme allows for Couple and Child Premiums in recognition of the fact that household composition has a direct bearing on living costs. In fact, under our proposals, an applicant’s income threshold will rise substantially as allowances are made for the Couple and Child Premiums. For example, a single applicant with two children (one under 13 and another over 14) will benefit from a gross income threshold of £2,555 per month, which equates to an annual salary of approximately £30,500. A couple with a child over 14 will benefit from a gross income threshold of £2,840 per month, which equates to an annual salary of c. £34,080. Lastly, the HwF scheme makes further allowances through a comprehensive list of income disregards so that any income falling within the list (such as certain benefit payments) do not form part of the income threshold.

61. Taking the above into consideration, we will proceed with the proposal as consulted upon, using the 2019/20 ONS LCF data to set the income thresholds.

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Question 7: Do you agree with our proposal to review the income thresholds (as set out in the table under paragraph 70 of the consultation document) when the ONS LCF 2021/22 data is published in 2023?

62. We received 10 responses to this question. 7 respondents (70%) agreed with our proposal and 3 respondents (30%) disagreed.
63. Most respondents supported our proposal. Of those who disagreed, respondents noted that the 2021/22 dataset should have been available around the time the consultation was published and considered that the thresholds should be reviewed periodically to ensure they remains in line with current financial reality.

Government response

64. We welcome the support for this proposal. Regarding the comment that the 2021/22 ONS LCF data should have been available around the time the consultation was published, we refer to paragraph 57 above where we confirm that this dataset was only released on 31 May this year – nearly three months after the

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Consultation response

consultation was published and after the consultation period had closed. Whilst we could have delayed the consultation until the later data became available, we did not pursue this option as we believed it was more important to prioritise launching the consultation to put in place a revised, more generous HwF scheme as soon as possible. This was particularly so as we had fully developed our income threshold methodology and were ready to consult, and any later ONS LCF data would only change the level of thresholds, not the methodology. Further, through close monitoring of the position and liaising with ONS colleagues, we understood that there was a lack of certainty as to the exact date for release of the 2021/22 ONS LCF figures.

65. Where reviewing the ONS LCF data is concerned, as noted in paragraph 58 above, we are mindful that the HwF thresholds, as far as possible, should ensure they continue to protect access to justice and remain sustainable in the short, medium and long term, whilst focusing finite public funds on those with limited financial means. As such, we intend to periodically review

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Consultation response

new ONS LCF data and consider the thresholds as new datasets are published in the future.

Question 8: Do you agree with our proposal to withhold adjusting the income thresholds by inflation as explained in the consultation?

66. We received 13 responses to this question. 3 respondents (23%) agreed with our proposal, 8 respondents (62%) disagreed, 1 respondent (8%) answered ‘maybe’, and 1 respondent (8%) answered ‘don’t know’.⁵
67. Of the respondents who agreed with our proposal, they appreciated our commitment to review the income thresholds based on 2021/22 LCF ONS data. Most respondents who disagreed with our proposal sought for the thresholds to be adjusted in line with the recent rise in inflation and cost of living pressures, and for the thresholds to be periodically reviewed. One respondent also requested clarification as to why fees were raised in line with inflation in 2021 but inflation is not reflected in the

⁵ Subgroups do not total to 100% due to rounding.

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Consultation response

proposed income thresholds. Another respondent queried whether any review to legal aid availability will lead to further review of the HwF scheme in years to come.

Government response

68. We remain persuaded that relying on 2019/20 ONS LCF data to calculate the income thresholds without adjusting for inflation remains the most appropriate approach. As noted in the consultation, without sufficient evidence on the impact of the recent rise in inflation on household expenditure, uprating the income thresholds to account for inflation would be inconsistent with our proposed methodology, which is based on actual UK household expenditure.
69. While we recognise respondents’ concerns regarding inflation, it would not be appropriate to follow the approach taken in 2021 when, alongside increases to court fees by inflation, inflation increases were also applied to HwF thresholds. To clarify, court and tribunal fees are charged to cover the cost of the services being provided and the 2021 increases to fees by

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Consultation response

inflation were applied to reflect the increase in HMCTS costs of providing the related services. At the same time, inflation increases were also applied to the HwF income thresholds. Whilst that was a necessary amendment at the time, it is entirely different to the system-wide reform of the HwF scheme that we are currently proposing to undertake. It is therefore crucial that our methodology is robust and will stand the test of time over the years – as opposed to taking a reactionary approach to address high inflation that may not be sustainable in the longer term. Moreover, after targeted analysis, we can confirm that applying increases by inflation to the HwF income thresholds (rather than proceeding with the overarching reform we propose) would provide for a less generous scheme. The comparison is clearly illustrated by the table below:

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Consultation response

Gross monthly income thresholds

	Current thresholds	Thresholds using 2019/20 ONS LCF	Current thresholds adjusted for inflation⁶
Single applicant threshold	£1,170	£1,420	£1,365
Couple premium	£175	£710	£205
Child premium (age 14+)	£265	£710	£310
Child premium (age 0–13)	£265	£425	£310

70. Separately, where reviewing the ONS LCF data is concerned, please refer to the previous paragraph 58 above which addresses this point.

71. Lastly, in relation to the query over whether a review of Legal Aid availability will lead to a review of HwF in years to come, we do not

⁶ Applying the CPIH inflation rate from March 2021 to March 2023

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Consultation response

consider the schemes to be intrinsically linked. They are two separate processes, and one is not dependent on the other, so reviews of either scheme would not trigger a review of the other.

72. We will proceed with the proposal as consulted upon, not adjusting the income thresholds by inflation.

Income disregards

73. This section sets out the summary of responses to consultation question 9 relating to income disregards, together with the Government’s response.

Summary of responses

Question 9: Do you agree with our proposal to update the list of income disregards as outlined in the consultation, including within Annex C?

74. We received 10 responses to this question. 6 respondents (60%) agreed with our proposed updates to the list of income disregards and 4 respondents (40%) disagreed.

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Consultation response

75. While there was general support for aligning the HwF scheme with Legal Aid, respondents who answered ‘no’ strongly disagreed with the proposed removal from the list of disregards of: (a) housing benefit; (b) the housing element of pension credit; and (c) the childcare element of tax credit. Respondents highlighted that these payments do not constitute ‘income’ as such but are instead payments for direct and actual incurred costs provided to individuals who would likely fall into the lower income deciles. There was a particular concern that the proposal to stop disregarding housing benefit may disproportionately affect domestic abuse survivors receiving a higher housing benefit allowance who have gone into refuge where costs are higher. There was also concern that the proposal to stop disregarding the childcare element of tax credit may disproportionately impact parents of children with a severe learning disability who typically have high childcare costs.
76. Separately, one respondent recommended that the definition of housing benefit should be widened to include ad-hoc discretionary

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Consultation response

payments that can be administered by local authorities and charities.

Government response

77. With the exception of the disagreements relating to the three benefits noted above, we welcome the general agreement with our proposal to update the list of income disregards.
78. Regarding housing benefit, the housing element of pension credit and the childcare element of working tax credit, we previously proposed to remove these payments from the income disregards list on the basis that they relate to general living costs that are accounted for by the ONS LCF methodology. However, upon undertaking targeted analysis in light of the responses received, we consider that these benefits should remain as income disregards. We have reached this decision on the following basis.
79. Applicants’ housing costs, often the most significant cost for individuals on low incomes, are dependent upon household composition and region. Similarly, childcare costs can also vary depending on the type of provision and

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Consultation response

geographical location. Whilst the ONS LCF data (and thereby the income threshold) accounts for housing and childcare costs using the 5th income decile, we agree that a further allowance through income disregards is appropriate to ensure lower income households are not disproportionately impacted by benefit payments artificially inflating their gross monthly income. Therefore, we will amend our proposal to continue with the current approach of disregarding housing benefit, the housing element of pension credit and the childcare element of working tax credit from the applicant’s income calculations.

80. Separately, we do not propose to widen the definition of ‘housing benefit’. In general, housing costs are already factored into the ONS LCF data and are therefore factored into the thresholds. As noted above, we are also proposing to continue allowing housing benefit and the housing element of pension credit to be disregarded from income calculations. We do not consider that changing the definition of housing benefit is necessary or appropriate as ‘housing benefit’ relates to a specific

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Consultation response

Department for Work and Pensions (DWP) payment. Deviating from a clear and specific list of income disregards would not be beneficial for applicants or HMCTS and would be contrary to our aim of ensuring a simple and straightforward HwF scheme.

81. Based on the above, we will continue to disregard housing benefit, the housing element of pension credit and the childcare element of tax credit, but otherwise we will proceed with the proposal as consulted upon and update the list of income disregards.

Passporting benefits

82. This section sets out the summary of responses to question 10 of the consultation relating to passporting benefits, together with the Government’s response.

Summary of responses

Question 10: Do you agree with our proposal to maintain the current list of means tested benefits for passporting applicants through the income test?

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Consultation response

83. We received 10 responses to this question. 7 respondents (70%) agreed with our proposal and 3 respondents (30%) disagreed. Respondents agreed with our proposal to maintain the current list of passported benefits, recognising that a full assessment for this cohort would likely be onerous and slow. A respondent who disagreed with our proposal recommended that applicants who qualify for housing benefit or housing element of Universal Credit should also be passported through the income test.

Government response

84. We welcome the strong support for this proposal, which will continue to simplify the application process for individuals and streamline the process for HMCTS.
85. As explained in the consultation, the aim of passporting applicants is to simplify the application process for individuals who have had their means assessed by the DWP and who are therefore highly likely (due to their low incomes) to be eligible for fee remission if they underwent a full assessment. Whilst this rationale is applicable for the five types of means-tested

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Consultation response

benefits that currently passport applicants through the income test, it does not extend to recipients of housing benefit or the housing element of Universal Credit. The level of help an individual will receive through housing benefit or the housing element of Universal Credit varies according to several factors, including the individual’s household income. It is therefore not the case that, were it not for the passporting system, this group would in every situation be entitled to full fee remission based on a full income assessment. As such, we do not consider it justifiable to extend the list of passporting benefits to include housing benefit or the housing element of Universal Credit.

86. We will proceed with the proposal as consulted upon, maintaining the current list of means-tested benefits for passporting applicants through the income test.

Definition of gross monthly income

87. This section sets out the summary of responses to consultation questions 11 to 13 relating to proposals for amending the definition of gross

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Consultation response

monthly income, together with the Government’s response.

Summary of responses

Question 11: Do you agree with our proposal to amend the definition of gross monthly income as per paragraph 94 of the consultation?

88. We received 9 responses to this question. 6 respondents (67%) agreed with our proposed amendment, 2 respondents (22%) disagreed, and 1 respondent (11%) answered ‘maybe’. Respondents agreed that it is sensible to amend the definition in line with Legal Aid so there is a uniform approach in the calculation of income. However, one respondent commented that the income definition would include loan repayments or refunds of goods/services and recommended that income should routinely be assessed based on a three-month average to account for delayed or backdated payment of benefits.

Government response

89. We welcome the support for this proposal, which will provide clarity on what constitutes ‘income’.

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Consultation response

90. We confirm that the proposed income definition would include payments that have been received as loan repayments or refunds of good/services. We do not see a reason for excluding such payments in an applicant’s income assessment. In relation to the respondent’s recommendation to routinely assess HwF applicants’ income based on a three-month average, we are already proposing to allow applicants to use a three-month average of their income. However, as explained in the consultation, we proposed to leave this as a matter of choice for applicants so they can decide the best route for themselves depending on their financial circumstances. Please see the Government’s full response to question 12 on this issue.
91. We will proceed with the proposal as consulted upon, amending the definition of gross monthly income to align with civil legal aid.

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Consultation response

Question 12: Do you agree with our proposal to give applicants a choice between using a monthly income or a three-month average income for the income test?

92. We received 9 responses to this question. 4 respondents (45%) agreed with our proposal, 2 respondents (22%) disagreed, and 3 respondents (33%) answered 'maybe'.
93. Respondents who agreed with our proposal commented that it was sensible for the HwF scheme to recognise different types of employment and agreed it would enhance fairness for self-employed individuals whose income can vary significantly. Of those who disagreed, one respondent raised a concern that the one-month income rule may enable applicants to mask their true earnings by selecting an unusually low month of income, while others recommended that income should be routinely assessed on a three-month average and that a longer period (six or twelve months) would be preferable.

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Consultation response

Government response

94. We welcome the support for this proposal, which will build in flexibility to help applicants who are self-employed or employed in shift work who have fluctuating income from month to month.
95. We do not share the concern that the one-month income rule may enable applicants to mask their true earnings by selecting an unusually low month of income. To be eligible for fee remission, an individual can only rely on their gross income for the month immediately preceding the date of the HwF application. If an individual's earnings in a month is sufficiently low as to be under the relevant income threshold, this is in fact their actual and true earnings. Provided they meet the eligibility criteria (including the capital test), the individual should be able to access the HwF scheme. We note that the respondent who raised this concern did not provide any supporting evidence or further explanation.
96. We do not consider that providing the option of six or twelve months' income would be preferable to our proposal. A period of three

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Consultation response

months strikes the right balance between allowing flexibility for applicants who are self-employed, engaged in seasonal or shift work whilst maintaining a simple scheme for the benefit of applicants and HMCTS. Allowing for a longer period of income such as six or twelve months would most likely be: (a) an onerous requirement for applicants to meet, in both calculating their income and presenting evidence if required; (b) less generous, as an average based on half or a full year’s income could provide a higher monthly income figure that is not reflective of the applicant’s present situation; and (c) a more complex procedure for HMCTS to process and evidence check, which could result in delays for applicants.

97. We also do not consider that applicants’ income should routinely be assessed on a three-month average. We remain of the view that presenting the option to applicants as a matter of choice (between one month’s income or a three-month average) is the best approach. Whilst a routine income assessment using a three-month average may benefit the self-employed, seasonal or shift workers, it would place an

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Consultation response

unnecessary burden on individuals who are employed on a regular monthly income. Our proposal therefore places both categories of workers on an equal footing, without favouring one group over the other.

98. We will proceed with the proposal as consulted upon, giving applicants a choice between using a monthly income or a three-month average income for the income test.

Question 13: Do you agree with our proposal to amend the gross monthly income definition to no longer include drawings as income?

99. We received 9 responses to this question. 7 respondents (78%) agreed with our proposed amendment, 1 respondent (11%) disagreed, and 1 respondent (11%) answered 'maybe'.
100. The respondent who answered 'maybe' questioned the justification for ignoring drawings where a person is self-employed. No further comments were received in response to this question.

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Consultation response

Government response

101. We welcome the support for this proposal. To answer the respondent's query set out above, drawings are profits that a sole trader takes out of their business and 'profits' would automatically fall under our proposed amendment to the income definition as per consultation question 11. Therefore, continuing to consider drawings as income on a separate basis would risk double-counting an applicant's income.
102. We will proceed with the proposal as consulted upon, amending the gross monthly income definition to no longer include drawings as income.

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Consultation response

Chapter 2 – Partial fee remission

103. This section sets out the summary of responses to consultation questions 14 and 15 relating to partial fee remission proposals, together with the Government’s response.

Summary of responses

Question 14: Do you agree with our proposal to replace the fixed 50% partial remissions rule with the three-banded taper scheme?

104. We received 11 responses to this question. 7 respondents (64%) agreed with our proposed three-banded taper scheme, 3 respondents (27%) disagreed, and 1 respondent (9%) answered ‘don’t know’.

105. Respondents largely agreed with our proposal and felt that the taper scheme would be fairer to applicants on the lower end of the scale but also ensures that public money is best utilised. One

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Consultation response

respondent agreed with our proposal but sought clarification as to where the savings made would be spent. Of those who disagreed, one respondent commented that it is unfair to assume that an income higher than the threshold means applicants can afford to pay towards their court fee and be required to make contributions as high as 90% (£9 for every £10) towards a fee. Another respondent considered that the proposed change could significantly impact domestic abuse survivors’ access to justice.

Government response

106. We welcome the support for our proposal, which will help ensure a proportionate scheme that is better targeted towards individuals who need it most.
107. We recognise that it is incorrect to assume that those with an income above the threshold can afford to pay the full court fee. The answer clearly depends on two key factors: how far above the income threshold their income falls and the level of the court fee. This is precisely the reason for proposing a taper scheme which

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Consultation response

accounts for both important factors. The taper scheme does not assume that simply because an individual falls above the income threshold, they can afford to pay the full fee. The level of help is instead staggered – with greater help provided to those with income just above the threshold, which reduces in stages as the gap between the individual’s income and the income threshold widens. The level of partial remission is also directly linked to the fee amount.

108. The observation that our proposed taper scheme will require individuals above the income threshold to always contribute up to 90% of the fee (£9 for every £10) is incorrect. As explained in detail in the consultation, the proposed taper scheme together with the revised gross monthly income cap would operate similar to Income Tax. This means that only the income within the specific band would face the applicable contribution fee. We would refer the respondent to the worked example in pages 34 and 35 of the consultation document, which illustrates how the taper scheme would operate.

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Consultation response

109. In answer to a respondent’s request for clarification of where savings would be made, we would like to point out that (not including actual implementation costs incurred by HMCTS) implementing our proposed changes for a revised HwF scheme is not equivalent to ‘costs’ and ‘savings’ in the standard way. The HwF scheme provides fee remission to qualifying individuals. Therefore, the ‘cost’ of a more generous HwF scheme, whereby more individuals benefit from full or partial remission, is in fact reduced HMCTS income from the payment of court and tribunal fees, where a service is being provided. Conversely, any ‘saving’ from implementing the proposed taper scheme is simply receipt of any additional fee income – for example where higher earners who are currently benefiting from significant support will be required to make more proportionate contributions towards their fee. In summary, the ‘saving’ from our proposed partial remissions taper has enabled us to develop more generous proposals (with associated ‘costs’) elsewhere in the HwF scheme to benefit those most in need of support.

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Consultation response

110. Lastly, with regards to the comment that our proposed taper scheme could significantly impact survivors of domestic abuse, the respondent provided no further clarification or evidence on this point. Given that the taper scheme would apply to applicants equally and is only filtered dependent on an applicant's income level, we do not see how our proposal could impact domestic abuse survivors' access to justice. Please refer to paragraph 183 which explains the process if an applicant's partner has a contrary interest. Where an individual is ineligible for assistance through the HwF scheme and is likely to experience exceptional hardship, they can apply for fee remission under the Lord Chancellor's exceptional power to remit fees.
111. We will proceed with the proposal as consulted upon, replacing the fixed 50% partial remissions rule with the three-banded taper scheme.

Question 15: Do you agree with our proposal to reduce the gross monthly household income cap to £3,000 above the gross monthly income threshold?

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Consultation response

112. We received 10 responses to this question. 7 respondents (70%) agreed with our proposal and 3 respondents (30%) disagreed.
113. Respondents acknowledged that, where possible, public funds should be channelled to those most in need. Of the respondents who disagreed, one argued that the cap itself was unfair and another respondent stated that increased fees as a result of this proposal could significantly affect domestic abuse survivors' access to justice.

Government response

114. We welcome the support for this proposal which will ensure that the HwF scheme remains targeted to individuals with limited financial means.
115. We do not consider that the principle of a gross monthly household income cap is unfair. The core purpose of the HwF scheme is to assist individuals with limited financial means. A cap is therefore necessary to ensure a well targeted scheme so that individuals most in need do not fall through the gap over time. We do not consider that taxpayer funds should be directed

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Consultation response

to provide greater or unlimited financial assistance to individuals on higher incomes who can reasonably be expected to pay a fee in part or in full.

116. With regards to the comment that our proposed reduction of the income cap could significantly impact survivors of domestic abuse, the respondent provided no further clarification or evidence on this point. Given that the cap would apply to all applicants equally and is only filtered dependent on an applicant’s income level, we do not see how our proposal could impact domestic abuse survivors’ access to justice.
117. We will proceed with the proposal as consulted upon, reducing the gross monthly household income cap to £3,000 above the gross monthly income threshold.

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Consultation response

Chapter 3 – The capital test

118. This section sets out the summary of responses to consultation questions 16 to 23 relating to the capital test proposals, together with the Government’s response.

Definition of disposable capital

Summary of responses

Question 16: Do you agree with our proposal to amend the definition of disposable capital to mean ‘savings and investments’ with a non-exhaustive list of included examples as set out in paragraph 119 of the consultation?

119. We received 10 responses to this question. 6 respondents (60%) agreed with our proposal, 3 respondents (30%) disagreed, and 1 respondent (10%) answered ‘maybe’.

120. Most respondents supported our proposal, highlighting that it helps capture investments that are not available as liquid assets. Of those who disagreed, respondents commented that

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Consultation response

applicants should not be penalised for having savings and investments, particularly where this may be the only safety net for pensioners or the self-employed. There was also a comment that the non-exhaustive list is too vague and there should be more clarity, for example, that cryptocurrency should be included.

Government response

121. We welcome the support for this proposal, which will provide a clear and simple definition of capital.
122. We do not propose to have an exhaustive list of the types of capital that will constitute ‘savings and investments’ as this creates an unnecessary risk that all types of capital will not be captured, particularly new forms that may be developed over time. Furthermore, we confirm that cryptocurrencies are already covered by the current definition of capital under the Fees Orders, and they will continue to be covered by the proposed definition. We therefore do not consider it necessary to specify this type of capital over others within the definition. However, to assist applicants with determining

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Consultation response

whether certain types of capital are covered by the definition of capital, we will review and update the current list contained in the public guidance accompanying HwF applications.

123. Regarding the comment that applicants should not be penalised for having savings and investments, particularly where this may be the only safety net for pensioners or the self-employed, we note that the respondent did not provide further explanation nor evidence on their point. Where someone has a substantial level of savings and investments, it is reasonable to expect they use those resources to pay their fee before utilising public funds. Implementing a capital threshold therefore ensures that the HwF scheme remains focused on helping those individuals with little to no savings who, if not for the scheme, would be unable to access the courts and tribunals system. Further, under our proposals, individuals of state pension age will benefit from a more generous blanket capital threshold of £16,000 regardless of the fee level. Again, we consider it reasonable that if they have savings and investments over this threshold, they are required to use those

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Consultation response

resources before receiving assistance from the HwF scheme. Lastly, the respondent did not provide any evidence for suggesting that a capital threshold would unduly disadvantage the self-employed. We do not consider that a further capital allowance for self-employed individuals is necessary or appropriate.

124. We will proceed with the proposal as consulted upon, amending the definition of disposable capital to mean ‘savings and investments’ with a non-exhaustive list of included examples as set out in paragraph 119 of the consultation.

The lower capital threshold

Summary of responses

Question 17: Do you agree with our proposal to maintain the principle of using three months’ expenditure to set the lower capital threshold, and accordingly increase the lower capital threshold to £4,250?

125. We received 9 responses to this question. 7 respondents (78%) agreed with the proposal and 2 respondents (22%) disagreed.

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Consultation response

126. One respondent who agreed with our proposal noted that it seems proportionate to direct resources to where they are most needed. Of the two respondents who disagreed, they raised a concern that expenditure could vary depending on an individual's circumstances and sought clarification if this lower threshold would be linked to inflation or be periodically reviewed.

Government response

127. We welcome the support for this proposal. To clarify the concerns raised by respondents:
- **Expenditure could vary depending on an individual's circumstance:** Whilst this is true, this does not negate the rationale that the lower capital threshold should be linked with the proposed gross monthly income threshold (£1,420) to align with the general principle that individuals should have three months' essential expenditure in the form of capital. We would point out that where it is appropriate to account for certain types of income or capital that should not be assessed, these are covered by a wide range of existing and proposed income and capital

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Consultation response

disregards. Separately, the proposed age cap will account for the fact that those of pension age (66 or over) are likely to face difficulty in replenishing capital.

- **Whether the threshold will be linked to inflation or reviewed periodically:** To ensure we continue to protect access to justice by targeting finite public funds towards individuals with limited financial means who need it most, as new ONS LCF data is published in the future, we will periodically review the new surveys and the capital threshold.

128. We will proceed with the proposal as consulted upon, maintaining the principle of using three months' expenditure to set the lower capital threshold, and accordingly increasing the lower capital threshold to £4,250.

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Consultation response

The capital threshold band system

Summary of responses

Question 18: Do you agree with our proposal to replace the current ten-band threshold system with a simplified three-band structure as set out in paragraph 129 of the consultation?

129. We received 9 responses to this question. 7 respondents (78%) agreed with our proposal, 1 respondent (11%) disagreed, and 1 respondent (11%) answered 'maybe'.
130. Respondents supported our proposal, commenting that the three-band structure will be simpler and easier for both applicants and HMCTS, as well as being more generous. Respondents who disagreed did not provide comments.

Government response

131. We welcome the positive response to this proposal and will proceed with the proposal as consulted upon, replacing the current ten-band threshold system with a simplified three-band structure.

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Consultation response

The age cap

Summary of responses

Question 19: Do you agree with our proposal to increase the age cap to align with the current state pension age of 66?

132. We received 10 responses to this question. 7 respondents (70%) agreed with our proposal and 3 respondents (30%) disagreed.
133. Most respondents agreed with our proposal, noting that it is proportionate to increase the age cap, which will ensure better alignment with local authority assessments. Of the respondents who disagreed, they commented that the cap could be lowered to 55 and that many people retire before 66. One respondent did not dispute our rationale but requested clarification as to where the money saved from this proposal would be spent.

Government response

134. We welcome the strong support for this proposal, which will ensure consistency with the original rationale for having an age cap.

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Consultation response

135. We do not propose to lower the age cap as there is no objective evidence or rationale for doing so. We recognise that older people of or above state pension age are generally retired and thereby find it more difficult to replenish capital. This is not the case in relation to individuals who have not yet reached state pension age who can reasonably be expected to work and replenish their capital. We do not consider that individuals who may have chosen to retire early fall within the same category to warrant inclusion within the age cap. However, where there are other factors that limit an individual’s ability to work, we note that the HwF scheme accounts for this through income and capital disregards (such as disability related benefits and/or relevant compensation payments).
136. In response to the clarification request as to where the money saved from this proposal would be spent, please refer to our previous answer at paragraph 109 above, which applies in the same way regarding ‘savings’ and ‘costs’ in relation to the HwF scheme.

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Consultation response

137. We will proceed with the proposal as consulted upon, increasing the age cap to align with the current state pension age of 66.

Capital disregards

Summary of responses

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

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

138. 10 respondents answered our question. 7 respondents (70%) agreed with our proposal, 1 respondent (10%) disagreed, and 2 respondents (20%) answered 'maybe'.

139. Those in favour responded that the practicality of this proposal was clear, that it would be

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Consultation response

easier for applicants to understand and align the scheme with local authority assessment. Of those who disagreed and had specific comments on the proposal, respondents noted that an applicant's household effects and personal belongings should not be on the capital disregards list. Another applicant also highlighted that it is crucial to explain that removing these items from the list of capital disregards does not mean that they are included in the definition of disposable capital.

Government response

140. We welcome the majority support for this proposal, which will ensure alignment with the proposed definition of capital as ‘savings and investments’.
141. To clarify, we are not proposing to begin assessing these items as capital by removing them from the list of capital disregards. Instead, the proposed change is to account for the fact that these particular items will not fall under our proposed definition of capital so it is unnecessary to disregard them. Whilst we consider that the new definition will be simpler,

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Consultation response

we will ensure there is clear public guidance to accompany the HwF application.

142. We will proceed with the proposal as consulted on, updating the list of capital disregards to remove these items.

Question 21: Do you agree with our proposal to amend the list of capital disregards to include the list of payment and compensation schemes under paragraph 147 of the consultation?

143. 10 respondents answered this question. 8 respondents (80%) agreed with our proposal, 1 respondent (10%) disagreed, and 1 respondent (10%) answered 'maybe'.
144. Respondents agreed that such payments should never be considered capital and observed that the proposal rightly aligned with Legal Aid.

Government response

145. We welcome the support from respondents and will proceed with the proposal as consulted upon, amending the list of capital disregards to include the list of payment and compensation

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schemes under paragraph 147 of the consultation.

Question 22: Are there other payments that should be added to the list of capital disregards alongside the additional payments proposed under paragraph 147 in the consultation document?

146. 9 respondents answered this question. 2 respondents (22%) answered 'yes', 3 respondents (33%) answered 'no', and 4 respondents (45%) answered 'don't know'.
147. Of the respondents who answered 'yes' and provided comments, one respondent commented that one off or ad hoc cash gifts from family or friends should be included. Another respondent highlighted that people with learning disabilities and family members who have received compensation due to inadequate care should be included as they do not necessarily come under the payments currently disregarded.

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Government response

148. We do not propose to add 'one off or ad hoc cash gifts from family or friends' to the list of disregarded payments. HwF is a means tested scheme to help individuals with limited financial means access justice. While there are legitimate reasons for disregarding payments made to provide for persons who have suffered some kind of personal harm, the same consideration does not apply to lump sum gifts. We consider that one off or ad hoc cash gifts are an additional resource beyond ordinary and reasonable expenditure. It is therefore reasonable to factor them in. In practice, where gifts are small amounts of money, they are unlikely to take an applicant above the capital threshold and thereby, to have a material impact on their eligibility for fee remission. However, where gifts are substantial (namely, in the thousands of pounds) and their addition to an applicant's savings and investments take them above the applicable capital threshold, we believe it is reasonable to require such applicants to use their capital towards the fee.

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149. In response to the recommendation that compensation received due to inadequate care should be included in the list, we note that such payments would be covered under clinical negligence payments that are already disregarded from the capital test and will continue to be. We note that there may be certain benefits paid to individuals with disabilities or their families. However, where applicable, the HwF scheme operates 'income disregards' covering a range of disability related benefits.

Question 23: Do you agree with our proposal to introduce a 24-month time limit for existing compensation payments disregarded under the HwF scheme and (if the list of capital disregards is extended in line with our proposal above) proposed additional payments – in line with the table under paragraph 153 of the consultation?

150. 10 respondents answered this question. 3 respondents (30%) agreed with our proposal, 6 respondents (60%) disagreed, and 1 respondent (10%) answered 'don't know'.

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151. The majority of respondents argued that a time limit should not be introduced for compensation payments on the basis that many of the payments are meant to cover life changing circumstances and life-long care/needs. They therefore commented that it was unreasonable to expect the injured person and their family to have adjusted to their household expenditure within 24 months. They also highlighted that there may be valid reasons why a person might want to save the compensation payments e.g. to help with anticipated future care needs, which they should be encouraged to do.

Government response

152. We recognise the concerns expressed by respondents, especially from stakeholders with first-hand experience in this area. We have reviewed our proposal in light of the responses and on careful analysis, we consider that a time limit should not be introduced.
153. We acknowledge that 24 months may not always be a suitable period for individuals to adjust their budgeting to account for increased household expenditure caused by personal

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harm suffered. Considering the responses, we also recognise that any immediate or substantial fixed costs caused by the harm may not have passed by this period. Whilst we note that there is a 12-month time limit for personal injury payments applied by DWP in assessing Universal Credit eligibility and a 24-month time limit for back payments of child maintenance payment proposed by the Legal Aid MTR, these schemes are different to the HwF scheme. We also recognise that retaining the current position and not introducing a time limit would keep the scheme operationally simple for applicants and HMCTS.

154. We will not proceed with the proposal as consulted upon, so those compensation payments disregarded under the HwF scheme will not be subject to a time limit under the revised scheme.

Chapter 4 – The application process

155. This section sets out the summary of responses to consultation questions 24 and 25 relating to proposals for revising the application process, together with the Government’s response.

Declaration and Statement of truth

Summary of responses

Question 24: Do you agree with our proposal to amend the declaration and statement of truth within the HwF application to expressly allow litigation friends and legal representatives to complete and sign on the applicants’ behalf?

156. We received 11 responses to this question. 9 respondents (82%) agreed with proposal, 1 respondent (9%) disagreed, and 1 respondent (9%) answered ‘maybe’.

157. Respondents considered the proposed change would help enable and enhance access to

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Consultation response

justice, particularly for vulnerable court users. There were some requests for clarity on the proposal and its effects, which are addressed in the Government response below.

Government response

158. We welcome the support for this proposal. To clarify a few questions raised by respondents:

- Whose finances are assessed where a parent is making a claim on behalf of their child or where the applicant is a deceased's estate: In accordance with clear HwF guidance available on the gov.uk website, we confirm that financial details required are of the person who is the party to the legal action (the applicant) but the third party (parent, administrator or executor) applying on behalf of the applicant can sign the application.
- **Whether family carers with deputyship or power of attorney can sign the HwF application:** We note that, under Part 21 of the Civil Procedure Rules, if a person lacks mental capacity (defined as a 'protected party'), they cannot be involved in proceedings without the appointment of a

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litigation friend. As such, a litigation friend appointed to assist a protected party can (and will continue to be able to) sign the HwF application. Again, we refer to clear HwF guidance available on the gov.uk website which sets out this position.

159. Following support from respondents, we will proceed with the proposal as consulted upon. The proposed change will help to improve the overall quality of applications, ease the process for applicants, and align the HwF application with other court and tribunal forms that can already be signed by litigation friends and legal representatives.

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Consultation response

Completion of applications

Summary of responses

Question 25: Do you agree with our proposal to add a provision within the Fees Orders to state that where an application for remission is incomplete, or additional information is required, the requested information must be provided within the period notified in writing to the applicant. If information requested is not provided, the application shall be treated as abandoned?

160. We received 12 responses to this question. 7 respondents (58%) agreed with our proposal, 3 respondents (25%) disagreed, and 2 respondents (17%) answered 'maybe'.
161. Of those who disagreed and/or had specific comments on the proposal, respondents noted that the time period should be reasonable, with reminders and flexibility for granting extensions in extenuating circumstances. Separately, there were some requests for clarity on the proposal and its effects, which are addressed in the Government response below.

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Government response

162. We welcome respondents' support of our proposal. We recognise and agree with respondents that the time limit should be reasonable. We are therefore working with HMCTS to agree a timeframe that is appropriate and reasonable, which recognises respondents' views as well as accounting for operational considerations. We do not consider that it is necessary or proportionate to introduce reminders as they will increase the costs and complexity of processing applications for HMCTS staff. We also note that there is sufficient clarity around what is required for applicants to make a HwF application and as such, information requested by HMCTS to process applications should be readily available to (or obtainable by) the applicant. However, we agree with respondents that there must be appropriate flexibility for extenuating circumstances to safeguard against penalising applicants with legitimate reasons for being unable to meet the standard timeframe. Therefore, we will ensure that there is a discretion in place for recognising extenuating

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circumstances by exception and provide public guidance on this.

163. To clarify a few questions raised by respondents:

- **Whether the time limit will be prescribed rather than open to local variation:** In the interests of clarity and simplicity, the proposed time limit will apply as standard across all HwF applications.
- Whether it will be clear that if an application is deemed abandoned, no further application for that fee can be made unless it falls within the permitted three month timescale from the date of fee payment: In line with current practice where applications become abandoned, HMCTS will write to applicants to notify them of this outcome and informing them that they can re-apply if their application remains within the three month timescale (i.e. three months from the date of payment of the relevant fee).
- **If an issue fee is subsequently amended, whether a HwF application for the amended fee would still apply to the original fee:** In such a scenario, HMCTS will

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require a new HwF application that will be assessed against the new fee value. If an applicant is required to pay towards the amended fee, any amount already paid towards the original fee will be deducted and only the remaining balance will be payable.

164. In light of the above, we will proceed with the proposal as consulted upon to create a transparent, clear and effective process for both applicants and HMCTS.

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Chapter 5 – Implementation

165. This section sets out the summary of responses to consultation question 26 relating to transitional provision proposals, together with the Government’s response.

Transitional provisions

Summary of responses

Question 26: Do you agree with our proposals to assess applicants during the transition period as set out in the above scenarios?

166. We received 10 responses to this question. 8 respondents (80%) agreed with proposal, 1 respondent (10%) disagreed, and 1 respondent (10%) answered ‘maybe’.

167. No comments were received in response to this question.

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Government response

168. We welcome the support from the majority of respondents and will proceed with the proposal as consulted.

Chapter 6 – Miscellaneous issues outside the scope of this consultation

169. Separate to the consultation responses detailed above, we received a number of general responses on the HwF scheme that were not related to the HwF reform proposals, and therefore not in scope of the consultation. As such, we have separated these responses from the previous chapters and for completeness, address them briefly under this chapter.

Court fees

170. A respondent commented that whilst they accepted that courts and tribunals should not be entirely funded by the taxpayer, court fees are too high and it is not just low-income individuals who are denied access to justice.

171. Court and tribunal fees are required to contribute to the funding of HMCTS, which is operationally responsible for the administration

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of all fees. All fees are set in accordance with Managing Public Money principles, with the intention to recover a contribution towards the costs of providing HMCTS services from court and tribunal users where possible, with the remainder of the required funding being met by the department, and ultimately the taxpayer. A large proportion of fees are charged at the cost of service or below. Some fees are set above the cost of service and are described as ‘enhanced’. Fees can only be enhanced with explicit parliamentary approval under an affirmative statutory instrument. Enhanced fees are used to subsidise areas where costs are typically under-recovered to minimise the cost to the taxpayer. Where an individual is ineligible for assistance through the HwF scheme and are likely to experience exceptional hardship, they can apply for fee remission under the Lord Chancellor’s exceptional power to remit fees. We therefore do not agree with the respondent that court fees are set in a way and at levels that have the effect of denying access to justice.

172. A separate response noted that under the current HwF scheme, an application must be

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made for each court fee payable and queried whether systems could be put in place to consider an applicant’s financial situation to be stable for a defined period of time to avoid requiring multiple applications.

173. The HwF scheme is intentionally a simple, straightforward scheme that provides remission for one-off court or tribunal fees. This accounts for the fact that HwF applications can relate to extremely varied claims and applications for wide-ranging fees across the entire spectrum of fee-charging court and tribunal jurisdictions. Therefore, the current approach taken (of requiring a separate application for each fee) is the most simple, effective, and proportionate approach for both applicants and HMCTS. An assumption of an applicant’s means across a set period would not be in the spirit of the HwF scheme which assesses an applicant’s financial circumstances at the time of applying for remission.

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Damages Claims Portal

174. A few respondents noted that the digital HwF process is not accessible on the Damages Claims Portal.
175. Whilst the HwF process is not incorporated into the Damages Claims Portal, individuals can apply retrospectively using the existing forms and processes that apply to paper claims, which remains a robust and tested legacy method. However, HMCTS are aware of the issues raised and will continue to consider options for allowing this capability in future.

Family law and courts

176. A few respondents provided comments on family law and the family courts, including concerns around possible increases to court fees in family law cases, and the role of the HwF scheme to protect access to justice.
177. We acknowledge and recognise the need to ensure a robust HwF scheme that protects access to justice for vulnerable individuals on low incomes with little to no savings. As noted in

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the consultation document, this was one of our three primary objectives when reviewing the HwF scheme and forms the basis for our package of reform proposals for providing a more generous system. With regards to observations concerning family law, they are out of scope of this consultation. As indicated in their responses, we trust that the respondents raised these points in response to the relevant Ministry of Justice consultation on ‘Supporting earlier resolution of private family law arrangements’ published on 23 March 2023.

Legal insurance

178. A response noted that the consultation did not specify how the proposals could impact insurers, namely whether applicants need to set out existing legal insurance cover or other forms of legal representation in their HwF application. We confirm that this was not proposed in the consultation. The current proposals are limited to allowing legal representatives and litigation friends to complete the applications on behalf of applicants and sign the declaration of truth (consultation question 24).

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179. There was a separate request for the Ministry of Justice to consider whether the HwF scheme should be available where there is an unsuccessful paying party such as an insurance company in personal injury litigation. Whilst this matter is not within scope of the current consultation, we recognise the issue and will consider whether it requires addressing in future and, if so, how this can be achieved.
180. Lastly, one respondent noted that there have been issues where an insurer paid the court fee when the party to proceedings should instead have received fee remission, which has led to protracted costs arguments. We note that this is an issue concerning costs rather than one that is resolved by the HwF scheme. The eligibility criteria for applying and receiving fee remission through the HwF scheme is clear. Where a HwF application is received by HMCTS, this is duly processed and (depending on the applicant’s financial circumstances) the applicant is granted or refused fee remission. Where an application for fee remission is not made by an individual who would have been eligible if they had applied, HMCTS cannot take any action unless

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a retrospective application is made within three months of the fee being paid.

Domestic abuse survivors

181. One of the respondents noted that a significant proportion of women applying for divorce will likely be survivors of domestic abuse and face high legal fees. They therefore recommended that survivors of domestic violence should be automatically eligible for full fee remission, eligibility based on joint income and capital should be waived, and awareness of the HwF scheme should be increased.
182. The purpose of the HwF scheme is to assist all vulnerable individuals with limited financial means, including survivors of domestic violence who may struggle to reasonably afford their fees. As a means tested scheme, it is imperative that the basis for determining eligibility for fee remission is an individual’s financial means. We therefore do not propose to deviate from this core focus and function of the HwF scheme. We do recognise that there may be domestic abuse survivors on low incomes with little to no savings

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and, where this is the case, the HwF scheme will be available to assist them. If they do not meet the eligibility criteria to qualify for support under the HwF scheme, they can apply under the Lord Chancellor’s exceptional power to remit fees.

183. With regard to waiving joint income and capital requirements, we confirm there are existing HwF provisions that address this. Where an applicant’s partner has a contrary interest in the matter to which the fee relates, the partner’s capital and income is not treated as the capital and income of the applicant. This clearly covers divorce proceedings, alongside other types of claims and applications.
184. We will ensure that clear public facing HwF guidance continues to be available when the scheme is updated and will engage with relevant stakeholders to increase awareness of the revised scheme.

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Conclusion and next steps

185. The Government has considered all the responses to the consultation carefully. The Lord Chancellor has a duty to protect access to justice and a key element of that duty is making sure people are not prevented from turning to our courts or tribunals for help simply because they cannot reasonably afford to pay the fee. All individuals, regardless of their financial circumstances, must be able to access the courts and tribunals in times of need.
186. The Government will be proceeding as planned to revise the HwF scheme as set out in this consultation response. This will ensure a more generous scheme that targets financial assistance at those most in need whilst providing value for taxpayers' money.
187. The proposals will be effected via negative statutory instrument in Autumn 2023.
188. The changes will include amendments to fees in the following Fees Orders:

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- The Non-Contentious Probate Fees Order 2004
- The Gender Recognition (Application Fees) Order 2006
- The Court of Protection Fees Order 2007
- The Civil Proceedings Fees Order 2008
- The Family Proceedings Fees Order 2008
- The Magistrates’ Courts Fees Order 2008
- The Supreme Court Fees Order 2009
- The Upper Tribunal (Lands Chamber) Fees Order 2009
- The First-tier Tribunal (Gambling) Fees Order 2010
- The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011
- The Upper Tribunal (Immigration and Asylum) (Judicial Review) (England and Wales) Fees Order 2011
- The First-tier Tribunal (Property Chamber) Fees Order 2013

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Impact Assessment, Equalities and Welsh Language

Impact Assessment

189. An updated Impact Assessment has been prepared and published alongside this consultation response.

Equalities

190. Under the Equality Act 2010, the Government is required, as part of policy development, to consider the equalities impact of our proposal. In summary, public authorities subject to the equality duty must have regard to the following when exercising their functions:

- eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;

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- foster good relations between people who share a protected characteristic and those who do not.
191. For the purposes of the equality assessment the relevant protected characteristics under the Equality Act are: race; sex; disability; sexual orientation; religion and belief; age; marriage and civil partnership; gender reassignment; pregnancy and maternity.
192. An updated Equalities Statement has been prepared and published alongside this consultation response.

Welsh Language

193. Implementation of the proposals would also impact those who speak the Welsh Language.
194. A Welsh version of this document can be found at:
<https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>. A Welsh language copy of the updated Impact Assessment and the Equalities Statement will be provided on request.

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Annex A: List of respondents

Association of Personal Injury Lawyers

Citizens Advice Witness Service

Civil Court Users Association

County Court Money Claims Centre

Families Need Fathers/Both Parents Matter

Housing Law Practitioners Association

Individuals (3)

Rt. Hon. Sir Keith Lindblom (Senior President of
Tribunals)

Law Society of England and Wales

Law Society of Scotland

Refuge

Resolution

Shelter

The Association of Consumer Support Organisations

The Bar Council

The Challenging Behaviour Foundation

Annex B: Final list of proposed changes to the HwF scheme

This annex sets out the final list of proposed changes to the HwF scheme we will be taking forward following the consultation.

Income test proposals

1. **Income thresholds:** Based on the 2019/20 ONS LCF 5th income decile and OECD equivalisation, we will proceed with setting the income thresholds as follows:

Proposed gross monthly income thresholds	
Individual threshold for a single applicant	£1,420
Couple Premium	£710
Child Premium (age 14+)	£710
Child Premium (age 0–13)	£425

2. **Income disregards:** We will proceed with the following list of income disregards:

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Attendance Allowance	Payments out of the Independent Living Fund
Severe Disablement Allowance	Armed Forces Independence Payment
Carer’s Allowance	Compensation paid under the Naval, Military, and Air Forces Service Pension Order 2006
Disability Living Allowance	Personal Independence Payment
Constant Attendance Allowance	Payments made to support people in need of social care
Exceptionally Severe Disablement Allowance	Payments made from the Social Fund
Industrial Injuries Disablement Benefit	Financial support under an agreement for the foster care of a child
Disabled and severely disabled elements of Child Tax Credit	Advance payments made on account under Universal Credit or other legacy benefits

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Bereavement Support Payment	Housing Benefit
Housing element of Pension Credit	Childcare element of Working Tax Credit
Disabled and severely disabled elements of Working Tax Credit	

3. **Passporting benefits:** We will proceed with maintaining the current list of means-tested benefits for passporting applicants through the income test, namely:
- Income-based Jobseeker’s Allowance
 - Income-related Employment and Support Allowance
 - Income Support
 - Pension Credit (Guarantee Credit)
 - Universal Credit with additional earnings of less than £6,000 (gross annual)
4. **Definition of ‘gross monthly income’:** We will proceed with amending the definition to:
- Align with civil legal aid as follows: the gross amount the individual has earned and any

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other gross sums from any source which the individual has received.

- Give applicants a choice between using a monthly income or a three-month average income for the income test.
- No longer include drawings as income.

Partial remissions proposals

5. We will proceed with replacing the current partial remissions policy with a three-banded taper scheme with a gross monthly income cap of £3,000 above the gross monthly income threshold. The three-banded taper scheme will be as follows:

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

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Capital test proposals

6. **Definition of disposable capital:** We will proceed with amending the definition to – savings and investments including, without being limited to bonds; lump sums; stocks and shares; the value of second homes; money or property owned outside the UK.
7. **The lower capital threshold:** We will proceed with maintaining the principle of using three months’ expenditure to set the lower capital threshold, and accordingly increasing it to £4,250.
8. **The capital threshold band system:** We will proceed with replacing the current ten-band system with a simplified three-band structure as follows:

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

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9. **The age cap:** We will proceed with increasing the age cap to align with the current state pension age of 66.
10. **Capital disregards:** We will amend the list of capital disregards as follows:
 - **Remove the following items from the list:**
household furniture and effects of the main or only dwelling occupied by the party; articles of personal clothing; and tools and implements of trade, including vehicles used for business purposes.
 - Add the following items to the list:
 - Armed Forces Compensation Scheme
 - Compensation payments relating to the Grenfell Tower fire
 - Compensation payments relating to Windrush
 - Lambeth Children's Homes Redress Scheme
 - London Emergencies Trust payments
 - Medomsley Detention Centre Physical Abuse Settlement Scheme
 - Miscarriage of Justice Compensation Scheme
 - National Emergencies Trust payments

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

Application process proposals

11. **Declaration and statement of truth:** We will proceed with amending the declaration and statement of truth within the HwF application to expressly allow litigation friends and legal representatives to complete and sign on the applicants' behalf.
12. **Completion of applications:** We will proceed with adding a provision within the Fees Orders to state that where an application for remission

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is incomplete, or additional information is required, the requested information must be provided within the period notified in writing to the applicant. If information requested is not provided, the application shall be treated as abandoned.

Transitional provisions

13. We will proceed with assessing applicants during the transition period as follows:
 - Scenario 1: Where a HwF application was lodged prior to the revised scheme coming into force but has not yet been processed by HMCTS. In this case, the application will be assessed in line with the rules in force at the time the application was lodged.
 - Scenario 2: An applicant paid the court or tribunal fee on a date before the revised HwF scheme came into force but they make a retrospective application after the HwF scheme comes into force. The refund application, based on the applicant’s capital and income at the time they paid the fee, will be assessed in line with rules of the old HwF scheme.

OGL

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