

Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice: Equalities Statement

1. Introduction

1.1 Further to the Equalities Statement that accompanied the Government's consultation: *Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice* dated 7 March 2023, this Statement updates our equalities considerations in light of the consultation responses received.

1.2 This Statement should therefore be read in conjunction with the previous Equalities Statement, a copy of which can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145983/equalities-statement.pdf

1.3 We consider that the equalities considerations identified and detailed in the previous Equalities Statement remain relevant. However, the following matters were raised in the consultation responses, which require a further equalities impact analysis:

- The equalities impact of no longer taking forward two proposals that were previously included in the consultation, namely: (a) retaining housing benefit, the housing element of pension credit and the childcare element of tax credit within the list of income disregards; and (b) not introducing a time limit for existing and proposed compensation payments within the list of capital disregards.
- The consultation responses received in answer to our equalities questions 27 and 28 within the consultation.
- One general consultation response raising an equalities concern (not in answer to consultation equalities questions 27 and 28).

1.4 We have conducted the further analysis required and address the above three matters within this updating Statement.

2. Background

2.1 It is the Lord Chancellor's duty to protect the constitutional right of access to justice. A key element of that duty is making sure that people are not prevented from using our courts and tribunals 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 system in times of need.

2.2 It is with this crucial duty in mind that the HwF scheme was introduced on 7 October 2013. The scheme supports the Lord Chancellor's duty to protect

access to justice by providing financial help towards the cost of court and tribunal fees for individuals with limited financial means.

2.3 The Ministry of Justice held a public consultation from 7 March 2023 to 30 May 2023, inviting responses on a series of reforms to make the HwF scheme more generous and target financial assistance at those most in need, whilst providing value for money for the taxpayer.

2.4 The consultation followed a previous update to the scheme on 30 September 2021 when inflation-based increases were applied to the gross monthly income thresholds (backdated to August 2016). The consultation proposals were the outcome of a comprehensive review that examined all aspects of the HwF structure. Full details on the proposals for reforming the scheme are set out in the consultation document.¹

2.5 As part of the consultation, it was vital to consider the equalities impact of the proposals. This was duly completed, and an Equalities Statement published alongside the consultation document.

2.6 As noted in the introduction above, this Statement addresses the equalities considerations raised by the respondents. For the Government's position in answer to all other responses received, please see the consultation response document that this Statement accompanies, a copy of which can be found here: <https://www.gov.uk/government/consultations/revising-the-help-with-fees-remission-scheme>

3. Public Sector Equality Duty

3.1 This Equalities Statement records the Ministry of Justice's analysis to fulfil the requirements of the Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010. This places a duty on Ministers and the Department, when exercising their functions, to have due regard to the need to:

- Eliminate unlawful discrimination - direct discrimination, indirect discrimination, discrimination arising from disability, and harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity - between people who share a relevant protected characteristic and people who do not share it.
- Foster good relations - between people who share a relevant protected characteristic and those who do not share it.

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- In carrying out this duty, Ministers and the Department must pay ‘due regard’ to the nine ‘protected characteristics’ set out under the Act, namely: race, sex, disability, sexual orientation, religion or belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

4. The equalities impact of removing two proposals that were previously included in the consultation

4.1. As detailed in the full consultation response document, we will proceed with the package of proposals as consulted upon, except two proposals:

- a) We will retain housing benefit, the housing element of pension credit and the childcare element of working tax credit in the list of income disregards.
- b) We will not proceed with introducing a 24-month time limit for existing and proposed compensation payments within the list of capital disregards.

4.2. The equalities impact of these changes are as follows.

Equalities impact of retaining housing benefit, the housing element of pension credit and the childcare element of tax credit in the list of income disregards

4.3. Among a list of other various benefits, housing benefit, housing element of pension credit and childcare element of tax credit are currently within the list of income disregards and as such, are not taken into account when assessing an applicant’s income for HwF eligibility. In the consultation, we proposed including payments received under these benefits as part of calculating an applicant’s income. Although 60% of respondents who answered the relevant question agreed with our proposal to update the list of income disregards, those who answered ‘no’ strongly disagreed with the proposal. This 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 these benefits in the list of income disregards. Please see the Government’s full response to question 9 for the summary of responses received and our rationale for agreeing with respondents’ views.

4.4. With regards to equalities considerations, the full Equalities Statement accompanying the consultation examined the correlation between those with protected characteristics and their level of income. **Table 5** within the Statement demonstrated that individuals in lower quintiles have a higher probability of belonging to an Asian, black or other ethnic background, compared to a white or Mixed ethnic background. They are also more likely to be living with a disabled child, be single with children or be single pensioners. Our amended proposal to retain these benefits in the list of income disregards will therefore maintain the

current level of assistance for applicants under a revised HwF scheme, particularly for those on lower incomes with protected characteristics.

- 4.5. Within the consultation responses relating to this proposal, one respondent highlighted that removing the childcare element of tax credit from the list of income disregards could disproportionately impact parents of children with a severe learning disability who typically have high childcare costs. Our amended proposal to retain the benefit within the list of income disregards will assist individuals with disabilities and their families.
- 4.6. Another response to the proposal noted that removing housing benefit from the list of income disregards may disproportionately affect domestic abuse survivors receiving a higher housing benefit allowance who have gone into refuge where costs are higher. Whilst domestic abuse survivors do not constitute a protected characteristic category, we acknowledge that individuals with certain protected characteristics are at greater risk of domestic abuse, including: younger people, individuals with disabilities, and women generally.² Therefore, our amended proposal to retain housing benefit within the list of income disregards will benefit victims of domestic abuse who share one or more protected characteristics.

Equalities impact of no longer introducing a 24-month time limit for existing and proposed compensation payments within the list of capital disregards

- 4.7. Personal injury or medical negligence awards, unfair dismissal payments and criminal injury compensation scheme payments are currently excluded from an applicant's capital assessment ('capital disregards'). There is also no time limit for how long these payments are disregarded. In our consultation, we proposed to add further payments, such as those related to Grenfell fire and Windrush, but to introduce a 24-month time limit (i.e. after this time, the payments would be included in the HwF capital assessment). Respondents agreed with our proposal to extend the payments list, but strongly disagreed with our time limit proposal 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 the Government's full response to question 23 for the summary of responses received and our rationale for agreeing with respondents' views.
- 4.8. With regards to equalities considerations, based on the nature of several of the compensation payments, we recognise that recipients of these payments may include those who define themselves as living with a disability. Therefore, we examined the correlation between households on low incomes (who would benefit from the scheme) and households with disabilities. As demonstrated by **Tables 4 to 6** within the full Equalities Statement accompanying the consultation,

² See: [Domestic abuse victim characteristics, England and Wales - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

households in quintile 1 and quintile 2 / Bottom quintile and Second quintile who have lower income will benefit from the increased HwF income thresholds. Individuals in these quintiles are also more likely to live in a household with a disabled working-age adult or a disabled child. Therefore, our amended proposal will remove the risk that is likely to have been created by a 24-month time limit on lower income households, particularly for households with a disabled working-age adult or disabled child.

4.9. Overall, we consider that our proposal to remove the time limit, alongside adding several additional compensation payments to the list of capital disregards will extend the level of financial assistance offered by a revised HwF scheme.

5. The consultation responses received in answer to our equalities questions 27 and 28 within the consultation

5.1. As part of the consultation, in line with our statutory obligations, we invited responses to two equalities questions:

- Question 27: Do you agree that we have correctly identified the range and extent of the equalities impact under each of the proposals set out in this consultation?
- Question 28: Are there forms of mitigation in relation to equalities impacts that we have not considered?

5.2. This section sets out the summary of responses to the questions, together with the Government's response.

Question 27: Do you agree that we have correctly identified the range and extent of the equalities impact under each of the proposals set out in this consultation?

5.3. We received 7 responses to this question. 4 respondents (57%) agreed that we had correctly identified the range and extent of the equalities impacts under each of the proposals set out in this consultation. 1 respondent (14%) disagreed, 1 respondent (14%) answered 'maybe', and 1 respondent (14%) answered 'don't know'.³

5.4. We confirm that of all respondents who answered the question, only one respondent provided comments. Whilst they agreed with the equalities impacts we had identified, they wanted to further highlight their comments in response to previous consultation questions relating to individuals with learning difficulties and

³ Subgroups do not total to 100% due to rounding.

their families who also bring claims on behalf of their relatives. They did not provide additional clarification on their comment.

5.5. **Government response:** We consider that we have correctly identified the range and extent of the equalities impact under each of the proposals set out in the consultation and that the Equalities Statement published alongside it remains valid. Additionally, to address the respondent's specific concerns relating to each relevant proposal, we have: (a) thoroughly analysed the complete set of consultation responses received and detailed the Government's response in relation to each of our proposals; and (b) analysed and set out above the equalities impact of not proceeding with two policy changes set out in the consultation.

Question 28: Are there forms of mitigation in relation to equalities impacts that we have not considered?

5.6. We received 7 responses to this question. 1 respondent (14%) believed that there were no forms of mitigation in relation to equalities impacts that we had not considered, 2 respondents (29%) felt that we had not considered all forms of mitigation and, 4 respondent (57%) answered that they did not know.

5.7. The two respondents who answered this question used it to articulate their concerns about the impacts of the proposals on those with disabilities and their families. The respondents commented that the thresholds used to calculate the level of fee remission an applicant receives should be higher for those with disabilities to take into account their higher living costs. One respondent specifically raised that there should be the introduction of a disability premium.

5.8. **Government response:** We acknowledge the concerns that households with disabled family members may have regarding higher costs. Premiums are there to acknowledge the size of a household and to account for additional spending required from having a partner or children. As stated in the consultation response document, to account for applicants with disabilities and their families, the HwF scheme applies several disability related income disregards (such as attendance allowance, severe disablement allowance, Disability Living Allowance etc.), which ensure that such income is not factored into the income assessment. Please see **Annex B** of the consultation response for the full list of payments we propose to disregard from the income test.

5.9. Additionally, where households with disabled family members receive one of the qualifying benefits, they will be passported through the income test and will receive full fee remission. The HwF scheme also applies several disability related capital disregards (such as Exceptionally Severe Disablement Allowance and Industrial Injuries Disablement Benefit etc). These disregards ensure that certain

capital, such as for disability related issues, is not factored into the capital assessment.

5.10. As the HwF scheme already accounts for households with disabled family members through these allowances, and will continue to do so, we do not propose to set a separate higher threshold for households with disabled family members. We consider it to be inappropriate to include all households with a disabled family member within one category when there is such a broad range of disabilities across a wide spectrum. We consider the income thresholds are best tailored through the use of income and capital 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. However, 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 fees, which is available only in exceptional circumstances.

6. A general response raising an equalities concern

6.1. As part of their overall response to the consultation, one respondent noted that the consultation document was long and complicated, without an accompanying easy read document. They were concerned about the difficulty for people with a learning disability to read and respond to the consultation.

6.2. **Government response:** Whilst we acknowledge that the consultation document was lengthy due to the extensive list of reform proposals and contained some complex issues, we made several adjustments to account for this. We ran the consultation for a period of 12 weeks to ensure there was enough time for those who wished to respond to thoroughly read, consider and respond to our proposals. To help with the complexity of the proposals and to make the document more accessible, we also published the consultation in large print and in the Welsh language. Within the document, we included various tables, diagrams worked examples and a summary at the start of the document which set out our aims to help ease understanding.

7. Equality Impact Analysis

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