

Title: Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice IA No: MoJ048/2023 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS), UK Supreme Court	Impact Assessment (IA)		
	Date: 07/08/2023		
	Stage: Implementation		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: mojfeepolicy@justice.gov.uk			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2022/23 prices)			
Total Net Present Social Value N/A	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

Fees have been charged in the civil and family courts, as well as certain tribunals, for many years and are a crucial means of funding the courts and tribunals system. It is the Lord Chancellor's duty to protect the constitutional right of access to justice, and a key element of this is making sure that people are not prevented from turning to our courts or tribunals for help simply because they cannot afford to pay the fee. Under the Help with Fees (HwF) scheme, HMCTS provides full or partial remission towards court and tribunal fees for users who have minimal savings and are on a low income or in receipt of certain benefits. The proposed reform of the HwF scheme is intended to ensure that access to justice is maintained for those who would otherwise be unable to afford court or tribunal fees. Government intervention is required because the Ministry of Justice sets the eligibility criteria for this means-test scheme.

What are the policy objectives of the action or intervention and the intended effects?

The intended effect is to revise the HwF scheme so it is more generous, better targeted and more efficient. The policy objectives are to ensure that (i) access to justice is maintained for individuals on low income with limited savings; (ii) the scheme continues to provide value for taxpayers' money; and (iii) the scheme is straightforward for applicants to understand and HMCTS to administer. We will also be aligning the UK Supreme Court (UKSC) remission scheme thresholds to ensure consistency with the HwF scheme.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options are considered in this Impact Assessment (IA):

- Option 0: Do Nothing. Maintain the current HwF scheme
- Option 1 – Reform the HwF scheme with revised eligibility criteria, namely to the income test, partial remissions policy and the capital test.

The Government's preferred option is to implement Option 1 as this best meets the policy objectives.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Reform the HwF scheme with revised eligibility criteria, namely to the income test, partial remissions policy and the capital test.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022/23	PV Base Year 22/23	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	Optional	£16	Optional
High	Optional	£20	Optional
Best Estimate		£18	0

Description and scale of key monetised costs by 'main affected groups'

Option 1 is estimated to cost HMCTS £18m-£24m per annum in lost fee income, with a central estimate of £21m, except for the year 2023/24 when the cost is estimated at £9m-£12m (with a central estimate of £10m), as the option is assumed to be introduced in October 2023. This equates to an annual average of £16m-£20m p.a. (with a central estimate of £18m) after conversion to real prices. As Option 1 represents a transfer of resources from HMCTS to individuals who will pay lower fees or receive a full fee remission, the lost income to HMCTS is not included in the NPV. There will also transitional costs to HMCTS to update both staff guidance for the public and to update the online services and calculator used. This is estimated to cost £150,000.

Other key non-monetised costs by 'main affected groups'

Any increased demand would lead to increased processing costs for HMCTS. Also there will be familiarisation costs to solicitors and supporting organisations, such as Citizen's Advice, however it is not expected these cost will be significant.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	Optional	£16	Optional
High	Optional	£20	Optional
Best Estimate		£18	0

Description and scale of key monetised benefits by 'main affected groups'

Option 1 is expected to increase the value of fee remissions by around £18-24m per annum, with a central estimate of £21m; this is £16m-£20m per annum (with a central estimate of £18m) after conversion to real prices. As Option 1 represents a transfer of resources from HMCTS to individuals who will pay lower fees or receive a full fee remission, the additional savings to court users is not included in the NPV.

Other key non-monetised benefits by 'main affected groups'

None

Key assumptions/sensitivities/risks	3.5%
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The following assumptions have been made when estimating the impacts in this IA:

- The estimates of costs and benefits are approximations that have been calculated using income and benefit data provided to us by the Department for Work and Pensions (DWP).
- Eligibility is calculated based on the DWP data under the current system and the proposed system using an average fee for each jurisdiction.
- The proportional change in eligibility is applied to remissions under the current system to estimate the additional amount of fee income remitted from the proposed policy.
- The DWP data has been weighted to make it more representative of court users using available data on the characteristics of court users. However, as the income of civil court claimants is not recorded, the estimates here are an approximation and actual income foregone may be higher or lower than that reported here.
- The analysis uses fee remissions in 2019/20 as a baseline.
- An Optimism Bias of 30% has been applied to the outputs from the model (the low estimate) to create a high estimate. The central estimate is the mid-point between the low and high estimates.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

Court and Tribunal Fee Remissions

1. HM Courts and Tribunals Service (HMCTS) delivers a benefit for courts and tribunals users, and the general public, by providing forums where people can enforce and defend their rights. Whether it be separated parents in a family court, a vulnerable witness to a crime, or someone appealing a benefits decision, a significant number of people interact with HMCTS every year during some of the most difficult times in their lives.
2. Fees have been charged in the civil and family courts, as well as certain tribunals, for many years and are a crucial means of funding the courts and tribunals system. It is the Lord Chancellor's duty to protect the constitutional right of access to justice, and a key element of that duty is making sure that people are not prevented from turning to our courts or tribunals for help simply because they cannot afford to pay the fee. All individuals, regardless of their financial circumstances, must be able to access the courts and tribunals system in times of need.
3. It is with this crucial duty in mind that the Help with Fees (HwF) scheme was introduced on 7 October 2013.¹ It is the single fee remission system applicable in all fee charging courts and tribunals in England and Wales.² The UK Supreme Court (UKSC), in operating its own remission scheme, applies the same eligibility criteria as the HwF scheme. The HwF scheme supports the Lord Chancellor's duty to protect access to justice by providing individuals on low income and little to no savings with financial support towards the cost of their court or tribunal fees. Provided they meet the eligibility criteria, applicants will either be eligible for a fee reduction (partial remission) or full fee remission.
4. A HwF application is required at each stage of the case where a fee is payable, including where a hearing fee may be applicable. The applicant can apply to get some or all of their money back if they have paid a fee in the last 3 months. However, the applicant must have been eligible for fee remission when they paid the fee.
5. The HwF scheme is only available to individuals. To qualify for the HwF scheme, an applicant must pass two tests – the capital test and the income test.
 - i) The capital test: The applicant must have disposable capital below a set amount ('the capital threshold').³ Currently, if an applicant or their partner is aged 61 years or over when making an application, they will pass the test if their disposable capital is below £16,000. Known as the 'age cap', this is a flat capital threshold that applies to this age group regardless of the fee amount. However, where an applicant and their partner (if applicable) are *under* the age of 61, the capital threshold varies according to the fee size – it currently starts at a lower threshold of £3,000 (for fees up to £1,000) and rises to a maximum threshold of £16,000 (for fees over £7,000). It must be noted that certain types of capital are excluded from the definition of 'disposable capital' and do not count towards the HwF capital threshold.⁴

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

² The HwF scheme also applies to fees currently charged by tribunals with UK-wide jurisdiction. Note, separate fee remission schemes operate for court fees in Scotland and Northern Ireland.

³ This includes, but is not limited to, money in savings account, stocks and shares, value of second homes etc.

⁴ For example: the applicant's main home, articles of personal clothing, unfair dismissal payments etc.

- ii) The income test: Provided they pass the capital test, the applicant will proceed to the income test. Under this test, in order to qualify for full fee remission, the applicant's gross monthly household income must be below the income threshold applicable to them. The current threshold starts at £1,170 for a single applicant. It is adjusted to take account of a partner (an additional £175, known as the 'Couple Premium') and any financially dependent children (allowance of £265 for each child, known as the 'Child Premium'). Similar to the capital test, certain benefits and forms of income are excluded from the income test – a full list can be found at Annex A. Separately, applicants in receipt of certain means-tested benefits are automatically deemed to fall below the HwF thresholds and will not pay anything towards their fee – known as 'passporting'.⁵
 - iii) Partial remissions (part of the income test): Applicants whose gross household monthly income *exceeds* the income threshold may receive a partial fee remission. This is determined by assessing their household income level against the 'gross monthly income cap' (the maximum allowed gross monthly household income). The cap is currently set at £4,000 above the applicant's income threshold. Where an applicant's gross monthly income is *above* the threshold but *below* the cap, the level of partial remission is calculated using the '50% rule'. For every £10 of income above the threshold, the applicant will be required to pay £5 towards the fee (up to a maximum of £2,000). If an applicant's gross monthly income is above the cap that is applicable to their circumstance, they will not receive any assistance through the HwF scheme.
6. Those individuals that are ineligible for fee remission under the HwF scheme can apply for remission under the Lord Chancellor's exceptional power to remit fees.⁶
 7. In 2021/22, £736m was charged in courts and tribunals fees, with £81m being remitted,⁷ an overall remission rate of 11%.

Problem Under Consideration

8. Apart from a minor amendment in 2014 to the definition of excluded benefits under the income test,⁸ and an update in September 2021 when the income thresholds were increased pursuant to inflation (backdated to 2016),⁹ the HwF scheme has not been subject to other changes since its introduction in 2013. This means the generosity of the HwF scheme has fallen in real terms.
9. For example, the gross monthly threshold of £1,170 for a single applicant without children amounts to an annual gross income of £14,040. This is far below the current gross annual salary of £21,700 for a person earning the National Living Wage, working 40 hours per week.
10. As a result of the above, and following a comprehensive review, we consulted on a set of reforms to ensure a more generous, better targeted and more efficient HwF scheme. The consultation paper, *Revising the 'Help with Fees' remission scheme – protecting and enhancing access to justice*, was published on 7 March 2023. It invited responses to the proposed reforms. The consultation period closed on 30 May 2023. We received 18 responses, over 60% of which were from those working in the legal or public sector. Other respondents

⁵ These are: Income-based Jobseeker's Allowance; Income-related Employment and Support allowance; Income Support; Pension Credit (Guarantee Credit); and Universal Credit with additional take home earnings of less than £6,000 gross per annum.

⁶ There is a separate but similar exceptional circumstances power available for fees relating to the UKSC, which can be exercised by the Chief Executive. The Chief Executive of the UKSC also has the power to remit fees in relation to an application for permission to intervene in an appeal filed by a charitable or not-for-profit organisation which seeks to make submissions in the public interest.

⁷ HMCTS Annual Report and Accounts 2021/22, found at <https://www.gov.uk/government/publications/hm-courts-and-tribunals-service-annual-report-and-accounts-2021-to-2022>

⁸ The Courts and Tribunals Fees (Miscellaneous Amendments) Order 2014

⁹ The Court Fees (Miscellaneous Amendments) Order 2021

included the main representative bodies for the legal profession, and members of the public.¹⁰ A consultation response has been published alongside this impact assessment.¹¹ Having conducted a thorough analysis of the responses to the consultation, the Ministry of Justice has decided to proceed with the key reform proposals presented in the consultation.¹²

11. This Impact Assessment (IA) therefore assesses the impact of the proposed reforms to the HwF scheme taking into account responses to the consultation. The IA does not include the cost of the impact on the UKSC. However, with a fee income of £901,000 in 2021/22, the costs associated with making these changes in the UKSC are expected to be minor.
12. The proposal to reform the HwF scheme, if implemented, would involve amendments to the HwF rules set out in The Courts and Tribunals Fee Remissions Order 2013.

B. Policy Rationale and Objectives

13. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
14. In this case the rationale for intervening is equity (fairness): to ensure that all individuals are able to afford court and tribunal fees, so they are not prevented from accessing the justice system. The associated policy objective is to ensure access to justice for all, whilst ensuring value for money for taxpayers. It seeks to achieve this through establishing a more generous fee remission scheme that targets financial assistance to individuals who need it most and provides them with increased help.
15. The Government's reforms to the HwF scheme seek to achieve: (i) a more generous fee remission scheme that provides more help to individuals with limited financial means; (ii) a better targeted scheme that provides financial assistance to individuals who need it most; (iii) a scheme that provides the best value for taxpayers' money. Overall, the Government's reforms seek to improve access to justice.

C. Description of Options Considered

16. To meet these policy objectives, the following options are considered in this IA:

- **Option 0 – Do Nothing. Maintain the current HwF scheme.**

¹⁰ The full list of respondents is as follows: 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; Individual members of the public (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.

¹¹ The response can be found at <https://consult.justice.gov.uk>

¹² Two minor proposed amendments are being made in light of the representations received. These refer to: (a) continuing with the current approach of disregarding certain benefits in an applicant's income assessment; and (b) continuing with the current approach of no time limit for disregarding certain payments when assessing an applicant's savings and investments. Further details can be found below and in the consultation response.

- **Option 1 – Reform the HwF scheme with revised eligibility criteria, namely to the income test, partial remissions policy and the capital test.**

17. Option 1 is the Government’s preferred option to meet the policy objectives.

Option 0

18. Under the “do nothing” option, the current HwF scheme would remain unchanged.

19. If the current HwF scheme were to remain in place, court and tribunal users who would, under the revised methodology described under Option 1, be eligible for full or partial fee remission, would be prevented from accessing financial support with their fees. As household incomes rise over time, the number of court and tribunal users eligible for a fee remission, along with the value of any fee remission (all else being equal), would gradually fall.

Option 1

20. Under Option 1, the Government will revise the HwF scheme. The key reforms will be to the scheme’s eligibility criteria: the income test, the partial fee remissions policy, and the capital test.

- i) The income test will be revised by using an updated methodology to set new income thresholds, Child Premiums and Couple Premium; thereby increasing the thresholds and Premiums.
- ii) The current partial remissions policy will be replaced with a three-banded taper scheme that reduces the gross monthly income cap to £3,000 above the gross monthly income threshold.
- iii) The capital test will be revised by increasing the lower capital threshold from £3,000 to £4,250, introducing a simplified three-band capital threshold structure, and revising the capital threshold age cap from 61 years old to 66 years old.

21. There are additional reforms to revise the HwF scheme included in this option, full details of which can be found at Annex B. However, the IA will focus its analysis on the above three main sets of proposals as these will have a material impact on the estimated cost of the reformed HwF scheme. The paragraphs below set out the three main reforms in more detail.

The income test

22. Under Option 1 we will revise the income test by using an updated methodology and setting the HwF income thresholds based on data on living expenses published in the Office for National Statistics (ONS) Living Costs and Food Survey (LCF).¹³

23. Option 1 will set the HwF income threshold in line with the expenditure of the 5th decile income level (i.e., the average household expenditure of people whose income falls 40% to 50% of the way up the UK’s income distribution), reflecting the expenditure of the median income household¹⁴. However, to establish what should be included in the income threshold as ‘ordinary and reasonable expenditure’, it has been revised to exclude non-essentials (such as alcoholic drink and tobacco, and holiday). Please see Annex C for a full list of exclusions.

¹³ The current income thresholds were derived from HM Revenue and Customs Working Tax Credit income cut-off for workers (currently in the process of being phased out and replaced by Universal Credit).

¹⁴ The middle value income of the sorted list of incomes.

24. To account for different size households, Option 1 includes revised Couple and Child Premiums that were derived by applying the Organisation for Economic Co-operation and Development's (OECD) modified-equivalence scale to the income threshold derived from the LCF dataset.¹⁵ This will maintain the existing HwF scheme's rationale that household composition has a direct bearing on living costs and, as a result, whether an applicant can afford their fee. However, and departing from the current HwF scheme's single Child Premium, Option 1 will establish two separate Child Premium levels – a lower Premium for a child aged 0 to 13; and a higher Premium for a child over 14 that is equivalent to the Couple Premium.
25. The single person equivalised spend have been calculated as gross income levels, and the gross level non-essential expenditure has been deducted to reach the income threshold of £1,420 (rounding to the nearest £5). The Couple and Child Premiums have been calculated from the proposed income threshold of £1,420, using the OECD modified-equivalence scale. The equivalence value for additional household members aged 14 or over is 0.5 per person, giving a premium rate of £710 for applicants with a partner or a child aged 14+. For a child aged 0-13, the equivalence value is 0.3 per child, giving a premium rate of £425 for this group.
26. Although 2020/21 LCF data was available at the time of the consultation, this time period coincided with COVID-19 related restrictions on social contact and economic activities which heavily influenced consumption habits of the respondents. Therefore, at the time of the consultation, the 2019/20 LCF data better reflected actual spending habits than the 2020/21 data. Likewise, the ONS published the 2021/22 LCF data on 31 May 2023¹⁶, after the end of the consultation period.
27. We have since considered and reviewed this later dataset. Although there was an increase to household expenditure compared with 2020/21, it remained at a level below 2019/20 (pre-pandemic). As such, revising the HwF scheme using the 2021/22 LCF data would provide for lower thresholds than data from 2019/20.¹⁷ We therefore believe that the 2019/20 LCF data remains a more robust reflection of spending habits for basing the HwF income thresholds on and have used this data to set the income threshold, Couple and Child Premiums in Option 1.
28. We recognise that the use of the 19/20 LCF data, and therefore the proposed thresholds based on it, will not capture the ongoing effects of the recent rise in UK inflation. As part of our HwF review, we explored the possibility of adjusting these thresholds to account for recent inflation. We determined this was not appropriate because there is insufficient evidence on the impact of the recent rise in inflation on household expenditure. Without such evidence, uprating the income thresholds to account for inflation would be inconsistent with our proposed methodology, which is based on actual UK household expenditure.
29. Notwithstanding the consultation responses which argued that the thresholds should be adjusted in line with the recent rise in inflation and cost of living pressures, we have decided to maintain the position above as was detailed in the consultation and accompanying IA.

¹⁵ Equivalisation scales are used to adjust household income, taking into account household size and composition. There are various scales available, which differ in their complexity and methodology. The OECD-modified equivalence scale is used widely across Europe. It adjusts household income to reflect the different resource needs of single adults, any additional adults in the household, and children in various age groups. The modified OECD equivalence scale is the standard scale for the Statistical Office of the European Union (Eurostat). It is also used by several government departments in the UK for key household income statistics. For example, the Department for Work and Pensions (DWP) use the modified OECD equivalence scale for their Households Below Average Income publication; ONS also use it for the Effects of Taxes and Benefits on Household Income analysis.

¹⁶ Available at

<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/expenditure/bulletins/familyspendingintneuk/april2021tomarch2022>

¹⁷ Using the 2021/22 LCF data would yield a HwF single applicant threshold of £1,380; a couple premium of £690; a child premium (aged 14+) of £690 and a child premium (aged 0-13) of £415.

However, we are mindful that the HwF thresholds should, as far as possible, continue to protect access to justice and remain sustainable in the short, medium and long term, while focusing finite public funds on those with limited financial means. As such, we will periodically review and consider the thresholds as new ONS LCF datasets are published in the future.

30. The current and revised income thresholds are given in Table 1, below.

Table 1: Current and revised gross monthly HwF income thresholds

	Individual threshold for a single applicant	Couple Premium	Child Premium (age 14+)	Child Premium (age 0-13)
Current gross monthly income thresholds	£1,170	£175	£265	£265
Option 1 gross monthly income thresholds	£1,420	£710	£710	£425

31. 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, not factored into an applicant's HwF income assessment. In the consultation, we proposed to begin factoring them in as part of proposed reforms to the income test.

32. 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 proposed removal of these three benefits. 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 took on board the views of the respondents' who disagreed and propose to retain them in the list of income disregards. As more benefit claimants are moved onto Universal Credit, continuing to disregard these three benefits will not impact the cost of the HwF scheme. Additionally, as a large proportion of those receiving housing benefit are also in receipt of passported benefits, this does not impact the assessment of the HwF scheme.

33. The current passporting arrangements were assessed as part of the HwF review and were found to be appropriate within the proposed scheme. Therefore, Option 1 will make no changes to existing passporting arrangements.

34. In summary, and following analysis of the consultation responses received, with the exception of continuing to disregard *housing benefit, the housing element of pension credit and the childcare element of tax credit*, Option 1 includes all the income test proposals consulted upon.

The partial fee remissions policy

35. Following analysis of the consultation responses received, Option 1 includes all of the partial remissions policy proposals that were consulted upon. Therefore Option 1 will replace the current 50% partial remissions rule with a three-banded taper scheme and reduce the gross monthly income cap of £4,000 to £3,000 above the gross monthly income threshold.

The capital test

36. Following analysis of the consultation responses received, with the exception of not introducing a 24-month time limit for compensation payments, we will proceed with all other capital test proposals as consulted upon.

37. Personal injury or medical negligence awards, unfair dismissal payments and criminal injury compensation scheme payments are currently disregarded from an applicant's capital assessment. There is also no time limit for how long these payments are disregarded. As part of the capital test proposals, 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).
38. 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. Due to lack of data, the compensation time limit had not been explicitly modelled. However, we do not expect that it would make a material difference to the cost of the HwF scheme.

Implementation

39. The reformed HwF scheme will apply to all fees in the courts and tribunals where the current HwF scheme is applicable. The UKSC operates its own remission scheme. However, it is aligned with the HwF scheme in its income and capital test criteria. As such, to maintain consistency between the two schemes, we will update the UKSC remission scheme to align with relevant changes made to the HwF scheme as necessary.
40. Implementation of the HwF scheme is assumed to take place in October 2023 for all fees in the courts and tribunals where the current HwF scheme is applicable.

D. Affected Stakeholder Groups, Organisations and Sectors

41. The options assessed in this IA will primarily affect users of HMCTS services where the current HwF scheme is applicable, and users of the UKSC fee remission scheme. A list of all the main groups that would be affected directly, or indirectly, is shown below:
- HMCTS users – individual litigants, appellants and defendants using any of the fee-charging civil, family courts and tribunals;
 - HMCTS – who operate the HwF service;
 - The taxpayer – the subsidy currently provided by the UK taxpayers towards the HwF scheme would be affected;
 - Legal services providers – who provide services to HMCTS users;
 - Support organisations – such as Citizen's Advice or Support through Court, who provide advice and assistance to vulnerable or financially constrained HMCTS users;
 - MoJ – who sponsor HMCTS (which provides the services for which fees are charged);
 - The UKSC – the final court of appeal for civil cases in the UK. Fee remissions in the UKSC are awarded under Schedule 2 of the Supreme Court Fees Order 2009. This remission scheme thresholds are aligned with the HwF scheme.

E. Cost and Benefit Analysis

42. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
43. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus

on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

44. The costs and benefits of each proposal are compared to Option 0, the counterfactual or “do nothing” scenario, where HwF income thresholds are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
45. In this instance, however, as court fees and associated remissions simply serve to shift resources between HMCTS and court users, the cost to HMCTS of option 1 represents a net transfer to individuals who will now pay lower court fees. The NPV is therefore £0.
46. This IA assumes a 10-year appraisal period, a discount rate of 3.5%, a price and Present Value (PV) base year of 2022/23. The HwF thresholds are not assumed to rise with inflation, so the additional cost to HMCTS will fall over-time in real terms. As detailed at paragraph 56 an Optimism Bias of 30% is applied. Total estimated income estimates are rounded to the nearest £m.

Methodology

47. The following analysis seeks to estimate the amount of additional court and tribunal fee income that would be ‘remitted’ as a result of Option 1. The approach taken to model this was to estimate the increase in the proportion of fee income due that would be remitted (‘remission rate’) for the main jurisdictions where fees are remitted and apply these rates to the total fees due using 2019/20 data.

How the HwF Model Works

48. HMCTS hold data which allows us to calculate the proportion of total fee income due across all fees that is currently ‘remitted’. However, because HMCTS does not collect data on court user’s income and earnings, it is not possible to know exactly how many more court users might receive a remission if they applied (and how much they would receive) under Option 1. Therefore, the impacts of Option 1 are estimated using a version of the Department for Work and Pensions’ (DWP) Policy Simulation Model (PSM). The PSM is representative of the general population and includes full income and benefit information. We adjust the weights in the PSM to make it more representative of court users. More details on the PSM are given in Annex D.
49. An overview of the how the modelling works is outlined in the steps below, with more detail given in Annex D.
 - **Step 1:** Eligibility for a fee remission, and the size of this remission, is tested for each household in the PSM using an average fee. This is done for the baseline (Option 0) and Option 1.
 - **Step 2:** The weights in the PSM are adjusted to make the sample more representative of court users. This is done using information on the characteristics of court users, see Annex D.
 - **Step 3:** The outputs from the PSM modelling are scaled down to align to the actual remission rates calculated from HMCTS data. It is then possible to estimate how much more of gross income is remitted under Option 1 compared with Option 0.

This is the estimated additional cost to HMCTS of the proposed HwF scheme (Option 1).

50. Steps 1 to 3 are carried out for the seven main fee areas where remissions are awarded, with an appropriate average fee and weighting used for each. The areas are: County Civil Fees (<£750), Civil Money £15k - £50k, Civil Money £50k+, Multi Track Hearing Fee, Divorce application fee, Private Family Law (application fee) and Royal Courts of Justice (RCJ). These seven categories of fee covered 95% of HwF awards in 2019/20. Table 4 gives the remission rates for the current HwF scheme calculated from HMCTS data and the expected remission rates under Option 1 for the fee categories.

Table 4: Proportion of total fee income due that is remitted ('remission rate') in Option 0 and Option 1; using 2019/20 data

Jurisdiction and fee band	Remission rates under current HwF scheme (19/20 data)	Remission Rates under Option 1
County Civil Fees (<£750)	9%	12%
Civil Money £15k - £50k	30%	31%
Civil Money £50k+	55%	56%
Multi Track Hearing Fee	6%	7%
Divorce application fee	22%	27%
Private Family Law (application fee)	27%	33%
Royal Courts of Justice (RCJ)	28%	35%

Note: 2019/20 remission rates have been calculated using HwF internal management information and gross fee income. They are a percentage of total gross fee income, which includes businesses that bring cases to court who are not eligible for the HwF scheme. It excludes whole case types where income is only received from organisations (e.g. mortgage repossession). Public family law is excluded as these fees are paid by public bodies.

51. A remaining seven fee categories are not included in the PSM modelling in 2019/20, which made up just 5% of total HwF awards: Court of Protection, Probate, Magistrates Civil, Tribunals, Remaining Family Fees, Possession Issue Fees and Insolvency Fees. To estimate the increase in the amount of fee income remitted in these jurisdictions, the Private Family Law (application fee) remission rate change (an increase of 24%) was applied to Court of Protection and Remaining Family Fees; and the County Civil Fees (<£750) remission rate change (an increase of 35%) was applied to the remaining five jurisdictions.

52. The outputs from the model are scaled down to the current HMCTS remissions levels, rather than remission rates calculated from the PSM being used directly in the modelling. This is because the PSM outputs will be higher than actual remission rates, as a share of fee income will be paid by organisations (who are not eligible), or paid under a 'no win, no fee' arrangement, and because some eligible claimants may not apply.

Value of Remissions

53. Table 5 gives the amount of fee income that was remitted in 2019/20 by jurisdiction under the current HwF scheme, and the estimated amount under Option 1. The table shows that in 2019/20, £99m of fee income was remitted. This is estimated to rise to £118m-£153m per annum under the proposed option; an increase of £18m-£24m per annum.

54. It is possible that the remission rate may rise if more court and tribunal users apply for remission under the HwF scheme under Option 1. Given the lack of data available and model limitations, we cannot estimate this impact.

Table 5: Fee Income remitted: baseline and Option 1 (2019/20 data), £millions

Jurisdiction and fee band	Remission under current HwF scheme (2019/20)	Remission under Option 1	Increase in Remission
County Civil Fees (<£750)	£17.8m	£24.1m - £31.3m	£6.3m - £8.2m
Civil Money £15k - £50k	£10.5m	£11.1m - £14.4m	£0.6m - £0.8m
Civil Money £50k+	£27.7m	£27.9m - £36.2m	£0.1m - £0.2m
Multi Track Hearing Fee	£0.8m	£0.9m - £1.2m	£0.1m - £0.1m
Divorce application fee	£15.3m	£19.4m - £25.2m	£4.1m - £5.3m
Private Family Law (application fee)	£3.6m	£4.4m - £5.7m	£0.9m - £1.1m
Royal Courts of Justice (RCJ)	£18.2m	£22.8m - £29.6m	£4.6m - £6.0m
Other	£5.4m	£6.9m - £9.0m	£1.5m - £2.0m
Total	£99.3m	£117.5m - £152.7m	£18.2m - £23.7m

Figures rounded to the nearest £100,000. Figures may not sum due to rounding.

55. The seven fee categories not included in the PSM modelling for 2019/20 have been grouped as 'other' in Table 5.

Optimism Bias

56. A 30% optimism bias has been applied to our model estimate of £18m p.a. in nominal terms, giving an upper bound of £24m p.a. as the additional amount of fee income that might be remitted due to the proposed reform of the HwF scheme. As the effect of Option 1 on demand for courts or tribunals is uncertain, optimism bias is applied to capture any potential rise in demand.

Demand

57. It is possible that by expanding eligibility to the HwF scheme, the reduction in the fee payable could incentivise some individuals to issue a court application who may not have done so otherwise. Greater awareness of the HwF scheme could also have this impact. Although we consider this to be a low risk, the optimism bias of 30% would include any potential shift in demand.

Nominal and real costs of Option 1

58. Table 6 shows the additional nominal cost to HMCTS over a 10-year appraisal period. Option 1 is estimated to cost HMCTS £18m-£24m per annum in foregone fee income, with a central estimate of £21m; the cost is estimated as £9m-£12m, central estimate of £10m, in 2023/24 as Option 1 is assumed to be introduced partway through the financial year in October 2023.

59. Table 6 shows the additional cost to HMCTS after accounting for inflation, using the GDP deflator. The real, annual average cost to HMCTS is £16m-20m, with central estimate of £18m.

Table 6: Additional nominal cost of HwF scheme over 10-year appraisal period, £millions

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	Annual Average
Nominal Cost											
Low	£9m	£18m	£18m	£18m	£18m	£18m	£18m	£18m	£18m	£18m	£17m
High	£12m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£22m

Best estimate	£10m	£21m	£21m	£21m	£21m	£21m	£21m	£21m	£21m	£21m	£20m
Cost in real prices											
Low	£9m	£17m	£17m	£17m	£17m	£16m	£16m	£16m	£15m	£15m	£16m
High	£11m	£23m	£22m	£22m	£22m	£21m	£21m	£20m	£20m	£19m	£20m
Best estimate	£10m	£20m	£20m	£20m	£19m	£19m	£18m	£18m	£18m	£17m	£18m

Option 1 – Reform the HwF scheme with revised eligibility criteria, namely to the income test, partial remissions policy and the capital test

Costs of Option 1

Transitional costs

HMCTS

60. HMCTS is expected to incur c. £150,000 in costs for the design and user testing the online and paper application processes and associated guidance. HMCTS is also expected to incur costs from amending guidance, the public online application form, the staff online application and the HwF calculators used by staff.

HMCTS users, providers of legal services and support organisations

61. There may be familiarisation and awareness costs incurred by individuals and legal services providers who use the court services where these fees are being changed. Support organisations, such as Citizen’s Advice and Support through Court, may also incur familiarisation costs and will need to amend any guidance and staff training documents. However, it is not expected that these costs will be significant.

UK Supreme Court

62. There will be familiarisation and awareness costs to the UKSC Supreme Court, who will need to familiarise themselves with the revised thresholds and amend any guidance. The costs associated with making these changes are expected to be minor.

Ongoing costs

HMCTS, MoJ, Taxpayers

63. As shown in Table 6 above, the ongoing cost to HMCTS (and therefore to the MoJ and the general taxpayer) in nominal terms is £9m-£12m in 2023/24 (as implementation is assumed to be partway through the year in 2022/23 in October), rising to £18m-£24m per annum from 2024/25 onwards. Over the 10-year appraisal period, this equates to an annual average of £16m-£20m p.a. (with a central estimate of £18m) after conversion to real prices.

64. Additionally, any significant increase in demand will lead to increased processing costs. The exact magnitude of these has not been monetised but is likely to be small relative to the size of the remissions themselves. For this reason, we have not presented estimates of this cost.

Benefits of Option 1

Ongoing benefits

Users of HMCTS services

65. As a result of Option 1, we estimate that HMCTS users will benefit in nominal terms by around £9m-£12m in 2023/24, the first six months of the remission change, and £18m-£24m per annum from 2024/25 onwards. Over the 10-year appraisal period, this equates to an annual average of £16m-£20m p.a. (with a central estimate of £18m) after conversion to real prices.

F. Risks and Sensitivity Analysis

Assumptions and Risks

66. The modelling approach rests on a number of assumptions which mean the estimated additional cost of Option 1 could be higher or lower than estimated above. The key assumptions that could particularly affect the estimated cost are:

- **Average fees:** as the value of a remission is dependent on the fee being paid, the use of weighted average fees means that actual remissions rates will vary from those estimated by actual fees paid.
- **Weighting:** while the PSM has been weighted to reflect the characteristics of court users (see details in Annex D), this is not as robust as full income/benefit information on court applicants. The gross income of court users has been estimated using the PSM and the actual gross incomes users will differ.
- **Take-up:** as the model estimates the increase in remissions by adjusting the current remission rates by the proportional change in eligibility in the PSM dataset, the model implicitly assumes that the 'take-up rate' does not change. The 'take-up rate' refers to the proportion of individuals eligible for a court fee remission that actually apply for a remission. As we do not know what proportion of eligible individuals currently 'take-up' a remission, it is not possible to estimate how this might change.
- **Current Remissions:** the modelling assumes that the amount of fee income currently remitted (Option 0) will remain relatively stable in absence of the changes proposed here. It is possible that the current financial climate may lead to an increase in remissions, and this is something that will be monitored.

67. In addition, we have also conducted sensitivity analysis to examine the impact of each main eligibility criteria (income thresholds, partial remissions policy and capital test) of the revised HwF scheme being assessed as Option 1. To do this we took each of the three eligibility criteria in turn and estimated the impact on remission costs of retaining that criteria of the current HwF scheme (or conversely, ignoring that criteria of the proposed HwF scheme).

- (i) Sensitivity 1 – Ignores the income thresholds eligibility criteria of the proposed HwF scheme but retains the partial remissions policy and capital test eligibility criteria;
- (ii) Sensitivity 2 – Ignores the partial remissions policy of the proposed HwF scheme but retains the income thresholds and capital test eligibility criteria;
- (iii) Sensitivity 3 – Ignores the capital test eligibility criteria of the proposed HwF scheme but retains the income thresholds and partial remissions eligibility criteria.

68. Table 7 below presents the results of the sensitivity analysis. Table 7 shows that the eligibility criteria that has the most impact on the value of remissions is the income thresholds. Using the current income thresholds which are lower than the revised thresholds (overall, but most notably in terms of the Premiums) has the impact of substantially reducing the value of the net fee income foregone. This means that it would make the scheme less generous. If the current partial remissions policy were used instead (while reforming the income thresholds and capital test as proposed), then the HwF scheme would be more generous by £3m to £4m per annum. However, this would mean that the scheme would not be targeted to those who most need help and would increase the taxpayers' subsidy to the HwF scheme.
69. Conversely, Table 7 shows that the revised capital test eligibility criteria is likely to have the least impact on the HwF scheme, as using the current criteria would make the scheme have lower value of remissions in the range of £0.2m to £0.3m. Overall, the results suggest that the revised changes to the income threshold eligibility criteria have the most impact.

Table 7: Results of the sensitivity analysis (costs in nominal terms)

Eligibility criteria	Revised HwF scheme (Option 1)	Sensitivity 1	Sensitivity 2	Sensitivity 3
Income thresholds	Revised	Current	Revised	Revised
Partial remissions policy	Revised	Revised	Current	Revised
Capital test	Revised	Revised	Revised	Current
Estimated cost per annum from 2024/25 compared to current HwF scheme	£18m to £24m	£-4m to £-3m	£21m to £28m	£18m to £23m
Estimated cost difference per annum from 2024/25 to revised HwF scheme (Option 1)	N/A	£-28m to £-21m	£3m to £4m	£-0.3m to £-0.2m

G. Wider Impacts

Equality impacts

70. A separate updated equalities statement has been produced for the options assessed in this IA.

Better Regulation

71. This measure is not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and so does not score against the department's business impact target.

International Trade Impacts

72. There would be no impacts on international trade as a result of Option 1.

Environment Impacts

73. There would be no impacts on the environment as a result of Option 1

H. Monitoring and Evaluation

74. The revised HwF scheme will be monitored using HMCTS Management Information of HwF applications and will be reviewed as part of regular internal MOJ review processes

75. Additionally, the MoJ will review new ONS LCF data and will consider the income thresholds levels as new datasets are published in the future.

Annex A: Disregarded Benefits

The following benefits and forms of income are currently excluded from the income test:

- Armed Forces Independence Payment (AFIP)
- Attendance Allowance
- Back to Work Bonus
- Bereavement Allowance
- Budgeting Advances paid under Universal Credit
- Budgeting Loan
- Carer's Allowance
- Carer Element of Universal Credit
- Childcare Element of Working Tax Credit
- Childcare Element of Universal Credit
- Cold Weather Payment
- Constant Attendance Allowance
- Direct payments made under Community Care, Services for Carer and Children's Services
- Disability Living Allowance (DLA)
- Disabled and Severely Disabled elements of Child Tax Credit
- Disabled and Severely Disabled Child elements of Working Tax Credit
- Disabled and Severely Disabled Child elements of Universal Credit
- Exceptionally Severe Disablement Allowance
- Financial support under an agreement for the foster care of a child 14
- Funeral Payment
- Housing Benefit
- Housing Credit Element of Pension Credit
- Housing Element of Universal Credit
- Industrial Injuries Disablement Benefit
- Independent Living Fund payments
- Limited Capability for Work Element of Universal Credit
- Personal Independence Payment (PIP)
- Any pension paid under the Naval, Military and Air forces etc (Disablement and Death) service Pension Order 2006
- Severe Disablement Allowance
- Short Term Benefit Advances (STBAs)
- Universal Credit Advances
- Widowed Parent's Allowance

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

Proposals for revising the income test

Income threshold: As set out in paragraphs 22 to 30 above, we propose to use an updated methodology and set the income thresholds based on data on living expenses published by the ONS LCF. Our proposed methodology will make the scheme more generous by raising the income threshold and Premiums.

Income disregards: Certain benefits and forms of income are excluded from the income test. We propose to update the list of income disregards to ensure that the only types of income to be excluded are those necessary to meet costs not represented in the ONS LCF data, namely: (a) payments intended to cover an immediate financial need i.e. Universal Credit advance payments or bereavement support payments; and (b) payments intended to cover a specific, unavoidable set of costs, e.g. Costs relating to disability. We will continue to disregard housing benefit, the housing element of pension credit and the childcare element of tax credit.

Definition of *gross monthly income*: We propose to amend the definition of 'gross monthly income'.

Proposals for revising the partial remissions policy

Policy for calculating partial remissions: as set out in paragraphs 35 to **Error! Reference source not found.** above, we propose to replace the fixed 50% partial remissions rule with a three-banded taper scheme.

The income cap: As set out in paragraphs 35 to **Error! Reference source not found.** above, we propose to reduce the gross monthly household income cap from £4,000 to £3,000.

Proposals for revising the capital test

Definition of *disposable capital*: We propose to amend the definition of *disposable capital*.

The lower capital threshold: As set out under paragraph **Error! Reference source not found.** above, for applicants and their partners who are under the age cap, we propose to increase the lower capital threshold from £3,000 to £4,250.

The capital threshold band system: As set out under paragraph **Error! Reference source not found.** above, we propose to replace the current ten-band system with a simplified three-band structure.

The age cap: As set out under paragraph **Error! Reference source not found.** above, we propose to increase the age cap from 61 years old to 66 years old, in line with the current State Pension age.

Capital disregards: Certain types of capital are excluded from the capital test. We propose to revise the list of 'capital disregards'.

Proposals for revising the application process

Declaration and statement of truth: We propose to allow litigation friends and legal representatives to complete and sign the application on applicants' behalf.

Incomplete applications: We propose to add a provision to deal with incomplete HwF applications.

Annex C: Excluded expenditure list

The ONS LCF data sets out the expenditure that was actually incurred net of tax and deductions (such as NI or pensions). These have been added back in to arrive at a gross monthly income. The gross monthly income required for an individual to be able to afford what a person at the 5th decile spends on goods and services according to the LCF 2019/20 is £1,862.

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

- Alcoholic drink, tobacco etc. - £53
- Gambling payments - £9
- Holiday related expenditure - £145 (package holidays, spending on holidays, travel and medical insurance.)
- Restaurants and hotels - £122 (on restaurants, we consider that not all spending can be deemed necessary.)
- Licences, fines, and transfers - £2.50 (such as motoring fines and stamp duty. Road tax is also included in this category and this element has not been excluded, as this is a necessary cost that cannot be considered for exclusion.)
- Money transfers and credit - £55 (such as money given as a cash gift, donations to charity, credit card interest payments.)
- 33% reduction on recreation and culture - £56 (This covers a wide range of spending, such as games, hobbies, cinemas, pets, books and computers. We consider that such spending should not be excluded in its entirety, as people should be able to afford some level of social and cultural participation. However, we believe that it is reasonable to expect applicants to reduce their expenditure on leisure activities by some amount in order to save to pay a fee. In this case, we have applied a reduction of 33%. Package holidays and gambling payments are treated separately and are excluded entirely (as above).)

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

Annex D: Modelling the increase in fee income remitted

This Annex provides more details on the DWP data used to estimate the change in fee income remitted between Option 0 and Option 1 and more details on how the data is weighted to make it more representative of court users.

DWP Income and Benefits Data

The DWP Policy Simulation Model (PSM) is a household dataset giving detailed information on household composition, earnings, other income, and benefits. It is representative of the general population. The PSM is based upon the 2017/18 Family Resources Survey but gives information on income and benefits in 2022/23 prices.

Although the number of households in receipt of Universal Credit (UC) will have increased since receiving the PSM dataset for this analysis (due to UC having a wider coverage of helping those in work and the continued migration legacy benefits to UC), this is not expected to have a substantial impact on HwF eligibility. This is because only those with additional take home earnings of less than £6,000 per annum (and therefore £500 per month) are eligible.

The PSM dataset does not include the full list of benefits that can be disregarded from income in the HwF means-test, and so only the following have been included: War Pension, Attendance Allowance, Severe Disablement Allowance, Housing Credit, Carer's Allowance, Personal Independence Payment, Disability Living Allowance, and Winter Fuel Payment. The Housing Element of Universal Credit is also disregarded from gross income, but this is capped at the maximum amount of Universal Credit received by the benefit unit.

Weighting the PSM

Each household in the PSM data will have a weight – together, these weights act to make the dataset representative of the general population. However, court users may differ, not just from the general population, but may also differ across jurisdictions. The weights in the PSM are therefore adjusted to make the sample better reflective of court users.

The Civil Court Users Survey (CCSU) (2014/15) found that the “profile of individual claimants matches the general population of adults (aged 16 or older) reasonably closely”, although claimants were found slightly more likely to be male, aged 45 or over and self-employed. The weights in the PSM dataset have therefore been adjusted to match the age profile of court users as reported in the CCSU and the proportion that are self-employed. Gender was not used to re-weight the data due to the difficulty of assigning a gender to a benefit unit. This weight is used when calculating remission rates in County Civil and High Court, as we have no data specific to the High Court.

To calculate remission rates in the family jurisdiction, alternative weights were calculated. For the divorce application fee, the weights in the DWP data were adjusted to match the age profile of those divorced in 2018, using ONS published statistics. However, accurately assessing applicant's income for the divorce fee is particularly difficult due to the changing nature of their household income and circumstances.

For Private Family Law fees, an alternative weight was developed to try to match the income distribution of households in the DWP dataset with that of Private Family Law claimants. Data on the postcodes of Private Family Law claimants in 2019 was matched to ONS data giving

an 'income deprivation' score for each Local Super Output Area¹⁸. This was used to analyse the proportion of Private Family Law claimants falling within each percentile of income deprivation in order to give a proxy distribution for income. The gross income of households in the PSM was then equivalised and ranked so that the PSM weights could be adjusted to match the proxy income distribution of Private Family Law applicants.

A similar approach was considered for county court claimants, but this was not considered robust enough to use in the final modelling due to the difficulty in removing organisations from the County Court claimant dataset.

For each jurisdiction, a best attempt has been made to re-weight the PSM data to reflect the characteristics or incomes of court users. However, none of these are a substitute for actual income information on court claimants and, in the case of the County Court, the CCUS is now several years old. In the case of the family jurisdiction, postcode is only a proxy for income. There therefore remains a risk that eligibility and income foregone is higher or lower than estimated here.

¹⁸ Using this approach, it was possible to match 96% of postcodes to an income deprivation score.