



**BIRMINGHAM LAW SOCIETY**

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**Review of the introduction of fees in the  
Employment Tribunals**

Ministry of Justice Consultation  
January 2017

**March 2017**

## Birmingham Law Society responses to consultation: proposals for adjustments to the fee remission scheme

**Preface:** By way of overview, we would like to comment that we feel strongly that the fee scheme poses a serious obstacle to Claimant access to justice and the proposals for adjustments to the remission scheme will not sufficiently alleviate the injustice posed by the introduction of fees.

**Question 1: Do you have any specific proposals for further reforms to the Help with Fees scheme that would help to raise awareness of remissions, or make it simpler to use? Please provide details.**

### Response:

The Help with Fees scheme (“the scheme”) has ameliorated most of the difficulties users experienced with the original remission scheme.

We believe that the scheme is adequately signposted. Users are directed to a number of links to the guidance notes and application form. However, the tables accompanying question 11 about the applicant’s total monthly income are misleading. Under the heading “How your income affects whether you can get help with your fee”, Table 2 provides the following illustration:

<b>Table 2</b>	<b>Single</b>	<b>Part of a couple</b>
<b>Maximum income</b>	£5,085 plus £245 for each child you have	£5,245 plus £245 for each child you have
<b>For example</b>		
<b>1 child</b>	£5,330	£5,490
<b>2 children</b>	£5,575	£5,735

The maximum income tables are misleading and are not relevant to those seeking help with employment fees. For example and with reference to Table 2, an applicant with a partner and two children (£5,245 plus £245 plus £245) will not be able to earn £5,735 per month and still be eligible for remission. This is because, when taking into account their contribution towards their fees (£5 for every £10 over the threshold for maximum income to obtain full fee remission - £1,735), the applicant would have to contribute £2,000 towards the fee. The maximum tribunal fee is currently £950.

We do not believe that the availability of the support available under the Lord Chancellor’s exceptional powers to remit fees for those who do not qualify for the scheme is well signposted. The only guidance to this that we can find is the Guide on how to apply for help with fees (Form EX160A) under the heading “if you are likely to experience exceptional hardship”. Even if applicants manage to find the guidance, they are likely to be put off making an application because of the tone adopted (help will only be made available in “exceptional circumstances”) and the failure to properly explain how to make the application. For example, the Guide refers to making an application to “the delivery manager” but does not explain who this person is, or how they can correspond with him/her.

We consider that serious consideration should be given to the timing of payment of the hearing fee. It is our experience that the hearing fee is required too early, often before exchange of witness statements with the effect that Claimants, having paid the final and substantial hearing fee, may feel encouraged to proceed with their claim despite evidence which is later adduced which impacts upon the merits of their claim. It is our recommendation that the fee should fall due for payment within fourteen days of exchange of statements but not less than fourteen days before the first day of the final hearing. We consider there to be merit in the hearing fee payment date being a clearly defined date which should be shared with/notified to the Respondent (the Respondent has an interest in knowing when the fee is payable but this information is not always shared with the Respondent). Directions could be set that work backwards from this date.

Further, the hearing fee should be repayable immediately to the Claimant if the case is settled before actually reaching a hearing or if the case settles before one week ahead of the hearing to allow the Tribunal to utilise that hearing time for other cases.

**Question 2: Do you agree that raising the lower gross monthly income threshold is the fairest way to widen access to help under Help with Fees scheme and to alleviate the impact of fees on ET claims? Please give reasons.**

**Response:**

We believe that the gross monthly income threshold should be increased (our comments relating to the threshold are set out in our response to question 3) and, in addition, changes should be made to the capital limits. In particular, we believe that any payment received by way of statutory redundancy should be excluded from the disposable income test (but not any enhanced payments) and, additionally, any lump sum payments made which amount to a payment in lieu of notice.

In our experience, many applicants rely on these payments as a source of income to assist them until they find alternative employment and it is unfair to expect them to use these payments to bring employment claims. Many are simply unwilling to do so and the fact that they *may* be able to recover fees from the respondent at the end of their claim is not a satisfactory response and overlooks the real pressures many individuals are under when they lose their jobs.

We recommend the removal of the requirement to consider household income.

Alternatively, consideration should be given to a significant increase of the household income threshold to cover those households who are not at all subject to financial pressure.

Consideration could be given to a second threshold for people who have just missed out on remission but who are recognised as being low income and may struggle with the fees. For these people consideration could be given to a payment plan. There could be a number of fixed payment plans presented to them. Claimants could be advised that if they default on repayment, the remainder of the sum becomes payment immediately.

**Question 3: Do you agree with the proposal to raise the gross monthly income threshold for a fee remission from £1,085 to £1,250? Please give reasons.**

**Response:**

We agree that the gross monthly income threshold should be increased. However, we do not feel that the proposed increase is sufficient.

We suggest that the threshold should reflect the real living wage set by the Living Wage Foundation, rather than that of the national minimum wage and national living wage set by the government.

Current rates are £8.45 per hour in the UK other than London where the rate is £9.75 an hour. This reflects the reality of the cost of living.

We also believe that the threshold should be increased annually in line with increases to the linked rates to ensure that those who are low paid will continue to be eligible for help with fees.

**Question 4: Are there any other types of proceedings, in addition to those specified in paragraph 355, which are also connected to applications for payments made from the National Insurance Fund, where similar considerations apply, and where there may be a case for exempting them from fees? Please give reasons.**

**Response:**

We are not aware of any other types of claim connected to applications for payments made from the National Insurance Fund that need to be included in the exemption.

However, we believe that claims that are restricted to holiday pay and/or notice pay should not attract a fee. Many of these types of claims are low value and cost more to litigate (in terms of fees) than the individual can expect to recover. This acts as a deterrent and many individuals do not bring these types of claims and therefore lose out.

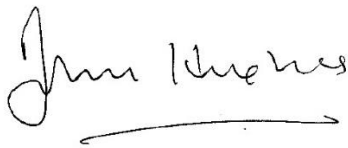
**Question 5: Do you agree with our assessment of the impacts of our proposed reforms to the fee remissions scheme on people with protected characteristics? Are there other factors we should take into account, or other groups likely to be affected by these proposals? Please give reasons.**

**Response:**

We believe that the current scheme does adversely affect people with protected characteristics, particularly women, those on maternity leave and disabled Claimants. With regard to the latter, their prospects of securing new employment will be much lower than a non-disabled Claimant and therefore they are disproportionately impacted by the financial hardship posed by the hearing fee.

We refer to the evidence presented to the Commons Select Committee in this respect and note that the Justice Committee concluded that “major changes are urgently needed to restore an acceptable access to the employment tribunals system”. In our view, the changes proposed in this consultation do not achieve this.

14 March 2017

A handwritten signature in black ink that reads "John Hughes". The signature is written in a cursive style. Below the signature is a horizontal line that ends in an arrow pointing to the right.

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John Hughes  
President  
Birmingham Law Society