Subject:	Revising the “Help with Fees” remission scheme
Published by:	HM Ministry of Justice
Publication Date:	7th March 2023
Closing Date:	30th May 2023
Response Date:	30th May 2023
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Representation:	The CCUA has drawn upon the views of the CCUA membership including those of the Policy and Reform Committee. See further detail under “introduction” below.

Introduction

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to this consultation from the Ministry of Justice.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. They include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Overall thoughts

Access to justice continues to be a major concern to the Civil Court Users Association and court users in general. This review is therefore welcomed. However, we would argue that the current fee structure presents a barrier to justice in many situations, which will not be relieved by these proposals.

Court fees are simply too high, as well as being front loaded. This means that some potential litigants will face the choice of spending more than the price of a brand new car simply to issue a Claim Form, or alternatively to walk away. That is not good enough.

There is a strong implication in this consultation paper that only low income individuals face a barrier to justice due to the fees. Bearing in mind the point we make above, that is clearly not the case. Many potential litigants, both individuals and businesses, will continue to be denied access to justice.

Given that Claim Form issue fees, as well as some other fees, increase in proportion to the amount of the claim, it is certainly not only small claims where justice is being denied. Many large potential claims are currently not being litigated due to the size of the fees due to the risk of losing yet further money. Court users appreciate that the outcome of litigation is never certain, but they also have to consider that even if they are successful in their claim, there is also never any guarantee that they will be paid or be able to effectively enforce their Judgment.

We agree that court fees should be payable and that the civil justice system should not be funded purely by the taxpayer. A complete absence of fees would be counterproductive, in that it would encourage spurious claims and defences. However, we continue to reject the idea that the system should be entirely self-funding and most definitely oppose the current system of “enhanced fees”, whereby court users are often required to pay *more* than the cost of providing the service.

Many participants in legal proceedings have arrived in that situation unexpectedly and through no fault of their own. We therefore see no reason why there should not be an element of tax payer subsidy towards court fees, in order to keep them low and realistic, which they often aren’t at the moment. After all, the provision of an effective and accessible justice system should be a cornerstone of society, to the benefit of all.

Response

We would ask that the following responses are considered within the context of the overall points made above.

We have only answered those questions where we feel we have value to add.

Question 1: Do you agree with our proposed methodology to set the income threshold using ONS LCF data? Please state yes/no/maybe/don't know and provide reasons for your answer.

Agree the calculations need to be based upon some quantifiable metric, however it is interesting to note only abut 6,000 complete this survey each year so sample set is quite low versus population as a whole, and may lead to some results which do not accurately reflect the finances of the wider populous.

Question 2: Do you agree with our proposed methodology to use the 5th income decile to set the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

Subject to the concerns raised above, yes it appears sensible to base on this mid-range level, especially as it aligns with Legal Aid calculations. However, as a wider comment, the restrictions to legal aid availability over the years have led to accusations that access to the judicial system is being removed from some. Should it be assumed that any review to legal aid availability will lead to further review of fee assistance rules in years to come?

Question 3: Do you agree with our assessment of 'essential' and 'non-essential' expenditure categories, as set out in **Annex B**, for the purposes of calculating the income threshold? Please state yes/no/maybe/don't know and provide reasons for your answer.

Subject to the general points we make above, we appreciate that the Government must balance public interest in tax payers money against the access to justice preservation. Whilst some 'non essential' expenditure categories could appear a little draconian on first view - it is the case that a court fee is usually a one off expense or a series of fees over a shorter period and the access to the Court system should still require the applicant to take serious consideration of whether it is appropriate in the circumstances. Ensuring that, where affordable, the applicant has some level of financial obligation towards the fee would seem sensible and reasonable.

Question 4: Do you agree with our proposal to use the OECD modified equivalence scale to establish the Couple Premium and Child Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes in the main. Many existing government calculations apply economies of scale when calculating entitlement to, for example, benefits. Seems reasonable to align with existing government methodology in this means tested process. As with anything, will always encounter certain member of the population who do not fit neatly into the process, but this cannot be eliminated entirely when implementing a bulk process.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

No. It is not persuasive that a younger child would be less impactful on a family finances and neither is it clear where the age cut off as suggested is derived from. Would like more information or a simple and clearer metric to simply account for children under 16 or under 18 and in full time education for example.

Question 6: Do you agree with our proposal to use the 2019/20 ONS LCF data to set the income threshold and Premiums? Please state yes/no/maybe/don't know and provide reasons for your answer.

Concern on using this data sample expressed in Question 1. Limited data pool.

Question 7: Do you agree with our proposal to review the income thresholds (as set out in the table under paragraph 70 above) when the ONS LCF 2021/22 data is published in 2023? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes, subject to concerns of using this data as the benchmark, agree it should be reviewed periodically to ensure it remains in line with current financial reality. Would this be reviewed annually or bi-annually etc?

Question 8: Do you agree with our proposal to withhold adjusting the income thresholds by inflation as explained above? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes, as long as it receives periodic reviews through some metric.

Question 9: Do you agree with our proposal to update the list of income disregards as outlined above, and in **Annex C**? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes, agree disregard re disability support payments. Agree sensible to align with Legal Aid calculations, subject to Legal Aid comments at Question 2.

Question 10: Do you agree with our proposal to maintain the current list of means-tested benefits for passporting applicants through the income test? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes - a full assessment of every applicant would likely be onerous and slow. Accept the likelihood of anyone in receipt of the listed benefits would be in a position to pay a Court fee so removes a large degree of admin from the review.

Question 11: Do you agree with our proposal to amend the definition of gross monthly income as per paragraph 94? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes on the basis it aligns with Legal Aid - subject again to earlier comments on Legal Aid and provided Legal Aid is accepted to be functioning successfully.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Maybe. Fee is an instant and usually one off. Is it necessary to complicate this part of the process? if they can afford it in the month of the application then this could be sufficient? At the other side of the argument, not desirable for applicants to feel put off from accessing justice in a random month where they appear to have more income than is regular.

Question 13: Do you agree with our proposal to amend the gross monthly income definition to no longer include drawings as income? Please state/yes/no/maybe/don't know and provide reasons for your answer.

Yes. It is not disregarded - it is classed in the Capital calculation so seems reasonable.

Proposals regarding the partial remissions policy

Question 14: Do you agree with our proposal to replace the fixed 50% partial remissions rule with the three-banded taper scheme set out above? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes – would say this is fairer for the applicants on lower end of the scale but also ensures public money best directed.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes – public funds should be channelled where possible to those in most need. Examples of scenario under old calculations where £65k income p.a may achieve fee assistance is clearly not ideal.

The capital test proposals

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? Please state yes/no/maybe/don't know and provide reasons for your answer

Yes, in principle. Whilst investments not often immediately available in liquid form it is not desirable that someone could have vast investment and not be required to consider liquidating some to afford a court fee. The change is in the spirit of targeted support.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes – appears proportionate to the aim at directing resources to where needed most. Raising the lower threshold to account for changes since implementation in 2013 reasonable. Will this lower threshold be linked to inflation or periodically reviewed?

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes – simplification will be clearer for users and more efficient for government to apply. More transparency on how assistance is targeted.

Question 19: Do you agree with our proposal to increase the age cap to align with the current state pension age of 66? Please state yes/no/maybe/don't know and provide reasons for your answer.

Agree it is desirable to maintain age in line with state pension age but the reality is many people have retired or reduced work before 66 and would find it hard to replenish capital before this age. However, disregards for certain benefits and disability payments would act as a safety net for some of this age bracket falling through gaps. Agree on balance proportionate to increase the age.

Question 20: If the definition of disposable capital is amended as proposed under paragraph 119 above, 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.
Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes - practicality of this is clear.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes in so far as it is aimed at aligning with other schemes such as Legal Aid. Whether all capital disregards on the list are appropriate of themselves is not really relevant to this review.

Question 22: Are there other payments that should be added to the list of capital disregards alongside the additional payments proposed under paragraph 147? Please state yes/no/maybe/don't know and provide reasons for your answer.

Don't know - nothing comes to mind.

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes for the purposes of clarity and to align with other schemes.

Proposals regarding the application process

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes – in line with enabling/enhancing access to the justice system

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? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes for practicality purposes - in line with GDPR also as cannot maintain half completed data applications for longer than necessary etc. Ensure enough time to respond and perhaps a chaser letter to mitigate chance of postal failure.

Question 26: Do you agree with our proposals to assess applicants during the transition period as set out in the above scenarios? Please state yes/no/maybe/don't know and provide reasons for your answer.

Yes - there needs to be some method for transition, likely none will be flawless but this seems reasonable.

Rob Thompson

CCUA Chair

30th May 2023