

**Ministry of Justice  
Fee remissions for the courts and tribunals**



**A response by the Association of Personal Injury Lawyers**

**May 2013**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,700 members committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, Governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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## **Introduction**

APIL welcomes the opportunity to respond to the Ministry of Justices' latest consultation on fee remissions in the courts and tribunals. The fee remission system is extremely important in allowing low income claimants to have access to the courts. The proposed reforms threaten this access to justice. It is predicted by the Government that there would be around a 20% reduction in the number of people who could qualify for a fee remission if the new proposals were to be implemented.

The reform of the fee remission system should not be viewed in isolation. Coupled with the loss of legal aid and expected increase in litigants in person, the proposals could have disastrous consequences. APIL is concerned that:

- In a bid to ensure “wealthy individuals” pay their own court fees, the disposable capital test and gross monthly income thresholds are set too low.
- Changing the fee remission system before the effects of the new benefits system are known is dangerous to access to justice. The new proposals for fee remissions are based on estimates. It is important that the Ministry of Justice obtains actual evidence before putting the changes into practice.
- The proposed changes could further disadvantage litigants in person.

## **The Disposable Capital Test**

The disposable capital test will lead to vulnerable injured people being denied access to justice. Firstly, the disposable capital thresholds are set far too low, and will prevent fee remissions from being claimed by far more people than just “wealthy individuals”. The low thresholds will have a deterrent effect on those who are just on the threshold and so not entitled to a remission. A person who has £3,000 savings will not want to spend, and will most likely not be able to justify, spending £1,000 on court fees. This will therefore deny access to justice, as they will be put off from bringing a claim for compensation that they rightfully deserve.

A further issue is that if a person is injured, then they may well be forced to take time off work for a lengthy period of time, and during this time they may only be paid statutory sick pay, which currently stands at £86.70 per week. They will therefore need their savings to support them through this difficult time. If the disposable capital test were brought into force, an injured employee with only £3,000 in savings and very little household income would

have to gamble up to one third of their savings on fees, at a time when they need their savings the most<sup>1</sup>.

We are also concerned that the disposable capital test will disproportionately affect certain groups of people, such as the elderly, who may inherently have more capital than other groups, but may not be in a position to use it to pay for court fees, as they use their savings for day to day costs.

A further issue is that “disposable” capital includes ISAs, shares and other assets that may be difficult to liquidate without the claimant incurring a penalty or even a loss. Not all savings are in a form that is immediately and easily accessible.

### **Gross Monthly Income**

The consultation states that the government has chosen to consider an applicant’s monthly gross income as this best reflects an applicant’s current financial situation and therefore their ability to pay a fee. There is a danger that gross monthly income will not adequately reflect a person’s ability to pay for court fees.

The proposed income thresholds for gross monthly income are also lower than they were previously. A single person’s threshold is set at £1,085 (equating to around £13,000 per annum), but a couple’s threshold drops from £18,000 per annum (as it is set now) to £1,245 gross monthly income, which equates to £15,000 per annum – a mere £2,000 per annum above that of a single person. Given that a person working 40 hours a week on minimum wage earns £12,875.20 per annum, most people according to this threshold will be considered “wealthy” and able to pay court fees. This is simply not the case.

### **Changes to the benefits system**

It is clear from the consultation and the impact assessment that the Government is uncertain about how the changes in the benefits system will tie in with the new proposed fee remissions system. Over-estimation of how many people will qualify for benefits and how much money they will subsequently have following the changes could have devastating effects on the fee remission system, and thus on access to justice for the vulnerable. It could potentially leave vulnerable people having to pay fees that they simply cannot afford. APIL therefore strongly recommends that the Government waits until the new system of Universal Credit has been put into force and the effects of the changes have settled, before deciding how to adapt the fee remission system.

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<sup>1</sup> Pg 13 paragraph 8 of the consultation document “those with over £3,000 household disposable capital would never be required to spend more than one third of their household disposable capital on a fee.”

The proposed changes – removing certain qualifying benefits such as Working Tax Credit; not allowing Universal Credit to be a “passporting” benefit to full remission - are expected to cut the percentage of adults eligible for fee remission from around 35% to 29%. The Government’s justification for this is that their estimates show that around 2.6m more adults would be entitled to receive some element of Universal Credit than those who would be entitled to a full remission under the proposed gross income test. Allowing an automatic full remission to all those who receive Universal Credit could therefore cost up to £4m in additional full remissions.

APIL is concerned about the figures that “support” this change, found at page 12 of the Impact Assessment. If the old system were kept in place with the changes to the benefits system, there would be a slight increase in those who would be entitled to remission, from 34% to 35%. Under the new system, there would be a drop from 32% to 24% of people eligible for a full remission. Whilst there would be an increase in people allowed a partial remission under the new system, from around 1% to 5%, there would be an overall decline in people being eligible for any remission at all – from 35% to 29%. 20% of people who are at present entitled to a fee remission of some sort will now not be entitled to any waiver of their court fees. It would be dangerous to apply a new system of fee remission when drastic changes to the benefits system are taking place. Numerous people could be left without the support that they require as a result.

### **Reducing time limit for retrospective fee remission from six months to two months**

APIL is strongly against the time limit for retrospective fee remission being reduced from six months to two months. Commonly, defendants will refuse to pay for court fees if a remission could have been granted to the claimant, but the claimant did not apply. The defendant will class these costs as an unnecessary disbursement. Insurers argue that they are not liable for court fees even if they lose a case, as the claimant would have been entitled to remission and so failed to mitigate by not applying for it. The six month time limit for retrospective claims allows claimants with borderline cases who may not be sure whether or not they should have applied for a fee remission, to apply after the case has gone to court, and get a remission to avoid being out of pocket when the defendant will not pay.

We are concerned that two months is an unrealistic time limit, failing to allow sufficient time for the client to gather the required evidence and apply for remission. Many APIL members report that the EX 160 form for fee remission is very time consuming and difficult to complete. The form must be completed perfectly, or it will be sent back. Supporting evidence must also be gathered and sent off.

It also must be taken into account that following the Legal Aid and Sentencing and Punishment of Offenders Act reforms, there will be more litigants in person. The effects described above will be exacerbated where a claimant tries to bring a claim without the help of a legal representative. These people will be inexperienced about the court process, and will be even more likely to be unaware, initially, that they can qualify for a remission of fees. If they do not apply when they should however, the experienced insurer will not pay the fees if the defendant loses, as they will argue in assessment of costs that the court fees are an unnecessary disbursement. Reducing the time that a claimant can bring a retrospective fee remission claim will increase the chance of an inexperienced litigant in person being left out of pocket with costly court fees.

### **Impact assessment and equality analysis**

As expressed above, we have concerns about the introduction of a new fee remission system being introduced without seeing the effects of the new Universal Credit. There is a lot of uncertainty in the impact assessment, and this is unsatisfactory when the proposed changes affect vulnerable people and their access to justice.

We also have concerns that certain groups of people, such as the elderly, will be unfairly penalised for having savings and will not qualify for fee remission under the disposable capital test, even though by realistic standards they are not “wealthy individuals”.

- Ends -

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